

1 SENATE BILL NO. 269

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the Senate Committee on General Laws and Technology

4 on _____)

5 (Patron Prior to Substitute—Senator Favola)

6 *A BILL to amend the Code of Virginia by adding a section numbered 54.1-2400.1:1, relating to use of*
7 *artificial intelligence system by mental health service providers; civil penalty.*8 **Be it enacted by the General Assembly of Virginia:**9 **1. That the Code of Virginia is amended by adding a section numbered 54.1-2400.1:1 as follows:**10 **§ 54.1-2400.1:1. Use of artificial intelligence by mental health service providers; civil penalty.**11 **A. As used in this section:**12 *"Administrative support" means tasks performed to assist a mental health service provider in the delivery*
13 *of mental health services that do not involve therapeutic communication. "Administrative support" includes*
14 *(i) managing appointment scheduling and reminders, (ii) processing billing and insurance claims, and (iii)*
15 *drafting general communications related to mental health services logistics that do not include therapy or*
16 *counseling.*17 *"Artificial intelligence system" means any machine learning-based system that, for any explicit or implicit*
18 *objective, infers from the inputs such system receives how to generate outputs, including content, decisions,*
19 *predictions, and recommendations, that can influence physical or virtual environments. "Artificial*
20 *intelligence system" does not include any artificial intelligence system or general purpose artificial*
21 *intelligence model that is used for development, prototyping, and research activities before such artificial*
22 *intelligence system or general purpose artificial intelligence model is made available to deployers or*
23 *consumers.*24 *"Mental health service provider" has the same meaning as provided in § 54.1-2400.1.*25 *"Peer support" means services provided by individuals with lived experience of mental health conditions*
26 *or recovery from substance use that are intended to offer encouragement, understanding, and guidance*
27 *without clinical intervention.*28 *"Religious counseling" means counseling provided by clergy members, pastoral counselors, or other*
29 *religious leaders acting within the scope of their religious duties if the services are explicitly faith-based and*
30 *are not represented as clinical mental health services or therapy services.*31 *"Therapeutic communication" means any verbal, nonverbal, or written interaction conducted in a clinical*
32 *or professional setting that is intended to diagnose or treat an individual's mental, emotional, or behavioral*

33 *health concerns. "Therapeutic communication" includes (i) direct clinical interactions with clients that*
34 *constitutes the delivery of therapy or psychotherapy services; (ii) providing independent clinical guidance,*
35 *strategies, or interventions designed to achieve mental health outcomes; (iii) offering emotional support,*
36 *reassurance, or empathy in response to psychological or emotional distress, including suicidal or violent*
37 *ideations; (iv) collaborating with clients to develop or modify therapeutic goals or treatment plans; and (v)*
38 *offering behavioral feedback that constitutes the delivery of therapy or psychotherapy services.*

39 *B. A mental health service provider may use an artificial intelligence system to assist in providing therapy*
40 *or counseling services if such mental health service provider maintains full responsibility for all interactions,*
41 *outputs, and data use associated with the system.*

42 *No licensed professional shall be permitted to use an artificial intelligence system in providing therapy or*
43 *counseling services pursuant to this subsection when the session is recorded or transcribed unless:*

44 *1. The mental health service provider discloses to the patient or the patient's legally authorized*
45 *representative (i) that an artificial intelligence system will be used and (ii) the specific purpose of the*
46 *artificial intelligence system that will be used; and*

47 *2. At the initial appointment, the mental health service provider discloses its artificial intelligence system*
48 *use and policies related to such use and the patient or the patient's legally authorized representative provides*
49 *written or digital consent to the use of an artificial intelligence system as permitted by this section. The*
50 *mental health service provider shall give notice of any change in its policies related to the use of an artificial*
51 *intelligence system to any patient or such patient's legally authorized representative who has consented to the*
52 *use of an artificial intelligence system pursuant to this subdivision.*

53 *C. A person or business entity may not provide, advertise, or otherwise offer therapy or counseling*
54 *services, including through the use of an artificial intelligence system, to the public in the Commonwealth*
55 *unless the therapy or counseling services are conducted by a mental health service provider.*

56 *D. A mental health service provider may use an artificial intelligence system only to the extent that such*
57 *use meets the requirements of subsection B. No mental health service provider shall allow an artificial*
58 *intelligence system to:*

59 *1. Make independent therapeutic decisions;*
60 *2. Directly interact with clients in any form of therapeutic communication without provider oversight; or*
61 *3. Generate therapeutic recommendations, diagnose, or implement treatment plans without review,*
62 *oversight, and approval by the licensed professional.*

63 *E. All records kept by a mental health service provider and all communications between an individual*

64 *seeking therapy or counseling services and a mental health service provider shall be confidential pursuant to*
65 *the requirements of § 32.1-127.1:03 and shall not be disclosed unless such disclosure complies with the*
66 *requirements of § 32.1-127.1:03.*

67 *F. This section does not apply to religious counseling, peer support, or self-help materials and*
68 *educational resources that are available to the public and do not purport to offer therapy or counseling*
69 *services.*

70 *G. Any person who violates the provisions of this section shall be subject to a civil penalty not to exceed*
71 *\$10,000. Such penalty shall be collected by the Department of Health Professions and shall be deposited into*
72 *the general fund.*