

Summary of Research Related to Use of Ambient Intelligence Tools in Clinical Settings

There is no New York law or regulation addressing the use of ambient intelligence tools generally or in clinical settings, specifically. New York regulates the recording of conversations under the NY Penal Law provisions eavesdropping, which makes it a felony to “unlawfully engage[] in wiretapping, mechanical overhearing of a conversation, or intercepting or accessing of an electronic communication.”¹ Each of these constitutes “eavesdropping” and each is defined to apply to situations in which *at least one party to a conversation does not consent* to the overhearing or recording of the conversation, meaning New York is generally a “one-party consent” state.² Thus, if a provider consents to the use of ambient intelligence tools in their clinical encounters, any overhearing, recording, transcription, or other collection of the provider’s conversations with patients would not violate New York’s eavesdropping laws.

- **“Wiretapping”** means “the intentional overhearing or recording of a telephonic or telegraphic communication by a person other than a sender or receiver thereof, without the consent of either the sender or receiver, by means of any instrument, device or equipment.”³ “Telephonic communication” requires a transfer containing a “human voice” by use of “wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of communications” and “any electronic storage of such communications.”⁴ This includes transfers made only in part through wires, cables, or similar connections.⁵

When ambient intelligence tools are used in a clinical setting, the prohibition on wiretapping would be most applicable in the context of a telehealth visit during which neither the patient or provider has consented to the use of such tools. In-person encounters in which wires, cables, or other connections are not used to transmit a conversation would not be subject to the wiretapping law.

- **“Mechanical overhearing of a conversation”** means “the intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment.”⁶ This type of eavesdropping also would not apply in the context of a clinical encounter involving ambient intelligence tools as the provider (one party to the conversation) is present for and involved in the conversation.
- **“Intercepting or accessing of an electronic communication”** means “the intentional acquiring, receiving, collecting, overhearing, or recording of an electronic communication, without the consent of the sender or intended receiver thereof, by means of any instrument, device or equipment, except when used by a telephone company in the ordinary course...”⁷ “Electronic communication” means “any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-optical system,” subject to various exceptions not applicable here.⁸

¹ N.Y. Penal Law § 250.05.

² N.Y. Penal Law § 250.00; *Flagler v. Trainor*, 663 F.3d 543 (2d Cir. 2011).

³ *Id.* at (1).

⁴ *Id.* at (3).

⁵ *Sharon v. Sharon*, 558 N.Y.S.2d 468 (Sup. Ct. 1990).

⁶ N.Y. Penal Law § 250.00(2).

⁷ *Id.* at (6).

⁸ *Id.* at (5).

Restrictions on intercepting or accessing of an electronic communication would have limited application regarding use of ambient intelligence tools in the clinical context, similar to wiretapping above. This law would also most logically apply in the case of a telehealth visit during which neither the patient or provider has consented to the use of such tools and recording of conversations during in-person encounters would not fall within this provision's scope.

A number of legislative and administrative policies regarding the use of AI have been proposed or implemented over the past few years in New York, none of which directly address ambient intelligence tools. New York introduced 35 laws addressing AI in 2025, but only two have passed:

- New York State passed the Artificial Intelligence Companion Models Law⁹ that prohibits any person or entity to operate or provide an “AI companion” to someone in New York unless the model contains a protocol to take reasonable effort to detect and address suicidal ideation or expressions of self-harm expressed by the user. That protocol must, at a minimum: (1) detect user expressions of suicidal ideation or self-harm, and (2) refer users to crisis service providers (e.g., suicide prevention and behavioral health crisis hotlines) or other appropriate crisis services, when suicidal ideations or thoughts of self-harm are detected. AI companion operators must provide a “clear and conspicuous” notification—either verbally or in writing—that the user is not communicating with a human; that notification must occur at the beginning of any AI companion interaction, and at least every three hours after for continuous interactions. The Attorney General has oversight authority and can impose penalties of \$15,000/day on an operator that violates the law. This law is effective on November 4, 2025.
- New York also passed the Automated Employment Decision-Making in State Government law¹⁰ requiring any state agency that uses an automated employment decision-making tool to publish a list of such tools on its website. In addition, it requires that the state maintain a inventory of AI systems that are used by state agencies.

Several significant pieces of legislation were introduced that would have broadly regulated AI, including potentially deployers of ambient listening tools and systems, which would have required bias-testing and risk mitigation activities, among other things. However, none of these passed.

Until more substantial legislation is passed that addresses ambient intelligence, use of AI specifically in clinical settings, or consumers'/patients' affirmative consent to or rights to opt-out of the use of AI-enabled tools and systems with which they interact or to which they are exposed, clinical entities and providers need not affirmatively obtain patient consent for the use of ambient intelligence tools under applicable law. Nonetheless, due to the sensitivity and generally confidential nature of personal health information and other information discussed during clinical encounters between patients and providers, as well as the increasingly prevalent cybersecurity threats to organizations that operate in the healthcare sector, it may be advisable that patients be advised that ambient intelligence tools are being used during such encounters. In addition, some providers are choosing to post in the exam room or the waiting room a disclosure that ambient intelligence tools are being used.

