SENATE . . . . . No. 3206

Senate, July 23, 2026 -- Text of amendment (76) (offered by Senator Moore) to the Ways and Means amendment (Senate, No. 3178) to the House Bill relative to economic development in the commonwealth.

The Commonwealth of Massachusetts

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

by inserting after section __ the following section:-

SECTION __. Chapter 112 of the General Laws is hereby amended by adding the following section:-

“Section 298.

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

"Administrative support" means tasks performed to assist a licensed professional in the delivery of therapy or psychotherapy services that do not involve communication.

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

(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 advice.

"Artificial intelligence" means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

“Bureau” means the Bureau of Health Professions Licensure.

“Consent" means a clear, explicit affirmative act by an individual that: (i) unambiguously communicates the individual's express, freely given, informed, voluntary, specific, and unambiguous written agreement, including a written agreement provided by electronic means, and (ii) is revocable by the individual.

"Consent" does not include an agreement that is obtained by the following: (1) the acceptance of a general or broad terms of use agreement or a similar document that contains description of artificial intelligence along with other unrelated information; (2) an individual hovering over, muting, pausing, or closing a given piece of digital content; or (3) an agreement obtained through the use of deceptive actions.

"Licensed professional" means an individual who holds a valid license issued by this State to provide therapy or psychotherapy services, including: (1) a licensed clinical psychologist; (2) a licensed clinical social worker; (3) a licensed social worker; (4) a licensed professional counselor; (5) a licensed clinical professional counselor; (6) a licensed marriage and family therapist; (7) a certified alcohol and other drug counselor authorized to provide therapy or psychotherapy services; (8) a licensed advanced practice registered nurse; (9) a licensed physician who specializes in the practice of psychiatry; and (10) any other professional authorized by this State to provide therapy or psychotherapy services.

"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 or psychotherapy services.

"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, the following: (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.

"Therapeutic communication" means any verbal, non-verbal, or written interaction conducted in a clinical or professional setting that is intended to diagnose, treat, or address an individual'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 or reflecting 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.

"Therapy or psychotherapy services" means services provided to diagnose, treat, or improve an individual's mental health or behavioral health. "Therapy or psychotherapy services" does not include religious counseling or peer support.

(b) As used in this section, "permitted use of artificial intelligence" means the use of artificial intelligence tools or systems by a licensed professional to assist in providing administrative support or supplementary support in therapy or psychotherapy services where the licensed professional maintains full responsibility for all interactions, outputs, and data use associated with the system and satisfies the requirements of subsection (c); and provided, that an artificial intelligence that conducts administrative support shall not communicate or interact with a patient or the patient's legally authorized representative in a manner that reasonably misleads the patient or the patient's legally authorized representative about its artificial identity; provided further that an artificial intelligence system shall not violate this clause if it includes a disclosure in its communications that is clear, conspicuous, and reasonably designed to inform the patient or patient's legally authorized representative with whom the artificial intelligence communicates or interacts that it is artificial intelligence.

(c) No licensed professional shall be permitted to use artificial intelligence to assist in providing supplementary support in therapy or psychotherapy where the client's therapeutic session is recorded or transcribed unless:

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

(A) that artificial intelligence will be used; and

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

(2) the patient or the patient's legally authorized representative provides consent to the use of artificial intelligence.

(d) An individual, corporation, or entity may not provide, advertise, or otherwise offer therapy or psychotherapy services, including through the use of Internet-based artificial intelligence, to the public in this State unless the therapy or psychotherapy services are conducted by an individual who is a licensed professional.

(e) A licensed professional may use artificial intelligence only to the extent the use meets the requirements of subsections (b) and (c). A licensed professional may not allow artificial intelligence to do any of the following:

(1) make independent therapeutic decisions;

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

(3) generate therapeutic recommendations or treatment plans without review and approval by the licensed professional; or

(4) detect emotions or mental states without review and approval by the licensed professional.

(f) All records kept by a licensed professional and all communications between an individual seeking therapy or psychotherapy services and a licensed professional shall be confidential and shall not be disclosed except as required by law.

(g) Any individual, corporation, or entity found in violation of this section shall pay a civil penalty to the bureau in an amount not to exceed $10,000 per violation, as determined by the bureau, with penalties assessed based on the degree of harm and the circumstances of the violation. The civil penalty shall be assessed by the bureau after a hearing.

An individual, corporation, or entity found in violation of this section shall pay the civil penalty within 60 days after the date of an order by the bureau imposing the civil penalty. The order shall constitute a judgment and may be filed and executed in the same manner as any judgment from a court of record.

(h) The bureau shall have authority to investigate any actual, alleged, or suspected violation of this section.

