NEIL ABERCROMBIE
GOVERNOR OF HAWAII

LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Health

SB 2227, Relating to Provider Orders for Life-Sustaining Treatment

Testimony of Linda Rosen, M.D., M.P.H.
Director of Health

Wednesday, March 12, 2014

Department's Position: The department SUPPORTS this bill WITH COMMENTS.

Fiscal Implications: The fiscal implications are undetermined.

Purpose and Justification: Following passage of the original POLST bill in 2009, the department remained a voluntary and active participant along with local practicing physicians and clinical and professional experts to help shape POLST and the current POLST form. The department supports the intent of POLST and the aim of the current and companion bills to expand signatory authority to advance practice nurses. The department also recognizes that there are differences between this SB2227 and its companion HB2052; the department prefers the language in SB2227. If the House Committee on Health is considering making changes to SB2227 in favor of the changes made in HB2052, please note the following: the department will defer to legal and technical experts on language concerning the capacity of patients and other technical language changes, and the department will oppose the requirement for the department to develop and adopt a sample POLST form. Such a requirement would be unnecssary since a POLST form has already been developed and adopted and it is recognized state-wide by 1st responders and healthcare professionals. The form is used to write medical orders, and as with other medical orders forms should not be regulated. The form was modeled after forms used in other parts of the country and the local physicians and experts continually review the form for

improvement based on national standards and as best practices emerge through study and experience. Requiring the DOH or any other state agency to develop and adopt a sample form would undermine the current process and be a disservice to the community. It would require DOH to adopt administrative rules that would create an unintended burden on the currently successful process without any measurable improvement or benefit to the public. This process would create a *de facto* POLST form rather than a sample form and the department would then become responsible to track national standards and best practices without the financial or professional resources required for the job.

As a result, the Department of Health supports the current language of SB2227 and respectfully requests that any requirement for the department to develop and adopt a sample POLST form not be included.

Thank you for the opportunity to testify.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

LINDA ROSEN, MD, MPH
DIRECTOR OF HEALTH

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STATE OF HAWAII
EXECUTIVE OFFICE ON AGING
NO. 1 CAPITOL DISTRICT
250 SOUTH HOTEL STREET, SUITE 406
HONOLULU, HAWAII 96813-2831

Committee on Health

SB2227, RELATING TO PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT

Testimony of Wes Lum
Director, Executive Office on Aging
Attached Agency to the Department of Health

Wednesday, March 12, 2014; Conference Room 329

8:30 a.m.

EOA's Position: The Executive Office on Aging (EOA) supports this measure.

Purpose and Justification: This bill is similar to SB2867, which is part of the Governor's package, that expands healthcare provider signatory authority to include advanced practice registered nurses (APRN) and corrects inconsistencies over terms used to describe who may sign for a Physician Orders for Life-Sustaining Treatment (POLST) form on behalf of a patient. Other technical amendments should include: a) HRS subsections 327K-2(b) and (c) should also be amended to reflect the changes in terminology made in this bill, and b) HRS subsection 327k-2(a)(3) should be amended to add the word "patient's" before legal representative in two places on page 5, line 15 and 18.

This measure also reflects the recommendation of the State Plan on Alzheimer's Disease and Related Dementias (ADRD) to realize the goal of enhancing care quality and efficiency. We believe that in order for Hawaii to achieve the vision of the best quality of life for those touched by

dementia, it is imperative to achieve the highest quality of culturally competent care possible and a state infrastructure sensitive to the needs of people with ADRD and their care partners. Consumers and their families need to have all appropriate services and care to maximize quality of life, delivered in a coordinated way from early and accurate diagnosis to the end of life. POSLT is a holistic method of planning for end of life care and a specific set of medical orders that ensure that patients' wishes are honored. Therefore, expanding healthcare provider signatory authority to include APRNs will assist with a timely completion of a POLST for persons with dementia. Thank you for the opportunity to testify.

UNIVERSITY OF HAWAI'I SYSTEM
Legislative Testimony

LATE

Written Testimony Presented Before the
House Committee on Health
March 12, 2014 at 8:30 a.m.
by
Mary G. Boland, DrPH, RN, FAAN
Dean and Professor
School of Nursing & Dental Hygiene
University of Hawai'i at Mānoa

SB 2227 – RELATING TO PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT

Chair Belatti, Vice Chair Morikawa, and members of the House Committee on Health, thank you for this opportunity to provide testimony in strong support of this bill, SB 2227.

UH Mānoa Nursing supports increasing access to the Hawai'i physician orders for life-sustaining treatment (POLST) law by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; particularly, expanding health care provider signatory authority to include advanced practice registered nurses (APRNs); and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient.

POLST is a tool to help ensure that patients make informed decisions and that their wishes are honored across health care settings. POLST requires a meaningful dialog between patients and their physicians or APRNs (especially in rural, medically underserved areas of Hawai'i. SB 2227 is consistent with barrier-breaking legislation made between 2009-2011, when the Legislature authorized[1] APRNs to function

[1] **Act 169, SLH 2009** required insurers/HMOs/benefit societies to recognize APRNs as PCPs; authorized APRNs to sign, certify, or endorse all documents relating to health care within their scope of practice provided for their patients including workers' compensation, verification documents, verification and evaluation forms the DHS and DOE, verification and authorization forms of the DOH and physical examination forms.
Act 57, SLH 2010 the adoption of the National Council of State Boards of Nursing's Model Nurse Practice Act and Model Nursing Administrative Rules.
Act 110, SLH 2011 required each hospital in the State licensed under Hawai`i Revised Statutes (HRS), § 321-14.5 is required to allow[1] APRNs [1] and qualified APRNs granted prescriptive authority to practice within the full scope of practice including as a primary care provider. APRNs granted prescriptive authority to prescribe controlled drugs (Schedule II-V) within formulary appropriate to the APRN's specialty. Able to prescribe drugs without working relationship agreement with a licensed physician.

independently as primary care providers to help relieve the oncoming shortage of primary care physicians[2].

Therefore, UH Mānoa Nursing respectfully requests passage of this measure. We appreciate your continuing support of nursing and education in Hawai'i. Thank you for the opportunity to testify.

[2] A 2010 study by the John A. Burns School of Medicine reported a current shortage of 600 physicians (more than 20% of the current supply) and an impending shortage of 1,600 by 2020. "Because physician shortages of the magnitude described will directly impact the health and well-being of virtually all residents of Hawai'i, something must be done. Unfortunately, there is no easy fix to the problem. The problem is most acute on the island of Hawai'i, but people everywhere, including urban O'ahu are also starting to feel the effects in a variety of specialties… If Hawai'i's utilization of physician services were to match the average mainland usage, our current demand for physicians would be about 3,500. If Hawai'i's population grows as anticipated without change being made in the system of care or current utilization patterns, our state will need over 4,000 doctors by the year 2020. It is expected that even with active recruitment Hawai'i will probably suffer a net loss of approximately 50 physicians every year in the face of dramatically rising demand. If the delivery system remains the same as today, many Hawai'i residents will not have timely access to care. The indigent and elderly will feel it first. As the shortage deepens, we'll all experience the effects". The ten top solutions identified by the working groups to be addressed most urgently include the use of non-physician clinicians (*Report to the 2011 Hawaii State Legislature: Report on Findings from the Hawaii Physician Workforce Assessment Project.* Withy, K. and Sakamoto, D.T. John A. Burns School of Medicine, December, 2010).

Healthcare Association of Hawaii

Wednesday – March 12, 2014 – 8:30am
Conference Room 329

The House Committee on Health

To: Representative Della Au Belatti, Chair
Representative Dee Morikawa, Vice Chair

From: George Greene
President & CEO
Healthcare Association of Hawaii

Re: Testimony in Support
SB 2227 — Relating to Provider Orders for Life-Sustaining Treatment

The Healthcare Association of Hawaii (HAH) is a 116-member organization that includes all of the acute care hospitals in Hawaii, the majority of long term care facilities, all the Medicare-certified home health agencies, all hospice programs, as well as other healthcare organizations including durable medical equipment, air and ground ambulance, blood bank and respiratory therapy. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing nearly 20,000 people statewide.

