

**Testimony for HB1957 on 2/22/2012 2:00:00 PM**

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**LATE TESTIMONY**

**Sent:** Wednesday, February 22, 2012 11:38 AM

**To:** CPCtestimony

**Cc:** andrew.tseu@doh.hawaii.gov

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**Attachments:** HB1957\_HD1\_HTH\_02-22-12\_CP~1.pdf (28 KB)

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Testimony for CPC/JUD 2/22/2012 2:00:00 PM HB1957

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: State of Hawaii, Department of Health

Organization:

E-mail: andrew.tseu@doh.hawaii.gov

Submitted on: 2/22/2012

**Comments:**

Please replace this testimony for the testimony erroneously submitted by the Department of Health on February 17, 2012. We apologize for the mix-up and thank you for your consideration.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

Written Only

LORETTA J. FUDDY, A.C.S.W., M.P.H.  
DIRECTOR OF HEALTH

In reply, please refer to  
File:

## House Committees on Consumer Protection & Commerce and Judiciary

### H.B. No. 1957 H.D. 1, RELATING TO HEALTH CARE INFORMATION

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.  
Director of Health

February 22, 2012

1 **Department's Position:** Support.

2 **Fiscal Implications:** None.

3 **Purpose and Justification:** The Department supports this bill because it will serve to facilitate the  
4 exchange of health information and simplify an often complex analysis of applicable state privacy laws.  
5 The result will be improved patient care, reduced health care costs and enhanced quality of health care  
6 operations without compromising privacy protections.

7 The Department believes that this bill is in accord with the Health Insurance Portability and  
8 Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical  
9 Health (HITECH) Act. These federal regulations promote a system to enhance the quality of patient  
10 care while reducing instances of duplicative services and protecting patient privacy. This bill moves in  
11 the direction set by both HIPAA and the HITECH Act.

12 This bill promotes sharing health information in a timely and safe manner while improving  
13 patient care and outcomes, reducing health cost, and enhancing oversight of healthcare operations. It  
14 also helps pave the way for the electronic maintenance and exchange of health information.

1        This bill also will serve to simplify what has become a complicated array of state laws and  
2 regulations regarding health care privacy. Often, an involved preemption analysis must be conducted to  
3 determine which privacy law is appropriate. While our staff is highly trained and capable, this  
4 unnecessary complexity can lead to delays or the application of an incorrect law. This bill will eliminate  
5 a significant layer of that complexity.

6        This bill only applies to entities that are already required to comply with HIPAA regulations.  
7 HIPAA is the recognized standard in this area; therefore, appropriate protections will still be in place.  
8 Furthermore, this bill specifically states that it does not apply to disclosures of health information  
9 restricted by federal law or regulations. This means that federal regulations, such as those regarding  
10 substance abuse treatment information, must still be followed.

11        The Department supports H.B. 1957 H.D. 1. Thank you for the opportunity to provide testimony  
12 on this measure.



## TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-SIXTH LEGISLATURE, 2012

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ON THE FOLLOWING MEASURE:

H.B. NO. 1957, H.D. 1, RELATING TO HEALTH CARE INFORMATION.

BEFORE THE:

HOUSE COMMITTEES ON CONSUMER PROTECTION AND COMMERCE AND ON  
JUDICIARY

DATE: Wednesday, February 22, 2012                      TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or  
Andrea J. Armitage, Deputy Attorney General

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Chairs Herkes and Keith-Agaran and Members of the Committees:

The Department of the Attorney General appreciates and supports the intent of this bill to promote simplification and efficiency in the electronic exchange of individually identifiable health information. However, we are concerned that the way in which this bill is drafted may cause confusion within the health care provider community as well as among health care consumers due to its lack of specificity, and thus, we provide the following comments and potential solutions.

This bill would create a new chapter in the Hawaii Revised Statutes called the Health Care Privacy Harmonization Act, which would provide that all entities covered by the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191, as amended (HIPAA), who use and disclose health information in compliance with HIPAA regulations shall be deemed to be acting in compliance with state privacy laws and regulations, even if the state laws and regulations are stricter than HIPAA. The new chapter would make it clear that it would not supersede any federal laws that are stricter than HIPAA, nor would it affect mandatory reporting statutes for abuse, neglect, or vital statistics.

We are concerned that the bill does not make sufficiently clear which Hawaii confidentiality statutes would be modified to the HIPAA standards and which statutes would not be affected. Furthermore, the way it is currently drafted, health care providers who are not covered by HIPAA would not be affected by this bill and would still be held to standards stricter than HIPAA standards for the use and disclosure of health care information. (Health care

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Twenty-Sixth Legislature, 2012  
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providers who are not covered entities as defined by HIPAA are those who do not bill for services electronically. The Hawaii State Hospital is one example of a health care provider that is not designated as a HIPAA covered entity.) This would perpetuate two different standards governing the exchange of health care information, which is what the bill is trying to eliminate. We suggest that the Health Care Privacy Harmonization Act instead provide that all state law privacy provisions that are stricter than HIPAA standards shall be equivalent to HIPAA standards. It would then apply to all health care entities that maintain, use, and disclose confidential health information, whether or not they are technically HIPAA-covered. Moreover, if there are state laws that should remain stricter than HIPAA, then those laws should be identified in the section entitled, "Relationship to other laws."

We have been working on a proposed House Draft 2 that incorporates potential solutions to the problems we see in House Draft 1. We have not had the opportunity to discuss our draft with all other interested parties, although we have had discussions with Beth Giesting, Hawaii's Director of Health Care Transformation. Those conversations are continuing, and we look forward to working with the Hawaii Health Information Exchange and other stakeholders in this endeavor and hope to reach consensus on the substance of this bill going forward. We recommend that decision making be postponed pending those discussions.