

**Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 26-0038.01 Brita Darling x2241

HOUSE BILL 26-1139

HOUSE SPONSORSHIP

Joseph and Lieder,

SENATE SPONSORSHIP

(None),

House Committees
Health & Human Services

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE USE OF ARTIFICIAL INTELLIGENCE IN HEALTH CARE.**

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>.)

Section 2 of the bill requires entities that use an artificial intelligence system or algorithm (AI system) for the purpose of conducting utilization review of health-care services, including health insurance carriers, pharmacy benefit managers, private utilization review organizations, behavioral health administrative services organizations, and managed care entities, to ensure that the AI system complies with certain requirements specified in the bill when determining coverage for services. Specifically, the AI system used must:

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.

- Not base its determination solely on group data; and
- Make determinations based on medical or clinical history, the patient's individual clinical circumstances, and other relevant factors specified in the bill, with denial of coverage reviewed by a licensed clinician or physician.

The AI system may be used to assist in utilization review, including expedited approvals. A denial or delay of coverage for a service based in whole or in part on medical necessity must be reviewed by a licensed clinician or physician who is competent to evaluate the specific clinical issues.

Section 3 defines a "mental health companion chatbot", in part, as an AI system that:

- Uses generative artificial intelligence to provide adaptive, personalized, and emotionally resonant responses to sustain a one-on-one relationship with a user;
- Engages in interactive conversations similar to those an individual would have with a licensed mental health professional; and
- Is represented by the AI systems provider as, or that a reasonable person believes to be, capable of providing mental health therapy or of helping to manage or treat mental health conditions.

Sections 2, 5, 6, and 7:

- Declare that an AI systems provider engages in the unauthorized practice of psychotherapy if the AI system used:
 - Represents, states, or indicates, explicitly or implicitly, that the AI system is a human mental health provider or is authorized to engage in the practice of psychotherapy;
 - Uses prohibited titles, abbreviations or descriptions of professions, credentials, or services that only a mental health professional authorized to provide psychotherapy in the state (regulated professional) may use;
 - Delivers psychotherapy services that would be considered the practice of psychotherapy without oversight by an individual who is a regulated professional; or
 - Is a mental health companion chatbot and: Fails to provide clear and conspicuous notice to the user that the AI system is not a human and is not authorized to provide psychotherapy, therapy, or counseling or to manage or treat mental health conditions; fails to disclose that the AI system is artificial intelligence

when asked; fails to implement a protocol to address suicidal ideation or self-harm expressed by users, including referring users to a suicide hotline or crisis text line; or sells, shares, or discloses identifiable mental health data or conditions the use of the mental health companion chatbot on a user agreeing to those practices;

- Allow for the use of an AI system to provide general information, support, or education, without representing that the AI system is a regulated professional;
- Exempt from the bill the development, testing, or evaluation of an AI system conducted for the purpose of research by an institutional review board; and
- Prohibit a regulated professional from billing a public or private payer for psychotherapy services that are provided directly to a client and that are conducted by an AI system or for supervision of candidates or professional consultations that are provided by an AI system without human oversight.

Section 4 requires a regulated professional to disclose to a client the purposes for which the regulated professional uses AI systems or therapeutic or diagnostic devices that include AI systems in their practice and when those AI systems or devices are used, the right of a client to consent to a disclosure of confidential communications, and other disclosures.

Sections 2 and 7 prohibit a health insurance carrier and a payer of services under the "Colorado Medical Assistance Act" and the "Children's Basic Health Plan Act" from paying for psychotherapy services that are provided directly to a client and that are conducted by an AI system.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Health-care decisions affect the most intimate, complex, and
5 consequential aspects of human life, including physical survival, mental
6 well-being, family stability, and personal dignity, and therefore must be
7 grounded in compassion, clinical judgment, and individualized
8 understanding;

1 (b) Artificial intelligence systems may offer valuable tools to
2 support efficiency, data analysis, and administrative functions in
3 health-care delivery; however, these systems cannot comprehend the full
4 breadth and depth of the human experience, including trauma, culture,
5 disability, grief, fear, hope, and the lived realities that shape patient health
6 outcomes;

7 (c) The state of Colorado has a compelling interest in ensuring
8 that health care remains human-centered and that decisions involving
9 coverage determinations, medical necessity, and access to treatment,
10 particularly denials of care, are made by qualified human clinicians
11 or physicians who are accountable for these decisions and can exercise
12 professional judgment and ethical reasoning;

13 (d) Reliance on artificial intelligence systems to make or
14 materially influence adverse health-care determinations without
15 meaningful human oversight risks compounding inequities, embedding
16 bias, and eroding trust between patients, providers, and health-care
17 systems;

18 (e) Artificial intelligence systems may be used as an assistive tool
19 in health-care delivery and administration but must not replace human
20 judgment, human accountability, or the therapeutic relationship that is
21 essential to safe, ethical, and effective care; and

22 (f) Every Coloradan, regardless of income, insurance status,
23 disability, language access needs, race, ethnicity, geography, or
24 immigration status, deserves access to human-centered health care that
25 recognizes their dignity, individuality, and humanity.

26 (2) Therefore, the general assembly declares that it is essential to:

27 (a) Regulate the use of artificial intelligence systems in health care

- 1 to ensure transparency, accountability, equity, and patient safety;
- 2 (b) Prohibit automated systems from making adverse coverage
- 3 determinations without qualified human review; and
- 4 (c) Preserve the central role of licensed clinicians in decisions that
- 5 affect the health, well-being, and lives of Coloradans.

6 **SECTION 2.** In Colorado Revised Statutes, **add** 10-16-112.7 as

7 follows:

8 **10-16-112.7. Use of artificial intelligence systems - utilization**

9 **review - prohibition on payment for AI-delivered psychotherapy**

10 **services - definitions.**

11 (1) AS USED IN THIS SECTION:

12 (a) "ARTIFICIAL INTELLIGENCE SYSTEM" HAS THE MEANING SET

13 FORTH IN SECTION 6-1-1701 (2).

14 (b) "BEHAVIORAL HEALTH ADMINISTRATIVE SERVICES

15 ORGANIZATION" MEANS AN ORGANIZATION SELECTED BY THE BEHAVIORAL

16 HEALTH ADMINISTRATION PURSUANT TO SECTION 27-50-402 TO ESTABLISH

17 AND MAINTAIN A NETWORK OF BEHAVIORAL HEATH PROVIDERS.

18 (c) "MANAGED CARE ENTITY" HAS THE MEANING SET FORTH IN

19 SECTION 25.5-5-403 (4).

20 (d) "PRIVATE UTILIZATION REVIEW ORGANIZATION" OR

21 "ORGANIZATION" MEANS A PRIVATE UTILIZATION REVIEW ORGANIZATION,

22 AS DEFINED IN SECTION 10-16-112 (1)(a), THAT HAS A CONTRACT WITH OR

23 PERFORMS PRIOR AUTHORIZATION ON BEHALF OF A CARRIER.

24 (2) **Utilization review.** SUBSECTIONS (3), (4), AND (5) OF THIS

25 SECTION APPLY TO:

26 (a) A CARRIER THAT:

27 (I) USES AN ARTIFICIAL INTELLIGENCE SYSTEM [REDACTED] FOR THE

1 PURPOSE OF UTILIZATION REVIEW; OR

2 (II) CONTRACTS WITH OR OTHERWISE WORKS THROUGH A PERSON
3 THAT USES AN ARTIFICIAL INTELLIGENCE SYSTEM █ FOR THE PURPOSE OF
4 UTILIZATION REVIEW;

5 (b) A PHARMACY BENEFIT MANAGER OR PRIVATE UTILIZATION
6 REVIEW ORGANIZATION THAT CONTRACTS WITH A CARRIER TO PROVIDE
7 UTILIZATION REVIEW SERVICES ON BEHALF OF THE CARRIER AND USES AN
8 ARTIFICIAL INTELLIGENCE SYSTEM █ FOR THE PURPOSE OF CONDUCTING
9 THE UTILIZATION REVIEW; AND

10 (c) A BEHAVIORAL HEALTH ADMINISTRATIVE SERVICES
11 ORGANIZATION OR MANAGED CARE ENTITY THAT USES AN ARTIFICIAL
12 INTELLIGENCE SYSTEM █ FOR THE PURPOSE OF CONDUCTING UTILIZATION
13 REVIEW OF MENTAL OR BEHAVIORAL HEALTH SERVICES.

14 (3) A PERSON DESCRIBED IN SUBSECTION (2) OF THIS SECTION THAT
15 USES AN ARTIFICIAL INTELLIGENCE SYSTEM █ TO CONDUCT UTILIZATION
16 REVIEW SHALL ENSURE THAT:

17 (a) THE ARTIFICIAL INTELLIGENCE SYSTEM █ BASES ITS
18 DETERMINATION ON THE FOLLOWING INFORMATION, AS APPLICABLE:

19 (I) AN INDIVIDUAL'S MEDICAL OR OTHER CLINICAL HISTORY;
20 (II) INDIVIDUAL CLINICAL CIRCUMSTANCES AS PRESENTED BY THE
21 REQUESTING PROVIDER; AND

22 (III) OTHER RELEVANT CLINICAL INFORMATION CONTAINED IN THE
23 INDIVIDUAL'S MEDICAL OR OTHER CLINICAL RECORD;

24 (b) THE ARTIFICIAL INTELLIGENCE SYSTEM █ DOES NOT BASE ITS
25 DETERMINATIONS SOLELY ON GROUP DATA, WITHOUT REFERENCE TO THE
26 INDIVIDUAL'S DATA;

27 █

1 (c) THE ARTIFICIAL INTELLIGENCE SYSTEM [REDACTED] IS NOT USED IN ANY
2 WAY THAT DISCRIMINATES AGAINST INDIVIDUALS IN VIOLATION OF OTHER
3 STATE OR FEDERAL LAWS;

4 (d) THE ARTIFICIAL INTELLIGENCE SYSTEM [REDACTED] IS FAIRLY AND
5 EQUITABLY APPLIED, INCLUDING IN ACCORDANCE WITH APPLICABLE
6 REGULATIONS AND GUIDANCE ISSUED BY THE FEDERAL DEPARTMENT OF
7 HEALTH AND HUMAN SERVICES;

8 (e) THE ARTIFICIAL INTELLIGENCE SYSTEM [REDACTED] PRODUCES AND
9 RETAINS DOCUMENTATION, AUDIT LOGS, AND MODEL-GOVERNANCE
10 RECORDS IN ORDER TO DEMONSTRATE COMPLIANCE WITH THIS SECTION
11 AND SECTION 10-3-1104.9;

12 (f) THE ARTIFICIAL INTELLIGENCE SYSTEM'S [REDACTED] PERFORMANCE,
13 USE, AND OUTCOMES ARE PERIODICALLY REVIEWED TO MAXIMIZE
14 ACCURACY AND RELIABILITY;

15 (g) AN INDIVIDUAL'S HEALTH DATA IS NOT USED BEYOND ITS
16 INTENDED OR STATED PURPOSE, CONSISTENT WITH APPLICABLE STATE AND
17 FEDERAL LAWS; AND

18 (h) THE ARTIFICIAL INTELLIGENCE SYSTEM'S OR ALGORITHM'S
19 CRITERIA AND GUIDELINES COMPLY WITH OTHER APPLICABLE STATE OR
20 FEDERAL LAWS CONCERNING UTILIZATION REVIEW AND COVERAGE FOR
21 HEALTH-CARE SERVICES.

22 (4) A PERSON DESCRIBED IN SUBSECTION (2) OF THIS SECTION
23 SHALL PROVIDE WRITTEN DISCLOSURES TO THE DIVISION, THE
24 DEPARTMENT OF HUMAN SERVICES, OR THE DEPARTMENT OF HEALTH CARE
25 POLICY AND FINANCING, AS APPLICABLE, THAT IDENTIFY:

26 (a) THE UTILIZATION REVIEW FUNCTIONS FOR WHICH THE
27 ARTIFICIAL INTELLIGENCE SYSTEM WILL BE USED;

1 (b) THE POINTS IN THE UTILIZATION REVIEW PROCESS WHEN THE
2 ARTIFICIAL INTELLIGENCE SYSTEM IS USED;

3 (c) THE HUMAN OVERSIGHT PROCESS, INCLUDING THE
4 QUALIFICATIONS OF THE REVIEWER AND WHETHER THE A HUMAN MUST
5 APPROVE AN ADVERSE DETERMINATION; AND

6 (d) THE PROCESS FOR MAINTAINING AUDIT INFORMATION
7 SUFFICIENT TO DEMONSTRATE COMPLIANCE WITH SUBSECTION (3) OF THIS
8 SECTION.

