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HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

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STATE OF MAINE

HOUSE OF REPRESENTATIVES

132ND LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 1397, L.D. 2082, "An Act to Regulate the Use of Artificial Intelligence in Providing Certain Mental Health Services"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'**Sec. 1. 10 MRSA §1500-EE** is enacted to read:

§1500-EE. Use of artificial intelligence in therapy or psychotherapy services prohibited unless provided by licensed professional

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Artificial intelligence" means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs, such as predictions, content, recommendations or decisions, that can influence physical or virtual environments.

B. "Licensed professional" means an individual who holds a valid license or certificate issued in this State to practice psychotherapy or behavioral health therapy, including:

(1) An individual licensed pursuant to Title 32, chapter 56;

(2) An individual licensed pursuant to Title 32, chapter 83;

(3) An individual licensed pursuant to Title 32, chapter 119;

(4) An individual licensed or certified pursuant to Title 32, chapter 81 and authorized to provide therapy or psychotherapy services;

(5) An individual licensed pursuant to Title 32, chapter 31; and

(6) A physician or physician associate licensed under Title 32, chapter 36 or 48, who specializes in the diagnosis and treatment of mental disorders.

C. "Therapeutic communication" means any verbal, nonverbal or written interaction, conducted in a clinical or professional setting, that is intended to diagnose, treat or

address an individual's mental, emotional or behavioral health concerns. "Therapeutic communication" includes, but is not limited to:

(1) Direct interactions with individuals for the purpose of understanding their thoughts, emotions or experiences;

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

(3) Offering emotional support, reassurance or empathy in response to psychological or emotional distress;

(4) Collaborating with individuals to develop or modify therapeutic goals or treatment plans; and

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

D. "Therapy or psychotherapy services" means services provided to diagnose, treat or address an individual's mental health or behavioral health through therapeutic communication.

2. Offering therapy or psychotherapy services through use of Internet-based artificial intelligence or otherwise prohibited unless person licensed. A person may not provide, advertise or otherwise offer therapy or psychotherapy services, including through the use of Internet-based artificial intelligence, to the public unless the therapy or psychotherapy services are provided by a licensed professional.

3. Violation. A violation of subsection 2 is a violation of the Maine Unfair Trade Practices Act.

4. Exceptions. This section does not apply to an artificial intelligence-based intervention that is used solely within a research project approved by an institutional review board, as defined in Title 22, section 1711-C, subsection 6, paragraph G, and conducted in compliance with all applicable federal protections for human subjects in research.

Sec. 2. 32 MRSA §2113 is enacted to read:

§2113. Use of artificial intelligence to assist in providing administrative support and supplementary support in therapy or psychotherapy services

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

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

(1) Managing appointment scheduling and reminders;

(2) Processing billing and insurance claims; and

(3) Drafting general communications related to the logistics of delivering therapy or psychotherapy services that do not include therapeutic communication.

B. "Artificial intelligence" means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs, such as

predictions, content, recommendations or decisions, that can influence physical or virtual environments.

C. "Consent" means a clear, explicit and affirmative act by an individual that: unambiguously communicates the individual's express, informed, voluntary, specific and unambiguous written agreement, including a written agreement provided by electronic means or provided by initialing a specific section of an individual's general consent to treatment agreement; and is revocable by the individual.

"Consent" does not include an agreement that is obtained by:

(1) The acceptance of a general or broad terms-of-use agreement or a similar document that contains descriptions of artificial intelligence along with unrelated information;

(2) An individual's hovering over, muting, pausing or closing a given piece of electronic content; or

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

D. "Supplementary support" means tasks performed to assist a licensed professional in the delivery of therapy or psychotherapy services that do not involve therapeutic communication and that are not administrative support. "Supplementary support" includes, but is not limited to:

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

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

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

E. "Therapeutic communication" means any verbal, nonverbal or written interaction, conducted in a clinical or professional setting, that is intended to diagnose, treat or address an individual's mental, emotional or behavioral health concerns. "Therapeutic communication" includes, but is not limited to:

(1) Direct interactions with individuals for the purpose of understanding their thoughts, emotions or experiences;

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

(3) Offering emotional support, reassurance or empathy in response to psychological or emotional distress;

(4) Collaborating with individuals to develop or modify therapeutic goals or treatment plans; and

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

F. "Therapy or psychotherapy services" means services provided to diagnose, treat or address an individual's mental health or behavioral health through therapeutic communication.

2. Permitted use of artificial intelligence. A person licensed under this chapter, referred to in this section as "the licensee," may provide administrative support or

supplementary support in the delivery of therapy or psychotherapy services through the use of artificial intelligence as long as the licensee acts within the scope of practice of the licensee's license, in accordance with any requirements and restrictions imposed by this chapter and in accordance with standards of practice, and only if:

A. The licensee maintains full responsibility for all interactions, outputs and data use associated with the use of artificial intelligence; and

B. For the use of artificial intelligence to assist in providing supplementary support, the licensee satisfies the requirements of subsection 3.

