SB2100

SD1

LINDA LINGLE
GOVERNOR OF HAWAII

CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

Senate Committee on Health

SB 2100 SD1, Relating to Health Care Data

Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health

February 23, 2010

Department's Position: The Department of Health opposes the measure as written, and offers to work on amendments with the other stakeholders.

Fiscal Implications: Uncertain but substantial costs for departmental and private information technology (IT). For the department, we will need employees or vendors to develop, test and maintain an electronic data transmission system in compliance with the bill. Such costs are not covered by the executive supplemental budget and would cause financial hardship to the department.

Purpose and Justification: The measure requires that laboratory test results be provided to health care providers or their designees, and HIPAA entities and business associates as defined by 45 CFR Parts 160-164.

The department understands the need for health care entities to share electronic information to expedite patient care, including access to and payment of necessary laboratory testing, and the department urges that such information sharing be done carefully, with consideration of relevant issues, such as privacy under the law, business needs, information technology, and costs.

The bill appears over-broad. It requires providing personal health information to "authorized persons" to the extent of the definition of such persons whether those persons request the information or

not. The bill also provides any HIPAA-defined entity or business associate, such as insurance companies, broad and unrestricted access to all patient laboratory information without the current provider-patient permissions, or even health plan membership.

We are aware of the charter and composition of the Hawaii Health Information Exchange (HHIE), and we have reviewed the changes proposed by HHIE, and we attach our comments on those proposed changes

The bill needs to recognize the practicalities of implementation. First, IT development costs money, and the bill provides none. Second, good IT development needs time even when resources are available, and the bill takes effect upon approval. Third, designing and operating a good IT system also requires teamwork by the affected parties, especially if a new system is to be integrated with or connected to existing systems or coordinated with other proposed systems. The bill does not recognize this need.

We respectfully request that amendments be made. We are willing to work with other stakeholders to develop more acceptable language.

Thank you for the opportunity to testify.

ATTACHMENT

The draft Hawaii Health Information Exchange proposed changes as of this date are:

"Clinical laboratory test results. (a) Clinical laboratory test results [~~shall~~] may be provided to [~~authorized persons~~] any covered entity for [~~the~~] any purpose[~~of populating a personal health record or an electronic medical record and for any other purpose also~~] permitted under the Health Insurance Portability and Accountability Act of 1996, et. seq. and federal regulations promulgated thereunder.

(b) For the purposes of this section and any state administrative rules governing clinical laboratories in the state of Hawaii, the definition of "authorized persons" [~~means~~] shall include:

(1) The provider ordering the test or [~~his or her~~] the provider's designee; and

(2) Any covered entity as defined under 45 Code of Federal Regulations parts 160-164, regulations promulgated the Health Insurance Portability and Accountability Act of 1996, et. seq. ~~covered entity as defined under 45 Code of Federal Regulations parts 160-164~~

DOH COMMENTS:

1. The replacement of "shall" with "may" is an improvement, but we are still concerned about allowing protected information to go to "any covered entity" without patient consent. There should be some specified relationship between the patient and the covered entity. We admit that there is a tension between protection and flexibility.
2. The reference to the federal regulations is an improvement.

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Honolulu, Hawai'i 96813-4333

HAWAI'I PACIFIC HEALTH
Kapi'olani • Pali Momi • Straub • Wilcox

808-535-7401
www.hawaiipacifichealth.org

Tuesday, February 23, 2010 – 10:00am
Room 016

The Senate Committee on Judiciary & Government Operations

To: Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

From: Steve Robertson
Executive Vice President & CIO, Revenue Management and IT

Re: Testimony in Support of SB 2100 SD1 Relating to Health Care Data – with Amended Language

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My name is Steve Robertson, Executive Vice President and Chief Information Officer, at Hawai'i Pacific Health (HPH). Hawai'i Pacific Health is a nonprofit health care system and the state's largest health care provider, committed to providing the highest quality medical care and service to the people of Hawai'i and the Pacific Region through its four affiliated hospitals, 44 outpatient clinics and more than 2,200 physicians and clinicians. The network is anchored by its four nonprofit hospitals: Kapi'olani Medical Center for Women & Children, Kapi'olani Medical Center at Pali Momi, Straub Clinic & Hospital and Wilcox Memorial Hospital. Collectively, they lead the state in the areas of women's health, pediatric care, cardiovascular services, bone and joint services and cancer care. Hawai'i Pacific Health ranks among the top 3.8 percent of hospitals nationwide in electronic medical record adoption, with system-wide implementation that allows its hospitals to offer integrated, coordinated care throughout the state. Learn more at: http://www.hawaiipacifichealth.org

We support the intent of SB 2100 SD 1 Relating to Health Care Data which expands access of laboratory test results beyond ordering physicians and their designees, but recommend that the bill be amended.

Under current Department of Health administrative rules, clinical laboratories may disclose lab results only to the person who ordered the lab test, or their designee. This language prohibits the release of the lab results to other physicians and HIPAA health entities involved in the individual's care as they did not order that particular lab. SB2100 SD1 seeks to widen access to laboratory information to covered entities under the Privacy Rule as well as their business associates for purposes of populating an electronic health record, personal health record and any other purpose permitted under the Federal Privacy Rule (HIPAA).

