



**HAWAII HEALTH SYSTEMS**  
C O R P O R A T I O N

*"Quality Healthcare for All"*

## ***COMPLIANCE ALERT 13-20***

### ***HIPAA Update: HHSC to Rely on Hawaii's "Healthcare Privacy Harmonization Act"***

**EXECUTIVE SUMMARY:** Based on legal counsel review, HHSC will rely on Hawaii's "Healthcare Privacy Harmonization Act" (HRS 323B), which basically states that our compliance with the Federal HIPAA law will be "deemed" compliance with all of Hawaii's existing healthcare privacy laws (including special protections on mental health, AIDS/ARC, developmental disabilities, etc.). There are additional federal requirements and protections for release of drug/alcohol treatment program records (42 CFR Part 2) and psychotherapy notes (per HIPAA) which are, at the moment, the only special or heightened protections for healthcare records with which we must comply, in addition to HIPAA.

**SUMMARY:** Hawaii State Act 315/HRS 323B called the "Health Care Privacy Harmonization Act" was signed into law July 10, 2012. To date, there is no case law interpreting this Act but its language is fairly clear—the law says that notwithstanding any law to the contrary, any HIPAA-compliant use/disclosure of protected health information, or authorization for release, or notice of breach of unsecured PHI, shall be deemed compliant with all (50+) Hawaii state laws on healthcare privacy.

The legislative intent is fairly clear that they wanted to allow the Federal HIPAA to control and preempt the patchwork of state privacy protections. Although the Act does not set forth any specific immunity or protection from claims for privacy violations based on the requirements of the 50+ state statutes (which have not been repealed), HHSC will rely on the relatively clear language and the legislators' intent to substitute the complexity and comprehensive nature of HIPAA for our past patchwork of state healthcare privacy laws and regulations. We will of course monitor case law and other media for any interpretive decisions/legal challenges.

To put this into place, HHSC Legal, working with Compliance, has:

1. Revised the standardized Authorization for Release of Information form to delete non-HIPAA protected categories, and any other associated forms.
2. Revised policies.
3. Begun education of HIM departments and other stakeholders regarding the changes in law, and the changes in our approach.

**ACTION NEEDED:** HHSC facilities should review the new HIPAA Privacy Policies scheduled for adoption by the HHSC Board of Directors on September 19, 2013. HIM personnel and others involved in release of protected health information should actively monitor this situation and review the new "Release of Information Form".

Source: HRS 323B.