

1 AN ACT relating to artificial intelligence and declaring an emergency.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 3 of this Act:*

6 *(1) "Administrative support":*

7 *(a) Means tasks performed to assist a licensed professional in the delivery of*
8 *therapy or psychotherapy services that do not involve therapeutic*
9 *communication; and*

10 *(b) Includes but is not limited to:*

11 *1. Managing appointment scheduling and reminders;*

12 *2. Processing billing and insurance claims; and*

13 *3. Drafting general communications related to therapy logistics that do*
14 *not include therapeutic communication or advice;*

15 *(2) "Artificial intelligence" has the same meaning as in KRS 42.722;*

16 *(3) "Consent":*

17 *(a) Means a clear, explicit affirmative act by an individual that:*

18 *1. Unambiguously communicates the individual's express, freely given,*
19 *informed, voluntary, specific, and unambiguous written agreement,*
20 *including a written agreement provided by electronic means; and*

21 *2. Is revocable by the individual; and*

22 *(b) Does not include an agreement that is obtained by:*

23 *1. The acceptance of a general or broad terms of use agreement or a*
24 *similar document that contains descriptions of artificial intelligence*
25 *along with other unrelated information;*

26 *2. An individual hovering over, muting, pausing, or closing a given piece*
27 *of digital content; or*

1 3. Deceptive actions;

2 (4) "Licensed professional":

3 (a) Means an individual who holds a valid license or certificate issued by any
4 agency of this Commonwealth to provide therapy or psychotherapy services,
5 including:

6 1. A licensed psychologist licensed under KRS Chapter 319;

7 2. A licensed clinical social worker licensed under KRS 335.100;

8 3. A certified social worker licensed under KRS 335.080;

9 4. A professional counselor credentialed under KRS 335.500 to 335.599;

10 5. A marriage and family therapist licensed under KRS 335.300 to
11 335.399;

12 6. A licensed alcohol and drug counselor licensed under KRS 309.080 to
13 309.089 authorized to provide therapy or psychotherapy services;

14 7. A licensed professional art therapist licensed under KRS 309.130 to
15 309.1399;

16 8. An advanced practice registered nurse licensed under KRS Chapter
17 314 engaged in providing mental health services; and

18 9. Any other professional authorized by this Commonwealth through a
19 license or certificate to provide therapy or psychotherapy services; and

20 (b) Does not include a physician;

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

24 (6) "Permitted use of artificial intelligence" means the use of artificial intelligence
25 tools or systems by a licensed professional to assist in providing administrative
26 support or supplementary support in therapy or psychotherapy services where the
27 licensed professional maintains full responsibility for all interactions, outputs,

1 and data use associated with the system and satisfies the requirements of Section
2 2 of this Act;

3 (7) "Relevant board" means the applicable state board that licenses, certifies,
4 regulates, or oversees the specific type of licensed professional;

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

9 (9) "Supplementary support" includes but is not limited to the:

10 (a) Preparing and maintaining of client records, including therapy notes;

11 (b) Analyzing of anonymized data to track client progress or identify trends,
12 subject to review by a licensed professional; and

13 (c) Identifying and organizing of external resources or referrals for client use;

14 (10) "Therapeutic communication":

15 (a) Means any verbal, nonverbal, or written interaction conducted in a clinical
16 or professional setting that is intended to diagnose, treat, or address an
17 individual's mental, emotional, or behavioral health concern; and

18 (b) Includes but is not limited to:

19 1. Direct interactions with clients for the purpose of understanding or
20 reflecting their thoughts, emotions, or experiences;

21 2. Providing guidance, therapeutic strategies, or interventions designed
22 to achieve mental health outcomes;

23 3. Offering emotional support, reassurance, or empathy in response to
24 psychological or emotional distress;

25 4. Collaborating with clients to develop or modify therapeutic goals or
26 treatment plans; and

27 5. Offering behavioral feedback intended to promote psychological

1 growth or address mental health conditions; and

2 (11) "Therapy or psychotherapy services":

3 (a) Means services provided by a licensed professional to diagnose, treat, or
4 improve an individual's mental health or behavioral health; and

5 (b) Does not include religious counseling, self-help materials and educational
6 resources, or peer support.

7 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
8 READ AS FOLLOWS:

9 (1) A licensed professional:

10 (a) Shall not use artificial intelligence to assist in providing supplementary
11 support in therapy or psychotherapy services where the client's therapeutic
12 session is recorded or transcribed unless:

13 1. The patient or the patient's legally authorized representative is
14 informed in writing of the following:

15 a. That artificial intelligence will be used; and

16 b. The specific purpose of the artificial intelligence tool or system
17 that will be used; and

18 2. The patient or the patient's legally authorized representative provides
19 consent to the use of artificial intelligence;

20 (b) May use artificial intelligence only to the extent it is a permitted use of
21 artificial intelligence and the use meets the requirements of this section;
22 and

23 (c) Shall not allow artificial intelligence to:

24 1. Make independent therapeutic decisions; or

25 2. Generate therapeutic recommendations or treatment plans without
26 review and approval by the licensed professional.

27 (2) An individual, corporation, or entity shall not provide, advertise, or otherwise

1 offer therapy or psychotherapy services, including through the use of internet-
2 based artificial intelligence, to the public in this Commonwealth unless the
3 therapy or psychotherapy services are performed by an individual who is a
4 licensed professional.

5 (3) All records kept by a licensed professional and all communications between an
6 individual seeking therapy or psychotherapy services and a licensed professional
7 shall be confidential and shall not be disclosed except as required by KRS
8 210.235.

9 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
10 READ AS FOLLOWS:

11 (1) Any individual, corporation, or entity found to be in violation of Sections 1 to 3 of
12 this Act shall pay a civil penalty to the relevant board in an amount not to exceed
13 ten thousand dollars (\$10,000) per violation, as determined by the relevant board,
14 with penalties assessed based on the degree of harm and the circumstances of the
15 violation.

16 (2) A civil penalty shall be:

17 (a) Assessed by the relevant board after a hearing is held by the relevant board
18 in accordance with KRS Chapter 13B; and

19 (b) Paid within sixty (60) days after the date of an order by the relevant board
20 imposing the civil penalty.

21 (3) The relevant board shall have authority to investigate any actual, alleged, or
22 suspected violation of Sections 1 to 3 of this Act.

23 (4) Sections 1 to 3 of this Act do not apply to religious counseling, peer support, or
24 self-help materials and educational resources that are available to the public and
25 do not purport to offer therapy or psychotherapy services.

26 ➔Section 4. Whereas the General Assembly seeks to protect vulnerable
27 Kentuckians from harm caused by artificial intelligence, an emergency is declared to

- 1 exist, and this Act takes effect upon its passage and approval by the Governor or upon its
- 2 otherwise becoming a law.