H.B. NO. 192

A BILL FOR AN ACT

RELATING TO CONFIDENTIALITY OF PATIENT PRESCRIPTION INFORMATION.

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

1 SECTION 1. The legislature finds that on September 16, 2 2008, the United States First Circuit Court of Appeals upheld a 3 New Hampshire law that asserts the right of states to prohibit 4 the sale of doctor-specific prescription drug data that is 5 widely used in pharmaceutical marketing. The New Hampshire law was intended to cut down on state health care costs by 6 7 eliminating the tool used by drug sales representatives in 8 promoting brand name drugs. By purchasing the data describing 9 which doctors prescribe what drugs, pharmaceutical sales forces 10 are better able to identify which doctors might use their 11 products and be receptive to their sales proposals. 12 Pharmaceutical representatives can also focus on persuading 13 doctors who do not write many prescriptions for their products 14 to change their minds. In his ruling, United States Court of 15 Appeals Judge Bruce Marshall Selya wrote, "The record contains 16 substantial evidence that, in several instances, detailers 17 [pharmaceutical sales representatives] armed with prescribing 18 histories encourage the overzealous prescription of more costly HB LRB 09-0763.doc

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1	brand-name drugs regardless of both the public health		
2	consequences and the probable outcome of a sensible cost/benefit		
3	analysis."		
4	The purpose of this Act is to enact a prescription		
5	information confidentiality law based on the existing law in New		
6	Hampshire.		
7	SECTION 2. Chapter 328, Hawaii Revised Statutes, is		
8	amended by adding a new section to be appropriately designated		
9	and to read as follows:		
10	"§328- Prescription information; confidentiality;		
11	violation. (a) Records relating to prescription information		
12	containing patient-identifiable and prescriber-identifiable data		
13	shall not be licensed, transferred, used, or sold by any		
14	pharmacy benefits manager, insurance company, electronic		
15	transmission intermediary, retail, mail order, or internet		
16	pharmacy or other similar entity, for any commercial purpose,		
17	except for the limited purposes of:		
18	(1) Pharmacy reimbursement;		
19	(2) Formulary compliance;		
20	(3) Care management;		
21	(4) Utilization review by a health care provider, the		
22	patient's insurance provider, or the agent of either;		



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1	(5) Health care research; or		
2	(6) As otherwise provided by law.		
3	(b) For the purpose of this section, "pharmacy benefit		
4	manager" means a third party administrator of prescription drug		
5	benefit programs primarily responsible for processing and paying		
6	prescription drug claims, developing and maintaining a drug		
7	formulary, contracting with pharmacies, and negotiating		
8	discounts and rebates with drug manufacturers. Commercial		
9	purposes include advertising, marketing, promotion, or any		
10	activity that could be used to influence sales or market share		
11	of a pharmaceutical product, influence or evaluate the		
12	prescribing behavior of an individual health care professional,		
13	or evaluate the effectiveness of a professional pharmaceutical		
14	detailing sales force.		
15	(c) Nothing in this section shall prohibit:		
16	(1) The dispensing of prescription medications to a		
17	patient or to the patient's authorized representative;		
18	(2) The transmission of prescription information between		
19	an authorized prescriber and a licensed pharmacy;		
20	(3) The transfer of prescription information between		
21	licensed pharmacies;		



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1	(4)	The transfer of prescription records that may occur in	
2		the event a pharmacy ownership is changed or	
3		transferred;	
4	(5)	Care management educational communications provided to	
5		a patient about:	
6		(A) The patient's health condition;	
7		(B) Adherence to a prescribed course of therapy; or	
8		(C) Other information about the drug being dispensed,	
9		treatment options, or clinical trials.	
10	(d)	Nothing in this section shall prohibit the collection,	
11	use, trans	sfer, or sale of patient and prescriber data that are	
12	not identifiable by zip code, geographic region, or medical		
13	specialty for commercial purposes.		
14	(e)	In addition to other remedies, a violation of this	
15	section is an unfair or deceptive act or practice within the		
16	meaning of	f section 480-2."	
17	SECT	ION 3. New statutory material is underscored.	
18	SECT	ION 4. This Act shall take effect upon its approval.	
19			
		INTRODUCED BY:	
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JAN 2 2 2009



Report Title: Prescription Information; Confidentiality

Description:

Prohibits, except for certain limited purposes, the use, transfer, licensing, or sale of a patient's prescription information for any commercial purpose.

