

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred House Bill
3 No. 816 entitled “An act relating to regulating the use of artificial intelligence
4 in the provision of mental health services” respectfully reports that it has
5 considered the same and recommends that the Senate propose to the House that
6 the bill be amended by striking out all after the enacting clause and inserting in
7 lieu thereof the following:

8 Sec. 1. PURPOSE

9 It is the purpose of this act to:

10 (1) safeguard individuals seeking mental health services in Vermont
11 from psychological harm, including death by suicide, by ensuring that these
12 services are delivered by mental health professionals and not artificial
13 intelligence systems; and

14 (2) allow the responsible use of artificial intelligence for administrative,
15 operational, documentation, and quality-improvement functions that support
16 access, efficiency, and innovation in mental health services.

17 Sec. 2. 3 V.S.A. § 129a is amended to read:

18 § 129a. UNPROFESSIONAL CONDUCT

19 (a) In addition to any other provision of law, the following conduct by a
20 licensee constitutes unprofessional conduct. When that conduct is by an
21 applicant or person who later becomes an applicant, it may constitute grounds

1 for denial of a license or other disciplinary action. Any one of the following
2 items or any combination of items, whether the conduct at issue was
3 committed within or outside the State, shall constitute unprofessional conduct:

4 * * *

5 (30) For any mental health professional, misuse of artificial intelligence
6 pursuant to 26 V.S.A. § 7101.

7 * * *

8 Sec. 3. 18 V.S.A. § 7115 is added to read:

9 § 7115. PROHIBITED USES OF ARTIFICIAL INTELLIGENCE

10 (a) As used in this section:

11 (1) “Artificial intelligence” means an engineered or machine-based
12 system that varies in its level of autonomy and that can, for explicit or implicit
13 objectives, infer from the input it receives how to generate outputs that can
14 influence physical or virtual environments. “Artificial intelligence” includes
15 generative artificial intelligence.

16 (2) “Generative artificial intelligence” means an artificial intelligence
17 that can generate derived synthetic content, including text, images, video, and
18 audio, that emulates the structure and characteristics of the system’s training
19 data.

20 (3) “Mental health services” means support, counseling, therapy, or
21 psychotherapy services provided by a mental health professional to diagnose or

1 treat an individual’s mental or behavioral health or provide ongoing recovery
2 support, excluding religious counseling.

3 (4) “Therapeutic communication” means a written or spoken interaction
4 intended to diagnose or treat any type of mental or behavioral health concern,
5 provide ongoing recovery support, or provide any advice related to diagnosis,
6 treatment, or recovery.

7 (b) A person, corporation, or entity shall not offer, provide, or advertise
8 mental health services in the State that use artificial intelligence in whole or in
9 part, except as authorized pursuant to 26 V.S.A. § 7101.

10 (c)(1) A violation of this section shall be deemed a violation of the
11 Consumer Protection Act, 9 V.S.A. chapter 63. The Attorney General has the
12 same authority to make rules, conduct civil investigations, enter into
13 assurances of discontinuance, and bring civil actions, and private parties have
14 the same rights and remedies as provided under 9 V.S.A. chapter 63,
15 subchapter 1.

16 (2) Nothing in this section shall be construed to preclude or supplant any
17 other statutory or common law remedies.

18 Sec. 4. 26 V.S.A. chapter 120 is added to read:

19 CHAPTER 120. ARTIFICIAL INTELLIGENCE IN REGULATED

20 PROFESSIONS

21 Subchapter 1. General Provisions

1 § 7001. DEFINITIONS

2 As used in this chapter:

3 (1) “Artificial intelligence” means an engineered or machine-based
4 system that varies in its level of autonomy and that can, for explicit or implicit
5 objectives, infer from the input it receives how to generate outputs that can
6 influence physical or virtual environments. “Artificial intelligence” includes
7 generative artificial intelligence.

8 (2) “Generative artificial intelligence” means an artificial intelligence
9 that can generate derived synthetic content, including text, images, video, and
10 audio, that emulates the structure and characteristics of the system’s training
11 data.

12 Subchapter 2. Use of Artificial Intelligence by Mental Health

13 Professionals

14 § 7101. PERMITTED AND PROHIBITED USES OF ARTIFICIAL
15 INTELLIGENCE IN THERAPEUTIC SETTINGS

16 (a) Definitions. As used in this section:

17 (1) “Administrative support” means a task, other than therapeutic
18 communication, that is performed to assist a mental health professional in the
19 professional’s delivery of mental health services, such as:

20 (A) managing appointment scheduling and reminders;

21 (B) processing billing and insurance claims;

1 (C) drafting general communications related to practice logistics;

2 (D) preparing and maintaining clinical records, including notes from
3 patient or client sessions;

4 (E) analyzing deidentified data to track patient or client progress,
5 identify trends, or implement operational and quality-improvement measures;

6 (F) identifying and organizing external resources or referrals for
7 patient or client use; and

8 (G) implementing workforce and capacity planning.

