

1 AN ACT relating to mental health chatbots.

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 6 of this Act:*

6 *(1) "Artificial intelligence" has the same meaning as in KRS 42.722;*

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

8 *(3) "Confidential communications" means information obtained by an individual
9 licensed under an applicable state licensing statute, including information
10 obtained by the individual's examination of the client or patient, which is:*

11 *(a) Transmitted:*

12 *1. Between the client or patient and an individual licensed under an
13 applicable state licensing statute in the course of that relationship; or*

14 *2. Among the client or patient, an individual licensed under an
15 applicable state licensing statute, and individuals who are
16 participating in the diagnosis or treatment under the direction of an
17 individual licensed under an applicable state licensing statute,
18 including members of the client's or patient's family; and*

19 *(b) Made in confidence, for the diagnosis or treatment of the client or patient
20 by the individual licensed under an applicable state licensing statute, and by
21 a means not intended to be disclosed to third persons other than those
22 individuals:*

23 *1. Present to further the interest of the client or patient in the
24 consultation, examination, or review;*

25 *2. Reasonably necessary for the transmission of the communications; or*

26 *3. Participating in the diagnosis and treatment of the client or patient
27 under the direction of the mental health therapist;*

1 (4) "Covered entity" has the same meaning as established in 45 C.F.R. sec. 160.103
2 pursuant to HIPAA;

3 (5) "Generative artificial intelligence" means an artificial intelligence system that
4 can generate derived synthetic content, including text, images, video, and audio,
5 that emulates the structure and characteristics of the system's training data;

6 (6) "Health care provider" has the same meaning as established in 45 C.F.R. sec.
7 160.103;

8 (7) "Health plan" has the same meaning as established in 45 C.F.R. sec. 160.103;

9 (8) "Individually identifiable health information" means any information, whether
10 oral or recorded in any form or medium, that relates to the physical or mental
11 health or condition of an individual;

12 (9) "Licensed mental health therapist" means an individual who holds a valid
13 license or certificate issued by any agency of this Commonwealth to provide
14 therapy or psychotherapy services, including:

15 (a) A physician and surgeon, or osteopathic physician engaged in the practice
16 of mental health therapy;

17 (b) A licensed psychologist licensed under KRS Chapter 319;

18 (c) A licensed clinical social worker licensed under KRS 335.100;

19 (d) A certified social worker licensed under KRS 335.080;

20 (e) A professional counselor credentialed under KRS 335.500 to 335.599;

21 (f) A marriage and family therapist licensed under KRS 335.300 to 335.399;

22 (g) A licensed alcohol and drug counselor licensed under KRS 309.080 to
23 309.089 authorized to provide therapy or psychotherapy services;

24 (h) An art therapist licensed under KRS 309.133;

25 (i) An advanced practice registered nurse licensed under KRS Chapter 314
26 engaged in providing mental health services; and

27 (j) Any other professional authorized by this Commonwealth through a license

or certificate to provide therapy or psychotherapy services;

(10) "Mental health chatbot":

(a) Means an artificial intelligence system that:

1. Uses generative artificial intelligence to engage in interactive conversations with a user of the mental health chatbot similar to the confidential communications that an individual would have with a licensed mental health therapist; and

2. A supplier represents, or a reasonable person would believe, can or will provide mental health therapy or help a user manage or treat mental health conditions; and

(b) Does not include an artificial intelligence system that only:

1. Provides scripted output, such as guided meditations or mindfulness exercises; or

2. Analyzes an individual's input for the purpose of connecting the individual with a licensed mental health therapist;

(11) "Personal data" has the same meaning as in KRS 367.3611;

(12) "Scientific research development" means research:

(a) Conducted by a researcher affiliated with:

1. An institution of higher education;

2. A research organization; or

3. A healthcare facility; and

(b) *That is:*

1. Approved by an institutional review board; and

2. Conducted in accordance with applicable ethics requirements for human subject research;

(13) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not

1 the person deals directly with the consumer;

2 (14) "User" means an individual located in Kentucky at the time the individual
3 accesses or uses a mental health chatbot; and

4 (15) "User input" means content provided to a mental health chatbot by a user.

