STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

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GOVERNOR OF HAWAII
VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH
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ADMINISTRATOR

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March 14, 2016

To: The House Committee on Health

S.B. 2389 SD1 - Relating to Health

Representative Della Au Belatti, Chair
Representative Richard P. Creagan, Vice Chair
Committee on Health

From: Sue Radcliffe, Administrator State Health Planning & Development Agency

Agency's Position: Support

Chair Belatti, Vice Chair Creagan and Committee Members:

Since 1975, SHPDA has been the State's principal agency charged with the duty of promoting accessibility for all the people of the State of Hawai'i to quality health care services at reasonable cost. To accomplish our objectives we conduct studies and investigations regarding the causes of health care costs.

The passage of this bill could reinvigorate the Agency and strengthen our potential to succeed in our mission. The bill will promote transparency in the health care sector and support public policy decision making.

Importantly, S.B. 2389 SD1 clarifies existing language making it clear that the State needs the original *data* not merely summaries and statistical reports. Furthermore, the bill confirms the intent and desire by this legislature, on behalf of the people of Hawai'i, to allow SHPDA to orchestrate and direct the analysis of health care claims payment data to promote quality health care services at reasonable cost in the most transparent public way possible.

SHPDA will serve as the point of centralized authority tasked with directing health care data to unbiased technical analytical resources within the State such as at the University of Hawaii. At this moment in time Hawaii has the opportunity to leverage funding that is currently in place from Center for Consumer Information and Insurance Oversight which is a division the Centers' for Medicaid and Medicare Services.

SHPDA looks forward to this opportunity of modernizing our capacity to serve Hawai'i's people. Leveraging the new capabilities now available to us, we will help the people, you, our legislature, our sister state agencies, and further empower the people and their accessibility to the greatest quality of health care at the most reasonable cost.

UNIVERSITY OF HAWAIʻI SYSTEM
Legislative Testimony

Testimony Presented Before the
House Committee on Health
Monday, March 14, 2016 at 2:15 p.m.
By
Robert Bley-Vroman, Chancellor
And
Denise Eby Konan, Dean
College of Social Sciences
University of Hawaiʻi at Mānoa

SB 2389 SD1 – RELATING TO HEALTH

Chair Belatti, Vice Chair Creagan, and members of the committee:

Thank you for the opportunity to provide testimony on SB 2389 SD1. We appreciate the opportunity to testify in strong support of SB 2389 SD1 intended to promote accessibility to quality healthcare to the people of Hawaiʻi at a reasonable cost.

The University of Hawaiʻi stands on its previous testimony to the House Committee on Health on HB 2481 and strongly supports SB 2389 SD1. The CSS-SSRI strongly supports the efforts to increase healthcare pricing and cost transparency, and firmly believes in its importance to inform policymakers and consumers on healthcare costs, value, health status and its potential to improve healthcare in the State of Hawaiʻi.

We strongly support the bill amendment that specifically names the CSS Social Sciences Research Institute (SSRI) Pacific Health Informatics and Data Center (PHIDC) as the host of the "University of Hawaiʻi data center" described in SECTION 2.b.

The CSS-SSRI has significant capacity, expertise, and track record to serve as the State of Hawaiʻi health data repository. CSS-SSRI will develop the Pacific Health Informatics and Data Center (PHIDC) to support this effort.

We thank the committee for allowing us to testify in strong support of SB 2389 SD1.

