1   H.816

2   Introduced by Representatives Berbeco of Winooski, Arsenault of Williston,

3   and Priestley of Bradford

4   Referred to Committee on

5   Date:

6   Subject: Health; mental health; professional regulation; artificial intelligence;

7   therapeutic services

8   Statement of purpose of bill as introduced: This bill proposes to regulate the

9   use of artificial intelligence by mental health professionals. It further proposes

10   to prohibit offering or advertising mental health services that use artificial

11   intelligence in whole or in part.

12   An act relating to regulating the use of artificial intelligence in the provision
13   of mental health services

14   It is hereby enacted by the General Assembly of the State of Vermont:

15   Sec. 1. PURPOSE

16   It is the purpose of this act to safeguard individuals seeking mental health

17   services in Vermont by:

18   (1) ensuring that therapeutic judgment, clinical decision making, and

19   therapeutic communication remain the responsibility of qualified mental health

20   professionals and are not delegated to artificial intelligence systems;

1   (2) respecting individual choice in selecting mental health services,

2   including community, peer, and faith-based options; and

3   (3) allowing the responsible use of artificial intelligence for

4   administrative, operational, documentation, and quality-improvement functions

5   that support access, efficiency, and innovation in mental health services.

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

7   § 129a. UNPROFESSIONAL CONDUCT

8   (a) In addition to any other provision of law, the following conduct by a

9   licensee constitutes unprofessional conduct. When that conduct is by an

10   applicant or person who later becomes an applicant, it may constitute grounds

11   for denial of a license or other disciplinary action. Any one of the following

12   items or any combination of items, whether the conduct at issue was

13   committed within or outside the State, shall constitute unprofessional conduct:

14   * * *

15   (30) For any mental health professional, misuse of artificial intelligence

16   pursuant to 26 V.S.A. § 7101.

17   * * *

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

19   § 7115. PROHIBITED USES OF ARTIFICIAL INTELLIGENCE

20   (a) As used in this section:

1   (1) "Artificial intelligence" means a machine-based system or software

2   that, depending on human objectives, is capable of perceiving an environment

3   through data acquisition and then processing and interpreting the derived

4   information to take an action or to imitate intelligent behavior, such as produce

5   predictions, content, recommendations, or decisions. An artificial intelligence

6   system can also learn and adapt its behavior by analyzing how the environment

7   is affected by prior actions. "Artificial intelligence" includes generative

8   artificial intelligence.

9   (2) "Generative artificial intelligence" means foundation models used in

10   artificial intelligence systems specifically intended to generate, with varying

11   levels of autonomy, content such as complex text, images, audio, or video.

12   (3) "Mental health services" means support, counseling, therapy, or

13   psychotherapy services provided by a mental health professional to diagnose or

14   treat an individual's mental or behavioral health or provide ongoing recovery

15   support, excluding religious counseling.

16   (4) "Therapeutic communication" means a written or spoken interaction

17   intended to diagnose or treat any type of mental or behavioral health concern,

18   provide ongoing recovery support, or provide any advice related to diagnosis,

19   treatment, or recovery.

20   (b) A person, corporation, or other entity shall not offer, provide, or

21   advertise mental health services in the State that represent artificial intelligence

1   as providing therapeutic judgment, diagnosis, treatment, or therapeutic

2   communication. Nothing in this subsection shall prohibit the use or disclosure

3   of the use of artificial intelligence for administrative, documentation,

4   operational, or quality-improvement purposes when a mental health

5   professional retains clinical responsibility as authorized pursuant to 26 V.S.A.

6   § 7101.

7   (c)(1) A violation of this section shall be deemed a violation of the

8   Consumer Protection Act, 9 V.S.A. chapter 63. The Attorney General has the

9   same authority to make rules, conduct civil investigations, enter into

10   assurances of discontinuance, and bring civil actions, and private parties have

11   the same rights and remedies as provided under 9 V.S.A. chapter 63,

12   subchapter 1.

13   (2) Nothing in this section shall be construed to preclude or supplant any

14   other statutory or common law remedies.

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

16   CHAPTER 120. ARTIFICIAL INTELLIGENCE IN REGULATED

17   PROFESSIONS

18   Subchapter 1. General Provisions

19   § 7001. DEFINITIONS

20   As used in this chapter:

1   (1) "Artificial intelligence" means a machine-based system or software

2   that, depending on human objectives, is capable of perceiving an environment

3   through data acquisition and then processing and interpreting the derived

4   information to take an action or to imitate intelligent behavior, such as produce

5   predictions, content, recommendations, or decisions. An artificial intelligence

6   system can also learn and adapt its behavior by analyzing how the environment

7   is affected by prior actions. "Artificial intelligence" includes generative

8   artificial intelligence.