Thank you for the opportunity to testify in support of SB 2227, which promotes efficiency in advance care planning. SB 2227 modernizes provider orders for life-sustaining treatment by changing references of "physician orders for life-sustaining treatment" in the Hawaii Revised Statutes to "provider orders for life-sustaining treatment," expanding signatory authority to include advanced practice registered nurses. HAH supports the intent and spirit of SB 2227, which is to improve the quality of life for patients though expanded efficiency and consistency in advance care planning.

Thank you for the opportunity to testify in support of SB 2227.

Phone: (808) 521-8961 | Fax: (808) 599-2879 | HAH.org | 707 Richards Street, PH2 - Honolulu, HI 96813

Hawaii Association of Health Plans

March 12, 2014

The Honorable Della Au Belatti, Chair
The Honorable Dee Ann Morikawa, Vice Chair

Committee on Health

Re: SB 2227 – Relating to Physician Orders for Life-Sustaining Treatment

Dear Chair Belatti, Vice Chair Morikawa, and Members of the Committee:

My name is Rick Jackson and I am Chairperson of the Hawaii Association of Health Plans ("HAHP") Public Policy Committee. HAHP is a non-profit organization consisting of nine (9) member organizations:

AlohaCare
Hawaii Medical Assurance Association
HMSA
Hawaii-Western Management Group, Inc.
Kaiser Permanente
MDX Hawai'i
'Ohana Health Plan
University Health Alliance
UnitedHealthcare

Our mission is to promote initiatives aimed at improving the overall health of Hawaii. We are also active participants in the legislative process. Before providing any testimony at a Legislative hearing, all HAHP member organizations must be in unanimous agreement of the statement or position.

HAHP appreciates the opportunity to provide testimony in support to SB 2227 which would expand access to physician orders for life-sustaining treatment to advanced practice registered nurses; and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient. We believe that this type of expansion will be highly beneficial to all the people of Hawai`i, especially to those living in rural communities. HAHP also believes that this Bill will further encourage communication between healthcare providers and patients to make more informed decisions, which is crucial to positive health outcomes.

Thank you for the opportunity to provide testimony.

Sincerely,

Rick Jackson
Chair, Public Policy Committee

HAWAI'I STATE CENTER FOR NURSING
Connecting Nurses. Transforming Healthcare.

Written Testimony Presented Before the
House Committee on Health
March 12 , 2013 8:30 a.m.
by
Dale Allison, PhD, WHNP-BC, FNP, APRN-Rx, FAAN
Member, HSCN Advisory Board
Hawaii State Center for Nursing
University of Hawai'i at Manoa

SB 2227, SD1 RELATING TO PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT

Chair Belatti, Vice Chair Morikawa, and members of the House Committee on Health, thank you for this opportunity to provide testimony in strong support of this bill, SB 2227, SD1.

The Hawaii State Center for Nursing supports increasing access to POLST by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; particularly, expanding health care provider signatory authority to include advanced practice registered nurses (APRNs); and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient. POLST is a tool to help ensure that patients make informed decisions and that their wishes are honored across health care settings. POLST requires a meaningful dialog between patients and their physicians or APRNs (especially in rural, medically underserved areas of Hawai'i.

SB 2227, SD1 is consistent with barrier-breaking legislation made between 2009-2011, when the Legislature authorized[1] APRNs to function independently as primary care providers to help relieve the oncoming shortage of primary care physicians[2].

---

[1] **Act 169, SLH 2009** required insurers/HMOs/benefit societies to recognize APRNs as PCPs; authorized APRNs to sign, certify, or endorse all documents relating to health care within their scope of practice provided for their patients including workers' compensation, verification documents, verification and evaluation forms the DHS and DOE, verification and authorization forms of the DOH and physical examination forms.
Act 57, SLH 2010 the adoption of the National Council of State Boards of Nursing's Model Nurse Practice Act and Model Nursing Administrative Rules.
Act 110, SLH 2011 required each hospital in the State licensed under Hawai`i Revised Statutes (HRS), § 321-14.5 is required to allow[1] APRNs [1] and qualified APRNs granted prescriptive authority to practice within the full scope of practice including as a primary care provider. APRNs granted prescriptive authority to prescribe controlled drugs (Schedule II-V) within formulary appropriate to the APRN's specialty. Able to prescribe drugs without working relationship agreement with a licensed physician.

Therefore, the Hawaii State Center for Nursing respectfully requests passage of this measure. We appreciate your continuing support of nursing and education in Hawai'i. Thank you for the opportunity to testify.

---

[2] A 2010 study by the John A. Burns School of Medicine reported a current shortage of 600 physicians (more than 20% of the current supply) and an impending shortage of 1,600 by 2020. "Because physician shortages of the magnitude described will directly impact the health and well-being of virtually all residents of Hawai'i, something must be done. Unfortunately, there is no easy fix to the problem. The problem is most acute on the island of Hawai'i, but people everywhere, including urban O'ahu are also starting to feel the effects in a variety of specialties… If Hawai'i's utilization of physician services were to match the average mainland usage, our current demand for physicians would be about 3,500. If Hawai'i's population grows as anticipated without change being made in the system of care or current utilization patterns, our state will need over 4,000 doctors by the year 2020. It is expected that even with active recruitment Hawai'i will probably suffer a net loss of approximately 50 physicians every year in the face of dramatically rising demand. If the delivery system remains the same as today, many Hawai'i residents will not have timely access to care. The indigent and elderly will feel it first. As the shortage deepens, we'll all experience the effects". The ten top solutions identified by the working groups to be addressed most urgently include the use of non-physician clinicians (*Report to the 2011 Hawaii State Legislature: Report on Findings from the Hawaii Physician Workforce Assessment Project.* Withy, K. and Sakamoto, D.T. John A. Burns School of Medicine, December, 2010).

HAWAI'I STATE CENTER FOR NURSING
Connecting Nurses. Transforming Healthcare.

Written Testimony Presented Before the
House Committee on Health
March 12 , 2013 8:30 a.m.
by
Kathy Yokouchi, Policy Analyst
Hawaii State Center for Nursing
University of Hawai'i at Manoa

SB 2227, SD1 RELATING TO PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT

Chair Belatti, Vice Chair Morikawa, and members of the House Committee on Health, thank you for this opportunity to provide testimony in strong support of this bill, SB 2227, SD1.

The Hawaii State Center for Nursing supports increasing access to POLST by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; particularly, expanding health care provider signatory authority to include advanced practice registered nurses (APRNs); and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient. POLST is a tool to help ensure that patients make informed decisions and that their wishes are honored across health care settings. POLST requires a meaningful dialog between patients and their physicians or APRNs (especially in rural, medically underserved areas of Hawai'i.

SB 2227, SD1 is consistent with barrier-breaking legislation made between 2009-2011, when the Legislature authorized[1] APRNs to function independently as primary care providers to help relieve the oncoming shortage of primary care physicians[2].

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Therefore, the Hawaii State Center for Nursing respectfully requests passage of this measure. We appreciate your continuing support of nursing and education in Hawai'i. Thank you for the opportunity to testify.

"Because physician shortages of the magnitude described will directly impact the health and well-being of virtually all residents of Hawai‘i, something must be done. Unfortunately, there is no easy fix to the problem. The problem is most acute on the island of Hawai‘i, but people everywhere, including urban O‘ahu are also starting to feel the effects in a variety of specialties… If Hawai‘i’s utilization of physician services were to match the average mainland usage, our current demand for physicians would be about 3,500. If Hawai‘i’s population grows as anticipated without change being made in the system of care or current utilization patterns, our state will need over 4,000 doctors by the year 2020. It is expected that even with active recruitment Hawai‘i will probably suffer a net loss of approximately 50 physicians every year in the face of dramatically rising demand. If the delivery system remains the same as today, many Hawai‘i residents will not have timely access to care. The indigent and elderly will feel it first. As the shortage deepens, we’ll all experience the effects". The ten top solutions identified by the working groups to be addressed most urgently include the use of non-physician clinicians (*Report to the 2011 Hawaii State Legislature: Report on Findings from the Hawaii Physician Workforce Assessment Project.* Withy, K. and Sakamoto, D.T. John A. Burns School of Medicine, December, 2010).

