

ACT 37

H.B. NO. 2043

A Bill for an Act Relating to Adolescent Mental Health Care.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Act 13, Session Laws of Hawaii 2018, required the department of health to convene a task force to address the

concerns of minors seeking counseling on sexual orientation, gender identity, gender expressions, and related behaviors. According to the department's child and adolescent mental health division's November 2018 report to the legislature, there was general agreement amongst task force members to amend existing law to increase access to adolescent mental health services. Specifically, access would be increased by allowing unlicensed mental health professionals to provide minor-initiated mental health treatment or counseling services under the supervision of licensed mental health professionals and maintaining the confidentiality of mental health treatment or counseling services when a minor initiates mental health services without parental or legal guardian consent, knowledge, or participation.

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

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

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

- (1) Allowing 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;
- (2) Requiring 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; and
- (3) Requiring 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.

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

“§577-29 Mental health services relating to minors; diagnosis, counseling, and related activities. (a) Notwithstanding any other law to the contrary, a minor who is fourteen years of age or older may consent to mental health treatment or counseling services provided by a licensed mental health professional or mental health professional if, in the opinion of the licensed mental health professional, the minor is mature enough to participate intelligently in the mental health treatment or counseling services[;] without parental or legal guardian consent, knowledge, or participation; provided that the consent of the minor's parent or legal guardian shall be required to prescribe medication to the minor or to place the minor into an out-of-home or residential treatment program.

(b) The mental health treatment or counseling services provided to a minor as authorized by this section shall include involvement of the minor's parent or legal guardian, unless the licensed mental health professional~~;~~ or mental health professional and licensed mental health professional, after consulting with the minor, determines that the involvement would be inappropriate. ~~[The licensed mental health professional shall state in the client record whether and when the treating clinician attempted to contact the minor's parent or legal guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the treating licensed mental health professional's opinion, it would be inappropriate to contact the minor's parent or guardian.]~~ The mental health professional shall ensure that the covered entity has been notified that minor-initiated mental health treatment or counseling services should not be disclosed.

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

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

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

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

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

~~[(f) As used in]~~ (h) For the purposes of this section:

"Covered entity" has the same meaning as in title 45 Code of Federal Regulations section 160.103.

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

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

ACT 37

“Mental health professional” means a person who is working under the supervision of a licensed mental health professional and:

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

“Mental health treatment or counseling services” means the provision of outpatient mental health treatment or counseling by a licensed mental health professional~~[-] or mental health professional.~~”

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

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

(Approved September 15, 2020.)