3. Requirements of use; supplementary support. A licensee may use artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services only when the client's therapeutic session is recorded or transcribed, and only if:

A. The client or the client's legally authorized representative is informed in writing of the following:

(1) That artificial intelligence will be used;

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

(3) How session data collected by artificial intelligence will be stored, retained, used for training and deleted upon termination of therapy or psychotherapy services; and

B. The client or the client's legally authorized representative provides consent to the use of artificial intelligence.

4. Prohibition of use. A licensee may use artificial intelligence to provide supplementary support only to the extent the use meets the requirements of subsection 3. A licensee may not allow artificial intelligence to:

A. Make independent therapeutic decisions;

B. Directly interact with clients in any form of therapeutic communication; or

C. Generate therapeutic recommendations or treatment plans without review and approval by the licensee.

5. Denial of treatment prohibited; failure to provide consent. A licensee may not deny, or refuse to provide, therapy or psychotherapy services to a client on the sole basis that the client has not provided consent to the use of artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services.

6. Confidentiality. When using artificial intelligence pursuant to this section, a licensee shall comply with all state and federal confidentiality and privacy laws and shall ensure that any artificial intelligence technology is compliant with all state and federal confidentiality and privacy laws.

7. Professional responsibility. All laws and rules governing professional responsibility, unprofessional conduct and generally accepted standards of practice that apply to a licensee also apply to that licensee when using artificial intelligence pursuant to this section.

8. Violation. A violation of this section is subject to disciplinary action by the board pursuant to Title 10, section 8003, subsection 5.

9. Exception. This section does not apply to an artificial intelligence-based intervention that is used solely within a research project approved by an institutional review board, as defined in Title 22, section 1711-C, subsection 6, paragraph G, and conducted in compliance with all applicable federal protections for human subjects in research.

10. Rules. The board shall adopt rules to implement the requirements of this section. Rules adopted pursuant to this subsection are major substantive rules as described in Title 5, chapter 375, subchapter 2-A.

11. Client waiver void and unenforceable. Any waiver by a client of the provisions of this section is contrary to public policy and is void and unenforceable.

12. Right to civil action. This section may not be construed to prohibit a client or a client's authorized representative from:

A. Maintaining an action for harm caused to a client that is attributable to the use of artificial intelligence to assist in providing administrative support or supplementary support in the delivery of therapy or psychotherapy services;

B. Maintaining an action alleging professional negligence of a licensee; or

C. Seeking any other remedies available under other provisions of law.

Sec. 3. 32 MRSA §2600-G is enacted to read:

§2600-G. Use of artificial intelligence to assist in providing administrative support and supplementary support in therapy or psychotherapy services

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

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

(1) Managing appointment scheduling and reminders;

(2) Processing billing and insurance claims; and

(3) Drafting general communications related to the logistics of delivering therapy or psychotherapy services that do not include therapeutic communication.

B. "Artificial intelligence" means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs, such as predictions, content, recommendations or decisions, that can influence physical or virtual environments.

C. "Consent" means a clear, explicit and affirmative act by an individual that: unambiguously communicates the individual's express, informed, voluntary, specific and unambiguous written agreement, including a written agreement provided by electronic means or provided by initialing a specific section of an individual's general consent to treatment agreement; and is revocable by the individual.

"Consent" does not include an agreement that is obtained by:

(1) The acceptance of a general or broad terms-of-use agreement or a similar document that contains descriptions of artificial intelligence along with unrelated information;

(2) An individual's hovering over, muting, pausing or closing a given piece of electronic content; or

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

D. "Supplementary support" means tasks performed to assist a licensed professional in the delivery of therapy or psychotherapy services that do not involve therapeutic communication and that are not administrative support. "Supplementary support" includes, but is not limited to:

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

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

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

E. "Therapeutic communication" means any verbal, nonverbal or written interaction, conducted in a clinical or professional setting, that is intended to diagnose, treat or address an individual's mental, emotional or behavioral health concerns. "Therapeutic communication" includes, but is not limited to:

(1) Direct interactions with individuals for the purpose of understanding their thoughts, emotions or experiences;

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

(3) Offering emotional support, reassurance or empathy in response to psychological or emotional distress;

(4) Collaborating with individuals to develop or modify therapeutic goals or treatment plans; and

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

F. "Therapy or psychotherapy services" means services provided to diagnose, treat or address an individual's mental health or behavioral health through therapeutic communication.

2. Permitted use of artificial intelligence. A person licensed or privileged to practice under this chapter, chapter 145 or chapter 145-A, referred to in this section as "the licensee," may provide administrative support or supplementary support in the delivery of therapy or psychotherapy services through the use of artificial intelligence as long as the licensee acts within the scope of practice of the licensee's license, in accordance with any requirements and restrictions imposed by this chapter and in accordance with standards of practice, and only if:

A. The licensee maintains full responsibility for all interactions, outputs and data use associated with the use of artificial intelligence; and

B. For the use of artificial intelligence to assist in providing supplementary support, the licensee satisfies the requirements of subsection 3.

3. Requirements of use; supplementary support. A licensee may use artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services only when the client's therapeutic session is recorded or transcribed, and only if:

A. The client or the client's legally authorized representative is informed in writing of the following:

(1) That artificial intelligence will be used;

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

(3) How session data collected by artificial intelligence will be stored, retained, used for training and deleted upon termination of therapy or psychotherapy services; and

B. The client or the client's legally authorized representative provides consent to the use of artificial intelligence.

4. Prohibition of use. A licensee may use artificial intelligence to provide supplementary support only to the extent the use meets the requirements of subsection 3. A licensee may not allow artificial intelligence to:

A. Make independent therapeutic decisions;

B. Directly interact with clients in any form of therapeutic communication; or

C. Generate therapeutic recommendations or treatment plans without review and approval by the licensee.

5. Denial of treatment prohibited; failure to provide consent. A licensee may not deny, or refuse to provide, therapy or psychotherapy services to a client on the sole basis that the client has not provided consent to the use of artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services.

6. Confidentiality. When using artificial intelligence pursuant to this section, a licensee shall comply with all state and federal confidentiality and privacy laws and shall ensure that any artificial intelligence technology is compliant with all state and federal confidentiality and privacy laws.

7. Professional responsibility. All laws and rules governing professional responsibility, unprofessional conduct and generally accepted standards of practice that apply to a licensee also apply to that licensee when using artificial intelligence pursuant to this section.

8. Violation. A violation of this section is subject to disciplinary action by the board pursuant to Title 10, section 8003, subsection 5.

9. Exception. This section does not apply to an artificial intelligence-based intervention that is used solely within a research project approved by an institutional review board, as defined in Title 22, section 1711-C, subsection 6, paragraph G, and conducted in compliance with all applicable federal protections for human subjects in research.

10. Rules. The board shall adopt rules to implement the requirements of this section. Rules adopted pursuant to this subsection are major substantive rules as described in Title 5, chapter 375, subchapter 2-A.

11. Client waiver void and unenforceable. Any waiver by a client of the provisions of this section is contrary to public policy and is void and unenforceable.

12. Right to civil action. This section may not be construed to prohibit a client or a client's authorized representative from:

A. Maintaining an action for harm caused to a client that is attributable to the use of artificial intelligence to assist in providing administrative support or supplementary support in the delivery of therapy or psychotherapy services;

B. Maintaining an action alleging professional negligence of a licensee; or

C. Seeking any other remedies available under other provisions of law.

Sec. 4. 32 MRSA §3300-J is enacted to read:

§3300-J. Use of artificial intelligence to assist in providing administrative support and supplementary support in therapy or psychotherapy services

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

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

(1) Managing appointment scheduling and reminders;

(2) Processing billing and insurance claims; and

(3) Drafting general communications related to the logistics of delivering therapy or psychotherapy services that do not include therapeutic communication.

B. "Artificial intelligence" means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs, such as predictions, content, recommendations or decisions, that can influence physical or virtual environments.

C. "Consent" means a clear, explicit and affirmative act by an individual that: unambiguously communicates the individual's express, informed, voluntary, specific and unambiguous written agreement, including a written agreement provided by electronic means or provided by initialing a specific section of an individual's general consent to treatment agreement; and is revocable by the individual.

"Consent" does not include an agreement that is obtained by:

(1) The acceptance of a general or broad terms-of-use agreement or a similar document that contains descriptions of artificial intelligence along with unrelated information;

(2) An individual's hovering over, muting, pausing or closing a given piece of electronic content; or

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

D. "Supplementary support" means tasks performed to assist a licensed professional in the delivery of therapy or psychotherapy services that do not involve therapeutic communication and that are not administrative support. "Supplementary support" includes, but is not limited to:

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

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

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

E. "Therapeutic communication" means any verbal, nonverbal or written interaction, conducted in a clinical or professional setting, that is intended to diagnose, treat or address an individual's mental, emotional or behavioral health concerns. "Therapeutic communication" includes, but is not limited to:

(1) Direct interactions with individuals for the purpose of understanding their thoughts, emotions or experiences;

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

(3) Offering emotional support, reassurance or empathy in response to psychological or emotional distress;

(4) Collaborating with individuals to develop or modify therapeutic goals or treatment plans; and

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

F. "Therapy or psychotherapy services" means services provided to diagnose, treat or address an individual's mental health or behavioral health through therapeutic communication.

