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March 1, 2026

Representative Susan R. Donovan, Chair
House Committee on Health and Human Services
Rhode Island House of Representatives
82 Smith Street
Providence, RI 02903

Re: H7349, Oversight of Artificial Intelligence Technology in Mental Health Care Act

Dear Representative Donovan and Members of the House Committee on Health and Human Services:

Thank you for the opportunity to testify regarding H7349. Artificial intelligence is growing exponentially. This exponential growth is triggering a range of responses within and outside of Rhode Island, from caution to fear, as tragedies have occurred through consumer's use of unregulated large language models and AI companions. We greatly appreciate the efforts to address Rhode Islanders' safety.

We respectfully urge this Committee to oppose H7349 as written. This bill regulates mental health and substance use professionals' use of artificial intelligence, whereas H7350 addresses the regulations directly with technology companies to address the public safety related to AI companions. While we understand the goal of this bill is also to protect the public and professionals, this bill will result in disparities in healthcare as well as potentially and unintentionally cause harm in other ways. We will address certain sections in this bill that illustrate our position.

40.1-5.5-2 (2) Definition of Artificial Intelligence and 40.1-5.5-2 (3) Consent

The definition of AI captures much of modern health IT. AI is far more than recording devices for note taking, for which psychologists gain consent.. Tools, such as EHR clinical decision support, digital therapeutics, and depression screening scoring algorithms – which are to assist in quality treatment and reducing administrative burdens - all fit into this definition. For those who work within integrated care, this places all mental health and substance use professionals at a disadvantage vis-à-visthe medical professionals within the team.

The section on consent is therefore confusing given the broad definition of AI, as how would any practice create a meaningful consent form for the patient? Within multidisciplinary or integrated care settings, will there only be a consent form for mental health and substance use professionals within the group but not for physicians, psychiatrists, nurse practitioners, nurses, occupational therapists, physical therapists, respiratory therapists, and all others in the healthcare profession? Exempting medical

professionals from this bill says to the patient in any setting that medical professionals are qualified for use of digital mental health related tools, mental health scoring and decision making tools within an EHR without consent but those within the field of mental health must have consent for every patient about every area of the practice and every use of AI. Mental health treatment is complex. If only licensed mental health professionals are required to get consent for the use of the broad scope of AI covered by this bill, it has the potential of causing suspicion, confusion, and disadvantage for licensed mental health professionals.

40.1-5.5-2 (5)(7) and 40.1-5.5-3 (a)(c) Parity issue

Physicians (including psychiatrists) are excluded, and other healthcare professionals such as nurse practitioners, physical therapists, occupational therapists, applied behavior analysts are not mentioned. Mental health and substance use professionals working in the schools are also not mentioned. Psychologists are unaware of evidence supporting the need to regulate the licensed mental health professional instead of regulating the company that creates the products beyond the AI companions covered in H7350. Licensed mental health professionals typically have longer and more frequent visits than the medical community, so monitoring the use of digital mental health tools would be more frequent.

Based on 40.1-5,5-3 (c) and 40.1-5.5-2 (7), some examples of when a licensed mental health and substance use professionals in this bill would be liable for the AI used by the patient:

- Suggesting to an ADHD patient to use Google calendar or other organizing tool to help with executive functioning
- A patient comes in and uses a mood tracking app to find patterns in moods to help with assessment and treatment and this app uses therapeutic communications defined in 40.1-5.5-2(10)
- A psychologist working with individuals diagnosed with autism cannot use AI based social skills training chatbot tools, which research indicates as promising treatment

This bill discourages the use of FDA approved digital therapeutics tools such as SleepioRx for insomnia, Rejoyn for depression, DaylightRx for generalized anxiety disorder, Mamalift Plus for postpartum depression and anxiety by licensed mental health professionals given 40.1-5,5-3(c) and the full responsibility placed on the licensed professional in 40.1-5.5-2 (7). Yet physicians and other medical professionals, who typically do not provide services for the length and frequency that licensed mental health professionals do, are able to use these. If we are talking about public safety, then shouldn't legislation also include all healthcare professionals who are using AI tools that are connected to mental health?

40.1-5.5-5 (c) - loophole for technology companies

We respectfully request the committee to consider whether this section, which excludes "self help" and "educational," leaves a loophole for holding technology companies responsible, as it does not appear consistent with H7350.

Recommendations

We request:

- A certification process for all AI tools used within a mental health and/or substance use practice in any setting so consent reflects the limited AI knowledge of licensed professionals using these tools
- Placing the liability of public safety onto technology companies who are the only ones who have access to the algorithms that create the products, rather than the licensed professionals included in this bill
- Change the definition of artificial intelligence to match the scope of this bill
- Address the professional inequity by including all physicians, nurse practitioners, and healthcare professionals that use artificial intelligence within the mental health space as well as mental health professionals working within the schools

Thank you for your consideration of our concerns. We urge you to oppose this bill as it is written.

Sincerely,

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