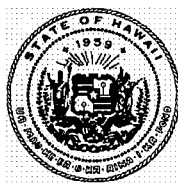


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February 11, 2009

MEMORANDUM

TO: Honorable David Y. Ige, Chair
Senate Committee on Health

FROM: Lillian B. Koller, Director

SUBJECT: **S.B. 1092 – RELATING TO PRESCRIPTION RECORDS PRIVACY**

Hearing: Wednesday, February 11, 2009, 3:00 PM.
Conference Room 016, State Capitol

PURPOSE: The purpose of this bill is to protect the confidentiality of prescription records identifying a doctor or other health care professional licensed to prescribe medications by prohibiting the use of such information for marketing purposes. Ensures that the State comply with Federal restrictions on the transfer and use of Medicaid data.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) acknowledges that this measure has merit; however, given the current fiscal difficulties, it would not be prudent to pursue enactment at this time. Further, DHS cannot support this bill as written unless the State Pharmacy Assistance Program (SPAP) is excluded.

The State Pharmacy Assistance program (SPAP) is not part of Medicaid. SPAP is a program that allows non-Medicaid recipients to purchase medications at a decreased price. The contractor that administers this program does not get reimbursed by the State but rather covers its cost through the sale of data. Restricting the sale of prescription data would require a new general fund appropriation to fund the SPAP program and, given our current fiscal difficulties, it would not be

prudent to seek a new general fund appropriation. Therefore, DHS recommends excluding the SPAP program from S.B. 1092.

Other than excluding SPAP, DHS agrees with legislation to protect prescribing information from marketing purposes and avoid undue influence by the pharmaceutical industry over provider prescribing decisions. DHS supports the intent of this bill that such confidential information should not be used for marketing purposes.

Medicaid is regulated under 42 C.F.R. chapter IV, subchapter C, or under a Medicaid waiver as approved by the Centers for Medicare & Medicaid Services (CMS). This bill complies with federal Medicaid laws and regulations to protect disclosure and use of prescription data. In addition, DHS has policies and procedures in place for the Health Insurance Portability and Accountability Act (HIPAA) compliance.

DHS supports the proposed section 328-B, Prescription Record Privacy, subsection (b), which allows the disclosure of regulated records containing individual identifying information only for non-marketing purposes, such as transfer of prescriptions from one pharmacy to another when patient's health plan changes or the sale of one pharmacy to another pharmacy. This section will allow for the transfer/sale of the regulated records containing individual identifying information.

In an effort to better serve the Hawaii Medicaid population and improve quality, DHS does share aggregated and/or de-identified information to track larger health trends related to Hawaii's Medicaid population. The Department responds to CMS-related program development requests, CMS tracking of federal programs, survey requests, and other government/non-government requests on a case-by-case basis.

Thank you for this opportunity to testify.