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# A BILL FOR AN ACT

RELATING TO HEALTH CARE PRIVACY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4   **"CHAPTER**

5   **PRIVACY OF HEALTH CARE INFORMATION**

6           **§ -1 Definitions.** As used in this chapter, except as  
7 otherwise specifically provided:

8           "Educational institution" means an institution or place for  
9 instruction or education including any public or private  
10 elementary school, secondary school, vocational school,  
11 correspondence school, business school, junior college, teachers  
12 college, college, normal school, professional school,  
13 university, or scientific or technical institution, or other  
14 institution furnishing education for children or adults.

15           "Employer" means any individual or type of organization,  
16 including any partnership, association, trust, estate, joint  
17 stock company, insurance company, or corporation, whether  
18 domestic or foreign, a debtor in possession or receiver or



1 trustee in bankruptcy, or a legal representative of a deceased  
2 person, that has one or more individuals in its regular  
3 employment.

4 "Health care" means:

5 (1) Preventive, diagnostic, therapeutic, rehabilitative,  
6 palliative, or maintenance services:

7 (A) With respect to the physical or mental condition  
8 of an individual; or

9 (B) Affecting the structure or function of the human  
10 body or any part of the human body, including the  
11 banking of blood, sperm, organs, or any other  
12 tissue; or

13 (2) Any sale or dispensing of a drug, device, equipment,  
14 or other health care-related item to an individual, or  
15 for the use of an individual pursuant to a  
16 prescription or order by a health care provider.

17 "Health care provider" means a person who receives,  
18 creates, uses, maintains, or discloses protected health  
19 information while acting in whole or in part in the capacity of:

20 (1) A person who is licensed, certified, registered, or  
21 otherwise authorized by federal or state law to  
22 provide an item or service that constitutes health



1 care in the ordinary course of business, or practice  
2 of a profession;

3 (2) A federal, state, or employer-sponsored program that  
4 directly provides items or services that constitute  
5 health care to beneficiaries; or

6 (3) An officer, employee, or agent of a person described  
7 in paragraph (1) or (2).

8 "Health oversight agency" means a person who receives,  
9 creates, uses, maintains, or discloses protected health  
10 information while acting in whole or in part in the capacity of:

11 (1) A person who performs or oversees the performance of  
12 an assessment, evaluation, determination, or  
13 investigation, relating to the licensing,  
14 accreditation, or credentialing of health care  
15 providers; or

16 (2) A person who:

17 (A) Performs or oversees the performance of an audit,  
18 assessment, evaluation, determination, or  
19 investigation relating to the effectiveness of,  
20 compliance with, or applicability of, legal,  
21 fiscal, medical, or scientific standards or



1 aspects of performance related to the delivery  
2 of, or payment for, health care; and

3 (B) Is a public agency, acting on behalf of a public  
4 agency, acting pursuant to a requirement of a  
5 public agency, or carrying out activities under a  
6 federal or state law governing the assessment,  
7 evaluation, determination, investigation, or  
8 prosecution for violations of paragraph (1).

9 "Health plan" means any health insurance plan, including  
10 any hospital or medical service plan, dental or other health  
11 service plan or health maintenance organization plan, provider-  
12 sponsored organization, or other program providing or arranging  
13 for the provision of health benefits, whether or not funded  
14 through the purchase of insurance.

15 "Insurer" means any person regulated under chapter 432D,  
16 article 1 of chapter 432, any group that has purchased a group  
17 insurance policy issued by a person regulated under chapter  
18 432D, and any person regulated under article 10A of chapter 431,  
19 other than a life insurer, disability income insurer, or long-  
20 term care insurer.

21 "Law enforcement inquiry" means a lawful investigation  
22 conducted by an appropriate government agency or official



1 inquiring into a violation of, or failure to comply with, any  
2 civil or administrative statute or any regulation, rule, or  
3 order issued pursuant to such a statute. It does not include a  
4 lawful criminal investigation or prosecution conducted by county  
5 prosecutors or the department of the attorney general.

6 "Nonidentifiable health information" means any information  
7 that would otherwise be protected health information except that  
8 the information in and of itself does not reveal the identity of  
9 the individual whose health or health care is the subject of the  
10 information and that will not be used in any way that would  
11 identify the subjects of the information or would create  
12 protected health information.

