ata ACTION
Telehealth Policy to Transform Healthcare

May 13, 2026

The Honorable Alyssa Black
Chair, Committee on Health Care
Vermont House of Representatives
115 State Street
Montpelier, Vermont 05633

The Honorable Daisy Berbeco
Vice Chair, Committee on Health Care
Vermont House of Representatives
115 State Street
Montpelier, Vermont 0563

RE: ATA ACTION CONCERNS REGARDING H. 816

Dear Chair Black, Vice Chair Berbeco and members of the Committee on Health and Welfare,

On behalf of ATA Action, I am writing to share our association's concerns with H. 816, regarding regulating the use of artificial intelligence (AI) in the delivery of mental health services in Vermont. Our organization appreciates the General Assembly's focus on patient protection and the quality of mental health services, and we are broadly supportive of the intent of this legislation. However, we are concerned that, as written, this proposal could cause confusion for providers due to overly broad definitions and the failure to consider FDA-cleared products.

ATA Action, the American Telemedicine Association's affiliated trade association focused on advocacy, advances policy to ensure all individuals have permanent access to telehealth services across the care continuum. ATA Action supports the enactment of state and federal telehealth policies to secure telehealth access for all Americans, including those in rural and underserved communities. ATA Action recognizes that telehealth and virtual care have the potential to truly transform the health care delivery system–by improving patient outcomes, enhancing safety and effectiveness of care, addressing health disparities, and reducing costs – if only allowed to flourish.

ATA Action has followed and engaged in the development of state policies regarding the use of AI in healthcare, including the recently enacted Illinois AI mental health framework (HB 1806)–which appears to have served as the inspiration for H. 816. Illinois enacted HB 1806 with significant flaws in place, over our opposition, including a failure to consider FDA-cleared products, overly broad definitions, and arbitrary restrictions that limit licensed clinicians from using AI tools consistent with their scope of practice and the standard of care. Unfortunately, despite amendments made in the House Committee on Healthcare, H. 816 still contains many of these issues and we believe amendments are necessary if the bill is to be advanced.

Overly Broad Definition of "Therapeutic Communication"

H. 816 defines "therapeutic communication" in ways that are overly broad and risk capturing every day, non-clinical speech that unlicensed persons, health coaches, and community health workers routinely use. The definition reaches any written or spoken interaction intended to diagnose or treat a mental or behavioral health concern, or to provide any advice related to diagnosis, treatment, or recovery – language broad enough to sweep in general wellness conversations and health education interactions that have never been considered the exclusive domain of licensed professionals.

This definitional overreach matters because the bill imposes significant restrictions and prohibitions predicated on whether an interaction constitutes "therapeutic communication." If that term is not carefully tailored to capture what is truly clinical speech delivered by a licensed professional, the downstream

restrictions will be applied far too broadly, potentially chilling beneficial tools and services that cause no patient harm. We urge the Committee to ensure this definition is narrowed to reflect the actual scope of licensed clinical practice.

We also recommend adding a negative definition clarifying that "therapeutic communication" does not include general wellness education, instruction, or guidance intended to promote overall health and well-being rather than to diagnose or treat a specific mental, emotional, or behavioral health concern.

The Bill Fails to Account for FDA-Cleared Products

As currently drafted, H. 816 does not distinguish between FDA-cleared AI products and unregulated consumer apps, treating all products the same. We believe this is potentially harmful to patient care and inconsistent with sound regulatory policy.

FDA-regulated digital therapeutics and AI tools are held to rigorous standards, including quality management systems, cybersecurity requirements, and mandatory adverse event reporting, ensuring both safety and efficacy. Our organization represents Digital Therapeutics – clinically validated, FDA-regulated Software as a Medical Device products that incorporate artificial intelligence and other technologies into treatments delivered to patients through phones, tablets, computers, and VR headsets. The FDA cleared its first prescription digital therapeutic in 2017 and has since approved more than 20 through this rigorous review process under both the Biden and Trump administrations.

These products undergo clinical validation, are subject to pre- and post-market oversight, and involve regulated healthcare practitioners as gatekeepers, protecting patients throughout the care process. In contrast, unregulated mobile health apps operate without these safeguards, rely only on general consumer protections, and may compromise patient data while making unproven health claims. Maintaining the distinction between regulated and unregulated products is essential to protect patients while allowing safe, evidence-based digital interventions to thrive. Indeed, given the existing federal oversight, Colorado's AI Act–the country's first comprehensive AI law–exempts high-risk AI systems already approved, authorized, or certified by the FDA.

We urge the Committee to add an exemption to H. 816 for artificial intelligence systems that have been reviewed and cleared for use by the FDA or another federal agency tasked with approving AI and AI algorithms for use in health care. Failing to do so would place Vermont in the anomalous position of treating rigorously reviewed, federally approved medical products the same as unvetted consumer chatbots.

The Bill's Enforcement Mechanicsm Should Be Adjusted

Finally, ATA Action is deeply concerned with the provisions of Sec. c(1) which applies the Consumer Protection Act, and thus the threat of a private right of action, to persons or entities using AI to aid in the delivery of therapy and psychotherapy. Our organization does not believe that a private right of action should be included in this policy due to the substantial potential liability for well meaning entities based on nebulous standards. Instead, we encourage enforcement to be left in the capable hands of the Attorney General.

Thank you for the opportunity to comment. We urge the Committee to consider our feedback before advancing H. 816, with the goal of striking the best balance between patient safety, clinical innovation,

and regulatory clarity. If you have any questions or would like to discuss the telehealth industry's perspective further, please contact me at hyoung@ataaction.org.

Kind regards,

Hunter Young
Head of State Government Relations
ATA Action

ATA ACTION
13th St NW, 12th Floor Washington, DC 20005
Info@ataaction.org