1   H.644

2   Introduced by Representatives Rachelson of Burlington, Chapin of East

3   Montpelier, Dodge of Essex, Donahue of Northfield, Greer of

4   Bennington, Howard of Rutland City, McCann of Montpelier,

5   McGill of Bridport, Olson of Starksboro, Pouech of Hinesburg,

6   Priestley of Bradford, Sibilia of Dover, and Tomlinson of

7   Winooski

8   Referred to Committee on

9   Date:

10 Subject: Health; mental health; professional regulation; consumer protection;

11   artificial intelligence; mental health services

12 Statement of purpose of bill as introduced: This bill proposes to prohibit a

13 person, corporation, or other entity from offering, providing, or advertising

14 mental health services delivered by artificial intelligence systems, with limited

15 exceptions. It further proposes to regulate the use of artificial intelligence by

16 mental health professionals.

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

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

2   Sec. 1. FINDINGS

3   The General Assembly finds that:

4   (1) Individuals are increasingly using chatbots to receive unlicensed

5   therapy from large language models (LLMs), and researchers from the

6   Stanford Institute for Human-Centered Artificial Intelligence, Carnegie Mellon

7   University, the University of Minnesota Twin Cities, and the University of

8   Texas evaluated artificial intelligence systems against clinical standards for

9   therapists, finding that commercially available therapy chatbots responded

10   inappropriately to various mental health conditions, encouraged delusions, and

11   failed to recognize crises, contrary to clinical best practice.

12   (2) Researchers at the Center for Countering Digital Hate found patterns

13   of ChatGPT advice pertaining to mental health, eating disorders, and substance

14   use disorders on topics such as "how to 'safely' cut yourself," "pills for

15   overdose," "restrictive diet plans," "appetite-suppressing medications,"

16   "personalized plans for getting drunk," and "how to hide intoxication at

17   school"; the chatbot also generated a suicide plan and goodbye notes to family.

18   (3) Deaths by suicide have been reported after the deceased's use of an

19   artificial intelligence tool, including an individual 14 years of age who died by

20   suicide after suicidal conversations with a chatbot and an individual 13 years

21   of age who was encouraged to take his own life by a chatbot.

1   Sec. 2. PURPOSE

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

3   services in Vermont from psychological harm, including death by suicide, by

4   ensuring that these services are delivered by mental health professionals and

5   not artificial intelligence systems.

6   Sec. 3. 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. 4. 18 V.S.A. § 7115 is added to read:

19   § 7115. PROHIBITED USES OF ARTIFICAL INTELLIGENCE

20   (a) As used in this section:

1   (1) "Artificial intelligence" means any machine-based system, software,

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

3   environment through data acquisition and then processing and interpreting the

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

5   natural language processing, pattern recognition, predictive analytics, offering

6   recommendations, or decision making.

7   (2) "Mental health services" means peer support, counseling, therapy, or

8   psychotherapy services used to diagnose or treat an individual's mental or

9   behavioral health or provide ongoing recovery support, including providing

10   therapeutic decisions, issuing direct therapeutic communications, generating

11   treatment plans or recommendations, or detecting or interpreting emotions or

12   mental states.

13   (3) "Therapeutic communication" has the same meaning as in 26 V.S.A.

14   § 7101.

15   (b) A person, corporation, or entity shall not offer, provide, or advertise

16   mental health services in the State that use artificial intelligence in whole or in

17   part, except as authorized pursuant to 26 V.S.A. § 7101.

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

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

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

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

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

2   subchapter 1. Each violation of this section shall carry a civil penalty of

3    $10,000.00 as set forth in 9 V.S.A. § 2461.

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

5   other statutory or common law remedies.

6   Sec. 5. 26 V.S.A. chapter 120 is added to read:

7   CHAPTER 120. ARTIFICIAL INTELLIGENCE IN REGULATED

8   PROFESSIONS

9   Subchapter 1. General Provisions

10   § 7001. DEFINITIONS

11   As used in this chapter, "artificial intelligence" means any machine-based

12   system, software, or algorithm that, depending on human objectives, is capable

13   of perceiving an environment through data acquisition and then processing and

14   interpreting the derived information to take an action or to imitate intelligent

15   behavior, such as natural language processing, pattern recognition, predictive

16   analytics, offering recommendations, or decision making.