13 "Protected health information" means any information,  
14 identifiable to an individual, including demographic  
15 information, whether or not recorded in any form or medium, that  
16 relates directly or indirectly to the past, present, or future:

- 17 (1) Physical or mental health or condition of an  
18 individual, including tissue and genetic information;  
19 (2) Provision of health care to an individual; or  
20 (3) Payment for the provision of health care to an  
21 individual.



1           **§ -2 Disclosure in civil, judicial, and administrative**  
2 **procedures.** (a) Protected health information may be disclosed  
3 pursuant to a discovery request or subpoena in a civil action  
4 brought in a state court or a request or subpoena related to a  
5 state administrative proceeding, only if the disclosure is made  
6 pursuant to a court order as provided for in subsection (b).

7           (b) A court order issued under this section shall:

8           (1) Provide that the protected health information involved  
9           is subject to court protection;

10          (2) Specify to whom the protected health information may  
11          be disclosed;

12          (3) Specify that the protected health information shall  
13          not otherwise be disclosed or used; and

14          (4) Meet any other requirements that the court determines  
15          are needed to protect the confidentiality of the  
16          protected health information.

17          (c) This section shall not apply in a case in which the  
18          protected health information sought under the discovery request,  
19          subpoena, or request is:

20          (1) Nonidentifiable health information; or

21          (2) Related to a party to the proceeding whose medical  
22          condition is at issue.



1 (d) The release of any protected health information under  
2 this section shall not violate this chapter.

3 **§ -3 Disclosure for civil or administrative law**

4 **enforcement purposes.** (a) For the purposes of this section  
5 only, "entity" means a health care provider, health plan, health  
6 oversight agency, employer, insurer, or educational institution.

7 (b) An entity or person who receives protected health  
8 information may disclose the protected health information if the  
9 disclosure is pursuant to:

10 (1) An administrative subpoena or summons or judicial  
11 subpoena;

12 (2) Consent of the individual who is the subject of the  
13 protected health information; or

14 (3) A court order.

15 (c) A subpoena or summons for a disclosure under  
16 subsection (b)(1) shall only be issued if the civil or  
17 administrative law enforcement agency involved shows that there  
18 is probable cause to believe that the protected health  
19 information is relevant to a legitimate law enforcement inquiry.

20 (d) When the matter or need for which protected health  
21 information was disclosed to a civil or administrative law  
22 enforcement agency under subsection (b) has concluded, including



1 any derivative matters arising from the matter or need, the  
2 civil or administrative law enforcement agency shall either  
3 destroy the protected health information, or return all of the  
4 protected health information to the person from whom it was  
5 obtained.

6 (e) To the extent practicable, and consistent with the  
7 requirements of due process, a civil or administrative law  
8 enforcement agency shall redact personally identifying  
9 information from protected health information prior to the  
10 public disclosure of the protected health information in a  
11 judicial or administrative proceeding.

12 (f) Protected health information obtained by a civil or  
13 administrative law enforcement agency pursuant to this section  
14 shall only be used for purposes of a legitimate law enforcement  
15 activity.

16 (g) If protected health information is obtained without  
17 meeting the requirements of subsection (b), any protected health  
18 information that is unlawfully obtained shall be excluded from  
19 court or administrative proceedings unless the party whose  
20 health information was obtained requests otherwise."

21 SECTION 2. If any provision of this Act, or the  
22 application thereof to any person or circumstance, is held





1 invalid, the invalidity does not affect other provisions or  
2 applications of the Act that can be given effect without the  
3 invalid provision or application, and to this end the provisions  
4 of this Act are severable.

5 SECTION 3. This Act does not affect rights and duties that  
6 matured, penalties that were incurred, and proceedings that were  
7 begun before its effective date.

8 SECTION 4. This Act shall take effect on July 1, 2050.



**Report Title:**

Health Care Information Privacy; Civil and Administrative Proceedings

**Description:**

Specifies conditions under which protected health information may be disclosed in civil, judicial, and administrative procedures and for civil or administrative law enforcement purposes. Effective July 1, 2050. (HB2532 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

