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## A BILL FOR AN ACT

RELATING TO PRIVACY OF HEALTH CARE INFORMATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. People have a constitutional right to privacy  
2 under article I, section 6 of the Constitution of the State of  
3 Hawaii. This right to privacy includes personal health  
4 information and records, and with respect to information about  
5 their medical care and health status, this right continues  
6 throughout every civil, criminal, and administrative proceeding  
7 in which a person's health information is obtained and used and  
8 after the proceeding has concluded.

9           Rule 504.1(d)(3) of the Hawaii rules of evidence, provides  
10 a limited narrow waiver of health information privacy of a  
11 patient's condition that is part of the patient's claim or  
12 defense in the subject proceeding. However, this limited waiver  
13 of the physician-patient privilege does not entitle any party or  
14 entity to use that patient's personal health information outside  
15 of the proceeding without first obtaining the patient's informed  
16 consent for those uses. Currently, a party may protect its  
17 health information privacy in a proceeding and limit the use of  
18 the information to the proceeding by obtaining a protective



1 order from the court or administrative agency. The legislature  
2 finds that, to achieve uniformity and consistency, courts and  
3 administrative agencies and parties to proceedings therein  
4 should have explicit guidance on the basic required elements of  
5 health information and records authorizations and protective  
6 orders.

7 People are typically not aware of how their health  
8 information is being used in and outside of civil, criminal, and  
9 administrative proceedings. The legislature, therefore, finds  
10 that a fundamental principal of the privacy of health  
11 information is an individual's understanding of the right to  
12 health information privacy. Accordingly, the legislature has  
13 the responsibility to reasonably limit the use of health  
14 information to authorized purposes.

15 Currently, there is no federal or state statute that  
16 comprehensively governs the disclosure and use of an  
17 individual's protected health information. Chapter 323C, Hawaii  
18 Revised Statutes, was repealed by Act 244, Session Laws of  
19 Hawaii, 2001, in anticipation of the federal regulations that  
20 would implement the Health Insurance Portability and  
21 Accountability Act. However, these federal regulations  
22 established only a minimum floor of privacy protection, and the



1 regulations only governed protected health information that is  
2 obtained directly from health care providers. The federal  
3 regulations do not provide adequate privacy protection for uses  
4 of protected health information in court and administrative  
5 agency proceedings, and they do not address continuing privacy  
6 considerations once those proceedings have concluded. The  
7 legislature therefore finds that persons' right to privacy of  
8 their health information and records is at risk during these  
9 proceedings and after their conclusion.

10 The purpose of this Act is to protect individuals from  
11 unauthorized uses of their protected health information and  
12 records in all civil, criminal, and administrative proceedings  
13 and to establish mechanisms to protect against unauthorized and  
14 inappropriate uses of protected health information outside of  
15 civil, criminal, or administrative proceedings.

16 SECTION 2. Chapter 622, Hawaii Revised Statutes, is  
17 amended by adding a new section to be appropriately designated  
18 and to read as follows:

19 **"§622- Disclosure of health information in civil,**  
20 **criminal, and administrative proceedings.** (a) A person's  
21 protected health information may be disclosed in response to a



1 discovery request or subpoena only if the disclosure is made  
2 pursuant to:

3 (1) A written authorization, signed by the person to whom  
4 the protected health information belongs, or the  
5 person's legal guardian, that reasonably describes the  
6 person's privacy rights and the purposes for which the  
7 health information will be used; or

8 (2) A court or administrative agency order, including a  
9 stipulated order.

10 (b) A court or administrative agency protective order  
11 issued under this section shall:

12 (1) Provide that protected health information is subject  
13 to continuing privacy protection from all unauthorized  
14 uses within and outside of the proceeding;

15 (2) Identify any entities to which the information may be  
16 disclosed;

17 (3) Specify that the protected health information may not  
18 be disclosed or used outside of the subject  
19 proceeding, except for record-keeping and regulatory  
20 purposes as may be required by federal or state law;

21 (4) Require the prompt return or certification of the  
22 destruction of all copies of protected health



1           information and all summaries, except for copies that  
 2           are required by federal or state law; and  
 3           (5) Meet any other requirements that the court or  
 4           administrative agency determines are appropriate to  
 5           protect the confidentiality of protected health  
 6           information from unauthorized uses within and outside  
 7           of the proceeding."

8           SECTION 3. New statutory material is underscored.

9           SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Kirk Caldwell

Tony Wu  
Mele Canoll

Frank  
Paul

James  
John

Calvin K. Boy  
J. R. K...

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**Report Title:**

Health Care Information

**Description:**

Promotes privacy of health care information in civil, criminal, and administrative proceedings by providing for protective orders.

