

1 H.816

2 An act relating to regulating the use of artificial intelligence in the provision
3 of mental health services

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

5 Sec. 1. PURPOSE

6 It is the purpose of this act to safeguard individuals seeking mental health
7 services in Vermont by:

8 (1) ensuring that therapeutic judgment, clinical decision making, and
9 therapeutic communication remain the responsibility of mental health
10 professionals and are not delegated to artificial intelligence systems;

11 (2) respecting individual choice in selecting mental health services,
12 including community, peer, and faith-based options; and

13 (3) allowing the responsible use of artificial intelligence for
14 administrative, operational, documentation, and quality-improvement functions
15 that support access, efficiency, and innovation in mental health services.

16 Sec. 2. 3 V.S.A. § 129a is amended to read:

17 § 129a. UNPROFESSIONAL CONDUCT

18 (a) In addition to any other provision of law, the following conduct by a
19 licensee constitutes unprofessional conduct. When that conduct is by an
20 applicant or person who later becomes an applicant, it may constitute grounds
21 for denial of a license or other disciplinary action. Any one of the following

1 items or any combination of items, whether the conduct at issue was
2 committed within or outside the State, shall constitute unprofessional conduct:

3 * * *

4 (30) For any mental health professional, misuse of artificial intelligence
5 pursuant to 26 V.S.A. § 7101.

6 * * *

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

8 § 7115. PROHIBITED USES OF ARTIFICIAL INTELLIGENCE

9 (a) As used in this section:

10 (1) “Artificial intelligence” means an engineered or machine-based
11 system that varies in its level of autonomy and that can, for explicit or implicit
12 objectives, infer from the input it receives how to generate outputs that can
13 influence physical or virtual environments. “Artificial intelligence” includes
14 generative artificial intelligence.

15 (2) “Generative artificial intelligence” means an artificial intelligence
16 that can generate derived synthetic content, including text, images, video, and
17 audio, that emulates the structure and characteristics of the system’s training
18 data.

19 (3) “Mental health services” means support, counseling, therapy, or
20 psychotherapy services provided by a mental health professional to diagnose or

1 treat an individual’s mental or behavioral health or provide ongoing recovery
2 support, excluding religious counseling.

3 (4) “Therapeutic communication” means a written or spoken interaction
4 intended to diagnose or treat any type of mental or behavioral health concern,
5 provide ongoing recovery support, or provide any advice related to diagnosis,
6 treatment, or recovery.

7 (b) A person, corporation, or other entity shall not offer, provide, or
8 advertise mental health services in the State that represent artificial intelligence
9 as providing therapeutic judgment, diagnosis, treatment, or therapeutic
10 communication. Nothing in this subsection shall prohibit the use or disclosure
11 of the use of artificial intelligence for administrative, documentation,
12 operational, or quality-improvement purposes when a mental health
13 professional retains clinical responsibility as authorized pursuant to 26 V.S.A.
14 § 7101.

15 (c)(1) A violation of this section shall be deemed a violation of the
16 Consumer Protection Act, 9 V.S.A. chapter 63. The Attorney General has the
17 same authority to make rules, conduct civil investigations, enter into
18 assurances of discontinuance, and bring civil actions, and private parties have
19 the same rights and remedies as provided under 9 V.S.A. chapter 63,
20 subchapter 1.

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

2 (1) “Administrative support” means a task performed to assist a mental
3 health professional in the professional’s delivery of mental health services,
4 such as scheduling, billing, and general logistics, but excluding therapeutic
5 communication.

6 (2) “Clinical responsibility” means the duty of a mental health
7 professional to review, approve, and remain legally accountable for any use of
8 artificial intelligence in connection with the provision of mental health
9 services.

10 (3) “Consent” means an explicit, affirmative act by an individual that
11 communicates in writing voluntary, informed, and revocable agreement.
12 “Consent” does not include acceptance of broad terms-of-use agreements,
13 passive actions, or deceptive practices.