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

7 (1) A supplier of a mental health chatbot shall not sell to or share with any third
8 party any:

9 (a) Individually identifiable health information of a user; or

10 (b) User input.

11 (2) Subsection (1) of this section shall not apply to individually identifiable health
12 information:

13 (a) Requested by a health care provider with the consent of the user;

14 (b) Provided to a user's health plan upon request of the user; or

15 (c) Shared in compliance with subsection (3) of this section.

16 (3) (a) A supplier may share individually identifiable health information necessary
17 to ensure the effective functionality of the mental health chatbot with
18 another party with which the supplier has a contract related to such
19 functionality.

20 (b) When sharing information under subsection (3)(a) of this section, the
21 supplier and the other party shall comply with all applicable privacy and
22 security provisions of 45 C.F.R. pt. 160 and 45 C.F.R. pt. 164, Subparts A
23 and E, as if the supplier were a covered entity and the other party were a
24 business associate, as those terms are defined in 45 C.F.R. sec. 160.103.

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

27 (1) A supplier shall not use a mental health chatbot to advertise a specific product or

1 service to a user in a conversation between the user and the mental health
2 chatbot unless the mental health chatbot clearly and conspicuously:

3 (a) Identifies the advertisement as an advertisement; and
4 (b) Discloses to the user any:
5 1. Sponsorship;
6 2. Business affiliation; or
7 3. Agreement that the supplier has with a third party to promote,
8 advertise, or recommend the product or service.

9 (2) A supplier of a mental health chatbot shall not use a user's input to:

10 (a) Determine whether to display an advertisement for a product or service to
11 the user, unless the advertisement is for the mental health chatbot itself;
12 (b) Determine a product, service, or category of product or service, to advertise
13 to the user; or
14 (c) Customize how an advertisement is presented to the user.

15 (3) This section shall not prohibit a mental health chatbot from recommending that a
16 user seek counseling, therapy, or other assistance from a licensed mental health
17 therapist, including a specific licensed mental health therapist.

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

20 (1) A supplier of a mental health chatbot shall cause the mental health chatbot to
21 clearly and conspicuously disclose to a user that the mental health chatbot is an
22 artificial intelligence system and not a human.

23 (2) The disclosure described in subsection (1) of this section shall be made:
24 (a) Before the user may access the features of the mental health chatbot;
25 (b) Before any interaction with the user if the user has not accessed the mental
26 health chatbot within the previous seven (7) days;
27 (c) Every thirty (30) minutes after beginning the interaction with the user; and

1 (d) Any time a user asks or otherwise prompts the mental health chatbot about
2 whether artificial intelligence is being used.

3 ➔ SECTION 5. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) It is an affirmative defense to liability in an action brought under an applicable
6 state licensing statute if the supplier demonstrates that the supplier:

7 (a) Created, maintained, and implemented a policy that meets the requirements
8 of subsection (2) of this section;

9 (b) Maintains documentation regarding the development and implementation
10 of the mental health chatbot that describes:

11 1. Foundation models used in development;

12 2. Training data used;

13 3. Compliance with federal health privacy regulations;

14 4. User data collection and sharing practices;

15 5. User data retention practices consistent with Kentucky law; and

16 6. Ongoing efforts to ensure accuracy, reliability, fairness, and safety;

17 and

18 (c) Filed the policy with the Attorney General as described in subsection (4) of
19 this section, and complied with all requirements of the filed policy at the
20 time of the alleged violation.

21 (2) A policy described in subsection (1)(a) of this section shall:

22 (a) Be in writing;

23 (b) State the intended purposes of the mental health chatbot and the abilities
24 and limitations of the mental health chatbot; and

25 (c) Describe the procedures by which the supplier:

26 1. Ensures that licensed mental health therapists are involved in the
27 development and review process;

