

MHAIP

The Mental Health AI Policy Project

Regulating AI for Mental Health

Emerging Governance Approaches Across U.S. States

Executive Summary:

States are taking two primary approaches to governing AI in mental health: regulating clinicians' use of AI and regulating AI technologies through consumer-protection law. Some states combine both approaches. These approaches assign responsibility differently. Clinical regulation generally places accountability on licensed providers, while the consumer-protection approach place more responsibility on developers, vendors, and deployers. The result is uneven protections, enforcement, and liability across states.

Policy Takeaways

- **Federal standards should establish a consistent baseline for AI tools used for mental health support**, so safeguards do not depend on where a person lives.
- **Oversight of AI tools used for mental health should be proportional to risk**, with stronger safeguards for higher-risk tools.
- **Minimum safeguards should apply to AI tools used for mental health**, including transparency, appropriate crisis-response protocols, and protections for sensitive mental health data.
- **Federal standards should serve as a floor, not a ceiling**, preserving state authority over clinical scope of practice and allowing states to adopt additional protections.

Why This Matters

The use of artificial intelligence (AI), particularly large language models (LLMs), for mental health support in the United States has increased over the past two years. One in five young people now uses AI for emotional support.^[1] While these tools may expand access to information and support, research has also documented risks, including data breaches, reinforcement of harmful beliefs, inaccurate or fabricated responses, and cases involving serious harm.^[2-4]

U.S. states have begun responding with different regulatory approaches, resulting in a fragmented landscape for consumers, clinicians, developers, and deployers. Requirements vary in who and what they cover, the safeguards they establish, and how they are enforced. This variation can lead to uneven consumer protections, differing clinician liabilities, and uncertainty for developers and deployers operating across state lines.



1 in 5

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Governance Approaches

A case-study analysis of state bills and laws identifies two main approaches to regulating AI tools used for mental health: clinical governance and consumer protection. States apply these approaches independently or combine them in a hybrid approach.

1. Clinical Governance EXAMPLE: ILLINOIS (HB806) Regulates clinicians' use of AI in mental health care. Limits AI's role in therapy and requires disclosure and consent for certain uses. Clinicians retain responsibility for AI-assisted care. Key Gaps Does not cover all mental health professionals equally. Places compliance responsibility primarily on clinicians and does not distinguish between FDA vetted and unvetted AI tools.	2. Consumer Protection EXAMPLE: UTAH (HB452) Regulates AI tools and their deployers and developers, focusing on consumer-facing protections such as disclosure, data practices, and advertising restrictions. Key Gaps Protects consumers from certain business and data practices but does not necessarily establish clinical standards for the tool itself. Key questions about clinical design and meaningful clinician involvement may remain with developers.	3. Hybrid Governance Example: Nevada (AB 406) Regulates both AI tools and clinical providers, but through different requirements. Restricts AI systems from providing professional mental health care while also limiting how licensed providers may use AI with patients. Key Gaps Provides broader coverage, but does not resolve state-to-state fragmentation. Different definitions, requirements, and enforcement structures leave developers and clinicians navigating inconsistent rules across jurisdictions.
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Policy Recommendations

The case studies show that states are taking different approaches to governing AI tools used for mental health, creating a fragmented regulatory landscape and uneven protections. A coordinated, risk-based federal regulatory floor is needed to establish consistent baseline consumer protections across states. While states retain primary authority over mental health care through professional licensing and scope-of-practice requirements, federal requirements should complement this state authority. These requirements should be tailored to the risks posed by different AI tools.

- 1 Establish a Federal Floor for AI Used in Mental Health:** Establish baseline federal standards for consumer protection, medical device oversight, and health data protections to address gaps and inconsistencies across state laws. Federal standards should serve as a floor, allowing states to adopt additional protections while ensuring that users receive a consistent minimum level of protection regardless of where they live.
- 2 Adopt a Risk-Based Regulatory Approach:** Tailor regulatory requirements to the level and type of risk an AI tool poses. Lower-risk tools, such as mindfulness or stress-management applications, should face fewer requirements than tools that provide therapeutic advice, deliver clinical interventions, process sensitive therapy conversations, or influence users' emotions. Higher-risk uses should be subject to correspondingly stronger safeguards, with certain manipulative or deceptive practices prohibited.
- 3 Define Minimum Safeguards in Statute:** Establish core protections in law rather than leaving them to developers' discretion. At a minimum, requirements should include disclosure when users are interacting with AI, appropriate crisis-response protocols, and restrictions on advertising and the sale of identifiable mental health data.
- 4 Require Meaningful Clinical Expertise in Development and Testing:** Require developers of higher-risk AI tools used for mental health to meaningfully involve licensed mental health professionals in the design, development, and ongoing testing of these tools. Federal standards should define what constitutes meaningful clinical involvement to ensure that these requirements are consistent and enforceable.

About this Policy Brief:

This policy brief is part of a series on AI and mental health designed to inform policymakers on the potential benefits and risks, and approaches to effective regulation. The series translates emerging clinical and research evidence into actionable considerations for policy and regulatory frameworks.

This brief is adapted from Aldhalimi A. "Governing AI for Mental Health: Fragmented State Approaches and the Case for a Federal Framework." JMIR Mental Health. 2026;13. Jmirmental.jmir.org/2026/1/e96389

About MHAIP

The Mental Health AI Policy Project (MHAIP) is an independent research and policy initiative focused on AI safety and governance in mental health. We analyze AI safety risks, evaluate existing safeguards and regulations, propose governance frameworks, and translate research into actionable policy guidance.

[1] McBain RK, Cantor JH, Breslau J, et al. AI Chatbot Use and Disclosure for Mental Health Among US Adolescents and Young Adults. JAMA Pediatr. 2026;180(8):884-890.2026.2015

[2] Nutbeam D, Milot AJ. Artificial intelligence and public health: prospects, hype and challenges. Public Health Res Pract. Mar 2025;35:PU24001.

[3] Frances A. Warning: AI chatbots will soon dominate psychotherapy. Br J Psychiatry. May 20, 2026;228(5):474-478.

[4] Head KR. Digital companions, real casualties: a commentary on rising AI-related mental health crises. Curr Res Psychiatry. 2026;6(1):1-5.

[5] McBain RK, Bozick R, Diliberti M, Zhang LA, Zhang F, Burnett A, et al. Use of generative AI for mental health advice among US adolescents and young adults. JAMA Netw Open. Nov 03, 2025;8(11):e2542281.

[6] AI in the therapist's office 2025. Practitioner Pulse Survey, American Psychological Association. Dec 2025.