

Artificial Intelligence transcription software

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MIPS has received a number of enquiries from members about the medico-legal risks of using AI transcription software. This article addresses these questions.

How does it work?

MIPS understands that there are several companies in the market now providing this functionality, which can be integrated into existing clinical practice software. Broadly speaking, the software is designed to capture an audio recording of a consultation, convert it into a written transcript, and then adopt large language models to generate a relevant summarised medical record. Once a progress note is created, users can review and correct the note before it is finalised. This process generates other information in the form of an audio file and a written transcription file. There seems to be some variation among providers as to where audio files and transcripts are stored and for how long.

Does MIPS support its use?

MIPS does not endorse or recommend the use of specific products, services, or providers. MIPS understands that many health service providers have already started using AI transcription software and have found it to save them time and to increase the accuracy of their medical records. However, in deciding whether to adopt this software into your practice, you should consider a number of factors, including the information contained within this article.

Am I covered for the use of AI transcription software to generate medical records?

Yes. Subject to the terms and conditions of your MIPS Indemnity Insurance Policy, there is no exclusion for the use of AI transcription software. However, it is important to understand some of the medico-legal issues that can arise when using the software to minimise the risk of any claims, complaints or privacy breaches arising.

Medico-legal issues to consider

Surveillance devices legislation

Different legislation in each state regulates the audio recording of conversations, which includes clinical consultations. In Victoria, Queensland, and the Northern Territory, it is not unlawful for a health service provider to record a conversation if they are a party to the conversation. However, in New South Wales, South Australia, Western Australia, and the Australian Capital Territory, it is a criminal offence to record conversations without consent. In addition, under the Telecommunications (Interception) Act 1979 (Cth), it is unlawful anywhere in Australia to intercept a communication passing over a telecommunications system. This could apply to telehealth consultations. It is therefore critical that health service providers obtain consent from patients before using any AI transcription software. I discuss consent below.

Privacy considerations

Different privacy laws also operate across Australia. They regulate the collection, use, disclosure, and storage of health information, including the minimum period for retaining health information. This is important because any audio files and transcripts generated by AI transcription software may contain health information not included in the medical record and may therefore need to be retained for a minimum period of time, in addition to the requirement to retain AI-generated medical records. The minimum retention period of health information varies between states and territories and also depends upon whether the information is held by a public or private health facility. In Queensland, South Australia, Western Australia, the Northern Territory and Tasmania, the Privacy Act applies, and personal information should be deleted when no longer required. Arguably, this means

that once the medical record note has been generated, the audio file and transcript can be deleted. However, in Victoria, the Australian Capital Territory and New South Wales, health information must be retained for seven years from when a patient was last consulted or until a child reaches the age of 25 years, whichever occurs later. It would be important for health service providers to understand whether and for how long any audio files or transcripts are stored to ensure that it complies with the requirements in the health service provider's jurisdiction.

The Privacy Act also regulates overseas information transfers, making it essential to understand where any health information is stored. If audio files and/or transcripts are stored overseas, it is again important that patients are aware of this and provide their consent. Similarly, it would be important to understand how any audio recordings, records or transcripts are stored (e.g. external server locations, cloud computing) and whether these meet Australian information security standards.

Obtaining consent

As a result of the legal restrictions imposed by privacy and surveillance devices laws, health service providers must seek consent from patients before using AI transcription software. This can be verbal or in writing. However, if verbal consent is obtained, the details of the discussion and the patient's consent (or refusal of consent) should be clearly documented in the medical record. Patients should also be given the opportunity to withdraw their consent at any time. To ensure that patient consent is informed and free of coercion, it would be prudent practice to provide patients with sufficient written information about how health information will be collected, used, and disclosed, and where and for how long it will be stored. Patients should be given sufficient time to digest this information and be given an opportunity to ask questions before consenting to any recording during a consultation. MIPS understands that some AI transcription software providers have developed their own consent forms, although this is not a substitute for discussing the process with patients and answering their questions. Health service providers could also alert patients about the proposed use of AI transcription software on the clinic website, in the clinic's privacy policy, in new patient registration forms, at the reception desk, and/or in the waiting room through the use of posters or information pamphlets.

Professional obligations to check for accuracy

Finally, it is the health service providers' responsibility to carefully check any AI-generated medical records before finalising them. The Health Insurance (Professional Services Review Scheme) Regulations 2019 (Cth) and the Codes of Conduct of the Medical and Dental Boards of Australia require health service providers to maintain clear, accurate, respectful, and sufficient records that can facilitate the ongoing treatment of the patient. Adverse patient outcomes may occur when other health service providers caring for a patient rely on inaccurate medical records.

Take-home messages

AI transcription software has the potential to increase the speed and accuracy of medical records generation. However, before deciding whether to adopt this new way of working into your clinical practice, it is important that potential medicolegal risks are recognised and addressed. There are three key take-aways. First, voluntary and informed consent must be obtained from patients before recording any consultations. Second, it is important to understand whether audio and transcription files are generated and, if so, where and for how long they are stored, to ensure compliance with privacy laws. Third, at the end of the consultation, you should check that the medical record generated is true and correct. If you require any specific medicolegal advice in relation to the use of AI transcription software, then please do not hesitate to contact MIPS on info@mips.com.au.

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If in doubt, contact our claims and 24-hour clinico-legal advice and support team on 1300 698 573.

You should consider the appropriateness of the information and read the [Member Handbook Combined PDS and FSG](#) before making a decision on whether to join MIPS.
