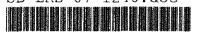
JAN 2 4 2007

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 SB LRB 07-1240.doc



- 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

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S.B. NO. 1663

- 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 "S622- 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

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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 un	der 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	<u>(3)</u>	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

SB LRB 07-1240.doc



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	SECT	ON 3. New statutory material is underscored.
9	SECTI	ON 4. This Act shall take effect upon its approval.
0		Maria No.
		INTRODUCED BY:
		11

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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.