



EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

September 15, 2020

**GOV. MSG. NO. 1142**

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Thirtieth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Thirtieth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on September 15, 2020, the following bill was signed into law:

HB2043 HD2 SD2

RELATING TO ADOLESCENT MENTAL HEALTH  
CARE.  
**Act 037 (20)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

# A BILL FOR AN ACT

RELATING TO ADOLESCENT MENTAL HEALTH CARE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that Act 13, Session Laws  
2 of Hawaii 2018, required the department of health to convene a  
3 task force to address the concerns of minors seeking counseling  
4 on sexual orientation, gender identity, gender expressions, and  
5 related behaviors. According to the department's child and  
6 adolescent mental health division's November 2018 report to the  
7 legislature, there was general agreement amongst task force  
8 members to amend existing law to increase access to adolescent  
9 mental health services. Specifically, access would be increased  
10 by allowing unlicensed mental health professionals to provide  
11 minor-initiated mental health treatment or counseling services  
12 under the supervision of licensed mental health professionals  
13 and maintaining the confidentiality of mental health treatment  
14 or counseling services when a minor initiates mental health  
15 services without parental or legal guardian consent, knowledge,  
16 or participation.



1 These unlicensed mental health professionals who provide  
2 services under the supervision of a licensed mental health  
3 professional are considered to be in-training and must be in an  
4 accredited training program or have completed all licensing  
5 requirements except the post-degree experience for licensure  
6 examination.

7       The legislature further finds that it is standard practice  
8 for a mental health professional treating a minor to explain  
9 what confidentiality means in regard to mental health treatment  
10 or counseling services and counsel the minor on whether to keep  
11 treatment or counseling confidential from the minor's parent or  
12 legal guardian. Confidentiality may be broken when necessary  
13 for the health and safety of the minor client or others, or when  
14 recovery requires the involvement of another person. The  
15 legislature also finds that it is important for a mental health  
16 professional to assist a minor in completing a nondisclosure  
17 form to be sent to a health plan provider when there is  
18 consensus between the licensed mental health professional and  
19 the minor to keep treatment and counseling confidential from the  
20 minor's parent or legal guardian.



1           The purpose of this Act is to improve minors' access to  
2 mental health care by:

3           (1) Allowing an unlicensed mental health professional,  
4           working under the supervision of a licensed mental  
5           health professional, to provide mental health  
6           treatment or counseling services to minors without  
7           parental or legal guardian consent, knowledge, or  
8           participation;

9           (2) Requiring a mental health professional to ensure that  
10           the covered entity has been notified that minor-  
11           initiated mental health treatment or counseling  
12           services should not be disclosed; and

13           (3) Requiring a covered entity, upon notification that  
14           minor-initiated mental health treatment or counseling  
15           services should not be disclosed, to maintain the  
16           confidentiality of minor-initiated mental health  
17           treatment or counseling services.

18           SECTION 2. Section 577-29, Hawaii Revised Statutes, is  
19 amended to read as follows:

20           "**§577-29 Mental health services relating to minors;**  
21 **diagnosis, counseling, and related activities. (a)**



1 Notwithstanding any other law to the contrary, a minor who is  
2 fourteen years of age or older may consent to mental health  
3 treatment or counseling services provided by a licensed mental  
4 health professional or mental health professional if, in the  
5 opinion of the licensed mental health professional, the minor is  
6 mature enough to participate intelligently in the mental health  
7 treatment or counseling services[+] without parental or legal  
8 guardian consent, knowledge, or participation; provided that the  
9 consent of the minor's parent or legal guardian shall be  
10 required to prescribe medication to the minor or to place the  
11 minor into an out-of-home or residential treatment program.

12 (b) The mental health treatment or counseling services  
13 provided to a minor as authorized by this section shall include  
14 involvement of the minor's parent or legal guardian, unless the  
15 licensed mental health professional [7] or mental health  
16 professional and licensed mental health professional, after  
17 consulting with the minor, determines that the involvement would  
18 be inappropriate. ~~[The licensed mental health professional~~  
19 ~~shall state in the client record whether and when the treating~~  
20 ~~clinician attempted to contact the minor's parent or legal~~  
21 ~~guardian, and whether the attempt to contact was successful or~~



1 ~~unsuccessful, or the reason why, in the treating licensed mental~~  
2 ~~health professional's opinion, it would be inappropriate to~~  
3 ~~contact the minor's parent or guardian.] The mental health  
4 professional shall ensure that the covered entity has been  
5 notified that minor-initiated mental health treatment or  
6 counseling services should not be disclosed.~~

7 (c) A covered entity shall have policies and procedures  
8 established to maintain nondisclosure of the minor-initiated  
9 mental health treatment or counseling services to the parent or  
10 legal guardian in accordance with federal regulations, including  
11 45 Code of Federal Regulations section 164, subpart E. The  
12 mental health professional shall be entitled to submit a claim  
13 to the covered entity for the provision of minor-initiated  
14 treatment or counseling services to the minor pursuant to this  
15 section, but shall not bill for out-of-pocket payments,  
16 copayments, coinsurance, or deductibles.

