Fiscal Note

Legislative Council Staff

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HB 26-1139: USE OF ARTIFICIAL INTELLIGENCE IN HEALTH CARE

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Fiscal note status: The fiscal note reflects the introduced bill.

Summary Information

Overview. This bill creates a regulatory structure for the use of an artificial intelligence system or algorithm (AI) in health care that specifies where AI can and cannot be used.

Types of impacts. The bill is projected to affect the following areas on an ongoing basis:

- Minimal State Workload
- State Revenue

Appropriations. No appropriation required.

Table 1
State Fiscal Impacts

Type of Impact	Budget Year FY 2026-27	Out Year FY 2027-28
State Revenue	$0	$0
State Expenditures	$0	$0
Transferred Funds	$0	$0
Change in TABOR Refunds	$0	$0
Change in State FTE	0.0 FTE	0.0 FTE

Summary of Legislation

This bill creates a regulatory structure for the use of an artificial intelligence (AI) system or algorithm in health care that specifies where AI can and cannot be used. The bill defines "mental health companion chatbot" and places requirements and restrictions on their use. Further, the bill places requirements on mental health professionals who use AI systems in their practices; persons who deploy AI systems in the state, including mental health companion chatbots; and health insurers regarding coverage for services and claims processing. Provisions of the bill are outlined in more detail below.

Coverage Prohibition

The bill prohibits a public or private payer, including Medicaid and the Children's Basic Health Plan (CHP+), from providing coverage for psychotherapy services conducted by AI, and prohibits a mental health provider from billing for services provided by an AI system.

Utilization Review

Under the bill, AI may be used in utilization review by health insurers, as long as the AI system is not discriminatory, meets specific documentation requirements, and bases its determination on:

- an individual's medical or other clinical history;

- individual clinical circumstances; and

- other relevant clinical information in the individual's records.

A denial or delay of coverage based in whole or in part on medical necessity cannot be based solely on the output of an AI system without independent approval by a health care professional.

The bill requires that a person providing an AI system for utilization review provide written disclosures to the Division of Insurance in the Department of Regulatory Agencies (DORA), the Department of Human Services (DHS), or the Department of Health Care Policy and Financing (HCPF), as applicable, pertaining to how the artificial intelligence system or algorithm will be used and what oversight will be provided.

Unauthorized Practice of Psychotherapy

A person who provides an AI system engages in the unauthorized practice of psychotherapy if the AI system acts as a psychotherapist, including by:

- representing or stating, explicitly or implicitly, that the AI system is an authorized, human mental health provider;

- using prohibited titles, abbreviations, or descriptions that only a regulated professional is permitted to use; and

- delivering psychotherapy services that fall within the practice of psychotherapy without oversight by an individual who is a regulated professional.

Further, it is also an unauthorized practice of psychotherapy if a person deploys a mental health companion chatbot that:

- fails to provide clear notice to users that it is not a human and not authorized to provide mental health services or to treat mental health conditions;

- fails to implement protocols to address suicidal ideation or self-harm expressed by users, including referrals for a suicide or crisis hotline; or

- sells, shares, or discloses identifiable mental health data or conditions related to a user's use of the chatbot.

An AI system used for general information or research purposes are not subject to this prohibition. Additional detail on the disclosure requirements and protocols related to suicide and self-harm are provided below.

Disclosure Requirements

If a mental health provider uses an AI system for any purpose related to the practice of psychotherapy, they must provide the client with specific information about the AI system including the system name, purpose, and privacy protections, and the right of the client to consent to any disclosure of confidential information. Mental health companion chatbots are required to provide clear and conspicuous notice at least every 30 minutes to the user that they are interfacing with an AI system not licensed to provide mental health therapy.

Suicide Prevention

A person providing a mental health chatbot must implement a protocol for addressing suicidal ideation or self-harm expressed by a user to the chatbot and must report annually to the Office of Suicide Prevention in the Department of Public Health and Environment (CDPHE) concerning the number of times that the chatbot detected suicidal ideation by users and the number of times the chatbot brought up suicidal ideation or actions with users.

Background and Assumptions

Current policies of the Department of Personnel and Administration, which manages state employee insurance, HCPF and DHS, do not allow payment for delivery of services by AI systems. For HCPF, the bill largely codifies existing practices related to utilization review and payment prohibitions delivered directly by AI systems. DHS has not adopted the use of AI in clinical settings.

State Revenue

The Judicial Branch may have a minimal increase in revenue from new civil case filings. Any increase is expected to be minimal and are subject to TABOR. To the extent the bill increases costs in the Division of Professions and Occupations in DORA, fees on regulated professionals may be increased to cover any costs. Overall, any impact on fee revenue is assumed to be minimal at this time.

State Expenditures

The bill will increase workload, and potentially costs, for several state agencies as described below.

Division of Professions and Occupations—DORA

The bill increases workload and potentially costs for the Division of Professions and Occupations in the DORA to handle additional complaints related to psychotherapy services provided via AI. These complaints may involve both currently regulated mental health professionals, as well as individuals and companies deploying AI systems that engage in the unauthorized practice of psychotherapy as defined by the bill. These complaints and any resulting investigations will also increase legal services costs for the division, which are provided by the Department of Law. Should additional resources be required related to this work, it is assumed any adjustments to appropriations will be made through the annual budget process based on actual enforcement actions required.

Division of Insurance—DORA

The Division of Insurance will have additional workload to issue new rules for insurers related to the use of AI in claims processing and the disclosures required under the bill. Additional staff time will be required to review the disclosure filings under the bill. This workload can be accomplished within existing appropriations.

Judicial Branch

To the extent that civil filings for judicial review or discriminatory practices increases, the workload for trial courts will increase. This is expected to be minimal and accomplished within existing appropriations.

Department of Public Health and Environment

The Office of Suicide Prevention in the CDPHE is required to collect data provided by individuals overseeing mental health chatbots in the state. This is a minimal workload increase that can be accomplished within existing appropriations.

Effective Date

The bill takes effect January 1, 2027, and applies to actions taken on or after that date.

State and Local Government Contacts

Health Care Policy and Financing	Law
Human Services	Public Health and Environment
Information Technology	Regulatory Agencies
Judicial	