2. Permitted use of artificial intelligence. A person licensed or privileged to practice under this chapter, chapter 145 or chapter 145-A, referred to in this section as "the licensee," may provide administrative support or supplementary support in the delivery of therapy or psychotherapy services through the use of artificial intelligence as long as the licensee acts within the scope of practice of the licensee's license, in accordance with any requirements and restrictions imposed by this chapter and in accordance with standards of practice, and only if:

A. The licensee maintains full responsibility for all interactions, outputs and data use associated with the use of artificial intelligence; and

B. For the use of artificial intelligence to assist in providing supplementary support, the licensee satisfies the requirements of subsection 3.

3. Requirements of use; supplementary support. A licensee may use artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services only when the client's therapeutic session is recorded or transcribed, and only if:

A. The client or the client's legally authorized representative is informed in writing of the following:

(1) That artificial intelligence will be used;

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

(3) How session data collected by artificial intelligence will be stored, retained, used for training and deleted upon termination of therapy or psychotherapy services; and

B. The client or the client's legally authorized representative provides consent to the use of artificial intelligence.

4. Prohibition of use. A licensee may use artificial intelligence to provide supplementary support only to the extent the use meets the requirements of subsection 3. A licensee may not allow artificial intelligence to:

A. Make independent therapeutic decisions;

B. Directly interact with clients in any form of therapeutic communication; or

C. Generate therapeutic recommendations or treatment plans without review and approval by the licensee.

5. Denial of treatment prohibited; failure to provide consent. A licensee may not deny, or refuse to provide, therapy or psychotherapy services to a client on the sole basis that the client has not provided consent to the use of artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services.

6. Confidentiality. When using artificial intelligence pursuant to this section, a licensee shall comply with all state and federal confidentiality and privacy laws and shall ensure that any artificial intelligence technology is compliant with all state and federal confidentiality and privacy laws.

7. Professional responsibility. All laws and rules governing professional responsibility, unprofessional conduct and generally accepted standards of practice that apply to a licensee also apply to that licensee when using artificial intelligence pursuant to this section.

8. Violation. A violation of this section is subject to disciplinary action by the board pursuant to Title 10, section 8003, subsection 5.

9. Exception. This section does not apply to an artificial intelligence-based intervention that is used solely within a research project approved by an institutional review board, as defined in Title 22, section 1711-C, subsection 6, paragraph G, and conducted in compliance with all applicable federal protections for human subjects in research.

10. Rules. The board shall adopt rules to implement the requirements of this section. Rules adopted pursuant to this subsection are major substantive rules as described in Title 5, chapter 375, subchapter 2-A.

11. Client waiver void and unenforceable. Any waiver by a client of the provisions of this section is contrary to public policy and is void and unenforceable.

12. Right to civil action. This section may not be construed to prohibit a client or a client's authorized representative from:

A. Maintaining an action for harm caused to a client that is attributable to the use of artificial intelligence to assist in providing administrative support or supplementary support in the delivery of therapy or psychotherapy services;

B. Maintaining an action alleging professional negligence of a licensee; or

C. Seeking any other remedies available under other provisions of law.

Sec. 5. 32 MRSA §3820-A is enacted to read:

§3820-A. Use of artificial intelligence to assist in providing administrative support and supplementary support in therapy or psychotherapy services

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

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

(1) Managing appointment scheduling and reminders;

(2) Processing billing and insurance claims; and

(3) Drafting general communications related to the logistics of delivering therapy or psychotherapy services that do not include therapeutic communication.

B. "Artificial intelligence" means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs, such as predictions, content, recommendations or decisions, that can influence physical or virtual environments.

C. "Consent" means a clear, explicit and affirmative act by an individual that: unambiguously communicates the individual's express, informed, voluntary, specific and unambiguous written agreement, including a written agreement provided by electronic means or provided by initialing a specific section of an individual's general consent to treatment agreement; and is revocable by the individual.

"Consent" does not include an agreement that is obtained by:

(1) The acceptance of a general or broad terms-of-use agreement or a similar document that contains descriptions of artificial intelligence along with unrelated information;

(2) An individual's hovering over, muting, pausing or closing a given piece of electronic content; or

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

D. "Supplementary support" means tasks performed to assist a licensed professional in the delivery of therapy or psychotherapy services that do not involve therapeutic communication and that are not administrative support. "Supplementary support" includes, but is not limited to:

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

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

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

E. "Therapeutic communication" means any verbal, nonverbal or written interaction, conducted in a clinical or professional setting, that is intended to diagnose, treat or address an individual's mental, emotional or behavioral health concerns. "Therapeutic communication" includes, but is not limited to:

(1) Direct interactions with individuals for the purpose of understanding their thoughts, emotions or experiences;

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

(3) Offering emotional support, reassurance or empathy in response to psychological or emotional distress;

(4) Collaborating with individuals to develop or modify therapeutic goals or treatment plans; and

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

F. "Therapy or psychotherapy services" means services provided to diagnose, treat or address an individual's mental health or behavioral health through therapeutic communication.

