SENATE . . . . No. 2632

The Commonwealth of Massachusetts

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In the One Hundred and Ninety-Fourth General Court
(2025-2026)

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SENATE, October 16, 2025.

The committee on Advanced Information Technology, the Internet and Cybersecurity to whom was referred the petition (accompanied by bill, Senate, No. 46) of Michael O. Moore and James B. Eldridge for legislation relative to the use of artificial intelligence and other software tools in healthcare decision-making, report the accompanying bill (Senate, No. 2632).

For the committee,

Michael O. Moore

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The Commonwealth of Massachusetts

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An Act relative to the use of artificial intelligence and other software tools in healthcare decision-making.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1   SECTION 1. Chapter 112 of the General Laws is hereby amended by adding the

2   following section:-

3   Section 298. Wellness and Oversight for Psychological Resources.

4   (a) As used in this section, unless the context otherwise requires:

5   "Administrative support" means tasks performed to assist a licensed professional in the

6   delivery of therapy or psychotherapy services that do not involve communication.

7   "Administrative support" includes, but is not limited to, the following:

8   (1) managing appointment scheduling and reminders;

9   (2) processing billing and insurance claims; and

10   (3) drafting general communications related to therapy logistics that do not include

11   therapeutic advice.

12   "Artificial intelligence" means an engineered or machine-based system that varies in its

13   level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives

14   how to generate outputs that can influence physical or virtual environments.

15   "Consent" means a clear, explicit affirmative act by an individual that: (i) unambiguously

16   communicates the individual's express, freely given, informed, voluntary, specific, and

17   unambiguous written agreement, including a written agreement provided by electronic means,

18   and (ii) is revocable by the individual.

19   "Consent" does not include an agreement that is obtained by the following: (1) the

20   acceptance of a general or broad terms of use agreement or a similar document that contains

21   description of artificial intelligence along with other unrelated information; (2) an individual

22   hovering over, muting, pausing, or closing a given piece of digital content; or (3) an agreement

23   obtained through the use of deceptive actions.

24   "Division" means the Division of Occupational Licensure.

25   "Licensed professional" means an individual who holds a valid license issued by this

26   State to provide therapy or psychotherapy services, including: (1) a licensed clinical

27   psychologist; (2) a licensed clinical social worker; (3) a licensed social worker; (4) a licensed

28   professional counselor; (5) a licensed clinical professional counselor; (6) a licensed marriage and

29   family therapist; (7) a certified alcohol and other drug counselor authorized to provide therapy or

30   psychotherapy services; (8) a licensed professional music therapist; (9) a licensed advanced

31   practice registered nurse; and (10) any other professional authorized by this State to provide

32   therapy or psychotherapy services, except for a physician.

33   "Peer support" means services provided by individuals with lived experience of mental

34   health conditions or recovery from substance use that are intended to offer encouragement,

35   understanding, and guidance without clinical intervention.

36   "Religious counseling" means counseling provided by clergy members, pastoral

37   counselors, or other religious leaders acting within the scope of their religious duties if the

38   services are explicitly faith-based and are not represented as clinical mental health services or

39   therapy or psychotherapy services.

40   "Supplementary support" means tasks performed to assist a licensed professional in the

41   delivery of therapy or psychotherapy services that do not involve therapeutic communication and

42   that are not administrative support.

43   "Supplementary support" includes, but is not limited to, the following: (1) preparing and

44   maintaining client records, including therapy notes; (2) analyzing anonymized data to track client

45   progress or identify trends, subject to review by a licensed professional; and (3) identifying and

46   organizing external resources or referrals for client use.

47   "Therapeutic communication" means any verbal, non-verbal, or written interaction

48   conducted in a clinical or professional setting that is intended to diagnose, treat, or address an

49   individual's mental, emotional, or behavioral health concerns.

50   "Therapeutic communication" includes, but is not limited to: (1) direct interactions with

51   clients for the purpose of understanding or reflecting their thoughts, emotions, or experiences;

52   (2) providing guidance, therapeutic strategies, or interventions designed to achieve mental health

53   outcomes; (3) offering emotional support, reassurance, or empathy in response to psychological

54   or emotional distress; (4) collaborating with clients to develop or modify therapeutic goals or

55   treatment plans; and (5) offering behavioral feedback intended to promote psychological growth

56   or address mental health conditions.

57   "Therapy or psychotherapy services" means services provided to diagnose, treat, or

58   improve an individual's mental health or behavioral health. "Therapy or psychotherapy services"

59   does not include religious counseling or peer support.

60   (b) As used in this Section, "permitted use of artificial intelligence" means the use of

61   artificial intelligence tools or systems by a licensed professional to assist in providing

62   administrative support or supplementary support in therapy or psychotherapy services where the

63   licensed professional maintains full responsibility for all interactions, outputs, and data use

64   associated with the system and satisfies the requirements of subsection (c).

65   (c) No licensed professional shall be permitted to use artificial intelligence to assist in

66   providing supplementary support in therapy or psychotherapy where the client's therapeutic

67   session is recorded or transcribed unless:

68   (1) the patient or the patient's legally authorized representative is informed in writing of

69   the following:

70   (A) that artificial intelligence will be used; and

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

72   (2) the patient or the patient's legally authorized representative provides consent to the

73   use of artificial intelligence.

74   (d) An individual, corporation, or entity may not provide, advertise, or otherwise offer

75   therapy or psychotherapy services, including through the use of Internet-based artificial

76   intelligence, to the public in this State unless the therapy or psychotherapy services are

77   conducted by an individual who is a licensed professional.

