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# 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 confidentiality of mental health treatment or  
14 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  
4 an 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 is important for a mental health  
16 professional to assist a minor in completing a non-disclosure  
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           treatments or counseling services to minors without  
7           parental or legal guardian consent, knowledge, or  
8           participation;

9           (2) Requiring a mental health professional to assist a  
10          minor with completing a non-disclosure notification  
11          form to send to covered entities, when appropriate;  
12          and

13          (3) Requiring a covered entity, upon receiving a completed  
14          notification form, to maintain confidentiality of  
15          minor-initiated mental health treatment or counseling  
16          services.

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

19           "**§577-29 Mental health services relating to minors;**  
20 **diagnosis, counseling, and related activities. (a)**

21 Notwithstanding any other law to the contrary, a minor who is



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

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



1 ~~health professional's opinion, it would be inappropriate to~~  
2 ~~contact the minor's parent or guardian.]~~ The mental health  
3 professional shall assist the minor in completing a notification  
4 form to send to the covered entity directing the covered entity  
5 not to disclose minor-initiated mental health treatment or  
6 counseling services. The completed notification form shall be  
7 sent to the covered entity and filed in the minor's record.

8 (c) A covered entity, upon receiving the completed  
9 notification form from the mental health professional, shall  
10 have policies and procedures established to maintain non-  
11 disclosure of the minor-initiated mental health treatment or  
12 counseling services to the parent or legal guardian. The mental  
13 health professional shall be entitled to submit a claim to the  
14 covered entity for the provision of minor-initiated treatment or  
15 counseling services to the minor pursuant to this section, but  
16 shall not bill for out-of-pocket payments, co-payments, co-  
17 insurance, or deductibles.

18 ~~[-e-]~~ (d) A minor may not abrogate consent provided by a  
19 parent or legal guardian on the minor's behalf. A parent or  
20 legal guardian may not abrogate consent given by the minor on  
21 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 mental health treatment or  
12 counseling services were provided to a minor without the  
13 consent, knowledge, or participation of the minor's parent or  
14 legal guardian, a covered entity shall not disclose to the  
15 minor's parent or legal guardian who is a policyholder or other  
16 covered person, any billing information, including payments made  
17 by the covered entity for minor-initiated mental health  
18 treatment or counseling services.

19           ~~[(f)]~~ (h) ~~[As used in]~~ For the purposes of this section:  
20           "Covered entity" has the same meaning as in title 45 Code  
21 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 a 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 1, 2021.

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# H.B. NO. 2043

**Report Title:**

Minors; Minor-Initiated Mental Health Treatment or Counseling Services; Confidentiality; Mental Health Professionals

**Description:**

Allows an unlicensed mental health professional, working under the supervision of a licensed mental health professional, to provide mental health treatments or counseling services to minors without parental or legal guardian consent, knowledge, or participation. Requires a mental health professional to assist a minor with completing a non-disclosure notification form to send to covered entities, when appropriate. Requires a covered entity, upon receiving a completed notification form, to maintain confidentiality of minor-initiated mental health treatment or counseling services.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

