

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 26-0298.01 Brita Darling x2241

HOUSE BILL 26-1195

HOUSE SPONSORSHIP

Rydin and Mabrey,

SENATE SPONSORSHIP

Amabile and Mullica,

House Committees
Health & Human Services

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING RESTRICTIONS ON THE USE OF ARTIFICIAL INTELLIGENCE**

102 **RELATING TO PSYCHOTHERAPY SERVICES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill prohibits licensed, certified, or registered psychologists, professional counselors, social workers, clinical social workers, marriage and family therapists, addiction counselors, or candidates for those credentials, as well as unlicensed psychotherapists and other individuals lawfully permitted to provide psychotherapy services in the state (regulated professionals), from using an artificial intelligence system to:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

- Directly interact with clients in any form of therapeutic communication;
- Generate therapeutic recommendations or treatment plans without review and approval by regulated professionals; or
- Detect emotions or mental states.

Under current law, the practice of "psychotherapy" or "psychotherapy services" means, in pertinent part: Treatment, diagnosis, testing, assessment, or counseling in a professional relationship to assist individuals or groups to alleviate behavioral and mental health disorders; understand unconscious or conscious motivation; resolve emotional, relationship, or attitudinal conflicts; or modify behaviors that interfere with effective emotional, social, or intellectual functioning. Psychotherapy follows a planned procedure of intervention that takes place on a regular basis or over a period of time, or, in the cases of testing, assessment, and brief psychotherapy, psychotherapy can be a single intervention. The definition of psychotherapy in current law also states that it is the intent of the general assembly that the definition of psychotherapy be interpreted in its narrowest sense to regulate only those persons that clearly fall within the definition.

The bill allows regulated professionals to use an artificial intelligence system to assist in providing administrative support or supplementary support for psychotherapy services if the regulated professional maintains full responsibility for all interactions, outputs, and data use associated with the artificial intelligence system.

Further, if a client's therapeutic session will be recorded or transcribed through the use of an artificial intelligence system, the regulated professional must obtain written, informed consent from the client or the client's representative.

The bill does not prohibit the use of an artificial intelligence system within accredited or approved educational, instructional, or professional training programs so long as the artificial intelligence system is used solely for educational, administrative, simulation, or training purposes and is not deployed or marketed for use with clients, patients, or the public.

The bill also does not prohibit the development or testing of an artificial intelligence system solely for research purposes under the oversight of a federally registered institutional review board, so long as the artificial intelligence system is not offered to consumers or used to provide psychotherapy services outside of the research setting.

Further, the bill also does not prohibit the use of a technology or service that provides self-help, coaching, guided meditation, or wellness tools and that does not diagnose or treat mental health disorders and clearly discloses that the technology or service is not a substitute for clinical care.

The applicable board that regulates a regulated professional may

take disciplinary action against a regulated professional that violates prohibitions in the bill concerning the use of artificial intelligence systems relating to psychotherapy services.

The bill also makes it unlawful for an individual, corporation, or entity (person) to provide, advertise, or otherwise offer psychotherapy services to the public in the state unless the services are provided by a regulated professional.

It is an unfair trade practice under the "Colorado Consumer Protection Act" for a person to use a term, letter, or phrase in the advertising, interface, or outputs of an artificial intelligence system that indicates or implies that the artificial intelligence system's output data is endorsed by or equivalent to psychotherapy services provided by regulated professionals or represent that the artificial intelligence system provides psychotherapy services or that users' data or information is confidential.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 12-245-224, **amend**
3 (1)(w) and (1)(x); and **add** (1)(y) as follows:

4 **12-245-224. Prohibited activities - related provisions -**
5 **definition.**

6 (1) A person licensed, registered, or certified under this article 245
7 violates this article 245 if the person:

8 (w) Has sold or fraudulently obtained or furnished a license,
9 registration, or certification to practice as a psychologist, social worker,
10 marriage and family therapist, licensed professional counselor,
11 psychotherapist, or addiction counselor or has aided or abetted in those
12 activities; **or**

13 (x) Has failed to respond, in the manner required by the board, to
14 a complaint filed with or by the board against the licensee, registrant, or
15 certificate holder; **OR**

16 (y) FAILS TO COMPLY WITH SECTION 12-245-224.5 CONCERNING
17 THE USE OF ARTIFICIAL INTELLIGENCE SYSTEMS.

