

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

Senate Committee on Health

HB 2086 HD1, Relating to Health Care Data

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

February 23, 2010

1 **Department's Position:** The Department of Health opposes the measure as written, and offers to work
2 on amendments with the other stakeholders.

3 **Fiscal Implications:** Uncertain but substantial costs for departmental and private information
4 technology (IT). For the department, we will need employees or vendors to develop, test and maintain
5 an electronic data transmission system in compliance with the bill. Such costs are not covered by the
6 executive supplemental budget and would cause financial hardship to the department.

7 **Purpose and Justification:** The measure requires that laboratory test results be provided to health care
8 providers or their designees, and HIPAA entities and business associates as defined by 45 CFR Parts
9 160-164.

10 The department understands the need for health care entities to share electronic information to
11 expedite patient care, including access to and payment of necessary laboratory testing, and the
12 department urges that such information sharing be done carefully, with consideration of relevant issues,
13 such as privacy under the law, business needs, information technology, and costs.

14 The bill appears over-broad. It requires providing personal health information to "authorized
15 persons" to the extent of the definition of such persons whether those persons request the information or

1 not. The bill also provides any HIPAA-defined entity or business associate, such as insurance
2 companies, broad and unrestricted access to all patient laboratory information without the current
3 provider-patient permissions, or even health plan membership.

4 We are aware of the charter and composition of the Hawaii Health Information Exchange
5 (HHIE), and we have reviewed the changes proposed by HHIE, and we attach our comments on those
6 proposed changes

7 The bill needs to recognize the practicalities of implementation. First, IT development costs
8 money, and the bill provides none. Second, good IT development needs time even when resources are
9 available, and the bill takes effect upon approval. Third, designing and operating a good IT system also
10 requires teamwork by the affected parties, especially if a new system is to be integrated with or
11 connected to existing systems or coordinated with other proposed systems. The bill does not recognize
12 this need.

13 We respectfully request that amendments be made. We are willing to work with other
14 stakeholders to develop more acceptable language.

15 Thank you for the opportunity to testify.

ATTACHMENT

The draft Hawaii Health Information Exchange proposed changes as of this date are:

“Clinical laboratory test results. (a) Clinical laboratory test results ~~[shall]~~ may be provided to ~~[authorized persons]~~ any covered entity for ~~[the]~~ any purpose~~[of populating a personal health record or an electronic medical record and for any other purpose also]~~ permitted under the Health Insurance Portability and Accountability Act of 1996, et. seq. and federal regulations promulgated thereunder.

(b) For the purposes of this section and any state administrative rules governing clinical laboratories in the state of Hawaii, the definition of “authorized persons” ~~[means]~~ shall include:

- (1) The provider ordering the test or ~~[his or her]~~ the provider’s designee; and
- (2) Any covered entity as defined under 45 Code of Federal Regulations parts 160-164, regulations promulgated the Health Insurance Portability and Accountability Act of 1996, et. seq. ~~covered entity as defined under 45 Code of Federal Regulations parts 160-164~~

DOH COMMENTS:

1. The replacement of “shall” with “may” is an improvement, but we are still concerned about allowing protected information to go to “any covered entity” without patient consent. There should be some specified relationship between the patient and the covered entity. We admit that there is a tension between protection and flexibility.
2. The reference to the federal regulations is an improvement.

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

February 23, 2010

The Honorable John Riki Karamatsu, Chair
The Honorable Ken Ito, Vice Chair
House Committee on Judiciary

Re: HB 2086 HD1 – Relating to Health Care Data

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 2086 HD1 which would allow clinical laboratories to provide access to lab data to HIPAA entities and business associates.

On the state level, Hawaii Revised Statutes do not directly oversee clinical laboratories and instead the Hawaii Department of Health regulates these entities under the Hawaii Administrative Rules (HAR). Current HAR only permit clinical laboratories to disclose lab results to “authorized persons” and their “designees.” Under the HAR definition, “authorized person” only includes medical providers licensed in the state. This current definition hinders the ability to meaningfully share clinical laboratory data to improve Hawaii’s health care system.

As you are aware, HMSA launched its Online Care program which allows individuals to gain access to physicians and specialists 24 hours a day, 7 days a week via the internet or telephone. An important component of Online Care is the ability for participating Online Care providers to access an individual’s medical history to ensure that they have all the information they need to provide an appropriate diagnosis. One of the problems which our system has run into is the inability to populate our member’s records with the results of any laboratory testing they have received. The language contained in HB 2086 HD1 is meant to allow for these results to be made available to physicians assisting members via Online Care by extending the definition of entities which may receive this information to those covered under HIPAA.

There are other projects in the works locally which stand to gain from its passage as well. The UH College of Pharmacy at Hilo, along with a broad coalition of organizations, is working toward implementing a regional health information exchange which would serve as a prototype for larger future projects. A grant application to receive federal funding has been submitted and this initiative will bring major changes to access for those on the Big Island. This goes hand-in-hand with the broader effort of the Hawaii Health Information Exchange (HHIE) to draw down American Recovery and Reinvestment Act (ARRA) funding to create a statewide information exchange. Unless HIPAA covered entities, such as health plans, are able to share this laboratory data, it will be virtually impossible to utilize technology to promote a more efficient and higher quality health care system.