2. Permitted use of artificial intelligence. A person licensed or privileged to practice under this chapter, referred to in this section as "the licensee," may provide administrative support or supplementary support in the delivery of therapy or psychotherapy services through the use of artificial intelligence as long as the licensee acts within the scope of practice of the licensee's license, in accordance with any requirements and restrictions imposed by this chapter and in accordance with standards of practice, and only if:

A. The licensee maintains full responsibility for all interactions, outputs and data use associated with the use of artificial intelligence; and

B. For the use of artificial intelligence to assist in providing supplementary support, the licensee satisfies the requirements of subsection 3.

3. Requirements of use; supplementary support. A licensee may use artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services only when the client's therapeutic session is recorded or transcribed, and only if:

A. The client or the client's legally authorized representative is informed in writing of the following:

(1) That artificial intelligence will be used;

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

(3) How session data collected by artificial intelligence will be stored, retained, used for training and deleted upon termination of therapy or psychotherapy services; and

B. The client or the client's legally authorized representative provides consent to the use of artificial intelligence.

4. Prohibition of use. A licensee may use artificial intelligence to provide supplementary support only to the extent the use meets the requirements of subsection 3. A licensee may not allow artificial intelligence to:

A. Make independent therapeutic decisions;

B. Directly interact with clients in any form of therapeutic communication; or

C. Generate therapeutic recommendations or treatment plans without review and approval by the licensee.

5. Denial of treatment prohibited; failure to provide consent. A licensee may not deny, or refuse to provide, therapy or psychotherapy services to a client on the sole basis that the client has not provided consent to the use of artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services.

6. Confidentiality. When using artificial intelligence pursuant to this section, a licensee shall comply with all state and federal confidentiality and privacy laws and shall ensure that any artificial intelligence technology is compliant with all state and federal confidentiality and privacy laws.

7. Professional responsibility. All laws and rules governing professional responsibility, unprofessional conduct and generally accepted standards of practice that apply to a licensee also apply to that licensee when using artificial intelligence pursuant to this section.

8. Violation. A violation of this section is subject to disciplinary action by the board pursuant to Title 10, section 8003, subsection 5.

9. Exception. This section does not apply to an artificial intelligence-based intervention that is used solely within a research project approved by an institutional review board, as defined in Title 22, section 1711-C, subsection 6, paragraph G, and conducted in compliance with all applicable federal protections for human subjects in research.

10. Rules. The board shall adopt rules to implement the requirements of this section. Rules adopted pursuant to this subsection are major substantive rules as described in Title 5, chapter 375, subchapter 2-A.

11. Client waiver void and unenforceable. Any waiver by a client of the provisions of this section is contrary to public policy and is void and unenforceable.

12. Right to civil action. This section may not be construed to prohibit a client or a client's authorized representative from:

A. Maintaining an action for harm caused to a client that is attributable to the use of artificial intelligence to assist in providing administrative support or supplementary support in the delivery of therapy or psychotherapy services;

B. Maintaining an action alleging professional negligence of a licensee; or

C. Seeking any other remedies available under other provisions of law.

Sec. 6. 32 MRSA §6207-D is enacted to read:

§6207-D. Use of artificial intelligence to assist in providing administrative support and supplementary support in therapy or psychotherapy services

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

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

(1) Managing appointment scheduling and reminders;

(2) Processing billing and insurance claims; and

(3) Drafting general communications related to the logistics of delivering therapy or psychotherapy services that do not include therapeutic communication.

B. "Artificial intelligence" means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs, such as predictions, content, recommendations or decisions, that can influence physical or virtual environments.

C. "Consent" means a clear, explicit and affirmative act by an individual that: unambiguously communicates the individual's express, informed, voluntary, specific and unambiguous written agreement, including a written agreement provided by electronic means or provided by initialing a specific section of an individual's general consent to treatment agreement; and is revocable by the individual.

"Consent" does not include an agreement that is obtained by:

(1) The acceptance of a general or broad terms-of-use agreement or a similar document that contains descriptions of artificial intelligence along with unrelated information;

(2) An individual's hovering over, muting, pausing or closing a given piece of electronic content; or

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

D. "Supplementary support" means tasks performed to assist a licensed professional in the delivery of therapy or psychotherapy services that do not involve therapeutic communication and that are not administrative support. "Supplementary support" includes, but is not limited to:

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

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

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

E. "Therapeutic communication" means any verbal, nonverbal or written interaction, conducted in a clinical or professional setting, that is intended to diagnose, treat or address an individual's mental, emotional or behavioral health concerns. "Therapeutic communication" includes, but is not limited to:

(1) Direct interactions with individuals for the purpose of understanding their thoughts, emotions or experiences;

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

(3) Offering emotional support, reassurance or empathy in response to psychological or emotional distress;

(4) Collaborating with individuals to develop or modify therapeutic goals or treatment plans; and

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

F. "Therapy or psychotherapy services" means services provided to diagnose, treat or address an individual's mental health or behavioral health through therapeutic communication.

