



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
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In reply, please refer to:
File:

SENATE COMMITTEE ON HEALTH

SB2849, RELATING TO COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT.

**Testimony of Gary Gill
Acting Director of Health**

**February 3, 2014
1:30 PM**

1 **Department's Position:** The Department of Health (DOH) strongly supports this Administration Bill.

2 **Fiscal Implications:** None, salaries for both positions are already budgeted.

3 **Purpose and Justification:** The purpose of this measure is to permanently establish the positions of
4 Privacy Officer and Security Officer for the Department of Health. Covered Entities must, per 45 Code
5 of Federal Regulations Part 164.530(a), designate a privacy official to enforce the Privacy Rule, and per
6 45 Code of Federal Regulations Part 164.308(a), identify a security official to enforce the Security Rule.

7

8 The Health Insurance Portability and Accountability Act of 1996 (HIPAA) introduced rigorous national
9 privacy and security standards to assure personal health information remains confidential. In 2009,
10 HIPAA enforcement provisions were strengthened, including increasing the civil and criminal penalties
11 for violations to up to \$1.5M and/or imprisonment for up to five to ten years.

12

13 The Privacy Officer and Security Officer work in tandem to manage DOH's risks associated with
14 breaches, defined as any unauthorized acquisition, access, use, or disclosure of Protected Health

1 Information (PHI) that compromises the security or privacy of such information. Breaches may be
2 deliberate and malicious or unintentional, and either may involve sophisticated technological tools or
3 simple human error, for example, mis-faxing a document. Regardless of intention or level of
4 sophistication, the U.S. Department Health and Human Services Office for Civil Rights (OCR), which
5 enforces HIPAA, has significantly stepped up enforcement due to the proliferation of networks and
6 electronic medical and billing systems.

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8 Since promulgation of the updated rules in 2009, OCR has imposed fines of over \$20,000,000 ranging
9 from \$35,000 for a simple lack of a privacy and security plan to \$4,500,000 for violations of disclosure
10 rules and non-response to the OCR investigation. Breaches will also damage public trust in the
11 Department of Health which has legal and ethical duties to ensure that the health information with which
12 it is entrusted remains protected and confidential.

13
14 The Department of Health requests both positions, 1.0 FTE for the Privacy Officer and 1.0 FTE for the
15 Security Officer, be permanently established by statute exempt from civil service. Currently, the
16 Privacy Officer and Security Officer positions are temporary exempt positions attached to a special
17 project that will sunset in 2014 and not be renewed. Statutory establishment and exemption will provide
18 a permanent framework for this important and federally required responsibility.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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The Twenty-Seventh Legislature, State of Hawaii
Hawaii State Senate
Committee on Health

Testimony by
Hawaii Government Employees Association
February 3, 2014

S.B. 2849 – RELATING TO COMPLIANCE
WITH THE HEALTH INSURANCE
PORTABILITY AND ACCOUNTABILITY ACT

The Hawaii Government Employees Association opposes the provision in S.B. 2849, which makes the privacy officer and security officer exempt from Chapter 76, HRS. This particular type of exemption from civil service has become all too prevalent and is inconsistent and in direct conflict with purpose and intent of Article XVI of the Hawaii State Constitution and Section 76-1 HRS. There are over 1,000 exempt employees under the specific exemption used in this bill – Section 76-16 (b) (17), HRS.

The problems and challenges created by exempt positions are that while most are included in HGEA bargaining units, and the union collects dues from them, they are not protected under the discipline and reduction-in-force article for bargaining units 3, 4 and 13. They are also ineligible for step movements. Exempt employees in Unit 13 are also precluded from earning overtime. Many of these exempt employees have been employed by the State of Hawaii for years and provide valuable service to their respective departments, yet they are not treated fairly by the employer.

There is simply no legitimate reason for these two positions to be exempted from Chapter 76, HRS. The positions should be subject to Chapter 76, HRS. We appreciate the opportunity to testify in opposition to S.B. 2849 with the suggested amendment.

Respectfully submitted,

Randy Perreira
Executive Director