

U.S. Department of Health and Human Services Compliance Plan for OMB Memorandum M-24-10

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Prepared by: Assistant Secretary for Technology Policy (ASTP)
Office of the Chief Artificial Intelligence Officer (OCAIO)

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Introduction

On March 28, 2024, the Office of Management and Budget (OMB) published Memorandum M-24-10, *Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence*. M-24-10 establishes new agency requirements and guidance for artificial intelligence (AI) governance, innovation, and risk management and is consistent with the AI in Government Act of 2020, the Advancing American AI Act, and Executive Order 14110 on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.

The United States Department of Health and Human Services (HHS) Office of the Chief Artificial Intelligence Officer (OCAIO) within the Assistant Secretary for Technology Policy and the Office of the National Coordinator for Health Information Technology (hereafter ASTP) is responsible for implementing the requirements outlined in M-24-10.

Section 3(a)(iii) of M-24-10 requires each agency to submit a compliance plan to OMB regarding its approach to achieve consistency with M-24-10 (and to publicly post such plan on the agency's website) or a written determination that the agency does not use and does not anticipate using covered AI¹.

M-24-10 established new agency requirements and guidance for AI governance, innovation, and risk management. In compliance with M-24-10, HHS's compliance plan consists of three sections that align with those areas:

- Strengthening AI Governance and Coordinating AI Use
- Advancing Responsible AI Innovation
- Managing Risks from the Use of Artificial Intelligence

The HHS OCAIO will work with all HHS Operating Divisions (OpDivs) and Staff Divisions (StaffDivs) to implement the requirements and recommendations set forth in M-24-10. This compliance plan fulfills the requirement specified in Section 3(a)(iii) of M-24-10.

HHS is aligned with the federal government's commitment to maintain American leadership in AI (Executive Order 13859) and to promote the use of trustworthy AI (Executive Order 13960) among other AI-related Executive Orders². The compliance plan required by M-24-10 establishes principles and practices for the responsible use, development, and procurement of artificial intelligence technologies.

This compliance plan details HHS's efforts and intentions to achieve consistency with M-24-10 through actions that include but are not limited to: updating existing internal AI principles, guidelines, and policies; removing barriers to responsible use of AI; promoting initiatives to increase AI talent; increasing collaboration and the sharing of best practices; determining which AI is presumed to be safety-impacting or rights-impacting; and identifying and managing AI risk management practices.

This plan does not supersede any existing federal laws that HHS agencies must follow.

¹ Covered AI is discussed in M-24-10, Page 2, Scope, Section 2.b.

² For example: Executive Order 14110 - *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence* and Executive Order 14091 - *Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*.

STRENGTHENING AI GOVERNANCE AND COORDINATING AI USE

General

In connection with the HHS AI Taskforce, the HHS OCAIO has actively integrated and implemented the requirements of Executive Order 14110 and M-24-10 across the HHS AI community. This includes the issuance of several internal memoranda to orient HHS OpDivs/StaffDivs to M-24-10's governance expectations and to set in motion the active compliance obligations that M-24-10 requires for HHS' current and planned AI uses (e.g., annual AI inventory).

To further the efficient implementation of M-24-10 across a department as large as HHS, the OCAIO has required that each OpDiv/StaffDiv designate a Senior Liaison for AI to serve as a single, coordinating point of contact for the OCAIO. The OCAIO is also actively engaged in standing up a new HHS AI Community of Practice (CoP) to facilitate AI-related knowledge sharing and communication across HHS on a wide range of topics, from AI tools to workforce development to procurement. Additionally, the OCAIO, in coordination with relevant HHS OpDivs/StaffDivs, has initiated a review of the AI policies issued across HHS for compliance with Executive Order 14110 and OMB M-24-10. The OCAIO expects to use this review to establish, as necessary, new or superseding policies, requirements, best practices, and recommendations for HHS-wide use and implementation.

AI Governance Bodies

Consistent with M-24-10's requirements, HHS has designated an acting Chief AI Officer (CAIO) and initiated the hiring process for a permanent CAIO. Additionally, HHS held its first HHS AI Governance Board meeting in May 2024 with another planned for late fall. The HHS AI Governance Board is chaired by the Deputy Secretary, co-chaired by the acting CAIO, and includes representative senior leadership from OpDivs and StaffDivs.

The OCAIO will also ensure that all strategic and departmental policy, requirements, and guidance is consistent with government policy on managing procurement risks and reducing barriers to the responsible use of AI.

AI Use Case Inventories

Building on the release of M-24-10, throughout FY24 and FY25 the OCAIO will lay the groundwork to optimize the curation and maintenance of the HHS' AI use case inventory data. OCAIO will also perform additional required analyses as well as lead HHS' public release of AI code associated with applicable AI tools consistent with M-24-10's requirements. For the initial FY24 AI inventory, Senior Liaisons for AI have been called upon to support the OCAIO's curation, analyses, and publication responsibilities. The OCAIO anticipates developing a standard taxonomy of data points required for the HHS AI use case inventory with a specific focus on potential safety-impacting and rights-impacting factors. The OCAIO also intends to develop, as necessary, certain standard operating procedures (SOPs³) to help accurately and comprehensively collect and report all AI use case inventory data.

³ Standard operating procedure (SOP): Established or prescribed methods to be followed routinely for the performance of designated operations or in designated situations.

Reporting on AI Use Cases Not Subject to Inventory

The OCAIO plans to develop, as necessary, SOPs for accurate and complete AI use case inventory data collection. The OCAIO will issue its AI use case inventory on a scheduled basis with instructions describing whether an AI use case that previously met the exclusion criteria for being individually inventoried should subsequently be added to the agency's public inventory. These SOPs will be in alignment with the requirements stated in Section 3(a)(v) of M-24-10 and the recently released OMB guidance on submitting AI use cases for the 2024 AI Use Case Inventory⁴.

ADVANCING RESPONSIBLE AI INNOVATION

Removing Barriers to the Responsible Use of AI

The OCAIO will routinely assess and identify barriers to the responsible use of AI and determine techniques and approaches to minimize these barriers. Some of the current barriers identified include:

- Funding and procurement
- IT infrastructure
- Data management
- Cybersecurity
- Shortage of AI talent from a workforce perspective

The OCAIO plans to take a multi-pronged, multi-stage approach to address the above barriers and any others identified by HHS OpDivs/StaffDivs. Early-stage efforts planned and in process include the distribution of: best practices, HHS-wide SOPs and guidelines, AI-related trainings, and other methods of promoting transparency and efficiency with respect to the responsible use of AI. Additionally, during FY25, the OCAIO will produce the M-24-10 required strategy “for identifying and removing barriers to the responsible use of AI and achieving enterprise-wide improvements in AI maturity.”

AI Talent

The OCAIO will collaborate with the HHS Chief Human Capital Officer to utilize the tools available for recruiting and retaining AI talent at HHS. Part of this collaboration includes identifying an HHS AI talent lead who will focus on the recruitment and the retention of top AI talent. The OCAIO will leverage the key actions taken by OPM to recruit, hire, and train AI and AI-related talent⁵. Along with the above approaches, the OCAIO continues to monitor the progress being made under Section 10.2: Increasing AI Talent in Government of Executive Order 14110 to accelerate hiring pathways.

⁴ See: Guidance for 2024 Agency Artificial Intelligence Reporting per EO 14110 published on August 8, 2024.

⁵ OPM actions include: launching an AI Talent Surge to accelerate hiring AI professional across the federal government, granting flexible hiring authorities for federal agencies to hire AI talent, and issuing a memo in July 2023 in collaboration with the Office of Science and Technology Policy (OSTP) to outline specific AI competencies that can be used in the selection, assessment, and training of AI talent.