9 (2) “Clinical responsibility” means the duty of a mental health
10 professional to review, approve, and remain legally accountable for any use of
11 artificial intelligence in connection with the provision of mental health
12 services.

13 (3) “Consent” means an explicit, affirmative act by an individual that
14 communicates in writing voluntary, informed, and revocable agreement.

15 “Consent” does not include acceptance of broad terms-of-use agreements,
16 passive actions, or deceptive practices.

17 (4) “Mental health professional” means an individual licensed, certified,
18 or rostered, respectively, to provide mental health services as a physician
19 pursuant to chapter 23 or 33 of this title; an advanced practice registered nurse
20 specializing in psychiatric mental health pursuant to chapter 28 of this title; a
21 psychologist pursuant to chapter 55 of this title; a peer support provider or peer

1 recovery support specialist pursuant to chapter 60 of this title; a social worker
2 pursuant to chapter 61 of this title; an alcohol and drug abuse counselor
3 pursuant to chapter 62 of this title; a clinical mental health counselor pursuant
4 to chapter 65 of this title; a marriage and family therapist pursuant to chapter
5 76 of this title; a psychoanalyst pursuant to chapter 77 of this title; an applied
6 behavior analyst pursuant to chapter 95 of this title; a nonlicensed or
7 noncertified psychotherapist, noncertified psychoanalyst; or any other
8 professional that provides mental health services except as exempted in
9 subsection (e) of this section.

10 (5) “Mental health services” means support, counseling, therapy, or
11 psychotherapy services provided by a mental health professional to diagnose or
12 treat an individual’s mental or behavioral health or provide ongoing recovery
13 support, excluding religious counseling or peer support.

14 (6) “Peer support” means support services provided by an individual
15 with lived experience of a mental health condition or substance use disorder
16 who is not certified under chapter 60 of this title.

17 (7) “Religious counseling” means counseling provided by clergy,
18 pastoral counselors, or other religious leaders acting within the scope of the
19 individual’s duties if the counseling is explicitly faith-based and not
20 represented as clinical services.

1 (8) “Therapeutic communication” means a written or spoken interaction
2 intended to diagnose or treat any type of mental or behavioral health concern,
3 provide ongoing recovery support, or provide any advice related to diagnosis,
4 treatment, or recovery.

5 (9) “Therapeutic decision” means the final clinical determination
6 regarding diagnosis or the selection, modification, or termination of treatment
7 or care. “Therapeutic decision” does not include algorithmic risk scoring, data
8 analytics, or other clinical decision support tools when used under the
9 supervision and authority of a licensed mental health professional.

10 (b) Permitted uses. A mental health professional may use artificial
11 intelligence for administrative support to the extent that the mental health
12 professional retains sole clinical responsibility for therapeutic decisions by
13 reviewing and assuming responsibility for all tasks performed by, outputs
14 created by, and data use associated with the artificial intelligence system
15 employed.

16 (c) Confidentiality and consent.

17 (1) Any administrative support tasks conducted using artificial
18 intelligence, including transcription and recording, shall be subject to the
19 disclosure prohibitions in 18 V.S.A. §§ 1881 and 7103.

20 (2) Consent by a patient or client is required when artificial intelligence
21 is used to record or transcribe identifiable therapeutic communications.

1 (d) Prohibited uses. A mental health professional shall neither:

2 (1) use artificial intelligence in the State to independently make

3 therapeutic decisions, issue direct therapeutic communications, generate

4 treatment plans or recommendations, or detect or interpret emotions or mental

5 states; nor

6 (2) offer, provide, or advertise mental health services in the State that

7 use artificial intelligence in whole or in part, except as provided in subsection

8 (b) of this section.

9 (e) Exceptions. Nothing in this section shall apply to:

10 (1) religious counseling;

11 (2) peer support provided by an individual who is not certified pursuant

12 to chapter 60 of this title; and

13 (3) generalized educational and self-help resources that do not purport to

14 offer mental health services.

15 Sec. 5. EFFECTIVE DATE

16 This act shall take effect on passage.

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3 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE