



STATE OF HAWAII
DEPARTMENT OF HEALTH
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In reply, please refer to:
File:

House Committee on Health

HB 2575, RELATING TO TRAUMA

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

Friday, February 5, 2010, 9:30 am

1 **Department's Position:** The Department of Health strongly supports this Administration bill.

2 **Fiscal Implications:** None

3 **Purpose and Justification:** In Hawaii, trauma is the leading cause of death and disability for those
4 1-44 years of age. The Department has been charged in Section 321-22.5, Hawaii Revised Statutes, with
5 building a comprehensive statewide trauma system to address this public health problem. The trauma
6 system will consist of multiple emergency medical service agencies, hospitals, and committees formed
7 to review and improve the care provided to patients within the system.

8 Multidisciplinary Quality Assurance (QA) and Peer Review (PR) committees seek broad
9 participation within health organizations to produce improvements in patient care. This involves
10 personnel from various disciplines reviewing records of care that they did not themselves provide, and
11 making recommendations for improvement. Without protection from discovery, such reviewers would
12 potentially become involved in medical malpractice cases just because they reviewed the case.
13 Recognizing that this seriously affects voluntary participation, QA and PR committees within hospitals
14 and health maintenance organizations are currently protected from discovery by Section 624-25.5,
15 Hawaii Revised Statutes. It is important to note that all patient records and other material pertinent to

1 investigation of potential medical malpractice remain available; it is only the committee's deliberations
2 and proceedings that are protected.

3 The Department seeks protections for QA and PR committees convened and conducted by the
4 Department for the purpose of improving patient outcomes. Such protections will assure the full
5 participation and broad involvement by the many key individuals and agencies needed to produce the
6 best results from the statewide trauma system.

7 Thank you for the opportunity to testify on this bill.



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CATHY L. TAKASE
ACTING DIRECTOR

To: House Committee on Health
From: Cathy L. Takase, Acting Director

Hearing: Friday, February 5, 2010, 9:30 a.m.
State Capitol, Room 329

Re: Testimony on H.B. 2575
Relating to Trauma

Thank you for the opportunity to testify regarding H.B. 2575. OIP takes no position on the substance of this bill, but is testifying to point out a technical problem and to express concerns regarding a broadly phrased confidentiality provision.

At page 5, lines 10-12, the bill provides that the information described in that section "is not subject to chapter 92F. . . ." The effect of this language would be not simply to provide confidentiality, but would bring the information entirely outside the requirements of the Uniform Information Practices Act ("UIPA"), chapter 92F. In other words, the department would have no obligation to acknowledge receipt of a request and provide a reason for its denial as generally required; it could simply ignore requests for records containing that information.

OIP uniformly and strongly recommends against provisions in statutes outside of the UIPA that seek to exclude records from the UIPA's entire statutory scheme. OIP believes that, where the intent is to exempt certain records from disclosure, it is clearer and more appropriate to instead simply make the records "confidential." Where a record is made confidential, it may be withheld from disclosure under an exception to the UIPA and it may be considered in an executive meeting, i.e., a closed meeting, under the Sunshine Law. See Haw. Rev. Stat. § 92F-13(4) (1993) (exception to disclosure provided for government records protected by statute from disclosure); Haw. Rev. Stat. § 92-5(a)(8) (exception to open meeting requirement provided to deliberate or decide a matter that requires consideration of information that is confidential by law). If the intent is to exclude this information from disclosure under the UIPA, OIP suggests the following amendment:

(e) Information held by the department as a result of patient care records and system performance reviews conducted under this part is not subject to chapter 92F, confidential and is not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that patient care records and system performance review information otherwise available from other sources is not confidential or immune from chapter 92F, subpoena, discovery, or introduction into evidence through those sources solely because they were provided as required by this part.

In addition to the technical problem caused by exempting information from the UIPA's entire statutory scheme, OIP also has concerns about whether a confidentiality clause in this bill is justified. It is not clear why the UIPA's exceptions for privacy, for records protected by "other law" (which would include the HIPAA medical privacy rules), and perhaps other UIPA exceptions, would not be sufficient to appropriately protect medical records collected by DOH. The only sort of information collected under this bill that might conceivably be disclosable under UIPA exceptions and HIPAA would be de-identified records – either non-patient-specific compilations, or records from which all indications of a patient's identity had been removed – and those records would carry a strong public interest in how DOH was performing its oversight function.

Thank you for the opportunity to testify.