TESTIMONY

SB2098

HTH Committee Hearing 1/27/2012



NEIL ABERCROMBIE GOVERNOR

SENATE COMMITTEE ON HEALTH Senator Josh Green, MD, Chair Senator Clarence K. Nishihara, Vice Chair

January 27, 2012 2:45 pm Room 229

Support for SB 2098 Relating to Privacy of Health Care Information

Presented by Beth Giesting, Healthcare Transformation Coordinator

Chair Green, Vice-Chair Nishihara, the Office of the Governor is in support of Senate Bill 2098, Relating to Privacy of Health Care Information.

We find that transforming the quality and sustainability of our health care system hinges on our effective use of health information technology. The essential HIT building blocks are

- 1) The widespread meaningful use of electronic health records, and
- 2) Appropriate exchange of health information.

The exchange of health information is a key factor for reducing system fragmentation; costly, dangerous duplication of services; and treatment delays and errors. Its effective use will result in higher quality, increased patient and provider satisfaction, and lower costs.

The body of conflicting rules and regulations that have evolved over many years that restrict and complicate sharing information are a barrier to effective exchange that paralyze providers threatened with unintentional breaches of the law. Relying on the federal HIPAA regulations as the arbiter for health information exchange will greatly simplify providers' work and is a critical support to appropriate and much-needed health information exchange.

Thank you for the opportunity to offer our support.

NEIL ABERCROMBIE



LORETTA J. FUDDY, A.C.S.W., M.P.H.

in reply, please refer to:

Senate Committee on Health

S.B. No. 2098, RELATING TO PRIVACY OF HEALTH CARE INFORMATION

Written Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H. Director of Health

January 25, 2012

- 1 Department's Position: Support with Amendment
- 2 Fiscal Implications: None.
- 3 Purpose and Justification: The Department supports this bill because it will serve to facilitate the
- 4 exchange of health information and simplify an often complex analysis of applicable state privacy laws.
- 5 The result will be improved patient care, reduced health care costs and enhanced quality of health care
- 6 operations without compromising privacy protections. We do propose one amendment to the bill for
- clarification purposes.
- The Department believes that this bill is in accord with the Health Insurance Portability and
- 9 Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical
- 10 Health (HITECH) Act. These federal regulations promote a system to enhance the quality of patient
- care while reducing instances of duplicative services and protecting patient privacy. This bill moves in
- the direction set by both HIPAA and the HITECH Act.
- This bill promotes sharing health information in a timely and safe manner while improving
- 14 patient care and outcomes, reducing health cost, and enhancing oversight of healthcare operations. It
- 15 also helps pave the way for the electronic maintenance and exchange of health information.

This bill also will serve to simplify what has become a complicated array of state laws and regulations regarding health care privacy. Often, an involved preemption analysis must be conducted to determine which privacy law is appropriate. While our staff is highly trained and capable, this unnecessary complexity can lead to delays or the application of an incorrect law. This bill will eliminate a significant layer of that complexity.

This bill only applies to entities that are already required to comply with HIPAA regulations.

HIPAA is the recognized standard in this area; therefore, appropriate protections will still be in place.

Furthermore, this bill specifically states that it does not apply to disclosures of health information
restricted by federal law or regulations. This means that federal regulations, such as those regarding
substance abuse treatment information, must still be followed.

The one amendment we recommend is the deletion of language that states "Notwithstanding any law to the contrary, any notice of breach of unsecured protected health information that complies with 45 Code of Federal Regulations Part 164, Subpart D, shall be deemed to comply with all state laws and rules relating to notice of breach of protected health information". The language stated above contradicts other language in the bill that states, "Nothing in this chapter shall be construed to ... Limit or otherwise affect any state statute or rules that requires notification of other security or privacy breaches".

There is a potential for misunderstanding that if an entity that falls under this bill complies with HIPAA breach notification requirements, then that entity will be in compliance of all state breach notification requirements as well. This may lead entities to believe that if there is a breach that triggers both HIPAA and HRS Chapter 487N ("Security Breach of Personal Information") requirements, that complying with only the HIPAA requirements means they are fully compliant.

Thank you for the opportunity to provide testimony on this measure.



NEIL ABERCROMBIE GOVERNOR

BRIAN SCHATZ

STATE OF HAWAII INSURANCE DIVISION DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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TO THE SENATE COMMITTEE ON HEALTH

TWENTY-SIXTH LEGISLATURE Regular Session of 2012

Friday, January 27, 2012 2:45 p.m.

