

S .B. NO. 2869

JAN 23 2014

A BILL FOR AN ACT

RELATING TO PRIVACY OF HEALTH CARE INFORMATION.

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

1 SECTION 1. In 2012, when the Health Care Privacy
2 Harmonization Act, chapter 323B, Hawaii Revised Statutes,
3 passed, the legislature noted that Hawaii has over fifty
4 different laws and rules that govern health care privacy. Those
5 laws include section 333E-6, Hawaii Revised Statutes, regarding
6 the privacy of developmental disabilities records, and section
7 334-5, Hawaii Revised Statutes, regarding the privacy of mental
8 health records. Both of these laws were passed prior to the
9 enactment of the Health Insurance Portability and Accountability
10 Act of 1996 ("HIPAA"). The Health Care Privacy Harmonization
11 Act enabled HIPAA-covered entities to be deemed compliant with
12 all state privacy laws if they are compliant with the HIPAA
13 privacy rules. However, entities that are not considered HIPAA-
14 covered remain subject to these two specific statutes. These
15 two statutes do not have most of the necessary exceptions that
16 are included in HIPAA, including the ability to share
17 information for the purposes of treatment, payment, or health
18 care operations without a written consent from the patient.

1 The purpose of this Act is to repeal language in these two
2 overly limiting confidentiality statutes and replace it with the
3 requirements of the HIPAA privacy rule, and to make those
4 sections applicable to all entities that hold developmental
5 disabilities records and mental health records, whether or not
6 they are considered HIPAA-covered.

7 SECTION 2. Section 333E-6, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "~~[f]~~**§333E-6**~~[f]~~ **Confidentiality of records.** All
10 certificates, applications, records, and reports made for the
11 purposes of this chapter and ~~[directly or indirectly identifying~~
12 ~~a person subject hereto shall be kept confidential and shall not~~
13 ~~be disclosed to any other person except so far (1) as the person~~
14 ~~identified, or the person's legal guardian, consents, or (2) as~~
15 ~~disclosure may be deemed necessary by the director of health to~~
16 ~~carry out this chapter, or (3) as disclosure may be deemed~~
17 ~~necessary under the federal Developmental Disabilities Act of~~
18 ~~1984, Public Law 98-527, to protect and advocate the rights of~~
19 ~~persons with developmental disabilities who reside in facilities~~
20 ~~for persons with developmental disabilities, or (4) as~~
21 ~~disclosure may be deemed necessary by the family court for any~~
22 ~~case pending before a court.] chapter 333F, maintained, used, or~~

1 disclosed by health care providers as defined in chapter 334,
2 health plans as defined in 45 Code of Federal Regulations
3 section 160.103, and health care clearinghouses as defined in 45
4 Code of Federal Regulations section 160.103, and directly or
5 indirectly identifying a person who receives services because of
6 a developmental disability shall be kept confidential and shall
7 not be disclosed by any person except so far as allowed by 45
8 Code of Federal Regulations part 164, subpart E.

9 Nothing in this section shall preclude the application of
10 more restrictive rules of confidentiality set forth for records
11 covered by 42 Code of Federal Regulations part 2, relating to
12 the confidentiality of alcohol and drug abuse patient records,
13 or disclosure deemed necessary under the federal Developmental
14 Disabilities Act of 1984, P.L. 98-527, to protect and advocate
15 the rights of persons with developmental disabilities who reside
16 in facilities for persons with developmental disabilities."

17 SECTION 3. Section 334-5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§334-5 Confidentiality of records.** All certificates,
20 applications, records, and reports made for the purposes of this
21 chapter, maintained, used, or disclosed by health care providers
22 as defined in this chapter, health plans as defined in 45 Code

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1 of Federal Regulations section 160.103, and health care
2 clearinghouses as defined in 45 Code of Federal Regulations
3 section 160.103, and directly or indirectly identifying a person
4 who receives mental health services shall be kept confidential
5 and shall not be disclosed by any person except so far as[+]

6 ~~(1) The person identified, or the person's legal guardian,~~
7 ~~consents;~~

8 ~~(2) Disclosure may be deemed necessary by the director of~~
9 ~~health or by the administrator of a private~~
10 ~~psychiatric or special treatment facility to carry out~~
11 ~~this chapter;~~

12 ~~(3) A court may direct upon its determination that~~
13 ~~disclosure is necessary for the conduct of proceedings~~
14 ~~before it and that failure to make the disclosure~~
15 ~~would be contrary to the public interest;~~

