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LC004017

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IN GENERAL ASSEMBLY

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS -- OVERSIGHT OF ARTIFICIAL INTELLIGENCE TECHNOLOGY IN
MENTAL HEALTH CARE ACT

Referred To: Senate Artificial Intelligence & Emerging Tech

SECTION 1. Title 40.1 of the General Laws entitled "BEHAVIORAL HEALTHCARE,
DEVELOPMENTAL DISABILITIES AND HOSPITALS" is hereby amended by adding thereto
the following chapter:

OVERSIGHT OF ARTIFICIAL INTELLIGENCE TECHNOLOGY IN MENTAL HEALTH
CARE ACT

This chapter shall be known and may be cited as the "Oversight of Artificial Intelligence Technology in Mental Health Care Act".

(1) "Administrative support" means tasks performed to assist a licensed professional in the delivery of therapy or psychotherapy services that do not involve communication. "Administrative support" includes, but is not limited to, the following:

- (i) Managing appointment scheduling and reminders;
- (ii) Processing billing and insurance claims; and
- (iii) Drafting general communications related to therapy logistics that do not include
utic advice.

1 (2) "Artificial intelligence", "artificial intelligence technology", or "AI" means a machine-
2 based system that can, for a given set of human-defined objectives, make predictions,
3 recommendations, or decisions influencing real or virtual environments, and that uses machine and
4 human-based inputs to perceive real and virtual environments, abstract such perceptions into
5 models through analysis in an automated manner, and use model inference to formulate options for
6 information or action.

7 (3) "Consent" means an affirmative written agreement, including by electronic means,
8 which unambiguously communicates the individual's explicit, express, freely given, informed,
9 voluntary, and specific agreement, and which is revocable by the individual. "Consent" does not
10 include an agreement that is obtained by the following:

11 (i) The acceptance of a general or broad terms of use, agreement, or a similar document
12 that contains descriptions of artificial intelligence along with other unrelated information;

13 (ii) An individual hovering over, muting, pausing, or closing a given piece of digital
14 content; or

15 (iii) Using deceptive actions.

16 (4) "Director" means the director of the department of health.

17 (5) "Licensed professional" means an individual who holds a valid license, credential, or
18 certification issued by this state to practice as a psychologist, social worker, mental health
19 practitioner, professional substance use counselor, professional substance use prevention
20 practitioner, or to otherwise provide therapy or psychotherapy services including:

21 (i) A licensed mental health counselor;

22 (ii) A licensed marriage and family therapist;

23 (iii) A licensed creative arts therapist;

24 (iv) A licensed psychoanalyst;

25 (v) A licensed master social worker;

26 (vi) A licensed clinical social worker;

27 (vii) A credentialed alcoholism and substance abuse counselor;

28 (viii) A credentialed prevention professional;

29 (ix) A credentialed prevention specialist;

30 (x) A credentialed alcoholism and substance abuse counselor, credentialed prevention
31 professional, or credentialed prevention specialist with an additional gambling designation;

32 (xi) A certified problem gambling counselor;

33 (xii) A credentialed alcoholism and substance abuse counselor trainee;

34 (xiii) Any other person holding any other credential that may be overseen by units or

1 divisions providing addiction services and supports; or

2 (xiv) Any other professional licensed, credentialed, certified, or otherwise authorized by
3 this state to provide therapy or psychotherapy services, except for a physician.

4 (6) "Peer support" means services provided by individuals with lived experience of mental
5 health conditions or recovery from substance use or gambling that are intended to offer
6 encouragement, understanding, and guidance without clinical intervention.

7 (7) "Permitted use of artificial intelligence" means the use of artificial intelligence tools or
8 systems by a licensed professional to assist in providing administrative support or supplementary
9 support in therapy or psychotherapy services where the licensed professional maintains full
10 responsibility for all interactions, outputs, and data use associated with the system and satisfies the
11 requirements of this chapter.

12 (8) "Religious counseling" means counseling provided by clergy members, pastoral
13 counselors, or other religious leaders acting within the scope of their religious duties if the services
14 are explicitly faith-based and are not represented as clinical mental health services or therapy or
15 psychotherapy services.