TESTIMONY ON SENATE BILL NO. 2098 – RELATING TO PRIVACY OF HEALTH CARE INFORMATION.

TO THE HONORABLE JOSH GREEN, M.D., CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department takes no position on this bill which clarifies that persons and entities governed by HIPAA shall be in compliance with Hawaii's privacy laws and rules.

The regulation contemplated by this bill is not insurance regulation.

We thank the Committee for the opportunity to present testimony on this matter.



NEIL ABERCROMBIE GOVERNOR

BRIAN SCHATZ

STATE OF HAWAII OFFICE OF THE DIRECTOR DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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PRESENTATION OF DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON HEALTH

TWENTY-SIXTH STATE LEGISLATURE REGULAR SESSION, 2012

FRIDAY, JANUARY 27, 2012 2:45 P.M.

WRITTEN TESTIMONY ONLY

ON

SENATE BILL NO. 2098
RELATING TO PRIVACY OF HEALTH CARE INFORMATION

TO THE HONORABLE JOSH GREEN, M.D., CHAIR,
AND TO THE HONORABLE CLARIENCE K. NISHIHARA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 2098, Relating to Privacy of Health Care Information. My name is Jo Ann Uchida, Complaints and Enforcement Officer of the Department's Regulated Industries Complaints Office ("RICO"). The Department offers the following written testimony on Senate Bill No. 2098.

Testimony on Senate Bill No. 2098 January 27, 2012 Page 2

Senate Bill No. 2098 provides that individually identifiable health care information released in compliance with federal law shall be deemed to comply with state law. The Department respectfully requests that this Committee specify the existing State privacy statutes that would be impacted by this bill. Such clarification would assist the Department in establishing a protocol for subpoening records and in determining whether a licensee's disclosure conforms to applicable State and federal laws.

Thank you for the opportunity to submit written testimony on Senate Bill No. 2098.



шшш.hhic.org phone: 808,534,0288 fax: 808,534,0292

January 25, 2012

Senator Joshua Green, Chair Senator Clarence K. Nishihara, Vice Chair Senate Health Committee Hawaii State Legislature State Capitol Honolulu, HI 96813

Chairman Green and Vice-chairman Nishihara,

The Hawaii Health Information Corporation supports SB 2098—RELATING TO PRIVACY OF HEALTH CARE INFORMATION. SB 2098 harmonizes existing Hawaii statutes relating to the privacy and sharing of health care records into conformance with federal HIPAA requirements, as amended by the American Recovery and Reinvestment Act. This is very important for two reasons.

First, the plethora of approximately fifty statutory references to privacy is difficult for providers to understand and use. Bringing all into conformance with HIPAA will provide providers with the ability to more easily comply with one set of standards. Second, a single set of HIPAA compliant statutes will facilitate the exchange of clinical information by providers through the Hawaii Health Information Exchange (HHIE). By allowing for clinical information to be exchanged easily, more information will be available to providers of care, improving the quality of care to the patient.

For these reasons, HHIC strongly supports SB 2098 and recommends its passage.

Sincerely,

Peter A. Sybinsky, Ph.D.

President & CEO



SENATE COMMITTEE ON HEALTH Senator Josh Green, Chair

Conference Room 229 January 27, 2012 at 2:45 p.m.

Supporting SB 2098: Relating to Privacy of Health Care Information

The Healthcare Association of Hawaii advocates for its member organizations that span the entire spectrum of health care, including all acute care hospitals, as well as long term care facilities, home care agencies, and hospices. In their efforts to provide quality care to all of Hawaii's residents, our members employ over 40,000 people. Thank you for this opportunity to testify in support of SB 2098, which creates an effective regulatory structure for managing health care information.

The health care system is very complex, and much information is transmitted among the various organizations within the system. Patient confidentiality is of paramount importance, but information must flow through the system efficiently to ensure that care is provided on a timely basis, that payment is made for care, and that government entities responsible for monitoring health care receive the necessary information.

The federal Health Insurance Portability and Accountability Act (HIPAA) governs the transmission of individually identifiable health information between health care providers, insurers, and other organizations that depend on such information. The State also has regulations that govern the transmission of such information.

Unfortunately, State and federal regulations are not always aligned, and as such there can be confusion about the interpretation of the regulations. This confusion can result in medical information not being optimally shared among organizations.

