

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Health Care to which was referred House Bill No. 814
3 entitled “An act relating to neurological rights and the use of artificial
4 intelligence technology in health and human services” respectfully reports that
5 it has considered the same and recommends that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

8 Sec. 1. INTENT

9 It is the intent of the General Assembly to:

10 (1) protect human rights, promote equity, increase efficiency, enhance
11 accessibility, create transparency, and guarantee accountability in health care
12 and human services through the ethical and responsible use of artificial
13 intelligence technology;

14 (2) maximize the benefits and minimize the risks of the use of artificial
15 intelligence in health care and human services;

16 (3) promote the ethical and responsible use of augmented intelligence in
17 service delivery, coverage determinations, and access to health care and human
18 services;

19 (4) prevent harm from the use of augmented and other artificial
20 intelligence in health care and human services;

1 (5) improve the experience of patients, providers, and payers through
2 the use of augmented and other artificial intelligence; and

3 (6) improve quality of care, drive positive health outcomes, and
4 cultivate population health through the use of augmented and other artificial
5 intelligence.

6 Sec. 2. 18 V.S.A. chapter 42C is added to read:

7 CHAPTER 42C. NEUROLOGICAL RIGHTS

8 § 1891. PURPOSE; INDIVIDUAL RIGHTS

9 The State of Vermont recognizes that each individual has the right to:

10 (1) mental and neural data privacy;

11 (2) the freedom of thought;

12 (3) ~~cognitive liberty~~ **nondiscrimination in the development and**
13 **application of neurotechnologies;**

14 (4) change an individual’s decision regarding neurotechnology and the
15 right to determine by what means to change that decision;

16 (5) be afforded protection from neurotechnological interventions of the
17 mind and from unauthorized access to or manipulation of an individual’s brain
18 activity; and

19 (6) be afforded protection from unauthorized neurotechnological
20 alterations in mental functions critical to personality.

21 ~~§ 1892. DEFINITIONS~~

1 As used in this chapter:

2 (1) “Brain computer interface” means a device that enables its user to
3 interact with a computer by means of brain activity only.

4 (2) “Conscious decision making” means an individual making a
5 deliberate decision with awareness and intention.

6 (3) “Consciousness bypass” means the use of neurotechnology to
7 manipulate brain activity by applying electrical or optical stimuli without the
8 conscious awareness of the individual whose brain activity is being
9 manipulated.

10 (4) “Neural data” means information that is generated by the
11 measurement of the activity of an individual’s central or peripheral nervous
12 systems and that can be processed by or with the assistance of a device.

13 (5) “Neurotechnology” means the assembly of methods and instruments
14 that enable a direct connection of technical components with the nervous
15 system of an individual.

16 (6) “Written informed consent” means the written consent given
17 voluntarily by an individual with capacity, on the individual’s own behalf or on
18 behalf of another in the role of an agent, guardian, or surrogate, after being
19 fully informed of the nature, benefits, risks, and consequences of the proposed
20 agreement.

1 ~~§ 1893. NEURAL DATA PRIVACY~~

2 ~~(a) Prohibition. Subject to the limited exceptions provided in this section,~~
3 ~~no person shall:~~

4 ~~(1) collect or record an individual's neural data gathered from a brain-~~
5 ~~computer interface; or~~

6 ~~(2) share with a third party an individual's neural data gathered from a~~
7 ~~brain-computer interface.~~

8 ~~(b) Consent to collect. A person shall not collect or record an individual's~~
9 ~~neural data gathered from a brain-computer interface unless the person:~~

10 ~~(1) provides the individual with a written notice explaining how the~~
11 ~~person will use the individual's neural data; and~~

12 ~~(2) thereafter receives written informed consent from the individual to~~
13 ~~collect or record the individual's neural data.~~

14 ~~(c) Consent to share. A person shall not share with a third party an~~
15 ~~individual's neural data gathered from a brain-computer interface unless the~~