9 (5) (a) NOTWITHSTANDING SUBSECTION (3) OF THIS SECTION, AN
10 ARTIFICIAL INTELLIGENCE SYSTEM MAY BE USED TO ASSIST WITH
11 UTILIZATION REVIEW, INCLUDING EXPEDITED APPROVALS.

12 (b) A CARRIER'S DENIAL OF COVERAGE BASED IN WHOLE OR IN
13 PART ON MEDICAL NECESSITY SHALL NOT BE ISSUED SOLELY ON THE
14 OUTPUT OF AN ARTIFICIAL INTELLIGENCE SYSTEM WITHOUT HUMAN
15 REVIEW AND APPROVAL OF THE DENIAL OR DELAY BY A LICENSED
16 CLINICIAN, LICENSED PHYSICIAN, OR OTHER REGULATED PROFESSIONAL
17 THAT IS COMPETENT TO EVALUATE THE SPECIFIC CLINICAL ISSUES
18 INVOLVED IN THE HEALTH-CARE SERVICES REQUESTED BY THE PROVIDER
19 AND A REVIEW OF THE HEALTH BENEFIT PLAN'S TERMS OF COVERAGE FOR
20 THE HEALTH-CARE SERVICE.

21 (6) **Prohibition on payment for AI-delivered psychotherapy**
22 **services.**

23 (a) A CARRIER OFFERING A HEALTH BENEFIT PLAN ISSUED OR
24 RENEWED IN THE STATE ON OR AFTER THE EFFECTIVE DATE OF THIS
25 SECTION SHALL NOT PROVIDE COVERAGE FOR SERVICES THAT CONSTITUTE
26 PSYCHOTHERAPY SERVICES, AS DEFINED IN SECTION 12-245-202 (14),
27 THAT ARE PROVIDED DIRECTLY TO AN INDIVIDUAL AND THAT ARE

1 CONDUCTED BY AN ARTIFICIAL INTELLIGENCE SYSTEM.

2 (b) SUBSECTION (6)(a) OF THIS SECTION DOES NOT PROHIBIT THE
3 USE OF BILLING SOFTWARE, ELECTRONIC HEALTH RECORDS, VIDEO
4 PLATFORMS, OR OTHER NONTHERAPEUTIC SOFTWARE TOOLS INCIDENT TO
5 SERVICES PROVIDED BY A HUMAN PROVIDER.

6 (c) THE USE OF VIDEOCONFERENCING, MESSAGING PLATFORMS, OR
7 OTHER COMMUNICATIONS SOFTWARE TO ENABLE SUPERVISION OR
8 CONSULTATION BY A LICENSED, REGISTERED, OR CERTIFIED INDIVIDUAL
9 DOES NOT CONSTITUTE SUPERVISION OR CONSULTATION THAT IS
10 CONDUCTED BY AN ARTIFICIAL INTELLIGENCE SYSTEM, AS REFERENCED IN
11 SUBSECTION (6)(a) OF THIS SECTION.

12 ■ ■ ■

13 **SECTION 3.** In Colorado Revised Statutes, **add** 25.5-1-209 as
14 follows:

15 **25.5-1-209. Prohibition on payment for AI-delivered**
16 **psychotherapy services.**

17 A PAYER OF MENTAL OR BEHAVIORAL HEALTH-CARE SERVICES
18 PROVIDED UNDER THE "COLORADO MEDICAL ASSISTANCE ACT", AS
19 SPECIFIED IN ARTICLES 4, 5, AND 6 OF THIS TITLE 25.5, OR THE "CHILDREN'S
20 BASIC HEALTH PLAN ACT", AS SPECIFIED IN ARTICLE 8 OF THIS TITLE 25.5,
21 SHALL NOT PAY FOR SERVICES THAT CONSTITUTE PSYCHOTHERAPY
22 SERVICES, AS DEFINED IN SECTION 12-245-202 (14), THAT ARE PROVIDED
23 DIRECTLY TO AN INDIVIDUAL AND THAT ARE CONDUCTED BY AN
24 ARTIFICIAL INTELLIGENCE SYSTEM, AS THAT TERM IS DEFINED IN SECTION
25 10-16-112.7 (1)(b).

26 **SECTION 4. Effective date - applicability.** This act takes effect
27 January 1, 2027, and applies to actions taken on or after said date.

1 **SECTION 5. Safety clause.** The general assembly finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, or safety or for appropriations for
4 the support and maintenance of the departments of the state and state
5 institutions.