



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

April 16, 2015

Representative Alissa Keny-Guyer
900 Court Street NE H484
Salem OR 97301

Re: House Bill 2948

Dear Representative Keny-Guyer:

You have requested a legal opinion on whether the -3 amendments to House Bill 2948 contradict or duplicate the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) (HIPAA). The short answer is no.

The relevant provision of HIPAA is 42 U.S.C. 1320d-2(d), which requires the Secretary of the United States Department of Health and Human Services to adopt security standards for protected health information:

- (A) to ensure the integrity and confidentiality of the information;
- (B) to protect against any reasonably anticipated—
 - (i) threats or hazards to the security or integrity of the information; and
 - (ii) unauthorized uses or disclosures of the information. . . .

Therefore, the provisions in the -3 amendments to House Bill 2948 do not contradict or duplicate HIPAA.

The standards adopted by the secretary are known collectively as the HIPAA Privacy Rule and are found in 45 C.F.R. part 164, subpart E. The provisions in section 2 of the introduced version of House Bill 2948 do not duplicate but rephrase many of the provisions in 45 C.F.R. 164.510 and 164.512. Specifically:

- Section 2 (1)(a)(A) mirrors the language in 45 C.F.R. 164.510(b)(1)(i).
- Section 2 (1)(a)(B) mirrors the language in 45 C.F.R. 164.510(b)(1)(ii).
- Section 2 (1)(b)(A) mirrors the language in 45 C.F.R. 164.510(b)(3).
- Section 2 (1) (b)(B) mirrors the language in 45 C.F.R. 164.510(b)(2).
- Section 2 (2) mirrors the language in 45 C.F.R. 164.512(j).

The -3 amendments to HB 2948 allow a health care provider who is treating a patient for a mental illness to disclose, if the requirements in section 2 (1) and (2) are met, the patient's diagnosis and treatment, safety issues for the patient, information about resources available in the community and the process for developing a safety plan. This additional information does not duplicate HIPAA or the Privacy Rule but is still consistent with HIPAA and the Privacy Rule

because it requires a threshold determination that the HIPAA requirements reflected in section 2 (1) and (2) have been met.

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Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

A handwritten signature in cursive script, appearing to read "Lorey H. Freeman".

By
Lorey H. Freeman
Senior Deputy Legislative Counsel