

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES BILL ANALYSIS

BILL NUMBER: SB 903 VERSION: AMENDED APRIL 7, 2026

AUTHOR: PADILLA SPONSOR:

- CALIFORNIA PSYCHOLOGICAL ASSOCIATION (CPA)
- CALIFORNIA ASSOCIATION OF MARRIAGE AND FAMILY THERAPISTS (CAMFT)
- CALIFORNIA BEHAVIORAL HEALTH ASSOCIATION (CBHA)

STAFF RECOMMENDED POSITION: SUPPORT

SUBJECT: MENTAL HEALTH PROFESSIONALS: ARTIFICIAL INTELLIGENCE

Summary: This bill establishes laws for the use of artificial intelligence (AI) when delivering psychotherapy services.

- It prohibits an individual, corporation or entity from providing, advertising, or offering psychotherapy services (including via AI) unless the services are conducted by a licensed professional.
- It allows licensed professionals offering therapy to use AI for administrative or supplementary support.
- It prohibits any psychotherapeutic communications or psychotherapy sessions from being recorded or transcribed unless specific consent requirements are met.
- It prohibits anyone from using AI to make independent therapeutic decisions, generate therapeutic recommendations or diagnoses, detect emotions or mental states, or assess symptom urgency.

Existing Law:

- 1) Includes numerous mental health professionals in the definition of a “psychotherapist”, including LMFTs, LCSWs, LPCCs, associate marriage and family therapists, associate clinical social workers, associate professional clinical counselors, MFT trainees, and PCC trainees. (Evidence Code (EC) §1010)
- 2) Prohibits health care providers and related entities from releasing medical information about a person’s outpatient psychotherapy treatment unless the requester provides a detailed written request, gives notice to the client, and agrees

to strict limits on use, retention, and destruction of the information. Additionally outlines specific exceptions, including disclosure to law enforcement in specified situations. (Civil Code (CC) §56.104)

- 3)** Provides that unlicensed practice in violation of any of the practice acts for professions within the Department of Consumer Affairs (DCA) is an infraction punishable by a fine. (Business and Professions Code (BPC) §146)
- 4)** If a DCA board has probable cause that a person is advertising the provision of professional services without a license, the board is permitted to issue a citation containing an order of correction, requiring the person to cease the unlawful advertising and to disconnect the telephone number used in the advertisement. (BPC §149)
- 5)** Authorizes DCA boards, with the approval of the Director, to file a petition with the superior court of the county where a person has engaged or is about to engage in a violation of its law. Authorizes the superior court to issue an injunction or order restraining this conduct. (BPC §125.5)
- 6)** Prohibits the practice of marriage and family therapy, educational psychology, clinical social work, and professional clinical counseling in the state without a valid California license and forbids advertising as a licensee or using designated titles and letters without proper licensure. (BPC §§4980, 4989.50, 4996, 4999.30, 4999.82)
- 7)** Authorizes the Executive Officer of the Board to issue citations containing orders of abatement and fines of up to \$5,000 for unlicensed practice, which are separate from and in addition to any other civil or criminal remedies. (California Code of Regulation (CCR) Title 16, §§1886.10, 1886.40)
- 8)** Defines “artificial intelligence” (AI) as an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments. (Government Code (GC) §11546.45.5)
- 9)** Defines “generative artificial intelligence” (GenAI) as an AI system that can generate derived synthetic content, such as text, images, video, and audio, that emulates the structure and characteristics of the system’s training data. (GC §11549.64(b))
- 10)** Provides certain prohibitions on the use of AI or GenAI in the health care professions regulated by the Department of Consumer Affairs (DCA) as follows (BPC §4999.9):
 - a)** Makes violating requirements in law that prohibit the use of specific terms, letters or phrases to imply having a license or certificate to practice a health care profession without actually having one, a violation enforceable against a

person or entity that develops or deploys an AI or GenAI system using those terms in its advertising or functionality.

- b) Prohibits using any term, letter or phrase in advertising or functionality of an AI or GenAI system that implies the care, advice, reports, or assessments offered is by a natural licensed person.
- c) Provides that each use of a prohibited term or letter is considered a separate violation.
- d) Provides that violations are subject to the jurisdiction of the applicable licensing board, which may pursue an injunction, restraining order, or other remedy authorized by the law.

This Bill:

- 1) Establishes the “Wellness and Oversight for Psychological Resources Act,” (Act), safeguarding individuals seeking therapy by ensuring those services are delivered by licensed professionals, and not unlicensed or unqualified providers such as AI systems. The Act recognizes that AI has the potential to expand clinical capacity if used in a safe, ethical, and legal manner. (BPC §§4989.80, 4989.81)
- 2) Defines a licensed professional who is subject to this Act as someone is a psychotherapist as defined in Evidence Code §1010 (BPC §4989.82(d)):
- 3) Prohibits an individual, corporation, or entity from using AI to record or transcribe psychotherapeutic communications, psychotherapy sessions, triage, or screening unless both of the following are met (BPC §4989.83(a)):
 - a) The patient or their representative is informed verbally or in writing that AI will be used and the specific purpose of the AI tool or system to be used.
 - b) The patient or their representative consents to the use of AI.
- 4) Provides that the patient does not surrender any of their rights to care if they do not consent to the use of AI. (BPC §4989.83(b))
- 5) Defines “consent” as a clear and explicit affirmative act by an individual that unambiguously communicates their express, freely given informed agreement. It can be written or verbally, must be documented, and is revocable. It does not include acceptance of a general or broad terms of use agreement that contains descriptions of AI with other unrelated information, an individual hovering over or closing a given piece of digital content, or an agreement obtained through deceptive actions. (BPC 4989.82(c))

- 6)** Prohibits an individual, corporation, or entity from providing, advertising, or offering psychotherapy services, including through AI, to the public unless it is conducted by a licensed professional. (BPC §4989.84(a))
- 7)** Prohibits an individual, corporation, or entity providing psychotherapy services or conducting triage or screening to use AI only to the extent its use meets the requirements of this Act and explicitly prohibits using AI from doing any of the following (BPC §4989.84(b)):
 - a)** Making independent therapeutic decisions.
 - b)** Directly interact with clients in any form of psychotherapeutic communication, unless consistent with [U.S. Food and Drug Administration guidance for low risk general wellness products or clinical support software](#), and is compliant with HIPAA.
 - c)** Generate therapeutic recommendations, assessment results, diagnose, or treatment plans without review and approval by a licensee.
 - d)** Detect emotions or mental states.
 - e)** Assess health concerns or symptoms for urgency, clinical nature, or appropriate level of psychotherapy services.
- 8)** Provides that if a licensee is using AI in connection with psychotherapy services, triage, or screening, and that use has not been selected, provided or mandated by an employing or contracting entity, then the licensee is responsible for ensuring that the AI is deployed in compliance with this Act, and that it is used in a clinically appropriate manner. (BPC §4989.84(c))
- 9)** Provides that if a licensee is using AI that is required or authorized by their employer or contracting entity, then that employer or entity is responsible for ensuring that the AI is deployed in compliance with this Act, and that the licensee is directed to use it in compliance with this Act. The licensee must use it in a clinically appropriate manner. (BPC §4989.84(d))
- 10)** Requires the use of AI in psychotherapy records to comply with confidentiality requirements in CC §56.104 (described above in the “Existing Law” section). (BPC §4989.85)
- 11)** Prohibits a company or entity from sharing, selling, storing or training their AI models on any data obtained from psychotherapy. (BPC §4989.85)
- 12)** Makes violations of the Act subject to the jurisdiction of the appropriate licensing board or enforcement agency and authorizes licensing boards to pursue an injunction or restraining order to enforce the Act. (BPC §4989.86 (a) and (b))

- 13)** Permits licensing boards to adopt rules and regulations to enforce the Act. (BPC §4989.86(d))
- 14)** Exempts religious counseling, peer support, AI used only for training or simulations, and publicly available self-help materials and educational resources that do not purport to offer psychotherapy from the provisions of this chapter. (BPC §4949.87)
 - a)** Religious counseling is defined as counseling provided by clergy, pastoral counselors, or other religious leaders acting within the scope of their religious duties if services are explicitly faith-based and not represented as clinical mental health services or psychotherapy. (BPC §4989.82(h))
 - b)** Peer support is defined as services provided by individuals with lived experience of mental health conditions or substance abuse recovery, intended to offer encouragement, understanding, and guidance without clinical intervention. (BPC §4989.82)(e))
- 15)** Defines numerous terms that are applicable to this bill and its implementation:
 - a)** Defines “administrative support” as tasks to assist the licensee in the delivery of psychotherapy that do not involve psychotherapeutic communication, including managing appointment schedules and reminders, processing billing and insurance, and drafting general communications related to therapy logistics that do not include therapeutic advice. (BPC §4989.82(a))
 - b)** Defines “supplementary support” as tasks that assist a licensee in delivering psychotherapy that does not involve psychotherapeutic communication, and that are not administrative support, including (BPC §4989.82(i)):
 - i)** Preparing and maintaining client records, including psychotherapy and progress notes.
 - ii)** Analyzing anonymous data to track client progress or identify trends, subject to review by a licensed professional.
 - iii)** Identifying external resources or referrals for client use.
 - iv)** Using AI tools that assist licensees with documentation, workflow management, or other functions that enhance clinical capacity, as long as the licensee maintains responsibility for all clinical decisions and communications.
 - c)** Defines “psychotherapeutic communication” as any verbal, nonverbal, or written interaction conducted in a clinical or professional setting intended to

diagnose, treat, or address someone’s mental, emotional, or behavioral health concerns. It includes (BPC §4989.82(f)):

- Direct interactions with clients to understand their thoughts, emotions or experiences;
 - Providing guidance, therapy strategies, or interventions designed to achieve mental health outcomes;
 - Offering emotional support, reassurance, or empathy in response to psychological or emotional distress;
 - Collaborating with clients to develop therapeutic goals or treatment plans;
 - Offering behavioral feedback to address mental health conditions.
- d) Defines “artificial intelligence” as an engineered or machine-based system that varies in its autonomy and that can infer from input how to generate outputs that can influence physical or virtual environments. (BPC §4989.82(b))
- e) Defines “use of artificial intelligence” as the use of AI tools or systems to assist in providing administrative support or supplementary support in psychotherapy services. (BPC §4989.82(k))

Comment:

- 1) **Author’s Intent.** The purpose of this bill is to protect consumers seeking therapy from the increasing use of unregulated AI systems. In the fact sheet for the bill, the author states:

“AI has the possibility to help professional with tasks such as administrative or supplementary support, but the technology is not fit to take over the job of human therapists. A skilled therapist brings clinical judgement, training, a duty of care, and human instincts and emotion to treatment that AI is incapable of replicating. AI also does not carry the legal or ethical responsibilities of a licensed professional and cannot replace the interpersonal connection that comes with talking to a human therapist.

