



## AI Therapy in Senior Care: The Next Compliance Minefield

### Introduction

Senior care providers are facing a new compliance challenge: the use of Artificial Intelligence (AI) in behavioral health. In August 2025, Illinois enacted the Wellness and Oversight for Psychological Resources (WOPR) Act (Public Act 104-0054), which prohibits AI-driven applications from offering therapeutic decision-making; directly interacting with clients in any form of therapeutic communication, generating recommendations or treatment plans without review and approval by the licensed professional; or detecting emotions or mental states.

Similar restrictions have emerged in Nevada and Utah, with other states (CA, NJ, PA, AK, NY, AR, MD, TX, FL and NC) considering action (Illinois General Assembly, 2025; Washington Post, 2025).

For senior care organizations integrating behavioral health services, these dual developments mark AI as both a potential innovation driver and a regulatory minefield.

### Industry Drivers & Regulatory Flashpoints

#### 1. Rise of AI Behavioral Health Tools

AI-based applications are increasingly used in senior communities for screening depression, monitoring loneliness, and providing virtual “coaching.” Providers are adopting these tools for various reasons, including workforce shortages in behavioral health, the Centers for Medicare & Medicaid Services (CMS) requirements to address psychological well-being in long-term care, and the expansion of integrated physical and behavioral health models (Curana Health, 2025). However, these tools often blur the line between support and clinical intervention, raising legal questions about scope of practice and liability.

#### 2. State Crackdowns in 2025

Illinois: The WOPR Act bans AI platforms from making therapeutic decisions, with penalties up to \$10,000 per violation (Illinois General Assembly, 2025; Axios, 2025). Nevada & Utah: Enacted similar restrictions, requiring licensed providers to oversee any AI-enabled behavioral health interventions (Washington Post, 2025). Other States: CA, NJ, PA, AK, NY, AR, MD, TX, FL, and NC are considering legislation to regulate or ban unlicensed AI therapy (Relias, 2025).

For senior care providers, compliance status now varies dramatically by geography.

### 3. Expanded HIPAA Security Enforcement

The U.S. Office for Civil Rights (OCR) has identified healthcare data breaches as a priority, responding to a 264% increase in ransomware attacks across healthcare in the past two years (Reuters, 2025). Enforcement priorities include encryption of all protected health information (PHI), deployment of multi-factor authentication (MFA), Security Risk Assessments (SRA), and employee training against phishing and social engineering (HHS OCR, 2025) as best practice measures. Providers using AI behavioral health platforms must ensure vendors meet HIPAA and security requirements.

#### Key Risk Domains for Senior Care

Risk Area	Description	Exposure
Licensure	AI delivering therapy-like advice without human clinician	Scope-of-practice violation
Privacy & Security	AI vendors storing sensitive psychological data	HIPAA breach penalties
Informed Consent	Residents unaware they are interacting with AI	Risk of deception and liability
Documentation	AI interactions not integrated into EHRs	Survey citations; billing compliance issues
State Variability	Patchwork laws across states	Multi-jurisdictional compliance burden

## Strategic Implications

For senior care executives, the central compliance question is: Will AI be an enabler — or a liability?

Beyond regulatory oversight, senior care organizations must address the operational realities of deploying AI-enabled behavioral health tools.

### Ongoing Maintenance and Compliance Auditing

Once an AI product is implemented, the question is not simply whether it works on launch — but who will be responsible for maintaining, monitoring, and auditing the platform over time.

Compliance leaders must weigh:

- Which staff will be trained to oversee AI functions?
- How often will the tool be audited for non-compliance, bias, or errors?
- Will the costs of oversight, monitoring, and remediation outweigh the anticipated savings from the technology itself?

In many cases, the *true expense* of AI is not in the purchase price, but in the ongoing compliance infrastructure required to use it safely and lawfully.

### Cost-Effectiveness and Strategic Alignment

Executives should ensure that AI integration is not treated as a “technology trend” but rather as part of a business plan and case aligned with organizational strategy. AI tools must demonstrate clear value in improving resident outcomes, reducing staff burden, or enabling compliance efficiencies — otherwise, their downstream risk may eclipse potential benefits.