2. Permitted use of artificial intelligence. A person licensed under this chapter, referred to in this section as "the licensee," may provide administrative support or supplementary support in the delivery of therapy or psychotherapy services through the use of artificial intelligence as long as the licensee acts within the scope of practice of the licensee's license, in accordance with any requirements and restrictions imposed by this chapter and in accordance with standards of practice, and only if:

A. The licensee maintains full responsibility for all interactions, outputs and data use associated with the use of artificial intelligence; and

B. For the use of artificial intelligence to assist in providing supplementary support, the licensee satisfies the requirements of subsection 3.

3. Requirements of use; supplementary support. A licensee may use artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services only when the client's therapeutic session is recorded or transcribed, and only if:

A. The client or the client's legally authorized representative is informed in writing of the following:

(1) That artificial intelligence will be used;

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

(3) How session data collected by artificial intelligence will be stored, retained, used for training and deleted upon termination of therapy or psychotherapy services; and

B. The client or the client's legally authorized representative provides consent to the use of artificial intelligence.

4. Prohibition of use. A licensee may use artificial intelligence to provide supplementary support only to the extent the use meets the requirements of subsection 3. A licensee may not allow artificial intelligence to:

A. Make independent therapeutic decisions;

B. Directly interact with clients in any form of therapeutic communication; or

C. Generate therapeutic recommendations or treatment plans without review and approval by the licensee.

5. Denial of treatment prohibited; failure to provide consent. A licensee may not deny, or refuse to provide, therapy or psychotherapy services to a client on the sole basis

that the client has not provided consent to the use of artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services.

6. Confidentiality. When using artificial intelligence pursuant to this section, a licensee shall comply with all state and federal confidentiality and privacy laws and shall ensure that any artificial intelligence technology is compliant with all state and federal confidentiality and privacy laws.

7. Professional responsibility. All laws and rules governing professional responsibility, unprofessional conduct and generally accepted standards of practice that apply to a licensee also apply to that licensee when using artificial intelligence pursuant to this section.

8. Violation. A violation of this section is subject to disciplinary action by the board pursuant to Title 10, section 8003, subsection 5.

9. Exception. This section does not apply to an artificial intelligence-based intervention that is used solely within a research project approved by an institutional review board, as defined in Title 22, section 1711-C, subsection 6, paragraph G, and conducted in compliance with all applicable federal protections for human subjects in research.

10. Rules. The board shall adopt rules to implement the requirements of this section. Rules adopted pursuant to this subsection are major substantive rules as described in Title 5, chapter 375, subchapter 2-A.

11. Client waiver void and unenforceable. Any waiver by a client of the provisions of this section is contrary to public policy and is void and unenforceable.

12. Right to civil action. This section may not be construed to prohibit a client or a client's authorized representative from:

A. Maintaining an action for harm caused to a client that is attributable to the use of artificial intelligence to assist in providing administrative support or supplementary support in the delivery of therapy or psychotherapy services;

B. Maintaining an action alleging professional negligence of a licensee; or

C. Seeking any other remedies available under other provisions of law.

Sec. 7. 32 MRSA §7009 is enacted to read:

§7009. Use of artificial intelligence to assist in providing administrative support and supplementary support in therapy or psychotherapy services

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

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

(1) Managing appointment scheduling and reminders;

(2) Processing billing and insurance claims; and

(3) Drafting general communications related to the logistics of delivering therapy or psychotherapy services that do not include therapeutic communication.

B. "Artificial intelligence" means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs, such as predictions, content, recommendations or decisions, that can influence physical or virtual environments.

C. "Consent" means a clear, explicit and affirmative act by an individual that: unambiguously communicates the individual's express, informed, voluntary, specific and unambiguous written agreement, including a written agreement provided by electronic means or provided by initialing a specific section of an individual's general consent to treatment agreement; and is revocable by the individual.

"Consent" does not include an agreement that is obtained by:

(1) The acceptance of a general or broad terms-of-use agreement or a similar document that contains descriptions of artificial intelligence along with unrelated information;

(2) An individual's hovering over, muting, pausing or closing a given piece of electronic content; or

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

D. "Supplementary support" means tasks performed to assist a licensed professional in the delivery of therapy or psychotherapy services that do not involve therapeutic communication and that are not administrative support. "Supplementary support" includes, but is not limited to:

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

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

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

E. "Therapeutic communication" means any verbal, nonverbal or written interaction, conducted in a clinical or professional setting, that is intended to diagnose, treat or address an individual's mental, emotional or behavioral health concerns. "Therapeutic communication" includes, but is not limited to:

(1) Direct interactions with individuals for the purpose of understanding their thoughts, emotions or experiences;

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

(3) Offering emotional support, reassurance or empathy in response to psychological or emotional distress;

(4) Collaborating with individuals to develop or modify therapeutic goals or treatment plans; and

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

F. "Therapy or psychotherapy services" means services provided to diagnose, treat or address an individual's mental health or behavioral health through therapeutic communication.