In high-risk professions such as mental health treatment it is imperative to ensure that AI technology is not being misused in a way that is potentially harmful to patients. We must act to ensure that commercial interests are not put above the needs and wellbeing of Californians.”

- 2) **Previous California Legislation.** [AB 489](#) (Chapter 615, Statutes of 2025) was signed into law by the Governor last year and became effective on January 1, 2026. It prohibits a person or entity who develops or deploys an artificial intelligence or generative artificial intelligence system from having that system represent or imply that it is a licensed health care provider by using prohibited terms, letters, or phrases. It makes violations subject to the jurisdiction of the applicable licensing board. At its May 2025 meeting, the Board had taken a “support” position on this bill.

3) **Legislation in Other States.** States have begun to develop laws regarding the use of AI in mental health therapy as well. Below are four examples.

Illinois: In August 2025, the Governor of Illinois signed the “Wellness and Oversight for Psychological Resources Act” into law.

The new law prohibits any person or entity from offering therapy by any means other than by a licensed professional. AI may only be used to provide administrative or supplementary support. The law defines administrative support as a task to assist a licensee in the delivery of therapy that does not involve communication, such as managing appointment scheduling and reminders or processing billing and insurance. Supplementary support is defined as tasks that assist a therapist in the delivery of therapy that do not involve therapeutic communication and that are not administrative support, such as maintaining client records and therapy notes or using data to track client progress. Use of supplementary support requires specified client disclosure and consent. (See **Attachment A** for the text of the law.)

Pennsylvania: Pennsylvania has proposed House Bill 1993 for its 2025-2026 Regular Session (**Attachment B**). Their proposal has many similarities with the Illinois law. The definitions of administrative support and supplementary support are essentially the same. The bill prohibits a mental health professional from using artificial intelligence to assist in supplementary support unless specified client disclosure and consent is obtained. It also prohibits an AI provider from making any representation or statement indicating that the system provides therapy services or that it is a therapist and prohibits programming an AI system to provide mental health therapy.

Florida: Florida has proposed House Bill 281 for its 2026 session (**Attachment C**). The bill would prohibit the state’s licensed or registered mental health professionals from using AI in their practice, except to assist in administrative or supplementary support services, or to record or transcribe a session if written informed consent is obtained at least 24 hours prior. It lists examples of permitted administrative or supplementary support services, including managing appointment scheduling, drafting general logistical communications that do not involve therapeutic advice, processing billing and insurance, managing patient records, and analyzing data for operational purposes.

Nevada: Nevada’s AB 406 was signed into law by its governor and became effective on July 1, 2025 (**Attachment D**).

Nevada’s law prohibits an AI provider from representing or programming an AI system to represent or state that the system is a therapist or that it is capable of providing professional mental or behavioral health care, or that a user can obtain

that type of care from it. Additionally, an AI system cannot be programmed to provide services in the scope of practice of a mental health professional.

The law also prohibits a mental health provider from using AI to provide mental and behavioral health care to a patient, except when using it for administrative support tasks which include scheduling, managing records, billing, analyzing data for operational purposes, or organizing and tracking files or notes. If a therapist uses AI for any of these authorized purposes, they need to make sure that use complies with all applicable state and federal patient privacy and security laws, and they also must independently review the accuracy of any report, data, or information compiled or analyzed.

- 4) **Other Resources.** The American Association of State Counseling Boards (AASCB) created a document titled “Supporting the Safe and Ethical use of AI in Mental Health Counseling” (November 2024) (**Attachment E**). The document is intended to support state licensing boards in their public protection duty as AI tools become more widespread in mental health practice.
- 5) **Complaints to the Board.** The Enforcement Unit reports that within the past year, the Board has received a few complaints related to the use of AI in therapy, including:
 - A complaint about a therapist’s use of AI to write therapy notes where the complainant had opted not to consent to this use.
 - A complaint about a therapist accidentally pasting a client’s personal identifying information into AI.
 - A complaint about a therapist using AI to guide client interactions during a session.
- 6) **Fiscal Impact.** Due to the increasing reliance on AI, the Board believes this bill could possibly increase complaints by 5%, which would work out to 150 complaints per year. Based on the time involved in investigating a complaint, the Board is asking for one permanent half time Analyst II to assist with the increased workload.

If these cases proceed to the Attorney General's office or violators request an administrative hearing, the Board may experience additional enforcement expenditures. However, some of these costs should be offset by the collection of fines.

7) **Technical Considerations.**

- a) **BPC §4989.82(d) - Use of Evidence Code §1010 to Define “Licensed Professional.”** The bill uses Evidence Code §1010 to define who qualifies as a licensed professional for purposes of the Act. However, EC §1010 does not

include the Board's LEP license types, or social work interns. It is likely the intent of the bill is that these professional categories also be included.

- b) BPC §4989.82(g) - Religious Counseling Definition:** The bill defines "religious counseling" as counseling provided by clergy members, pastoral counselors, or other religious leaders acting within the scope of their religious duties if the services are explicitly faith based and are not represented as clinical mental health or psychotherapy services. This Act does not apply to anyone meeting this definition of religious counseling.

Separately, this year in AB 1598, the Board is pursuing a definition of faith-based counseling in order to better define when such counseling is exempt from the Board's practice acts. That proposed language is as follows:

"This chapter shall not apply to any priest, rabbi, imam, or minister of the gospel, or other religious official of any denomination when providing faith-based counseling services as part of their regular professional duties for an established and legally recognizable faith-based entity, such as a church, synagogue, mosque, or other recognized religious organization, provided that all of the following criteria are met.

- (1) The services are performed solely under the direct auspices of that faith-based entity.*
- (2) A separate fee, beyond their customary compensation from that faith-based entity, is not charged or received.*
- (3) They do not hold themselves out to the public by any title or description of services incorporating the words "psychosocial," "psychotherapy," or "marriage and family therapist," and shall not state or imply that they are licensed or registered to practice marriage and family therapy.*
- (4) The services provided are limited to counseling services provided in a religious or spiritual context and do not involve the diagnosis or treatment of mental health disorders."*

Because this Act applies to numerous licensing boards and not just this Board, it may be reasonable for the definition to vary. However, the Board should discuss if the differing definitions cause any clarity concerns or affects the Board's practice exemption.

- c) BPC §4989.82(i) - Supplementary Support Definition:** Part of this definition states that supplementary support includes "Analyzing anonymized data to track client progress or identify trends, subject to review by a licensed professional." It may be clearer to require this to be reviewed by a licensed professional rather than be subject to review. Additionally, staff questions

whether all four tasks listed here should be required to be reviewed by the licensed professional, instead of just one.

- d) Definition of “Use of Artificial Intelligence” – Potential Confusion in Permitted Scope.** This bill includes “administrative support” and “supplementary support” within the “use of artificial intelligence” definition (§ 4989.82(k)) and prohibits “the use of artificial intelligence” in providing psychotherapy services unless conducted by a licensed professional in BPC §4989.84(b))

The statement in BPC 4989.84(b), by permitting the “use of artificial intelligence” only by a licensed person, indirectly permits a licensee to use AI for administrative and supplemental support. However, the bill never explicitly states this permission in the operative text; it is only stated indirectly through the definitions.

This structure may be too subtle, as it depends entirely on cross-referencing definitions. The contrast between permissible (administrative and supportive) and prohibited (psychotherapeutic) uses is not clearly stated and may be difficult for individuals to interpret without cross-reading multiple definitions.

For clarity, it may be helpful for the bill to explicitly state the permitted and non-permitted uses of AI for licensed professionals in one section, and then separately state the permitted and non-permitted uses of AI for a non-licensed individual, corporation, or entity in another section.

- e) Consent Only Required for Recording or Transcribing?** BPC §4989.83(a) prohibits the use of AI to record or transcribe psychotherapeutic communications, psychotherapy sessions, or triage/screening unless the patient is informed about the use of AI and gives consent.

This is the only place that the bill discusses consent. The bill does not clearly address whether consent is also required if a licensee is using AI for administrative or supplementary support, as this is not explicitly stated. It is possible that this is the intent, as subdivision (a) uses the term “use of artificial intelligence” which includes administrative and supplemental support. However, this is not easily discernible, and if the intent is to require consent for those uses, that should be stated clearly.

- f) Jurisdiction Ambiguity.** While the bill states that violations are subject to the jurisdiction of the “appropriate licensing board,” this becomes unclear in situations where the violator is not holding themselves out as any particular type of licensed psychotherapist. The bill defines “licensed professional” by cross-reference to Evidence Code §1010, which encompasses multiple professions regulated by different boards, including the Medical Board of

California, the Board of Behavioral Sciences, the Board of Psychology, and the Board of Registered Nursing.

If a complaint involves an entity using AI to provide psychotherapy services without claiming to be, for example, an LMFT, psychologist, or physician, it is not evident which board would be responsible for investigating and enforcing the violation. For clarity and consistent enforcement, the bill may benefit from specifying how jurisdiction is determined when the violator's license type (or lack thereof) is not apparent.

8) Recent Board Efforts and Discussion.

- **Listening Session:** On November 12, 2025, Board staff hosted a listening session via Webex titled "BBS Lunch Time Listening Session: Artificial Intelligence in Mental Health Practice". The purpose of the listening session was to gather insight and perspectives of professionals on the use of AI in mental health practice. This session featured a panel with representatives from the California Association of Marriage and Family Therapy (CAMFT), the National Association of Social Workers-California chapter (NASW-CA), and the California Alliance of Child and Family Services. Panelists responded to questions developed by staff addressing the potential benefits and risks of AI use in mental health practice, as well as ethical considerations relevant to practitioners, educators, students, and trainees. Feedback collected through a post-session survey indicated great interest among the participants in receiving additional ethical and legal guidance from the Board regarding the use of AI in mental health practice.

