

SENATE BILL NO. 269

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

on _____)

(Patron Prior to Substitute—Senator Favola)

A BILL to amend the Code of Virginia by adding a section numbered 54.1-2400.1:1, relating to use of artificial intelligence system by mental health service providers; civil penalty.

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 54.1-2400.1:1 as follows:****§ 54.1-2400.1:1. Use of artificial intelligence by mental health service providers; civil penalty.****A. As used in this section:**

"Administrative support" means tasks performed to assist a mental health service provider in the delivery of mental health services that do not involve therapeutic communication. "Administrative support" includes (i) managing appointment scheduling and reminders, (ii) processing billing and insurance claims, and (iii) drafting general communications related to mental health services logistics that do not include therapy or counseling.

"Artificial intelligence system" means any machine learning-based system that, for any explicit or implicit objective, infers from the inputs such system receives how to generate outputs, including content, decisions, predictions, and recommendations, that can influence physical or virtual environments. "Artificial intelligence system" does not include any artificial intelligence system or general purpose artificial intelligence model that is used for development, prototyping, and research activities before such artificial intelligence system or general purpose artificial intelligence model is made available to deployers or consumers.

"Mental health service provider" has the same meaning as provided in § 54.1-2400.1.

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

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

"Therapeutic communication" means any verbal, nonverbal, or written interaction conducted in a clinical or professional setting that is intended to diagnose or treat an individual's mental, emotional, or behavioral

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

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

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

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

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

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

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

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

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.*