DAVID Y. IGE
GOVERNOR

TODD NACAPUY
CHIEF INFORMATION OFFICER

OFFICE OF ENTERPRISE TECHNOLOGY SERVICES

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INFORMATION AND COMMUNICATION SERVICES DIVISION

OFFICE OF INFORMATION MANAGEMENT AND TECHNOLOGY

Testimony of
BRYAN FITZGERALD
Project Director, Hawai‘i Health Data Center Project

Before the

HOUSE COMMITTEE ON HEALTH
Monday, March 14, 2016; 2:15 p.m.
State Capitol, Conference Room 329

SENATE BILL NO. 2389 S.D. 1
RELATING TO HEALTH

Chair Belatti, Vice Chair Creagan and Committee Members:

My name is Bryan FitzGerald, Project Director of the Hawai‘i Health Data Center (HHDC), a federally funded special collaborative project between the Office of Enterprise Technology Services and the University of Hawai‘i’s Telecommunications and Social Informatics Research program to establish a *public* Health Data Center for the State of Hawai‘i.

We **support the intent** of S.B. 2389 S.D. 1 to broaden the scope of health and healthcare data and other information submitted to the State Health Planning and Development Agency (SHPDA) in the interest of fulfilling its original mandate of promoting accessibility for all the people of the State to quality health care services at reasonable cost.

However, we have **concerns** with a clause that would diminish SHPDA’s authority to investigate health care data. Specifically, language in line 13 on page 4 mandating data sharing agreements would allow private organizations to avoid compliance:

> “(c) The entity accepting health care services claims and payment data shall enter into a negotiated data sharing agreement with any payer or insurer before data is submitted.”

An organization with health care data wishing to withhold its data need only refuse to consent to a data sharing agreement.

Additionally, questions regarding technical reporting minutia, such as specifying which data fields and software formats will be required, are more appropriately left to the administrative rules process (H.R.S. Chapter 91), as technology rapidly changes and evolves over time. Specifying such matters in statute could impede future efficiency.

Thank you for this opportunity to provide testimony.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:
S.B. NO. 2389, S.D. 1, RELATING TO HEALTH.

BEFORE THE:
HOUSE COMMITTEE ON HEALTH

DATE: Monday, March 14, 2016 **TIME:** 2:15 p.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Heidi M. Rian, Deputy Attorney General

Chair Belatti and Members of the Committee:

The Department of the Attorney General provides the following comments and requests that this measure be held, as it may be pre-empted by the Employee Retirement Income Security Act of 1974 (ERISA). We believe further discussion and analysis are required.

This bill would amend section 323D-18, Hawaii Revised Statutes (HRS), to require that not only providers of health care but also "all payers of claims for payment for health care services delivered to any person, including providers of public or private health insurance" (page 2, lines 6 – 9) report to the State Health Planning and Development Agency (SHPDA) information on health care services claims and payment data. SHPDA is then to provide the information to a University of Hawaii data center.

On March 1, 2016, the United States Supreme Court issued its decision in Gobeille v. Liberty Mutual Insurance Co., No. 14-181, 2016 WL 782861 (March 1, 2016). That decision found that a similar Vermont statute is pre-empted by ERISA. The Vermont statute requires "[h]ealth insurers, health care providers, health care facilities, and governmental agencies" to "file reports, data, schedules, statistics, or other information" with the Green Mountain Care Board, including "health insurance claims and enrollment information" and "any other information relating to health care costs, prices, quality, utilization, or resources . . . ." 18 Vermont Statutes Annotated (V.S.A.) § 9410(c). The Green Mountain Care Board is similar to SHDPA. The Court explained that ERISA pre-empts a state law that "has an impermissible connection with ERISA plans, meaning a state law that governs a central matter of plan administration or interferes with nationally uniform plan administration." Id. at *5. It found that

decisions to determine and administer reporting requirements for ERISA plans are for the federal government to make, not states.

This measure would require all payers of claims for health care services, including insurers, to report to SHPDA "[h]ealth care services claims and payment data, including information about the nature of the reimbursement and any fees, discounts, incentives, or performance payments affecting the rate of reimbursement from any insurer." (Page 3, lines 12-16) Although the information that is to be reported is not exactly the same as what the Vermont statute required, the measure is still problematic under Gobeille and is likely pre-empted as applied to plans covered by ERISA.