A link to the listening session can be found [here](#).

- **Policy and Advocacy Committee Discussion:** At its January 15, 2026 meeting, the Policy and Advocacy Committee discussed the Board's role in regulating the use of AI in mental health practice. Stakeholders reiterated their need for clear guidance on the appropriate use of AI, and the Committee discussed the potential development of regulations similar to those previously established for telehealth standards of practice.

- 9) **Staff Recommended Position.** Staff recommends that the Board consider a support position on this bill, and additionally request any discussed technical changes the Board believes necessary.

10) Related Legislation.

The Board is considering the following AI-related legislation this year:

- **AB 1979 (Bonta)** prohibits health facilities and medical offices from using artificial intelligence tools for any tasks that require the professional judgment

of a licensed health care provider. It also bans the use of AI to direct or instruct unlicensed personnel in performing duties that require a professional license.

- **AB 1988 (Pellerin)** seeks to improve safety protocols for chatbots by requiring them to use a graduated response warning system that includes a 20-minute crisis interruption pause when a user is expressing intent or desire to harm themselves or others.
- **AB 2575 (Ortega)** establishes protections and accountability for the use of artificial intelligence and clinical decision support tools in health care by preventing developers from escaping liability, requiring plain-language disclosures for providers, and safeguarding workers' professional judgment from employer restrictions or retaliation.
- **SB 1146 (Gonzalez)** requires an advertisement for a health-related product or service that uses an image, audio, or video of a natural person representing themselves to be or identifiably depicting a person as a health care provider, that is generated or substantially altered by artificial intelligence (AI), to include a clear disclosure stating that AI was used and that the person is not a health care provider.

11) Support and Opposition.

Support:

- California Psychological Association (CPA) (Sponsor)
- California Association of Marriage and Family Therapists (CAMFT) (Sponsor)
- California Behavioral Health Association (CBHA) (Sponsor)

Opposition: None at this time.

12) History.

04/08/26	Set for hearing April 13.
04/07/26	From committee with author's amendments. Read second time and amended. Re-referred to Com. on B. P. & E.D.
02/18/26	Referred to Coms. on B. P. & E.D. and P., D.T., & C.P.
01/22/26	From printer. May be acted upon on or after February 21.
01/21/26	Introduced. Read first time. To Com. on RLS. for assignment. To print.

13) Attachments.

- **Attachment A:** Illinois Law
- **Attachment B:** Pennsylvania Proposed Law
- **Attachment C:** Florida Proposed Law
- **Attachment D:** Nevada Law

- **Attachment E:** American Association of State Counseling Boards' (AASCB)
"Supporting the Safe and Ethical use of AI in Mental Health Counseling"
(November 2024)

Blank Page

AMENDED IN SENATE APRIL 7, 2026

SENATE BILL

No. 903

Introduced by Senator Padilla
(Coauthor: Senator Rubio)

January 21, 2026

An act to add Chapter 13.6 (commencing with Section 4989.80) to Division 2 of the Business and Professions Code, relating to healing arts.

legislative counsel's digest

SB 903, as amended, Padilla. Mental health professionals: artificial intelligence.

Existing law establishes ~~the Board of Behavioral Sciences in the Department of Consumer Affairs to regulate licensees under various healing arts boards within the Department of Consumer Affairs that license and regulate various healing arts licensees. Existing laws, including the Licensed Marriage and Family Therapist Act, the Educational Psychologist Practice Act, the Clinical Social Worker Practice Act, and the Licensed Professional Clinical Counselor Act,~~ *make a violation of those acts a crime.*

Existing law regulates the use of artificial intelligence, as defined. Existing law requires a health facility, clinic, physician's office, or office of a group practice that uses generative artificial intelligence to generate written or verbal patient communications pertaining to patient clinical information to ensure those communications include a disclaimer that indicates to the patient that a communication was generated by artificial intelligence and instructions describing how a patient may contact a human health care provider, employee, or other appropriate person.

~~This bill would prohibit a licensed professional, as defined, from engaging in the use of artificial intelligence to assist in providing supplementary support in therapy or psychotherapy where the client's therapeutic session is recorded or transcribed unless the patient or their authorized representative is informed that artificial intelligence will be used and provides consent, as specified. The bill would also prohibit an individual, corporation, or entity from providing, advertising, or otherwise offering therapy or psychotherapy, including through the use of internet-based artificial intelligence, to the public in this state unless the therapy or psychotherapy services are conducted by an individual who is a licensed professional. The bill would additionally prohibit a licensed professional from allowing artificial intelligence to make independent therapeutic decisions or take other specified actions related to communications with clients, as specified. The bill would authorize the department to investigate actual, alleged, or suspected violations of these provisions and impose civil penalties, as prescribed.~~ *regulate the use of artificial intelligence by licensed professionals providing psychotherapy services, as defined. The bill, among other things, would prohibit an individual, corporation, or entity from using artificial intelligence to record or transcribe psychotherapeutic communications or sessions or to triage or screen a person for the need for psychotherapy services unless the patient or their authorized representative is informed that artificial intelligence will be used and provides consent, as specified. The bill would prohibit a licensed professional from allowing artificial intelligence to perform certain acts, including making independent therapeutic decisions or detecting emotions or mental states. The bill would make a violation of the bill's provisions subject to the jurisdiction of the appropriate health care professional licensing board or enforcement agency, as specified, and would authorize those boards and enforcement entities to pursue any remedies authorized by law.*

Existing law, the Confidentiality of Medical Information Act, generally restricts the persons and entities to whom, and the purposes for which, a health care provider, health care service plan, or contractor may release a patient's medical information. The Confidentiality of Medical Information Act additionally imposes certain disclosure requirements for the release of medical information that specifically relates to the patient's participation in outpatient treatment with a psychotherapist. In this regard, the act prohibits a health care provider, health care service plan, or contractor from releasing that information to persons

or entities who have requested that information and who are otherwise authorized by specified laws to receive that information, unless the requester makes certain written disclosures to the patient and to the provider of health care, health care service plan, or contractor, as specified. Those disclosures include, among other things, the specific intended uses of the information, and the length of time during which the information will be kept before being destroyed or disposed of, as specified. Existing law makes a violation of those provisions that result in economic loss or personal injury to a patient punishable as a misdemeanor.

This bill would require the use of artificial intelligence in psychotherapy records to comply with the confidentiality requirements of the above-described provision of the Confidentiality of Medical Information Act.

By expanding the scope of existing crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 13.6 (commencing with Section 4989.80)
2 is added to Division 2 of the Business and Professions Code, to
3 read

4

5 **Chapter 13.6. Wellness and Oversight for**
6 **Psychological Resources Act**

7

8 4989.80. This chapter may be cited as the Wellness and
9 Oversight for Psychological Resources Act.

10 4989.81. The purpose of this chapter is to safeguard individuals
11 seeking ~~therapy or~~ psychotherapy services by ensuring these
12 services are delivered by ~~qualified, licensed, or certified~~ *licensed*
13 professionals. This chapter is intended to protect consumers from

1 unlicensed or unqualified providers, including unregulated artificial
 2 intelligence systems, while respecting individual choice and access
 3 to community-based and faith-based mental health ~~support.~~ *support*
 4 *and recognizing that artificial intelligence technology has the*
 5 *potential to expand clinical capacity if used in a safe, ethical, and*
 6 *legal manner.*

7 4989.82. For purposes of this chapter, the following definitions
 8 apply:

9 (a) “Administrative support” means tasks performed to assist a
 10 licensed professional in the delivery of ~~therapy or~~ psychotherapy
 11 services that do not involve ~~therapeutic~~ *psychotherapeutic*
 12 communication. “Administrative support” includes, but is not
 13 limited to, all of the following:

- 14 (1) Managing appointment scheduling and reminders.
- 15 (2) Processing billing and insurance claims.
- 16 (3) Drafting general communications related to therapy logistics
 17 that do not include therapeutic advice.

18 (b) “Artificial intelligence” means an engineered or
 19 machine-based system that varies in its level of autonomy and that
 20 can, for explicit or implicit objectives, infer from the input it
 21 receives how to generate outputs that can influence physical or
 22 virtual environments.

23 (c) (1) “Consent” means a clear, explicit affirmative act by an
 24 individual *that* meets both of the following requirements:

25 (A) Unambiguously communicates the individual’s express,
 26 freely given, informed, voluntary, specific, and unambiguous
 27 ~~written agreement, including a written agreement provided by~~
 28 ~~electronic means.~~ *agreement, either written or verbally, and*
 29 *documented in the record.*

30 (B) Is revocable by the individual.

31 (2) “Consent” does not include an agreement that is obtained
 32 by any of the following:

33 (A) The acceptance of a general or broad terms of use agreement
 34 or a similar document that contains descriptions of artificial
 35 intelligence along with other unrelated information.

36 (B) An individual hovering over, muting, pausing, or closing a
 37 given piece of digital content.

38 (C) An agreement obtained through the use of deceptive actions.

