

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



HOUSE BILL 26-1139

BY REPRESENTATIVE(S) Joseph and Lieder, Duran, Froelich, Lindsay, Nguyen, Story, Titone;
also SENATOR(S) Cutter and Daugherty, Amabile, Gonzales J., Hinrichsen, Jodeh, Kipp, Marchman, Mullica, Coleman.

CONCERNING THE USE OF ARTIFICIAL INTELLIGENCE IN HEALTH CARE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) Health-care decisions affect the most intimate, complex, and consequential aspects of human life, including physical survival, mental well-being, family stability, and personal dignity, and therefore must be grounded in compassion, clinical judgment, and individualized understanding;

(b) Artificial intelligence systems may offer valuable tools to support efficiency, data analysis, and administrative functions in health-care delivery; however, these systems cannot comprehend the full breadth and depth of the human experience, including trauma, culture, disability, grief,

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

fear, hope, and the lived realities that shape patient health outcomes;

(c) The state of Colorado has a compelling interest in ensuring that health care remains human-centered and that decisions involving coverage determinations, medical necessity, and access to treatment, particularly denials of care, are made by qualified human clinicians or physicians who are accountable for these decisions and can exercise professional judgment and ethical reasoning;

(d) Reliance on artificial intelligence systems to make or materially influence adverse health-care determinations without meaningful human oversight risks compounding inequities, embedding bias, and eroding trust between patients, providers, and health-care systems;

(e) Artificial intelligence systems may be used as an assistive tool in health-care delivery and administration but must not replace human judgment, human accountability, or the therapeutic relationship that is essential to safe, ethical, and effective care; and

(f) Every Coloradan, regardless of income, insurance status, disability, language access needs, race, ethnicity, geography, or immigration status, deserves access to human-centered health care that recognizes their dignity, individuality, and humanity.

(2) Therefore, the general assembly declares that it is essential to:

(a) Regulate the use of artificial intelligence systems in health care to ensure transparency, accountability, equity, and patient safety;

(b) Prohibit automated systems from making adverse coverage determinations without qualified human review; and

(c) Preserve the central role of licensed clinicians in decisions that affect the health, well-being, and lives of Coloradans.

SECTION 2. In Colorado Revised Statutes, **add** 10-16-112.7 as follows:

10-16-112.7. Use of artificial intelligence systems - utilization review - prohibition on payment for AI-delivered psychotherapy

services - definitions.

(1) AS USED IN THIS SECTION:

(a) "ARTIFICIAL INTELLIGENCE SYSTEM" HAS THE MEANING SET FORTH IN SECTION 6-1-1701 (2).

(b) "BEHAVIORAL HEALTH ADMINISTRATIVE SERVICES ORGANIZATION" MEANS AN ORGANIZATION SELECTED BY THE BEHAVIORAL HEALTH ADMINISTRATION PURSUANT TO SECTION 27-50-402 TO ESTABLISH AND MAINTAIN A NETWORK OF BEHAVIORAL HEALTH PROVIDERS.

(c) "MANAGED CARE ENTITY" HAS THE MEANING SET FORTH IN SECTION 25.5-5-403 (4).

(d) "PRIVATE UTILIZATION REVIEW ORGANIZATION" OR "ORGANIZATION" MEANS A PRIVATE UTILIZATION REVIEW ORGANIZATION, AS DEFINED IN SECTION 10-16-112 (1)(a), THAT HAS A CONTRACT WITH OR PERFORMS PRIOR AUTHORIZATION ON BEHALF OF A CARRIER.

(2) **Utilization review.** SUBSECTIONS (3), (4), AND (5) OF THIS SECTION APPLY TO:

(a) A CARRIER THAT:

(I) USES AN ARTIFICIAL INTELLIGENCE SYSTEM FOR THE PURPOSE OF UTILIZATION REVIEW; OR

(II) CONTRACTS WITH OR OTHERWISE WORKS THROUGH A PERSON THAT USES AN ARTIFICIAL INTELLIGENCE SYSTEM FOR THE PURPOSE OF UTILIZATION REVIEW;