It may be possible to create a carve-out for ERISA plans so that this statute would apply only to other insurers such as government employee benefit plans. The database may be of reduced usefulness, though, as it would not include all payers' claims. There may be other ways to obtain some or all of the data that would not run afoul of ERISA, but time would be needed to develop them.

Because this measure as written may be pre-empted by ERISA and a work-around, if one is possible, will require time and care to develop, we respectfully request that the measure be held.

DAVID Y. IGE
GOVERNOR

RACHAEL WONG, DrPh
DIRECTOR

PANKAJ BHANOT
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

March 13, 2016

TO: The Honorable Representative Della Au Belatti, Chair
House Committee on Health

FROM: Rachael Wong, DrPH, Director

SUBJECT: **SB 2389 SD 1 Relating to Health**

Hearing: Monday, March 14, 2016, 2:15 pm
Conference Room 329, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the bill and provides comments.

PURPOSE: The purpose of the bill is to facilitate greater transparency in the health care sector by broadening the scope of data, including health care claims data, reported to the State Health Planning and Development Agency (SHPDA).

The Department of Human Services (DHS) supports the intent of the bill to increase transparency through data and analysis of health care claims and payment data. This is an important step to understanding overall the total cost of care by payor, type of health condition, or geography. We respectfully suggest additional clarification for consideration. In order to share Medicaid claims data, a Medicaid purpose to the use of the data should be stated in order to comply with federal Medicaid regulations (42 CFR Part 431, Subpart F).

Finally, the collection, compiling and analysis of the data will require not only informational systems to support the stated purpose, but complex health analytics. We defer to SHPDA regarding implementation of the proposal as it will be essential for SHPDA to have adequate resources to be able to use the data for the intents and purposes of the bill.

Thank you for the opportunity to testify on this bill.

HAWAII HEALTH INFORMATION CORPORATION
Hawaii's source of healthcare data

www.hhic.org
phone: 808.534.0288
fax: 808.534.0292

Representative Della Au Bellati, Chair
Representative Richard Creagan, Vice Chair
House Committee on Health
Hawaii State House of Representatives
Hawaii State Capitol, Room 426
Honolulu, HI 96813

Dear Chair Bellati and Vice Chair Creagan,

RE: SB 2389, SD 1 Relating to Health

The Hawaii Health Information Corporation was created by Hawaii's healthcare community 22 years ago to work with Hawaii's hospitals, physicians, payers, government and public organizations to use data for improve healthcare quality, address high healthcare costs and improve the health of Hawaii's people. We have provided information to inform Hawaii on difficult public policy issues such as the uninsured, the hospital waitlist and the scope of Medicare underfunding of healthcare in Hawaii. HHIC is familiar with Hawaii's healthcare system and has extensive experience in providing for Hawaii's health information needs. We have always been noted for our objectivity and fairness as well as producing highest quality health data products.

From our perpective, the significant issues related to HB 2481 continue in SB 2389, SD1. These are: 1. creation of a permanent statutory function that requires funding without authorizing that funding; 2. the blanket restriction of the private sector from participating in APCD activities, especially governance; 3. the lack of familiarity of both APCD Project staff and the proposed contactor designated in the bill with healthcare analytics and reporting; and 4. the lack of effectiveness of the project to date. SB 2389, SD 1 adds permanent statutory designation for a UH organization, but the bill also gives that organization 90 days to withdraw from providing services (a provision that would, in effect, "gut" the legislation if the agency designated in the legislation withdraws).

First, this measure creates a permanent statute but does not make provisions for its future funding. Without provisions for the general funds that will be necessary for its operation after the federal grant that funds current activities runs out, SHPDA will be unable to carry out the legislative mandate. The funding needed, we estimate, will exceed $2 million a year. Gathering and reporting of health data is not cheap. It is a matter of good fiscal policy to address the funding question. Otherwise, the next legislature will be left with an unfunded mandate. We strongly urge this committee not to pass this bill without provisions for its future funding.

