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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 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 November 18, 2008, the United States First Circuit Court  
16 of Appeals upheld the New Hampshire statute against a challenge  
17 to its validity. In its ruling, the United States Court of

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

7 The purpose of this Act is to enact a patient prescription  
8 information confidentiality law prohibiting the sale of doctor-  
9 specific prescription drug data.

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

13 **"§328- Prescription information; confidentiality;**  
14 **violation.** (a) Records relating to prescription information  
15 containing patient-identifiable and prescriber-identifiable data  
16 shall not be licensed, transferred, used, or sold by any  
17 pharmacy benefits manager, insurance company, electronic  
18 transmission intermediary, pharmacy licensed under chapter 461,  
19 physician or osteopathic physician licensed under chapter 453,  
20 or other similar entity, for any commercial purpose, except for  
21 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 third-party insurance  
5        provider, or the agent of either;

6        (5) Health care research; or

7        (6) As otherwise provided by law.

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

20       (c) Nothing in this section shall prohibit:

21       (1) The dispensing of prescription medications to a  
22       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; or
- 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       (f) The department of commerce and consumer affairs, shall  
22 initiate investigations and disciplinary action to enforce this

1 section regarding any reports of activity that may violate this  
2 section.

3 (g) The department of commerce and consumer affairs, shall  
4 refer reports of any person or entity in violation of this  
5 section to the appropriate professional licensing or regulatory  
6 body for investigation and disciplinary action, including the  
7 suspension or revocation of the person or entity's license or  
8 permit to practice."

9 SECTION 3. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on July 1, 2015.

**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. Assigns enforcement to the department of commerce and consumer affairs. (SD2)