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 assist a minor with completing a nondisclosure notification form to send to covered entities, when appropriate; and

(3) Requiring a covered entity, upon receiving a completed notification form, 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 the 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
unsuccesful, 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 assist the minor in completing a notification
form to send to the covered entity directing the covered entity
not to disclose minor-initiated mental health treatment or
counseling services. The completed notification form shall be
sent to the covered entity and filed in the minor's record.

(c) A covered entity, upon receiving the completed
notification form from the mental health professional, 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. 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.

(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.
(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.

(f) The minor's parent or legal guardian 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 mental health treatment or counseling services were provided to a minor without the consent, knowledge, or participation of the minor's parent or legal guardian, 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.

(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;
3. A licensed clinical social worker licensed pursuant to chapter 467E;
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.

"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 a 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 July 1, 2050.
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 assist a minor with completing a nondisclosure notification form to send to covered entities, when appropriate. Requires a covered entity, upon receiving a completed notification form, to maintain the confidentiality of minor-initiated mental health treatment or counseling services. Takes effect on 7/1/2050. (HD1)

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