39 ~~(d) “Department” means the Department of Consumer Affairs.~~

1 (e) ~~“Licensed professional” means an individual who holds a~~
2 ~~valid license issued by this state to provide therapy or~~
3 ~~psychotherapy services, including, but not limited to, the following:~~

- 4 ~~(1) A licensed clinical psychologist.~~
- 5 ~~(2) A licensed clinical social worker.~~
- 6 ~~(3) A licensed professional clinical counselor.~~
- 7 ~~(4) A licensed marriage and family therapist.~~
- 8 ~~(5) A registered or certified alcohol or other drug counselor.~~
- 9 ~~(6) A psychiatric mental health nurse practitioner.~~
- 10 ~~(7) Any other professional authorized by this state to provide~~
11 ~~therapy or psychotherapy services.~~

12 (d) *“Licensed professional” has the same meaning as*
13 *“psychotherapist” as defined in Section 1010 of the Evidence*
14 *Code.*

15 (f)

16 (e) *“Peer support” means services provided by individuals with*
17 *lived experience of mental health conditions or recovery from*
18 *substance use that are intended to offer encouragement,*
19 *understanding, and guidance without clinical intervention.*

20 (f) (1) *“Psychotherapeutic communication” means any verbal,*
21 *nonverbal, or written interaction conducted in a clinical or*
22 *professional setting that is intended to diagnose, treat, or address*
23 *an individual’s mental, emotional, or behavioral health concerns.*
24 *“Psychotherapeutic communication” includes, but is not limited*
25 *to, any of the following:*

26 (A) *Direct interactions with clients for the purpose of*
27 *understanding or reflecting their thoughts, emotions, or*
28 *experiences.*

29 (B) *Providing guidance, therapeutic strategies, or interventions*
30 *designed to achieve mental health outcomes.*

31 (C) *Offering emotional support, reassurance, or empathy in*
32 *response to psychological or emotional distress.*

33 (D) *Collaborating with clients to develop or modify therapeutic*
34 *goals or treatment plans.*

35 (E) *Offering behavioral feedback intended to promote*
36 *psychological growth or address mental health conditions.*

37 (2) *“Psychotherapeutic communication” does not include the*
38 *discussion of a patient’s use of artificial intelligence in a clinical*
39 *setting.*

1 (g) “Psychotherapy services” means services provided to
 2 diagnose, treat, or improve an individual’s mental health or
 3 substance use disorder condition. “Psychotherapy services” does
 4 not include religious counseling or peer support.

5 ~~(g)~~

6 (h) “Religious counseling” means counseling provided by clergy
 7 members, pastoral counselors, or other religious leaders acting
 8 within the scope of their religious duties if the services are
 9 explicitly faith based and are not represented as clinical mental
 10 health services or ~~therapy or psychotherapy services.~~

11 ~~(h)~~

12 (i) “Supplementary support” means tasks performed to assist a
 13 licensed professional in the delivery of ~~therapy or psychotherapy~~
 14 services that do not involve ~~therapeutic psychotherapeutic~~
 15 communication and that are not administrative support.
 16 “Supplementary support” includes, but is not limited to, any of the
 17 following:

18 (1) Preparing and maintaining client records, including ~~therapy~~
 19 ~~psychotherapy and progress notes.~~

20 (2) Analyzing anonymized data to track client progress or
 21 identify trends, subject to review by a licensed professional.

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

24 (4) Using artificial intelligence tools that assist licensed
 25 professionals with documentation, workflow management, or other
 26 functions that enhance clinical capacity, provided the licensed
 27 professional maintains responsibility for all clinical decisions and
 28 communications.

29 ~~(i) (1) “Therapeutic communication” means any verbal,~~
 30 ~~nonverbal, or written interaction conducted in a clinical or~~
 31 ~~professional setting that is intended to diagnose, treat, or address~~
 32 ~~an individual’s mental, emotional, or behavioral health concerns.~~
 33 ~~“Therapeutic communication” includes, but is not limited to, any~~
 34 ~~of the following:~~

35 ~~(A) Direct interactions with clients for the purpose of~~
 36 ~~understanding or reflecting their thoughts, emotions, or~~
 37 ~~experiences.~~

38 ~~(B) Providing guidance, therapeutic strategies, or interventions~~
 39 ~~designed to achieve mental health outcomes.~~

1 ~~(C) Offering emotional support, reassurance, or empathy in~~
2 ~~response to psychological or emotional distress.~~

3 ~~(D) Collaborating with clients to develop or modify therapeutic~~
4 ~~goals or treatment plans.~~

5 ~~(E) Offering behavioral feedback intended to promote~~
6 ~~psychological growth or address mental health conditions.~~

7 ~~(2) “Therapeutic communication” does not include the~~
8 ~~discussion of a patient’s use of artificial intelligence in a clinical~~
9 ~~setting.~~

10 ~~(j) “Therapy or psychotherapy services” means services provided~~
11 ~~to diagnose, treat, or improve an individual’s mental health or~~
12 ~~substance use disorder condition. “Therapy or psychotherapy~~
13 ~~services” does not include religious counseling or peer support.~~

14 ~~(j) “Triage or screening” means the assessment of an~~
15 ~~individual’s health concerns and symptoms for the purpose of~~
16 ~~determining the urgency, clinical nature, or appropriate level of~~
17 ~~the individual’s need for psychotherapy services.~~

18 ~~(k)~~

19 ~~(k) “Use of artificial intelligence” means the use of artificial~~
20 ~~intelligence tools or systems by a licensed professional to assist~~
21 ~~in providing administrative support or supplementary support in~~
22 ~~therapy or psychotherapy services where the licensed professional~~
23 ~~maintains full responsibility for all interactions, outputs, and data~~
24 ~~use associated with the system and satisfies the requirements of~~
25 ~~Section 4989.83. psychotherapy services.~~

26 ~~4989.83. A licensed professional shall not engage in the use~~
27 ~~of artificial intelligence to assist in providing supplementary~~
28 ~~support in therapy or psychotherapy where the client’s therapeutic~~
29 ~~session is recorded or transcribed unless both of the following~~
30 ~~conditions are satisfied:~~

31 ~~4989.83. (a) An individual, corporation, or entity shall not~~
32 ~~use artificial intelligence to record or transcribe psychotherapeutic~~
33 ~~communications, psychotherapy sessions, or triage or screening~~
34 ~~unless both of the following conditions are satisfied:~~

35 ~~(a)~~

36 ~~(1) The patient or the patient’s legally authorized representative~~
37 ~~is informed verbally or in writing of both of the following:~~

38 ~~(1)~~

39 ~~(A) That artificial intelligence will be used.~~

40 ~~(2)~~

1 (B) The specific purpose of the artificial intelligence tool or
2 system that will be used.

3 ~~(b)~~

4 (2) The patient or the patient's legally authorized representative
5 provides consent to the use of artificial intelligence.

6 *(b) A patient does not surrender any of their rights to care if
7 the patient or their legally authorized representative does not
8 provide consent to the use of artificial intelligence.*

9 4989.84. (a) An individual, corporation, or entity shall not
10 provide, advertise, or otherwise offer ~~therapy or~~ psychotherapy
11 services, including through the use of ~~internet-based~~ artificial
12 intelligence, to the public in this state unless the ~~therapy or~~
13 psychotherapy services are conducted by an individual who is a
14 licensed professional.

15 ~~(b) A licensed professional may use artificial intelligence only
16 to the extent the use meets the requirements this chapter. A licensed
17 professional shall not allow artificial intelligence to do any of the
18 following:~~

19 *(b) When providing psychotherapy services or conducting triage
20 or screening, an individual, corporation, or entity may use artificial
21 intelligence only to the extent the use meets the requirements of
22 this chapter and shall not allow artificial intelligence to do any of
23 the following:*

24 (1) Make independent therapeutic decisions.

25 (2) Directly interact with clients in any form of ~~therapeutic~~
26 *psychotherapeutic* communication, unless ~~they are using a product~~
27 *that is approved by the tool or system is consistent with the United*
28 *States Food and Drug Administration guidance for low-risk general*
29 *wellness products or clinical support software, and is compliant*
30 *with the federal Health Insurance Portability and Accountability*
31 *Act of 1996 (Public Law 104-191).*

32 (3) Generate therapeutic ~~recommendations~~ *recommendations,*
33 *assessment results, diagnoses, or treatment plans without review*
34 *and approval by the licensed professional.*

35 (4) Detect emotions or mental states.

36 (5) *Assess an individual's health concerns or symptoms for the
37 purpose of determining the urgency, clinical nature, or appropriate
38 level of the individual's need for psychotherapy services.*

39 *(c) If a licensed professional uses artificial intelligence in
40 connection with psychotherapy services or triage or screening and*

1 *the use has not been selected, provided, directed, or mandated by*
2 *an employing or contracting entity, the licensed professional shall*
3 *be responsible for both of the following:*

4 *(1) Ensuring the artificial intelligence is deployed in compliance*
5 *with this chapter.*

6 *(2) Ensuring the artificial intelligence is used in a clinically*
7 *appropriate manner.*

8 *(d) If a licensed professional uses artificial intelligence required*
9 *or authorized by their employer or contracting entity, the following*
10 *shall apply:*

11 *(1) The employer or contracting entity shall be responsible for*
12 *both of the following:*

13 *(A) Ensuring the artificial intelligence is deployed in compliance*
14 *with this chapter.*

15 *(B) Directing the licensed professional to use the artificial*
16 *intelligence in compliance with this chapter.*

17 *(2) The licensed professional shall use artificial intelligence in*
18 *a clinically appropriate manner.*

19 ~~4989.85. All records kept by a licensed professional and all~~
20 ~~communications between an individual seeking therapy or~~
21 ~~psychotherapy services and a licensed professional shall be~~
22 ~~confidential and shall not be disclosed except as otherwise required~~
23 ~~by law.~~

24 ~~4989.86. (a) The department shall have the authority to~~
25 ~~investigate any actual, alleged, or suspected violation of this~~
26 ~~chapter.~~

27 ~~(b) Any individual, corporation, or entity found in violation of~~
28 ~~this chapter shall pay a civil penalty to the department in an amount~~
29 ~~not to exceed ten thousand dollars (\$10,000) per violation, as~~
30 ~~determined by the department, with penalties assessed based on~~
31 ~~the degree of harm and the circumstances of the violation. Before~~
32 ~~the civil penalty is levied, the individual, corporation, or entity~~
33 ~~shall be given a written notice of the proposed action, including~~
34 ~~the nature of the violation and the amount of the proposed penalty,~~
35 ~~and shall have the right to request a hearing, which shall be held~~
36 ~~pursuant to the Administrative Procedure Act (Chapter 5~~
37 ~~(commencing with Section 11500) of Part 1 of Division 3 of Title~~
38 ~~2 of the Government Code). An individual, corporation, or entity~~
39 ~~found in violation of this chapter shall pay the civil penalty within~~
40 ~~60 days after the date of the order by the department imposing the~~

1 ~~civil penalty. The order shall constitute a judgment and may be~~
 2 ~~filed and executed in the same manner as any judgment from the~~
 3 ~~appropriate court.~~

4 4989.85. *Use of artificial intelligence in psychotherapy records*
 5 *shall comply with the confidentiality required in Section 56.104*
 6 *of the Civil Code. A company or entity shall not share, sell, store,*
 7 *or train their models on any data obtained from psychotherapy.*