16 ~~person:~~

17 ~~(1) provides the individual with a written request for the individual's~~
18 ~~neural data to be shared with a third party and for what purposes, including the~~
19 ~~name and address of the third party; and~~

20 ~~(2) thereafter receives written informed consent from the individual to~~
21 ~~share the individual's neural data with the third party.~~

1 ~~(d) Revocation of consent.~~

2 ~~(1) An individual who has provided written informed consent allowing a~~
3 ~~person to collect, record, or share the individual's neural data pursuant to this~~
4 ~~section has the right to revoke consent at any time thereafter by providing~~
5 ~~written notice to the person initially receiving the consent. This revocation of~~
6 ~~consent notice shall be as easy or easier for the individual to provide as~~
7 ~~compared to the requirements for initially providing consent.~~

8 ~~(2) A person who receives written notice from an individual revoking~~
9 ~~consent pursuant to subdivision (1) of this subsection shall:~~

10 ~~(A) destroy all records of the individual's neural data not later than~~
11 ~~10 days after receiving the notice; and~~

12 ~~(B) in the case of the revocation of consent to share an individual's~~
13 ~~neural data, immediately:~~

14 ~~(i) cease sharing an individual's neural data with all third parties~~
15 ~~upon receipt of the notice; and~~

16 ~~(ii) inform all third parties with whom the person has shared the~~
17 ~~individual's neural data that the individual has revoked consent.~~

18 ~~§ 1894. CONSCIOUSNESS BYPASS LIMITATIONS~~

19 ~~(a) Specific consent required.~~

20 ~~(1) A person shall not allow a brain-computer interface it manufactures~~
21 ~~to be used to bypass the conscious decision making of an individual unless the~~

1 ~~person has received specific, written informed consent from the individual. As~~
2 ~~used in this section, “specific” means written consent for each and every~~
3 ~~category of action performed by the brain-computer interface.~~

4 ~~(2) A person receiving written informed consent from an individual~~
5 ~~shall keep a record of the individual’s consent.~~

6 ~~(3) Consent obtained by using a consciousness bypass is not informed~~
7 ~~consent.~~

8 ~~(b) Revoking consent.~~

9 ~~(1) An individual who has provided specific, written informed consent~~
10 ~~allowing a brain-computer interface to be used to bypass the conscious~~
11 ~~decision making of the individual pursuant to this section has the right to~~
12 ~~revoke consent at any time thereafter by providing notice to the person initially~~
13 ~~receiving the consent. This revocation of consent notice shall be as easy or~~
14 ~~easier for the individual to provide as compared to the requirements for~~
15 ~~initially providing consent.~~

16 ~~(2) An individual’s agent, guardian, or surrogate has the right to revoke~~
17 ~~consent on behalf of the individual pursuant to subdivision (1) of this~~
18 ~~subsection.~~

1 ~~§ 1895. PENALTY; ENFORCEMENT~~

2 ~~(a) A violation of this chapter shall constitute an unfair or deceptive act or~~
3 ~~practice in commerce under 9 V.S.A. chapter 63, Vermont’s Consumer~~
4 ~~Protection Act.~~

5 ~~(b) A person who violates this chapter shall be subject to a civil penalty of~~
6 ~~not more than \$10,000.00 for each violation.~~

7 ~~(c) The Attorney General shall have the same authority to make rules,~~
8 ~~conduct civil investigations, enter into assurances of discontinuance, and bring~~
9 ~~civil actions as provided under 9 V.S.A. chapter 63, subchapter 1. Consumers~~
10 ~~shall have the same rights and remedies as provided under 9 V.S.A. chapter 63,~~
11 ~~subchapter 1.~~

12 ~~Sec. 3. 18 V.S.A. chapter 233 is added to read:~~

13 ~~CHAPTER 233. ARTIFICIAL INTELLIGENCE IN HEALTH CARE~~

14 ~~Subchapter 1. General Provisions~~

15 ~~§ 9751. DEFINITIONS~~

16 ~~As used in this subchapter:~~

17 ~~(1) “Artificial intelligence” means a machine-based system that makes~~
18 ~~predictions, recommendations, or decisions influencing real or virtual~~
19 ~~environments.~~

