To: House Committee on Health Care
From: Stephanie Winters, Vermont Medical Society and Vermont Psychiatric Association
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Date: February 27, 2026
RE: H.816 – An act relating to regulating the use of artificial intelligence in the provision of mental health services

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Thank you for the opportunity to speak about H.816.

The intent of this bill is clear and important: to ensure that artificial intelligence does not substitute for licensed mental health professionals in delivering diagnosis, treatment, or therapeutic judgment. Preserving human clinical accountability in behavioral health—particularly for vulnerable patients—is a reasonable and widely shared goal.

My comments today focus narrowly on two drafting provisions that may have broader operational impact than intended.

First: The Consent Requirement for "Processing" Therapeutic Communications
The bill requires patient consent when AI is used to record, transcribe, or process identifiable therapeutic communications.

Recording a therapy session clearly warrants consent. However, the term "process" is not defined and could be interpreted very broadly.

Modern mental health practices use AI tools to:
- Draft clinical notes,
- Suggest billing codes,
- Format treatment plans,
- Extract quality metrics, and
- Support measurement-based care dashboards.

Under a literal reading, all of those functions could constitute "processing" identifiable therapeutic communications.

If that interpretation prevails, clinicians may need separate consent for routine documentation support tools—beyond what HIPAA already permits for treatment, payment, and operations.

The practical consequence could be increased administrative burden and reduced adoption of tools designed to reduce clinician burnout.

Second: The Prohibition on AI "Making Therapeutic Decisions" or "Generating Treatment Plans"

The bill prohibits AI from:
- Making therapeutic decisions, and
- Generating treatment plans.

The concern here is not autonomous AI replacing mental health professionals—that is clearly outside the intent of the bill.

The concern is that many modern clinical systems generate drafts or provide decision-support recommendations that are reviewed and approved by licensed professionals.

Examples include:
- Suicide risk stratification tools,
- Measurement-based care platforms,
- Draft treatment plan templates auto-populated by diagnosis,
- Medication interaction alerts.

In each case, the clinician retains full authority and responsibility.

However, H.816 does not currently include an explicit supervised-use exception clarifying that AI-assisted outputs are permissible if reviewed and approved by a licensed professional.

Without that clarification, providers may interpret the language conservatively and discontinue legitimate decision-support tools.

Why Does This Matter - Vermont's health care workforce is already constrained, particularly in rural areas.

If documentation tools and decision-support systems are curtailed due to ambiguity, the result may be:
- Reduced efficiency; Increased administrative time; Longer wait times for patients.

Thank you again for your consideration, and I have included specific amendment suggestions in my written testimony and I'm happy to answer questions.

Suggested Amendments:

➢ **Clarification of "Processing"**
In the section requiring consent when artificial intelligence is used to "record, transcribe, or process identifiable therapeutic communications," amend to read:

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

The term 'process' shall not include the use of artificial intelligence for documentation support, formatting, coding assistance, quality improvement analytics, or administrative healthcare operations, provided that:
(1) a licensed mental health professional reviews and approves any clinical content; and
(2) the professional retains responsibility for the accuracy and completeness of the record."

➢ **Supervised Use Clarification – Decision Support: Permissible AI-Assisted Clinical Support**
Amend the prohibition on using AI to "make therapeutic decisions" or "generate treatment plans" to read:

"A mental health professional shall not use artificial intelligence to independently make therapeutic decisions, independently diagnose, independently determine treatment, or independently generate treatment plans.

Artificial intelligence may be used to generate draft documentation, draft treatment plans, or clinical decision-support recommendations, provided that:
(1) a licensed mental health professional reviews, modifies as appropriate, and approves the output;
(2) the licensed professional retains sole responsibility for clinical decisions; and
(3) artificial intelligence does not directly communicate therapeutic advice to a patient or client without review and approval by a licensed professional."

➢ **Definition of "Therapeutic Decision"**
Add: "Therapeutic decision" means the final clinical determination regarding diagnosis, treatment selection, modification, or termination of care.

The term 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."