8 4989.86. (a) *A violation of this chapter is subject to the*
 9 *jurisdiction of the appropriate health care professional licensing*
 10 *board or enforcement agency.*

11 (b) *The appropriate health care professional licensing board*
 12 *may pursue an injunction or restraining order to enforce the*
 13 *provisions of this chapter, as authorized by Section 125.5.*

14 (c) *This section does not limit the authority of a health care*
 15 *professional licensing board or enforcement agency to pursue any*
 16 *remedy otherwise authorized by law.*

17 (d) *The appropriate health care professional licensing boards*
 18 *may adopt rules and regulations necessary to implement this*
 19 *chapter.*

20 4989.87. *This chapter does not apply to any of the following:*

21 (a) *Religious counseling.*

22 (b) *Peer support.*

23 (c) *Self-help materials and educational resources that are*
 24 *available to the public and do not purport to offer ~~therapy or~~*
 25 *psychotherapy services.*

26 (d) *Artificial intelligence used solely for training or simulation*
 27 *purposes.*

28 *SEC. 2. No reimbursement is required by this act pursuant to*
 29 *Section 6 of Article XIII B of the California Constitution because*
 30 *the only costs that may be incurred by a local agency or school*
 31 *district will be incurred because this act creates a new crime or*
 32 *infraction, eliminates a crime or infraction, or changes the penalty*
 33 *for a crime or infraction, within the meaning of Section 17556 of*
 34 *the Government Code, or changes the definition of a crime within*
 35 *the meaning of Section 6 of Article XIII B of the California*
 36 *Constitution.*

O

**ATTACHMENT A
ILLINOIS LAW**

HB1806 Enrolled

LRB104 07364 AAS 17404 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Wellness and Oversight for Psychological Resources Act.

6 Section 5. Purpose. The purpose of this Act is to
7 safeguard individuals seeking therapy or psychotherapy
8 services by ensuring these services are delivered by
9 qualified, licensed, or certified professionals. This Act is
10 intended to protect consumers from unlicensed or unqualified
11 providers, including unregulated artificial intelligence
12 systems, while respecting individual choice and access to
13 community-based and faith-based mental health support.

14 Section 10. Definitions. In this Act:

15 "Administrative support" means tasks performed to assist a
16 licensed professional in the delivery of therapy or
17 psychotherapy services that do not involve communication.

18 "Administrative support" includes, but is not limited to, the
19 following:

- 20 (1) managing appointment scheduling and reminders;
21 (2) processing billing and insurance claims; and
22 (3) drafting general communications related to therapy

1 logistics that do not include therapeutic advice.

2 "Artificial intelligence" has the meaning given to that
3 term in Section 2-101 of the Illinois Human Rights Act.

4 "Consent" means a clear, explicit affirmative act by an
5 individual that: (i) unambiguously communicates the
6 individual's express, freely given, informed, voluntary,
7 specific, and unambiguous written agreement, including a
8 written agreement provided by electronic means, and (ii) is
9 revocable by the individual. "Consent" does not include an
10 agreement that is obtained by the following:

11 (1) the acceptance of a general or broad terms of use
12 agreement or a similar document that contains descriptions
13 of artificial intelligence along with other unrelated
14 information;

15 (2) an individual hovering over, muting, pausing, or
16 closing a given piece of digital content; or

17 (3) an agreement obtained through the use of deceptive
18 actions.

19 "Department" means the Department of Financial and
20 Professional Regulation.

21 "Licensed professional" means an individual who holds a
22 valid license issued by this State to provide therapy or
23 psychotherapy services, including:

24 (1) a licensed clinical psychologist;

25 (2) a licensed clinical social worker;

26 (3) a licensed social worker;

- 1 (4) a licensed professional counselor;
- 2 (5) a licensed clinical professional counselor;
- 3 (6) a licensed marriage and family therapist;
- 4 (7) a certified alcohol and other drug counselor
- 5 authorized to provide therapy or psychotherapy services;
- 6 (8) a licensed professional music therapist;
- 7 (9) a licensed advanced practice psychiatric nurse as
- 8 defined in Section 1-101.3 of the Mental Health and
- 9 Developmental Disabilities Code; and
- 10 (10) any other professional authorized by this State
- 11 to provide therapy or psychotherapy services, except for a
- 12 physician.

13 "Peer support" means services provided by individuals with
14 lived experience of mental health conditions or recovery from
15 substance use that are intended to offer encouragement,
16 understanding, and guidance without clinical intervention.

17 "Religious counseling" means counseling provided by clergy
18 members, pastoral counselors, or other religious leaders
19 acting within the scope of their religious duties if the
20 services are explicitly faith-based and are not represented as
21 clinical mental health services or therapy or psychotherapy
22 services.

23 "Supplementary support" means tasks performed to assist a
24 licensed professional in the delivery of therapy or
25 psychotherapy services that do not involve therapeutic
26 communication and that are not administrative support.

1 "Supplementary support" includes, but is not limited to, the
2 following:

3 (1) preparing and maintaining client records,
4 including therapy notes;

5 (2) analyzing anonymized data to track client progress
6 or identify trends, subject to review by a licensed
7 professional; and

8 (3) identifying and organizing external resources or
9 referrals for client use.

10 "Therapeutic communication" means any verbal, non-verbal,
11 or written interaction conducted in a clinical or professional
12 setting that is intended to diagnose, treat, or address an
13 individual's mental, emotional, or behavioral health concerns.

14 "Therapeutic communication" includes, but is not limited to:

15 (1) direct interactions with clients for the purpose
16 of understanding or reflecting their thoughts, emotions,
17 or experiences;

18 (2) providing guidance, therapeutic strategies, or
19 interventions designed to achieve mental health outcomes;

20 (3) offering emotional support, reassurance, or
21 empathy in response to psychological or emotional
22 distress;

23 (4) collaborating with clients to develop or modify
24 therapeutic goals or treatment plans; and

25 (5) offering behavioral feedback intended to promote
26 psychological growth or address mental health conditions.

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

6 Section 15. Permitted use of artificial intelligence.

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

15 (b) No licensed professional shall be permitted to use
16 artificial intelligence to assist in providing supplementary
17 support in therapy or psychotherapy where the client's
18 therapeutic session is recorded or transcribed unless:

19 (1) the patient or the patient's legally authorized
20 representative is informed in writing of the following:

21 (A) that artificial intelligence will be used; and

22 (B) the specific purpose of the artificial
23 intelligence tool or system that will be used; and

24 (2) the patient or the patient's legally authorized
25 representative provides consent to the use of artificial

1 intelligence.

2 Section 20. Prohibition on unauthorized therapy services.

3 (a) An individual, corporation, or entity may not provide,
4 advertise, or otherwise offer therapy or psychotherapy
5 services, including through the use of Internet-based
6 artificial intelligence, to the public in this State unless
7 the therapy or psychotherapy services are conducted by an
8 individual who is a licensed professional.

9 (b) A licensed professional may use artificial
10 intelligence only to the extent the use meets the requirements
11 of Section 15. A licensed professional may not allow
12 artificial intelligence to do any of the following:

13 (1) make independent therapeutic decisions;

14 (2) directly interact with clients in any form of
15 therapeutic communication;

16 (3) generate therapeutic recommendations or treatment
17 plans without review and approval by the licensed
18 professional; or

19 (4) detect emotions or mental states.

20 Section 25. Disclosure of records and communications. All
21 records kept by a licensed professional and all communications
22 between an individual seeking therapy or psychotherapy
23 services and a licensed professional shall be confidential and
24 shall not be disclosed except as required under the Mental

1 Health and Developmental Disabilities Confidentiality Act.

2 Section 30. Enforcement and penalties.

3 (a) Any individual, corporation, or entity found in
4 violation of this Act shall pay a civil penalty to the
5 Department in an amount not to exceed \$10,000 per violation,
6 as determined by the Department, with penalties assessed based
7 on the degree of harm and the circumstances of the violation.
8 The civil penalty shall be assessed by the Department after a
9 hearing is held in accordance with Section 2105-100 of the
10 Department of Professional Regulation Law of the Civil
11 Administrative Code of Illinois. An individual, corporation,
12 or entity found in violation of this Act shall pay the civil
13 penalty within 60 days after the date of an order by the
14 Department imposing the civil penalty. The order shall
15 constitute a judgment and may be filed and executed in the same
16 manner as any judgment from a court of record.

17 (b) The Department shall have authority to investigate any
18 actual, alleged, or suspected violation of this Act.

19 Section 35. Exceptions. This Act does not apply to the
20 following:

- 21 (1) religious counseling;
22 (2) peer support; and
23 (3) self-help materials and educational resources that
24 are available to the public and do not purport to offer

1 therapy or psychotherapy services.

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1993 Session of
2025

INTRODUCED BY SHUSTERMAN, PROBST, PIELLI, HILL-EVANS, RIVERA,
HOHENSTEIN, FRANKEL, SANCHEZ, HADDOCK, GREEN, SCOTT, SMITH-
WADE-EL AND WAXMAN, OCTOBER 24, 2025

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE,
OCTOBER 24, 2025

AN ACT

1 Providing for the use of artificial intelligence in mental
2 health therapy and for enforcement.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Artificial
7 Intelligence in Mental Health Therapy Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Administrative support." A task performed to assist a
13 mental health professional with the logistics of an appointment
14 that does not involve therapeutic communication, including:

- 15 (1) managing appointment scheduling and reminders;
16 (2) processing billing and insurance claims; and
17 (3) drafting general communications related to therapy

1 logistics that do not include therapeutic advice.

2 "Artificial intelligence." As follows:

3 (1) A machine-based system that can, for a given set of
4 human-defined objectives, make predictions, recommendations
5 or decisions influencing real or virtual environments,
6 including the ability to:

7 (i) perceive real and virtual environments;

8 (ii) abstract perceptions made under this paragraph
9 into models through analysis in an automated manner; and

10 (iii) use model inference to formulate options for
11 information or action based on outcomes under
12 subparagraph (i) or (ii).

13 (2) The term includes generative artificial
14 intelligence.

15 "Consent." As follows:

16 (1) A clear, explicit affirmative act by an individual
17 that:

18 (i) unambiguously communicates the individual's
19 express, freely given, informed, voluntary, specific and
20 unambiguous written agreement, including a written
21 agreement provided by electronic means; and

22 (ii) is revocable by the individual.

