

ACT 29

S.B. NO. 2333

A Bill for an Act Related to Licensed Marriage and Family Therapists.

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

SECTION 1. The legislature finds that title 25 of the Hawaii Revised Statutes regulates numerous professions and occupations, including marriage and family therapists. One of the regulatory mechanisms provided for in title 25 is professional licensing. Specifically, marriage and family therapists are licensed by a program within the department of commerce and consumer affairs pursuant to chapter 451J, Hawaii Revised Statutes.

The legislature further finds that, although chapter 451J, Hawaii Revised Statutes, provides a licensing procedure for marriage and family therapists, the term “marriage and family therapist” is used elsewhere in the Hawaii Revised Statutes without a reference to licensing. Often, “marriage and family therapist” appears in conjunction with other regulated professions that are explicitly referred to in those sections as “licensed” professions. The legislature additionally finds that this discrepancy between marriage and family therapists and other regulated and licensed professions may create ambiguity in interpretations of these statutes.

The purpose of this Act is to improve clarity and facilitate understanding in the law by reducing ambiguity in the term “marriage and family therapist”.

SECTION 2. Section 431M-1, Hawaii Revised Statutes, is amended by amending the definitions of “alcohol or drug dependence outpatient services”, “day treatment services”, “marriage and family therapist”, “mental health outpatient services”, “partial hospitalization”, “qualified”, and “treatment episode” to read as follows:

““Alcohol or drug dependence outpatient services” means alcohol or drug dependence nonresidential treatment provided on an ambulatory basis to patients with alcohol or drug dependence problems that includes interventions prescribed and performed by qualified physicians, psychologists, licensed clinical social workers, licensed marriage and family therapists, licensed mental health counselor<sup>1</sup>, or advanced practice registered nurses. This definition shall not imply

a broadening of the scope of or granting of prescriptive authority privileges, except as otherwise allowed pursuant to chapter 457.

“Day treatment services” means treatment services provided by a hospital, mental health outpatient facility, or nonhospital facility to patients who, because of their conditions, require more than periodic hourly service. Day treatment services shall be prescribed by a physician, psychologist, licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse, and carried out under the supervision of a physician, psychologist, licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse. Day treatment services require less than twenty-four hours of care and a minimum of three hours in any one day.

“~~[Marriage]~~ Licensed marriage and family therapist” means a person licensed in marriage and family therapy practice pursuant to chapter 451J.

“Mental health outpatient services” means mental health nonresidential treatment provided on an ambulatory basis to patients with mental illness that includes interventions prescribed and performed by a physician, psychologist, licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse.

“Partial hospitalization” means treatment services, including in-hospital treatment services or benefits, provided by a hospital or mental health outpatient facility to patients who, because of their conditions, require more than periodic hourly service. Partial hospitalization shall be prescribed by a physician or psychologist, and may be prescribed by a licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse in consultation with a physician or psychologist. Partial hospitalization requires less than twenty-four hours of care and a minimum of three hours in any one day.

“Qualified” means:

- (1) Having skill in the diagnosis or treatment of substance use disorders, based on a practitioner’s credentials, including but not limited to professional education, clinical training, licensure, board or other certification, clinical experience, letters of reference, other professional qualifications, and disciplinary action; or
- (2) Being a licensed physician, psychologist, licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse, and certified pursuant to chapter 321.

“Treatment episode” means one admission to an accredited hospital or nonhospital facility, or office of a qualified physician, psychologist, licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse for treatment of alcohol or drug dependence, or both, as stipulated in a prescribed treatment plan and that would generally produce remission in those who complete the treatment. The prescribed treatment plan may include the provision of substance abuse services in more than one location and may include in-hospital, nonhospital residential, day treatment, or alcohol or drug dependence outpatient services, or any combination thereof. An admission for only detoxification services shall not constitute a treatment episode.”