1 ~~(2) “Artificial intelligence technology” means a computer system,~~
2 ~~application, or other product that uses or incorporates one or more forms of~~
3 ~~artificial intelligence.~~

4 ~~(3) “Confidential communication” means information obtained by a~~
5 ~~licensed mental health provider, including information obtained by the~~
6 ~~provider’s examination of the client or patient, that is:~~

7 ~~(A)(i) transmitted between the client or patient and the licensed~~
8 ~~mental health provider in the course of the treating relationship; or~~

9 ~~(ii) transmitted among the client or patient, the licensed mental~~
10 ~~health provider, and individuals who are participating in the diagnosis and~~
11 ~~treatment under the direction of the licensed mental health provider, including~~
12 ~~members of the client’s or patient’s family; and~~

13 ~~(B) made in confidence, for the diagnosis or treatment of the client or~~
14 ~~patient by the licensed mental health provider, and by a means not intended to~~
15 ~~be disclosed to third parties other than those individuals who are:~~

16 ~~(i) present to further the interests of the client or patient in the~~
17 ~~consultation, examination, or review;~~

18 ~~(ii) reasonably necessary for the transmission of the~~
19 ~~communications; or~~

20 ~~(iii) participating in the diagnosis and treatment of the client or~~
21 ~~patient under the direction of the licensed mental health provider.~~

1 ~~(4) “Covered entity” has the same meaning as in 45 C.F.R. § 160.103.~~

2 ~~(5) “Generative artificial intelligence” means an artificial intelligence~~
3 ~~technology system that:~~

4 ~~(A) is trained on data;~~

5 ~~(B) is designed to simulate human conversation with a consumer~~
6 ~~through one or more of the following:~~

7 ~~(i) text;~~

8 ~~(ii) audio; or~~

9 ~~(iii) visual communication; and~~

10 ~~(C) generates nonscripted outputs similar to outputs created by a~~
11 ~~human, with limited or no human oversight.~~

12 ~~(6) “Health care provider” has the same meaning as in 45 C.F.R.~~
13 ~~§ 160.103.~~

14 ~~(7) “Health plan” has the same meaning as in 45 C.F.R. § 160.103.~~

15 ~~(8) “Individually identifiable health information” means any~~
16 ~~information, whether oral or recorded in any form or medium, that relates to~~
17 ~~the physical or mental health or condition of an individual.~~

18 ~~(9)(A) “Mental health chatbot” means an artificial intelligence~~
19 ~~technology that:~~

20 ~~(i) uses generative artificial intelligence to engage in interactive~~
21 ~~conversations with a user of the mental health chatbot similar to the~~

1 ~~confidential communications that an individual would have with a licensed~~
2 ~~mental health provider; and~~

3 ~~(ii) a supplier represents, or a reasonable person would believe,~~
4 ~~can or will provide psychotherapy or help a user manage or treat mental health~~
5 ~~conditions.~~

6 ~~(B) “Mental health chatbot” does not include artificial intelligence~~
7 ~~technology that only:~~

8 ~~(i) provides scripted output, such as guided meditations or~~
9 ~~mindfulness exercises; or~~

10 ~~(ii) analyzes an individual’s input for the purpose of connecting~~
11 ~~the individual with a human mental health provider.~~

12 ~~(10) “Mental health provider” means an individual who is:~~

13 ~~(A) a physician licensed pursuant to 26 V.S.A. chapter 23 or 33 who~~
14 ~~is engaged in the practice of psychotherapy;~~

15 ~~(B) an advanced practice registered nurse licensed pursuant to~~
16 ~~26 V.S.A. chapter 28 who specializes in psychiatric or mental health nursing;~~

17 ~~(C) a physician assistant licensed pursuant to 26 V.S.A. chapter 31~~
18 ~~who specializes in psychiatric or mental health care;~~