1 **SECTION 2.** In Colorado Revised Statutes, **add 12-245-224.5 as**
2 **follows:**

3 **12-245-224.5. Use of artificial intelligence systems for**
4 **psychotherapy services - unauthorized use - permitted use by**
5 **regulated individuals - consent - use in educational and training**
6 **settings and research - definitions.**

7 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
8 REQUIRES:

9 (a) (I) "ADMINISTRATIVE SUPPORT" MEANS TASKS THAT:

10 (A) ARE PERFORMED TO ASSIST A LICENSEE, REGISTRANT,
11 CERTIFICATE HOLDER, OR OTHER INDIVIDUAL LAWFULLY PERMITTED TO
12 PROVIDE PSYCHOTHERAPY SERVICES IN THE STATE IN THE DELIVERY OF
13 PSYCHOTHERAPY SERVICES; AND

14 (B) DO NOT INVOLVE THERAPEUTIC COMMUNICATION.

15 (II) "ADMINISTRATIVE SUPPORT" INCLUDES THE FOLLOWING, AT A
16 MINIMUM:

17 (A) MANAGING APPOINTMENT SCHEDULING AND REMINDERS;
18 (B) PROCESSING BILLING AND INSURANCE CLAIMS; AND
19 (C) DRAFTING GENERAL COMMUNICATIONS RELATED TO THERAPY
20 LOGISTICS THAT DO NOT INCLUDE THERAPEUTIC ADVICE.

21 (b) "ARTIFICIAL INTELLIGENCE SYSTEM" HAS THE MEANING SET
22 FORTH IN SECTION 6-1-1701 (2).

23 (c) (I) "CONSENT" MEANS A CLEAR, EXPLICIT, AFFIRMATIVE,
24 SPECIFIC, AND UNAMBIGUOUS WRITTEN AGREEMENT, INCLUDING A
25 WRITTEN AGREEMENT PROVIDED BY ELECTRONIC MEANS, ENTERED INTO
26 BY AN INDIVIDUAL THAT IS REVOCABLE BY THE INDIVIDUAL.

27 (II) "CONSENT" DOES NOT INCLUDE AN AGREEMENT THAT IS

1 OBTAINED BY ANY OF THE FOLLOWING MEANS:

2 (A) THE ACCEPTANCE OF A GENERAL OR BROAD TERMS OF USE
3 AGREEMENT OR A SIMILAR DOCUMENT THAT CONTAINS DESCRIPTIONS OF
4 ARTIFICIAL INTELLIGENCE ALONG WITH OTHER UNRELATED INFORMATION;
5 (B) AN INDIVIDUAL INTERACTING WITH A GIVEN PIECE OF DIGITAL
6 CONTENT IN A MANNER THAT INVOLVES HOVERING OVER, MUTING,
7 PAUSING, OR CLOSING THE DIGITAL CONTENT; OR
8 (C) AN AGREEMENT OBTAINED THROUGH THE USE OF DECEPTION.

9 (d) "PERSON" HAS THE MEANING SET FORTH IN SECTION 2-4-401
10 (8).

