



February 13, 2009

**MEMORANDUM**

**TO:** Honorable Rosalyn H. Baker, Chair  
Senate Committee on Commerce and Consumer Protection

**FROM:** Lillian B. Koller, Director

**SUBJECT:** **S.B. 449 – RELATING TO PATIENT PRESCRIPTION INFORMATION**  
Hearing: Friday, February 13, 2009 8:30 a.m.  
Conference Room 229, State Capitol

**PURPOSE:** The purpose of this bill is to prohibit, except for certain limited purposes, the use, transfer, licensing, or sale of a patient's prescription information for any commercial purpose.

**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 because it will affect the Hawaii Rx Plus program.

Hawaii Rx Plus is not part of Medicaid. Hawaii Rx Plus is a program that allows non-Medicaid recipients to purchase medications at a decreased price. Last year through Hawaii Rx Plus, over 7,400 people filled over 15,000 prescriptions at a savings to them of nearly \$195,000 (26%).

The contractor that administers this program does not get reimbursed by the State but rather covers its cost through the sale of HIPAA (Federal Health Insurance Portability and Accountability Act) compliant data. Restricting the sale of prescription data would require a new

general fund appropriation to fund the Hawaii Rx Plus program and, given our current fiscal difficulties, it would not be prudent to seek a new general fund appropriation. Therefore, DHS recommends excluding the Hawaii Rx Plus from S.B. 449.

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), and Med-QUEST programs comply 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 HIPAA compliance.

In an effort to better serve 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. DHS 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.

Protection of prescribing information from marketing purposes is important to avoid undue influence by the pharmaceutical industry over provider prescribing decisions.

Thank you for this opportunity to testify.