



February 17, 2021

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Lisa Kitagawa, Vice Chair, and
Members of the House Committee on Consumer Protection & Commerce

Date: Wednesday, February 17, 2021
Time: 2:00 p.m.
Place: Conference Room 329, State Capitol

From: Anne Perreira-Eustaquio, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 718 HD1 RELATING TO HEALTH

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal seeks to add a new section to chapter 346, Hawaii Revised Statutes (HRS), requiring the Department of Human Services (DHS) to compile information regarding employers with employees who receive public assistance. It requires DLIR to assist the DHS in the form of sharing employment data to achieve this purpose.

The Department offers comments on the measure.

II. CURRENT LAW

The current law does not require DHS access to Unemployment Insurance (UI) data as proposed in this measure.

III. COMMENTS ON THE SENATE BILL

The DLIR is willing to work with DHS to determine how the legislative purpose can be achieved within the statutory disclosure provisions contained in Chapter 383, HRS, and within cost or resource restrictions. The U.S. Department of Labor (U.S.DOL) has long interpreted methods of administration to require the confidentiality of UI information and to follow the Congressional mandate that UI information be used only for the purpose for which it is directed. According to HRS §383-95 and HAR §12-5-211 to §12-5-220, disclosure of information from workers, employers, or other persons or groups in the course of administering the state employment security program shall be held confidential and shall not be disclosed

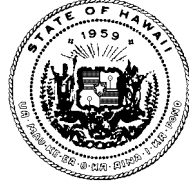
unless authorized requesting agencies have entered into a written agreement with the Department.

U.S.DOL guidance in [Unemployment Insurance Program Letter NO. 34-97](#) sets forth the criteria regarding the basic confidentiality and disclosure requirements for the Federal-State unemployment compensation (UC) program for sharing information with other public officials. Records may be disclosed where the public official is enforcing a law and:

1. The disclosure is permitted by State law (§383-95),
2. The disclosure would not significantly hinder or delay the processing of UI claims, or significantly hinder other activities of the State employment security agency, or such disclosure would not impede the efficient administration of the State employment security law,
3. The public officials continue to safeguard the confidentiality of the records, and
4. - If disclosure entails more than incidental time, arrangements are made for the reimbursement of costs.

Should this proposal be enacted, an information sharing agreement with DHS would be required to satisfy its limited purposes. As a condition for the data exchange, DHS would have to provide relevant recipients' personal identifying information to crossmatch against the DLIR-UI employer and wage records. All expenses associated with providing the data must be reimbursed by the requesting agency in accordance with the federal requirements.

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February 15, 2021

TO: The Honorable Representative Aaron Ling Johanson, Chair
House Committee on Consumer Protection & Commerce

FROM: Cathy Betts, Director

SUBJECT: **HB 718 HD1 – RELATING TO HEALTH.**

Hearing: Wednesday, February 17, 2021, 2:00 p.m.
Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the measure and offers comments. DHS defers to the Department of Labor & Industrial Relations (DLIR). The Committee on Health, Human Services, & Homelessness amended the measure by defecting the effective date and making technical amendments.

PURPOSE: The purpose of this bill requires the department of human services to compile information regarding employers having employees who receive public assistance and to submit an annual report to the legislature on the 50 employers with the highest number of employees receiving public assistance. Requires the department of labor and industrial relations to share employment data with the department of human services. Effective 7/1/2060. (HD1)

DHS agrees that understanding and containing the state's health care costs are issues that the Legislature and the public would benefit from a deeper understanding of, in addition to appreciating the complexities of underemployment, poverty wages, and economic impacts on society, business, and the State budget.

Currently, although Med-QUEST Division (MQD) does have a data sharing agreement with the DLIR, the use of the data is restricted. However, it may be possible to amend the agreement to be used for the purposes in the bill. MQD will work with DLIR to revise the data-sharing agreement. MQD would likely be able to compile the information and produce the report relative to employers and Medicaid enrollment.

Of note, enrollment in both employer-sponsored insurance and Medicaid is allowed. Medicaid would be the secondary insurance since Medicaid is the payer of last resort (the last to be billed). Thus, employers that have individuals covered by Medicaid may also be providing health insurance for those same employees. Per the intent outlined in the preamble, the identified employers actually may be providing health insurance for their employees; however, the report would not be able to distinguish between employers that are or are not offering health insurance.

Currently we are not able to run a report for all public benefit programs. We are currently in the development phase of the Benefits Enterprise Solution (BES), which is the department's 2nd phase of its major modernization of DHS IT systems. Once completed, BES will serve the financial and SNAP programs of the department's Benefits, Employment & Support Services Division (BESSD). However, as previously reported, the name of the recipient's employer is not a factor in eligibility determination for BESSD programs, so we will need to consider how to meet this requirement.

As the bill progresses, we will likely update the Legislature with additional resource needs and request an effective date that will allow us enough time to build and implement the functional capability to run the requested report for all benefits.

Thank you for the opportunity to provide comments on this measure.

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House Committee on Consumer Protection & Commerce
Honorable Aaron Ling Johanson, Chair
Honorable Lisa Kitagawa, Vice Chair

RE: Testimony Commenting on H.B. 718 H.D. 1, Relating to Health
Hearing: February 17, 2021 at 2:00 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony commenting on H.B. 718 H.D. 1. **The reference to HIPAA in this bill will be confusing to implement and should be deleted in favor of clearer language in the bill or committee report.**

HIPAA privacy standards apply to limited categories of personal health information as maintained by specific recordkeepers (covered entities). From the description of the report identified in the bill, it does not appear that the report is intended to include any information protected by HIPAA.

To the extent that the bill seeks to incorporate the safe harbor de-identification standards in the Privacy Rule, 45 C.F.R. 164.514 – even if the information to be disclosed is not covered by HIPAA – that analysis might lead the Department of Human Services to conclude that nothing may be provided. For example, the safe harbor standards require removal of “all geographic subdivisions smaller than a State”; identifying an employer would provide identifying geographic information smaller than a State. The HIPAA Privacy Rule imposes exceptionally strict standards because it protects exceptionally strong privacy interests. Those standards do not fit all situations.

In any event, the standards for withholding information about public assistance benefits are clear already under the Uniform Information Practices Act, HRS chapter 92F. *E.g.*, HRS § 92F-14(b)(3) (recognizing significant privacy interest in “[i]nformation relating to eligibility for social services or welfare benefits or to the determination of benefit levels”). The Office of Information Practices has held “that only in an unusual case would the disclosure of information concerning an individual’s . . . welfare status . . . shed light upon the conduct and actions of agencies or their officials”; thus public disclosure of such information would “constitute a clearly unwarranted invasion of personal privacy under the UIPA.” OIP Op. No. 91-12 at 5 & n.4. OIP has explained the standards for segregating individually identifiable information from records to ensure that information “will not be identified as pertaining to a particular claimant.” *E.g.*, OIP

Op. No. 00-02 at 11-12 (“What constitutes identifying information must be determined not only from the standpoint of the public, but also from that of persons familiar with the circumstances involved.”).

If there is particular information of concern to the Committee beyond personally identifiable information that should be withheld from reports, it would be better to specify that information in the statute or committee report, rather than cite HIPAA. Specificity will ensure that implementation follows the legislative intent because recent events have demonstrated the State’s overly restrictive understanding of HIPAA and how it works. Otherwise, it is likely that the Legislature will not get what it appears to want from this bill.

Thank you again for the opportunity to testify with comments on H.B. 718 H.D. 1.