
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 ~~[7]~~ 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.



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 treatment or counseling services to minors without parental or legal guardian consent, knowledge, or participation. Requires a mental health professional to ensure that the covered entity has been notified that minor-initiated mental health treatment or counseling services should not be disclosed. Requires a covered entity, upon notification that minor-initiated mental health treatment or counseling services should not be disclosed, to maintain the confidentiality of minor-initiated mental health treatment or counseling services. Takes effect 1/30/2021. (SD2)

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