14 (4) “Mental health professional” means an individual licensed, certified,
15 or rostered, respectively, to provide mental health services as a physician
16 pursuant to chapter 23 or 33 of this title, an advance practice registered nurse
17 specializing in psychiatric mental health pursuant to chapter 28 of this title, a
18 psychologist pursuant to chapter 55 of this title, a peer support provider or peer
19 recovery support specialist pursuant to chapter 60 of this title, a social worker
20 pursuant to chapter 61 of this title, an alcohol and drug abuse counselor
21 pursuant to chapter 62 of this title, a clinical mental health counselor pursuant

1 to chapter 65 of this title, a marriage and family therapist pursuant to chapter
2 76 of this title, a psychoanalyst pursuant to chapter 77 of this title, or an
3 applied behavior analyst pursuant to chapter 95 of this title, and a nonlicensed
4 or noncertified psychotherapist, noncertified psychoanalyst, or any other
5 professional that provides mental health services except as exempted in
6 subsection (e) of this section.

7 (5) “Mental health services” means support, counseling, therapy, or
8 psychotherapy services provided by a mental health professional to diagnose or
9 treat an individual’s mental or behavioral health or provide ongoing recovery
10 support, excluding religious counseling or peer support.

11 (6) “Peer support” means support services provided by an individual
12 with lived experience of a mental health condition or substance use disorder
13 who is not certified under chapter 60 of this title.

14 (7) “Religious counseling” means counseling provided by clergy,
15 pastoral counselors, or other religious leaders acting within the scope of the
16 individual’s duties if explicitly faith-based and not represented as clinical
17 services.

18 (8) “Supplementary support” means a task performed to assist a mental
19 health professional in the professional’s delivery of mental health services,
20 excluding therapeutic communication and administrative support.

1 (9) “Therapeutic communication” means a written or spoken interaction
2 intended to diagnose or treat any type of mental or behavioral health concern,
3 provide ongoing recovery support, or provide any advice related to diagnosis,
4 treatment, or recovery.

5 (10) “Therapeutic decision” means the final clinical determination
6 regarding diagnosis or selection, modification, or termination of treatment or
7 care. “Therapeutic decision” does not include algorithmic risk scoring, data
8 analytics, or other clinical decision support tools when used under the
9 supervision and authority of a licensed mental health professional.

10 (b) Permitted uses. A mental health professional may use artificial
11 intelligence systems for administrative support, supplementary support, and
12 operational or quality-improvement functions, provided the professional
13 retains sole responsibility for therapeutic decisions. Permitted uses include
14 scheduling, billing, coding, and claims processing; transcription and
15 documentation support; preparation and maintenance of clinical records;
16 deidentified data analysis for quality improvement; and workforce and capacity
17 planning where the mental health professional reviews, modifies where
18 necessary, and approves the final product.

19 (c) Confidentiality and consent.

1 (1) Any administrative support or supplementary support tasks
2 conducted using artificial intelligence, including transcription and recording,
3 shall be subject to the disclosure prohibitions in 18 V.S.A. §§ 1881 and 7103.

4 (2) Consent by a patient or client is required when artificial intelligence
5 is used to record identifiable therapeutic communications.

6 (d) Prohibited uses.

7 (1) A mental health professional shall not use artificial intelligence in a
8 manner that allows the artificial intelligence to independently make therapeutic
9 decisions, independently diagnose, independently determine treatment, or
10 independently generate treatment plans.

11 (2) Nothing in this subsection shall prohibit a mental health professional
12 from disclosing or describing the mental health professional's use of artificial
13 intelligence for administrative support or supplementary support purposes to a
14 prospective, current, or former patient or client.

15 (e) Exceptions. Nothing in this section shall apply to:

16 (1) religious counseling;

17 (2) peer support provided by an individual who is not certified pursuant
18 to chapter 60 of this title; and

19 (3) generalized educational and self-help resources that do not purport to
20 offer mental health services.

- 1 Sec. 5. EFFECTIVE DATE
- 2 This act shall take effect on passage.