
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. The legislature finds that in 2012, when the
2 Health Care Privacy Harmonization Act, chapter 323B, Hawaii
3 Revised Statutes, was enacted, the legislature noted that Hawaii
4 has over fifty different laws and rules that govern health care
5 privacy. Those laws include section 333E-6, Hawaii Revised
6 Statutes, regarding the privacy of developmental disabilities
7 records, and section 334-5, Hawaii Revised Statutes, regarding
8 the privacy of mental health records. Both of these laws were
9 passed prior to the enactment of the Health Insurance
10 Portability and Accountability Act of 1996 (HIPAA). The Health
11 Care Privacy Harmonization Act enabled HIPAA-covered entities to
12 be deemed compliant with all state privacy laws if they are
13 compliant with the HIPAA privacy rules. However, entities that
14 are not considered HIPAA-covered entities remain subject to
15 these two specific statutes. These two statutes do not have
16 most of the necessary exceptions that are included in HIPAA,
17 including the ability to share information for the purposes of



1 treatment, payment, or health care operations without written
2 consent from the patient.

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

9 SECTION 2. Chapter 333F, Hawaii Revised Statutes, is
10 amended by adding a new section to be appropriately designated
11 and to read as follows:

12 "§333F- Confidentiality of records. (a) All
13 certificates, applications, records, and reports made for the
14 purposes of this chapter that are maintained, used, or disclosed
15 by health care providers as defined in chapter 334, health plans
16 as defined in title 45 Code of Federal Regulations section
17 160.103, and health care clearinghouses as defined in title 45
18 Code of Federal Regulations section 160.103, and directly or
19 indirectly identifying a person who receives services because of
20 a developmental disability shall be kept confidential and shall
21 not be disclosed by any person except as allowed by title 45
22 Code of Federal Regulations part 164, subpart E.



1 (b) Nothing in this section shall preclude the application
2 of more restrictive rules of confidentiality set forth for
3 records covered by title 42 Code of Federal Regulations part 2,
4 relating to the confidentiality of alcohol and drug abuse
5 patient records, or disclosure deemed necessary under the
6 federal Developmental Disabilities Act of 1984, P.L. 98-527, to
7 protect and advocate for the rights of persons with
8 developmental disabilities who reside in facilities for persons
9 with developmental disabilities."

10 SECTION 3. Section 333E-6, Hawaii Revised Statutes, is
11 amended to read as follows:

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



1 ~~for persons with developmental disabilities, or (4) as~~
2 ~~disclosure may be deemed necessary by the family court for any~~
3 ~~case pending before a court.] that are maintained, used, or~~
4 ~~disclosed by health care providers as defined in chapter 334,~~
5 ~~health plans as defined in title 45 Code of Federal Regulations~~
6 ~~section 160.103, and health care clearinghouses as defined in~~
7 ~~title 45 Code of Federal Regulations section 160.103, and~~
8 ~~directly or indirectly identifying a person who receives~~
9 ~~services because of a developmental disability shall be kept~~
10 ~~confidential and shall not be disclosed by any person except as~~
11 ~~allowed by title 45 Code of Federal Regulations part 164,~~
12 ~~subpart E.~~

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



1 SECTION 4. Section 334-5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§334-5 Confidentiality of records.** All certificates,
4 applications, records, and reports made for the purposes of this
5 chapter~~[7]~~ that are maintained, used, or disclosed by health
6 care providers as defined in this chapter, health plans as
7 defined in title 45 Code of Federal Regulations section 160.103,
8 and health care clearinghouses as defined in title 45 Code of
9 Federal Regulations section 160.103, and directly or indirectly
10 identifying a person subject hereto shall be kept confidential
11 and shall not be disclosed by any person except ~~[so far as:~~

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

14 ~~(2) Disclosure may be deemed necessary by the director of~~
15 ~~health or by the administrator of a private~~
16 ~~psychiatric or special treatment facility to carry out~~
17 ~~this chapter;~~

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



- 1 ~~(4) Disclosure may be deemed necessary under the federal~~
2 ~~Protection and Advocacy for Mentally Ill Individuals~~
3 ~~Act of 1986, Public Law 99-319, to protect and~~
4 ~~advocate the rights of persons with mental illness who~~
5 ~~reside in facilities providing treatment or care;~~
- 6 ~~(5) Disclosure of a person's treatment summary from a~~
7 ~~previous five year period from one health care~~
8 ~~provider to another may be deemed necessary for the~~
9 ~~purpose of continued care and treatment of the person,~~
10 ~~or for health care operations; provided that the~~
11 ~~health care provider seeking disclosure makes~~
12 ~~reasonable efforts to obtain advance consent from the~~
13 ~~person; or~~
- 14 ~~(6) Disclosures are made between the person's health care~~
15 ~~provider and payor to obtain reimbursement for~~
16 ~~services rendered to the person; provided that~~
17 ~~disclosure shall be made only if the provider informs~~
18 ~~the person that a reimbursement claim will be made to~~
19 ~~the person's payor, the person is afforded an~~
20 ~~opportunity to pay the reimbursement directly, and the~~
21 ~~person does not pay.]~~



1 as allowed by title 45 Code of Federal Regulations part 164,
2 subpart E. Nothing in this section shall preclude the
3 application of more restrictive rules of confidentiality set
4 forth for records covered by [~~Title~~] title 42 [~~, Part 2,~~] Code of
5 Federal Regulations [~~7~~] part 2, relating to the confidentiality
6 of alcohol and drug abuse patient records [~~. For the purposes of~~
7 ~~this section, "facilities" shall include but not be limited to~~
8 ~~hospitals, nursing homes, community facilities for mentally ill~~
9 ~~individuals, boarding homes, and care homes.~~

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



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval.

4



Report Title:

Privacy of Health Care Information

Description:

Amends the statutes to protect the privacy of developmental disability and mental health information, while allowing reasonable use and disclosure as provided by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). (SD1)

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