19 ~~(D) a psychologist licensed pursuant to 26 V.S.A. chapter 55;~~

20 ~~(E) a social worker licensed pursuant to 26 V.S.A. chapter 61;~~

1 ~~(F) an alcohol and drug abuse counselor licensed pursuant to 26~~

2 ~~V.S.A. chapter 62;~~

3 ~~(G) a clinical mental health counselor licensed pursuant to 26 V.S.A.~~

4 ~~chapter 65;~~

5 ~~(H) a marriage and family therapist licensed pursuant to 26 V.S.A.~~

6 ~~chapter 76; or~~

7 ~~(I) a psychoanalyst licensed pursuant to 26 V.S.A. chapter 77.~~

8 ~~(11) “Personal data” means information that is linked or can be~~

9 ~~reasonably linked to an identified individual or an identifiable individual.~~

10 ~~(12) “Scientific research development” means research:~~

11 ~~(A) conducted by a researcher affiliated with:~~

12 ~~(i) an institution of higher education;~~

13 ~~(ii) a research organization; or~~

14 ~~(iii) a health care facility; and~~

15 ~~(B) that is approved by an institutional review board and is conducted~~

16 ~~in accordance with applicable ethics requirements for human subject research.~~

17 ~~(13) “Supplier” means a seller, lessor, assignor, offeror, broker, or other~~

18 ~~person who regularly solicits, engages in, or enforces consumer transactions,~~

19 ~~regardless of whether the person deals directly with the consumer.~~

20 ~~(14) “User input” means content provided to a mental health chatbot by~~

21 ~~a Vermont user.~~

1 ~~(15) “Vermont user” means an individual located in Vermont at the time~~
2 ~~the individual accesses or uses a mental health chatbot.~~

3 ~~§ 9752. NOTICE OF USE OF GENERATIVE ARTIFICIAL~~
4 ~~INTELLIGENCE~~

5 ~~(a) Except as provided in subsection (b) of this section, any health care~~
6 ~~provider that uses generative artificial intelligence to generate written or verbal~~
7 ~~patient communications relating to patient clinical information shall ensure that~~
8 ~~those communications include both of the following:~~

9 ~~(1) A disclaimer that indicates to the patient that the communication was~~
10 ~~generated by generative artificial intelligence.~~

11 ~~(A) For written communications involving physical and digital~~
12 ~~media, including letters, emails, and other occasional messages, the disclaimer~~
13 ~~shall appear prominently at the beginning of each communication.~~

14 ~~(B) For written communications involving continuous online~~
15 ~~interactions, including chat-based telehealth, the disclaimer shall be~~
16 ~~prominently displayed throughout the interaction.~~

17 ~~(C) For audio communications, the disclaimer shall be provided~~
18 ~~verbally at the start and end of the interaction.~~

19 ~~(D) For video communications, the disclaimer shall be prominently~~
20 ~~displayed throughout the interaction.~~

1 (2) Clear instructions describing how a patient may contact a human
2 health care provider; an employee of the health care facility, clinic, physician's
3 office, or office of a group provider; or other appropriate person.

4 (b) If a communication is generated by generative artificial intelligence and
5 read and reviewed by a licensed human health care provider, the requirements
6 of subsection (a) of this section shall not apply.

7 (c) In addition to the enforcement authority set forth in section 9753 of this
8 chapter, a violation of this section by a licensed health care provider is subject
9 to the jurisdiction of the Office of Professional Regulation and the Board of
10 Medical Practice, as applicable.

11 § 9753. VIOLATIONS; ENFORCEMENT AUTHORITY

12 The Attorney General may impose an administrative penalty of not more
13 than \$2,500.00 for each violation of this chapter. In addition, and in addition
14 to any other remedy provided by law, the Attorney General may file an action
15 in Superior Court for a violation of this chapter. The Attorney General shall
16 have the same authority to investigate and obtain remedies as if the action were
17 brought under the Vermont Consumer Protection Act, 9 V.S.A. chapter 63.

