A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

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

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

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

Section 3 defines a "mental health companion chatbot", in part, as an AI system that:
- Uses generative artificial intelligence to provide adaptive, personalized, and emotionally resonant responses to sustain a one-on-one relationship with a user;
- Engages in interactive conversations similar to those an individual would have with a licensed mental health professional; and
- Is represented by the AI systems provider as, or that a reasonable person believes to be, capable of providing mental health therapy or of helping to manage or treat mental health conditions.

Sections 2, 5, 6, and 7:
- Declare that an AI systems provider engages in the unauthorized practice of psychotherapy if the AI system used:
  - Represents, states, or indicates, explicitly or implicitly, that the AI system is a human mental health provider or is authorized to engage in the practice of psychotherapy;
  - Uses prohibited titles, abbreviations or descriptions of professions, credentials, or services that only a mental health professional authorized to provide psychotherapy in the state (regulated professional) may use;
  - Delivers psychotherapy services that would be considered the practice of psychotherapy without oversight by an individual who is a regulated professional; or
  - Is a mental health companion chatbot and: Fails to provide clear and conspicuous notice to the user that the AI system is not a human and is not authorized to provide psychotherapy, therapy, or counseling or to manage or treat mental health conditions; fails to disclose that the AI system is artificial intelligence

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

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

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

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

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

2   **SECTION 1. Legislative declaration.** (1) The general assembly

3   finds and declares that:

4   (a) Health-care decisions affect the most intimate, complex, and

5   consequential aspects of human life, including physical survival, mental

6   well-being, family stability, and personal dignity, and therefore must be

7   grounded in compassion, clinical judgment, and individualized

8   understanding;

1   (b) Artificial intelligence systems may offer valuable tools to

2   support efficiency, data analysis, and administrative functions in

3   health-care delivery; however, these systems cannot comprehend the full

4   breadth and depth of the human experience, including trauma, culture,

5   disability, grief, fear, hope, and the lived realities that shape patient health

6   outcomes;

7   (c) The state of Colorado has a compelling interest in ensuring

8   that health care remains human-centered and that decisions involving

9   coverage determinations, medical necessity, and access to treatment,

10   particularly denials or delays of care, are made by qualified human

11   clinicians or physicians who are accountable for these decisions and can

12   exercise professional judgment and ethical reasoning;

13   (d) Reliance on automated or algorithmic systems to make or

14   materially influence adverse health-care determinations without

15   meaningful human oversight risks compounding inequities, embedding

16   bias, and eroding trust between patients, providers, and health-care

17   systems;

18   (e) Artificial intelligence systems may be used as an assistive tool

19   in health-care delivery and administration but must not replace human

20   judgment, human accountability, or the therapeutic relationship that is

21   essential to safe, ethical, and effective care; and

22   (f) Every Coloradan, regardless of income, insurance status,

23   disability, language access needs, race, ethnicity, geography, or

24   immigration status, deserves access to human-centered health care that

25   recognizes their dignity, individuality, and humanity.

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

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

1   to ensure transparency, accountability, equity, and patient safety;

2   (b) Prohibit automated systems from making adverse coverage

3   determinations without qualified human review; and

4   (c) Preserve the central role of licensed clinicians in decisions that

5   affect the health, well-being, and lives of Coloradans.

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

7   follows:

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

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

10   **services - definitions.**

11   (1) AS USED IN THIS SECTION:

12   (a) "ALGORITHM" MEANS A COMPUTATIONAL OR MACHINE

13   LEARNING PROCESS THAT INFORMS HUMAN DECISION-MAKING IN

14   INSURANCE PRACTICES.

15   (b) "ARTIFICIAL INTELLIGENCE SYSTEM" OR "AI SYSTEM" MEANS

16   A MACHINE-BASED SYSTEM THAT, FOR ANY EXPLICIT OR IMPLICIT

17   OBJECTIVE, INFERS FROM THE INPUTS THE SYSTEM RECEIVES HOW TO

18   GENERATE OUTPUTS, INCLUDING CONTENT, DECISIONS, PREDICTIONS, OR

19   RECOMMENDATIONS, THAT CAN INFLUENCE PHYSICAL OR VIRTUAL

20   ENVIRONMENTS.

21   (c) "BEHAVIORAL HEALTH ADMINISTRATIVE SERVICES

22   ORGANIZATION" MEANS AN ORGANIZATION SELECTED BY THE BEHAVIORAL

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

24   AND MAINTAIN A NETWORK OF BEHAVIORAL HEATH PROVIDERS.

25   (d) "MANAGED CARE ENTITY" HAS THE MEANING SET FORTH IN

26   SECTION 25.5-5-403 (4).

27   (e) "PRIVATE UTILIZATION REVIEW ORGANIZATION" OR

1   "ORGANIZATION" MEANS A PRIVATE UTILIZATION REVIEW ORGANIZATION,

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

3   PERFORMS PRIOR AUTHORIZATION ON BEHALF OF A CARRIER.

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

5   SECTION APPLY TO:

6   (a) A CARRIER THAT:

7   (I) USES AN ARTIFICIAL INTELLIGENCE SYSTEM OR ALGORITHM FOR

8   THE PURPOSE OF UTILIZATION REVIEW; OR

9   (II) CONTRACTS WITH OR OTHERWISE WORKS THROUGH A PERSON

10 THAT USES AN ARTIFICIAL INTELLIGENCE SYSTEM OR ALGORITHM FOR THE

11 PURPOSE OF UTILIZATION REVIEW;

12   (b) A PHARMACY BENEFIT MANAGER OR PRIVATE UTILIZATION

13 REVIEW ORGANIZATION THAT CONTRACTS WITH A CARRIER TO PROVIDE

14 UTILIZATION REVIEW SERVICES ON BEHALF OF THE CARRIER AND USES AN

15 ARTIFICIAL INTELLIGENCE SYSTEM OR ALGORITHM FOR THE PURPOSE OF

16 CONDUCTING THE UTILIZATION REVIEW; AND

17   (c) A BEHAVIORAL HEALTH ADMINISTRATIVE SERVICES

18 ORGANIZATION OR MANAGED CARE ENTITY THAT USES AN ARTIFICIAL

19 INTELLIGENCE SYSTEM OR ALGORITHM FOR THE PURPOSE OF CONDUCTING

20 UTILIZATION REVIEW OF MENTAL OR BEHAVIORAL HEALTH SERVICES.

21   (3) A PERSON DESCRIBED IN SUBSECTION (2) OF THIS SECTION THAT

22 USES AN ARTIFICIAL INTELLIGENCE SYSTEM OR ALGORITHM TO CONDUCT

23 UTILIZATION REVIEW SHALL ENSURE THAT:

24   (a) THE ARTIFICIAL INTELLIGENCE SYSTEM OR ALGORITHM BASES

25 ITS DETERMINATION ON THE FOLLOWING INFORMATION, AS APPLICABLE:

26   (I) AN INDIVIDUAL'S MEDICAL OR OTHER CLINICAL HISTORY;

27   (II) INDIVIDUAL CLINICAL CIRCUMSTANCES AS PRESENTED BY THE

1 REQUESTING PROVIDER; AND

2 (III) OTHER RELEVANT CLINICAL INFORMATION CONTAINED IN THE

3 INDIVIDUAL'S MEDICAL OR OTHER CLINICAL RECORD;

4 (b) THE ARTIFICIAL INTELLIGENCE SYSTEM OR ALGORITHM DOES

5 NOT BASE ITS DETERMINATIONS SOLELY ON GROUP DATA, WITHOUT

6 REFERENCE TO THE INDIVIDUAL'S DATA;

7 (c) (I) THE USE OF THE ARTIFICIAL INTELLIGENCE SYSTEM OR

8 ALGORITHM DOES NOT, DIRECTLY OR INDIRECTLY:

9 (A) RESULT IN ALGORITHMIC DISCRIMINATION AS DEFINED IN

10 SECTION 6-1-1701 OR UNFAIR DISCRIMINATION PURSUANT TO SECTION

11 10-3-1104; OR

12 (B) UNFAIRLY DISCRIMINATE PURSUANT TO SECTION 10-3-1104.9;

13 AND

14 (II) THE ARTIFICIAL INTELLIGENCE SYSTEM OR ALGORITHM IS NOT

15 USED IN ANY WAY THAT DISCRIMINATES AGAINST INDIVIDUALS IN

16 VIOLATION OF OTHER STATE OR FEDERAL LAWS RELATING TO ACCESS TO

17 HEALTH-CARE SERVICES AND UTILIZATION AND PAYMENT FOR THOSE

18 SERVICES;

19 (d) THE ARTIFICIAL INTELLIGENCE SYSTEM OR ALGORITHM IS

20 FAIRLY AND EQUITABLY APPLIED, INCLUDING IN ACCORDANCE WITH

21 APPLICABLE REGULATIONS AND GUIDANCE ISSUED BY THE FEDERAL

22 DEPARTMENT OF HEALTH AND HUMAN SERVICES;

23 (e) THE ARTIFICIAL INTELLIGENCE SYSTEM OR ALGORITHM

24 PRODUCES AND RETAINS DOCUMENTATION, AUDIT LOGS, AND

25 MODEL-GOVERNANCE RECORDS IN ORDER TO DEMONSTRATE COMPLIANCE

26 WITH THIS SECTION AND SECTION 10-3-1104.9;

27 (f) THE ARTIFICIAL INTELLIGENCE SYSTEM'S OR ALGORITHM'S

1   PERFORMANCE, USE, AND OUTCOMES ARE PERIODICALLY REVIEWED TO

2   MAXIMIZE ACCURACY AND RELIABILITY;

3   (g)   AN INDIVIDUAL'S HEALTH DATA IS NOT USED BEYOND ITS

4   INTENDED OR STATED PURPOSE, CONSISTENT WITH APPLICABLE STATE AND

5   FEDERAL LAWS; AND

6   (h)   THE ARTIFICIAL INTELLIGENCE SYSTEM'S OR ALGORITHM'S

7   CRITERIA AND GUIDELINES COMPLY WITH OTHER APPLICABLE STATE OR

8   FEDERAL LAWS CONCERNING UTILIZATION REVIEW AND COVERAGE FOR

9   HEALTH-CARE SERVICES.

10   (4)   A PERSON DESCRIBED IN SUBSECTION (2) OF THIS SECTION

11   SHALL   PROVIDE   WRITTEN   DISCLOSURES   TO   THE   DIVISION,   THE

12   DEPARTMENT OF HUMAN SERVICES, OR THE DEPARTMENT OF HEALTH CARE

13   POLICY   AND   FINANCING,   AS   APPLICABLE,   PERTAINING   TO   HOW   THE

14   ARTIFICIAL   INTELLIGENCE   SYSTEM   OR   ALGORITHM   WILL   BE   USED   AND

15   WHAT   OVERSIGHT   WILL   BE   PROVIDED   BY   THE   PERSON   DESCRIBED   IN

16   SUBSECTION (2) OF THIS SECTION.

17   (5) (a)   NOTWITHSTANDING SUBSECTION (3) OF THIS SECTION, AN

18   ARTIFICIAL INTELLIGENCE SYSTEM OR ALGORITHM MAY BE USED TO ASSIST

19   WITH UTILIZATION REVIEW, INCLUDING EXPEDITED APPROVALS.

20   (b) A CARRIER'S DENIAL OR DELAY OF COVERAGE BASED IN WHOLE

21   OR IN PART ON MEDICAL NECESSITY SHALL NOT BE ISSUED SOLELY ON THE

22   OUTPUT OF AN AI SYSTEM OR ALGORITHM WITHOUT INDEPENDENT REVIEW

23   AND   APPROVAL   OF   THE   DENIAL   OR   DELAY   BY   A   LICENSED   CLINICIAN,

24   LICENSED   PHYSICIAN,   OR   OTHER   REGULATED   PROFESSIONAL   THAT   IS

25   COMPETENT TO EVALUATE THE SPECIFIC CLINICAL ISSUES INVOLVED IN THE

26   HEALTH-CARE SERVICES REQUESTED BY THE PROVIDER AND A REVIEW OF

27   THE HEALTH BENEFIT PLAN'S TERMS OF COVERAGE FOR THE HEALTH-CARE

1 SERVICE.

2 (6) **Prohibition on payment for AI-delivered psychotherapy**

3 **services.**

4 (a) A CARRIER OFFERING A HEALTH BENEFIT PLAN ISSUED OR

5 RENEWED IN THE STATE ON OR AFTER THE EFFECTIVE DATE OF THIS

6 SECTION SHALL NOT PROVIDE COVERAGE FOR SERVICES THAT CONSTITUTE

7 PSYCHOTHERAPY SERVICES, AS DEFINED IN SECTION 12-245-202 (14),

8 THAT ARE PROVIDED DIRECTLY TO AN INDIVIDUAL AND THAT ARE

9 CONDUCTED BY AN AI SYSTEM OR ALGORITHM.

10 (b) SUBSECTION (6)(a) OF THIS SECTION DOES NOT PROHIBIT THE

11 USE OF BILLING SOFTWARE, ELECTRONIC HEALTH RECORDS, VIDEO

12 PLATFORMS, OR OTHER NONTHERAPEUTIC SOFTWARE TOOLS INCIDENT TO

13 SERVICES PROVIDED BY A HUMAN PROVIDER.

14 (c) THE USE OF VIDEOCONFERENCING, MESSAGING PLATFORMS, OR

15 OTHER COMMUNICATIONS SOFTWARE TO ENABLE SUPERVISION OR

16 CONSULTATION BY A LICENSED, REGISTERED, OR CERTIFIED INDIVIDUAL

17 DOES NOT CONSTITUTE SUPERVISION OR CONSULTATION THAT IS

18 CONDUCTED BY AN ARTIFICIAL INTELLIGENCE SYSTEM OR ALGORITHM, AS

19 REFERENCED IN SUBSECTION (6)(a) OF THIS SECTION.

20 **SECTION 3.** In Colorado Revised Statutes, 12-245-202, **amend**

21 (1); and **add** (1.5), (4.5), and (9.5) as follows:

22 **12-245-202. Definitions.**

23 As used in this article 245, unless the context otherwise requires:

24 (1) "Board" includes the state board of psychologist examiners,

25 the state board of social work examiners, the state board of licensed

26 professional counselor examiners, the state board of marriage and family

27 therapist examiners, the state board of unlicensed psychotherapists, and

1 ~~the state board of addiction counselor examiners~~ "ARTIFICIAL

2 INTELLIGENCE SYSTEM" OR "AI SYSTEM" HAS THE MEANING SET FORTH IN

3 SECTION 10-16-112.7 (1)(b) AND INCLUDES A MENTAL HEALTH

4 COMPANION CHATBOT.

5   (1.5) "BOARD" INCLUDES THE STATE BOARD OF PSYCHOLOGIST

6 EXAMINERS, THE STATE BOARD OF SOCIAL WORK EXAMINERS, THE STATE

7 BOARD OF LICENSED PROFESSIONAL COUNSELOR EXAMINERS, THE STATE

8 BOARD OF MARRIAGE AND FAMILY THERAPIST EXAMINERS, THE STATE

9 BOARD OF UNLICENSED PSYCHOTHERAPISTS, AND THE STATE BOARD OF

10 ADDICTION COUNSELOR EXAMINERS.

11   (4.5) "GENERATIVE AI" HAS THE MEANING SET FORTH IN SECTION

12 1-46-102 (4).

13   (9.5) (a) "MENTAL HEALTH COMPANION CHATBOT" MEANS AN

14 ARTIFICIAL INTELLIGENCE SYSTEM THAT:

15   (I) USES GENERATIVE AI TECHNOLOGY THAT, THROUGH DESIGN

16 AND FUNCTION, IS CAPABLE OF GENERATING ADAPTIVE, PERSONALIZED,

17 AND EMOTIONALLY RESONANT RESPONSES TO SUSTAIN A COHERENT,

18 ONE-ON-ONE CONVERSATIONAL RELATIONSHIP WITH A USER;

19   (II) ENGAGES IN INTERACTIVE CONVERSATIONS WITH A USER

20 SIMILAR TO THE CONFIDENTIAL COMMUNICATIONS THAT AN INDIVIDUAL

21 WOULD HAVE WITH A HUMAN LICENSEE, REGISTRANT, OR CERTIFICATE

22 HOLDER CONCERNING MENTAL OR BEHAVIORAL HEALTH CONDITIONS; AND

23   (III) IS REPRESENTED BY THE PERSON THAT PROVIDES OR MAKES

24 THE AI SYSTEM AVAILABLE FOR USE IN THE STATE AS, OR THAT A

25 REASONABLE PERSON BELIEVES TO BE, CAPABLE OF PROVIDING MENTAL

26 HEALTH THERAPY OR OF HELPING TO MANAGE OR TREAT MENTAL OR

27 BEHAVIORAL HEALTH CONDITIONS.

1   (b) "MENTAL HEALTH COMPANION CHATBOT" DOES NOT INCLUDE

2 AN ARTIFICIAL INTELLIGENCE SYSTEM THAT ONLY:

3   (I) PROVIDES SCRIPTED OUTPUT, SUCH AS GUIDED MEDITATIONS,

4 MINDFULNESS EXERCISES, OR OTHER WELLNESS PRACTICES; OR

5   (II)   ANALYZES AN INDIVIDUAL'S INPUT FOR PURPOSES OF

6 CONNECTING THE INDIVIDUAL WITH A HUMAN LICENSEE, REGISTRANT, OR

7 CERTIFICATE HOLDER.

8   **SECTION 4.** In Colorado Revised Statutes, 12-245-216, **add**

9 (3.5) as follows:

10   **12-245-216. Mandatory disclosure of information to clients -**

11 **use of artificial intelligence in psychotherapy practice.**

12   (3.5) IF A LICENSEE, REGISTRANT, OR CERTIFICATE HOLDER USES

13 AN ARTIFICIAL INTELLIGENCE SYSTEM FOR ANY PURPOSE RELATING TO THE

14 PRACTICE OF PSYCHOTHERAPY, THEY MUST INCLUDE WITH THE

15 INFORMATION PROVIDED TO THE CLIENT PURSUANT TO SUBSECTION (1)(d)

16 OF THIS SECTION INFORMATION CONCERNING:

17   (a) THE NAME OF THE AI SYSTEM USED;

18   (b) WHETHER A THERAPEUTIC OR DIAGNOSTIC DEVICE USED BY A

19 CLIENT THAT INCLUDES AN ARTIFICIAL INTELLIGENCE SYSTEM IS A

20 FEDERAL DRUG ADMINISTRATION-APPROVED DEVICE;

21   (c) A WEBSITE ADDRESS WHERE THE AI SYSTEM OR THERAPEUTIC

22 OR DIAGNOSTIC DEVICE IS DESCRIBED;

23   (d)   THE SPECIFIC PURPOSES FOR WHICH THE LICENSEE,

24 REGISTRANT, OR CERTIFICATE HOLDER USES AI SYSTEMS OR THERAPEUTIC

25 OR DIAGNOSTIC DEVICES IN THEIR PRACTICE AND WHEN AI SYSTEMS OR

26 DEVICES ARE USED;

27   (e)   WHETHER THERE IS A BUSINESS ASSOCIATE AGREEMENT

1 BETWEEN THE LICENSEE, REGISTRANT, OR CERTIFICATE HOLDER AND THE

2 PROVIDER OF THE AI SYSTEM OR THERAPEUTIC OR DIAGNOSTIC DEVICE

3 USED;

4 (f) HOW THE LICENSEE, REGISTRANT, OR CERTIFICATE HOLDER

5 PROTECTS AGAINST THE DISCLOSURE OF CONFIDENTIAL COMMUNICATIONS

6 OF PATIENT INFORMATION PURSUANT TO SECTION 12-245-220 AND THE

7 FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

8 OF 1996", AS AMENDED, PUB.L. 104-191.

9 (g) THE RIGHT OF THE CLIENT TO CONSENT TO ANY DISCLOSURE OF

10 CONFIDENTIAL COMMUNICATIONS.

11 **SECTION 5.** In Colorado Revised Statutes, 12-245-224, **add**

12 (1)(t)(VI) as follows:

13 **12-245-224. Prohibited activities - related provisions -**

14 **definition.**

15 (1) A person licensed, registered, or certified under this article 245

16 violates this article 245 if the person:

17 (t) Has engaged in any of the following activities and practices:

18 (VI) CHARGES, BILLS, OR OTHERWISE REQUESTS OR RECEIVES

19 PAYMENT OR OTHER BENEFIT FROM A PUBLIC OR PRIVATE PAYER FOR:

20 (A) PSYCHOTHERAPY SERVICES THAT ARE PROVIDED DIRECTLY TO

21 A CLIENT AND THAT ARE CONDUCTED BY AN ARTIFICIAL INTELLIGENCE

22 SYSTEM;

23 (B) PROFESSIONAL SUPERVISION OF A REGISTRANT THAT IS

24 CONDUCTED BY AN ARTIFICIAL INTELLIGENCE SYSTEM; OR

25 (C) PROFESSIONAL CONSULTATION WITH A LICENSEE, REGISTRANT,

26 OR CERTIFICATE HOLDER THAT IS CONDUCTED BY AN ARTIFICIAL

27 INTELLIGENCE SYSTEM;

1   **SECTION 6.** In Colorado Revised Statutes, **add** 12-245-228.5 as

2   follows:

3   **12-245-228.5. Unauthorized practice of psychotherapy - use**

4   **of artificial intelligence - penalties - definition.**

5   (1) AS USED IN THIS SECTION, "IDENTIFIABLE MENTAL HEALTH

6   DATA" MEANS INFORMATION THAT DIRECTLY OR INDIRECTLY IDENTIFIES

7   A USER AND RELATES TO THE USER'S MENTAL HEALTH CONDITION,

8   SYMPTOMS, TREATMENT HISTORY, OR PSYCHOLOGICAL STATE.

9   (2) A PERSON THAT PROVIDES OR MAKES AVAILABLE FOR USE IN

10   THE STATE AN ARTIFICIAL INTELLIGENCE SYSTEM ENGAGES IN THE

11   UNAUTHORIZED PRACTICE OF PSYCHOTHERAPY IF:

12   (a) THE ARTIFICIAL INTELLIGENCE SYSTEM:

13   (I) REPRESENTS, STATES, OR INDICATES, EXPLICITLY OR

14   IMPLICITLY, THAT THE AI SYSTEM OR ANY COMPONENT, FEATURE, OR

15   EMBODIMENT OF THE AI SYSTEM IS A MENTAL HEALTH PROVIDER,

16   INCLUDING A LICENSEE, REGISTRANT, CERTIFICATE HOLDER, SCHOOL

17   COUNSELOR, OR OTHER MENTAL OR BEHAVIORAL HEALTH PROVIDER;

18   (II) USES PROHIBITED TITLES, ABBREVIATIONS OR DESCRIPTIONS

19   OF PROFESSIONS, CREDENTIALS, OR SERVICES THAT WOULD VIOLATE

20   SECTION 12-245-218 IF USED BY AN INDIVIDUAL WHO IS NOT LICENSED,

21   CERTIFIED, OR REGISTERED PURSUANT TO THIS ARTICLE 245;

22   (III) REPRESENTS, STATES, OR INDICATES, EXPLICITLY OR

23   IMPLICITLY, THAT THE AI SYSTEM IS AUTHORIZED TO ENGAGE IN THE

24   PRACTICE OF PSYCHOTHERAPY IN THE STATE; OR

25   (IV) DELIVERS PSYCHOTHERAPY SERVICES THAT WOULD BE

26   CONSIDERED THE PRACTICE OF PSYCHOTHERAPY WITHOUT OVERSIGHT BY

27   AN INDIVIDUAL WHO IS NOT LICENSED, CERTIFIED, OR REGISTERED

1   PURSUANT TO THIS ARTICLE 245; OR

2   (b) THE ARTIFICIAL INTELLIGENCE SYSTEM IS A MENTAL HEALTH

3   COMPANION CHATBOT AND:

4   (I) FAILS TO PROVIDE CLEAR AND CONSPICUOUS NOTICE TO THE

5   USER THAT THE USER IS INTERACTING WITH AN AI SYSTEM THAT IS NOT A

6   HUMAN AND IS NOT LICENSED BY THE STATE TO PROVIDE PSYCHOTHERAPY,

7   THERAPY, OR COUNSELING OR TO MANAGE OR TREAT MENTAL OR

8   BEHAVIORAL HEALTH CONDITIONS:

9   (A) AT THE BEGINNING OF A USER INTERACTION AND THROUGH A

10   POP-UP WINDOW THAT APPEARS AT LEAST EVERY THIRTY MINUTES

11   THEREAFTER DURING THE SAME SESSION OR ENCOUNTER; AND

12   (B) WHEN ASKED BY THE USER IF THE MENTAL HEALTH

13   COMPANION CHATBOT IS ARTIFICIAL INTELLIGENCE, IS A CHATBOT, OR IS

14   HUMAN;

15   (II) THE PERSON THAT PROVIDES OR MAKES THE MENTAL HEALTH

16   COMPANION CHATBOT AVAILABLE FOR USE IN THE STATE FAILS TO

17   IMPLEMENT A PROTOCOL FOR ADDRESSING SUICIDAL IDEATION OR

18   SELF-HARM EXPRESSED BY A USER TO THE MENTAL HEALTH COMPANION

19   CHATBOT THAT INCLUDES A CLEAR AND CONSPICUOUS NOTIFICATION THAT

20   REFERS THE USER TO CRISIS SERVICES PROVIDERS, INCLUDING A SUICIDE

21   HOTLINE OR CRISIS TEXT LINE; OR

22   (III) THE PERSON THAT PROVIDES OR MAKES THE MENTAL HEALTH

23   COMPANION CHATBOT AVAILABLE FOR USE IN THE STATE:

24   (A) SELLS, SHARES, TRANSFERS, DISCLOSES, OR OTHERWISE MAKES

25   AVAILABLE ANY IDENTIFIABLE MENTAL HEALTH DATA COLLECTED FROM

26   A USER OF THE MENTAL HEALTH COMPANION CHATBOT; OR

27   (B) REQUIRES A USER TO CONSENT TO THE SALE OR TRANSFER OF

1   IDENTIFIABLE MENTAL HEALTH DATA AS A CONDITION OF ACCESS TO THE

2   MENTAL HEALTH COMPANION CHATBOT.

3   (3)   A PERSON THAT PROVIDES OR MAKES A MENTAL HEALTH

4   COMPANION CHATBOT AVAILABLE FOR USE IN THE STATE SHALL REPORT

5   ANNUALLY TO THE OFFICE OF SUICIDE PREVENTION IN THE DEPARTMENT

6   OF PUBLIC HEALTH AND ENVIRONMENT CONCERNING THE NUMBER OF

7   TIMES THAT THE MENTAL HEALTH COMPANION CHATBOT DETECTED

8   EXHIBITIONS OF SUICIDAL IDEATION BY USERS AND THE NUMBER OF TIMES

9   THE MENTAL HEALTH COMPANION CHATBOT BROUGHT UP SUICIDAL

10   IDEATION OR ACTIONS WITH THE USER.

11   (4)   NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, A

12   PERSON THAT PROVIDES OR MAKES AVAILABLE FOR USE IN THE STATE AN

13   ARTIFICIAL INTELLIGENCE SYSTEM THAT PROVIDES GENERAL

14   INFORMATION, SUPPORT, OR EDUCATION AND THAT DOES NOT ENGAGE IN

15   THE CONDUCT PROHIBITED PURSUANT TO SUBSECTION (2) OF THIS SECTION

16   IS NOT ENGAGED IN THE UNAUTHORIZED PRACTICE OF PSYCHOTHERAPY.

17   (5)   THIS SECTION DOES NOT APPLY TO THE DEVELOPMENT,

18   TESTING, OR EVALUATION OF AN ARTIFICIAL INTELLIGENCE SYSTEM

19   CONDUCTED SOLELY FOR RESEARCH PURPOSES UNDER THE OVERSIGHT OF

20   AN INSTITUTIONAL REVIEW BOARD REGISTERED WITH THE UNITED STATES

21   DEPARTMENT OF HEALTH AND HUMAN SERVICES, SO LONG AS THE AI

22   SYSTEM IS NOT OFFERED TO CONSUMERS OR USED TO PROVIDE

23   PSYCHOTHERAPY SERVICES OUTSIDE OF THE RESEARCH SETTING.

24   **SECTION 7.** In Colorado Revised Statutes, **add** 25.5-1-209 as

25   follows:

26   **25.5-1-209.   Prohibition on payment for AI-delivered**

27   **psychotherapy services.**

1 A PAYER OF MENTAL OR BEHAVIORAL HEALTH-CARE SERVICES

2 PROVIDED UNDER THE "COLORADO MEDICAL ASSISTANCE ACT", AS

3 SPECIFIED IN ARTICLES 4, 5, AND 6 OF THIS TITLE 25.5, OR THE "CHILDREN'S

4 BASIC HEALTH PLAN ACT", AS SPECIFIED IN ARTICLE 8 OF THIS TITLE 25.5,

5 SHALL NOT PAY FOR SERVICES THAT CONSTITUTE PSYCHOTHERAPY

6 SERVICES, AS DEFINED IN SECTION 12-245-202 (14), THAT ARE PROVIDED

7 DIRECTLY TO AN INDIVIDUAL AND THAT ARE CONDUCTED BY AN

8 ARTIFICIAL INTELLIGENCE SYSTEM, AS THAT TERM IS DEFINED IN SECTION

9 10-16-112.7 (1)(b).

10 **SECTION 8. Effective date - applicability.** This act takes effect

11 January 1, 2027, and applies to actions taken on or after said date.

12 **SECTION 9. Safety clause.** The general assembly finds,

13 determines, and declares that this act is necessary for the immediate

14 preservation of the public peace, health, or safety or for appropriations for

15 the support and maintenance of the departments of the state and state

16 institutions.