(b) A PHARMACY BENEFIT MANAGER OR PRIVATE UTILIZATION REVIEW ORGANIZATION THAT CONTRACTS WITH A CARRIER TO PROVIDE UTILIZATION REVIEW SERVICES ON BEHALF OF THE CARRIER AND USES AN ARTIFICIAL INTELLIGENCE SYSTEM FOR THE PURPOSE OF CONDUCTING THE UTILIZATION REVIEW; AND

(c) A BEHAVIORAL HEALTH ADMINISTRATIVE SERVICES ORGANIZATION OR MANAGED CARE ENTITY THAT USES AN ARTIFICIAL

INTELLIGENCE SYSTEM FOR THE PURPOSE OF CONDUCTING UTILIZATION REVIEW OF MENTAL OR BEHAVIORAL HEALTH SERVICES.

(3) A PERSON DESCRIBED IN SUBSECTION (2) OF THIS SECTION THAT USES AN ARTIFICIAL INTELLIGENCE SYSTEM TO CONDUCT UTILIZATION REVIEW SHALL ENSURE THAT:

(a) THE ARTIFICIAL INTELLIGENCE SYSTEM BASES ITS DETERMINATION ON THE FOLLOWING INFORMATION, AS APPLICABLE:

(I) AN INDIVIDUAL'S MEDICAL OR OTHER CLINICAL HISTORY;

(II) INDIVIDUAL CLINICAL CIRCUMSTANCES AS PRESENTED BY THE REQUESTING PROVIDER; AND

(III) OTHER RELEVANT CLINICAL INFORMATION CONTAINED IN THE INDIVIDUAL'S MEDICAL OR OTHER CLINICAL RECORD;

(b) THE ARTIFICIAL INTELLIGENCE SYSTEM DOES NOT BASE ITS DETERMINATIONS SOLELY ON GROUP DATA, WITHOUT REFERENCE TO THE INDIVIDUAL'S DATA;

(c) THE ARTIFICIAL INTELLIGENCE SYSTEM IS NOT USED IN ANY WAY THAT DISCRIMINATES AGAINST INDIVIDUALS IN VIOLATION OF OTHER STATE OR FEDERAL LAWS;

(d) THE ARTIFICIAL INTELLIGENCE SYSTEM IS FAIRLY AND EQUITABLY APPLIED, INCLUDING IN ACCORDANCE WITH APPLICABLE REGULATIONS AND GUIDANCE ISSUED BY THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES;

(e) THE ARTIFICIAL INTELLIGENCE SYSTEM PRODUCES AND RETAINS DOCUMENTATION, AUDIT LOGS, AND MODEL-GOVERNANCE RECORDS IN ORDER TO DEMONSTRATE COMPLIANCE WITH THIS SECTION AND SECTION 10-3-1104.9;

(f) THE ARTIFICIAL INTELLIGENCE SYSTEM'S PERFORMANCE, USE, AND OUTCOMES ARE PERIODICALLY REVIEWED TO MAXIMIZE ACCURACY AND RELIABILITY;

(g) AN INDIVIDUAL'S HEALTH DATA IS NOT USED BEYOND ITS INTENDED OR STATED PURPOSE, CONSISTENT WITH APPLICABLE STATE AND FEDERAL LAWS; AND

(h) THE ARTIFICIAL INTELLIGENCE SYSTEM'S OR ALGORITHM'S CRITERIA AND GUIDELINES COMPLY WITH OTHER APPLICABLE STATE OR FEDERAL LAWS CONCERNING UTILIZATION REVIEW AND COVERAGE FOR HEALTH-CARE SERVICES.

(4) A PERSON DESCRIBED IN SUBSECTION (2) OF THIS SECTION SHALL PROVIDE WRITTEN DISCLOSURES TO THE DIVISION, THE DEPARTMENT OF HUMAN SERVICES, OR THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, AS APPLICABLE, THAT IDENTIFY:

(a) THE UTILIZATION REVIEW FUNCTIONS FOR WHICH THE ARTIFICIAL INTELLIGENCE SYSTEM WILL BE USED;

(b) THE POINTS IN THE UTILIZATION REVIEW PROCESS WHEN THE ARTIFICIAL INTELLIGENCE SYSTEM IS USED;

(c) THE HUMAN OVERSIGHT PROCESS, INCLUDING THE QUALIFICATIONS OF THE REVIEWER AND WHETHER A HUMAN MUST APPROVE AN ADVERSE DETERMINATION; AND

(d) THE PROCESS FOR MAINTAINING AUDIT INFORMATION SUFFICIENT TO DEMONSTRATE COMPLIANCE WITH SUBSECTION (3) OF THIS SECTION.