That being said, we support the amendments being proposed today by the HHIE. These amendments would “allow” a laboratory to share data rather than “require” a laboratory share data. Additionally some of the language regarding personal health records (PHRs) and electronic medical records (EMRs) has been removed to

simplify the measure. We would point out that the removal of this language does not mean that using laboratory data for these purposes would no longer be permissible since populating PHRs and EMRs are permitted purposes under HIPAA.

HMSA and other affected stakeholders are working together in order to ensure that an individual's health information is protected. We would request the Committee pass this measure with HHIE's proposed amendments.

Thank you for the opportunity to testify today.

Sincerely,

A handwritten signature in black ink, appearing to read 'JD', with a long horizontal flourish extending to the right.

Jennifer Diesman
Vice President
Government Relations



55 Merchant Street
Honolulu, Hawai'i 96813-4333

HAWAII PACIFIC HEALTH

Kapi'olani • Pali Momi • Straub • Wilcox

808-535-7401
www.hawaiipacifichealth.org

Tuesday, February 23, 2010 – 2:00pm
Room 325

The House Committee on Judiciary

To: Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair

From: Steve Robertson
Executive Vice President & CIO, Revenue Management and IT

Re: **Testimony in Support of HB 2086 HD1 Relating to Health Care Data – with Amended Language**

My name is Steve Robertson, Executive Vice President and Chief Information Officer, at Hawai'i Pacific Health (HPH). Hawai'i Pacific Health is a nonprofit health care system and the state's largest health care provider, committed to providing the highest quality medical care and service to the people of Hawai'i and the Pacific Region through its four affiliated hospitals, 44 outpatient clinics and more than 2,200 physicians and clinicians. The network is anchored by its four nonprofit hospitals: Kapi'olani Medical Center for Women & Children, Kapi'olani Medical Center at Pali Momi, Straub Clinic & Hospital and Wilcox Memorial Hospital. Collectively, they lead the state in the areas of women's health, pediatric care, cardiovascular services, bone and joint services and cancer care. Hawai'i Pacific Health ranks among the top 3.8 percent of hospitals nationwide in electronic medical record adoption, with system-wide implementation that allows its hospitals to offer integrated, coordinated care throughout the state. Learn more at: <http://www.hawaiipacifichealth.org>

We support the intent of HB 2086 HD1 Relating to Health Care Data which expands access of laboratory test results beyond ordering physicians and their designees, **but** recommend that the bill be amended.

Under current Department of Health administrative rules, clinical laboratories may disclose lab results only to the person who ordered the lab test, or their designee. This language prohibits the release of the lab results to other physicians and HIPAA health entities involved in the individual's care as they did not order that particular lab. HB 2086 HD1 seeks to widen access to laboratory information to covered entities under the Privacy Rule as well as their business associates for purposes of populating an electronic health record, personal health record and any other purpose permitted under the Federal Privacy Rule (HIPAA).

We agree that the sharing of electronic medical data is a necessity in order for health



Affiliates of Hawai'i Pacific Health

information exchange to deliver on the promise of improving healthcare coordination in our community. Public trust in the confidentiality of their health information is an imperative in order for the health information exchange to be fully embraced by our patients. We therefore need to ensure the public's confidence that the information shared in this exchange will be held and shared in accordance with HIPAA.

As currently written we believe the language is too broad and the mandated disclosure requirement is onerous. This bill, if enacted, could **require** clinical laboratories to provide labs to populate the electronic health record (EHR) or personal health record (PHR) of any covered entity or its business associates. So, for example, if a covered entity, such as a pharmacy contracted with a technology company to provide their customers with a PHR, the clinical laboratories in the State could be mandated to submit labs to the technology company to populate the PHR. Every physician who implements an EHR could demand that the clinical laboratories submit labs to their EHR. For these reasons, we offer the following amendments:

To address these concerns, we suggest the following amendments:

"Â§321- Clinical laboratory test results. (a) Clinical laboratory test results [shall] may be provided to [authorized persons] any covered entity for [the] any purpose [of populating a personal health record or an electronic medical record and for any other] [also] permitted under the Health Insurance Portability and Accountability Act of 1996, et. seq. and federal regulations promulgated thereunder.

(b) For purposes of this section and any state administrative rules governing clinical laboratories in the state of Hawai`i, definition of "authorized persons" [means] shall include:

- (1) The provider ordering the test or the provider's designee; and
- (2) Any covered entity as defined under 45 Code of Federal Regulations Parts 160-164, regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, et. seq. ~~covered entity as defined in 45 Code of Federal Regulations Parts 160-164."~~

This language would broaden the scope of the current administrative rule to allow release of laboratory results for health information exchanges and PHRs/EHRs but only in accordance with the requirements of HIPAA.

I ask that the Committee consider our suggested changes. Thank you for the opportunity to testify.

Hawai'i Health Information Exchange

Health information, when and where you need it.

