ata ACTION
Telehealth Policy to Transform Healthcare

April 14, 2026

The Honorable Erica Layon
Chairman, Executive Departments and Administration Committee
New Hampshire House of Representatives
PO Box 1676
Derry, NH 03038

The Honorable Jeremy Slottje
Vice Chairman, Executive Departments and Administration Committee
New Hampshire House of Representatives
20 Old Coach Road
Hudson, NH 03051-5044

RE: ATA ACTION CONCERNS REGARDING SB 640

Dear Chair Layon, Vice Chair Slottje and members of the Executive Departments and Administration Committee,

On behalf of ATA Action, I am writing to share our association's perspective on Senate Bill 640 regarding the use of artificial intelligence to provide services requiring a professional license. Our organization appreciates the General Court's focus on patient protection and the quality of mental health services, and we are broadly supportive of the intent of this legislation. However, we are concerned that, as written, this proposal could cause confusion for providers and potentially disrupt patient care.

ATA Action, the American Telemedicine Association's affiliated trade association focused on advocacy, advances policy to ensure all individuals have permanent access to telehealth services across the care continuum. ATA Action supports the enactment of state and federal telehealth policies to secure telehealth access for all Americans, including those in rural and underserved communities. ATA Action recognizes that telehealth and virtual care have the potential to truly transform the health care delivery system – by improving patient outcomes, enhancing safety and effectiveness of care, addressing health disparities, and reducing costs – if only allowed to flourish.

ATA Action has followed and engaged in the development of state policies regarding the use of AI in healthcare, including the recently enacted Illinois AI mental health framework (HB 1806) – which appears to have served as the inspiration for SB 640. Illinois enacted HB 1806 with significant flaws in place, over our opposition, which included an unintentional ban on physicians delivering therapy, failure to consider FDA-cleared products, overly broad definitions, and arbitrary restrictions that limit licensed clinicians from using AI tools consistent with their scope of practice, and the standard of care. Our organization is excited to see that SB 640 does not import many of these issues, although we believe the bill should not be enacted in its current form.

The Definitions of "Therapeutic Communication" And "Therapy or Psychotherapy Services" Are Overly Broad and Should Be Narrowed.

First, the definition of "therapeutic communication" in Section IV(a)(5) captures everyday, non-clinical speech that unlicensed persons, health coaches, community health workers, and peer supporters routinely

use in communications with individuals about their mental or emotional health. The opening clause extends to any interaction "intended to … address an individual's mental, emotional, or behavioral health concerns" – a standard broad enough to encompass general wellness guidance and supportive conversation that have never been considered the exclusive domain of licensed clinicians. Similarly, several of the enumerated examples, including item (ii) ("providing guidance, therapeutic strategies, or interventions designed to achieve mental health outcomes") and item (v) ("offering behavioral feedback intended to promote psychological growth or address mental health conditions"), are broad enough to sweep in coaching, wellness guidance, and other non-clinical services. Item (iii) ("offering emotional support … in response to psychological or emotional distress") captures everyday empathic conversation rather than the specific, clinically significant interactions it should target.

We believe the definition should be carefully narrowed to capture only what is truly clinical, therapeutic speech delivered by a licensed professional in a therapeutic context. We recommend removing "or address" from the opening clause, revising item (i) to capture direct interactions that constitute the delivery of therapy or psychotherapy services rather than any exchange involving understanding or reflecting a client's thoughts, and narrowing item (ii) to "providing therapeutic strategies or interventions designed to achieve mental health outcomes," removing "guidance." We also recommend adding a negative definition clarifying that "therapeutic communication" does not include general wellness education, instruction, or guidance intended to promote overall health and well-being rather than to diagnose or treat a specific mental, emotional, or behavioral health concern.

Additionally, the definition of "therapy or psychotherapy services" in Section IV(a)(6) includes services that "improve" an individual's mental health or behavioral health – a standard so broad it could capture a wide range of resources, products, or services not currently provided by licensed professionals. The relevant mental health professional associations do not define therapy or psychotherapy so expansively. Given that the bill's significant requirements and prohibitions flow from this definition, we believe it should be narrowed to services provided to diagnose or treat.

The Exemption For FDA-Cleared Products Should Be Extended to All the Bill's Requirements

Our organization is appreciative of the amendments made to the bill in the Senate to Section III which states that "This paragraph does not preclude a New Hampshire licensed mental health professional, operating within their scope of practice, from utilizing FDA-authorized and/or HIPPA compliant artificial intelligence tools for a client under their care provided the New Hampshire licensed professional exercises due diligence."

This language is a significant step in the right direction. However, for consistency and to avoid confusion, the same consideration should be made in Section IV. Otherwise, we have concerns that access to FDA cleared digital therapeutics could be disrupted.

To address this issue, we suggest adding the following language to the Section IV(c):

This paragraph does not apply to:

> *(3) any artificial intelligence tool or system that has been reviewed and cleared for use by the Federal Food and Drug Administration, or another federal agency tasked with*

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approving artificial intelligence and artificial intelligence algorithms for use in health care.

Thank you for the opportunity to comment. We urge the Committee to consider our feedback above before advancing SB 640 to strike the best balance between patient safety, innovation and clarity. If you have any questions or would like to discuss the telehealth industry's perspective further, please contact me at hyoung@ataaction.org.

Kind regards,

Hunter Young

Hunter Young
Head of State Government Relations
ATA Action