

ACT 141

S.B. NO. 140

A Bill for an Act Relating to Child Abuse.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Legislature finds that there is a desperate need to enhance the continuity and quality of health and human service care to the children of the State of Hawaii.

A sector of Hawaii's health care and human service professionals has expressed much frustration and anguish over the need to know a child's HIV status in order to provide the best possible care for a foster or adoptive child who

maybe a subject of abuse. The lack of pertinent information regarding a child's HIV status compounds the difficulties faced by health care and human service providers in determining the appropriate referral and provision of services to abused and neglected children. Because of this, the Legislature finds that the disclosure of information relating to the HIV status of children involved in alleged cases of abuse or neglect would significantly assist in the provision of critical services.

The purpose of this Act is to allow the release of medical records regarding the HIV status of a child to foster parents or adoptive parents.

SECTION 2. Section 325-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The records of any person [which] that indicate that a person has a human immunodeficiency virus (HIV) infection, AIDS related complex (ARC), or acquired immune deficiency syndrome (AIDS), which are held or maintained by any state agency, health care provider or facility, physician, laboratory, clinic, blood bank, third party payor, or any other agency, individual, or organization in the State shall be strictly confidential. For the purposes of this part, the term “records” shall be broadly construed to include all communication which identifies any individual who has HIV infection, ARC, or AIDS. This information shall not be released or made public upon subpoena or any other method of discovery. Notwithstanding any other provision to the contrary, release of the records protected under this part shall be permitted under the following circumstances:

- (1) Release is made to the department of health in order that it may comply with federal reporting requirements imposed on the State. The department shall ensure that personal identifying information from these records are protected from public disclosure;
- (2) Release is made of the records, or of specific medical or epidemiological information contained therein, with the prior written consent of the person or persons to whom the records pertain;
- (3) Release is made to medical personnel in a medical emergency only to the extent necessary to protect the health, life, or well-being of the named party;
- (4) Release to or by the department of health is necessary to protect the health and well-being of the general public; provided that release is made in such a way that no person can be identified, except as specified in paragraph (5);
- (5) Release is made by the department of health of medical or epidemiological information from the records to medical personnel, appropriate county and state agencies, blood banks, plasma centers, organ and tissue banks, schools, preschools, day care centers, or county or district courts to enforce [the provisions of] this part and to enforce rules adopted by the department of health concerning the control and treatment of HIV infection, ARC, and AIDS; provided that release of information under this paragraph shall only be made by confidential communication to a designated individual charged with compliance [of the provisions of] with this part;
- (6) Release [is made for the purpose] of a child's records is made to the department of human services for the purpose of enforcing [the provisions of] chapters 350[;] and 587;
- (7) Release of a child's records is made within the department of human

services and to child protective services team consultants under contract to the department of human services for the purpose of enforcing and administering chapters 350 and 587 on a need to know basis pursuant to a written protocol to be established and implemented, in consultation with the director of health, by the director of human services;

(8) Release of a child’s records is made by employees of the department of human services authorized to do so by the protocol established in paragraph (7) in a case arising under chapters 350 and 587 to a natural parent of a child who is the subject of the case when the natural parent is a client in the case, the guardian ad litem of the child, the court, each party to the court proceedings, and also to an adoptive or a prospective adoptive parent, an individual or an agency with whom the child is placed for 24 hour residential care, and medical personnel responsible for the care or treatment of the child. When a release is made to a natural parent of the child, it shall be with appropriate counseling as required by section 325-16. In no event shall proceedings be initiated against a child’s natural parents for claims of child abuse under chapter 350 or harm to a child or to affect parental rights under chapter 587 solely on the basis of the HIV seropositivity of a child or the child’s natural parents.

(7) (9) Release is made to the patient’s health care insurer to obtain reimbursement for services rendered to the patient; provided that release shall not be made if, after being informed that a claim will be made to an insurer, the patient is afforded the opportunity to make the reimbursement directly and actually makes the reimbursement;

(8) (10) Release is made by the patient’s health care provider to another health care provider for the purpose of continued care or treatment of the patient; or

(9) (11) Release is made pursuant to a court order, after an in camera review of the records, upon a showing of good cause by the party seeking the release of the records.

As used in this part, unless the context requires otherwise:

“Medical emergency” means any disease-related situation [which] that threatens life or limb.

“Medical personnel” means any health care provider in the State, as provided in section 323D-2, who deals directly or indirectly with the identified patient or the patient’s contacts, and includes hospital emergency room personnel, the staff of the communicable disease division of the department of health, and any other department personnel as designated by the director.”

SECTION 3. Section 586-10.5, Hawaii Revised Statutes, is amended to read as follows:

“§586-10.5 Reports by the department of human services. In cases where there are allegations of domestic abuse involving a minor family or household member, the employee or appropriate nonjudicial agency designated by the family court to assist the petitioner shall report the matter to the department of human services, as required under [chapter 350,] chapters 350 and 587, and shall further notify the department of the granting of the temporary restraining order and of the hearing date. The department of human services shall provide the family court with an oral or written report of the investigation’s progress on or before the hearing date.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 22, 1991.)

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