

S.241

Introduced by Senators Gulick, Vyhovsky, Hardy, Lyons and White

Referred to Committee on

Date:

Subject: Health; mental health; professional regulation; consumer protection;
artificial intelligence; mental health services

Statement of purpose of bill as introduced: This bill proposes to prohibit a person, corporation, or other entity from offering, providing, or advertising mental health services delivered by artificial intelligence systems, with limited exceptions. It further proposes to regulate the use of artificial intelligence by mental health professionals.

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

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

Sec. 1. FINDINGS

The General Assembly finds that:

(1) Individuals are increasingly using chatbots to receive unlicensed therapy from large language models (LLMs), and researchers from the Stanford Institute for Human-Centered Artificial Intelligence, Carnegie Mellon University, the University of Minnesota Twin Cities, and the University of

1 Texas evaluated artificial intelligence systems against clinical standards for
2 therapists, finding that commercially available therapy chatbots responded
3 inappropriately to various mental health conditions, encouraged delusions, and
4 failed to recognize crises, contrary to clinical best practice.

5 (2) Researchers at the Center for Countering Digital Hate found patterns
6 of ChatGPT advice pertaining to mental health, eating disorders, and substance
7 use disorders on topics such as “how to ‘safely’ cut yourself,” “pills for
8 overdose,” “restrictive diet plans,” “appetite-suppressing medications,”
9 “personalized plans for getting drunk,” and “how to hide intoxication at
10 school”; the chatbot also generated a suicide plan and goodbye notes to family.

11 (3) Deaths by suicide have been reported after the deceased’s use of an
12 artificial intelligence tool, including an individual 14 years of age who died by
13 suicide after suicidal conversations with a chatbot and an individual 13 years
14 of age who was encouraged to take his own life by a chatbot.

15 Sec. 2. PURPOSE

16 It is the purpose of this act to safeguard individuals seeking mental health
17 services in Vermont from psychological harm, including death by suicide, by
18 ensuring that these services are delivered by mental health professionals and
19 not artificial intelligence systems.

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

2 § 129a. UNPROFESSIONAL CONDUCT

3 (a) In addition to any other provision of law, the following conduct by a
4 licensee constitutes unprofessional conduct. When that conduct is by an
5 applicant or person who later becomes an applicant, it may constitute grounds
6 for denial of a license or other disciplinary action. Any one of the following
7 items or any combination of items, whether the conduct at issue was
8 committed within or outside the State, shall constitute unprofessional conduct:

9 * * *

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

12 * * *

13 Sec. 4. 18 V.S.A. § 7115 is added to read:

14 § 7115. PROHIBITED USES OF ARTIFICIAL INTELLIGENCE

15 (a) As used in this section:

16 (1) “Artificial intelligence” means any machine-based system, software,
17 or algorithm that, depending on human objectives, is capable of perceiving an
18 environment through data acquisition and then processing and interpreting the
19 derived information to take an action or to imitate intelligent behavior, such as
20 natural language processing, pattern recognition, predictive analytics, offering
21 recommendations, or decision making.

1 (2) “Mental health services” means peer support, counseling, therapy, or
2 psychotherapy services used to diagnose or treat an individual’s mental or
3 behavioral health or provide ongoing recovery support, including providing
4 therapeutic decisions, issuing direct therapeutic communications, generating
5 treatment plans or recommendations, or detecting or interpreting emotions or
6 mental states.

7 (3) “Therapeutic communication” has the same meaning as in 26 V.S.A.
8 § 7101.

9 (b) A person, corporation, or entity shall not offer, provide, or advertise
10 mental health services in the State that use artificial intelligence in whole or in
11 part, except as authorized pursuant to 26 V.S.A. § 7101.

12 (c)(1) A violation of this section shall be deemed a violation of the
13 Consumer Protection Act, 9 V.S.A. chapter 63. The Attorney General has the
14 same authority to make rules, conduct civil investigations, enter into
15 assurances of discontinuance, and bring civil actions, and private parties have
16 the same rights and remedies, as provided under 9 V.S.A. chapter 63,
17 subchapter 1. Each violation of this section shall carry a civil penalty of
18 \$10,000.00 as set forth in 9 V.S.A. § 2461.

19 (2) Nothing in this section shall be construed to preclude or supplant any
20 other statutory or common law remedies.

1 Sec. 5. 26 V.S.A. chapter 120 is added to read:

2 CHAPTER 120. ARTIFICIAL INTELLIGENCE IN REGULATED
3 PROFESSIONS

4 Subchapter 1. General Provisions

5 § 7001. DEFINITIONS

6 As used in this chapter, “artificial intelligence” means any machine-based
7 system, software, or algorithm that, depending on human objectives, is capable
8 of perceiving an environment through data acquisition and then processing and
9 interpreting the derived information to take an action or to imitate intelligent
10 behavior, such as natural language processing, pattern recognition, predictive
11 analytics, offering recommendations, or decision making.

12 Subchapter 2. Use of Artificial Intelligence by Mental Health

13 Professionals

14 § 7101. PROHIBITED USES OF ARTIFICIAL INTELLIGENCE IN
15 THERAPEUTIC SETTINGS

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

17 (1) “Administrative support” means a task, other than therapeutic
18 communication, that is performed to assist a mental health professional in the
19 professional’s delivery of mental health services, such as:

20 (A) managing appointment scheduling and reminders;

21 (B) processing billing and insurance claims;

1 (C) drafting general communications related to practice logistics;

2 (D) preparing and maintaining clinical records, including notes from
3 patient or client sessions;

4 (E) analyzing deidentified data to track patient or client progress or
5 identify trends; and

6 (F) identifying and organizing external resources or referrals for
7 patient or client use.

8 (2) “Consent” means an explicit, affirmative act by an individual that
9 unambiguously communicates in writing voluntary, informed, and revocable
10 agreement.

11 (3) “Mental health professional” means an individual licensed, certified,
12 or rostered, respectively, to provide mental health services as a physician
13 pursuant to chapter 23 or 33 of this title; an advance practice registered nurse
14 specializing in psychiatric mental health pursuant to chapter 28 of this title; a
15 psychologist pursuant to chapter 55 of this title; a peer support provider or peer
16 recovery support specialist pursuant to chapter 60 of this title; a social worker
17 pursuant to chapter 61 of this title; an alcohol and drug abuse counselor
18 pursuant to chapter 62 of this title; a clinical mental health counselor pursuant
19 to chapter 65 of this title; a marriage and family therapist pursuant to chapter
20 76 of this title; a psychoanalyst pursuant to chapter 77 of this title; or an
21 applied behavior analyst pursuant to chapter 95 of this title; and a nonlicensed

1 or noncertified psychotherapist, noncertified psychoanalyst, or any other
2 professional that provides mental health services.

3 (4) “Mental health services” means peer support, counseling, therapy, or
4 psychotherapy services provided by a mental health professional to diagnose or
5 treat an individual’s mental or behavioral health or provide ongoing recovery
6 support.

7 (5) “Therapeutic communication” means a written, verbal, or nonverbal
8 interaction conducted in a professional therapeutic setting intended to diagnose
9 or treat any type of mental or behavioral health concern, provide ongoing
10 recovery support, or provide any advice related to diagnosis, treatment, or
11 recovery, such as:

12 (A) engaging in direct interactions with clients or patients for the
13 purpose of understanding or reflecting their thoughts, emotions, or
14 experiences;

15 (B) providing guidance, therapeutic strategies, or interventions
16 designed to achieve mental health outcomes;

17 (C) offering emotional support, reassurance, or empathy in response
18 to emotional or psychological distress;

19 (D) collaborating with a patient or client to develop or modify
20 treatment plans or therapeutic goals; and

1 (E) delivering feedback intended to promote growth or address
2 mental health conditions.

3 (b) Permitted uses.

4 (1) A mental health professional may use artificial intelligence for
5 administrative support to the extent that the professional reviews and assumes
6 responsibility for all tasks performed by, outputs created by, and data use
7 associated with the artificial intelligence system employed.

8 (2) If a mental health professional uses artificial intelligence for
9 transcription and recording purposes, the mental health professional shall first:

10 (A) inform the patient or client, or the patient's or client's legal
11 guardian, in writing of the specific purpose for which artificial intelligence is
12 being used and that any transcription or recording performed by artificial
13 intelligence shall be subject to the disclosure prohibitions in subsection (c) of
14 this section; and

15 (B) obtain consent from the patient or client, or the patient's or
16 client's legal guardian.

17 (c) Confidentiality. Any administrative support tasks conducted using
18 artificial intelligence shall be subject to the disclosure prohibitions in 18
19 V.S.A. §§ 1881 and 7103, including transcription and recording.

- 1 (d) Prohibited uses. A mental health professional shall neither:
2 (1) use artificial intelligence in the State to make therapeutic decisions,
3 issue direct therapeutic communications, generate treatment plans or
4 recommendations, or detect or interpret emotions or mental states; nor
5 (2) offer, provide, or advertise mental health services in the State that
6 use artificial intelligence in whole or in part, except as provided in subsection
7 (b) of this section.

8 Sec. 6. EFFECTIVE DATE

- 9 This act shall take effect on passage.