11 (e) "SUPPLEMENTARY SUPPORT" MEANS TASKS PERFORMED TO
12 ASSIST A LICENSEE, REGISTRANT, CERTIFICATE HOLDER, OR OTHER
13 INDIVIDUAL LAWFULLY PERMITTED TO PROVIDE PSYCHOTHERAPY
14 SERVICES IN THE STATE IN THE DELIVERY OF PSYCHOTHERAPY SERVICES
15 THAT DO NOT INVOLVE THERAPEUTIC COMMUNICATION AND THAT ARE NOT
16 ADMINISTRATIVE SUPPORT. "SUPPLEMENTARY SUPPORT" INCLUDES, AT A
17 MINIMUM:

18 (I) PREPARING AND MAINTAINING CLIENT RECORDS, INCLUDING
19 THERAPY NOTES;

20 (II) ANALYZING ANONYMIZED DATA TO TRACK CLIENT PROGRESS
21 OR IDENTIFY TRENDS, SUBJECT TO REVIEW BY A LICENSEE, REGISTRANT,
22 CERTIFICATE HOLDER, OR OTHER INDIVIDUAL LAWFULLY PERMITTED TO
23 PROVIDE PSYCHOTHERAPY SERVICES IN THE STATE; AND

24 (III) IDENTIFYING AND ORGANIZING INTERNAL AND EXTERNAL
25 RESOURCES OR REFERRALS FOR CLIENT USE.

26 (f) "THERAPEUTIC COMMUNICATION" MEANS ANY VERBAL,
27 NONVERBAL, OR WRITTEN INTERACTION CONDUCTED IN A CLINICAL OR

1 PROFESSIONAL SETTING THAT MEETS THE DEFINITION OF PSYCHOTHERAPY
2 SERVICES. "THERAPEUTIC COMMUNICATION" INCLUDES, AT A MINIMUM:

3 (I) DIRECT INTERACTIONS WITH CLIENTS FOR THE PURPOSE OF
4 UNDERSTANDING OR REFLECTING THEIR THOUGHTS, EMOTIONS, OR
5 EXPERIENCES;

6 (II) PROVIDING GUIDANCE, THERAPEUTIC STRATEGIES, OR
7 INTERVENTIONS DESIGNED TO ACHIEVE MENTAL OR BEHAVIORAL HEALTH
8 OUTCOMES;

9 (III) OFFERING EMOTIONAL SUPPORT, REASSURANCE, OR EMPATHY
10 IN RESPONSE TO PSYCHOLOGICAL OR EMOTIONAL DISTRESS;

11 (IV) COLLABORATING WITH CLIENTS TO DEVELOP OR MODIFY
12 THERAPEUTIC GOALS OR TREATMENT PLANS; AND

13 (V) OFFERING BEHAVIORAL FEEDBACK INTENDED TO PROMOTE
14 PSYCHOLOGICAL GROWTH OR TO ADDRESS MENTAL OR BEHAVIORAL
15 HEALTH CONDITIONS.

16 (2) A PERSON SHALL NOT PROVIDE, ADVERTISE, OR OTHERWISE
17 OFFER PSYCHOTHERAPY SERVICES TO THE PUBLIC IN THE STATE,
18 INCLUDING THROUGH THE USE OF AN ARTIFICIAL INTELLIGENCE SYSTEM,
19 UNLESS THE PSYCHOTHERAPY SERVICES ARE CONDUCTED IN ACCORDANCE
20 WITH THIS SECTION BY A LICENSEE, REGISTRANT, CERTIFICATE HOLDER, OR
21 OTHER INDIVIDUAL LAWFULLY PERMITTED TO PROVIDE PSYCHOTHERAPY
22 SERVICES IN THE STATE.

23 (3) A LICENSEE, REGISTRANT, CERTIFICATE HOLDER, OR OTHER
24 INDIVIDUAL LAWFULLY PERMITTED TO PROVIDE PSYCHOTHERAPY
25 SERVICES IN THE STATE MAY USE AN ARTIFICIAL INTELLIGENCE SYSTEM TO
26 ASSIST IN PROVIDING ADMINISTRATIVE SUPPORT OR SUPPLEMENTARY
27 SUPPORT FOR PSYCHOTHERAPY SERVICES IF THE LICENSEE, REGISTRANT,

1 CERTIFICATE HOLDER, OR OTHER INDIVIDUAL LAWFULLY PERMITTED TO
2 PROVIDE PSYCHOTHERAPY SERVICES IN THE STATE MAINTAINS FULL
3 RESPONSIBILITY FOR ALL INTERACTIONS, OUTPUTS, AND DATA USE
4 ASSOCIATED WITH THE ARTIFICIAL INTELLIGENCE SYSTEM AND SATISFIES
5 THE REQUIREMENTS SET FORTH IN SUBSECTION (4) OF THIS SECTION.

6 (4) (a) IF A CLIENT'S THERAPEUTIC SESSION WILL BE RECORDED OR
7 TRANSCRIBED, A LICENSEE, REGISTRANT, CERTIFICATE HOLDER, OR OTHER
8 INDIVIDUAL LAWFULLY PERMITTED TO PROVIDE PSYCHOTHERAPY
9 SERVICES IN THE STATE SHALL NOT USE AN ARTIFICIAL INTELLIGENCE
10 SYSTEM TO ASSIST IN PROVIDING SUPPLEMENTARY SUPPORT FOR
11 PSYCHOTHERAPY SERVICES, UNLESS:

12 (I) THE CLIENT OR THE CLIENT'S LEGALLY AUTHORIZED
13 REPRESENTATIVE IS INFORMED IN ADVANCE IN WRITING OF THE
14 FOLLOWING:

15 (A) THAT AN ARTIFICIAL INTELLIGENCE SYSTEM WILL BE USED;
16 AND

17 (B) THE SPECIFIC PURPOSE FOR WHICH THE ARTIFICIAL
18 INTELLIGENCE SYSTEM WILL BE USED;

19 (II) THE CLIENT OR THE CLIENT'S LEGALLY AUTHORIZED
20 REPRESENTATIVE CONSENTS IN WRITING TO THE USE OF THE ARTIFICIAL
21 INTELLIGENCE SYSTEM; AND

22 (III) THE CLIENT'S REFUSAL TO PROVIDE OR LATER DECISION TO
23 REVOKE CONSENT REQUIRED PURSUANT TO SUBSECTION (4)(a)(II) OF THIS
24 SECTION SHALL NOT BE USED AS A BASIS TO DENY PSYCHOTHERAPY
25 SERVICES.

26 (b) THE CONSENT REQUIRED PURSUANT TO SUBSECTION (4)(a)(II)
27 OF THIS SECTION FOR THE USE OF AN ARTIFICIAL INTELLIGENCE SYSTEM TO

1 RECORD OR TRANSCRIBE THERAPEUTIC SESSIONS IS REQUIRED ONLY FOR
2 THE INITIAL USE OF THE ARTIFICIAL INTELLIGENCE SYSTEM OCCURRING ON
3 OR AFTER THE EFFECTIVE DATE OF THIS SECTION AND NOT FOR EACH
4 SUBSEQUENT THERAPEUTIC SESSION, UNLESS THE PURPOSE OR MANNER OF
5 USE MATERIALLY CHANGES.

6 (5) A LICENSEE, REGISTRANT, CERTIFICATE HOLDER, OR OTHER
7 INDIVIDUAL LAWFULLY PERMITTED TO PROVIDE PSYCHOTHERAPY
8 SERVICES IN THE STATE SHALL NOT ALLOW AN ARTIFICIAL INTELLIGENCE
9 SYSTEM TO DO ANY OF THE FOLLOWING:

10 (a) DIRECTLY INTERACT WITH CLIENTS IN ANY FORM OF
11 THERAPEUTIC COMMUNICATION;

12 (b) GENERATE THERAPEUTIC RECOMMENDATIONS OR TREATMENT
13 PLANS WITHOUT REVIEW AND APPROVAL BY THE LICENSEE, REGISTRANT,
14 CERTIFICATE HOLDER, OR OTHER INDIVIDUAL LAWFULLY PERMITTED TO
15 PROVIDE PSYCHOTHERAPY SERVICES IN THE STATE; OR

16 (c) DETECT EMOTIONS OR MENTAL STATES.