18 Each violation of this chapter constitutes a separate violation for which the
19 Attorney General may obtain relief.

1 ~~Subchapter 2. Artificial Intelligence Applications Relating to Mental Health~~

2 ~~§ 9761. PROTECTION OF PERSONAL INFORMATION OF MENTAL~~

3 ~~HEALTH CHATBOT USERS~~

4 ~~(a)(1) Except as provided in subdivision (2) of this subsection, a supplier of~~
5 ~~a mental health chatbot shall not sell to or share with any third party any:~~

6 ~~(A) individually identifiable health information of a Vermont user; or~~

7 ~~(B) user input of a Vermont user.~~

8 ~~(2) The prohibition set forth in subdivision (1) of this subsection shall~~
9 ~~not apply to individually identifiable health information that is:~~

10 ~~(A) requested by a health care provider with the consent of the~~
11 ~~Vermont user;~~

12 ~~(B) provided to a health plan of a Vermont user upon request of the~~
13 ~~Vermont user; or~~

14 ~~(C) shared in compliance with subsection (b) of this section.~~

15 ~~(b)(1) A supplier may share individually identifiable health information~~
16 ~~necessary to ensure the effective functionality of the mental health chatbot with~~
17 ~~another person with whom the supplier has a contract related to such~~
18 ~~functionality.~~

19 ~~(2) When sharing information pursuant to subdivision (1) of this~~
20 ~~subsection, the supplier and the other person shall comply with all applicable~~
21 ~~privacy and security provisions of 45 C.F.R. Part 160 and 45 C.F.R. Part 164,~~

1 ~~Subparts A and E, as if the supplier were a covered entity and the other person~~
2 ~~were a business associate, as those terms are defined in 45 C.F.R. § 160.103.~~

3 ~~§ 9762. RESTRICTIONS ON ADVERTISING TO MENTAL HEALTH~~

4 ~~CHATBOT USERS~~

5 ~~(a) A supplier shall not use a mental health chatbot to advertise a specific~~
6 ~~product or service to a Vermont user in a conversation between the Vermont~~
7 ~~user and the mental health chatbot unless the mental health chatbot:~~

8 ~~(1) clearly and conspicuously identifies the advertisement as an~~
9 ~~advertisement; and~~

10 ~~(2) clearly and conspicuously discloses to the Vermont user any:~~

11 ~~(A) sponsorship;~~

12 ~~(B) business affiliation; or~~

13 ~~(C) agreement that the supplier has with a third party to promote,~~
14 ~~advertise, or recommend the product or service.~~

15 ~~(b) A supplier of a mental health chatbot shall not use a Vermont user's~~
16 ~~input to:~~

17 ~~(1) determine whether to display an advertisement for a product or~~
18 ~~service to the Vermont user, unless the advertisement is for the mental health~~
19 ~~chatbot itself;~~

20 ~~(2) determine a product, service, or category of product or service to~~
21 ~~advertise to the Vermont user; or~~

1 ~~(3) customize how an advertisement is presented to a Vermont user.~~

2 ~~(c) Nothing in this section shall be construed to prohibit a mental health~~

3 ~~chatbot from recommending that a Vermont user seek psychotherapy or other~~

4 ~~assistance from a licensed health care provider, including a specific licensed~~

5 ~~health care provider.~~

6 ~~§ 9763. MENTAL HEALTH CHATBOT DISCLOSURE REQUIREMENTS~~

7 ~~(a) A supplier of a mental health chatbot shall cause the mental health~~

8 ~~chatbot to clearly and conspicuously disclose to a Vermont user that the mental~~

9 ~~health chatbot is an artificial intelligence technology and not a human.~~

10 ~~(b) The disclosure described in subsection (a) of this section shall be made:~~

11 ~~(1) before the Vermont user may access the features of the mental health~~

12 ~~chatbot;~~

13 ~~(2) at the beginning of any interaction with the Vermont user if the~~

14 ~~Vermont user has not accessed the mental health chatbot within the previous~~