17 ~~[(e)]~~ (d) A minor may not abrogate consent provided by a  
18 parent or legal guardian on the minor's behalf. A parent or  
19 legal guardian may not abrogate consent given by the minor on  
20 the minor's own behalf.



1           ~~[(d)]~~ (e) If a minor consents to receive mental health  
2 treatment or counseling services pursuant to this section, the  
3 minor shall not be liable for payment.

4           ~~[(e)]~~ (f) The minor's parent or legal guardian ~~[is]~~ shall  
5 not be liable for payment for mental health treatment or  
6 counseling services provided pursuant to this section unless the  
7 parent or guardian participates in the mental health treatment  
8 or counseling services, and then only for services rendered with  
9 the participation of the parent or guardian.

10           (g) Pursuant to this section, upon notification from the  
11 mental health professional that minor-initiated mental health  
12 treatment or counseling services should not be disclosed, a  
13 covered entity shall not disclose to the minor's parent or legal  
14 guardian who is a policyholder or other covered person, any  
15 billing information, including payments made by the covered  
16 entity for minor-initiated mental health treatment or counseling  
17 services.

18           ~~[(f) As used in]~~ (h) For the purposes of this section:  
19           "Covered entity" has the same meaning as in title 45 Code  
20 of Federal Regulations section 160.103.



1 "Licensed mental health professional" means ~~[any of the~~  
2 ~~following:]~~ a person who provides counseling as part of the  
3 following professions:

- 4 (1) A ~~[person]~~ licensed ~~[as a]~~ mental health counselor  
5 licensed pursuant to chapter 453D;
- 6 (2) A ~~[person]~~ licensed ~~[as a]~~ marriage and family  
7 therapist licensed pursuant to chapter 451J;
- 8 (3) A licensed clinical social worker licensed pursuant to  
9 chapter 467E;
- 10 (4) A ~~[person]~~ licensed ~~[as a]~~ psychologist licensed  
11 pursuant to chapter 465;
- 12 (5) A physician licensed pursuant to chapter 453, who is  
13 board certified, or board eligible, ~~[licensed~~  
14 ~~psychiatrist,]~~ in psychiatry; or
- 15 (6) An advanced practice registered nurse licensed  
16 pursuant to chapter 457 who holds an accredited  
17 national certification in an advanced practice  
18 registered nurse psychiatric specialization.

19 "Mental health professional" means a person who is working  
20 under the supervision of a licensed mental health professional  
21 and:





- 1        (1) Is enrolled in an accredited training program; or
- 2        (2) Has completed all licensing requirements except the
- 3        hours of supervised post-degree experience or
- 4        examination required for state licensure as a licensed
- 5        mental health counselor pursuant to chapter 453D;
- 6        licensed marriage and family therapist pursuant to
- 7        chapter 451J; licensed clinical social worker pursuant
- 8        to chapter 467E; licensed psychologist pursuant to
- 9        chapter 465; or advanced practice registered nurse
- 10       licensed pursuant to chapter 457.

11       "Mental health treatment or counseling services" means the  
 12 provision of outpatient mental health treatment or counseling by  
 13 a licensed mental health professional[-] or mental health  
 14 professional."

15       SECTION 3. Statutory material to be repealed is bracketed  
 16 and stricken. New statutory material is underscored.

17       SECTION 4. This Act shall take effect on January 30, 2021.

APPROVED this 15 day of SEP, 2020




GOVERNOR OF THE STATE OF HAWAII

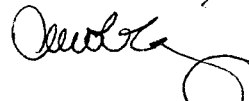


**THE SENATE OF THE STATE OF HAWAI'I**

Date: July 6, 2020  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2020.

  
President of the Senate

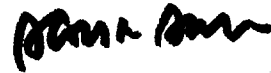
  
Clerk of the Senate

HB No. 2043, HD 2, SD 2

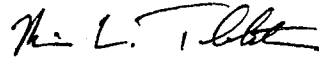
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: July 10, 2020  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2020.



Scott K. Saiki  
Speaker  
House of Representatives



Brian L. Takeshita  
Chief Clerk  
House of Representatives