

A Bill for an Act Relating to Privacy of Health Care Information.

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

SECTION 1. The legislature finds that in 2012, when the Health Care Privacy Harmonization Act, chapter 323B, Hawaii Revised Statutes, was enacted, the legislature noted that Hawaii has over fifty different laws and rules that govern health care privacy. Those laws include section 333E-6, Hawaii Revised Statutes, relating to the privacy of developmental disabilities records, and section 334-5, Hawaii Revised Statutes, relating to the privacy of mental health records. These laws were passed prior to the enactment of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Health Care Privacy Harmonization Act enabled HIPAA-covered entities to be deemed compliant with all state privacy laws if they are compliant with the HIPAA privacy rules. However, entities that are not considered HIPAA-covered entities remain subject to these two specific statutes. These two statutes do not have most of the necessary exceptions that are included in HIPAA, including the ability to share information for the purposes of treatment, payment, or health care operations without written consent from the patient.

The purpose of this Act is to repeal language in these two overly limiting confidentiality statutes and replace it with the requirements of the HIPAA privacy rule, and to make those sections applicable to all entities that hold developmental disabilities records and mental health records, whether or not they are considered HIPAA-covered entities.

SECTION 2. Chapter 333F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§333F- Confidentiality of records. (a) All certificates, applications, records, and reports made for the purposes of this chapter that are maintained, used, or disclosed by health care providers as defined in chapter 334, health plans as defined in title 45 Code of Federal Regulations section 160.103, and health care clearinghouses as defined in title 45 Code of Federal Regulations section 160.103, and directly or indirectly identifying a person who receives services because of a developmental disability shall be kept confidential and shall not be

disclosed by any person except as allowed by title 45 Code of Federal Regulations part 164, subpart E.

(b) Nothing in this section shall preclude the application of more restrictive rules of confidentiality set forth for records covered by title 42 Code of Federal Regulations part 2, relating to the confidentiality of alcohol and drug abuse patient records, or disclosure deemed necessary under the federal Developmental Disabilities Act of 1984, P.L. 98-527, to protect and advocate for the rights of persons with developmental disabilities who reside in facilities for persons with developmental disabilities.”

SECTION 3. Section 333E-6, Hawaii Revised Statutes, is amended to read as follows:

~~“§333E-6~~ **Confidentiality of records.** (a) 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 to any other 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 to carry out this chapter, or (3) as disclosure may be deemed necessary under the federal Developmental Disabilities Act of 1984, Public Law 98-527, to protect and advocate the rights of persons with developmental disabilities who reside in facilities for persons with developmental disabilities, or (4) as disclosure may be deemed necessary by the family court for any case pending before a court.]~~ that are maintained, used, or disclosed by health care providers as defined in chapter 334, health plans as defined in title 45 Code of Federal Regulations section 160.103, and health care clearinghouses as defined in title 45 Code of Federal Regulations section 160.103, and directly or indirectly identifying a person who receives services because of a developmental disability shall be kept confidential and shall not be disclosed by any person except as allowed by title 45 Code of Federal Regulations part 164, subpart E.

(b) Nothing in this section shall preclude the application of more restrictive rules of confidentiality set forth for records covered by title 42 Code of Federal Regulations part 2, relating to the confidentiality of alcohol and drug abuse patient records, or disclosure deemed necessary under the federal Developmental Disabilities Act of 1984, P.L. 98-527, to protect and advocate for the rights of persons with developmental disabilities who reside in facilities for persons with developmental disabilities.”

SECTION 4. 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 that are maintained, used, or disclosed by health care providers as defined in this chapter, health plans as defined in title 45 Code of Federal Regulations section 160.103, and health care clearinghouses as defined in title 45 Code of Federal Regulations section 160.103, and directly or indirectly identifying a person subject hereto shall be kept confidential and shall not be disclosed by any person except [so far as:

- (1) The person identified, or the person’s legal guardian, consents;
- (2) 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;

- (3) ~~A court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make the disclosure would be contrary to the public interest;~~
- (4) ~~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;~~
- (5) ~~Disclosure of a person's treatment summary from a previous five-year period from one health care provider to another may be deemed necessary for the purpose of continued care and treatment of the person, or for health care operations; provided that the health care provider seeking disclosure makes reasonable efforts to obtain advance consent from the person; or~~
- (6) ~~Disclosures are made between the person's health care provider and payor to obtain reimbursement for services rendered to the person; provided that disclosure shall be made only if the provider informs the person that a reimbursement claim will be made to the person's payor, the person is afforded an opportunity to pay the reimbursement directly, and the person does not pay.]~~

as allowed by title 45 Code of Federal Regulations part 164, subpart E. Nothing in this section shall preclude the application of more restrictive rules of confidentiality set forth for records covered by [Title] title 42[,- Part 2,] Code of Federal Regulations[,-] part 2, relating to the confidentiality of alcohol and drug abuse patient records[. 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, 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.], or disclosure deemed necessary under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, P.L. 99-319, to protect and advocate for the rights of persons with mental illness who reside in facilities providing treatment or care."~~

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved July 7, 2014.)

Note

1. Edited pursuant to HRS §23G-16.5.