17   Subchapter 2. Use of Artificial Intelligence by Mental Health

18   Professionals

19   § 7101. PROHIBITED USES OF ARTIFICIAL INTELLIGENCE IN

20   THERAPEUTIC SETTINGS

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

1   (1) "Administrative support" means a task, other than therapeutic

2   communication, that is performed to assist a mental health professional in the

3   professional's delivery of mental health services, such as:

4   (A) managing appointment scheduling and reminders;

5   (B) processing billing and insurance claims;

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

7   (D) preparing and maintaining clinical records, including notes from

8   patient or client sessions;

9   (E) analyzing deidentified data to track patient or client progress or

10   identify trends; and

11   (F) identifying and organizing external resources or referrals for

12   patient or client use.

13   (2) "Consent" means an explicit, affirmative act by an individual that

14   unambiguously communicates in writing voluntary, informed, and revocable

15   agreement.

16   (3) "Mental health professional" means an individual licensed, certified,

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

18   pursuant to chapter 23 or 33 of this title; an advance practice registered nurse

19   specializing in psychiatric mental health pursuant to chapter 28 of this title; a

20   psychologist pursuant to chapter 55 of this title; a peer support provider or peer

21   recovery support specialist pursuant to chapter 60 of this title; a social worker

1   pursuant to chapter 61 of this title; an alcohol and drug abuse counselor

2   pursuant to chapter 62 of this title; a clinical mental health counselor pursuant

3   to chapter 65 of this title; a marriage and family therapist pursuant to chapter

4   76 of this title; a psychoanalyst pursuant to chapter 77 of this title; or an

5   applied behavior analyst pursuant to chapter 95 of this title; and a nonlicensed

6   or noncertified psychotherapist, noncertified psychoanalyst, or any other

7   professional that provides mental health services.

8   (4) "Mental health services" means peer support, counseling, therapy, or

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

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

11   support.

12   (5) "Therapeutic communication" means a written, verbal, or nonverbal

13   interaction conducted in a professional therapeutic setting intended to diagnose

14   or treat any type of mental or behavioral health concern, provide ongoing

15   recovery support, or provide any advice related to diagnosis, treatment, or

16   recovery, such as:

17   (A) engaging in direct interactions with clients or patients for the

18   purpose of understanding or reflecting their thoughts, emotions, or

19   experiences;

20   (B) providing guidance, therapeutic strategies, or interventions

21   designed to achieve mental health outcomes;

1   (C) offering emotional support, reassurance, or empathy in response

2   to emotional or psychological distress;

3   (D) collaborating with a patient or client to develop or modify

4   treatment plans or therapeutic goals; and

5   (E) delivering feedback intended to promote growth or address

6   mental health conditions.

7   (b) Permitted uses.

8   (1) A mental health professional may use artificial intelligence for

9   administrative support to the extent that the professional reviews and assumes

10   responsibility for all tasks performed by, outputs created by, and data use

11   associated with the artificial intelligence system employed.

12   (2) If a mental health professional uses artificial intelligence for

13   transcription and recording purposes, the mental health professional shall first:

14   (A) inform the patient or client, or the patient's or client's legal

15   guardian, in writing of the specific purpose for which artificial intelligence is

16   being used and that any transcription or recording performed by artificial

17   intelligence shall be subject to the disclosure prohibitions in subsection (c) of

18   this section; and

19   (B) obtain consent from the patient or client, or the patient's or

20   client's legal guardian.

1   (c) Confidentiality. Any administrative support tasks conducted using

2 artificial intelligence shall be subject to the disclosure prohibitions in 18

3 V.S.A. §§ 1881 and 7103, including transcription and recording.

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

5   (1) use artificial intelligence in the State to make therapeutic decisions,

6 issue direct therapeutic communications, generate treatment plans or

7 recommendations, or detect or interpret emotions or mental states; nor

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

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

10 (b) of this section.

11 Sec. 6. EFFECTIVE DATE

12   This act shall take effect on passage.