16 (9) "Supplementary support" means tasks performed to assist a licensed professional in the
17 delivery of therapy or psychotherapy services that do not involve therapeutic communication and
18 that are not administrative support. "Supplementary support" includes, but is not limited to, the
19 following:

20 (i) Preparing and maintaining client records, including therapy notes;

21 (ii) Analyzing anonymized data to track client progress or identify trends, subject to review
22 by a licensed, credentialed, or certified professional; and

23 (iii) Identifying and organizing external resources or referrals for client use.

24 (10) "Therapeutic communication" means any verbal, non-verbal, or written interaction
25 conducted in a clinical or professional setting that is intended to diagnose, treat, or address an
26 individual's mental, emotional, or behavioral health concerns. "Therapeutic communication"
27 includes, but is not limited to:

28 (i) Direct interactions with clients for the purpose of understanding or reflecting their
29 thoughts, emotions, or experiences;

30 (ii) Providing guidance, therapeutic strategies, or interventions designed to achieve mental
31 health outcomes;

32 (iii) Offering emotional support, reassurance, or empathy in response to psychological or
33 emotional distress;

34 (iv) Collaborating with clients to develop or modify therapeutic goals or treatment plans;

1 and
2 (v) Offering behavioral feedback intended to promote psychological growth or address
3 mental health conditions.

4 (11) "Therapy or psychotherapy services" means services provided to diagnose, treat, or
5 improve an individual's mental health or behavioral health. "Therapy or psychotherapy services"
6 does not include religious counseling or peer support.

7 **40.1-5.5-3. Use of artificial intelligence in mental health care.**

8 (a) No licensed professional shall be permitted to use artificial intelligence, designed to
9 simulate emotional attachment, bonding, or dependency or artificial intelligence companions for
10 mental health or emotional support, to assist in providing supplementary support in therapy or
11 psychotherapy services where the client's therapeutic session is recorded or transcribed unless the
12 patient or the patient's parent, guardian or other legally authorized representative is informed in
13 writing of the following:

14 (1) That artificial intelligence will be used;

15 (2) The specific purpose of the artificial intelligence tool or system that will be used; and

16 (3) The patient or the patient's parents, or other legally authorized representative, provides
17 consent to the use of artificial intelligence.

18 (b) An individual, corporation, or entity may not provide, advertise, or otherwise offer
19 therapy or psychotherapy services, including through the use of Internet-based artificial
20 intelligence, to the public in this state unless the therapy or psychotherapy services are conducted
21 by an individual who is a licensed professional.

22 (c) A licensed professional may use artificial intelligence only to the extent that such use
23 meets the requirements of subsection (a) of this section. A licensed professional may not allow or
24 otherwise use artificial intelligence to do any of the following:

25 (1) Make independent therapeutic decisions;

26 (2) Directly interact with clients in any form of therapeutic communication;

27 (3) Generate therapeutic recommendations or treatment plans; or

28 (4) Detect emotions or mental states.

29 **40.1-5.5-4. Confidentiality of records.**

30 All records kept by a licensed professional and all communications between an individual
31 seeking therapy or psychotherapy services and a licensed professional shall be confidential and
32 shall not be disclosed except as provided pursuant to the provisions of § 40.1-5-26.

33 **40.1-5.5-5. Penalties.**

34 (a) The penalties pursuant to § 5-37.3-9 shall apply to any violation of the confidentiality

1 [provisions of this chapter.](#)

2 [\(b\) The director shall have authority to investigate any actual, alleged, or suspected](#)

3 [violation of this chapter.](#)

4 [\(c\) This chapter shall not apply to the following:](#)

5 [\(1\) Religious counseling;](#)

6 [\(2\) Peer support; and](#)

7 [\(3\) Self-help materials and educational resources that are available to the public and do not](#)

8 [purport to offer therapy or psychotherapy services.](#)

9 **40.1-5.5-6. Rules and Regulations.**

10 [The director of the department of health is authorized to promulgate rules and regulations](#)

11 [to carry out the intent of this chapter.](#)

12 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS -- OVERSIGHT OF ARTIFICIAL INTELLIGENCE TECHNOLOGY IN
MENTAL HEALTH CARE ACT

- 1
- This act would establish regulations regarding the use of artificial intelligence in mental
- 2
- healthcare treatments.
- 3
- This act would take effect upon passage.

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