16 ~~(4) Disclosure may be deemed necessary under the federal~~
17 ~~Protection and Advocacy for Mentally Ill Individuals~~
18 ~~Act of 1986, Public Law 99-319, to protect and~~
19 ~~advocate the rights of persons with mental illness who~~
20 ~~reside in facilities providing treatment or care;~~

21 ~~(5) Disclosure of a person's treatment summary from a~~
22 ~~previous five-year period from one health care~~

1 ~~provider to another may be deemed necessary for the~~
2 ~~purpose of continued care and treatment of the person,~~
3 ~~or for health care operations; provided that the~~
4 ~~health care provider seeking disclosure makes~~
5 ~~reasonable efforts to obtain advance consent from the~~
6 ~~person; or~~

7 6) ~~Disclosures are made between the person's health care~~
8 ~~provider and payor to obtain reimbursement for~~
9 ~~services rendered to the person; provided that~~
10 ~~disclosure shall be made only if the provider informs~~
11 ~~the person that a reimbursement claim will be made to~~
12 ~~the person's payor, the person is afforded an~~
13 ~~opportunity to pay the reimbursement directly, and the~~
14 ~~person does not pay.]~~

15 allowed by 45 Code of Federal Regulations part 164, subpart E.

16 Nothing in this section shall preclude the application of more
17 restrictive rules of confidentiality set forth for records
18 covered by [Title]42[, Part 2,] Code of Federal Regulations[,]
19 part 2, relating to the confidentiality of alcohol and drug
20 abuse patient records[. For the purposes of this section,
21 "facilities" shall include but not be limited to hospitals,

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1 ~~hospitals, nursing homes, community facilities for mentally ill~~
2 ~~individuals, boarding homes, and care homes.~~

3 ~~Nothing in this section shall preclude disclosure, upon~~
4 ~~proper inquiry, of any information relating to a particular~~
5 ~~patient and not clearly adverse to the interests of the patient,~~
6 ~~to the patient, the patient's family, legal guardian, or~~
7 ~~relatives, nor, except as provided above, affect the application~~
8 ~~of any other rule or statute of confidentiality. The use of the~~
9 ~~information disclosed shall be limited to the purpose for which~~
10 ~~the information was furnished.] or disclosure deemed necessary~~
11 under the federal Protection and Advocacy for Mentally Ill
12 Individuals Act of 1986, P.L. 99-319, to protect and advocate
13 the rights of persons with mental illness who reside in
14 facilities providing treatment or care."

15 SECTION 4. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: *Anna Mercedes K*

21

BY REQUEST

SB. NO. 2869

Report Title:

Privacy of Health Care Information

Description:

Amends the statutes to protect the privacy of developmental disability and mental health patients' health information, while allowing reasonable use and disclosure as provided by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

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

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JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO PRIVACY OF HEALTH CARE INFORMATION.

PURPOSE: To repeal current language in sections 333E-6 and 334-5, Hawaii Revised Statutes (HRS), and replace it with the requirements of the Health Insurance Portability and Accountability Act privacy rule, which will apply to all entities that hold developmental disabilities and mental health records.

MEANS: Amend sections 333E-6 and 334-5, Hawaii Revised Statutes.

JUSTIFICATION: This measure follows up on the enactment of chapter 323B, Hawaii Revised Statutes, the Health Care Privacy Harmonization Act, in 2012. Hawaii has over fifty different laws and rules that govern health care privacy. This complex array of state laws and rules unduly burdens health care providers who attempt to share or access critical information at the point of care and imposes unnecessary administrative costs and regulatory burdens.

Although chapter 323B enables HIPAA-covered health care providers to follow HIPAA rather than the stricter statutes and rules, entities that are not required to follow HIPAA cannot do the same. These are entities that do not bill electronically, and currently include the Hawaii state hospital.

Impact on the public: Enactment of this measure will protect patients' health information while benefiting patients in receiving improved health care coordination.

Impact on the department and other agencies: Statutory changes will allow all entities that hold developmental disabilities records and mental health records the reasonable ability to share health care information using the HIPAA privacy rule rather than the stricter and lesser known state laws with respect to these types of health information, while maintaining privacy and confidentiality of records.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HTH 495.

OTHER AFFECTED
AGENCIES: All public and private providers of developmental disabilities and mental health services, including the Hawaii state hospital.

EFFECTIVE DATE: Upon approval.