15 ~~seven days; and~~

16 ~~(3) any time a Vermont user asks or otherwise prompts the mental~~

17 ~~health chatbot about whether artificial intelligence is being used.~~

18 ~~§ 9764. MENTAL HEALTH CHATBOTS; AFFIRMATIVE DEFENSE~~

19 ~~(a) It is an affirmative defense to liability in an action for unlawful or~~

20 ~~unprofessional conduct brought against a supplier by the Office of Professional~~

1 ~~Regulation or the Board of Medical Practice if the supplier demonstrates that~~
2 ~~the supplier meets all of the following conditions:~~

3 ~~(1) the supplier created, maintained, and implemented a policy that~~
4 ~~meets the requirements of subsection (b) of this section;~~

5 ~~(2) the supplier maintains documentation regarding the development and~~
6 ~~implementation of the mental health chatbot that describes:~~

7 ~~(A) foundation models used in development;~~

8 ~~(B) training tools used;~~

9 ~~(C) compliance with federal health privacy regulations;~~

10 ~~(D) user data collection and sharing practices; and~~

11 ~~(E) ongoing efforts to ensure accuracy, reliability, fairness, and~~
12 ~~safety;~~

13 ~~(3) the supplier filed the policy with the Office of the Attorney General;~~

14 ~~and~~

15 ~~(4) the supplier complied with all requirements of the filed policy at the~~
16 ~~time of the alleged violation.~~

17 ~~(b) A policy described in subdivision (a)(1) of this section shall meet all of~~
18 ~~the following requirements:~~

19 ~~(1) be in writing;~~

20 ~~(2) clearly state:~~

21 ~~(A) the intended purposes of the mental health chatbot; and~~

- 1 ~~(B) the abilities and limitations of the mental health chatbot;~~
- 2 ~~(3) describe the procedures by which the supplier:~~
- 3 ~~(A) ensures that qualified mental health providers licensed in~~
- 4 ~~Vermont or in one or more other states, or both, are involved in the~~
- 5 ~~development and review process;~~
- 6 ~~(B) ensures that the mental health chatbot is developed and~~
- 7 ~~monitored in a manner consistent with clinical best practices;~~
- 8 ~~(C) conducts testing prior to making the mental health chatbot~~
- 9 ~~publicly available and regularly thereafter to ensure that the output of the~~
- 10 ~~mental health chatbot poses no greater risk to a user than that posed to an~~
- 11 ~~individual in psychotherapy with a licensed mental health provider;~~
- 12 ~~(D) identifies reasonably foreseeable adverse outcomes to and~~
- 13 ~~potentially harmful interactions with users that could result from using the~~
- 14 ~~mental health chatbot;~~
- 15 ~~(E) provides a mechanism for a user to report any potentially harmful~~
- 16 ~~interactions from use of the mental health chatbot;~~
- 17 ~~(F) implements protocols to assess and respond to risk of harm to~~
- 18 ~~users or other individuals;~~
- 19 ~~(G) details actions taken to prevent or mitigate any such adverse~~
- 20 ~~outcomes or potentially harmful interactions;~~

1 ~~(H) implements protocols to respond in real time to acute risk of~~
2 ~~physical harm;~~

3 ~~(I) reasonably ensures regular, objective reviews of safety, accuracy,~~
4 ~~and efficacy, which may include internal or external audits;~~

5 ~~(J) provides users any necessary instructions on the safe use of the~~
6 ~~mental health chatbot;~~

7 ~~(K) ensures users understand that they are interacting with artificial~~
8 ~~intelligence;~~

9 ~~(L) ensures users understand the intended purpose, capabilities, and~~
10 ~~limitations of the mental health chatbot;~~

11 ~~(M) prioritizes user mental health and safety over engagement~~
12 ~~metrics or profit;~~