THE QUEEN'S HEALTH SYSTEMS

1301 Punchbowl Street • Honolulu, Hawaii 96813 • Phone (808) 691-5900

S.B. 2227
RELATING TO PROVIDER ORDERS FOR LIFE SUSTAINING TREATMENT
House Committee on Health
March 12, 2014; 8:30 a.m.

Thank you for the opportunity to provide testimony in **strong support** of SB2227. We are Cherylee Chang, M.D., Director of the Stroke Center and Medical Director of the Neuroscience Institute/Neurocritical Care and Daniel Fischberg, MD, PhD, FAAHPM, Medical Director for the largest hospital-based palliative care program at The Queen's Medical Center and Vice-Chair of the Board of Kokua Mau, Hawaii's hospice and palliative care organization. In this testimony, first, we would like to address SB2227, and then turn the committee's attention to what we respectfully suggest are problematic changes that were made during second and third hearings for the companion measure, HB2052 and address concerns we now have subsequently.

We strongly support SB2227, as written, as it maintains the statutory requirements to allow POLST to continue to be effective in the State of Hawaii, while also expanding access by allowing APRNs to participate in signatory authority. When it comes to avoiding unwanted medical treatments at the end of life, Physician Orders for Life Sustaining Treatments (POLST) have been shown to be nearly 100% effective in preventing unwanted treatments while other directives, such as living wills, have not been shown effective. POLST have never been shown to be a barrier to people receiving the treatments that they do desire. Unfortunately, access to care continues to be an issue, particularly for those with advanced illness. Many patients that would wish to complete a POLST to avoid unwanted medical treatment are confined to their beds at home, in a nursing facility, or a hospice. Advanced practice nurses have been critical in providing needed medical care to these patients. Not permitting Advanced Practice Nurses to sign POLST forms means many patients in need cannot complete them, leaving them vulnerable to unwanted, aggressive treatment, such as electric shocks to the chest or placement on an artificial respirator, at the end of life when most people would prefer to focus on their comfort and dignity.

Turning the committee's attention now to HB2052, HD2, we would like to take this opportunity to address substantive changes made to HB2052 HD2, by the House Judiciary committee, in response to two testimonies which raised mirroring concerns.

- **Delete Section 6, requiring DOH to adopt a sample POLST "Form"**

1. **The POLST is an order for medical treatments.**

a. Physician orders should not be legislated. Physician orders should be based upon best practices, and able to be changed within the professional community, best positioned to keep current.

b. Hawaii has successfully achieved the voluntary universal adoption of the same POLST Order form throughout the state. The Hawaii form has been modeled after national forms which has also been adopted by other states. Grant funding and voluntary grass roots support has spread POLST to every island, hospital, nursing home, home care, hospice and most care homes.

c. The existing statute, 327K-4 allows for voluntary rules creation by the Department of Health.

d. Rules making and mandatory form adoption will delay forward movement.

- **Restore Section 4 (3) (A): "Lacks Capacity"**

1. **Section 4 (3) (A) of HB 2052, HD2 deletes "Lacks capacity", which impedes decision making powers**.

a. The change in HB2052, HD2 effectively eliminates the authority of an individual who was not designated by the patient in an Advance Directive (under section 327E) to create a POLST order.

b. We request that SB2227 retain the "lack capacity" provision to ensure the authority for ALL legally authorized representatives to make decisions as provided for in the Advance Directive Law (327E).

- **Address Concerns Raised in House Consumer Protection and House Judiciary Committees**

1. **Testimony from two individuals spoke to the "problematic areas with respect to the authority of 'non-designated surrogates' to make certain health care decisions on behalf of incapacitated patients on the POLST form and specifically decisions to withhold or withdraw artificial hydration and nutrition as provided in Chapter 327E."**

a. Both individuals testifying fully support POLST, and the expansion of POLST to include APRN.

b. Both individuals indicate that the concern lies in Chapter 327E, not in the POLST form.

c. Indeed, one individual stated this was ancillary to the [core] POLST discussion.

d. Currently, Chapter 327E-(g) allows for: "*A surrogate who has not been designated by the patient may make all health-care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision*

of the surrogate only when the primary physician and a second independent physician certify in the patient's medical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future."

e. By only allowing a designated decision maker(that is one who was appointed in writing by the patient through an advance directive) to sign a POLST the amendment in HD2 effectively contradicts the existing law in 327E-5. Thus, those individuals will be disenfranchised from accessing POLST as a means of establishing a portable treatment plan consistent with the values and best interest of those legally authorized to represent them.

f. How is a non-designated surrogate decision maker appointed? Each hospital must follow the laws as established in 327E-5 for identifying the decision maker. In the event the patient has not designated one, the law allows for a group of interested persons to reach consensus and request that one individual be designated to serve in that role. Further, 327E-5(i) also mandates: *"A supervising health-care provider shall require a surrogate to provide a written declaration under the penalty of false swearing stating facts and circumstances reasonably sufficient to establish the claimed authority."*

g. Most hospitals have been dealing with this issue for years, since the passage of 327E. We have examples of several hospital forms which require such statement under penalty of false swearing.

h. The concerted effort of the entire state's leadership in hospice and palliative care continues in their efforts to promote advance directives and effective conversations about treatment choices at the end of life.

i. Each health care provider must address their process for obtaining a representative to make decisions for the incapacitated patient who has not designated someone.

j. **Note:** POLST was not designed to be the form or tool that designated a decision maker. When POLST was created, we recognized that it was a complementary tool to the advance directives, and that the POLST orders were completed upon the clinical need of the patient. By contrast, an advance directive can be completed years in advance of a clinical need, and require 2 witnesses or notary to be legal.

- **<u>We understand the intent of those who ask for "safeguards" to be added into the POLST Order form</u>**

1. We respectfully recommend that to modify POLST away from its original design does not fix the problems they have identified.
2. To strengthen language and powers of the so-called "non-designated surrogate" the legislature might consider amending 327E, HRS.
3. The way the POLST legislation is designed is to be consistent with the Advance Directive law and not requiring amendment each time 327E, HRS is changed.

We respectfully request that the committee consider and advance the language in S.B. 2227 to ensure the continued effectiveness, as well as expanded access to POLST. We hope we have satisfactorily outlined our concerns on H.B. 2052, HD2. We welcome continued dialog with interested parties on re-examining Chapter 327E, HRS during the interim.

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

To: The Committee on Health
Honorable Rep. Della Au Belatti, Chair
Honorable Rep. Dee Morikawa, Vice Chair

From: Kenneth Zeri, RN, MS, President, Hospice Hawaii

Date: March 12, 2014

Testimony in support of SB 2227
Related to Providers Orders for Life Sustaining Treatment.

A. SB 2227
1. Hospice Hawaii wholeheartedly supports the passage of SB 2227, as proposed. SB 2227 accomplished three important goals:
    a. Expands the signatory capability in our current POLST to allow Advance Practice Registered Nurses (APRN) to sign a POLST order. Hawaii was one of the leading states in the nation to implement a statewide fully portable POLST system. However, shortly after implementation it became clear that individuals living in more rural communities, Veterans getting care inside the VA system and nursing home residents were more likely to be seen by an APRN than an MD. Nationwide, APRNs are being included in the rules and regulations to sign a POLST. This bill corrects that oversight and expands access to POLST.
    b. Re-names the form to "Provider" instead of "Physician."
    c. Corrects inconsistent language regarding who may sign on a patient's behalf, if that individual is unable.
2. This Bill DOES NOT:
    a. Change any language in the Advance Directive laws, (HRS 327E) in particular governing those who may become a so-called "non-designated" decision maker. Nor does this bill allow for the designation of a decision maker on the POLST form.