This bill harmonizes state regulations governing the disclosure of medical information with federal legislation. Consistent with HIPAA, this bill does not undermine existing Hawaii statutes or Administrative Rules that are currently more stringent than the provisions of HIPAA.

For the foregoing reasons, the Healthcare Association of Hawaii supports SB 2098.





Senate Health Committee Friday, January 27, 2012 2:45 p.m. Room 229

RE: SB 2098, RELATING TO PRIVACY OF HEALTH CARE INFORMATION

Good afternoon, Chair Green, Vice- Chair Nishihara and members of the Health Committee. On behalf of the Hawaii Chapter, American Physical Therapy Association ("HAPTA"), we are in **support** of SB 2098, relating to privacy of health care information.

This measure provides that use, disclosure, or authorization for release of individually identifiable health information that complies with federal law shall be deemed to comply with state law. It further provides that notice of breach of unsecured protected health information that complies with federal law shall be deemed to comply with state law.

We believe that this measure is an important step toward ensuring that health care professionals are not liable for potential inconsistencies between federal law and Hawaii laws which have not yet been harmonized.

HAPTA is a non-profit professional organization serving more than 250 member Physical Therapists and Physical Therapist Assistants. Our mission is to be the principal membership organization that represents and promotes the profession of Physical Therapy in the State of Hawaii.

Mahalo,

Ann Frost, P.T. Legislative Committee Chair



January 25, 2012

The Honorable Josh Green, M.D., Chair The Honorable Clarence K. Nishihara, Vice Chair Senate Committee on Health

Re: SB2098 - Relating to Privacy of Health Care Information.

Honorable Chair Green, Vice Chair Nishihara, and Members of the Committee:

My name is Christine Sakuda and I am the Executive Director of the Hawai'i Health Information Exchange (Hawai'i HIE). The Hawai'i HIE strongly supports SB2098 – Relating to Privacy of Health Care Information, which is intended to harmonize the laws that govern the exchange of personal health data.

Health care providers and their business associates face a bewildering patchwork of state privacy laws that are extremely difficult to understand and adhere to. This inhibits the health care industry from exchanging appropriate health data and effectively providing quality care to the patient.

This proposed act seeks to simplify compliance of protected personal health data by adherence to existing stringent federal privacy laws. As stated in SB2098, "The legislature finds that the privacy of health information has been greatly enhanced by the federal Health Insurance Portability and Accountability Act ("HIPAA") and related federal laws and regulations. HIPAA encourages the timely, secure, electronic transmission of individually identifiable health information, with important benefits for patients. The legislature also finds that HIPAA and related federal regulations provide a comprehensive regulatory scheme that protects the privacy of patients' health information, while allowing reasonable access by health care providers, health plans, and health oversight agencies."

The Hawai'i Health Information Exchange (Hawai'i HIE) is a 501(c)(3) non-profit established in 2006 by leading health care stakeholders in Hawai'i for the purpose of improving health care delivery throughout the state through seamless, effective, and secure health information exchange. The organization is supported by a broad range of board members from all sectors of the health care community, who are determined to transform the state of health care in Hawai'i to one that is more coordinated and patient-centric.

In September of 2009, Hawai'i HIE was designated by the state to develop and implement a statewide health information exchange, which will ultimately feed into the national health information network.

Hawai'i HIE understands the needs of the health care community to be able to safely and securely share personal health information in order to provide the finest and most efficient care to Hawai'i's patients. For the aforementioned reasons, Hawai'i HIE strongly supports SB2098.

Christine Mai'i Sakuda

Executive Director

Hawai'i Health Information Exchange



An Independent Licensee of the Blue Cross and Blue Shield Association

January 27, 2012

The Honorable Josh Green, M.D., Chair The Honorable Clarence K. Nishihara, Vice Chair

Senate Committee on Health

Re: SB 2098 - Relating to Health Care Information

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

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify in support of SB 2098, which clarifies that the use and or disclosure of certain health information consistent with federal Health Insurance Portability and Accountability Act (HIPAA) regulations, is deemed to be incompliance with Hawaii's privacy laws and rules.

Critical to Hawaii's success in creating an efficient health care system is the need for each individual's health care information to be efficiently shared amongst those persons and entities involved with the individual's health care. However, that efficiency must be balanced against the imperative to protect the individual's privacy. While HIPAA secured those privacy needs for each patient's personal health information with absolute, stringent requirements, the State has on its books a series of laws and rules governing that same set of information. That overlap creates an unnecessary burden for those involved with an individual's health care who need to share that information in an efficient manner. That has frustrated efforts to streamline the health care information system and, ultimately, delays efforts to make the health care system more cost effective and efficient. SB 2098 simply acknowledges that use of a patient's health care information in compliance with HIPAA's rigorous regulations also meets the requirements of our State's privacy laws and rules.

The Hawaii Health Information Exchange has made tremendous strides over the last two years to create that efficient, yet secure, system for the exchange of patients' health care information. SB 2098 will do much to reduce potential hurdles to achieving that goal. We ask that you pass SB 2098. Thank you.

Sincerely,

Jennifer Diesman Vice President

Government Relations



Testimony of
Phyllis Dendle
Director of Government Relations

Before:

Senate Committee on Health
The Honorable Josh Green, M.D., Chair
The Honorable Clarence K Nishihara, Vice Chair

January 27, 2012 2:45 pm Conference Room 229

SB 2098 RELATING TO PRIVACY OF HEALTH CARE INFORMATION

Chair Green and committee members, thank you for this opportunity to provide testimony on SB 2098 which brings into alignment state and federal laws concerning the protection of identifiable health information.

Kaiser Permanente Hawaii supports this bill.

The federal rules regarding privacy under HIPAA have been in effect since April 14, 2003. They have been successful in regulating the use of protected health information. The laws we have in the state of Hawaii have served us well but are not in alignment with federal laws which can cause confusion and can limit the appropriate use of health information. The bill before you proposes to harmonize this difference in laws. This will improve the efficiency of the use of information while still providing protections for the individual patient. We urge you to pass this bill.

Thank you for your consideration.

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THE SENATE THE TWENTY-SIIXTH LEGISLATURE REGULAR SESSION OF 2012

Committee on Health
Testimony in Support of S.B. 2098
Relating to Privacy of Health Care Information

Friday, January 27, 2012, 2:45 P.M. Conference Room 229

Chair Green and Members of the Committee:

I am Louis Erteschik, Acting Executive Director of the Hawaii Disability Rights Center, and am testifying in support of this bill.

Certainly the right of privacy is as important to individuals with disabilities as it is to anyone else. Yet, it is true that the myriad of laws designed to protect this right of privacy have often been an obstacle to our obtaining records or other information that we need to assist these individuals. For that reason, we believe that a streamlining and a simplification of the process would actually be beneficial because it would increase our ability to provide better representation of our clients. The Federal HIPAA law is already sufficiently stringent so that there is little value in a state law that may be either more stringent or slightly different in a way that results in more confusion than benefit.

The current bill appears to be a work in progress and it may take further refinement to identify and clarify all the issues that need to be addressed. However, we definitely support the concept of what this bill is attempting to accomplish and would be happy to assist in any way.

Thank you for the opportunity to testify in support of this measure.



HAWAII MEDICAL ASSOCIATION

1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814 Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

DATE: Friday, January 27, 2012

TIME: 2:45 p.m.

PLACE: Conference Room 229

To:

COMMITTEE ON HEALTH

Senator Josh Green, M.D., Chair

Senator Clarence K. Nishihara, Vice Chair

From: Hawaii Medical Association

Dr. Roger Kimura, MD, President

Linda Rasmussen, MD, Legislative Co-Chair Dr. Joseph Zobian, MD, Legislative Co-Chair Dr. Christopher Flanders, DO, Executive Director Lauren Zirbel, Community and Government Relations

∠Re:

SB 2098 RELATING TO PRIVACY OF HEALTH CARE INFORMATION

In Support

Chairs & Committee Members:

Hawaii Medical Association supports this measure.

The HMA agrees with the legislature that the privacy of health information has been greatly enhanced by the federal Health Insurance Portability and Accountability Act ("HIPAA") and related federal laws and regulations. HIPAA encourages the timely, secure, electronic transmission of individually identifiable health information, with important benefits for patients. HIPAA and related federal regulations provide a comprehensive regulatory scheme that protects the privacy of patients' health information, while allowing reasonable access by health care providers, health plans, and health oversight agencies.

HMA also agrees that the safety and protection of the health care consumer are paramount. The federal Health Information Technology for Economic and Clinical Health Act promotes the development of statewide health care information architecture that allows health care providers to share health care information, improve health care consumer safety, and reduce instances of redundant tests and procedures, and leads to an overall reduction of health care costs, while maintaining privacy and confidentiality in accordance with HIPAA.

