

SB 2098



EXECUTIVE CHAMBERS

HONOLULU

NEIL ABERCROMBIE
GOVERNOR

SENATE COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

February 24, 2012
9:30 a.m. Room 016

Support for SB 2098
Relating to Privacy of Health Care Information
Presented by Beth Giesting, Healthcare Transformation Coordinator

Chair Hee, Vice Chair Shimabukuro, and members of the Committee, 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 tools that include electronic health records and health information exchange. The appropriate exchange of health information is a critical factor for reducing system fragmentation; costly, dangerous duplication of services and decision-making and treatment delays. Its effective use will result in higher quality, increased patient and provider satisfaction, and lower costs.

The welter of conflicting rules and regulations related to exchange paralyze providers with concerns about unintentional breaches of the law. Accordingly, we will greatly increase provider participation in exchange activities if we simply rely on federal law as the sole arbiter for privacy, exchange, and notification.

Thank you for the opportunity to offer our support for this essential regulatory change.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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

335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

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

TO THE SENATE COMMITTEE ON
JUDICIARY AND LABOR

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2012

FRIDAY, FEBRUARY 24, 2012
9:30 A.M.

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

TO THE HONORABLE CLAYTON HEE, CHAIR,
AND TO THE HONORABLE MAILE S.L. SHIMABUKURO, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Regulated Industries Complaints Office ("RICO") of 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 Daria Loy-Goto, RICO's Acting Complaints and Enforcement Officer. RICO offers the following comments.

Senate Bill No. 2098 provides that individuals and entities governed by the Health Insurance Portability and Accountability Act ("HIPAA") who use or disclose

individually identifiable health information consistent with HIPAA regulations are deemed in compliance with State privacy laws and rules.

RICO respectfully requests that the Committee specifies the existing State privacy statutes that would be impacted by this bill. Such clarification would assist RICO in establishing a protocol for subpoenaing records and in determining whether a licensee's disclosure conforms to applicable State and federal laws.

Moreover, to the extent that health care licensees have various reporting requirements under State law, identifying the State laws impacted by this bill would clarify for RICO and licensees whether those reporting obligations are affected. For example, §453-8.7, Hawaii Revised Statutes, requires physicians without professional liability insurance to report settlements to the Department.

Thank you for the opportunity to testify on Senate Bill No. 2098. I will be happy to answer any questions the members of the Committee may have.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

Senate Committee on Judiciary and Labor

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

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

February 24, 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
7 clarification purposes.

8 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
11 care while reducing instances of duplicative services and protecting patient privacy. This bill moves in
12 the direction set by both HIPAA and the HITECH Act.

13 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.

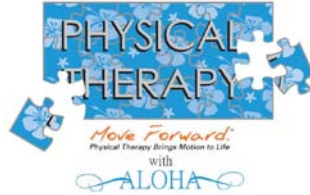
1 This bill also will serve to simplify what has become a complicated array of state laws and
2 regulations regarding health care privacy. Often, an involved preemption analysis must be conducted to
3 determine which privacy law is appropriate. While our staff is highly trained and capable, this
4 unnecessary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

6 This bill only applies to entities that are already required to comply with HIPAA regulations.
7 HIPAA is the recognized standard in this area; therefore, appropriate protections will still be in place.
8 Furthermore, this bill specifically states that it does not apply to disclosures of health information
9 restricted by federal law or regulations. This means that federal regulations, such as those regarding
10 substance abuse treatment information, must still be followed.

11 The one amendment we recommend is the deletion of language that states “Notwithstanding any
12 law to the contrary, any notice of breach of unsecured protected health information that complies with
13 45 Code of Federal Regulations Part 164, Subpart D, shall be deemed to comply with all state laws and
14 rules relating to notice of breach of protected health information”. The language stated above
15 contradicts other language in the bill that states, “Nothing in this chapter shall be construed to ... Limit
16 or otherwise affect any state statute or rules that requires notification of other security or privacy
17 breaches”.

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

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



Senate Committee on Judiciary and Labor
Friday, February 24, 2012
9:30 a.m.
Room 016

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

Good afternoon, Chair Hee, Vice Chair Shimabukuro 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

February 23, 2012

The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

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

Honorable Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

Hawai'i Health Information Exchange (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.

We appreciate the Department of Health's (DOH) support of this bill and its intent. Hawai'i HIE agrees that consistency throughout the bill is of the utmost importance and recognizes the DOH's concerns about the sections regarding notice of breach procedures. We acknowledge the need to eliminate any inconsistencies and suggest that goal is best met by deleting the current section 4(6).

4(6) Limit or otherwise affect any state statute or rule that requires notification of other security or privacy breaches.

This accomplishes the desired goal of harmonizing notice of breach procedures, so that entities governed by HIPAA do not need to try to comply with conflicting state and federal procedures for notice of breach of personal health information.

All entities that are not subject to HIPAA and are not governed by SB2098 will continue to be subject to all notice of breach procedures under state law.

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

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. 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.

**TESTIMONY OF ROBERT TOYOFUKU
ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ)
IN LIMITED OPPOSITION TO S.B. NO. 2098**

Date: Friday, February 24, 2012
Time: 9:30 am

To: Chairman Clayton Hee and Members of the Senate Committee on Judiciary and Labor:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in LIMITED OPPOSITION to S.B. No. 2098, relating to Health Care Information.

Medical records are routinely utilized in civil/criminal judicial and administrative proceedings. In criminal cases, medical records may be relevant to cause of death, mental capacity and mechanics of injury. In civil cases, medical records are routinely used in personal injury cases. Medical records are also routinely used in administrative proceedings involving workers' compensation, Medicaid, child protection services, and other proceedings involving health and welfare. The use of health care information in these proceedings is also impacted by HIPAA requirements. Our opposition is limited to the unintended application of this measure to judicial and administrative proceedings where the courts and agencies should be given latitude to regulate the use of health information in the manner most suitable for their purposes. The Supreme Court has established guidelines for health care privacy protection in judicial proceedings by both rule and decision. Certain confidential health information must be filed under rule and attorneys are limited in what they can do with health care information obtained in judicial proceedings. A standard form HIPAA compliant protective order developed by an

informal committee of judges, plaintiffs attorneys and defense attorneys is, for example, routinely used by many judges in the First Circuit (Honolulu).

We urge that the measure be amended to include judicial and administrative proceedings among the exempted categories in section 4, and offer the following amendment:

“(7) Limit, apply to or otherwise affect any judicial or administrative proceeding in which an individual’s health information is produced or used in the course of the proceeding; or to limit, apply to or otherwise affect the judiciary or an administrative agency in regulating the use of health information by rule, decision, regulation, order or otherwise.”

Thank you very much for allowing me to testify in LIMITED OPPOSITION to this measure. Please feel free to contact me should you have any questions or desire additional information.



SENATE COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair

Conference Room 016
February 24, 2012 at 9:30 a.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 for care is made, 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 regulate 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.

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



February 24, 2012

The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair

Senate Committee on Judiciary and Labor

Re: SB 2098 – Relating to Privacy of Health Care Information

Dear Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

My name is Richard Jackson and I am chair of the Public Policy Committee of the Hawaii Association of Health Plans (HAHP). HAHP is a non-profit organization consisting of eight (8) member organizations: AlohaCare, HMAA, HMSA, HWMG, Kaiser Permanente, MDX Hawai'i, UHA, and UnitedHealthcare. Our mission is to promote initiatives aimed at improving the overall health of Hawaii. HAHP is also active participants in the legislative process. Before providing any testimony, all HAHP member organizations must be in unanimous agreement of the statement or position.

We appreciate the opportunity to provide testimony in support of SB 2098 which clarifies that the use or disclosure of health information in a way consistent with the regulations of the federal Health Insurance Portability and Accountability Act (HIPAA) is also in compliance with Hawaii's own privacy regulations.

HIPAA stringently regulates the use and disclosure of personal health information. Currently, the State also has its own set of regulations governing health care information privacy. Such protected information occasionally needs to be shared with other individuals and entities in order to facilitate appropriate health care. While it is imperative that this information is shared efficiently, it is also of utmost important to protect this personal health information. The combination of the federal and state regulations can create unnecessary difficulties and confusion when requesting important protected health information.

SB 2098 states that if private health information is disclosed in a way that is sufficient to HIPAA's regulations, it will also comply with the State's regulations. We believe that by streamlining these regulations, the health care system will become more efficient for the people of Hawaii.

We appreciate the opportunity to testify in support of SB 2098 today. Thank you.

Sincerely,

Richard Jackson
Chair, Public Policy Committee

Testimony of
Phyllis Dendle
Director of Government Relations

Before:
Senate Committee on Judiciary and Labor
The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair

February 24, 2012
9:30 am
Conference Room 016

SB 2098 RELATING TO PRIVACY OF HEALTH CARE INFORMATION

Chair Hee 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.



HAWAII DISABILITY RIGHTS CENTER

1132 Bishop Street, Suite 2102, Honolulu, Hawaii 96813

Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928

E-mail: info@hawaiidisabilityrights.org Website: www.hawaiidisabilityrights.org

THE SENATE THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2012

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

**Friday, February 24, 2012, 9:30 A.M.
Conference Room 016**

Chair Hee 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.

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

February 24, 2012

The Honorable Clayton Hee, Chair
The Honorable Maile S. L. Shimabukuro, Vice Chair

Senate Committee on Judiciary and Labor

Re: SB 2098 – Relating to Health Care Information

Dear Chair Hee, Vice Chair Shimabukuro 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 in compliance 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.

We understand the Hawaii Health Information Exchange (HHIE) is proposing an amendment to SB 2098, to further clarify that this legislation is limited to entities covered by HIPAA regulations. The HHIE has made tremendous strides over the last two years to create that efficient, yet secure, system for the exchange of patients' health care information. We believe this Bill will do much to reduce potential hurdles to achieving that goal.

Thank you for allowing us to testify in support of this legislation.

Sincerely,

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

Jennifer Diesman
Vice President, Government Relations

February 23, 2012

Senator Clayton Hee, Chair
Senate Committee on Judiciary and Labor
Hawaii State Legislature
State Capitol
Honolulu, HI 96813

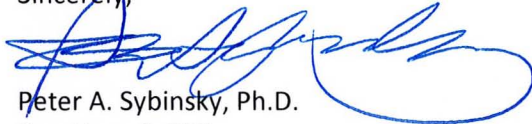
Chairman Hee:

The Hawaii Health Information Corporation strongly supports the intent of SB2098– RELATING TO HEALTH CARE INFORMATION. SB 2098 seeks to harmonize 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.

We realize that a number of parties, while generally supportive, have specific recommendations for improvement. We look forward to the work of the Hawaii Health Information Exchange, the Attorney-General, and other interested parties in producing a final version of the document that will streamline and improve health care information privacy and confidentiality through a single set of clear standards. For these reasons, HHIC strongly supports the intent of SB 2098 and recommends its passage with necessary amendments to be collaboratively worked out.

Sincerely,



Peter A. Sybinsky, Ph.D.
President & CEO