We also urge the Committee to eliminate the "conflict of interest" language in the bill. This legislation does not promote and actually undercuts the collaborative and cooperative partnership with the private sector that is important to the success of good governance. Our prime concern with the All Payer Claims Database Project is that it has allowed negligible private sector involvement in either the planning or the conduct of the grant activities. This has been a significant mistake. HHIC credits public/private partnerships for Hawaii's healthcare successes. In Hawaii, the private sector delivers the bulk of health care services and much of its coverage. The private sector carries out the provisions of the Prepaid Health Care Act and is key to the measure's 40-years of effectiveness. Private sector health plans and providers are responsible for the care of MedQuest members and Medicare beneficiaries. The private sector has the detailed knowledge of health information that the State purports to collect through an APCD. If the bill continues with the current restrictions on private sector

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involvement, the result will be "ivory tower" information, which does not accurately portray what is happening in Hawaii's healthcare system.

Third, the APCD Project and its contractor, from which the recommendations contained in SB 2389, SD 1 come, lack the background and understanding of healthcare in Hawaii. Experience in other jurisdictions is not the same as Hawaii-based experience, and experience in "IT" is not experience in health reporting and analytics. Health data is not a sterile, academic exercise of sending out data specifications and receiving perfect data back; data is often "dirty" and knowing what should be coming in from previous experience with those submitting is necessary to avoid mistakenly treating it as accurate. Expertise in healthcare reporting and analytics will be critical for a successful APCD.

Health data reporting and analystics is not as simple an exercise as has been portrayed by project staff. It is perhaps natural, then that the project has not achieved significant deliverables since its inception two years ago—and spent $1.2 million in federal funds in the process. We do not believe that this current direction and project will be able to accomplish its goals, even with the $3 million in project funding that remains.

In summary, HHIC is opposed to SB 2389, SD1 because of these significant flaws. There is a need to better define the data that is to be collected and the processes to be used than is contained in SB 2389, SD1. These need to be thoroughly vetted in the community and among stakeholders. As we and others have previously testified to both Houses, such an assessment is necessary before permanent legislation is established and the considerable general funding needed to finance a permanent effort is commited.

We certainly do not think that bureaucrats and academicians working alone can make these policy decisions. We would recommend that the national APCD Council be contracted to lead the vetting effort and that $250,000 of APCD Grant funding be appropriated to provide the resources for the necessary activities. Using the APCD Council would insert neutral health information expertise into the process and provide an objective base for the State Administration and the legislature to chart the direction of an APCD for Hawaii.

We look forward to working with the legislature to provide a solution that expands the range of high quality healthcare data and analysis to Hawaii. Thanks for providing the opportunity to provide testimony to you on SB 2389, SD1.

Sincerely,

Peter A. Sybinsky, Ph.D.
President and CEO
Hawaii Health Information Corporation

733 Bishop St. • Makai Tower • Suite 1870 • Honolulu, HI 96813

An Independent Licensee of the Blue Cross and Blue Shield Association

March 14, 2016

The Honorable Della Au Belatti, Chair
House Committee on Health
The Honorable Richard Creagan, Vice-Chair
House Committee on Health

Re: SB 2389 SD1 – Relating to Health

Dear Chair Belatti, Vice-Chair Creagan and Committee Members:

The Hawaii Medical Association (HMSA) respectfully opposes and offers comments on SB 2389 SD1, which broadens the scope of health and health care data and other information submitted to SHPDA.

HMSA appreciates and shares the Committee's interest in ensuring that health care services offered in our state are both reasonably affordable and high quality. However, SB 2389 SD1 as drafted does not advance that interest and may pose a risk to our members.

We therefore would ask the Committee to consider the following concerns before advancing this measure:

- Subsection (7) requires further clarification with regard to the types, frequency, and level of claim data being requested. Without specifications certain proprietary information that helps HMSA negotiate for the best rates for our members could potentially be in jeopardy. We therefore suggest the following amendments to subsection (7):

(7) Health care services claims and payment data including information regarding claims or payments for health care services submitted to or received from any payer or insurer.