Hawaii has over fifty different laws and rules, however, that govern health care privacy. This complex array of state laws and rules unduly burdens health care providers who attempt to share

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or access critical information at the point of care, and imposes unnecessary administrative costs and daunting regulatory burdens without countervailing benefits. This confusing patchwork of privacy restrictions arose prior to the enactment of HIPAA.

This measure helps to clarify that persons and entities subject to HIPAA, who use or disclose health information in a manner permitted by and consistent with HIPAA and related federal regulations, shall be deemed to be acting in compliance with state privacy laws and regulations.

Thank you for the opportunity to provide this testimony.

January 26, 2012

Ellen K. Awai, MSCJA, BBA, CPRP, HCPS 3329 Kanaina Ave. #304 Honolulu, HI 96815 Cell: (808) 551-7676 Awai76@aol.com

TO: Senator Josh Green, M.D., Chair of the Senate Health Committee & Members Health Hearing on Friday, January 27, 2012, 2:45 p.m. in Room #229

SUBJECT: SB2098 relating to Healthcare Information – HIPAA Act - Please Support!

I am a mental health consumer advocate, a member of Senator Chun-Oakland's mental health and Medicaid task groups, and a former State Adult Mental Health Division employee with the Office of Consumer Affairs. I developed and coordinated the Hawaii Certified Peer Specialist program with over 130 certified peer specialists in the state, consumers with severe mental health issues, who are role models and provide hope of recovery for others in the community. I am also one of the few certified Psychiatric Rehabilitation Practitioners in the state through the U.S. Psychiatric Rehabilitation Association (USPRA). I understand the need for clarity for the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Hawaii has over 50 laws governing this issue, which includes federal laws and regulations and is one of the strictest and probably the most confusing in the nation. The mental health task group working with the Attorney General's Office and the Hawaii Health Information Exchange would clarify which of Hawaii's laws to appeal.

Last year, I also graduated with my masters in Criminal justice Administration from Chaminade University. When seeking or being directed to the appropriate services for their conditions, many people with mental health issues are also confronted with criminal issues and diverted into the more costly jail, court, and prison systems instead. Consumer advocates such as myself feel that it is the responsibility of providers to have access to the necessary documents needed for our treatment at any time, especially during times of emergencies.

Please support this bill along with any adjustments made with the senate bill on HIPAA!

Mahalo and Aloha!

Ellen K. Awai Mental Health Advocate

LATE

TESTIMONY

SB2098

HTH Committee Hearing 1/27/2012



55 Merchant Street Honolulu, Hawai'i 96813-4333 808-535-7401 www.hawalipacifichealth.org

Friday – January 27, 2012 – 2:45 pm Conference Room 229

The Senate Committee on Health

To: Senator Josh Green, M.D., Chair

Senator Clarence K. Nishihara, Vice Chair

From: David Fox

Information/Security Privacy Officer

Re: SB 2098 RELATING TO HEALTH CARE INFORMATION - Testimony in Strong Support

My name is David Fox, Information Security/Privacy Officer for 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, 49 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, Pali Momi Medical Center, Straub Clinic & Hospital and Wilcox Memorial Hospital.

We are writing in strong support of SB 2098 Relating to Health Care Information which clarifies that persons and entities governed by the Health Insurance Portability and Accountability Act (HIPAA) and who use or disclose individually identifiable health information that is consistent with the HIPAA shall be deemed in compliance with Hawai'i's privacy laws and rules.

The primary advantage of SB 2098 is that it simplifies the process of protecting patient information for all health care providers and enables the timely and <u>secured sharing</u> of the information, thereby improving patient care and safety. The lack of existing conformance alignment between state and federal legislation has the net impact of medical information not being optimally shared thus compromising patient care. The intent of this bill is to "harmonize" state regulations governing the use and disclosure of medical records for the purpose of treatment, payment and health care operations.

To avoid confusion, SB 2098 may require amending to ensure passage does not negate or cause confusion around existing Hawai'i statutes enacted to address sections of HIPAA that clearly defer to state law. One such example is HRS 622-57 regarding the availability of a decedent's medical records.

We recognize that HIPAA and related federal schema are not perfect, yet HIPAA has done more to ensure the confidentiality of patient information across the full spectrum of the health care industry than any other combination of federal or state laws. By passing this bill, you will be taking a big step toward removing existing perceived barriers that hinder medical providers from sharing the information and improving patient care.