In light of the foregoing and the recent increased scrutiny of AI by lawmakers and regulators, CHCANY members who desire to employ ambient intelligence tools in clinical encounters may decide to implement

⁹ General Business Law Article 47 (Section 1700 et al).

¹⁰ State Technology and Civil Service Law.

procedures through which they can obtain consents from both providers and/or their patients (or provide disclosure to the provider) prior to a clinical encounter.

- ***For providers***, consents can be most readily obtained at annual trainings (for existing providers) or during initial onboarding (for new providers). Obtaining from each provider a blanket consent for the use of ambient intelligence tools in all of the provider's clinical encounters with patients would be the easiest to administer, collect, and maintain for CHCANYS members. If providers consent to the use of ambient intelligence tools, such consent would satisfy New York's one-party consent rule to guard against potential violations of eavesdropping laws, to the extent applicable (i.e., patient consent to the use of the tool would not be required under current law). A form of blanket consent to the use of ambient intelligence is attached hereto as ***Exhibit 1***.
- ***For patients***, disclosure or consent, while not required under current law if the provider has already consented to the use of ambient intelligence tools, may still be desired in the clinical setting and can be most readily obtained during the intake process or upon the provider first entering the exam room. A form of patient disclosure to the use of ambient intelligence is attached hereto as ***Exhibit 2***. **We caution providers, however, from obtaining patient consent if they are unable to ensure that such tools are not used if the patient does not consent.** If consent is obtained, we recommend that providers post something in the exam room reminding patients to advise the provider that they do not want the ambient listening tool used (to remind providers to not use it in that encounter).

EXHIBIT 1
Provider Consent to the Use of Ambient Intelligence Tools

[Provider Name] has approved the implementation and use of certain artificial intelligence (AI) enabled ambient listening (ambient intelligence) tools in the clinical setting to help support your clinical documentation practice. This tool is used to supplement and support you and not to replace your clinical judgement.

This form is to inform you of the implications of AI and to obtain your informed consent to the use of AI tools for each patient encounter you provide on behalf of [Provider Name], which will record the voice of anyone in the room during the patient encounter.

- AI tools offer administrative support during patient encounters by using generative AI transcription technology to produce draft clinical notes and chart summaries in real-time. AI tools are intended to reduce the amount of time and work providers must devote to documenting their services.
- AI tools record, transcribe and analyze provider-patient conversations as they occur, similar to how a scribe may draft notes for a provider during a patient encounter.
- Data collected using AI tools may also help [Provider Name] identify applicable CPT/HCPCS codes for billing purposes and may be integrated into [Provider Name]'s electronic health record software.
- AI tools may have additional functionality that use generative AI technology specifically developed for healthcare uses to analyze a patient's history, genetic information, lifestyle factors, comorbidities, drug allergies and sensitivities, and current symptoms. The tools then compare the patient's information to large datasets to identify patterns, help providers identify and diagnose diseases and conditions, provide predictions as to the likelihood of complications or the success rate of a particular intervention, and/or create a draft personalized treatment plan for the patient.

You, the provider, ***must*** review and, as necessary, edit and revise the draft clinical note, summary or personalized treatment plan produced by AI tools to ensure quality and accuracy before notes or summaries are incorporated into a patient's medical record. AI tools are aids to providers; they are not substitutes for a provider's exercise of professional judgment in making clinical decisions and performing other duties related to clinical care.

By signing below, you hereby consent to the use of AI tool during each patient encounter for which you are a treating or assisting provider at [Provider Name], and you agree to comply with the prevailing standards of professional practice regarding the use of technology in furnishing care to patients.

Professional's Name: _____

Professional's Signature: _____

Date: _____

EXHIBIT 2
Patient Disclosure to the Use of Ambient Intelligence Tools

[Provider Name] is using certain artificial intelligence (AI) enabled ambient listening (ambient intelligence) tools at our locations to support our providers when providing care to you.

This disclosure provides you with information regarding ambient intelligence used in the clinical setting.

- ***What are Ambient Intelligence Tools?*** Ambient intelligence tools use AI to “listen” to and record clinical conversations during your provider visit and write draft notes or summaries of the visit in real-time – like as if there was another person in the room scribing your visit. This helps providers focus more on you instead of entering information into the computer during your visit. Some ambient intelligence tools do other activities to help support providers to help them make diagnoses or decisions regarding your care and treatment.
- ***How Will Its Use Affect You?*** You will not know the ambient intelligence tool is being used; you will not interact with it. The ambient intelligence tool will be working behind the scenes to draft a draft clinical note or summary of your encounter for your provider to review after your visit.
- ***How Do Ambient Intelligence Tools Impact the Privacy and Security of Your Health Information?*** [Provider Name] assures you that your privacy is our utmost priority and that [Provider Name] keeps your health information private and secure. [Provider Name] complies with all applicable laws, including without limitation the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA).
- ***Who Do You Contact with Additional Questions?*** If you have any questions about ambient intelligence, or this consent form, please ask the front desk or your provider.