78   (e) A licensed professional may use artificial intelligence only to the extent the use meets

79   the requirements of subsections (b) and (c). A licensed professional may not allow artificial

80   intelligence to do any of the following:

81   (1) make independent therapeutic decisions;

82   (2) directly interact with clients in any form of therapeutic communication;

83   (3) generate therapeutic recommendations or treatment plans without review and

84   approval by the licensed professional; or

85   (4) detect emotions or mental states.

86   (f) All records kept by a licensed professional and all communications between an

87   individual seeking therapy or psychotherapy services and a licensed professional shall be

88   confidential and shall not be disclosed except as required by law.

89   (g) Any individual, corporation, or entity found in violation of this section shall pay a

90   civil penalty to the division in an amount not to exceed $10,000 per violation, as determined by

91   the division, with penalties assessed based on the degree of harm and the circumstances of the

92   violation. The civil penalty shall be assessed by the division after a hearing.

93   An individual, corporation, or entity found in violation of this section shall pay the civil

94   penalty within 60 days after the date of an order by the division imposing the civil penalty. The

95   order shall constitute a judgment and may be filed and executed in the same manner as any

96   judgment from a court of record.

97   (h) The division shall have authority to investigate any actual, alleged, or suspected

98   violation of this Act.

99   (i) This section does not apply to the following:

100   (1) religious counseling;

101   (2) peer support; and

102   (3) self-help materials and educational resources that are available to the public and

103   do not purport to offer therapy or psychotherapy services.

104   SECTION 2. Section 12 of Chapter 176O of the General Laws is hereby amended by

105   inserting at the end thereof the following subsections:-

106   (g)(1) A carrier or a utilization review organization that uses an artificial intelligence,

107   algorithm, or other software tool for the purpose of utilization review or utilization management

108   functions, based in whole or in part on medical necessity, or that contracts with or otherwise

109   works through an entity that uses an artificial intelligence, algorithm, or other software tool for

110   the purpose of utilization review or utilization management functions, based in whole or in part

111   on medical necessity, shall comply with this subsection and shall ensure all of the following:

112   (A) The artificial intelligence, algorithm, or other software tool bases its determination on

113   the following information, as applicable:

114   (i) An insured's medical or other clinical history.

115   (ii) Individual clinical circumstances as presented by the requesting provider.

116   (iii) Other relevant clinical information contained in the insured's medical or other

117   clinical record.

118   (B) The artificial intelligence, algorithm, or other software tool does not base its

119   determination solely on a group dataset.

120   (C) The artificial intelligence, algorithm, or other software tools criteria and guidelines

121   complies with this chapter and applicable state and federal law.

122   (D) The artificial intelligence, algorithm, or other software tool does not supplant health

123   care provider decision-making.

124   (E) The use of the artificial intelligence, algorithm, or other software tool does not

125   discriminate, directly or indirectly, against any insured in violation of state or federal law,

126   including but not limited to chapter 151B.

127   (F) The artificial intelligence, algorithm, or other software tool is fairly and equitably

128   applied, including in accordance with any applicable regulations and guidance issued by state

129   and federal agencies.

130   (G) The artificial intelligence, algorithm, or other software tool is open to inspection for

131   audit or compliance reviews by the division and by the executive office of health and human

132   services pursuant to applicable state and federal law.

133   (H) Disclosures pertaining to the use and oversight of the artificial intelligence,

134   algorithm, or other software tool are contained in the written policies and procedures, as required

135   by subsection (a).

136   (I) The artificial intelligence, algorithm, or other software tools performance, use, and

137   outcomes are periodically reviewed and revised to maximize accuracy and reliability.

138   (J) Patient data is not used beyond its intended and stated purpose, and consistent with

139   state and federal law.

140   (K) The artificial intelligence, algorithm, or other software tool does not directly or

141   indirectly cause harm to the insured.

142   (2) Notwithstanding paragraph (1), the artificial intelligence, algorithm, or other software

143   tool shall not deny, delay, or modify health care services based, in whole or in part, on medical

144   necessity. A determination of medical necessity shall be made only by a licensed physician or a

145   licensed health care professional competent to evaluate the specific clinical issues involved in the

146   health care services requested by the provider, as provided in subsection (a), by reviewing and

147   considering the requesting providers recommendation, the insured's medical or other clinical

148   history, as applicable, and individual clinical circumstances.

149   (3) For purposes of this subsection, artificial intelligence means an engineered or

150   machine-based system that varies in its level of autonomy and that can, for explicit or implicit

151   objectives, infer from the input it receives how to generate outputs that can influence physical or

152   virtual environments.

153   (4) This subsection shall apply to utilization review or utilization management functions

154   that prospectively, retrospectively, or concurrently review requests for covered health care

155   services.

156 (5) A health benefit plan subject to this subsection shall comply with applicable state and

157 federal rules and guidance regarding the use of artificial intelligence, algorithm, or other

158 software tools. The division and the executive office of health and human services may issue

159 guidance to implement this paragraph within one year of the adoption of state or federal rules or

160 the issuance of guidance by the federal Department of Health and Human Services regarding the

161 use of artificial intelligence, algorithm, or other software tools. Such guidance shall not be

162 subject to chapter 30A.

163 (6) This subsection applies to a MassHealth managed health benefit plan only to the

164 extent that the executive office of health and human services obtains any necessary federal

165 approvals, and federal financial participation is not otherwise jeopardized.

166 (7) This subsection shall apply to an insured regardless of the residency of the individual.

167 (8) A violation of this subsection constitutes an injury to the insured. The insured may

168 bring a civil action against the party that commits the violation. In a civil action brought under

169 this subsection in which an insured prevails, the court may award the plaintiff:

170 (A) Damages in an amount not more than $5,000 per insured per violation or actual

171 damages, whichever is greater;

172 (B) punitive damages;

173 (C) injunctive relief; and

174 (D) reasonable attorney's fees and litigation costs.