23 (2) The term does not include an agreement that is
24 obtained by the following:

25 (i) The acceptance of a general or broad terms of
26 use agreement or similar document that contains
27 descriptions of artificial intelligence along with other
28 unrelated information.

29 (ii) An individual hovering over, muting, pausing or
30 closing a given piece of digital content.

1 (iii) An agreement obtained through the use of
2 deceptive actions.

3 "Generative artificial intelligence." The class of
4 artificial intelligence models that emulate the structure and
5 characteristics of input data in order to generate derived
6 synthetic content, including images, videos, audio, text and
7 more.

8 "Mental health professional." An individual who is licensed,
9 certified or otherwise authorized to administer or provide
10 professional mental health care or counseling under:

11 (1) the act of May 22, 1951 (P.L.317, No.69), known as
12 The Professional Nursing Law;

13 (2) the act of March 23, 1972 (P.L.136, No.52), known as
14 the Professional Psychologists Practice Act;

15 (3) the act of October 5, 1978 (P.L.1109, No.261), known
16 as the Osteopathic Medical Practice Act;

17 (4) the act of December 20, 1985 (P.L.457, No.112),
18 known as the Medical Practice Act of 1985; or

19 (5) the act of July 9, 1987 (P.L.220, No.39), known as
20 the Social Workers, Marriage and Family Therapists and
21 Professional Counselors Act.

22 "Peer support." Services provided by individuals with lived
23 experience of mental health conditions or recovery from
24 substance use that are intended to offer encouragement,
25 understanding and guidance without clinical intervention.

26 "Permitted use of artificial intelligence." Administrative
27 support or supplementary support in therapy or psychotherapy for
28 which the mental health professional maintains full
29 responsibility for all interactions, outputs and data use
30 associated with the system.

1 "Religious counseling." Counseling provided by clergy
2 members or pastoral counselors or other religious duties if the
3 services are explicitly faith-based and are not represented as
4 clinical mental health services or therapy or psychotherapy
5 services.

6 "Supplementary support." A task performed to assist a mental
7 health professional in the delivery of therapy or psychotherapy
8 services that does not involve therapeutic communication and
9 that is not administrative support, including:

10 (1) preparing and maintaining client records, including
11 therapy notes;

12 (2) analyzing anonymized data to track client progress
13 or identify trends, subject to review by a mental health
14 professional; and

15 (3) identifying and organizing external resources or
16 referrals for client use.

17 "Therapeutic communication." A verbal, nonverbal or written
18 interaction conducted in a clinical or professional setting that
19 is intended to diagnose, treat or address an individual's
20 mental, emotional or behavioral health concerns, including the
21 following:

22 (1) Direct interaction with clients for the purpose of
23 understanding or reflecting their thoughts, emotions or
24 experiences.

25 (2) Providing guidance, therapeutic strategies or
26 interventions designed to achieve mental health outcomes.

27 (3) Offering emotional support, reassurance or empathy
28 in response to psychological or emotional distress.

29 (4) Collaborating with clients to develop or modify
30 therapeutic goals or treatment plans.

1 (5) Offering behavioral feedback intended to promote
2 psychological growth or address mental health conditions.
3 "Therapy or psychotherapy services." Services provided to
4 diagnose, treat or improve an individual's mental health or
5 behavioral health. The term does not include religious
6 counseling or peer support.

7 Section 3. Permitted use of artificial intelligence.

8 A mental health professional shall not be permitted to use
9 artificial intelligence to assist in providing supplementary
10 support in therapy or psychotherapy services for which the
11 client's therapeutic session is recorded or transcribed unless:

12 (1) The patient or the patient's legally authorized
13 representative is informed in writing:

14 (i) that artificial intelligence will be used; and

15 (ii) the specific purpose of the artificial
16 intelligence tool or system that will be used.

17 (2) The patient or the patient's legally authorized
18 representative provides consent to the use of artificial
19 intelligence.

20 Section 4. Prohibition on unauthorized therapy services.

21 (a) Prohibited statements.--An artificial intelligence
22 provider shall not make any representation or statement or
23 knowingly cause or program an artificial intelligence system
24 made available for use by a person in this Commonwealth to make
25 any representation or statement that explicitly or implicitly
26 indicates that:

27 (1) the artificial intelligence system is capable of
28 providing therapy or psychotherapy services;

29 (2) a user of the artificial intelligence system may
30 interact with any feature of the artificial intelligence

1 system which simulates human conversation in order to obtain
2 therapy or psychotherapy services; or

3 (3) the artificial intelligence system, or any
4 component, feature, avatar or embodiment of the artificial
5 intelligence system, is:

6 (i) a provider of therapy or psychotherapy;

7 (ii) a mental health professional;

8 (iii) a therapist;

9 (iv) a clinical therapist;

10 (v) a counselor;

11 (vi) a psychiatrist;

12 (vii) a doctor; or

13 (viii) any other provider of therapy or
14 psychotherapy services.

15 (b) Certain system prohibited.--An artificial intelligence
16 provider shall not make available for use by a person in this
17 Commonwealth an artificial intelligence system that is
18 specifically programmed to provide a service or experience to a
19 user that would constitute the practice of a mental health
20 professional if provided by a natural person.

21 (c) Use of artificial intelligence.--A mental health
22 professional may use artificial intelligence only to the extent
23 that the use meets the requirements of section 3. A mental
24 health professional may not allow artificial intelligence to:

25 (1) make independent therapeutic decisions;

26 (2) directly interact with a client in any form of
27 therapeutic communication;

28 (3) generate therapeutic recommendations or treatment
29 plans without review and approval by the mental health
30 professional; or

1 (4) detect emotions or mental states.

2 Section 5. Enforcement.

3 A violation of this act shall constitute unprofessional
4 conduct under the following provisions of law, including a
5 substantively similar provision of a successor act:

6 (1) Section 14(a)(9) of the act of May 22, 1951
7 (P.L.317, No.69), known as The Professional Nursing Law.

8 (2) Section 8(11) of the act of March 23, 1972 (P.L.136,
9 No.52), known as the Professional Psychologists Practice Act.

10 (3) Section 15(a)(8) of the act of October 5, 1978
11 (P.L.1109, No.261), known as the Osteopathic Medical Practice
12 Act.

13 (4) Section 41(8) of the act of December 20, 1985
14 (P.L.457, No.112), known as the Medical Practice Act of 1985.

15 (5) Section 11(a)(2) of the act of July 9, 1987
16 (P.L.220, No.39), known as the Social Workers, Marriage and
17 Family Therapists and Professional Counselors Act.

18 Section 6. Exceptions.

19 This act does not apply to:

20 (1) religious counseling;

21 (2) peer support; or

22 (3) self-help materials and educational resources that
23 are available to the public and do not purport to offer
24 therapy or psychotherapy services.

25 Section 7. Effective date.

26 This act shall take effect in 60 days.

Blank Page

**ATTACHMENT C
FLORIDA PROPOSED
LAW**

HB 281

2026

1 A bill to be entitled
2 An act relating to the use of artificial intelligence
3 in psychological, clinical, counseling, and therapy
4 services; creating ss. 490.016 and 491.019, F.S.;
5 defining the term "artificial intelligence";
6 prohibiting the use of artificial intelligence in the
7 practice of psychology, clinical social work, marriage
8 and family therapy, and mental health counseling;
9 providing exceptions; providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 **Section 1. Section 490.016, Florida Statutes, is created**
14 **to read:**

15 490.016 Use of artificial intelligence.—

16 (1) As used in this section, the term "artificial
17 intelligence" means any machine-based system that varies in
18 level of autonomy and that, for any explicit or implicit
19 objective, infers from the inputs the system receives how to
20 generate outputs, including, but not limited to, content,
21 decisions, predictions, or recommendations that can influence
22 physical or virtual environments.

23 (2) Except as otherwise provided in this section, a
24 licensee may not use artificial intelligence in the practice of
25 psychology or school psychology. A licensee may use artificial

26 intelligence to:

27 (a) Assist in administrative or supplementary support
28 services. Administrative and supplementary support services
29 include, but are not limited to, all of the following:

- 30 1. Managing appointment scheduling and reminders.
31 2. Drafting general communications related to therapy
32 logistics that do not involve therapeutic advice.
33 3. Processing billing and insurance claims.
34 4. Preparing and managing patient records.
35 5. Analyzing data for operational purposes.

36 (b) Record or transcribe a counseling or therapy session
37 if a licensee obtains written, informed consent at least 24
38 hours before the provision of services.

39 **Section 2. Section 491.019, Florida Statutes, is created**
40 **to read:**

41 491.019 Use of artificial intelligence.—

42 (1) As used in this section, the term "artificial
43 intelligence" means any machine-based system that varies in
44 level of autonomy and that, for any explicit or implicit
45 objective, infers from the inputs the system receives how to
46 generate outputs, including, but not limited to, content,
47 decisions, predictions, or recommendations that can influence
48 physical or virtual environments.

49 (2) Except as otherwise provided in this section, a
50 licensee, registered intern, or certificateholder may not use

51 artificial intelligence in the practice of clinical social work,
52 marriage and family therapy, or mental health counseling. A
53 licensee, registered intern, or certificateholder may use
54 artificial intelligence to:

55 (a) Assist in administrative or supplementary support
56 services. Administrative and supplementary support services
57 include, but are not limited to, all of the following:

- 58 1. Managing appointment scheduling and reminders.
59 2. Drafting general communications related to therapy
60 logistics that do not involve therapeutic advice.
61 3. Processing billing and insurance claims.
62 4. Preparing and managing patient records.
63 5. Analyzing data for operational purposes.

64 (b) Record or transcribe a counseling or therapy session
65 if a licensee, registered intern, or certificateholder obtains
66 written, informed consent at least 24 hours before the provision
67 of services.

68 **Section 3.** This act shall take effect July 1, 2026.

Blank Page

ATTACHMENT D NEVADA LAW

Assembly Bill No. 406—Assemblymembers
Jackson and Nadeem

CHAPTER.....