(5) (a) NOTWITHSTANDING SUBSECTION (3) OF THIS SECTION, AN ARTIFICIAL INTELLIGENCE SYSTEM MAY BE USED TO ASSIST WITH UTILIZATION REVIEW, INCLUDING EXPEDITED APPROVALS.

(b) A CARRIER'S DENIAL OF COVERAGE BASED IN WHOLE OR IN PART ON MEDICAL NECESSITY SHALL NOT BE ISSUED SOLELY ON THE OUTPUT OF AN ARTIFICIAL INTELLIGENCE SYSTEM WITHOUT HUMAN REVIEW AND APPROVAL OF THE DENIAL BY A LICENSED CLINICIAN, LICENSED PHYSICIAN, OR OTHER REGULATED PROFESSIONAL THAT IS COMPETENT TO EVALUATE THE SPECIFIC CLINICAL ISSUES INVOLVED IN THE HEALTH-CARE SERVICES REQUESTED BY THE PROVIDER AND A REVIEW OF THE HEALTH BENEFIT PLAN'S TERMS OF COVERAGE FOR THE HEALTH-CARE SERVICE.

(6) Prohibition on payment for AI-delivered psychotherapy services.

(a) A CARRIER OFFERING A HEALTH BENEFIT PLAN ISSUED OR RENEWED IN THE STATE ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION SHALL NOT PROVIDE COVERAGE FOR SERVICES THAT CONSTITUTE PSYCHOTHERAPY SERVICES, AS DEFINED IN SECTION 12-245-202 (14), THAT ARE PROVIDED DIRECTLY TO AN INDIVIDUAL AND THAT ARE CONDUCTED BY AN ARTIFICIAL INTELLIGENCE SYSTEM.

(b) SUBSECTION (6)(a) OF THIS SECTION DOES NOT PROHIBIT THE USE OF BILLING SOFTWARE, ELECTRONIC HEALTH RECORDS, VIDEO PLATFORMS, OR OTHER NONTHERAPEUTIC SOFTWARE TOOLS INCIDENT TO SERVICES PROVIDED BY A HUMAN PROVIDER.

(c) THE USE OF VIDEOCONFERENCING, MESSAGING PLATFORMS, OR OTHER COMMUNICATIONS SOFTWARE TO ENABLE SUPERVISION OR CONSULTATION BY A LICENSED, REGISTERED, OR CERTIFIED INDIVIDUAL DOES NOT CONSTITUTE SUPERVISION OR CONSULTATION THAT IS CONDUCTED BY AN ARTIFICIAL INTELLIGENCE SYSTEM, AS REFERENCED IN SUBSECTION (6)(a) OF THIS SECTION.

SECTION 3. In Colorado Revised Statutes, **add** 25.5-1-209 as follows:

25.5-1-209. Prohibition on payment for AI-delivered psychotherapy services.

A PAYER OF MENTAL OR BEHAVIORAL HEALTH-CARE SERVICES PROVIDED UNDER THE "COLORADO MEDICAL ASSISTANCE ACT", AS SPECIFIED IN ARTICLES 4, 5, AND 6 OF THIS TITLE 25.5, OR THE "CHILDREN'S BASIC HEALTH PLAN ACT", AS SPECIFIED IN ARTICLE 8 OF THIS TITLE 25.5, SHALL NOT PAY FOR SERVICES THAT CONSTITUTE PSYCHOTHERAPY SERVICES, AS DEFINED IN SECTION 12-245-202 (14), THAT ARE PROVIDED DIRECTLY TO AN INDIVIDUAL AND THAT ARE CONDUCTED BY AN ARTIFICIAL INTELLIGENCE SYSTEM, AS THAT TERM IS DEFINED IN SECTION 10-16-112.7 (1)(b).

SECTION 4. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2027; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state

constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect January 1, 2027, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

(2) This act applies to actions taken on or after the applicable effective date of this act.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO