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# A BILL FOR AN ACT

RELATING TO PATIENT PRESCRIPTION INFORMATION.

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

1           SECTION 1. The legislature finds that in 2006, New  
2 Hampshire enacted a law that prohibits the sale of doctor-  
3 specific prescription drug data--data that is widely used in  
4 pharmaceutical marketing. The New Hampshire law is intended to  
5 reduce state health care costs by eliminating the tool used by  
6 drug sales representatives in targeting sales of brand name  
7 drugs. By purchasing the data describing which doctors  
8 prescribe what drugs, pharmaceutical sales agents can more  
9 readily identify doctors who might be likely to prescribe their  
10 products and thus be receptive to their sales proposals. Of  
11 greater concern, however, is that drug companies can also use  
12 the information to identify doctors who do not write many  
13 prescriptions for their products, in order to step up their  
14 marketing efforts.

15           On September 16, 2008, the United States First Circuit  
16 Court of Appeals upheld the New Hampshire statute against a  
17 challenge to its validity. In his ruling, United States Court



1 of Appeals Judge Bruce Marshall Selya wrote, "The record  
2 contains substantial evidence that, in several instances,  
3 detailers [pharmaceutical sales representatives] armed with  
4 prescribing histories encourage the overzealous prescription of  
5 more costly brand-name drugs regardless of both the public  
6 health consequences and the probable outcome of a sensible  
7 cost/benefit analysis."

8 The purpose of this Act is to enact a patient prescription  
9 information confidentiality law based on the New Hampshire  
10 statute that has recently withstood legal challenge.

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

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

22 (1) Pharmacy reimbursement;



1        (2) Formulary compliance;

2        (3) Care management;

3        (4) Utilization review by a health care provider, the  
4            patient's insurance provider, or the agent of either;

5        (5) Health care research; or

6        (6) As otherwise provided by law.

7        (b) For the purpose of this section, "pharmacy benefit  
8        manager" means a third party administrator of prescription drug  
9        benefit programs primarily responsible for processing and paying  
10       prescription drug claims, developing and maintaining a drug  
11       formulary, contracting with pharmacies, and negotiating  
12       discounts and rebates with drug manufacturers. Commercial  
13       purposes include advertising, marketing, promotion, or any  
14       activity that could be used to influence sales or market share  
15       of a pharmaceutical product, influence or evaluate the  
16       prescribing behavior of an individual health care professional,  
17       or evaluate the effectiveness of a professional pharmaceutical  
18       detailing sales force.

19       (c) Nothing in this section shall prohibit:

20       (1) The dispensing of prescription medications to a  
21       patient or to the patient's authorized representative;



- 1        (2) The transmission of prescription information between
- 2                    an authorized prescriber and a licensed pharmacy;
- 3        (3) The transfer of prescription information between
- 4                    licensed pharmacies;
- 5        (4) The transfer of prescription records that may occur in
- 6                    the event a pharmacy ownership is changed or
- 7                    transferred;
- 8        (5) Care management educational communications provided to
- 9                    a patient about:
- 10                    (A) The patient's health condition;
- 11                    (B) Adherence to a prescribed course of therapy; or
- 12                    (C) Other information about the drug being dispensed,
- 13                    treatment options, or clinical trials.
- 14        (d) Nothing in this section shall prohibit the collection,
- 15 use, transfer, or sale of patient and prescriber data that are
- 16 not identifiable by zip code, geographic region, or medical
- 17 specialty for commercial purposes.
- 18        (e) In addition to other remedies, a violation of this
- 19 section is an unfair or deceptive act or practice within the
- 20 meaning of section 480-2."

21        SECTION 3. New statutory material is underscored.

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1 SECTION 4. This Act shall take effect upon its approval.

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**Report Title:**

Confidentiality of Prescription Information

**Description:**

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