2. Permitted use of artificial intelligence. A person licensed under this chapter, referred to in this section as "the licensee," may provide administrative support or supplementary support in the delivery of therapy or psychotherapy services through the use of artificial intelligence as long as the licensee acts within the scope of practice of the licensee's license, in accordance with any requirements and restrictions imposed by this chapter and in accordance with standards of practice, and only if:

A. The licensee maintains full responsibility for all interactions, outputs and data use associated with the use of artificial intelligence; and

B. For the use of artificial intelligence to assist in providing supplementary support, the licensee satisfies the requirements of subsection 3.

3. Requirements of use; supplementary support. A licensee may use artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services only when the client's therapeutic session is recorded or transcribed, and only if:

A. The client or the client's legally authorized representative is informed in writing of the following:

(1) That artificial intelligence will be used;

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

(3) How session data collected by artificial intelligence will be stored, retained, used for training and deleted upon termination of therapy or psychotherapy services; and

B. The client or the client's legally authorized representative provides consent to the use of artificial intelligence.

4. Prohibition of use. A licensee may use artificial intelligence to provide supplementary support only to the extent the use meets the requirements of subsection 3. A licensee may not allow artificial intelligence to:

A. Make independent therapeutic decisions;

B. Directly interact with clients in any form of therapeutic communication; or

C. Generate therapeutic recommendations or treatment plans without review and approval by the licensee.

5. Denial of treatment prohibited; failure to provide consent. A licensee may not deny, or refuse to provide, therapy or psychotherapy services to a client on the sole basis that the client has not provided consent to the use of artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services.

6. Confidentiality. When using artificial intelligence pursuant to this section, a licensee shall comply with all state and federal confidentiality and privacy laws and shall ensure that any artificial intelligence technology is compliant with all state and federal confidentiality and privacy laws.

7. Professional responsibility. All laws and rules governing professional responsibility, unprofessional conduct and generally accepted standards of practice that apply to a licensee also apply to that licensee when using artificial intelligence pursuant to this section.

8. Violation. A violation of this section is subject to disciplinary action by the board pursuant to Title 10, section 8003, subsection 5.

9. Exception. This section does not apply to an artificial intelligence-based intervention that is used solely within a research project approved by an institutional review board, as defined in Title 22, section 1711-C, subsection 6, paragraph G, and conducted in compliance with all applicable federal protections for human subjects in research.

10. Rules. The board shall adopt rules to implement the requirements of this section. Rules adopted pursuant to this subsection are major substantive rules as described in Title 5, chapter 375, subchapter 2-A.

11. Client waiver void and unenforceable. Any waiver by a client of the provisions of this section is contrary to public policy and is void and unenforceable.

12. Right to civil action. This section may not be construed to prohibit a client or a client's authorized representative from:

A. Maintaining an action for harm caused to a client that is attributable to the use of artificial intelligence to assist in providing administrative support or supplementary support in the delivery of therapy or psychotherapy services;

B. Maintaining an action alleging professional negligence of a licensee; or

C. Seeking any other remedies available under other provisions of law.

Sec. 8. 32 MRSA §13870 is enacted to read:

§13870. Use of artificial intelligence to assist in providing administrative support and supplementary support in therapy or psychotherapy services

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

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

(1) Managing appointment scheduling and reminders;

(2) Processing billing and insurance claims; and

(3) Drafting general communications related to the logistics of delivering therapy or psychotherapy services that do not include therapeutic communication.

B. "Artificial intelligence" means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs, such as predictions, content, recommendations or decisions, that can influence physical or virtual environments.

C. "Consent" means a clear, explicit and affirmative act by an individual that: unambiguously communicates the individual's express, informed, voluntary, specific and unambiguous written agreement, including a written agreement provided by electronic means or provided by initialing a specific section of an individual's general consent to treatment agreement; and is revocable by the individual.

"Consent" does not include an agreement that is obtained by:

(1) The acceptance of a general or broad terms-of-use agreement or a similar document that contains descriptions of artificial intelligence along with unrelated information;

(2) An individual's hovering over, muting, pausing or closing a given piece of electronic content; or

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

D. "Supplementary support" means tasks performed to assist a licensed professional in the delivery of therapy or psychotherapy services that do not involve therapeutic communication and that are not administrative support. "Supplementary support" includes, but is not limited to:

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

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

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

E. "Therapeutic communication" means any verbal, nonverbal or written interaction, conducted in a clinical or professional setting, that is intended to diagnose, treat or address an individual's mental, emotional or behavioral health concerns. "Therapeutic communication" includes, but is not limited to:

(1) Direct interactions with individuals for the purpose of understanding their thoughts, emotions or experiences;

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

(3) Offering emotional support, reassurance or empathy in response to psychological or emotional distress;

(4) Collaborating with individuals to develop or modify therapeutic goals or treatment plans; and

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

F. "Therapy or psychotherapy services" means services provided to diagnose, treat or address an individual's mental health or behavioral health through therapeutic communication.

