



38 N. Main St., Box 127
Waterbury, Vermont 05676
(802) 229-5447

ypaed@vermontpsych.org

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Testimony to House Health Care Committee

Re: H.814 An act relating to neurological rights and the use of artificial intelligence technology in health and human services

Rick Barnett, Psy.D., LADC
Legislative Chair, Vermont Psychological Association

To the Chair Black, Vice Chair McFaun and Members of the House Committee on Health Care:

My name is Dr. Rick Barnett. I am the Chair of the Legislative Committee for the Vermont Psychological Association (VPA) and a Council of Representatives Member, the governing body of the American Psychological Association (APA). I am a licensed clinical psychologist-doctorate, licensed alcohol and drug counselor practicing here in Vermont, and I appreciate the Legislature's thoughtful work addressing artificial intelligence in health care.

I want to begin by saying clearly that VPA supports the intent of H.814.

Artificial intelligence presents real risks — particularly when systems present themselves as substitutes for human judgment in mental health care. Protecting Vermonters from unlicensed or deceptive “AI therapists” is an important and appropriate goal.

The American Psychological Association has issued national guidance on this issue, and its central recommendation is simple: legislation should distinguish between **AI acting as a provider** and **AI functioning as a tool used by a licensed professional**.

Section 1 of this bill appropriately embraces the concept of *augmented intelligence* — technology that supports, rather than replaces, professional judgment. That principle is strongly aligned with psychological ethics and existing licensure standards.

Section 2's recognition of cognitive liberty and mental privacy is also forward-thinking. As neurotechnology evolves, these protections will become increasingly important.

My comments today focus primarily on clarification rather than opposition.

First, the bill currently does not distinguish between consumer AI chatbots and regulated clinical technologies. My understanding is that AI Chatbots may be addressed separately or amended in this bill. While fully autonomous AI therapy systems raise legitimate safety concerns, future FDA-cleared digital therapeutics or supervised clinical decision-support systems may appropriately incorporate artificial intelligence. Without clarification, licensed clinicians using federally regulated tools could unintentionally face liability under Vermont law. A narrow safe harbor recognizing regulated or clinically supervised tools would preserve patient safety while allowing responsible innovation.



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Second, Section 9771 addresses insurer use of artificial intelligence. Insurers are increasingly deploying algorithmic systems affecting utilization review and access to care. The bill asks insurers to review performance and outcomes, but additional clarity regarding how those obligations are operationalized — and enforced — would strengthen accountability and fairness across stakeholders.

Third, I would note that clinical practice is already regulated through professional licensure and ethical oversight. For licensed clinicians, integration of emerging technologies is most appropriately governed through the Office of Professional Regulation rather than consumer commerce statutes, which are designed to address deceptive market actors rather than professional clinical judgment. My hope is that House Committee on Government Operations will review this bill prior to passing out of the house should it move forward.

Finally, the Artificial Intelligence Advisory Council established under Section 5023 will play an important role in guiding implementation. Because this legislation concerns cognition, behavioral influence, and human interaction with intelligent systems, inclusion of psychological expertise alongside existing professional representation would meaningfully strengthen the council's work.

In closing, I encourage the Committee to maintain the bill's strong human-rights orientation while ensuring that regulation targets unlicensed or deceptive uses of AI rather than limiting licensed professionals' ability to responsibly use validated tools within their scope of practice.

Thank you for your leadership on this complex issue, and I would be happy to answer questions.

Rick Barnett, PsyD, MS, LADC
Chair, Legislative Committee, Vermont Psychological Association

Suggested Amendments

These suggestions do not change the intent of the bill; they clarify implementation and prevent unintended consequences identified in national guidance from the American Psychological Association.

Amendment 1 — Regulated Clinical AI Safe Harbor (§9752 Disclosure Requirements)

Section 4, Pages 13-14 ADD new subsection (c) Regulated Clinical Technologies:

“Nothing in this section shall be construed to prohibit the use of artificial intelligence systems that are cleared, approved, or authorized by the United States Food and Drug Administration, or other federally regulated clinical decision-support or digital therapeutic technologies, when used under the supervision and responsibility of a licensed health care professional acting within their lawful scope of practice.”

Rationale:

This amendment prevents Vermont law from unintentionally restricting federally regulated clinical technologies used responsibly by licensed professionals.

Amendment 2 — Disclaimer Flexibility

Section 4, §9752(b)(1)(B)

Page 14 (top third of page)

Modify continuous disclosure requirement

Replace: “must be displayed continuously” with: “must be reasonably disclosed at initiation of use and at appropriate intervals sufficient to inform a reasonable user...”



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Rationale:

Continuous disclosure requirements may unintentionally expose clinicians using regulated or supervised tools to liability despite adequate informed consent.

Amendment 3 — Insurer Accountability (Section 5, §9771), Page 24 Top of Page

Add:

“The Department of Financial Regulation shall adopt rules establishing measurable standards for auditing, validation, and oversight of artificial intelligence systems used by health insurers.”

Rationale:

Clear rulemaking authority ensures insurer accountability requirements are operationally enforceable rather than aspirational.

**Amendment 4 — Advisory Council Representation (§5023), Page 25, Top of Page
Advisory Membership Appointment**

Replace:

appointed by NASW-Vermont

With:

appointed by NASW-Vermont **and a member appointed by the Vermont Psychological Association**

Page 26 — organizational guidance list

Add:

“...and the American Psychological Association...”

Rationale:

Including psychological expertise ensures advisory guidance reflects scientific expertise in cognition, behavior, and human–AI interaction central to the bill’s subject matter.

End of **Section 4 (§ 9752)** or end of **Section 5**

Add Safe Harbor

“Nothing in this chapter shall be construed to limit the ability of a licensed health care professional to utilize artificial intelligence-enabled tools within the professional’s scope of practice and ethical obligations, provided the professional retains responsibility for clinical judgment and patient care.”

Rationale:

This clarification preserves patient protections while preventing unintended restriction of licensed professionals’ established scope of practice.

Amendment 5 – Regulatory Authority/Penalty Enforcement Page 8

A clarifying provision should be included stating that licensed mental health care professionals remain subject to oversight by the Office of Professional Regulation would preserve patient protections while maintaining Vermont’s established professional regulatory structure. The “not more than \$10,000” “per violation” is unclear. Is it per patient, per interaction, per session, per disclosure instance. That ambiguity alone creates major exposure.