

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) "Department" means the Department of Professional Licensing in the Public  
3                   Protection Cabinet;

4                   (5) "Licensed professional":

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

8                   1. A licensed psychologist licensed under the provisions of KRS Chapter  
9                   319;

10                  2. A licensed clinical social worker licensed under the provisions of KRS  
11                  335.100;

12                  3. A certified social worker licensed under the provisions of KRS  
13                  335.080;

14                  4. A professional counselor credentialed under the provisions of KRS  
15                  335.500 to 335.599;

16                  5. A marriage and family therapist licensed under the provisions of KRS  
17                  335.500 to 335.599;

18                  6. A licensed alcohol and drug counselor licensed under the provisions  
19                  of KRS 309.080 to 309.089 authorized to provide therapy or  
20                  psychotherapy services;

21                  7. An art therapist certified under KRS 309.130;

22                  8. An advanced practice registered nurse licensed under the provisions of  
23                  KRS Chapter 314 engaged in providing mental health services; and

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

26                  (b) Does not include a physician;

27                  (6) "Peer support" means services provided by individuals with lived experience of

1       mental health conditions or recovery from substance use that are intended to  
2       offer encouragement, understanding, and guidance without clinical intervention;

3       (7) "Permitted use of artificial intelligence" means the use of artificial intelligence  
4       tools or systems by a licensed professional to assist in providing administrative  
5       support or supplementary support in therapy or psychotherapy services where the  
6       licensed professional maintains full responsibility for all interactions, outputs,  
7       and data use associated with the system and satisfies the requirements of Section  
8       2 of this Act;

9       (8) "Relevant board" means the applicable state board that licenses, certifies,  
10       regulates, or oversees the specific type of licensed professional;

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

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

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

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

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

20       (11) "Therapeutic communication":

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

24               (b) Includes but is not limited to:

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

27                       2. Providing guidance, therapeutic strategies, or interventions designed

- 1 to achieve mental health outcomes;  
2 3. Offering emotional support, reassurance, or empathy in response to  
3 psychological or emotional distress;  
4 4. Collaborating with clients to develop or modify therapeutic goals or  
5 treatment plans; and  
6 5. Offering behavioral feedback intended to promote psychological  
7 growth or address mental health conditions; and

8 (12) "Therapy or psychotherapy services":

- 9 (a) Means services provided to diagnose, treat, or improve an individual's  
10 mental health or behavioral health; and  
11 (b) Does not include religious counseling or peer support.

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

14 (1) A licensed professional:

- 15 (a) Shall not use artificial intelligence to assist in providing supplementary  
16 support in therapy or psychotherapy services where the client's therapeutic  
17 session is recorded or transcribed unless:  
18 1. The patient or the patient's legally authorized representative is  
19 informed in writing of the following:  
20 a. That artificial intelligence will be used; and  
21 b. The specific purpose of the artificial intelligence tool or system  
22 that will be used; and  
23 2. The patient or the patient's legally authorized representative provides  
24 consent to the use of artificial intelligence;  
25 (b) May use artificial intelligence only to the extent it is a permitted use of  
26 artificial intelligence and the use meets the requirements of this section;  
27 (c) Shall not allow artificial intelligence to:

- 1           1. Make independent therapeutic decisions;
- 2           2. Directly interact with clients in any form of therapeutic
- 3           communication;
- 4           3. Generate therapeutic recommendations or treatment plans without
- 5           review and approval by the licensed professional; or
- 6           4. Detect emotions or mental state; and

7   (2) An individual, corporation, or entity shall not provide, advertise, or otherwise  
8   offer therapy or psychotherapy services, including through the use of internet-  
9   based artificial intelligence, to the public in this Commonwealth unless the  
10   therapy or psychotherapy services are performed by an individual who is a  
11   licensed professional.

12   (3) All records kept by a licensed professional and all communications between an  
13   individual seeking therapy or psychotherapy services and a licensed professional  
14   shall be confidential and shall not be disclosed except as required by KRS  
15   210.235.

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

18   (1) Any individual, corporation, or entity found to be in violation of Sections 1 to 3 of  
19   this Act shall pay a civil penalty to the department in an amount not to exceed ten  
20   thousand dollars (\$10,000) per violation, as determined by the department, with  
21   penalties assessed based on the degree of harm and the circumstances of the  
22   violation.

23   (2) A civil penalty shall be:

24       (a) Assessed by the department after a hearing is held by the relevant board;  
25       and

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

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

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

6 ➔Section 4. Whereas the General Assembly seeks to protect vulnerable  
7 Kentuckians from harm caused by artificial intelligence, an emergency is declared to  
8 exist, and this Act takes effect upon its passage and approval by the Governor or upon its  
9 otherwise becoming a law.