SECTION 3. Section 431M-4, Hawaii Revised Statutes, is amended to read as follows:

“§431M-4 **Mental illness, alcohol and drug dependence benefits.** (a) Alcohol and drug dependence benefits shall be as follows:

- (1) Detoxification services as a covered benefit under this chapter shall be provided either in a hospital or in a nonhospital facility that has a written affiliation agreement with a hospital for emergency, medical, and mental health support services. The following services shall be covered under detoxification services:
    - (A) Room and board;
    - (B) Diagnostic x-rays;
    - (C) Laboratory testing; and
    - (D) Drugs, equipment use, special therapies, and supplies.
 Detoxification services shall be included as part of the covered in-hospital services;
  - (2) Alcohol or drug dependence treatment through in-hospital, non-hospital residential, or day treatment substance abuse services as a covered benefit under this chapter shall be provided in a hospital or nonhospital facility. Before a person qualifies to receive benefits under this subsection, a qualified physician, psychologist, licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse shall determine that the person suffers from alcohol or drug dependence, or both; provided that the substance abuse services covered under this paragraph shall include those services that are required for licensure and accreditation. Excluded from alcohol or drug dependence treatment under this subsection are detoxification services and educational programs to which drinking or drugged drivers are referred by the judicial system and services performed by mutual self-help groups;
  - (3) Alcohol or drug dependence outpatient services as a covered benefit under this chapter shall be provided under an individualized treatment plan approved by a qualified physician, psychologist, licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse and shall be services reasonably expected to produce remission of the patient's condition. An individualized treatment plan approved by a licensed marriage and family therapist, licensed mental health counselor, licensed clinical social worker, or an advanced practice registered nurse for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist; and
  - (4) Substance abuse assessments for alcohol or drug dependence as a covered benefit under this section for a child facing disciplinary action under section 302A-1134.6 shall be provided by a qualified physician, psychologist, licensed clinical social worker, advanced practice registered nurse, or certified substance abuse counselor. The certified substance abuse counselor shall be employed by a hospital or nonhospital facility providing substance abuse services. The substance abuse assessment shall evaluate the suitability for substance abuse treatment and placement in an appropriate treatment setting.
- (b) **Mental illness benefits.**
- (1) Covered benefits for mental health services set forth in this subsection shall be limited to coverage for diagnosis and treatment of mental disorders. All mental health services shall be provided under an individualized treatment plan approved by a physician, psycholo-

- gist, licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse and must be reasonably expected to improve the patient's condition. An individualized treatment plan approved by a licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, or an advanced practice registered nurse for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist;
- (2) In-hospital and nonhospital residential mental health services as a covered benefit under this chapter shall be provided in a hospital or a nonhospital residential facility. The services to be covered shall include those services required for licensure and accreditation;
  - (3) Mental health partial hospitalization as a covered benefit under this chapter shall be provided by a hospital or a mental health outpatient facility. The services to be covered under this paragraph shall include those services required for licensure and accreditation; and
  - (4) Mental health outpatient services shall be a covered benefit under this chapter."

SECTION 4. Chapter 451J, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**"CHAPTER 451J  
LICENSED MARRIAGE AND FAMILY THERAPISTS"**

SECTION 5. Section 451J-1, Hawaii Revised Statutes, is amended by amending the definition of "marriage and family therapist" to read as follows:

"Marriage and family therapist" or "licensed marriage and family therapist" means a person who uses the title of marriage and family therapist or licensed marriage and family therapist, who has been issued a license under this chapter, and whose license is in effect and not revoked or suspended at the time in question."

SECTION 6. Section 451J-3, Hawaii Revised Statutes, is amended to read as follows:

**"[§451J-3] Powers and duties of the director.** In addition to any other powers and duties authorized by law, the director may:

- (1) Examine and approve the qualifications of all applicants under this chapter, and issue a license to each successful applicant granting permission to use the title of marriage and family therapist or licensed marriage and family therapist in this State pursuant to this chapter and the rules adopted under this chapter;
- (2) Adopt, amend, or repeal rules pursuant to chapter 91;
- (3) Administer, coordinate, and enforce this chapter and rules;
- (4) Discipline a person licensed as a marriage and family therapist for any cause described by this chapter, or for any violation of rules, or refuse to license a person for failure to meet licensing requirements or for any cause that would be grounds for disciplining a licensed marriage and family therapist; and
- (5) Appoint an advisory committee of licensed marriage and family therapists and members of the public to assist with the implementation of this chapter and the rules; except that the initial members of

the committee who are marriage and family therapists shall not be required to be licensed pursuant to this chapter.”

