

SB1171

Measure Title: RELATING TO THE HEALTH CARE PRIVACY HARMONIZATION ACT.

Report Title: Health Care Privacy Harmonization Act; De-identified Protected Health Information; Uses and Disclosures

Description: Identifies the circumstances in which the State has a compelling interest in the use and disclosure of de-identified protected health information under the Health Care Privacy Harmonization Act.

Companion: HB1404

Package: None

Current Referral: CPH

Introducer(s): BAKER, ENGLISH, KEITH-AGARAN



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

S.B. NO. 1171, RELATING TO THE HEALTH CARE PRIVACY HARMONIZATION ACT.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

DATE: Wednesday, February 22, 2017 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Michelle E. Nakata, Deputy Attorney General

Chair Baker and Members of the Committees:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to identify circumstances in which the State has compelling state interests in the public and private use of de-identified protected health information under the Health Care Privacy Harmonization Act, chapter 323B, Hawaii Revised Statutes (HRS). This bill also states that the uses and disclosures of de-identified protected health information shall be subject to requirements under 45 C.F.R section 164.502(d) and defines de-identified protected health information as having the same meaning as under 45 C.F.R. section 164.514(a), Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191.

While we appreciate the intent of this bill, as currently written it does not identify or describe the types of interests that would be considered legally compelling in the public and private use of de-identified protected health information. For clarity in interpretation and implementation, we recommend that the bill be amended to list specific examples of compelling state interests. One way to accomplish this would be to add a subsection to the new statutory section created in section 2 of the bill (page 1, line 11, through page 2, line 2). The suggested text below lists examples that the Legislature may wish to consider; there may be others as well, depending on the Legislature's intent.

“(b) The following are examples of public and private uses of de-identified protected health information in which the State shall have a compelling state interest:

- (1) De-identified protected health information from state agencies, hospitals, medical and health care facilities, health care providers, and providers of health insurance relating to medical research or economic research;
- (2) De-identified protected health information from state agencies, hospitals, medical and health care facilities, health care providers, and providers of health insurance relating to public safety;
- (3) De-identified protected health information from state agencies, pharmacies, medical and health care facilities, hospitals, health care providers, and providers of health insurance relating to patient protection and public safety involving unfair and deceptive acts or practices, restraints of trade, and price-fixing in violation of chapter 480;
- (4) De-identified protected health information from state agencies, hospitals, medical and health care facilities, and health care providers relating to the proper operation of medical and health care facilities that includes quality assessment and improvement activities;
- (5) De-identified protected health information from state agencies, hospitals, medical and health care facilities, and health care providers, relating to the proper operation of medical and health care facilities that includes patient protection and safety activities;
- (6) De-identified protected health information from state agencies, hospitals, medical and health care facilities, health care providers, and providers of health insurance relating to the proper operation of medical and health care facilities that includes population based activities relating to improving health or reducing health care costs; and
- (7) De-identified protected health information from state agencies, hospitals, medical and health care facilities, health care providers, and providers of health insurance relating to the proper operation of medical and health care facilities that includes fraud and abuse detection and compliance.”

If the Committee decides to proceed with this bill, we respectfully ask the Committee to amend the bill to add specific information or examples describing the compelling state interests.



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
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

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON
CONSUMER PROTECTION AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Wednesday, February 22, 2017
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 1171 – RELATING TO THE HEALTH CARE
PRIVACY HARMONIZATION ACT.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department supports the intent of this bill.

This bill identifies circumstances in which the State has a compelling interest in the use and disclosure of de-identified protected health information and recognizes that use and disclosure of de-identified protected health information is subject to 45 Code of Federal Regulations section 164.502(d).

We support the use of de-identified protected health information in a manner that is consistent with federal regulations.

We thank the Committee for the opportunity to present testimony on this matter.



**Testimony to the Senate Committee on Commerce,
Consumer Protection, and Health
Wednesday, February 22, 2017 at 9:00 A.M.
Conference Room 229, State Capitol**

**RE: SENATE BILL 1171 RELATING TO THE
HEALTH CARE PRIVACY HARMONIZATION ACT**

Chair Baker, Vice Chair Nishihara, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** SB 1171, which identifies the circumstances in which the State has a compelling interest in the use and disclosure of de-identified protected health information under the Health Care Privacy Harmonization Act.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We believe that this bill is of significant interest to the business community as it impacts the way that the health information of individuals relevant to operations may be accessed, as stated in the bill, "for the purposes of medical or economic research, patient protection, public safety, and the proper operation of medical and health care facilities."

We respectfully request the committee consider the following amendments to the bill. Below is new language for Section 2.

SECTION 2. Chapter 323B, Hawaii Revised Statutes, is amended by adding a new section (5) to read as follows:

Disclosure, use and production of de-identified patient health information.

(5) Provided that individually identifiable health information has been de-identified pursuant to 45 Code of Federal Regulations part 164, the State of Hawaii has a



Chamber of Commerce HAWAII

The Voice of Business

compelling interest in public and private use, disclosure and production of such de-identified information for purposes of medical or economic research, protecting patient or public safety, ensuring proper operation of facilities providing medical care, and health care operations as defined in 45 Code of Federal Regulations part 164.

We continue to work with the various stakeholders to ensure that the language in the bill rectifies the situation in both law and practice.

Thank you for the opportunity to testify.