AN ACT relating to health; prohibiting certain uses of artificial intelligence in public schools; requiring the Department of Education to develop a policy concerning certain uses of artificial intelligence; imposing certain restrictions relating to the marketing and programming of artificial intelligence systems; prohibiting certain persons from representing themselves as qualified to provide mental or behavioral health care; imposing certain restrictions relating to the use of artificial intelligence by providers of mental or behavioral health care; providing civil penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prescribes the authority and duties of a school counselor, school psychologist and school social worker. (NRS 391.293, 391.294, 391.296) **Section 2** of this bill prohibits a public school from using artificial intelligence to perform the functions and duties of a school counselor, school psychologist or school social worker which relate to the mental health of pupils. **Section 2** additionally requires the Department of Education to develop a policy for the use of artificial intelligence by such school employees while providing therapy, counseling or other mental or behavioral health services to pupils. **Section 2** requires the policy to include a method for the Department to examine the accuracy and efficacy of the use of artificial intelligence for such purposes.

Existing law: (1) regulates the practice and requires the licensure of certain mental health professionals, including psychiatrists, psychologists, marriage and family therapists, clinical professional counselors, registered nurses, social workers, alcohol and drug counselors and problem gambling counselors; and (2) prohibits unlicensed persons from engaging in the practices of those professions. (Chapters 630, 632, 633 and 641-641C of NRS) **Section 7** of this bill prohibits, with certain exceptions, an artificial intelligence provider from offering to users in this State an artificial intelligence system that is specifically programmed to provide a user with a service or an experience that would constitute the practice of professional mental or behavioral health care if provided by a natural person. **Section 7** also prohibits, with certain exceptions, an artificial intelligence provider or a natural person who is not licensed to practice professional mental or behavioral health care from making certain representations that would lead a person to believe that the provider, the artificial intelligence system operated by the provider or the natural person is capable of or qualified to provide mental or behavioral health care. **Section 8** of this bill imposes certain restrictions and prohibitions on the use of an artificial intelligence system by a licensed provider of mental and behavioral health care.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. (Deleted by amendment.)

Sec. 2. Chapter 391 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A public school, including, without limitation, a charter school or university school for profoundly gifted pupils, shall not use artificial intelligence to perform the functions and duties of a school counselor, school psychologist or school social worker as prescribed in NRS 391.293, 391.294 and 391.296, respectively, which relate to the mental health of pupils.

2. The Department shall develop a policy for the use of artificial intelligence by a school counselor, school psychologist, school social worker or other educational personnel while providing therapy, counseling or other mental or behavioral health services to pupils. The policy developed pursuant to this subsection must include, without limitation, a method for the Department to examine the accuracy and efficacy of any artificial intelligence used for such purposes. The Department may collaborate with the Division of Public and Behavioral Health of the Department of Health and Human Services in developing the policy.

3. The provisions of subsection 1 do not prohibit a school counselor, school psychologist, school social worker or other educational personnel from using artificial intelligence in accordance with the policy developed pursuant to subsection 2 or to perform tasks for administrative support, which may include, without limitation:

- (a) Scheduling;*
- (b) Managing records;*
- (c) Analyzing data for operational purposes; and*
- (d) Organizing, tracking and managing files or notes pertaining to a pupil.*

4. As used in this section, “artificial intelligence” means a machine-based system that, for any explicit or implicit objective, infers from the inputs the system receives how to generate outputs, including, without limitation, content, decisions, predictions or recommendations, that can influence physical or virtual environments.

Secs. 3-6. (Deleted by amendment.)



Sec. 7. Chapter 433 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An artificial intelligence provider shall not make any representation or statement or knowingly cause or program an artificial intelligence system made available for use by a person in this State to make any representation or statement that explicitly or implicitly indicates that:

(a) The artificial intelligence system is capable of providing professional mental or behavioral health care;

(b) A user of the artificial intelligence system may interact with any feature of the artificial intelligence system which simulates human conversation in order to obtain professional mental or behavioral health care; or

(c) The artificial intelligence system, or any component, feature, avatar or embodiment of the artificial intelligence system is a provider of mental or behavioral health care, a therapist, a clinical therapist, a counselor, a psychiatrist, a doctor or any other term commonly used to refer to a provider of professional mental health or behavioral health care.

2. An artificial intelligence provider shall not make available for use by a person in this State an artificial intelligence system that is specifically programmed to provide a service or experience to a user that would constitute the practice of professional mental or behavioral health care if provided by a natural person.

3. A natural person shall not represent himself or herself as being qualified to provide professional mental or behavioral health care, including, without limitation, by using the title of "therapist," "psychotherapist" or "counselor," or any similar title, if the person does not possess a valid credential issued by a governmental entity that authorizes the person to practice professional mental or behavioral health care in this State.

4. The Division:

(a) May investigate potential violations of this section.

(b) May bring an action to recover a civil penalty pursuant to subsection 5.

(c) Shall deposit any money received from a civil penalty into the State General Fund.

(d) Shall develop and disseminate to the public educational materials which contain:

(1) Information describing how a person may obtain professional mental or behavioral health care from a licensed or certified provider of professional mental or behavioral health care.



(2) Information about free or low-cost services or options that are available to persons in this State who are experiencing a mental or behavioral health crisis.

(3) Recommended best practices relating to the use or potential use of artificial intelligence by a person who is seeking care or relief from a mental or behavioral health condition, or who is experiencing a mental or behavioral health event, which may include, without limitation, recommendations concerning the circumstances under which such a person should seek the assistance or care of a provider of professional mental or behavioral health care.

5. A person who violates any provision of subsection 1, 2 or 3 is subject to a civil penalty not to exceed \$15,000 per violation.

6. This section shall not be construed to prohibit:

(a) Any advertisement, statement or representation for or relating to materials, literature and other products which are meant to provide advice and guidance for self-help relating to mental or behavioral health, if the material, literature or product does not purport to offer or provide professional mental or behavioral health care.

(b) Offering or operating an artificial intelligence system that is designed to be used by a provider of professional mental or behavioral health care to perform tasks for administrative support in conformity with subsection 2 of section 8 of this act.

7. As used in this section:

(a) "Artificial intelligence provider" means a person who operates or provides an artificial intelligence system.

(b) "Artificial intelligence system" means a machine-based system that, for any explicit or implicit objective, infers from the inputs the system receives how to generate outputs, including, without limitation, content, decisions, predictions or recommendations, that can influence physical or virtual environments.

(c) "Professional mental or behavioral health care":

(1) Means mental or behavioral health care or services relating to the diagnosis, treatment or prevention of mental illnesses or emotional or behavioral disorders which are typically provided by a provider of mental or behavioral health care within his or her authorized scope of practice.

(2) Includes, without limitation, the practice of:

(I) Psychology, as defined in NRS 641.025.

(II) Clinical professional counseling, as defined in NRS 641A.065.



(III) Marriage and family therapy, as defined in NRS 641A.080.

(IV) Social work and clinical social work, as defined in NRS 641B.030.

(V) Counseling persons with alcohol and other substance use disorders and counseling persons with an addictive disorder related to gambling, as defined in NRS 641C.100 and 641C.105, respectively.

(VI) Psychiatry.

Sec. 8. Chapter 629 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided by subsection 2 and, where applicable, the policy adopted by the Department of Education pursuant to section 2 of this act, a provider of mental and behavioral health care shall not use an artificial intelligence system in connection with providing professional mental and behavioral health care directly to a patient.

2. A provider of mental and behavioral health care may use an artificial intelligence system to assist the provider with performing tasks for administrative support, which may include, without limitation:

(a) Scheduling appointments;

(b) Managing records;

(c) Billing patients and managing records relating to billing;

(d) Analyzing data for operational purposes; and

(e) Organizing, tracking and managing files or notes relating to an individual session with a patient.

3. If a provider of mental and behavioral health care uses an artificial intelligence system for any purpose authorized in subsection 2, the provider shall ensure that such use complies with all applicable federal and state laws governing patient privacy and the security of electronic health records, health-related information and other related data, including, without limitation:

(a) The Health Information Technology for Economic and Clinical Health Act, 42 U.S.C. §§ 300jj et seq. and 17901 et seq.;

(b) The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended; and

(c) The provisions of NRS 439.581 to 439.597, inclusive.

4. A provider of mental and behavioral health care shall independently review the accuracy of any report, data or other information compiled, summarized, analyzed or generated by an artificial intelligence system for a purpose described in paragraph (c) or (e) of subsection 2.



5. *A provider of mental and behavioral health care who violates any provision of this section is guilty of unprofessional conduct and is subject to disciplinary action by the board, agency or other entity in this State by which he or she is licensed or certified.*

6. *As used in this section:*

(a) *“Artificial intelligence system” means a machine-based system that, for any explicit or implicit object, infers from the inputs the system receives how to generate outputs, including, without limitation, content, decisions, predictions or recommendations, that can influence physical or virtual environments.*

(b) *“Professional mental and behavioral health care” means psychotherapy, psychiatry, counseling, therapy or other care or services relating to the diagnosis, treatment or prevention of mental illnesses or emotional or behavioral disorders which are provided by a provider of mental and behavioral health care within his or her authorized scope of practice.*

(c) *“Provider of mental and behavioral health care” means:*

(1) *A psychiatrist licensed to practice medicine in this State pursuant to chapter 630 or 633 of NRS;*

(2) *A psychologist licensed to practice in this State pursuant to chapter 641 of NRS;*

(3) *A social worker licensed in this State as an independent social worker or a clinical social worker pursuant to chapter 641B of NRS;*

(4) *A registered nurse holding a master’s degree in the field of psychiatric nursing and licensed to practice professional nursing in this State pursuant to chapter 632 of NRS;*

(5) *A marriage and family therapist or clinical professional counselor licensed in this State pursuant to chapter 641A of NRS;*

(6) *An alcohol and drug counselor or problem gambling counselor who is licensed or certified pursuant to chapter 641C of NRS; and*

(7) *A person who provides counseling services as part of his or her training for any of the professions listed in subparagraphs (1) to (6), inclusive.*

Sec. 9. (Deleted by amendment.)

Sec. 10. 1. This section becomes effective upon passage and approval.

2. Sections 1 to 9, inclusive, of this act become effective:



- (a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and
- (b) On July 1, 2025, for all other purposes.