9   (2) "Generative artificial intelligence" means foundation models used in

10   artificial intelligence systems specifically intended to generate, with varying

11   levels of autonomy, content such as complex text, images, audio, or video.

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 performed to assist a mental

18   health professional in the professional's delivery of mental health services,

19   such as scheduling, billing, and general logistics, but excluding therapeutic

20   communication.

1   (2) "Clinical responsibility" means the duty of a mental health

2   professional to review, approve, and remain legally accountable for any use of

3   artificial intelligence in connection with the provision of mental health

4   services.

5   (3) "Consent" means an explicit, affirmative act by an individual that

6   communicates in writing voluntary, informed, and revocable agreement.

7   "Consent" does not include acceptance of broad terms-of-use agreements,

8   passive actions, or deceptive practices.

9   (4) "Mental health professional" means an individual licensed, certified,

10   or rostered, respectively, to provide mental health services as a physician

11   pursuant to chapter 23 or 33 of this title, an advance practice registered nurse

12   specializing in psychiatric mental health pursuant to chapter 28 of this title, a

13   psychologist pursuant to chapter 55 of this title, a peer support provider or peer

14   recovery support specialist pursuant to chapter 60 of this title, a social worker

15   pursuant to chapter 61 of this title, an alcohol and drug abuse counselor

16   pursuant to chapter 62 of this title, a clinical mental health counselor pursuant

17   to chapter 65 of this title, a marriage and family therapist pursuant to chapter

18   76 of this title, a psychoanalyst pursuant to chapter 77 of this title, or an

19   applied behavior analyst pursuant to chapter 95 of this title, and a nonlicensed

20   or noncertified psychotherapist, noncertified psychoanalyst, or any other

1   professional that provides mental health services except as exempted in

2   subsection (e) of this section.

3   (5) "Mental health services" means support, counseling, therapy, or

4   psychotherapy services provided by a mental health professional to diagnose or

5   treat an individual's mental or behavioral health or provide ongoing recovery

6   support, excluding religious counseling or peer support.

7   (6) "Peer support" means support services provided by an individual

8   with lived experience of a mental health condition or substance use disorder

9   who is not certified under chapter 60 of this title.

10   (7) "Religious counseling" means counseling provided by clergy,

11   pastoral counselors, or other religious leaders acting within the scope of the

12   individual's duties if explicitly faith-based and not represented as clinical

13   services.

14   (8) "Supplementary support" means a task performed to assist a mental

15   health professional in the professional's delivery of mental health services,

16   excluding therapeutic communication and administrative support.

17   (9) "Therapeutic communication" means a written or spoken interaction

18   intended to diagnose or treat any type of mental or behavioral health concern,

19   provide ongoing recovery support, or provide any advice related to diagnosis,

20   treatment, or recovery.

1   (b) Permitted uses. A mental health professional may use artificial

2   intelligence systems for administrative support, supplementary support, and

3   operational or quality-improvement functions, provided the professional

4   retains clinical responsibility. Permitted uses include scheduling, billing,

5   coding, and claims processing; transcription and documentation support with

6   patient or client consent; preparation and maintenance of clinical records;

7   deidentified data analysis for quality improvement; and workforce and capacity

8   planning.

9   (c) Confidentiality and consent.

10   (1) Any administrative support or supplementary support tasks

11   conducted using artificial intelligence, including transcription and recording,

12   shall be subject to the disclosure prohibitions in 18 V.S.A. §§ 1881 and 7103.

13   (2) Consent by a patient or client is required when artificial intelligence

14   is used to record, transcribe, or process identifiable therapeutic

15   communications, but is not required for administrative or deidentified

16   operational uses.

17   (d) Prohibited uses.

18   (1) A mental health professional shall neither:

19   (A) use artificial intelligence in the State to make therapeutic

20   decisions, directly interact with clients, generate treatment plans, or detect

21   emotions or mental states; nor

1   (B) offer, provide, or advertise mental health services that represent

2   artificial intelligence as providing therapeutic judgment, diagnosis, treatment,

3   or therapeutic communication.

4   (2) Nothing in this subsection shall prohibit a mental health professional

5   from disclosing or describing the mental health professional's use of artificial

6   intelligence for administrative support or supplementary support purposes to a

7   prospective, current, or former patient or client.

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

9   (1) religious counseling;

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

11   to chapter 60 of this title; and

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

13   offer mental health services.

14   Sec. 5. EFFECTIVE DATE

15   This act shall take effect on passage.