January 4, 2024

The Honorable Brett Guthrie
Chairman, Health Subcommittee
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC, 20515

Dear Chairman Guthrie,

Thank you for the opportunity to appear before the House Committee on Energy and Commerce Subcommittee on Health on November 29, 2023, for the hearing entitled "Understanding How AI is Changing Health Care." Attached please find my written responses to the questions for the record.

Sincerely,

Dr. Benjamin Nguyen
Senior Product Manager
Transcarent

Cc: The Honorable Anna Eshoo, Ranking Member, Subcommittee on Health, House Committee on Energy and Commerce

The Honorable Anna Eshoo
1. I introduced the CREATE AI Act (H.R. 5077) to give medical researchers in all sectors of society, including academia, small businesses, nonprofits and government agencies equitable access to resources needed to develop AI technology.
a) Do you support this bill?

Answer:

Transcarent supports the *Creating Resources for Every American To Experiment with Artificial Intelligence Act of 2023* (*CREATE AI Act.*) We agree that the legislation can be an important step toward advancing innovation and the development of safe, reliable, and trustworthy AI research and development. As called for in the legislation, we agree that efforts must be pursued to effectively test, benchmark, and evaluate AI systems developed and deployed in the United States.

The Honorable Nanette Barragán
1. Data is critical for the AI development for personalized health care, but there is currently no uniform federal privacy protection for all the types of health-relevant information that would be used to create AI tools. How can AI deployers use patient data and ensure patient privacy?

Answer:

Transcarent supports efforts to pursue a comprehensive privacy law that protects health and consumer data that falls outside of the parameters of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. A comprehensive privacy bill should ensure that data should only be used for what the consumer has consented to. Sensitive data shouldn't be used for marketing purposes or sold without the consent of the consumer.

Although HIPAA was enacted more than 25 years ago, the core principles still work well to protect patients' privacy. The HIPAA privacy rule is flexible and adaptive to AI use cases. The privacy rule has clear standards for protected health information (PHI) use and defines what de-identified means, and that will protect consumer privacy as AI systems are being built.

It is critical that all entities follow the best practices that HIPAA has established for the collection and sharing of sensitive health information; this includes the way PHI is defined and used by covered entities. These existing practices should be followed, whether you're building an electronic health record (EHR) or an AI product. Sharing medical data with AI products should be treated like sharing medical data with any non-AI product: if PHI is shared to an AI product, it should be protected in the same manner as any data shared with a non-AI product. Those who build AI products are responsible for what happens to that data and how it is stored, and they are responsible for using PHI appropriately and not using it to train AI models without proper de-identification or consent from patients.