13 ~~(N) implements measures to prevent discriminatory treatment of~~
14 ~~users; and~~

15 ~~(O) ensures compliance with the security and privacy protections of~~
16 ~~45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A, C, and E, as if the~~
17 ~~supplier were a covered entity, and applicable consumer protection~~
18 ~~requirements, including sections 9761–9763 of this subchapter.~~

19 ~~(c) To file a policy with the Office of the Attorney General under this~~
20 ~~section, a supplier of a mental health chatbot;~~

1 ~~(1) shall provide to the Office, in the form and manner prescribed by the~~

2 ~~Office:~~

3 ~~(A) the name and address of the supplier;~~

4 ~~(B) the name of the mental health chatbot supplied by the supplier;~~

5 ~~(C) the written policy described in subsection (b) of this section; and~~

6 ~~(D) a \$100.00 filing fee; and~~

7 ~~(2) may provide to the Office:~~

8 ~~(A) any revisions to a policy filed under this section; and~~

9 ~~(B) any other documentation that the supplier elects to provide.~~

10 ~~(d) The affirmative defense described in this section applies only in an~~
11 ~~administrative or civil action alleging unlawful or unprofessional conduct by a~~
12 ~~mental health provider.~~

13 ~~(e) Nothing in this section shall be construed to:~~

14 ~~(1) prohibit the Attorney General, the Office of Professional Regulation,~~
15 ~~or the Board of Medical Practice from bringing an action alleging unlawful or~~
16 ~~unprofessional conduct against the supplier of a mental health chatbot; or~~

17 ~~(2) recognize a mental health chatbot as a licensed mental health~~
18 ~~provider.~~

1 ~~Subchapter 3. Artificial Intelligence Applications Relating to Health Insurance~~

2 ~~§ 9771. USE OF ARTIFICIAL INTELLIGENCE IN UTILIZATION~~

3 ~~REVIEW~~

4 ~~(a) A health plan, as defined in section 9418 of this title, that uses an~~
5 ~~artificial intelligence, algorithm, or other software tool for the purpose of~~
6 ~~utilization review or utilization management functions, based in whole or in~~
7 ~~part on medical necessity, or that contracts with or otherwise works through an~~
8 ~~entity that uses artificial intelligence, algorithm, or other software tool for the~~
9 ~~purpose of utilization review or utilization management functions, based in~~
10 ~~whole or in part on medical necessity, shall ensure all of the following:~~

11 ~~(1) The artificial intelligence, algorithm, or other software tool bases its~~
12 ~~determination on the following information, as applicable:~~

13 ~~(A) a covered individual's medical or other clinical history;~~

14 ~~(B) the specific clinical circumstances as presented by the requesting~~
15 ~~health care provider; and~~

16 ~~(C) other relevant clinical information contained in the covered~~
17 ~~individual's medical or other clinical record.~~

18 ~~(2) The artificial intelligence, algorithm, or other software tool does not~~
19 ~~base its determination solely on a group dataset.~~

1 ~~(3) The artificial intelligence, algorithm, or other software tool’s criteria~~
2 ~~and guidelines comply with 8 V.S.A. chapter 107, chapter 221 of this title, and~~
3 ~~other applicable State and federal laws.~~

4 ~~(4) The artificial intelligence, algorithm, or other software tool does not~~
5 ~~supplant health care provider decision making.~~

6 ~~(5) The use of the artificial intelligence, algorithm, or other software~~
7 ~~tool does not discriminate, directly or indirectly, against covered individuals in~~
8 ~~violation of State or federal law.~~

9 ~~(6) The artificial intelligence, algorithm, or other software tool is fairly~~
10 ~~and equitably applied, including in accordance with any applicable regulations~~
11 ~~and guidance issued by the U.S. Department of Health and Human Services.~~

12 ~~(7) The artificial intelligence, algorithm, or other software tool is open~~
13 ~~to inspection for audit or compliance reviews by the Department of Financial~~
14 ~~Regulation and by other State agencies and departments pursuant to applicable~~
15 ~~State and federal law.~~