2. Permitted use of artificial intelligence. A person licensed under this chapter, referred to in this section as "the licensee," may provide administrative support or supplementary support in the delivery of therapy or psychotherapy services through the use of artificial intelligence as long as the licensee acts within the scope of practice of the licensee's license, in accordance with any requirements and restrictions imposed by this chapter and in accordance with standards of practice, and only if:

A. The licensee maintains full responsibility for all interactions, outputs and data use associated with the use of artificial intelligence; and

B. For the use of artificial intelligence to assist in providing supplementary support, the licensee satisfies the requirements of subsection 3.

3. Requirements of use; supplementary support. A licensee may use artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services only when the client's therapeutic session is recorded or transcribed, and only if:

A. The client or the client's legally authorized representative is informed in writing of the following:

(1) That artificial intelligence will be used;

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

(3) How session data collected by artificial intelligence will be stored, retained, used for training and deleted upon termination of therapy or psychotherapy services; and

B. The client or the client's legally authorized representative provides consent to the use of artificial intelligence.

4. Prohibition of use. A licensee may use artificial intelligence to provide supplementary support only to the extent the use meets the requirements of subsection 3. A licensee may not allow artificial intelligence to:

A. Make independent therapeutic decisions;

B. Directly interact with clients in any form of therapeutic communication; or

C. Generate therapeutic recommendations or treatment plans without review and approval by the licensee.

5. Denial of treatment prohibited; failure to provide consent. A licensee may not deny, or refuse to provide, therapy or psychotherapy services to a client on the sole basis that the client has not provided consent to the use of artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services.

6. Confidentiality. When using artificial intelligence pursuant to this section, a licensee shall comply with all state and federal confidentiality and privacy laws and shall ensure that any artificial intelligence technology is compliant with all state and federal confidentiality and privacy laws.

7. Professional responsibility. All laws and rules governing professional responsibility, unprofessional conduct and generally accepted standards of practice that apply to a licensee also apply to that licensee when using artificial intelligence pursuant to this section.

8. Violation. A violation of this section is subject to disciplinary action by the board pursuant to Title 10, section 8003, subsection 5.

9. Exception. This section does not apply to an artificial intelligence-based intervention that is used solely within a research project approved by an institutional review board, as defined in Title 22, section 1711-C, subsection 6, paragraph G, and conducted in compliance with all applicable federal protections for human subjects in research.

10. Rules. The board shall adopt rules to implement the requirements of this section. Rules adopted pursuant to this subsection are major substantive rules as described in Title 5, chapter 375, subchapter 2-A.

11. Client waiver void and unenforceable. Any waiver by a client of the provisions of this section is contrary to public policy and is void and unenforceable.

12. Right to civil action. This section may not be construed to prohibit a client or a client's authorized representative from:

A. Maintaining an action for harm caused to a client that is attributable to the use of artificial intelligence to assist in providing administrative support or supplementary support in the delivery of therapy or psychotherapy services;

B. Maintaining an action alleging professional negligence of a licensee; or

C. Seeking any other remedies available under other provisions of law.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment replaces the bill. The amendment prohibits any person from providing, advertising or otherwise offering therapy or psychotherapy services, including through the use of Internet-based artificial intelligence, to the public unless the therapy or psychotherapy services are provided by a licensed professional. The amendment provides an exception for an artificial intelligence-based intervention that is used solely within a research project conducted in compliance with all applicable federal protections for human subjects in research. A violation of the prohibition is a violation of the Maine Unfair Trade Practices Act.

The amendment authorizes certain licensed professionals who are able to provide therapy or psychotherapy services within the scope of their license to use artificial intelligence to assist in providing administrative support or supplementary support in therapy or psychotherapy services. The amendment provides requirements for the use of artificial intelligence as well as prohibitions on its use. The amendment establishes that any violation by a licensed professional is subject to disciplinary action by the relevant licensing board and clarifies that the statutory language may not be construed to prohibit a client or a client's authorized representative from maintaining an action for harm caused to a client that is attributable to the use of artificial intelligence to assist in providing administrative or supplementary support as part of therapy or psychotherapy services; maintaining an action alleging professional negligence by a licensee; or seeking any other remedies available under other provisions of law. The amendment also requires that each respective licensing board adopt rules to implement these requirements and designates those rules as major substantive subject to legislative review and approval.

FISCAL NOTE REQUIRED

(See attached)