To:

HOUSE COMMITTEE ON JUDICIARY
Representative Jon Riki Karamatsu, Chair
Representative Ken Into, Vice Chair

**Testimony in Support of House Bill 2086
Relating to Health Care Data
Submitted by: Christine Maii Sakuda, Executive Director
Hawaii Health Information Exchange
February 22nd, 2010, 2:00 p.m. Agenda, Room 325**

Dear Honorable Chair, Vice Chair and committee members,

The Hawaii Health Information Exchange supports the intent of HB 2086 HD 1 Relating to Health Care Data which expands access of laboratory test results beyond ordering physicians and their designees, but recommend that the bill be amended.

Under current Department of Health administrative rules, clinical laboratories may disclose lab results only to the person who ordered the lab test, or their designee. This language prohibits the release of the lab results to other physicians and HIPAA health entities involved in the individual's care as they did not order that particular lab. SB2100 SD1 seeks to widen access to laboratory information to covered entities under the Privacy Rule as well as their business associates for purposes of populating an electronic health record, personal health record and any other purpose permitted under the Federal Privacy Rule (HIPAA).

We agree that the sharing of electronic medical data is a necessity in order for health information exchange to deliver on the promise of improving healthcare coordination in our community. Public trust in the confidentiality of their health information is an imperative in order for the health information exchange to be fully embraced by our patients. We therefore need to ensure the public's confidence that the information shared in this exchange will be held and shared in accordance with HIPAA.

As currently written we believe the language is too broad and the mandated disclosure requirement is onerous. This bill, if enacted, could **require** clinical laboratories to provide labs to populate the electronic health record (EHR) or personal health record (PHR) of any covered entity or its business associates. So, for example, if a covered entity, such as a pharmacy contracted with a technology company to provide their customers with a PHR, the clinical laboratories in the State could be mandated to submit labs to the technology company to populate the PHR. Every physician who implements an EHR could demand that the clinical laboratories submit labs to their EHR. For these reasons, we offer the following amendments:

Hawai'i Health Information Exchange

Health information, when and where you need it.

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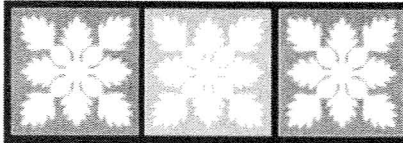
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This language would broaden the scope of the current administrative rule to allow release of laboratory results for health information exchanges and PHRs/EHRs but only in accordance with the requirements of HIPAA.

I ask that the Committee consider our suggested changes.

Thank you for the opportunity to testify.



Hawaii Association of Health Plans

February 23, 2010

The Honorable Jon Riki Karamatsu, Chair
The Honorable Ken Ito, Vice Chair
House Committee on Judiciary

Re: HB 2086 HD1 – Relating to Health Care Data

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

My name is Howard Lee and I am President of the Hawaii Association of Health Plans (“HAHP”). HAHP is a non-profit organization consisting of seven (7) member organizations:

AlohaCare
Hawaii Medical Assurance Association
HMSA
Hawaii-Western Management Group, Inc.

MDX Hawai‘i
University Health Alliance
UnitedHealthcare

Our mission is to promote initiatives aimed at improving the overall health of Hawaii. We are also active participants in the legislative process. Before providing any testimony at a Legislative hearing, all HAHP member organizations must be in unanimous agreement of the statement or position.

HAHP appreciates the opportunity to testify on HB 2086 HD1 which would amend the state’s regulatory framework regarding the sharing of clinical laboratory data to more closely comply with the federal Health Insurance Portability and Accountability Act (HIPAA.)

Health information technology is rapidly expanding and the state is expecting an influx of federal funding through the American Recovery and Reinvestment Act (ARRA). These monies will be used to create a statewide health information exchange which will ultimately connect the entire state and provide a framework to allow all types of health care providers to access clinical data.

One of the initial goals of ARRA is for states to examine local statutes in relation to data sharing to determine if changes need to be made in order to meet aggressive federal implementation timeframes. An examination of Hawaii regulations reveals that there is opportunity for change.

• AlohaCare • HMAA • HMSA • HWMG • MDX Hawaii • UHA • UnitedHealthcare •
HAHP c/o Howard Lee, UHA, 700 Bishop Street, Suite 300 Honolulu 96813
www.hahp.org

Clinical laboratories are overseen through federal regulation known as the Clinical Laboratories Improvement Amendments (CLIA). CLIA gives states leeway to define who may receive clinical laboratory results. In Hawaii, per Hawaii Administrative Rules (HAR), the only person who may receive laboratory results is the ordering physician or their "designee."

Since the HAR does not include other HIPAA covered entities, laboratories would be unable to provide clinical data to a health information exchange or for a physician to populate a field in an electronic medical record with this data. HAHP believes that making the statutory change included in HB 2086 HD1 to include HIPAA covered entities within the scope of those permitted to share laboratory data would be an easy step as we forge ahead to incorporate health care technology in a more comprehensive way.

We understand that the Hawaii Health Information Exchange is proposing changes to the current language of this measure. HAHP supports the inclusion of these amendments.

Thank you for the opportunity to offer comments today.

Sincerely,



Howard Lee
President