

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
13 provision of mental health services

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

~~Sec. 1. PURPOSE~~

15 It is the purpose of this act to safeguard individuals seeking mental health
16 services in Vermont by:

17 (1) ensuring that therapeutic judgment, clinical decision making, and
18 therapeutic communication remain the responsibility of qualified mental health
19 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
5 functions that support access, efficiency, and innovation in mental health
6 services.

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

8 § 129a. UNPROFESSIONAL CONDUCT

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

15 * * *

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

18 * * *

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

20 § 7115. PROHIBITED USES OF ARTIFICIAL INTELLIGENCE

21 (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~~
14 ~~or treat an individual’s mental or behavioral health or provide ongoing~~
15 ~~recovery 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
14 any 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
5 or treat an individual’s mental or behavioral health or provide ongoing
6 recovery 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
8 capacity 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 ~~(D) 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~~
13 ~~to offer mental health services.~~

14 Sec. 5. EFFECTIVE DATE

15 ~~This act shall take effect on passage.~~

Sec. 1. PURPOSE

*It is the purpose of this act to safeguard individuals seeking mental health
services in Vermont by:*

*(1) ensuring that therapeutic judgment, clinical decision making, and
therapeutic communication remain the responsibility of mental health
professionals and are not delegated to artificial intelligence systems;*

(2) respecting individual choice in selecting mental health services, including community, peer, and faith-based options; and

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

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, misuse of artificial intelligence pursuant to 26 V.S.A. § 7101.

* * *

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

§ 7115. PROHIBITED USES OF ARTIFICIAL INTELLIGENCE

(a) As used in this section:

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

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

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

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

(b) A person, corporation, or other entity shall not offer, provide, or advertise mental health services in the State that represent artificial intelligence as providing therapeutic judgment, diagnosis, treatment, or therapeutic communication. Nothing in this subsection shall prohibit the use

or disclosure of the use of artificial intelligence for administrative, documentation, operational, or quality-improvement purposes when a mental health professional retains clinical responsibility as authorized pursuant to 26 V.S.A. § 7101.

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

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

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

CHAPTER 120. ARTIFICIAL INTELLIGENCE IN REGULATED

PROFESSIONS

Subchapter 1. General Provisions

§ 7001. DEFINITIONS

As used in this chapter:

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

influence physical or virtual environments. “Artificial intelligence” includes generative artificial intelligence.

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

Subchapter 2. Use of Artificial Intelligence by Mental Health
Professionals

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

(a) Definitions. As used in this section:

(1) “Administrative support” means a task performed to assist a mental health professional in the professional’s delivery of mental health services, such as scheduling, billing, and general logistics, but excluding therapeutic communication.

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

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

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

(4) “Mental health professional” means an individual licensed, certified, or rostered, respectively, to provide mental health services as a physician pursuant to chapter 23 or 33 of this title, an advance practice registered nurse specializing in psychiatric mental health pursuant to chapter 28 of this title, a psychologist pursuant to chapter 55 of this title, a peer support provider or peer recovery support specialist pursuant to chapter 60 of this title, a social worker pursuant to chapter 61 of this title, an alcohol and drug abuse counselor pursuant to chapter 62 of this title, a clinical mental health counselor pursuant to chapter 65 of this title, a marriage and family therapist pursuant to chapter 76 of this title, a psychoanalyst pursuant to chapter 77 of this title, or an applied behavior analyst pursuant to chapter 95 of this title, and a nonlicensed or noncertified psychotherapist, noncertified psychoanalyst, or any other professional that provides mental health services except as exempted in subsection (e) of this section.

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

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

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

(8) “Supplementary support” means a task performed to assist a mental health professional in the professional’s delivery of mental health services, excluding therapeutic communication and administrative support.

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

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

(b) Permitted uses. A mental health professional may use artificial intelligence systems for administrative support, supplementary support, and

operational or quality-improvement functions, provided the professional retains sole responsibility for therapeutic decisions. Permitted uses include scheduling, billing, coding, and claims processing; transcription and documentation support; preparation and maintenance of clinical records; deidentified data analysis for quality improvement; and workforce and capacity planning where the mental health professional reviews, modifies where necessary, and approves the final product.

(c) Confidentiality and consent.

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

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

(d) Prohibited uses.

(1) A mental health professional shall not use artificial intelligence in a manner that allows the artificial intelligence to independently make therapeutic decisions, independently diagnose, independently determine treatment, or independently generate treatment plans.

(2) Nothing in this subsection shall prohibit a mental health professional from disclosing or describing the mental health professional's use of artificial

intelligence for administrative support or supplementary support purposes to a prospective, current, or former patient or client.

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

(1) religious counseling;

(2) peer support provided by an individual who is not certified pursuant to chapter 60 of this title; and

(3) generalized educational and self-help resources that do not purport to offer mental health services.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.