- 1 2. Ensures the mental health chatbot is developed and monitored in a
- 2 manner consistent with clinical best practices;
- 3 3. Conducts testing, prior to making the mental health chatbot publicly
- 4 available and regularly thereafter, to ensure that the output of the
- 5 mental health chatbot poses no greater risk to a user than that posed
- 6 to an individual in therapy with a licensed mental health therapist;
- 7 4. Identifies reasonably foreseeable adverse outcomes to, and potentially
- 8 harmful interactions with, users that could result from using the
- 9 mental health chatbot;
- 10 5. Provides a mechanism for a user to report any potentially harmful
- 11 interactions from use of the mental health chatbot;
- 12 6. Implements protocols to assess and respond to risk of harm to users or
- 13 other individuals;
- 14 7. Details actions taken to prevent or mitigate any such adverse outcomes
- 15 or potentially harmful interactions;
- 16 8. Implements protocols to respond in real time to acute risk of physical
- 17 harm;
- 18 9. Reasonably ensures regular, objective reviews of safety, accuracy, and
- 19 efficacy, which may include internal or external audits;
- 20 10. Provides users any necessary information on the safe use of the
- 21 mental health chatbot;
- 22 11. Ensures users understand they are interacting with artificial
- 23 intelligence;
- 24 12. Ensures users understand the intended purpose, capabilities, and
- 25 limitations of the mental health chatbot;
- 26 13. Prioritizes user mental health and safety over engagement metrics or
- 27 profit;

1 14. Implements measures to prevent discriminatory treatment of users;
2 and

3 15. Ensures compliance with the security and privacy provisions of 45
4 C.F.R. pt. 160, 45 C.F.R. pt. 164, Subparts A, C, and E, as if the
5 supplier were a covered entity, and applicable consumer protection
6 requirements.

7 (3) (a) A supplier of a mental health chatbot shall provide to the Attorney General
8 in a manner established by the Attorney General in subsection (4) of this
9 section:

- 10 1. The name and address of the supplier;
- 11 2. The name of the mental health chatbot supplied by the supplier;
- 12 3. The written policy described in subsection (2) of this section; and
- 13 4. Any annual filing fee set by the Attorney General;

14 (b) A supplier of a mental health chatbot may provide to the Attorney General:
15 1. Any revisions to a policy filed under this section; or
16 2. Any other documentation the supplier elects to provide.

17 (4) The Attorney General shall provide a physical or electronic means for a supplier
18 of a mental health chatbot to file a policy as provided for under subsection (2) of
19 this section. An annual filing fee may be imposed by the Attorney General.

20 (5) The affirmative defense described in subsection (1) of this section applies only in
21 an administrative or civil action alleging a violation of an applicable state
22 licensing statute.

23 (6) Nothing in this section shall be construed to:

- 24 (a) Bar the Attorney General from bringing an action under an applicable state
25 licensing statute against the supplier of a mental health chatbot; or
- 26 (b) Recognize a mental health chatbot as a licensed mental health therapist.

27 ➔ SECTION 6. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) The Attorney General shall administer and enforce Sections 1 to 6 of this Act in
3 accordance with the Kentucky Consumer Protection Act, KRS 367.110 to
4 367.300.

5 (2) In addition to the Attorney General's enforcement powers under subsection (1) of
6 this section:

7 (a) The Attorney General may impose an administrative fine of up to two
8 thousand five hundred dollars (\$2,500) for each violation of Sections 1 to 6
9 of this Act; and

10 (b) The Attorney General may bring an action in a court of competent
11 jurisdiction to enforce any provision of Sections 1 to 6 of this Act.

12 (3) The Attorney General may recover reasonable expenses incurred in investigating
13 and preparing the case, court costs, attorney's fees, and any other relief ordered
14 by the court of any action initiated under Sections 1 to 6 of this Act.

15 (4) A court may impose a civil penalty of no more than five thousand dollars (\$5,000)
16 for each violation of an administrative or court order issued for a violation of
17 Sections 1 to 6 of this Act. The Attorney General may bring a civil action on
18 behalf of the Commonwealth to collect a civil penalty imposed under this
19 subsection.

20 (5) The Attorney General shall deposit all fines and civil penalties collected under the
21 section into the consumer privacy fund established in KRS 367.3629.

22 ➔Section 7. If any provision of this Act or its application thereof to any person or
23 circumstance is held invalid, the invalidity shall not affect other provisions or
24 applications of the Act that can be given effect without the invalid provision or
25 application, and to this end the provisions of this Act are severable.

26 ➔Section 8. This Act may be cited as the Artificial Intelligence in Mental Health
27 Act.