SECTION 7. Section 451J-5, Hawaii Revised Statutes, is amended to read as follows:

“~~§451J-5~~ **Prohibited acts.** Except as specifically provided elsewhere in this chapter, no person shall use the title marriage and family therapist or licensed marriage and family therapist without first having secured a license under this chapter. The department shall investigate and prosecute any individual using the title of marriage and family therapist or licensed marriage and family therapist without being properly licensed as a marriage and family therapist. Any person who violates this section shall be subject to a fine of not more than \$1,000 per violation. Each day’s violation shall be deemed a separate offense. Any action taken to impose or collect the fine imposed under this section shall be a civil action.”

SECTION 8. Section 451J-6, Hawaii Revised Statutes, is amended to read as follows:

“~~§451J-6~~ **Exemptions.** (a) Licensure shall not be required of:

- (1) A person doing work within the scope of practice or duties of the person’s profession that overlaps with the practice of marriage and family therapy; provided the person does not purport to be a marriage and family therapist~~;~~ or licensed marriage and family therapist;
- (2) Any student enrolled in an accredited educational institution in a recognized program of study leading toward attainment of a graduate degree in marriage and family therapy or other professional field; provided that the student’s activities and services are part of a prescribed course of study supervised by the educational institution and the student is identified by an appropriate title including but not limited to “marriage and family therapy student or trainee”, “clinical psychology student or trainee”, “clinical social work student or trainee”, or any title which clearly indicates training status; or
- (3) Any individual who uses the title marriage and family therapy intern for the purpose of obtaining clinical experience in accordance with section 451J-7(3).

(b) Nothing in this chapter shall be construed to prevent qualified members of other licensed professions as defined by any law, rule, or the department, including but not limited to social workers, psychologists, registered nurses, or physicians, from doing or advertising that they assist or treat individuals, couples, or families consistent with the accepted standards of their respective licensed professions; provided that no person, unless the person is licensed as a marriage and family therapist, shall use the title of marriage and family therapist~~;~~ or licensed marriage and family therapist.”

SECTION 9. Section 451J-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Licenses shall be renewed triennially on or before December 31, with the first renewal deadline occurring on December 31, 2001. Failure to renew a license shall result in a forfeiture of the license. Licenses that have been forfeited may be restored within one year of the expiration date upon payment of renewal and restoration fees, and in the case of marriage and family therapists or licensed

marriage and family therapists audited pursuant to subsection (f), documentation of continuing education compliance. Failure to restore a forfeited license within one year of the date of its expiration shall result in the automatic termination of the license. Persons with terminated licenses shall be required to reapply for licensure as a new applicant.”

SECTION 10. Section 451J-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department shall deny, revoke, condition, or suspend a license granted pursuant to this chapter on the following grounds:

- (1) Conviction by a court of competent jurisdiction of a crime which the department has determined, by rules adopted pursuant to chapter 91, to be of a nature that renders the person convicted unfit to practice marriage and family therapy;
- (2) Failing to report in writing to the director any disciplinary decision related to the provision of mental health services issued against the licensee or the applicant in any jurisdiction within thirty days of the disciplinary decision, or within thirty days of licensure;
- (3) Violation of recognized ethical standards for marriage and family therapists or licensed marriage and family therapists as set by the association;
- (4) Fraud or misrepresentation in obtaining or renewing a license, including making a false certification of compliance with the continuing education requirement set forth in section 451J-10;
- (5) Revocation, suspension, or other disciplinary action by any state or federal agency against a licensee or applicant for any reason provided under this section; or
- (6) Other just and sufficient cause that renders a person unfit to practice marriage and family therapy.”

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved April 28, 2016.)

**Note**

1. Prior to amendment “counselors” appeared here.