We agree that the sharing of electronic medical data is a necessity in order for health

information exchange to deliver on the promise of improving healthcare coordination in our community. Public trust in the confidentiality of their health information is an imperative in order for the health information exchange to be fully embraced by our patients. We therefore need to ensure the public's confidence that the information shared in this exchange will be held and shared in accordance with HIPAA.

As currently written we believe the language is too broad and the mandated disclosure requirement is onerous. This bill, if enacted, could **require** clinical laboratories to provide labs to populate the electronic health record (EHR) or personal health record (PHR) of any covered entity or its business associates. So, for example, if a covered entity, such as a pharmacy contracted with a technology company to provide their customers with a PHR, the clinical laboratories in the State could be mandated to submit labs to the technology company to populate the PHR. Every physician who implements an EHR could demand that the clinical laboratories submit labs to their EHR. For these reasons, we offer the following amendments:

To address these concerns, we suggest the following amendments:

"Â§321- Clinical laboratory test results. (a) Clinical laboratory test results [~~shall~~] may be provided to [~~authorized persons~~] any covered entity for [~~the~~] any purpose [~~of populating a personal health record or an electronic medical record and for any other~~] [~~also~~] permitted under the Health Insurance Portability and Accountability Act of 1996, et. seq. and federal regulations promulgated thereunder.

(b) For purposes of this section and any state administrative rules governing clinical laboratories in the state of Hawai`i, definition of "authorized persons" [~~means~~] shall include:

(1) The provider ordering the test or the provider's designee; and

(2) Any covered entity as defined under 45 Code of Federal Regulations Parts 160-164, regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, et. seq. ~~covered entity as defined in 45 Code of Federal Regulations Parts 160-164."~~

This language would broaden the scope of the current administrative rule to allow release of laboratory results for health information exchanges and PHRs/EHRs but only in accordance with the requirements of HIPAA.

I ask that the Committee consider our suggested changes. Thank you for the opportunity to testify.

Hawai'i Health Information Exchange

Health information, when and where you need it.

To:
SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS
Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

Testimony in Support of Senate Bill 2100 Relating to Health Care Data

Submitted by: Christine Maii Sakuda, Executive Director
Hawaii Health Information Exchange
February 22nd, 2010, 10:00 a.m. Agenda, Room 016

Dear Honorable Chair, Vice Chair and committee members,

The Hawaii Health Information Exchange supports the intent of SB 2100 SD 1 Relating to Health Care Data which expands access of laboratory test results beyond ordering physicians and their designees, but recommend that the bill be amended.

Under current Department of Health administrative rules, clinical laboratories may disclose lab results only to the person who ordered the lab test, or their designee. This language prohibits the release of the lab results to other physicians and HIPAA health entities involved in the individual's care as they did not order that particular lab. SB2100 SD1 seeks to widen access to laboratory information to covered entities under the Privacy Rule as well as their business associates for purposes of populating an electronic health record, personal health record and any other purpose permitted under the Federal Privacy Rule (HIPAA).

We agree that the sharing of electronic medical data is a necessity in order for health information exchange to deliver on the promise of improving healthcare coordination in our community. Public trust in the confidentiality of their health information is an imperative in order for the health information exchange to be fully embraced by our patients. We therefore need to ensure the public's confidence that the information shared in this exchange will be held and shared in accordance with HIPAA.

As currently written we believe the language is too broad and the mandated disclosure requirement is onerous. This bill, if enacted, could **require** clinical laboratories to provide labs to populate the electronic health record (EHR) or personal health record (PHR) of any covered entity or its business associates. So, for example, if a covered entity, such as a pharmacy contracted with a technology company to provide their customers with a PHR, the clinical laboratories in the State could be mandated to submit labs to the technology company to populate the PHR. Every physician who implements an EHR could demand that the clinical laboratories submit labs to their EHR. For these reasons, we offer the following amendments:

Hawaii HIE | 345 Queen Street, Suite 601 | Honolulu, Hawaii 96813 | Tel: (808) 791-7830 |
Email: csakuda@hawaiipca.net

To address these concerns, we suggest the following amendments:

"Â§321- Clinical laboratory test results. (a) Clinical laboratory test results [~~shall~~] may be provided to [~~authorized persons~~] any covered entity for [~~the~~] any purpose [~~of populating a personal health record or an electronic medical record and for any other~~] [~~also~~] permitted under the Health Insurance Portability and Accountability Act of 1996, et. seq. and federal regulations promulgated thereunder.

(b) For purposes of this section and any state administrative rules governing clinical laboratories in the state of Hawai`i, definition of "authorized persons" [~~means~~] shall include:

(1) The provider ordering the test or the provider's designee; and

(2) Any covered entity as defined under 45 Code of Federal Regulations Parts 160-164, regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, et. seq. ~~covered entity as defined in 45 Code of Federal Regulations Parts 160-164."~~

This language would broaden the scope of the current administrative rule to allow release of laboratory results for health information exchanges and PHRs/EHRs but only in accordance with the requirements of HIPAA.