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

(1) religious counseling;

(2) peer support; and

(3) self-help materials and educational resources that are available to the public and do not purport to offer therapy or psychotherapy services."

SECTION ___. Section 12 of Chapter 176O of the General Laws is hereby amended by inserting at the end thereof the following subsections:-

"(g)(1) A carrier or a utilization review organization that uses an artificial intelligence, algorithm, or other software tool for the purpose of utilization review or utilization management functions, based in whole or in part on medical necessity, or that contracts with or otherwise works through an entity that uses an artificial intelligence, algorithm, or other software tool for

the purpose of utilization review or utilization management functions, based in whole or in part on medical necessity, shall comply with this subsection and shall ensure all of the following:

(A) The artificial intelligence, algorithm, or other software tool bases its determination on the following information, as applicable:

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

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

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

(B) The artificial intelligence, algorithm, or other software tool does not base its determination solely on a group dataset.

(C) The artificial intelligence, algorithm, or other software tools criteria and guidelines complies with this chapter and applicable state and federal law.

(D) The artificial intelligence, algorithm, or other software tool does not supplant health care provider decision-making.

(E) The use of the artificial intelligence, algorithm, or other software tool does not discriminate, directly or indirectly, against any insured in violation of state or federal law, including but not limited to chapter 151B.

(F) The artificial intelligence, algorithm, or other software tool is fairly and equitably applied, including in accordance with any applicable regulations and guidance issued by state and federal agencies.

(G) The artificial intelligence, algorithm, or other software tool is open to inspection for audit or compliance reviews by the division and by the executive office of health and human services pursuant to applicable state and federal law.

(H) Disclosures pertaining to the use and oversight of the artificial intelligence, algorithm, or other software tool are contained in the written policies and procedures, as required by subsection (a).

(I) The artificial intelligence, algorithm, or other software tools performance, use, and outcomes are periodically reviewed and revised to maximize accuracy and reliability.

(J) Patient data is not used beyond its intended and stated purpose, and consistent with state and federal law.

(K) The artificial intelligence, algorithm, or other software tool does not directly or indirectly cause harm to the insured.

(2) Notwithstanding paragraph (1), the artificial intelligence, algorithm, or other software tool shall not deny, delay, or modify health care services based, in whole or in part, on medical necessity. A determination of medical necessity shall be made only by a licensed physician or a licensed health care professional competent to evaluate the specific clinical issues involved in the health care services requested by the provider, as provided in subsection (a), by reviewing and considering the requesting providers recommendation, the insured's medical or other clinical history, as applicable, and individual clinical circumstances.

(3) For purposes of this subsection, artificial intelligence means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit

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

(4) This subsection shall apply to utilization review or utilization management functions that prospectively, retrospectively, or concurrently review requests for covered health care services.

(5) A health benefit plan subject to this subsection shall comply with applicable state and federal rules and guidance regarding the use of artificial intelligence, algorithm, or other software tools. The division and the executive office of health and human services may issue guidance to implement this paragraph within one year of the adoption of state or federal rules or the issuance of guidance by the federal Department of Health and Human Services regarding the use of artificial intelligence, algorithm, or other software tools. Such guidance shall not be subject to chapter 30A.

(6) This subsection applies to a MassHealth managed health benefit plan only to the extent that the executive office of health and human services obtains any necessary federal approvals, and federal financial participation is not otherwise jeopardized.

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

(8) A violation of this subsection constitutes an injury to the insured. The insured may bring a civil action against the party that commits the violation. In a civil action brought under this subsection in which an insured prevails, the court may award the plaintiff:

(A) Damages in an amount not more than $5,000 per insured per violation or actual damages, whichever is greater;

(B) punitive damages;

(C) injunctive relief; and

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

SECTION __. The health policy commission shall study and make recommendations related to government oversight or restrictions on the use of artificial intelligence in medical care. The study and recommendations shall include, but are not limited to: (i) a review of the use of artificial intelligence in the provision of medical care, including medical care provided or offered through internet-based artificial intelligence; (ii) an evaluation of existing protections for patients related to the use of artificial intelligence in the provision of medical care in the commonwealth and the sufficiency of such protections; (iii) a review of relevant literature and an analyses of the positive and negative outcomes and impacts of the use of artificial intelligence in the provision of medical care in the commonwealth and other states, including but not limited to, financial and care quality outcomes; and (iv) an evaluation of laws and regulations implemented, considered, or enacted in other states relevant to improving patient protections related to the use of artificial intelligence in the provision of medical care. The commission shall file the report of its study and recommendations with the clerks of the house of representatives and the senate, the house and senate committee on ways and means, the joint committee on health care financing, and the joint committee on advanced information technology, the internet, and cybersecurity no later than August 1, 2027.