20 ~~~~~ 25



Blank Page

ATTACHMENT E



Supporting the Safe and Ethical Use of AI in Mental Health Counseling

State licensing boards in mental health counseling safeguard the public by ensuring that licensed professionals meet the minimum qualifications necessary for safe and ethical practice. As technological advancements, particularly in artificial intelligence (AI), continue to integrate into clinical practice, licensing boards ensure that new technologies enhance the quality of care without compromising client safety, privacy, or the therapeutic relationship.

The purpose of this document is to support state licensing boards in upholding their duty to protect the public from harm as licensees use AI tools in clinical practice. This document has three sections. The first section includes information for board members. It offers information on how to think about and evaluate a board's role in protecting the public from harm within their scope of responsibility. The second section offers guidance to boards as they monitor how licensees use AI. The third section contains resources that boards can adapt and send to licensees to help licensees evaluate whether to use artificial intelligence as a tool.

November 2024

AI Education for Boards

Technology and AI can be found in all aspects of mental health care delivery.

- a. Clinical Tools
 - i. Therapeutic Techniques
 - ii. Books and Educational Resources
 - iii. Assessment Tools
 - iv. Treatment Planning Tools
- b. Practice Management and Administrative Tools
 - i. Electronic Health Record
 - ii. Scheduling Software
 - iii. Billing and Insurance Management
 - iv. Telehealth Platforms
 - v. Licensing and Credentialing Platforms
- c. Communication and Collaboration Tools
 - i. Client Portal
 - ii. Secure Messaging to Clients or Other Providers
- d. Client Engagement Tools
 - i. Educational or Training Content
 - ii. Digital Interventions, such as mood logs

Licensed Counselors remain responsible for the care they provide, regardless of the tools they use.



Some of the concerns about AI in mental health care include privacy, efficacy, and bias. Licensed Counselors are responsible for their ability to understand and explain how AI is used in care, the potential benefits and risks to their clients, and allow clients to opt out of AI being used in their care, even if that results in some clients seeking care elsewhere. While bias has been found in some AI tools and programs, it has also been demonstrated to be reduced or eliminated in other tools and programs. The Licensed Counselor remains accountable for making the best clinical judgment for the diagnosis and care of their clients.

To stay abreast of technology and AI advancements board members and licensees should learn from reputable and knowledgeable people in the field. Learning opportunities come in the forms of workshops, presentations, conferences, articles, and publications, and talking to experts in both building and using technology in mental health care.

Guidance For Boards as They Navigate Licensees Use of AI in Clinical Practice

Boards should respond to errors, adverse outcomes, and complaints related to the use of AI the same way they would respond to any complaint. Here are a few topics that specifically relate to using AI in clinical practice:

- Licensees are accountable for the care they deliver, regardless of the tools they use to assist or augment their clinical practice. Having used any tools in practice, AI or analog, does not alter the licensee’s responsibility for their professional judgment in the care delivered.
- Licensees are expected to evaluate tools before selecting them for use, looking for ethical and responsible development that actively works to reduce bias and improve the standard of care for all.
- Informed Consent forms should include the following information:
 - a. All third-party information sharing, including technology and AI tools
 - b. Potential risks and benefits to the client because of using those tools
 - c. Any outsourced services that use their AI tools or technology (answering service, billing service, on-call service, etc.)
 - d. Clients should have the opportunity to opt out of those tools being used in their care, even if that results in their seeking care elsewhere
- Licensees are expected to improve the tools by giving feedback to the developers if clients or counselors have any unexpected experiences. Topics for feedback may include:
 - a. Clinical relevance
 - b. Cultural relevance
 - c. Technical / User experience
- Licensees may not use tools that deliver services outside the licensee’s scope of practice.
- Licensees should consider what non-practice-related technologies are present in counseling sessions and take steps to secure clients’ privacy and confidentiality. For example, smart speakers and smartphones that are always listening should be turned off and secured when the licensee is in session.
- Tools used in practice should enhance care and should not interfere with human relationships. Decades of research consistently find the basis of effective care is the relationship between humans:
 - Therapeutic alliance (counselor and client for care to work)
 - Natural support system (family, friends, co-workers for outcomes to sustain)
- Licensees are held accountable to the following training standards and qualifications for practice when using AI and emerging technologies:
 - a. Federal Laws & Regulations
 - a. Health Insurance Portability and Accountability Act (HIPAA)
 - b. Family Educational Rights and Privacy Act (FERPA)

- c. 42 CFR Part 2 (Confidentiality of Substance Use Disorder Patient Records)
- b. State Laws & Regulations (Tennessee for Example)
 - a. Tennessee Code Annotated (TCA) Title 63, Chapter 22 (Professional Counselors, Marital and Family Therapists, Clinical Pastoral Therapists)
 - b. Tennessee Department of Health Rules and Regulations for Licensed Professional Counselors
- c. Professional Association Guidelines & Codes of Ethics
 - a. ACA [2014 Code of Ethics](#)
 - b. ACA [Recommendations for Practicing Counselors and Their Use of AI](#)
 - c. AMHCA [Code of Ethics](#)
 - d. NBCC [Ethical Principles for Artificial Intelligence in Counseling](#)

Resources For Boards to Distribute to Licensees to Support the Ethical Use of AI in Clinical Practice

Existing Rules & Regulations licensees are held accountable to:

- a. Federal Laws & Regulations
 - i. Health Insurance Portability and Accountability Act (HIPAA)
 - ii. Family Educational Rights and Privacy Act (FERPA)
 - iii. 42 CFR Part 2 (Confidentiality of Substance Use Disorder Patient Records)
- b. State Laws & Regulations (Tennessee, for Example)
 - i. Tennessee Code Annotated (TCA) Title 63, Chapter 22 (Professional Counselors, Marital and Family Therapists, Clinical Pastoral Therapists)
 - ii. Tennessee Department of Health Rules and Regulations for Licensed Professional Counselors
- c. Professional Association Guidelines & Codes of Ethics
 - i. ACA [2014 Code of Ethics](#)
 - ii. ACA [Recommendations for Practicing Counselors and Their Use of AI](#)
 - iii. NBCC [Ethical Principles for Artificial Intelligence in Counseling](#)

Recommended Informed Consent Clauses to add – see Appendix A

Licensees should use great caution when considering using AI tools in crisis management care. When in doubt, licensees should handle all crisis situations with a human response. AI holds great promise in supporting crisis care, however many crisis innovations are in development or are only available within large organizations. Licensees must consider the limitations of the tools they have access to before engaging any tools in crisis management. For example, chatbots that have no escalation protocols may not be safe or effective.

To stay abreast of technology and AI advancements licensees should learn from reputable and knowledgeable people in the field. Learning opportunities come in the form of

workshops, presentations, conferences, articles, and publications, and talking to experts in both building and using technology in mental health care.

Appendix A

Informed Consent for Mental Health Counseling with AI Support

Welcome! We're excited to work with you on your journey to better mental health. Our goal is to provide you with the best care possible, and that includes using advanced tools like Artificial Intelligence (AI) to support your treatment. This document will explain how AI is used, the potential benefits and risks, and your rights regarding its use. Please read this carefully and ask any questions you might have.

1. What is AI and How is it Used in Your Care?

Artificial Intelligence (AI) is a technology that helps us analyze information and provide personalized support. In our mental health counseling services, AI might be used to:

- **Analyze Your Progress:** AI tools can help track your mood, identify patterns, and offer insights to your therapist.
- **Provide Resources:** AI may recommend helpful articles, activities, or exercises based on your needs.
- **Enhance Communication:** AI tools can assist in scheduling appointments and reminding you of important tasks.
- **Provide Administrative Support:** AI may be used to complete the required documentation that your provider/counselor/therapist reviews and approves before being entered into your record

2. Benefits of Using AI in Your Care

- **Personalized Support:** AI helps tailor recommendations and resources specifically to your needs.
- **Timely Insights:** By analyzing your data, AI can provide quick feedback and suggest adjustments to your treatment plan.
- **Convenience:** AI tools can make scheduling and communication more efficient, helping you stay on track with your care.
- **Attention:** Your provider/counselor/therapist's attention can be on you and your care while AI tools manage documentation or other tasks related to your care.

3. Risks and Considerations

- **Privacy:** While we take steps to protect your data, no system is completely immune to breaches. We use secure technology to keep your information safe.
 - **How we treat your data:** Your data will be stored within the HIPAA-compliant tools we select, never on an individual's device.

- **How the tools we select treat your data:** Any tools we select for use will capture data, in some cases including audio or video recordings, with your consent. The data is securely stored, accessed only by authorized individuals, and disposed of according to strict regulations to protect your privacy. Here is a high-level overview of how our tools treat your data:
 - **Data Collection:** The data is collected, translated into text, and then integrated into the electronic health record and/or data set.
 - **Secure Storage:** The data is stored on secure servers that are HIPAA compliant to ensure your information is kept confidential and secure.
 - **Access Control:** Only authorized personnel can access your data. This might only include your provider/counselor/therapist or could include researchers with proper permissions and your consent.
 - **Retention Policies:** We have policies that dictate how long data should be stored that meet our obligations set forth by both laws and codes of ethics that govern our practice.
 - **Secure Deletion:** When it is time to dispose of the data – either because it has reached the end of its retention period, or it is no longer needed – the organization uses secure methods to permanently erase the data from servers so that it cannot be recovered.
 - **Audit Trails:** Our AI tools maintain records of when data was accessed and deleted to ensure accountability and compliance with regulations.
 - **Accuracy:** AI is a tool to assist in care but is not perfect. Human oversight is always involved to ensure the quality of your treatment.
 - **Dependence:** Overreliance on AI tools might sometimes affect personal interaction with your therapist. We strive to balance technology with human connection.

4. Your Rights and Choices

- **Opting Out:** You have the right to decline the use of AI tools in your care. If you choose to opt-out, it may mean seeking care through other providers or methods. We are here to support you in finding the best path for your needs.
- **Questions and Concerns:** If you have any questions or concerns about the use of AI in your counseling, please let us know. We're happy to discuss your options and provide more information.

5. Your Consent

By signing below, you acknowledge that you have read and understood the information provided, including the use of AI in your mental health counseling. You consent to the use of AI tools as described and understand your right to opt-out at any time.

If you have any questions or need further clarification, please don't hesitate to ask. We're here to support you every step of the way!

Signature: _____ Date: _____