### Telehealth, Licensure, and Reimbursement Risks

If behavioral health services are provided via telehealth, compliance complexity increases:

- Place of Service (POS) Codes: Accurate coding is required for CMS and private payer reimbursement.
- Distant Site vs. Home Site: Providers must document where the clinician and the resident are located at the time of service.
- Cross-State Licensure: When services occur across state lines, the provider must hold appropriate licensure in both states, or risk denial of payment and licensure board action.

Failure to address these telehealth considerations may lead to payment recoupment, licensure penalties, or survey deficiencies.

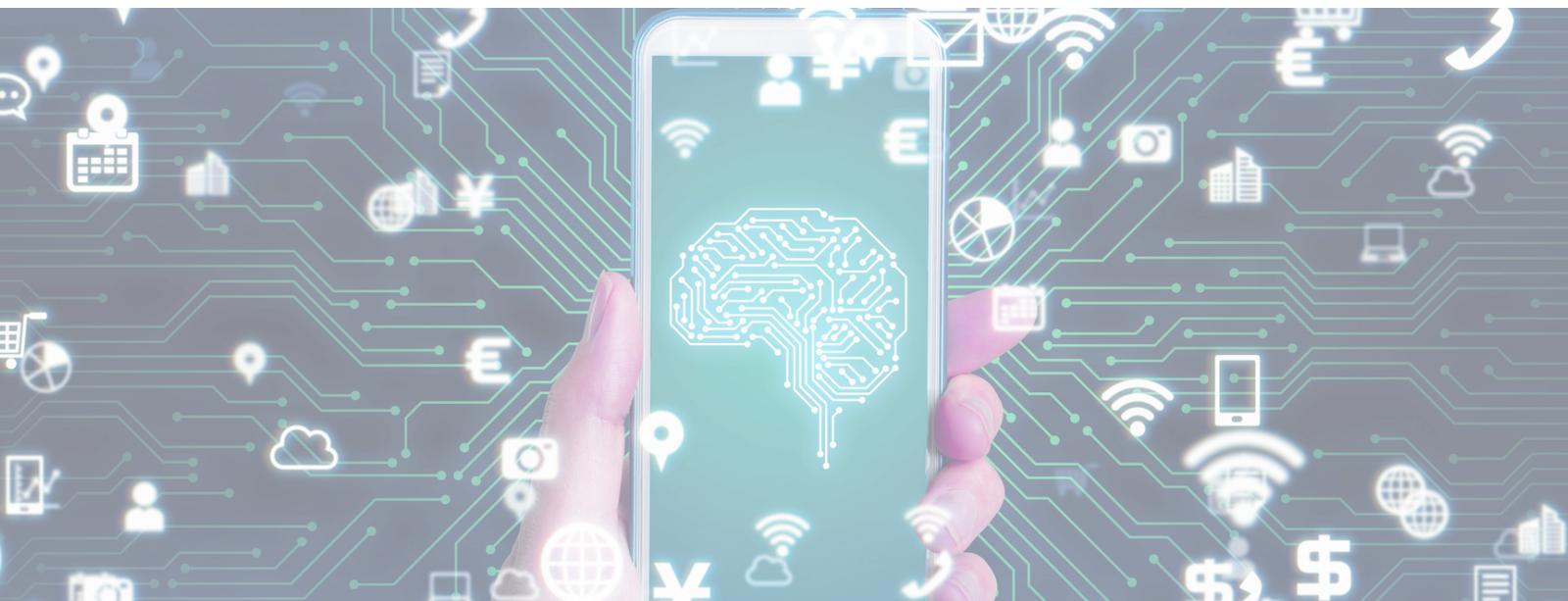
Risk is highest in organizations that use consumer-grade AI tools not designed for clinical oversight, allow AI “companions” to substitute for licensed providers, fail to conduct HIPAA security vetting of vendor systems, or lack policies on resident consent and disclosure regarding AI.

