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H.816

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

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

Sec. 1. PURPOSE

It is the purpose of this act to safeguard individuals seeking mental health services in Vermont from psychological harm, including death by suicide, by ensuring that these services are delivered by mental health professionals and not independently by artificial intelligence systems.

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

§ 129a. UNPROFESSIONAL CONDUCT

(a) In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action. Any one of the following items or any combination of items, whether the conduct at issue was committed within or outside the State, shall constitute unprofessional conduct:

* * *

(30) For any mental health professional, engaging in the prohibited use of artificial intelligence pursuant to 18 V.S.A. § 7115.

* * *

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

2 § 7115. PROHIBITED USES OF ARTIFICIAL INTELLIGENCE

3 (a) As used in this section:

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

8 (2) “Mental health professional” means an individual licensed, certified,
9 or rostered, respectively, to provide mental health services as a physician
10 pursuant to 26 V.S.A. chapter 23 or 33; an advanced practice registered nurse
11 specializing in psychiatric mental health pursuant to 26 V.S.A. chapter 28; a
12 psychologist pursuant to 26 V.S.A. chapter 55; a peer support provider or peer
13 recovery support specialist pursuant to 26 V.S.A. chapter 60; a social worker
14 pursuant to 26 V.S.A. chapter 61; an alcohol and drug abuse counselor
15 pursuant to 26 V.S.A. chapter 62; a clinical mental health counselor pursuant
16 to 26 V.S.A. chapter 65; a marriage and family therapist pursuant to 26 V.S.A.
17 chapter 76; a psychoanalyst pursuant to 26 V.S.A. chapter 77; an applied
18 behavior analyst pursuant to 26 V.S.A. chapter 95; a nonlicensed or
19 noncertified psychotherapist or a noncertified psychoanalyst; or any other
20 professional who provides mental health services.

1 (3) “Mental health services” means services provided to diagnose, treat,
2 or address an individual’s mental health or behavioral health through
3 therapeutic communications and therapeutic decisions.

4 (4) “Therapeutic communication” means a written, verbal, or nonverbal
5 interaction intended to diagnose or treat any type of mental or behavioral
6 health concern, provide ongoing recovery support, or provide clinical advice
7 on diagnosis, treatment, or recovery support, such as:

8 (A) engaging in direct interactions with clients or patients for the
9 purpose of understanding or reflecting the client’s or patient’s mental health
10 condition;

11 (B) providing clinical guidance, strategies, or interventions;

12 (C) offering clinical support, including reassurance or empathy in
13 response to emotional or psychological distress;

14 (D) collaborating with a patient or client to develop or modify
15 treatment plans or therapeutic mental health goals; and

16 (E) delivering feedback intended to promote growth or address
17 mental health outcomes.

18 (5) “Therapeutic decision” means the final clinical determination
19 regarding diagnosis or the selection, modification, or termination of treatment
20 or care.

1 (b) A corporation or entity shall not provide, advertise, or otherwise offer
2 mental health services, including through the use of artificial intelligence, to
3 the public unless the mental health services are:

4 (1) provided by a mental health professional; or

5 (2) part of an approved institutional review board or privacy board study
6 in accordance with 45 C.F.R. § 164.512(i)(1)(i)(A) and (B).

7 (c)(1) A violation of this section by a corporation or entity shall be deemed
8 a violation of the Consumer Protection Act, 9 V.S.A. chapter 63. The Attorney
9 General has the same authority, and private parties have the same rights and
10 remedies, as provided under 9 V.S.A. chapter 63, subchapter 1.

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

13 (d) Nothing in this section shall preclude a mental health professional who
14 is operating within the professional's scope of practice from utilizing artificial
15 intelligence tools that are compliant with the Health Insurance Portability and
16 Accountability Act of 1996, Pub. L. No. 104-191, provided that the mental
17 health professional reviews and approves any mental health services. This
18 includes a software-based medical product, including a digital therapeutic or
19 software as a medical device product that is authorized, cleared, or approved
20 by the U.S. Food and Drug Administration, provided the product's use is
21 prescribed or recommended by a mental health professional.

1 Sec. 4. 26 V.S.A. § 1354 is amended to read:

2 § 1354. UNPROFESSIONAL CONDUCT

3 (a) Prohibited conduct. The Board shall find that any one of the following,
4 or any combination of the following, whether the conduct at issue was
5 committed within or outside the State, constitutes unprofessional conduct:

6 * * *

7 (3) engaging in the prohibited use of artificial intelligence pursuant to
8 18 V.S.A. § 7115;

9 * * *

10 Sec. 5. 3 V.S.A. § 5023 is amended to read:

11 § 5023. ARTIFICIAL INTELLIGENCE ADVISORY COUNCIL

12 * * *

13 (b) Members.

14 (1) Members. The Advisory Council shall be composed of the
15 following members:

16 * * *

17 (I) the Director of Professional Regulation or designee;

18 (J) the Executive Director of the Vermont Board of Medical Practice
19 or designee;

20 (K) the Executive Director of Racial Equity or designee; and

21 ~~(J)~~(L) the Attorney General or designee.

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Sec. 6. USE OF ARTIFICIAL INTELLIGENCE BY MENTAL HEALTH
PROFESSIONALS

On or before January 15, 2027, the Artificial Intelligence Advisory Council established in 3 V.S.A. § 5023 shall submit a written report to the House Committees on Government Operations and Military Affairs and on Health Care and to the Senate Committees on Government Operations and on Health and Welfare regarding the regulation of the use of artificial intelligence by mental health professionals, including recommendations for legislative action.

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.