I ask that the Committee consider our suggested changes.

Thank you for the opportunity to testify.

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Email: csakuda@hawaiipca.net

DIAGNOSTIC LABORATORY SERVICES, INC.

TESTIMONY
OF
Raymond Yeung
Vice President, Information Services

OPPOSING SB 2100 SD1 WITH PROPOSED AMENDMENT: Relating to Health Care Data

TO THE SENATE
COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

February 23, 2010, 10:00 am
Conference Room 016

Chair Brian T. Taniguchi and Members of the Committee on Judiciary and Government Operations:

I am Raymond Yeung, Vice President of Information Systems at Diagnostic Laboratory Services, Inc. (DLS). I am here today to present testimony in opposition of SB 2100 SD1.

DLS is one of the major clinical laboratories in the State of Hawaii that could be significantly impacted by the passing of SB2100 SD1. For reasons that we have listed below (Section: Opposing Reasons), we strongly disagree with the majority of what this bill proposes and recommend the bill not be passed unless amended as below (Section: Proposed Amendment) to minimize the negative impact described. The language in our Proposed Amendment is identical in substance to that in the testimony submitted by the Hawaii Health Information Exchange on the same bill.

Opposing Reasons:

- The unrealistic requirement on the lab to disclose and deliver lab data to "authorized persons" under a wide-open definition per SB2100 SD1 would create unreasonable compliance, financial and operational burden on the lab who would have to keep up with delivering lab data to a dynamic permutation of "authorized persons" (e.g. any lab instrument vendor or business consultant who is an active business associate have the right to request for lab data under SB2100 SD1).
- Mandatory delivery of lab data to numerous "authorized persons" defined by SB2100 SD1 would inevitably increase the number of data repositories capturing personal health information that may or may not be equipped with proper security measures. This would

significantly increase the risk of data theft, information abuse and privacy/security breach.

- The multiple instances of "authorized persons" associated with a patient, potentially compounded by a multitude of disparate electronic health record and patient health record data repositories on the patient would make it impossible for the lab (1) to be aware and keep track of all these associated entities, and (2) to synchronize lab data updates and amendments with all these entities on a timely manner if at all, consequently, putting the patient at risk and the health provider to lose confidence with and/or question the integrity and reliability of lab data from sources other than the lab. This undermines the objective of a data-sharing bill.
- The practice of cross-system sharing of lab data among disparate systems independent of the lab is highly realistic and possible, and would further escalate the exposure to data theft, information abuse and privacy/security breach if these systems and data-sharing processes are not properly secured. Besides, there is no mechanism for the lab to propagate lab data updates and amendments to these systems which the lab is not aware of.

The amended version recommended below would enhance continuum of healthcare by expanding access of lab data to any providers involved in the treatment of the patient, besides the ordering provider. Furthermore, it preserves the provision of lab data access to covered entities for payment and operations that is consistent with HIPAA.

Proposed Amendment

§321- Clinical laboratory test results. (a) Clinical laboratory test results [~~shall~~] may be provided to [~~authorized persons~~] any covered entity for [~~the~~] any purpose [~~of populating a personal health record or an electronic medical record and for any other~~] purpose [~~also~~] permitted under the Health Insurance Portability and Accountability Act of 1996 and federal regulations promulgated thereunder.

(b) For purposes of this section and any state administrative rules governing clinical laboratories in the state, "authorized persons" [~~means~~] shall include:

(1) The provider ordering the test or the provider's designee; and

(2) Any Health Insurance Portability and Accountability Act of 1996 covered entity [~~or business associate~~] as defined in 45 Code of Federal Regulations Parts 160-164."

Thank you for your time today. Should you have any questions or need clarification, please don't hesitate to contact me at 589-5100.

Sincerely,

Raymond Yeung
Vice President, Information Systems

The Chamber of Commerce of Hawaii
The Voice of Business in Hawaii

Testimony to the Senate Committee on Judiciary

Conference Room 016, State Capitol
Tuesday, February 23; 10:00 a.m.

RE: SENATE BILL NO. 2100 SD1, RELATING TO HEALTH CARE DATA

Chair Taniguchi, Vice Chair Takamine, and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber supports Senate Bill 2100 SD1 relating to Health Care Data.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The measure ensures that appropriate health care entities are able to receive lab data in electronic format to facilitate the use and development of health care exchange networks.

The Chamber supports the growing need for a Health Information Technology system. This network allows for technical support to help physicians and hospitals in Hawaii establish electronic medical records and can also develop the policies and infrastructure needed for all health care providers to establish electronic interconnectivity throughout the state. Investing in technology infrastructure will reduce the overall administrative burden bourne by public and private entities.

Therefore, the Chamber supports legislation that will support centralized and efficient means in exchanging information such as lab data. This is a first step in the right direction in ameliorating some of the issues that arise due to a lack of an electronic communication system.

In light of the above, The Chamber of Commerce of Hawaii supports SB 2100 SD1. Thank you for the opportunity to testify.