17 (6) EXCEPT AS PROVIDED IN SUBSECTIONS (7) AND (8) OF THIS
18 SECTION, AN ARTIFICIAL INTELLIGENCE SYSTEM USED AS PERMITTED
19 PURSUANT TO THIS SECTION MUST NOT PROVIDE, DIRECT, GUIDE, OR
20 ATTEMPT TO PROVIDE, DIRECT, OR GUIDE PSYCHOTHERAPY, CLINICAL
21 INTERVENTION, COUNSELING, DIAGNOSIS, TREATMENT PLANNING, OR ANY
22 OTHER ACTIVITY THAT CONSTITUTES THE PRACTICE OF PSYCHOTHERAPY
23 WITH AN INDIVIDUAL OR A GROUP.

24 (7) NOTHING IN THIS SECTION PROHIBITS THE USE OF AN ARTIFICIAL
25 INTELLIGENCE SYSTEM WITHIN AN ACCREDITED OR APPROVED
26 EDUCATIONAL, INSTRUCTIONAL, OR PROFESSIONAL TRAINING PROGRAM,
27 SO LONG AS THE ARTIFICIAL INTELLIGENCE SYSTEM:

3 (b) IS NOT DEPLOYED, MARKETED, OR REPRESENTED AS A TOOL FOR
4 USE WITH CLIENTS, PATIENTS, OR MEMBERS OF THE PUBLIC; AND

5 (c) FOR ANY SIMULATION, TRAINING MODULE, OR EDUCATIONAL
6 ACTIVITY THAT INCLUDES CONTENT RELATED TO CLINICAL
7 DECISION-MAKING, IS SUPERVISED, REVIEWED, OR CONTROLLED BY AN
8 INDIVIDUAL LICENSED, CERTIFIED, REGISTERED, OR OTHERWISE LAWFULLY
9 PERMITTED TO PROVIDE PSYCHOTHERAPY SERVICES IN THE STATE.

18 (9) THIS SECTION DOES NOT APPLY TO:

26 (b) A TECHNOLOGY OR SERVICE THAT PROVIDES SELF-HELP,
27 COACHING, GUIDED MEDITATION, OR WELLNESS TOOLS AND THAT:

1 (I) DOES NOT DIAGNOSE OR TREAT MENTAL HEALTH DISORDERS;

2 AND

(II) CLEARLY DISCLOSES THAT THE TECHNOLOGY OR SERVICE IS
NOT A SUBSTITUTE FOR CLINICAL CARE.

5 **SECTION 3.** In Colorado Revised Statutes, **add** 6-1-1705.2 as
6 follows:

6-1-1705.2. Use of artificial intelligence systems - psychotherapy services - prohibited practices.

9 (1) A PERSON SHALL NOT USE ANY TERM, LETTER, OR PHRASE IN
10 THE ADVERTISING, INTERFACE, OR OUTPUTS OF AN ARTIFICIAL
11 INTELLIGENCE SYSTEM IN A MANNER THAT:

12 (a) INDICATES OR IMPLIES THAT THE ARTIFICIAL INTELLIGENCE
13 SYSTEM'S OUTPUT DATA IS BEING PROVIDED BY, IS ENDORSED BY, OR IS
14 EQUIVALENT TO SERVICES PROVIDED BY AN INDIVIDUAL LICENSED,
15 REGISTERED, OR CERTIFIED IN THE STATE PURSUANT TO ARTICLE 245 OF
16 TITLE 12 TO ENGAGE IN THE PRACTICE OF PSYCHOTHERAPY OR TO PROVIDE
17 PSYCHOTHERAPY SERVICES, AS DEFINED IN SECTION 12-245-202 (14);

18 (b) REPRESENTS THAT THE ARTIFICIAL INTELLIGENCE SYSTEM
19 PROVIDES PSYCHOTHERAPY SERVICES, AS DEFINED IN SECTION 12-245-202
20 (14); OR

21 (c) REPRESENTS THAT A USER'S DATA OR INFORMATION IS
22 CONFIDENTIAL.

25 **SECTION 5. Safety clause.** The general assembly finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, or safety or for appropriations for

1 the support and maintenance of the departments of the state and state
2 institutions.