

ACT 315

H.B. NO. 1957

A Bill for an Act Relating to Health Care Information.

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

SECTION 1. The legislature finds that the privacy of health information has been greatly enhanced by the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and related federal laws and regulations. HIPAA encourages the timely, secure, electronic transmission of individually identifiable health information, with important benefits for patients. The legislature also finds that HIPAA and related federal regulations provide a comprehensive regulatory scheme that protects the privacy of patients' health information while allowing reasonable access by health care providers, health plans, and health-oversight agencies.

The legislature further finds that the safety and protection of the health care consumer are paramount. The federal Health Information Technology for Economic and Clinical Health Act promotes the development of statewide health care information architecture that allows health care providers to share health care information, improve health care consumer safety, and reduce instances of redundant tests and procedures, leading to an overall reduction of health care costs while maintaining privacy and confidentiality in accordance with HIPAA.

Hawaii has over fifty different laws and rules, however, that govern health care privacy. This complex array of state laws and rules unduly burdens health care providers who attempt to share or access critical information at the point of care and imposes unnecessary administrative costs and daunting regulatory burdens without countervailing benefits.

The purpose of this Act is to ensure that covered entities and their business associates subject to HIPAA, who use or disclose health information in a manner permitted by and consistent with HIPAA's Privacy Rules (45 C.F.R. Part 164, subpart E) shall be deemed to be acting in compliance with state privacy laws and regulations, including section 334-5, Hawaii Revised Statutes, regarding the use and disclosure of mental health records; section 333E-6, Hawaii Revised Statutes, regarding the use and disclosure of developmental disabilities records; and section 325-101, Hawaii Revised Statutes, regarding the use and disclosure of records related to the human immunodeficiency virus, acquired immune deficiency syndrome (AIDS), and AIDS-related complex.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HEALTH CARE PRIVACY HARMONIZATION ACT**

§ -1 Applicability. This chapter shall apply, unless amended by specific reference to this chapter or any section thereof.

§ -2 Definitions. As used in this chapter:

“Breach” has the same meaning as in 45 Code of Federal Regulations section 164.402, as may be amended.

“Business associate” has the same meaning as in 45 Code of Federal Regulations section 160.103, as may be amended.

“Covered entity” has the same meaning as in 45 Code of Federal Regulations section 160.103, as may be amended.

“Disclosure” has the same meaning as in 45 Code of Federal Regulations section 160.103, as may be amended.

“Health information” has the same meaning as in 45 Code of Federal Regulations section 160.103, as may be amended.

“Individually identifiable health information” has the same meaning as in 45 Code of Federal Regulations section 160.103, as may be amended.

“Unsecured protected health information” has the same meaning as in 45 Code of Federal Regulations section 164.402, as may be amended.

“Use” has the same meaning as in 45 Code of Federal Regulations section 160.103, as may be amended.

§ -3 Privacy of individually identifiable health information. (a) Notwithstanding any law to the contrary, any use or disclosure of individually identifiable health information by any covered entity or business associate that is permitted by 45 Code of Federal Regulations Part 164, Subpart E, shall be deemed to comply with all state laws relating to the use, disclosure, or confidentiality of such information.

(b) Notwithstanding any law to the contrary, an authorization for release of individually identifiable health information that complies with 45 Code of Federal Regulations section 164.508 shall be deemed to comply with all state laws relating to individual authorization.

(c) Notwithstanding any law to the contrary, any notice of breach of unsecured protected health information that complies with 45 Code of Federal Regulations Part 164, Subpart D, shall be deemed to comply with all state laws relating to notice of breach of protected health information.

§ -4 Relationship to other laws. Nothing in this chapter shall be construed to:

- (1) Authorize the disclosure of individually identifiable health information to the extent that disclosure is restricted by federal law or regulations, including federal regulations about the confidentiality of information about drugs and alcohol, as set forth in 42 Code of Federal Regulations Part 2;
- (2) Compel the disclosure of individually identifiable health information that is not required by law to be disclosed;
- (3) Require a written authorization for release of individually identifiable health information or de-identified information to the extent that the Health Insurance Portability and Accountability Act of

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1996, Public Law 104-191, and its related regulations, as may be amended, does not require such authorization;

- (4) Limit or otherwise affect any state law that:
 - (A) Requires persons or entities to report disease, injury, child abuse, elder abuse, domestic violence, birth, or death; or
 - (B) Governs public health surveillance, investigation, or intervention;
- (5) Limit or otherwise affect health plan reporting, including reporting required for purposes of state management or financial audits; or
- (6) Limit or otherwise affect any evidentiary privilege, limitation on discovery, or confidentiality protection provided by any state law, decision, or order in relation to individually identifiable health information sought, used, or produced in any judicial or administrative proceeding.”

SECTION 3. This Act shall take effect upon its approval.

(Approved July 10, 2012.)