(a) Information regarding claims and payments for health services shall include aggregate claims paid and aggregate utilization data showing utilization and cost per service by broad service category.

- HMSA currently submits aggregated claims and utilization data to meet mandated state and federal transparency requirements. Should this measure ultimately be enacted in its current form, it would require plans to provide significantly more, and different, data which mean incurring significant cost for the plan and ultimately the consumer.

- Privacy and security of member health data is of utmost concern. Despite every effort of this bill to require the receiving entity to follow state and federal disclosure, privacy, security, and confidentiality laws, the Committee must recognize that any transfer of data places our members at a potential risk for misuse of that data.

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We share the Committee's interest in efforts around transparency in order to better serve consumers and policymakers alike and look forward to continuing ongoing meetings with state officials on these issues. Earlier in this process there was discussion of creating a stakeholder advisory council to focus on these types of complex and sensitive data sharing issues; we would support that effort and urge the Committee to consider deferring SB 2389 SD1 and instead establish a formal task force or working group to report back to the legislature with more focused data sharing recommendations.

Thank your allowing us to testify in opposition to SB 2389 SD1.

Sincerely,

Jennifer Diesman
Vice President, Government Relations

March 14, 2016 at 2:15 PM
Conference Room 329

House Committee on Health

To: Chair Della Au Belatti
Vice Chair Richard P. Creagan

From: George Greene
President and CEO
Healthcare Association of Hawaii

Re: Submitting Comments
SB 2389 SD1, Relating to Health

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 180 member organizations who represent almost every aspect of the health care continuum in Hawaii. Members include acute care hospitals, skilled nursing facilities, home health agencies, hospices, assisted living facilities and durable medical equipment suppliers. In addition to providing access to appropriate, affordable, high quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 20,000 people statewide.

We would like to thank the committee for the opportunity to **submit comments** on SB 2389 SD1. We support efforts to help policy-makers and other stakeholders gain access to data needed to make informed decisions. However, we would respectfully request that your committee establish a working group to help better inform all stakeholders about the particulars of this project, discuss the details of an all-payers claims database in Hawaii, and make recommendations as necessary on enabling legislation.

According to the All-Payers Claims Database (APCD) Council—a national collaborative focused on developing APCDs across the country—"stakeholder engagement…is essential to the success of a state APCD initiative." While this project has been considered for many years, a detailed plan for Hawaii's version of an APCD has not been widely developed and shared. There are a number of issues to work through, including how data will be stored, analyzed and disseminated. Creating a working group to discuss these issues would enable stakeholders from across the health care continuum to fully engage with one another to discuss and make recommendations on the various barriers and opportunities an APCD provides and also to determine the sustainability of any project.

While we appreciate the intent of this legislation, we would ask that your committee defer this measure and consider establishing a working group on the development of Hawaii's APCD. Thank you for your time and consideration of this matter.

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55 Merchant Street
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HAWAI'I PACIFIC HEALTH
Kapi'olani · Pali Momi · Straub · Wilcox

www.hawaiipacifichealth.org

March 14, 2016 – 2:15 pm
Conference Room 329

House Committee on Health

To: Representative Della Au Belatti, Chair
Representative Richard P. Creagan, Vice-Chair

From: Michael Robinson
Vice President – Government Relations & Community Affairs

Re: SB 2389 SD1
Comments with Concern

My name is Michael Robinson, Vice President, Government Relations and Community Affairs at Hawai'i Pacific Health (HPH). Hawai'i Pacific Health is a not-for-profit health care system, and the state's largest health care provider and non-governmental employer. Hawai'i Pacific Health is committed to providing the highest quality medical care and service to the people of Hawai'i and the Pacific Region through its four hospitals, more than 50 outpatient clinics and service sites, and over 1,600 affiliated physicians. Hawai'i Pacific Health's hospitals are Kapi'olani Medical Center for Women & Children, Pali Momi Medical Center, Straub Clinic & Hospital and Wilcox Memorial Hospital.