16 ~~(8) Disclosures pertaining to the use and oversight of the artificial~~
17 ~~intelligence, algorithm, or other software tool are contained in the health plan’s~~
18 ~~written policies and procedures to the extent required by the Department of~~
19 ~~Financial Regulation.~~

1 ~~(9) The artificial intelligence, algorithm, or other software tool's~~
2 ~~performance, use, and outcomes are periodically reviewed and revised to~~
3 ~~maximize accuracy and reliability.~~

4 ~~(10) Patient data is not used beyond its intended and stated purpose,~~
5 ~~consistent with chapter 42B of this title and with the security and privacy~~
6 ~~protections of 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, as~~
7 ~~applicable.~~

8 ~~(11) The artificial intelligence, algorithm, or other software tool does~~
9 ~~not directly or indirectly cause harm to the covered individual.~~

10 ~~(b) Notwithstanding subsection (a) of this section, the artificial intelligence,~~
11 ~~algorithm, or other software tool shall not deny, delay, or modify health care~~
12 ~~services based in whole or in part on medical necessity. A determination of~~
13 ~~medical necessity shall be made only by a licensed human health care provider~~
14 ~~who is competent to evaluate the specific clinical issues involved in the health~~
15 ~~care services requested by a treating health care provider by reviewing and~~
16 ~~considering the requesting provider's recommendation; the covered~~
17 ~~individual's medical or other clinical history, as appropriate; and the specific~~
18 ~~clinical circumstances.~~

19 ~~(c) This section shall apply to utilization review or utilization management~~
20 ~~functions that prospectively, retrospectively, or concurrently review requests~~
21 ~~for covered health care services.~~

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

2 § 5023. ARTIFICIAL INTELLIGENCE ADVISORY COUNCIL

3 (a) Advisory Council. There is established the Artificial Intelligence
4 Advisory Council to provide advice and counsel to the Director of the Division
5 of Artificial Intelligence with regard to the Division’s responsibilities to review
6 all aspects of artificial intelligence systems developed, employed, or procured
7 in State government. The Advisory Council, in consultation with the Director
8 of the Division, shall also engage in public outreach and education on artificial
9 intelligence.

10 (b) Members.

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

13 * * *

14 (F) one member with experience in the field of ethics and human
15 rights, appointed by the ~~Governor~~ National Association of Social Workers,
16 Vermont Chapter;

17 (G) one member who is an academic at a postsecondary institute,
18 appointed by the Vermont Academy of Science and Engineering;

19 (H) ~~the Commissioner of Health or designee~~ one member with
20 experience in public education, appointed by the Vermont-National Education
21 Association;

1 (3) create opportunities for public education and engagement in the
2 development of artificial intelligence policy.

3 (b) On or before January 15, 2027, the Artificial Intelligence Advisory
4 Council, in coordination with the Director of the Division of Artificial
5 Intelligence, shall submit a written report to the General Assembly:

6 (1) recommending any additional statutory changes necessary to further
7 the purposes of this act, **including:**

8 **(A) protections for neurological rights and in relation to**
9 **neurotechnologies;**

10 **(B) guidance on the use of generative artificial intelligence by**
11 **regulated professions; and**

12 **(C) regulating the use of artificial and augmented intelligence in**
13 **health insurance utilization review processes;**

14 (2) summarizing any additional ways that government can promote the
15 ethical and responsible use of artificial intelligence technology in health and
16 human services and in education;

17 (3) proposing pilot projects that improve public engagement in public
18 finance using ethical and responsible artificial intelligence technology; and

19 (4) identifying any reasons for further delaying or removing the new
20 2030 sunset of the Artificial Intelligence Advisory Council as set forth in Sec.
21 4 of this act.

1 Sec. 5. EFFECTIVE DATE

2 This act shall take effect on July 1, 2026.

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9 (Committee vote: _____)

10

11

Representative _____

12

FOR THE COMMITTEE