B. HB 2052 HD 2
1. I would like to take this opportunity to address substantive changes made to HB2052 HD2, by the House Judiciary committee, in response to two testimonies which raised similar concerns. Testimony from two individuals spoke to the "problematic areas with respect to the authority of 'non-designated surrogates' to make certain health care decisions on behalf of incapacitated patients on the POLST form and specifically decisions to withhold or withdraw artificial hydration and nutrition as provided in Chapter 327E."
    a. Both individuals testifying fully support POLST, and the expansion of POLST to include APRN.

b. Both individuals indicate that the concern lies in Chapter 327E, not in the POLST form.
c. Indeed, one individual stated this was ancillary to the [core] POLST discussion.
d. Currently, 327E-(g) allows for: "A surrogate who has not been designated by the patient may make all health-care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the primary physician and a second independent physician certify in the patient's medical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future."
e. By only allowing a designated decision maker (that is one who was appointed in writing by the patient through an advance directive) to sign a POLST the amendment in HD2 effectively contradicts the existing law in 327E-5. Thus, those individuals will be disenfranchised from accessing POLST as a means of establishing a portable treatment plan consistent with the values and best interest of those legally authorized to represent them.
f. How is a non-designated surrogate decision maker appointed? Each hospital must follow the laws as established in 327E-5 for identifying the decision maker. In the event the patient has not designated one, the law allows for a group of interested persons to reach consensus and request that one individual be designated to serve in that role. Further, 327E-5(i) also mandates: "A supervising health-care provider shall require a surrogate to provide a written declaration under the penalty of false swearing stating facts and circumstances reasonably sufficient to establish the claimed authority."
g. Most hospitals have been dealing with this issue for years, since the passage of 327E. We have examples of several hospital forms which require such statement under penalty of false swearing.
h. The concerted effort of the entire state's leadership in hospice and palliative care continues in their efforts to promote advance directives and effective conversations about treatment choices at the end of life.
i. Each Hospital must address their process for obtaining a representative to make decisions for the incapacitated patient who has not designated someone.
j. *Note: POLST was not designed to be the form or tool that designated a decision maker. When POLST was created, we recognized that it was a complementary tool to the advance directives, and that the POLST orders were completed upon the clinical need of the patient. By contrast, an advance directive can be completed years in advance of a clinical need, and require 2 witnesses or notary to be legal*.

2. **We understand the intent of those who ask for "safeguards" to be added to the POLST Order form:**
    a. However, I respectfully recommend that to modify POLST away from its original design does not fix the problems they have identified;
    b. To strengthen language and powers of the so-called "non-designated surrogate" the legislature might consider amending 327E; and,
    c. The way the POLST legislation is designed is to be consistent with the Advance Directive law and not requiring amendment each time 327E is changed.

3. **Restore Section 4 (3) (A): "Lacks Capacity"**:
    a. Section 4 (3) (A) of HB 2052, HD2 deletes "Lacks capacity", which impedes decision making powers.
        i. The change in HB2052, HD2 effectively eliminates the authority of an individual who was not designated by the patient in an Advance Directive (under section 327E) to create a POLST order.
        ii. I respectfully request that SB2227 retain the "lack capacity" provision to ensure the authority for ALL legally authorized representatives to make decisions as provided for in the Advance Directive Law (327E).

4. **Delete Section 6, requiring DOH to adopt a sample POLST "Form"**:
    a. The POLST is an order for medical treatments.
        i. Physician orders should not be legislated. Physician orders should be based upon best practices, and able to be changed within the professional community, who is best positioned to keep them current.
        ii. Hawaii has successfully achieved the voluntary universal adoption of the same POLST Order form throughout the state. Grant funding and voluntary grass roots support has spread POLST to every island, hospital, nursing home, home care, hospice and most care homes.
        iii. The existing statute, 327K-4 allows for voluntary rules creation by the Department of Health. The DOH has stated it is in opposition to a mandated form adopted by them.
        iv. Rules making and mandatory form adoption will delay forward movement.

Thank you very much for considering these issues regarding SB2227 and the potential impact of HB2052 HD2 should SB 2227 be amended to mirror HD2. I am available to answer questions at a later date through my office at 924-9255.

KŌKUA MAU
"Continuous Care"
Hawai'i Hospice and Palliative Care Organization

March 10, 2014

Dear Chair Belatti and other members of the committee,

Thank you for the opportunity to speak to SB2227 which was heard in the House as HB2052.

I serve as the Executive Director of Kokua Mau, Hawaii's Hospice and Palliative Care Organization which is the lead agency in Hawaii for POLST. Kokua Mau staffs the statewide multi-sectoral POLST Task Force and our website is the clearing house for information about POLST including the POLST form and other information for download. We have implemented education around the island providing education at facilities and for community groups. Additionally we answer questions on the phone and via email from individuals and professionals alike.

It is because of our very positive experiences with POLST around the state over the last 5 years that we have worked to expand the signing privileges for POLST to include APRNs. We believe that POLST is a crucial document for people facing seriously illness to insure that they get the right care at the right time in the right place and that their wishes are honored. We also believe POLST helps families make sure that loved ones are well cared for throughout their lives.

Unfortunately amendments were made in HB2052 HD2 that substantially change the intent of the legislation and we believe they should be removed.

There are two changes that I would like to address in my testimony.

1. Section 4 - The changes made in HD2 have taken away the ability of a non-patient designated surrogate decision maker to complete a POLST. This is a dramatic step that would deny many individuals from having the benefits of a POLST because they did not appoint a Healthcare Power of Attorney ahead of time. Although everyone over 18 is encouraged to complete an Advance Directive, appoint a Healthcare Power of Attorney, and discuss their wishes for end-of-life care with loved ones, most people do not. Some estimates are that 80% of people have not appointment an agent although much effort has been made in Hawaii to encourage people to make these important steps while they are still able. This means providers in hospitals and other facilities must follow the steps of the law as laid out in 327E-5 for appointing a surrogate when someone is no longer able to speak for themselves and needs a decision maker.

   Testimony was made that there is not currently a system for designating this surrogate but that is not the case. There is a well-defined process that is currently being effectively used around the state (outlined in 327E-5).

   A surrogate, according to 327E, is a person who is selected through agreement by all interested persons when the patient did not designate anyone. In the vast majority of the cases, family members and other people with an interest in and knowledge of the person are called together and through a facilitated process, surrogate decision makers are

determined. That decision maker is then asked to sign a legally binding form confirming that they are who they say they are, their relationship with the patient, and that they are willing to serve as the surrogate. This process is documented in the patient's medical record. Each facility has their own form but many use the sample form created by UHELP at the University of Hawaii Law School and run by Prof. James Pietsch.

I have attached a copy of the form used by Maui Memorial Medical Center as well as their explanation of Surrogate Decision Making as an example.

If there are issues with the way that non-designated surrogates are appointed or documented in 327E-5, then the legislature could take up that issue at a future time. The expansion of POLST signing privileges should not be the vehicle for changing 327E.

2. Creation of a sample form as proposed in Section 6 of HD2. We view this as an unnecessary step and one that will add extra levels of bureaucracy to a system that is working well. In Hawaii there is only one POLST form which all facilities have voluntarily agreed to use. It was created by the POLST Task Force in 2009, which includes the Department of Health. The form follows formats used in other states and endorsed by the National POLST committee.

   We feel that our current system of voluntary collaboration between key stakeholders has a very positive track record and we do not believe that the proposed changes will improve the situation but would in fact slow down the process.

   Additionally we feel that physician orders should not be legislated. Physician orders should be based upon best practices and able to be changed within the professional community. This is the best way for the forms to keep current.

There were additional language changes in the amendment that we agree with. These are to use the term "legally authorized representative" and to clarify the language about healthcare power of attorney. (These were changes suggested by Professor Jim Pietsch.)

In the past I have testified about the importance of POLST and stand on my testimony about the importance of the expansion of signing privileges to APRNs to remove bottlenecks and increase access to POLST.

As the lead agency for POLST, we have gotten a lot of positive feedback about POLST which is why we have initiated this legislation to expand signing privileges. POLST is working well and therefore we need more access to POLST not less. I welcome the chance to answer any questions about POLST or the other issues raised in this process.

Sincerely,

Jeannette G. Koijane, MPH
Executive Director

Example from Maui Memorial Medical Center

Written Declaration of Surrogate

I, declare myself surrogate

For due to the following

reasons:

A. Surrogate Appointment (check one)

[] According to the physician, I have been designated by the patient to be his/her surrogate decision maker

[X] I am a surrogate decision maker appointed by consensus of interested persons

B. Interested Persons

I am an interested person based on my relationship to the patient as: (check one)

[] spouse, not legally separated or estranged
[] reciprocal beneficiary
[] adult child
[] parent
[] adult sibling
[] adult grandchild
[] an adult who has exhibited special care and concern for the patient and who is familiar with the patient's personal values.

C. Additional Facts or Circumstances

The following are additional facts or circumstances as to why I claim to be a surrogate decision maker:

_____

_____

Signature of Surrogate Decision Maker Date

Print Name of Surrogate Decision Maker -- Contact Phone Numbers: Residence / Business / Cell

Lack of Capacity Determination for Surrogate Decision Making

As the primary physician or designee who has undertaken primary responsibility, I certify that _____ (patient's name) **DOES NOT** have the ability to understand the significant benefits, burdens, risks, and alternatives to proposed health care and **DOES NOT** have the ability to make and communicate a health care decision.

Signature of Primary Physician or Designee Date

Print Name of Primary Physician or Designee

*Terminology of patient used within the context of this form is inclusive of residents within a Nursing Facility.

Certification for Withdrawal or Withholding of Artificial Nutrition and Hydration for a Surrogate Appointed through Consensus of Interested Persons

Primary Physician

As primary physician or designee who has undertaken primary responsibility, I certify for _____ (patient's name) the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future.

_____ _____

Signature of Primary Physician Date

_____

Name of Primary Physician (print)

Independent Physician

As an independent physician, I certify that for _____ (patient's name) the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future.

_____ _____

Signature of Independent Physician Date

_____

Name of Independent Physician (print)

*Terminology of patient used within the context of this form is inclusive of residents within a Nursing Facility.

Example from Maui Memorial Medical Center

INFORMATION ABOUT SURROGATE DECISION MAKING

The following information is provided to help you better understand what a surrogate decision maker is, how he/she is appointed, and what is the scope of their responsibility.

Background Information

- The Uniform Health Care Decisions Act (Modified) was signed into law in July 1999 and addresses the appointment of a surrogate decision-maker for health care decisions. The law also changed and consolidated most of the advance directive laws into one law.
- Prior to the passage of this law, there was no law about surrogate decision making except as a trial project in the nursing facilities. In other settings, surrogate decision making was not provided for under the law even though it was usually accepted as community practice.
- This law applies to all settings, for example inpatients, outpatients, and residents in nursing facilities (e.g. – ICF/SNF). The use of the word patient in this handout is intended to include all of these populations.

Definitions

Agent: Someone designated through a durable power of attorney for health care decisions.

Capacity: An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision.

Guardian: Someone appointed by a court to make decisions, either for the person or property or both.

Interested persons: The patient's spouse, unless legally separated or estranged, a reciprocal beneficiary, any adult child, either parent of the patient, an adult sibling or adult grandchild of the patient, or ant adult who has exhibited special care and concern for the patient and who is familiar with the patient's personal values.

Surrogate: An individual, other than a patient's guardian or agent, designated to make health care decisions for the patient. Under the Uniform Health Care Decisions Act, there are two types of surrogates: one that is designated by the patient and another who is selected through agreement by all interested persons when the patient did not designate anyone.

What is the process by which a surrogate is appointed?

a. The patient's physician certifies that a patient lacks capacity.
b. In the absence of a guardian or agent, a surrogate decision-maker can be appointed.
c. A patient with capacity can designate an individual to be a surrogate by personally informing the physician. The physician documents the patient's designated surrogate in the medical record.
d. In the absence of a patient designated surrogate, the physician locates "interested persons" who may select a surrogate through consensus (or, if consensus cannot be reached, any individual may petition for legal guardianship).
e. Both designated and "consensus" (or "non-designated") surrogates must provide the physician with signed declaration stating the facts and circumstances through which they were appointed as surrogate.
f. The physician documents the selection of the surrogate in the medical record and provides a copy of the written claim for the medical record.

Is there any limitation on the type of decisions a surrogate can make?

The scope of decisions that a surrogate can make depends on how the surrogate was appointed. A surrogate that was designated by the patient may make health care decisions that the patient would normally make on their behalf. A surrogate who has been designated by consensus of interested persons can make health care decisions that the patient would normally make, however, a decision to withdraw or withhold nutrition and hydration requires that the primary physician and a second independent physician certify in the patient's medical record that the provision or continuation of artificial nutrition and hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future.

What should a surrogate consider when making decisions?

A surrogate's decision should be based on what the patient would have wanted. Many times it is based on what the patient expressed to the surrogate in the past, the patient's beliefs and what the patient felt was important. Sometimes the patient gave very explicit instructions to the surrogate and the surrogate was selected based on the patient's belief that this individual was the best choice to carry forth their wishes. Unfortunately, we cannot always predict the future or all situations that will come up. In most situations, what is usually considered is based on the best interests of the patient.

"Best interests" means that the benefits to the patient resulting from a treatment outweigh the burdens to the patient resulting from that treatment and shall include:

1) the effect of the treatment on the physical, emotional, and cognitive function of the patient;
2) the degree of physical pain or discomfort caused to the patient by the treatment, or the withholding or withdrawal of the treatment;
3) the degree to which the patient's medical condition, the treatment, or the withholding or withdrawal of treatment, results in a *severe* and continuing impairment;
4) the effect of treatment on the life expectancy of the patient;
5) the prognosis of the patient recovery, with and without treatment;
6) the risks, side effects, and benefits of the treatment or the withholding of the treatment; and
7) the religious beliefs and basic values of the patient receiving treatment, to the extent that these may assist the surrogate decision maker in determining benefits and burdens.

What if a consensus cannot be reached or someone disagrees with the decisions of the surrogate?

Any of the interested persons may seek guardianship, which is a judicial process. A judge after hearing justifying information from the petitioning party and any objects by the conflicting parties will decide who will become the patient's legal guardian.

HAWAIʻI PACIFIC HEALTH
Kapiʻolani • Pali Momi • Straub • Wilcox

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Honolulu, Hawaiʻi 96813-4333

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www.hawaiipacifichealth.org

Wednesday, March 12, 2014 – 8:30 am
Conference Room 329

LATE

The House Committee on Health

To: Representative Della Au Belatti, Chair
Representative Dee Morikawa, Vice Chair

From: Michelle Cantillo, RN, Advance Care Planning Coordinator

Re: SB 2227, Relating to Provider Orders For Life Sustaining Treatment
Testimony in Support

My name is Michelle Cantillo, and I am the RN, Advance Care Planning Coordinator for Hawaiʻi Pacific Health (HPH). HPH is a not-for-profit health care system, and the state's largest health care provider and non-government employer. It is committed to providing the highest quality medical care and service to the people of Hawaiʻi and the Pacific Region through its four hospitals, more than 50 outpatient clinics and service sites, and over 1,600 affiliated physicians. HPH's hospitals are Kapiʻolani Medical Center for Women & Children, Pali Momi Medical Center, Straub Clinic & Hospital and Wilcox Memorial Hospital. The system's leading strategic initiatives include women's health, pediatric care, cardiovascular services, cancer care, and bone and joint services. HPH ranks among the top three percent of hospitals nationwide in the adoption of electronic health records, with system-wide implementation that allows its hospitals and physicians to offer integrated, coordinated care throughout the state.

I write in support of SB 2227 which increases access to Physician Orders for Life Sustaining Treatments (POLST) by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" as well as expanding health care provider signatory authority to include advanced practice registered nurses.

