

HB 2086

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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:

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Senate Committee on Health

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HB 2086 HD2, Relating to Health Care Data

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

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March 12, 2010

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

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

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Purpose and Justification: The measure, as presently amended, allows laboratory test results to be provided to health care providers or their designees, and HIPAA entities and business associates as defined by 45 CFR Parts 160.103.

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The department understands the need for and supports the appropriate sharing of electronic health information to expedite patient care, including access to and payment of necessary laboratory testing. The department has invested substantial money, staff, and effort to implement successfully a laboratory information management system (LIMS) and is working on improvements to the LIMS. We are also pursuing other electronic systems to improve the use of health information for public health protection and improvement. We appreciate the legislature's past and current support for such efforts.

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1 For this bill to be successful, it needs more attention to privacy and practical issues. The
2 department urges that electronic health information sharing be done carefully, with consideration of
3 relevant issues, such as privacy under the law, cost, business needs and unforeseen ramifications.

4 Our privacy concern is that the amended bill allows access, without patient or doctor
5 permission, to lab test results by people other than doctors and other medical professionals and their
6 staff. The amended bill broadens the term “authorized persons” beyond the existing departmental rule,
7 Hawaii Administrative Rules (HAR) 11-110.1-2, to include people and entities who do not have any
8 direct responsibility for the individual’s health care. The draft also allows labs to provide broad and
9 unrestricted access to any HIPAA-defined entity or business associate, such as insurance companies who
10 do not insure the patient, all patient laboratory information without the current provider-patient
11 permissions, or even health plan membership, which could lead to unforeseen ramification and
12 unnecessary invasion of individual privacy.

13 We appreciate that this draft says information “may” be shared (p. 2, line 12) and does not
14 mandate such sharing. This leaves the details of information sharing to the various would-be sharers,
15 and there will still be issues of who should receive the test results and how. We are willing to take part
16 in those talks; and we will approach the subject cautiously because we want to fully understand the
17 interplay of the Health Insurance Portability and Accountability Act of 1996 (HIPAA); the Clinical
18 Laboratory Improvements Amendments of 1998 (CLIA); and the Health Information Technology for
19 Economic and Clinical Health (HITECH) Act, which is part of the American Recovery and
20 Reinvestment Act 2009 (ARRA).

21 A potential ramification of the broad definition of “authorized person” is that it may allow many
22 more people (all covered entities, including individuals) to order laboratory tests under HAR 11-110.1
23 without the benefit or consideration of health care provider interpretation of health status or medical
24 need, as the HIPAA regulations allows state laws broad powers to define. The definition of “authorized
25 persons” in the rule was carefully created by a committee of representatives from the three largest

1 clinical laboratory systems, several smaller community clinical laboratories, and the University of
2 Hawaii School of Medicine and approved via a public hearing process. The rule's intent was that the
3 listed licensed health care providers would use laboratory tests for direct diagnosis, treatment and health
4 care evaluation of the individual patient. The broad language proposed by this bill may bypass that
5 intent, and expose patients to medically unnecessary testing. This issue needs further review.

6 Currently defined "authorized persons" can already designate the release of medical records to
7 covered entities for purposes permitted under the Health Insurance Portability and Accountability Act of
8 1996, P.L. 104-191 under the present Hawaii Administrative Rules, so the bill may be unnecessary. One
9 could design an automated system that builds in consent as a key to information sharing.

10 The practical issues of implementation need to be considered also. While the bill has a long
11 delayed effective date, 2020, if the bill passes, the effective date will be much earlier. First, IT
12 development costs money, and the bill provides none. Second, good IT development needs time even
13 when resources are available. Third, designing and operating a good IT system also requires teamwork
14 by the affected parties, especially if a new system is to be integrated with or connected to existing
15 systems or coordinated with other proposed systems. The bill does not recognize this need.

16 We respectfully request that the bill be amended or deferred. We are willing to work with other
17 stakeholders to develop more acceptable language.

18 Thank you for the opportunity to testify.

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HAWAII MEDICAL ASSOCIATION

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Friday, March 12, 2010, 3:15 PM, Conference Room 016

To: COMMITTEE ON HEALTH
Senator David Y. Ige, Chair
Senator Josh Green, M.D., Vice Chair

From: Hawaii Medical Association
Gary A. Okamoto, MD, Legislative Co-Chair
Linda Rasmussen, MD, Legislative Co-Chair
April Donahue, Executive Director
Lauren Zirbel, Government Affairs
Dick Botti, Government Affairs

Re: HB2086 RELATING TO HEALTH CARE DATA

In Support

Chairs & Committee Members:

Hawaii Medical Association supports HB2086 as it allows exchange of lab data under HIPAA privacy laws. Efficient access to a patient's lab data would facilitate the appropriate evaluation and treatment of patients. This legislation will help set the foundation for health information exchange throughout Hawaii.

Please note that HMA's support is contingent on keeping the amendments from the HD2 version stating that lab data may be provided (not shall).

Thank you for the opportunity to provide testimony.

OFFICERS

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HMSA



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March 12, 2010

The Honorable David Ige, Chair
The Honorable Josh Green M.D., Vice Chair
Senate Committee on Health

Re: HB 2086 HD2 – Relating to Health Care Data

Dear Chair Ige, Vice Chair Green and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify in strong support of HB 2086 HD2 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.

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 HD2 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. 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. We believe that passage of HB 2086 HD2 will assist in the many efforts to improve Hawaii’s health care system and as such would request the Committee pass this measure as currently drafted. Thank you for the opportunity to testify today.

Sincerely,

A handwritten signature in black ink, appearing to read "JD".

Jennifer Diesman
Vice President
Government Relations