The regulatory shift mirrors earlier enforcement waves in telemedicine and psychotropic medication management in long-term care, underscoring the need for proactive compliance.

LW Consulting, Inc. (LWCI) recommends that compliance leaders take into consideration the following:

1. Identify all AI-enabled behavioral health technologies and assess the process functions being utilized, which can be added to the Security Risk Analysis.
2. Conduct an audit of all AI-enabled behavioral health technologies in use across facilities to identify threats, vulnerabilities, and gaps, including operations, clinical services, executive leadership, and compliance.
3. Review, update, and create policies at every decision to deploy AI within the organization to ensure AI governance occurs, and when needed, to explicitly prohibit AI where business decisions or regulations prohibit AI use.
4. Ensure HIPAA privacy and security compliance is a priority, including Part 2 statutes regarding patient consent and other uses and disclosures. This requires a thorough review of vendor risk assessments and business associate agreements.
5. Ensure staff training, including New Hire orientation, is updated when innovative technology is implemented, which includes the appropriate use, disclosure, and limitations of AI tools. Also, be sure patient forms and consent are updated to maintain compliance.

Failure to act now risks costly survey citations, state fines, and reputational damage.



## Conclusion

AI technology holds promise in addressing behavioral health challenges in senior care, but unregulated use has already drawn scrutiny from state and federal regulators. With laws rapidly evolving and HIPAA enforcement intensifying, compliance officers play a pivotal role in evaluating and working closely with technology teams to guide clinically compliant AI deployment across functional teams. .

Proactive teams will be better positioned for successful AI technology integration as technology evolves, allowing quick pivots and decisions with future iterations.

## **How LW Consulting, Inc. Can Help**

LW Consulting, Inc. (LWCI) partners with senior care organizations to reduce compliance risk by helping them make informed choices about behavioral health innovation. With many states now prohibiting or restricting AI-driven therapy, our role is to help leaders evaluate the compliance risk of AI-enabled technology and adopt approaches that are safe, compliant, and effective.

We support organizations with:

- **Risk Avoidance & Compliance Readiness** – Evaluating existing behavioral health technologies and advising organizations on when AI platforms may place them at regulatory risk, with clear recommendations for to improve safety.
- **Policy Development & Regulatory Alignment** – Drafting and updating policies to prohibit AI therapy tools in jurisdictions where they are not permitted, while strengthening compliance frameworks for behavioral health delivery.
- **Training and Education** – Equipping staff and leadership teams to recognize compliance red flags, navigate HIPAA and state licensure rules, and ensure ongoing readiness.
- **Executive Coaching** – Working directly with senior leaders to build confidence in decision-making, manage organizational change, and embed a culture of compliance around technology use.
- **Survey & Audit Support** – Preparing organizations for CMS, state survey, and payer audits, including corrective action planning when risks are identified.

By combining compliance expertise, leadership coaching, and strategic planning, LWCI helps senior care organizations avoid the pitfalls of AI-based behavioral health tools and focus instead on solutions that truly align with regulations, business goals, and resident well-being.



# About LW Consulting, Inc.

For nearly two decades, LWCI has delivered operational and compliance improvements to acute, post-acute, and sub-acute providers and government entities involved in healthcare. This expertise is also applied to compliance actions and legal proceedings, with a specialty in serving as an independent review organization (IRO).

LW Consulting, Inc. (LWCI) often works with Attorneys for providers in negotiating with Medicare Administrative Contractors (MACs), the Office of Inspector General (OIG), federal prosecutors, US Attorneys, and State Agencies in evaluating medical necessity, coding and billing procedures, and negotiating the adjudication of potential overpayment, denials, and disputed claims.

Our experienced team provides the statistical analysis, focus, comprehensive review, expert testimony, billing and coding support, and complementary services to help you turn the tide in your clients' direction. Our staff has been accepted as experts in a variety of courts at the local, state, and federal level.

## Sources

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