POLST have been shown to be nearly 100% effective in preventing unwanted treatments in contrast to other directives, such as living wills, which have not been shown to be effective. POLST have never been a barrier to people receiving the treatments that they do desire. Unfortunately, access to care continues to be an issue, particularly for those with advanced illnesses. Many patients that would wish to complete a POLST to avoid unwanted medical treatment are confined to their beds at home, in a nursing facility, or a hospice. Advanced practice nurses have been critical in providing needed medical care to these patients. The effect of not permitting Advanced Practice Nurses to sign POLST forms means many patients in need will be unable to complete them, leaving these patients vulnerable to unwanted, aggressive treatment, such as electric shocks to the chest or placement on an artificial respirator, at the end of life when most people would prefer to focus on their comfort and dignity.

We urge your Committee to pass this measure. Thank you for the opportunity to provide this testimony.

morikawa2-Joanna

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 11, 2014 12:43 PM
To: HLTtestimony
Cc: fconde@queens.org
Subject: Submitted testimony for SB2227 on Mar 12, 2014 08:30AM

LATE

SB2227
Submitted on: 3/11/2014
Testimony for HLT on Mar 12, 2014 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Francisco Conde	Hawaii State Center for Nursing	Support	No

Comments: I support increasing access to POLST by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; particularly, expanding health care provider signatory authority to include advanced practice registered nurses (APRNs); and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient. POLST is a tool to help ensure that patients make informed decisions and that their wishes are honored across health care settings. POLST requires a meaningful dialog between patients and their physicians or APRNs (especially in rural, medically underserved areas of Hawai'i.

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HMSA

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LATE

March 12, 2014

The Honorable Della Au Belatti, Chair
The Honorable Dee Morikawa Vice Chair
House Committee on Health

Re: SB 2227 – Relating to Provider Orders for Life-Sustaining Treatment

Dear Chair Au Belatti, Vice Chair Morikawa, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify in strong support of SB 2227, which increases access to physician orders for life-sustaining treatment (POLST).

It has long been HMSA's mission to improve the health and well-being of our members, and for all the people of Hawaii. A POLST form serves as a portable and recognized vehicle for documenting an individuals' end-of-life care and medical orders. We acknowledge the importance of communication between patients and health care providers.

Updating the references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; will allow advanced practice registered nurses (APRN) to also complete a POLST directly with patients and families. We believe that expanding access to APRNs to complete POLST forms will be highly beneficial for individuals living in rural areas or the neighbor-islands.

We strongly support SB 2227, and believe that increasing access to POLST will further improve the health and well-being for all the people of Hawai`i.

Thank you for the opportunity to testify today.

Sincerely,

Jennifer Diesman
Vice President
Government Relations

HAWAII MEDICAL ASSOCIATION
1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814
Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

LATE

DATE: ~~Wednesday, March 12, 2014~~ March 12, 2014
TIME: ~~8:30 AM~~ 8:30 AM
PLACE: ~~Conference Room 329~~ Conference Room 329

TO:
COMMITTEE ON HEALTH
Rep. Della Au Belatti, Chair
Rep. Dee Morikawa, Vice Chair

FROM: Hawaii Medical Association
Dr. Walton Shim, MD, President
Dr. Linda Rasmussen, MD, Legislative Co-Chair
Dr. Ron Kienitz, DO, Legislative Co-Chair
Dr. Christopher Flanders, DO, Executive Director
Lauren Zirbel, Community and Government Relations

RE: SB 2227

In this testimony, first, we would like to address SB2227, and then turn the committee's attention to what we respectfully suggest are problematic changes that were made during second and third hearings for the companion measure, HB2052 and address concerns we now have subsequently.

We strongly support SB2227, as written, as it maintains the statutory requirements to allow POLST to continue to be effective in the State of Hawaii, while also expanding access by allowing APRNs to participate in signatory authority. When it comes to avoiding unwanted medical treatments at the end of life, Physician Orders for Life Sustaining Treatments (POLST) have been shown to be nearly 100% effective in preventing unwanted treatments while other directives, such as living wills, have not been shown effective. POLST have never been shown to be a barrier to people receiving the treatments that they do desire. Unfortunately, access to care continues to be an issue, particularly for those with advanced illness. Many patients that would wish to complete a POLST to avoid unwanted medical treatment are confined to their beds at home, in a nursing facility, or a hospice. Advanced practice nurses have been critical in providing needed medical care to these patients. Not permitting Advanced Practice Nurses to

sign POLST forms means many patients in need cannot complete them, leaving them vulnerable to unwanted, aggressive treatment, such as electric shocks to the chest or placement on an artificial respirator, at the end of life when most people would prefer to focus on their comfort and dignity.

Turning the committee's attention now to HB2052, HD2, we would like to take this opportunity to address substantive changes made to HB2052 HD2, by the House Judiciary committee, in response to two testimonies which raised mirroring concerns.

- **Delete Section 6, requiring DOH to adopt a sample POLST "Form"**

1. **The POLST is an order for medical treatments.**

a. Physician orders should not be legislated. Physician orders should be based upon best practices, and able to be changed within the professional community, best positioned to keep current.

b. Hawaii has successfully achieved the voluntary universal adoption of the same POLST Order form throughout the state. The Hawaii form has been modeled after national forms which has also been adopted by other states. Grant funding and voluntary grass roots support has spread POLST to every island, hospital, nursing home, home care, hospice and most care homes.

c. The existing statute, 327K-4 allows for voluntary rules creation by the Department of Health.

d. Rules making and mandatory form adoption will delay forward movement.

- **Restore Section 4 (3) (A): "Lacks Capacity"**

1. **Section 4 (3) (A) of HB 2052, HD2 deletes "Lacks capacity", which impedes decision making powers**.

a. The change in HB2052, HD2 effectively eliminates the authority of an individual who was not designated by the patient in an Advance Directive (under section 327E) to create a POLST order.

b. We request that SB2227 retain the "lack capacity" provision to ensure the authority for ALL legally authorized representatives to make decisions as provided for in the Advance Directive Law (327E).

- **Address Concerns Raised in House Consumer Protection and House Judiciary Committees**

1. **Testimony from two individuals spoke to the "problematic areas with respect to the authority of 'non-designated surrogates' to make certain health care decisions on behalf of incapacitated patients on the POLST form and specifically decisions to withhold or withdraw artificial hydration and nutrition as provided in Chapter 327E."**

a. Both individuals testifying fully support POLST, and the expansion of POLST to include APRN.

b. Both individuals indicate that the concern lies in Chapter 327E, not in the POLST form.

c. Indeed, one individual stated this was ancillary to the [core] POLST discussion.

d. Currently, Chapter 327E-(g) allows for: *"A surrogate who has not been designated by the patient may make all health-care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the primary physician and a second independent physician certify in the patient's medical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future.*"

e. By only allowing a designated decision maker(that is one who was appointed in writing by the patient through an advance directive) to sign a POLST the amendment in HD2 effectively contradicts the existing law in 327E-5. Thus, those individuals will be disenfranchised from accessing POLST as a means of establishing a portable treatment plan consistent with the values and best interest of those legally authorized to represent them.

f. How is a non-designated surrogate decision maker appointed? Each hospital must follow the laws as established in 327E-5 for identifying the decision maker. In the event the patient has not designated one, the law allows for a group of interested persons to reach consensus and request that one individual be designated to serve in that role. Further, 327E-5(i) also mandates: *"A supervising health-care provider shall require a surrogate to provide a written declaration under the penalty of false swearing stating facts and circumstances reasonably sufficient to establish the claimed authority."*

g. Most hospitals have been dealing with this issue for years, since the passage of 327E. We have examples of several hospital forms which require such statement under penalty of false swearing.

h. The concerted effort of the entire state's leadership in hospice and palliative care continues in their efforts to promote advance directives and effective conversations about treatment choices at the end of life.

i. Each health care provider must address their process for obtaining a representative to make decisions for the incapacitated patient who has not designated someone.

j. **Note:** POLST was not designed to be the form or tool that designated a decision maker. When POLST was created, we recognized that it was a complementary tool to the advance directives, and that the POLST orders were completed upon the clinical need of the patient. By contrast, an advance directive can be completed years in advance of a clinical need, and require 2 witnesses or notary to be legal.

- **We understand the intent of those who ask for "safeguards" to be added into the POLST Order form**

1. We respectfully recommend that to modify POLST away from its original design does not fix the problems they have identified.
2. To strengthen language and powers of the so-called "non-designated surrogate" the legislature might consider amending 327E, HRS.
3. The way the POLST legislation is designed is to be consistent with the Advance Directive law and not requiring amendment each time 327E, HRS is changed.

We respectfully request that the committee consider and advance the language in S.B. 2227 to ensure the continued effectiveness, as well as expanded access to POLST. We hope we have satisfactorily outlined our concerns on H.B. 2052, HD2. We welcome continued dialog with interested parties on re-examining Chapter 327E, HRS during the interim.

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

LATE

HAWAII ASSOCIATION of PROFESSIONAL NURSES

Written Testimony Presented Before the
House Committee on Health
March 12, 2014 8:30 am

SB 2227 RELATING TO PROVIDER ORDERS FOR LIFE SUSTAINING TREATMENT

Chair Belatti, Vice Chair Morikawa, and members of the House Committee on Health, thank you for this opportunity to provide testimony in **STRONG SUPPORT** of this bill, SB 2227.

The measure supports increasing access to POLST by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; particularly, expanding health care provider signatory authority to include advanced practice registered nurses (APRNs); and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient.

Following the barrier-breaking legislation passed between 2009 and 2011, APRNs are able to function independently as primary care providers[1]. Since that time, countless individuals living in the State of Hawaii have selected an APRN as their primary care provider; this is especially true in medically underserved and rural areas. However, these same individuals would be denied access to POLST with their preferred provided as a result of the current legislative language in place. Therefore, HAPN respectfully requests that this Committee pass HB 2052, unamended. Thank you for the opportunity to testify.

Amy Vasconcellos, Vice Chair
Legislative Committee
Hawaii Association of Professional Nurses

[1] **Act 169, SLH 2009** required insurers/HMOs/benefit societies to recognize APRNs as PCPs; authorized APRNs to sign, certify, or endorse all documents relating to health care within their scope of practice provided for their patients including workers' compensation, verification documents, verification and evaluation forms the DHS and DOE, verification and authorization forms of the DOH and physical examination forms.
Act 57, SLH 2010 the adoption of the National Council of State Boards of Nursing's Model Nurse Practice Act and Model Nursing Administrative Rules.

P.O. Box 4314, Honolulu, HI 96812; Phone: (808) 255-4442; Fax: (808) 593-7703

Act 110, SLH 2011 required each hospital in the State licensed under Hawai`i Revised Statutes (HRS), § 321-14.5 is required to allow[1] APRNs [1] and qualified APRNs granted prescriptive authority to practice within the full scope of practice including as a primary care provider. APRNs granted prescriptive authority to prescribe controlled drugs (Schedule II-V) within formulary appropriate to the APRN's specialty. Able to prescribe drugs without working relationship agreement with a licensed physician

P.O. Box 4314, Honolulu, HI 96812; Phone: (808) 255-4442; Fax: (808) 593-7703

morikawa2-Joanna

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 10, 2014 2:57 PM
To: HLTtestimony
Cc: bishopmattj@gmail.com
Subject: *Submitted testimony for SB2227 on Mar 12, 2014 08:30AM*

SB2227
Submitted on: 3/10/2014
Testimony for HLT on Mar 12, 2014 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Matt Bishop	Individual	Support	No

Comments:

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morikawa2-Joanna

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 11, 2014 6:43 AM
To: HLTtestimony
Cc: dfischberg@mac.com
Subject: Submitted testimony for SB2227 on Mar 12, 2014 08:30AM

SB2227
Submitted on: 3/11/2014
Testimony for HLT on Mar 12, 2014 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Fischberg, MD, PhD	Individual	Support	No

Comments: I support the bill without house amendments limiting LAR and mandating a state form

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Written Testimony Presented Before the
Senate Committee on Health
March 12, 2013 8:30 a.m.

by
Lenora Lorenzo DNP, APRN, FAANP
Family, Geriatrics and Diabetes Nurse Practitioner
Region 9 Director, American Association of Nurse Practitioners

SB 2227, SD1 RELATING TOPROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT

Chair Belatti, Vice Chair Morikawa, and members of the Senate Committee on Health,

thankyou for this opportunity to provide testimony in strong support of this bill, SB 2227, SD1.

The American Association of Nurse Practitioners and I as a Practicing APRN support increasing access to POLST by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; particularly, expanding health care provider signatory authority to include advanced practice registered nurses (APRNs); and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient. POLST is a tool to help ensure that patients make informed decisions and that their wishes are honored across health care settings. POLST requires a meaningful dialog between patients and their physicians or APRNs (especially in rural, medically underserved areas of Hawai'i.

HB 2052 is consistent with barrier-breaking legislation made between 2009-2011, when the Legislature authorized[1] APRNs to function independently as primary care providers to help relieve the oncoming shortage of primary care physicians[2].

---

[1]**Act 169, SLH 2009** required insurers/HMOs/benefit societies to recognize APRNs as PCPs; authorized APRNs to sign, certify, or endorse all documents relating to health care within their scope of practice provided for their patients including workers' compensation, verification documents, verification and evaluation forms the DHS and DOE, verification and authorization forms of the DOH and physical examination forms.
Act 57, SLH 2010 the adoption of the National Council of State Boards of Nursing's Model Nurse Practice Act and Model Nursing Administrative Rules.
Act 110, SLH 2011 required each hospital in the State licensed under Hawai`i Revised Statutes (HRS), § 321-14.5 is required to allow[1] APRNs [1]and qualified APRNs granted prescriptive authority to practice within the full scope of practice including as a primary care provider. APRNs granted prescriptive authority to prescribe controlled drugs (Schedule II-V) within formulary appropriate to the APRN's specialty. Able to prescribe drugs without working relationship agreement with a licensed physician

[2]A 2010 study by the John A. Burns School of Medicine reported a current shortage of 600 physicians (more than 20% of the current supply) and an impending shortage of 1,600 by 2020. "Because physician shortages of the magnitude described will directly impact the health and well-being of virtually all residents of Hawai'i, something must be done. Unfortunately, there is no easy fix to the problem. The problem is most acute on the island of Hawai'i, but people everywhere, including urban O'ahu are also starting to feel the effects in a variety of specialties… If Hawai'i's utilization of physician services were to match the average mainland usage, our current demand for physicians would be about 3,500. If Hawai'i's population grows as anticipated without change being made in the system of care or current utilization patterns, our state will need over 4,000

As a practicing APRN, this bill will increase access to care for patients by allowing APRN's to practice to the extent of our training and licensure and provide needed end of life care decision making with provider and patients. Thus after dialogue with our patients to ensure informed decisions we would be able to honor their wishes in all health settings and prevent delays or additional costs to health care and consumers.

Therefore, we respectfully requests passage of this measure. We appreciate your continuing support of nursing and APRNs in Hawai'i. Thank you for the opportunity to testify.

