
A BILL FOR AN ACT

RELATING TO CONFIDENTIALITY OF PATIENT PRESCRIPTION INFORMATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that on September 16,
2 2008, the United States First Circuit Court of Appeals upheld a
3 New Hampshire law that asserts the right of states to prohibit
4 the sale of doctor-specific prescription drug data that is
5 widely used in pharmaceutical marketing. The New Hampshire law
6 was intended to cut down on state health care costs by
7 eliminating the tool used by drug sales representatives in
8 promoting brand name drugs. By purchasing the data describing
9 which doctors prescribe what drugs, pharmaceutical sales forces
10 are better able to identify which doctors might use their
11 products and be receptive to their sales proposals.
12 Pharmaceutical representatives can also focus on persuading
13 doctors who do not write many prescriptions for their products
14 to change their minds. In his ruling, United States Court of
15 Appeals Judge Bruce Marshall Selya wrote, "The record contains
16 substantial evidence that, in several instances, detailers
17 [pharmaceutical sales representatives] armed with prescribing
18 histories encourage the overzealous prescription of more costly



1 brand-name drugs regardless of both the public health
2 consequences and the probable outcome of a sensible cost/benefit
3 analysis."

4 The purpose of this Act is to enact a prescription
5 information confidentiality law based on the existing law in New
6 Hampshire.

7 SECTION 2. Chapter 328, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§328- Prescription information; confidentiality;
11 violation. (a) Records relating to prescription information
12 containing patient-identifiable and prescriber-identifiable data
13 shall not be licensed, transferred, used, or sold by any
14 pharmacy benefits manager, insurance company, electronic
15 transmission intermediary, retail, mail order, or internet
16 pharmacy or other similar entity, for any commercial purpose,
17 except for the limited purposes of:

- 18 (1) Pharmacy reimbursement;
19 (2) Formulary compliance;
20 (3) Care management;
21 (4) Utilization review by a health care provider, the
22 patient's insurance provider, or the agent of either;



- 1 (5) Health care research; or
- 2 (6) As otherwise provided by law.
- 3 (b) For the purpose of this section, "pharmacy benefit
4 manager" means a third party administrator of prescription drug
5 benefit programs primarily responsible for processing and paying
6 prescription drug claims, developing and maintaining a drug
7 formulary, contracting with pharmacies, and negotiating
8 discounts and rebates with drug manufacturers. Commercial
9 purposes include advertising, marketing, promotion, or any
10 activity that could be used to influence sales or market share
11 of a pharmaceutical product, influence or evaluate the
12 prescribing behavior of an individual health care professional,
13 or evaluate the effectiveness of a professional pharmaceutical
14 detailing sales force.
- 15 (c) Nothing in this section shall prohibit:
- 16 (1) The dispensing of prescription medications to a
17 patient or to the patient's authorized representative;
- 18 (2) The transmission of prescription information between
19 an authorized prescriber and a licensed pharmacy;
- 20 (3) The transfer of prescription information between
21 licensed pharmacies;



Report Title:

Prescription Information; Confidentiality

Description:

Prohibits, except for certain limited purposes, the use, transfer, licensing, or sale of a patient's prescription information for any commercial purpose.

