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# A BILL FOR AN ACT

RELATING TO HEALTH.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that it is critical for  
2 the stability of Hawaii's health care system for patients to be  
3 covered by private insurance or government subsidized health  
4 care coverage whenever possible. In 2017, the department of  
5 human services tried to implement new procedures to allow an  
6 appointed surrogate to act as a patient's authorized  
7 representative to make health care decisions related to  
8 medicaid, including the decision to apply for medicaid benefits,  
9 on behalf of a patient who lacks decision-making capacity and  
10 has not executed a power of attorney or has no legal guardian.  
11 However, there were additional medicaid requirements necessary  
12 to address before achieving this end. Allowing the patient's  
13 appointed surrogate to act as the patient's medicaid authorized  
14 representative will benefit individuals, who may become  
15 financially responsible for services that could have been  
16 covered by medicaid.



1       The legislature finds that it is vital for individuals who  
2   may qualify for medicaid to apply for these benefits without  
3   delay even when they are not capable of making health care  
4   decisions for themselves. Further, if an appointed surrogate is  
5   already making important healthcare decisions for a patient, the  
6   surrogate should also be allowed to help the individual apply  
7   for medical care coverage required to access services.

8       The purpose of this Act is to clarify that health care  
9   surrogates appointed under section 327E-5, Hawaii Revised  
10   Statutes, may operate as authorized representatives in order to  
11   act on behalf of a patient during the medicaid application  
12   process and for medicaid related matters.

13       SECTION 2. Section 327E-2, Hawaii Revised Statutes, is  
14   amended by amending the definition of "surrogate" to read as  
15   follows:

16       "\"Surrogate\" means an individual, other than a patient's  
17   agent or guardian, authorized under this chapter to make a  
18   health-care decision or to act as a medicaid authorized  
19   representative for the patient."

20       SECTION 3. Section 327E-5, Hawaii Revised Statutes, is  
21   amended to read as follows:



1        "[+]§327E-5[+] Health-care decisions; surrogates. (a) A  
2 patient may designate or disqualify any individual to act as a  
3 surrogate by personally informing the supervising health-care  
4 provider. In the absence of such a designation, or if the  
5 designee is not reasonably available, a surrogate may be  
6 appointed to make a health-care decision for the patient.

7        (b) A surrogate may make a health-care decision for a  
8 patient who is an adult or emancipated minor if the patient has  
9 been determined by the primary physician to lack capacity and no  
10 agent or guardian has been appointed or the agent or guardian is  
11 not reasonably available. Upon a determination that a patient  
12 lacks decisional capacity to provide informed consent to or  
13 refusal of medical treatment, the primary physician or the  
14 physician's designee shall make reasonable efforts to notify the  
15 patient of the patient's lack of capacity. The primary  
16 physician, or the physician's designee, shall make reasonable  
17 efforts to locate as many interested persons as practicable, and  
18 the primary physician may rely on such individuals to notify  
19 other family members or interested persons.

20        (c) Upon locating interested persons, the primary  
21 physician, or the physician's designee, shall inform such



1 persons of the patient's lack of decisional capacity and that a  
2 surrogate decision-maker should be selected for the patient.

3 (d) Interested persons shall make reasonable efforts to  
4 reach a consensus as to who among them shall make health-care  
5 decisions on behalf of the patient. The person selected to act  
6 as the patient's surrogate should be the person who has a close  
7 relationship with the patient and who is the most likely to be  
8 currently informed of the patient's wishes regarding health-care  
9 decisions. If any of the interested persons disagrees with the  
10 selection or the decision of the surrogate, or, if after  
11 reasonable efforts the interested persons are unable to reach a  
12 consensus as to who should act as the surrogate decision-maker,  
13 then any of the interested persons may seek guardianship of the  
14 patient by initiating guardianship proceedings pursuant to  
15 chapter 551[-] or chapter 560, as applicable. Only interested  
16 persons involved in the discussions to choose a surrogate may  
17 initiate such proceedings with regard to the patient.

18 (e) If any interested person, the guardian, or primary  
19 physician believes the patient has regained decisional capacity,  
20 the primary physician shall reexamine the patient and determine  
21 whether or not the patient has regained decisional capacity and



1 shall enter a decision and the basis for such decision into the  
2 patient's medical record and shall notify the patient, the  
3 surrogate decision-maker, and the person who initiated the  
4 redetermination of decisional capacity.

5 (f) A surrogate who has been designated by the patient may  
6 make health-care decisions for the patient that the patient  
7 could make on the patient's own behalf.

8 (g) A surrogate who has not been designated by the patient  
9 may make all health-care decisions for the patient that the  
10 patient could make on the patient's own behalf, except that  
11 artificial nutrition and hydration may be withheld or withdrawn  
12 for a patient upon a decision of the surrogate only when the  
13 primary physician and a second independent physician certify in  
14 the patient's medical records that the provision or continuation  
15 of artificial nutrition or hydration is merely prolonging the  
16 act of dying and the patient is highly unlikely to have any  
17 neurological response in the future.

18 The surrogate who has not been designated by the patient  
19 shall make health-care decisions for the patient based on the  
20 wishes of the patient, or, if the wishes of the patient are  
21 unknown or unclear, on the patient's best interest.



1       The decision of a surrogate who has not been designated by  
2       the patient regarding whether life-sustaining procedures should  
3       be provided, withheld, or withdrawn shall not be based, in whole  
4       or in part, on either a patient's preexisting, long-term mental  
5       or physical disability, or a patient's economic status. A  
6       surrogate who has not been designated by the patient shall  
7       inform the patient, to the extent possible, of the proposed  
8       procedure and the fact that someone else is authorized to make a  
9       decision regarding that procedure.

10       (h) A health-care decision made by a surrogate for a  
11       patient is effective without judicial approval.

12       (i) A surrogate may act as a medicaid authorized  
13       representative, pursuant to federal and state medicaid laws  
14       relating to authorized representatives, on the patient's behalf  
15       for the purposes of medicaid, including but not limited to  
16       assisting with, submitting, and executing a medicaid  
17       application, redetermination of eligibility, and other on-going  
18       medicaid-related communications with the department of human  
19       services. For the purposes of medicaid, the surrogate may  
20       access medicaid records of the patient on whose behalf the  
21       surrogate was designated to act. The surrogate shall agree to



1 be legally bound by the federal and state authorities related to  
2 authorized representatives, including but not limited to  
3 maintaining the confidentiality of any information provided by  
4 the department of human services, in compliance with all state  
5 and federal confidentiality laws. The surrogate's status as an  
6 authorized representative for the purposes of medicaid shall  
7 terminate when revoked by the patient who no longer lacks  
8 decisional capacity, upon appointment or availability of an  
9 agent or guardian of the person, or upon the patient's death.

10 ~~[(i)]~~ (j) A supervising health-care provider shall require  
11 a surrogate to provide a written declaration under the penalty  
12 of false swearing stating facts and circumstances reasonably  
13 sufficient to establish the claimed authority."

14 SECTION 4. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect on July 1, 3000.



**Report Title:**

Health Care Surrogate; Medicaid Authorized Representative  
Application

**Description:**

Authorizes a health care surrogate to act as a medicaid  
authorized representative to assist a patient with a medicaid  
application and eligibility process and in communications with  
the Department of Human Services. Specifies the duties and  
obligations of the surrogate. Effective 7/1/3000. (SD1)

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not legislation or evidence of legislative intent.*