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doctors by the year 2020. It is expected that even with active recruitment Hawai'i will probably suffer a net loss of approximately 50 physicians every year in the face of dramatically rising demand. If the delivery system remains the same as today, many Hawai'i residents will not have timely access to care. The indigent and elderly will feel it first. As the shortage deepens, we'll all experience the effects". The ten top solutions identified by the working groups to be addressed most urgently include the use of non-physician clinicians (*Report to the 2011 Hawaii State Legislature: Report on Findings from the Hawaii Physician Workforce Assessment Project.* Withy, K. and Sakamoto, D.T. John A. Burns School of Medicine, December, 2010).

morikawa2-Joanna

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 10, 2014 8:56 PM
To: HLTtestimony
Cc: teresa.parsons@hawaii.edu
Subject: Submitted testimony for SB2227 on Mar 12, 2014 08:30AM

SB2227
Submitted on: 3/10/2014
Testimony for HLT on Mar 12, 2014 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons	Individual	Support	No

Comments: Senators, I stand in STRONG SUPPORT of SB 2227 regarding expanding signatory authority to include advanced practice registered nurses. This will promote efficiency, assist with a timely completion of provider orders for life-sustaining treatment for patients, and expand access to health care professionals who may sign provider orders for life-sustaining treatment. This will be highly beneficial for individuals living in rural areas and neighbor islands as well as be in compliance with the Patient Protection, Affordable Care Act which encourages practicing to the fullest extent of licensure. Mahalo for allowing me to submit testimony in STRONG SUPPORT of SB 2227.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

Jackie Mishler RN BSN PCCN
Post Office Box 892
Kula, Hawaii 96790
561-8673

My name is Jackie Mishler. I am a Certified Progressive Care nurse from Maui and have been involved in Advance Directives and POLST since they became part of Hawaii law and practice.

I believe there is an underlying problem with this bill, whether the term used is "surrogate" or "legal representative." The problem is – in actual practice – the lack of standards for someone assuming the role of making medical decisions for the patient.

A patient can designate a representative through signature, can choose an agent through an Advance Directive, or can be placed in the care of a guardian through a court procedure. Each of these types of representative is authorized through procedures that are legally defined and are verifiable. And each of these representatives can authorize Do Not Resuscitate and other orders on behalf of the patient.

What is currently called a "non-designated surrogate" is someone NOT chosen by the patient. There is neither standard form for this selection nor a state-wide form that documents the reason or authority for the selection. Yet this person too can authorize a Do Not Resuscitate order. This is a significant weakness in our system of patient care.

But there is a solution, the wording for which is contained in HSR 327E-7 (i).
This reads, "A supervising health care provider shall require a surrogate to provide a written declaration under the penalty of false swearing stating facts and circumstances reasonably sufficient to establish the claimed authority".

In my professional capacity as a nurse I have examined different forms that purported to establish a non-designated surrogate. Those forms were sometimes not completely filled in, did not list the circumstances for the establishing the surrogacy, and did not have a declaration under penalty of false swearing. There is no standard form for this. That is the difficulty.

I urge the Committee to authorize the creation of a statewide form, the completion of which will be required for a representative not designated by the patient who will have the responsibility for making medical decisions for that patient, and that this form embody all the language of 327E-7(i). It can then be attached to the POLST form making it clear the signature is clearly authorized. If someone is in the position of making life-and-death decisions for a patient, such as authorizing a Do Not Resuscitate order, stopping antibiotics, etc., that authorization should be clear and oversight should be possible. Right now this is not the case.

Thank you so much for considering this matter carefully.

House Health Committee Hearing Wednesday 3/12/14 SB2227
Regarding POLST Physician/Provider Order for Life Sustaining Treatment

Jackie Mishler RN BSN PCCN
Post Office Box 892
Kula, Hawaii 96790
561-8673

If someone is in the position of making life and death decisions and choices for a patient such as authorizing a Do Not Resuscitate order, stopping antibiotics, etc., that authorization should be clear and oversight should be possible. Right now that is not the case. This bill magnifies this weakness in **protection** of the incapacitated patient.

I am not able to change my work schedule to attend but would like to ask that the Health Committee adopt the position taken by the House Judiciary in HB2052 HD 2 and not allow a non designated surrogate to fill out a POLST form.

If the Health Committee cannot take that position then I suggest they adopt the Senate Judiciary version and require the DOH to come up with a standard written declaration of surrogate form that conforms to section 327E-5 (i) Hawaii Revised Statutes which requires a supervising health-care provider to require a surrogate to provide a written declaration under the penalty of false swearing stating facts and circumstances reasonably sufficient to establish the claimed authority. The inclusion of this language in a standard written declaration of surrogate form increases the accountability of surrogates in making life and death decisions for patients who lack decisional capacity to provide informed consent to or refuse medical treatments.

Thank you for this opportunity to testify. Please call me if you need further clarification or if I can answer any questions that may arise from this testimony.

LATE

TO: Chair of Health Committee
Chair of Judiciary and Labor

SB 2227 relating to Providers Orders for Life-Sustaining Treatment

Monday, March 12, 2014- 8:30am HLT room 329

My name is Kevin and I'm in favor of SB 2227 relating to Providers Orders for Life-Sustaining Treatment. The importance of allowing a "provider" instead of a Physician to sign the POLST will allow more individuals to have this important document signed.

In closing, Please approve SB 2227 into law. Thank you for the opportunity to testify.

Written Testimony Presented Before the
Senate Committee on Health
March 12, 2013 8:30 a.m.
by

LATE

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SB 2227, SD1 RELATING TO PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT

Chair Belatti, Vice Chair Morikawa, and members of the Senate Committee on Health, thank you for this opportunity to provide testimony in strong support of this bill, SB 2227, SD1.

I am writing to support increasing access to POLST by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; particularly, expanding health care provider signatory authority to include advanced practice registered nurses (APRNs); and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient. POLST is a tool to help ensure that patients make informed decisions and that their wishes are honored across health care settings. POLST requires a meaningful dialog between patients and their physicians or APRNs (especially in rural, medically underserved areas of Hawai'i.

SB 2227, SD1 is consistent with barrier-breaking legislation made between 2009-2011, when the Legislature authorized[1] APRNs to function independently as primary care providers to help relieve the oncoming shortage of primary care physicians[2].

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[1] **Act 169, SLH 2009** required insurers/HMOs/benefit societies to recognize APRNs as PCPs; authorized APRNs to sign, certify, or endorse all documents relating to health care within their scope of practice provided for their patients including workers' compensation, verification documents, verification and evaluation forms the DHS and DOE, verification and authorization forms of the DOH and physical examination forms.
Act 57, SLH 2010 the adoption of the National Council of State Boards of Nursing's Model Nurse Practice Act and Model Nursing Administrative Rules.
Act 110, SLH 2011 required each hospital in the State licensed under Hawai`i Revised Statutes (HRS), § 321-14.5 is required to allow[1] APRNs [1] and qualified APRNs granted prescriptive authority to practice within the full scope of practice including as a primary care provider. APRNs granted prescriptive authority to prescribe controlled drugs (Schedule II-V) within formulary appropriate to the APRN's specialty. Able to prescribe drugs without working relationship agreement with a licensed physician.

[2] A 2010 study by the John A. Burns School of Medicine reported a current shortage of 600 physicians (more than 20% of the current supply) and an impending shortage of 1,600 by 2020. "Because physician shortages of the magnitude described will directly impact the health and well-being of virtually all residents of Hawai'i, something must be done. Unfortunately, there is no easy fix to the problem. The problem is most acute on the island of Hawai'i, but people everywhere,

Therefore, I respectfully request passage of this measure. I appreciate your continuing support of nursing and education in Hawai'i. Thank you for the opportunity to testify.

Lynda A Hirakami APRN FNP
12-4265 Pahoa Kalapana Rd
Pahoa HI 96778

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including urban O‘ahu are also starting to feel the effects in a variety of specialties… If Hawai‘i’s utilization of physician services were to match the average mainland usage, our current demand for physicians would be about 3,500. If Hawai‘i’s population grows as anticipated without change being made in the system of care or current utilization patterns, our state will need over 4,000 doctors by the year 2020. It is expected that even with active recruitment Hawai‘i will probably suffer a net loss of approximately 50 physicians every year in the face of dramatically rising demand. If the delivery system remains the same as today, many Hawai‘i residents will not have timely access to care. The indigent and elderly will feel it first. As the shortage deepens, we’ll all experience the effects". The ten top solutions identified by the working groups to be addressed most urgently include the use of non-physician clinicians (*Report to the 2011 Hawaii State Legislature: Report on Findings from the Hawaii Physician Workforce Assessment Project.* Withy, K. and Sakamoto, D.T. John A. Burns School of Medicine, December, 2010).