HPH appreciates the opportunity to submit comments regarding SB 2389 SD1 which broadens the scope of health and health care data and other information submitted to the state health planning and development agency.

When the ends of addressing a particular health care issue are clearly defined, we understand the critical importance of meaningful data to make informed decisions. The collection, transfer, protection, and meaningful analysis of health care information is incredibly complex. Given the scope of the mandated undertaking of this bill upon both health care providers and insurers, we would strongly encourage a working group be convened to ensure that the most meaningful type of data is gathered to address the most meaningful issues SHPDA would need to address its health care planning concerns.

As an example a working group would also address two timely considerations. First the impact of the recent March 1, 2016 Supreme Court *Gobeille v. Liberty Mutual Insurance Company* decision and the potential limitations of that decision on the types of data available for this effort. Second the working group would be useful to address the sustainability of this mandate over the long run as hospital provider and insurers would also be re-allocating its resources and processes to support this effort.

Finally we also echo the same concern shared by the Department of Health of limiting the choice of data center to solely a University of Hawai'i data center provided on the companion bill - HB 2481 – expressed at the House Health Committee. By instead identifying a general State agency to serve as the data center, we believe this effort could better build upon and leverage existing processes already created and established that support existing delivery of health care informatics.

Thank you for the opportunity to provide comment.

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 12, 2016 8:55 PM
To: HLTtestimony
Cc: mikegolojuch808@gmail.com
Subject: Submitted testimony for SB2389 on Mar 14, 2016 14:15PM

SB2389
Submitted on: 3/12/2016
Testimony for HLT on Mar 14, 2016 14:15PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch	Individual	Support	No

Comments: I strongly support SB2389. UH Graduate Assistants should be given the opportunity to decide if they want to be part of collective bargaining.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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HLTtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 14, 2016 12:16 PM
To: HLTtestimony
Cc: dylanarm@hawaii.edu
Subject: *Submitted testimony for SB2389 on Mar 14, 2016 14:15PM*

SB2389
Submitted on: 3/14/2016
Testimony for HLT on Mar 14, 2016 14:15PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Armstrong	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 13, 2016 4:12 PM
To: HLTtestimony
Cc: hedgesew@gmail.com
Subject: Submitted testimony for SB2389 on Mar 14, 2016 14:15PM

SB2389
Submitted on: 3/13/2016
Testimony for HLT on Mar 14, 2016 14:15PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Jerris Hedges	Individual	Oppose	No

Comments: SB2389 makes the incorrect assumption that UH Manoa has the capability to receive, safety store, and effectively analyze sensitive health care data. None of those assumptions are correct. Insurance and health care providers do not have agreements with UH Manoa for the safe transfer and storage of such data. UH Manoa is not a HIPAA compliant organization for the protection of personal health information. There is an existing nonprofit organization in Hawaii that already receives, safely stores and effectively analyses health care data. The proposal in this bill is duplicative in purpose and unlikely to be appropriately executed due to limitations in the storage and handling of sensitive patient data at UH Manoa. The execution of this bill could lead to millions of tax payer dollars being spent without a viable result from the effort. Indeed, the state has attempted to undertake this initiative without producing a viable product for the last two years. Although there is value in the execution of an all payers claims data base, the state would be wise to support a previously proposed collaboration between HHSC and the Hawaii Health Information Corporation (HHIC). Legislators should be aware that the nonprofit HHIC (but not UH Manoa) has a longstanding relationship with health care insurers, providers and the Department of Health for the safe & compliant storage of sensitive health data. The also have strong analytical capabilities for the analysis of that data (but not UH Manoa). Jerris Hedges, MD

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