The OCAIO will create platforms for knowledge sharing and best practices, including webinars, forums, and collaborative online spaces. Talent exchange programs will be considered, allowing employees to work on temporary assignments in other agencies to gain diverse experience and insights. Finally, the OCAIO may pursue the use of AI competitions and hackathons with other agencies to identify and attract top talent while also fostering innovation in the field of AI.

AI Code Sharing and Collaboration

As stated in M-24-10, “Openness, sharing, and reuse of AI significantly enhance both innovation and transparency, and must also be done responsibly to avoid undermining the rights, safety, and security of the public.” The OCAIO intends to work with OpDivs/StaffDivs to proactively share any custom-developed code – including models and model weights – for AI applications in active use and plans to release and maintain that code as open-source software in a public repository. The OCAIO also plans to leverage the information collected for the AI use case inventory to identify where opportunities exist for sharing this information. Ultimately, the OCAIO will institute practices for OpDivs/StaffDivs to ensure that AI code, model, and data asset sharing occurs throughout HHS.

Harmonization of Artificial Intelligence Requirements

The OCAIO is reviewing AI-related policies and procedures across all HHS OpDivs/StaffDivs to, as applicable, establish and to ensure consistency in HHS-wide guidance and/or requirements for AI governance, innovation, and risk management. The finalized products generated from these collaborations will be shared through the OCAIO-led HHS AI Community of Practice and other applicable internal HHS communication channels. As applicable, policies and procedures that affect the how the public engages with HHS would also be made available on the HHS website.

MANAGING RISKS FROM THE USE OF ARTIFICIAL INTELLIGENCE

Determining Which Artificial Intelligence Is Presumed to Be Safety-Impacting or Rights-Impacting

The OCAIO has actively engaged with OpDivs/StaffDivs to begin the work of identifying AI use cases that may be rights impacting, safety impacting, or both. The OCAIO is developing criteria to make these determinations based on OMB guidance and in consultation with experts in HHS and available guidance and best practices.

Additionally, during FY25, the OCAIO will develop an SOP to cover the safety- and rights-impacting AI use case waiver process applicable to the minimum requirements specified in M-24-10. The OCAIO will use this process to review AI use case waivers and to make operational decisions regarding the issuance, denial, revocation, and certification of waivers.

Implementation of Risk Management Practices and Termination of Non-Compliant AI

Except as prohibited by applicable law or where inconsistent with government-wide guidance, all HHS OpDivs/StaffDivs are required to apply the minimum risk management practices outlined in M-24-10 to safety- and rights-impacting AI by December 1, 2024, or else stop using the AI tool or solution until they achieve compliance. Leading up to December 1, 2024⁶, and then on an ongoing basis, the OCAIO will work with OpDivs/StaffDivs to:

⁶ The OCAIO will also help OpDiv/StaffDiv's with AI uses that may need to request an extension from OMB in October. Since this is a one-time process it is not listed as part of ongoing responsibilities.

- accurately identify safety- and rights-impacting AI uses;
- determine the extent to which such AI uses are in compliance with M-24-10's "minimum practices" and what additional actions may be needed;
- assist OpDivs/StaffDivs to bring AI uses into compliance with minimum practices (which may include requests that third-party vendors voluntarily take appropriate action (e.g., via updated documentation or testing measures); and
- Where applicable, identify which OpDiv/StaffDiv AI uses may need targeted waivers from the OCAIO for certain minimum practices and an established compliance plan.

Documenting and validating OpDivs/StaffDivs adherence to the minimum risk management practices for AI uses is crucial to effectively managing the risks posed by AI-supported products and systems. During FY25, the OCAIO expects to author a minimum risk management practices SOP that expands on M-24-10 and that factors in our first year experience assisting OpDiv/Staffdivs comply with the minimum practices.

OCAIO will also collaborate with (the HHS CIO, CISO, etc.) and look to use existing mechanisms and processes administered by HHS wherever possible to efficiently support the review of AI uses, such as leveraging the HHS Authority to Operate (ATO) process and the HHS Enterprise Product Life Cycle (EPLC).