

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 before the summary and inserting in its place the following:

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

§1150-EE. Use of artificial intelligence to assist in providing administrative support and supplementary support in therapy or psychotherapy 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. "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 therapy logistics that do not include therapeutic communication.~~

~~AB. "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; 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. "Department" means the Department of Professional and Financial Regulation.~~

~~BE. "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) A licensed clinical psychologist as defined in Title 34-B, section 3801, subsection 3 *licensed pursuant to Title 32, chapter 56*;~~

~~(2) A licensed clinical social worker as defined in Title 32, section 7001-A, subsection 6 *licensed pursuant to Title 32, chapter 83*;~~

~~(3) A licensed social worker as defined in Title 32, section 7001-A, subsection 8 *licensed pursuant to Title 32, chapter 83*;~~

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~~(4) A licensed professional counselor as defined in Title 32, section 18553, subsection 15 **licensed pursuant to Title 32, chapter 119;**~~

~~(5) A licensed clinical professional counselor as defined in Title 32, section 13851, subsection 2 **licensed pursuant to Title 32, chapter 119;**~~

~~(6) A licensed marriage and family therapist as defined in Title 32, section 13851, subsection 7 **licensed pursuant to Title 32, chapter 119;**~~

~~(7) **An** certified alcohol and drug counselor as defined in Title 32, section 6203-A, subsection 5 or a licensed alcohol and drug counselor as defined in Title 32, section 6203-A, subsection 9 **licensed or certified pursuant to Title 32, chapter 81 and** authorized to provide therapy or psychotherapy services;~~

~~(8) A professional music therapist;~~

~~**(89)** A licensed advanced practice registered nurse as defined in Title 32, section 2102, subsection 5-A **licensed pursuant to Title 32, chapter 31;**~~

~~(10) A certified intentional peer support specialist;~~

~~(11) A recovery coach;~~

~~**(912)** A psychiatrist. For the purposes of this subparagraph, "psychiatrist" means a physician licensed to practice medicine under Title 32, chapter **36 or 48**, subchapter 2 who specializes in the diagnosis and treatment of mental disorders. **and**~~

~~(13) Any other professional authorized by this State to provide therapy or psychotherapy services, except for a physician.~~

~~F. "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.~~

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

~~(1) Direct interactions with clients 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 clients to develop or modify therapeutic goals or treatment plans; and~~

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

CH. "Therapy or psychotherapy services" means services provided to diagnose, treat or improve an individual's mental health or behavioral health.

~~2. Permitted use of artificial intelligence. A licensed professional may use artificial intelligence to assist in providing administrative support or supplementary support in therapy or psychotherapy services only if the licensed professional maintains full responsibility for all interactions, outputs and data use associated with the use of artificial intelligence and satisfies the requirements of subsection 3.~~

~~3. Requirements of use. A licensed professional may use artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services when the client's therapeutic session is recorded or transcribed 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 use2. Therapy or psychotherapy services through use of Internet-based artificial intelligence prohibited. 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 and involve therapeutic communication with an individual. A licensed professional may use artificial intelligence only to the extent the use meets the requirements of subsection 3. A licensed professional 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 licensed professional.~~

~~5. Disclosure of records and communications. All records kept by a licensed professional and all communications between an individual seeking therapy or psychotherapy services and a licensed professional or between a client and a licensed professional are confidential and may not be disclosed except as required under law.~~

~~6. Enforcement and penalties. A person found in violation of this section shall pay a civil penalty to the department in an amount not to exceed \$10,000 per violation, as determined by the department. The penalty must be assessed based on the degree of harm and the circumstances of the violation. The civil penalty must be assessed by the department after a hearing is held in accordance with the Maine Administrative Procedure Act. A person found in violation of this section shall pay the civil penalty within 60 days after the date of an order by the department.~~

~~The department has authority to investigate any actual, alleged or suspected violation of this section.~~

~~3. Violation. A violation of subsection 2 by a person providing therapy or psychotherapy services to the public is a violation of the Maine Unfair Trade Practices Act.~~

~~47. Exceptions. This section does not apply to:~~

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A. 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; and

B. An artificial intelligence-based intervention that is authorized or reimbursed under a program administered by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, including demonstration waivers or innovation models, and conducted in compliance with all federal laws and regulations.

C. The use of artificial intelligence by a health carrier, health plan, managed care organization, utilization review organization, or third-party administrator for purposes of claims processing, utilization review, care management, quality improvement, fraud detection, network management, or payment determinations, provided that such use does not involve therapeutic communication or the delivery of therapy or psychotherapy services directly to an individual.