

A Bill for an Act Relating to Health.

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

PART I

SECTION 1. Section 349-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the [~~office of the governor,~~] department of health, for administrative purposes only, an executive office on aging.”

SECTION 2. All rights, powers, functions, and duties of the office of the governor, relating to the executive office on aging, are transferred to the department of health. All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

Any employee who, prior to this Act, was exempt from civil service and may be transferred as a consequence of this Act, shall continue to retain the employee's exempt status and shall not be appointed to a civil service position because of this Act. The employee shall continue in an exempt position upon transfer to the department of health until such time that the exempt position is converted to a civil service position in accordance with applicable state personnel rules, regulations, policies, or procedures.

All officers or employees whose positions are transferred by this Act shall be transferred to the department of health. The functions, duties, classifications, pay, benefits, tenure, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege of any officer or employee shall not be changed in the execution of the transfer. Subsequent changes in status shall be made in accordance with applicable state personnel laws, rules, policies, procedures, and collective bargaining agreements.

If an office or position held by an officer or employee is abolished as a result of this Act, the employment action affecting the officer or employee shall be in accordance with applicable state personnel laws, rules, policies, procedures, and collective bargaining agreements.

SECTION 3. All rules, policies, procedures, guidelines, and other material adopted or developed by the office of the governor to implement provisions of the Hawaii Revised Statutes which are reenacted or made applicable to the department of health by this Act, shall remain in full force and effect until amended or repealed by the department of health pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the office of the governor in those rules, policies, procedures, guidelines, and other material is amended to refer to the department of health.

SECTION 4. All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the office of the governor pursuant to the provisions of the Hawaii Revised Statutes, which are reenacted or made applicable to the department of health by this Act, shall remain in full force and effect. Upon the effective date of this Act, every reference to the office of the governor, relating to the executive office on aging, shall be construed as a reference to the department of health.

SECTION 5. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, computer software and data, authorizations, and other property, both real and personal, heretofore made, used, acquired, or held by the office of the governor in the exercise of the functions and programs transferred by this Act shall be transferred to the department of health when the functions or programs are so transferred.

SECTION 6. If any part of this Act is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State, the conflicting part of this Act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this Act in its application to the agencies concerned. The rules adopted under this Act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the State.

PART II

SECTION 7. The legislature finds that the continued provision of mental health services is vital to the community. It is essential that providers be able to efficiently submit and collect available insurance reimbursements for such services. Insurance reimbursement claims typically require information on the patient treated. Therefore, any statutory authorization for the release of patient medical records must be limited in scope and ensure the privacy of the patient.

Accordingly, the purpose of this part is to permit mental health service providers to release records for billing purposes under limited circumstances while preserving a patient's right to confidentiality.

SECTION 8. Section 334-5, Hawaii Revised Statutes, is amended to read as follows:

“§334-5 Confidentiality of records. All certificates, applications, records, and reports made for the purposes of this chapter and directly or indirectly identifying a person subject hereto shall be kept confidential and shall not be disclosed by any person except so far (1) as the person identified, or the person's legal guardian, consents, or (2) as disclosure may be deemed necessary by the director of health or by the administrator of a private psychiatric or special treatment facility to carry out this chapter, or (3) as a court may direct upon its determination that disclosure is necessary for the conduct [F]of[H] proceedings before it and that failure to make the disclosure would be contrary to the public interest, or (4) as disclosure may be deemed necessary under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, Public Law 99-319, to protect and advocate the rights of persons with mental illness who reside in facilities providing treatment or care[-], or (5) as disclosure is made to the person's health care insurer to obtain reimbursement for services rendered to the person, except for records subject to Title 42 Code of Federal Regulations Part 2, confidentiality of alcohol and drug abuse patient records; provided that disclosure shall be made only if the insurer informs the person that a reimbursement claim will be made to the person's insurer, the person is afforded an opportunity to pay the reimbursement claim directly, and the person does not pay. For the purposes of this section, “facilities” shall include, but not be limited to, hospitals, nursing homes, community facilities for mentally ill individuals, boarding homes, and care homes.

Nothing in this section shall preclude disclosure, upon proper inquiry, of any information relating to a particular patient and not clearly adverse to the interests of the patient, to the patient, the patient's family, legal guardian, or relatives, nor,

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except as provided above, affect the application of any other rule or statute of confidentiality. The use of the information disclosed shall be limited to the purpose for which the information was furnished.’’

PART III

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved June 24, 2003.)