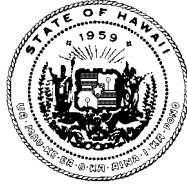


DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 7, 2018

TO: The Honorable Representative John M. Mizuno, Chair
House Committee on Health and Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 1812 HD 1 – RELATING TO HEALTH**

Hearing: Thursday, February, 8, 2018, 9:00 a.m.
Conference Room 329, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the measure, offers comments, and suggests an amendment.

PURPOSE: The purpose of the bill is to clarify that health care surrogates appointed under section 327E-5, Hawaii Revised Statutes (HRS), may operate as authorized representatives in order to assist a patient with the Medicaid application process.

We agree that ensuring timely access to Medicaid, in particular, to long-term care services, is important for the health care delivery system, the long-term care system and most importantly, our residents. We would like to clarify that in our current Hawaii Administrative rule (HAR) section 17-1711.1-9, we continue to have the provision that allow us to accept an application and documentation required to establish eligibility for Medicaid when someone acting responsibly for the incapacitated person turns it in to us.

However, this does not guarantee the application will be approved. If a decision cannot be made from the information submitted on the application, it will be pended for the missing information, and if that is not provided, the case will be denied. This is not a new process. To reiterate, this HAR has not changed, thus, someone who is incapacitated or

lacking decision-making abilities can still have a responsible person turn in an application their behalf, and it will be accepted and reviewed for Medicaid.

Regarding health care surrogates, in February of 2017, our policy team issued an additional chapter to our eligibility workers' procedure manual that allowed a health care surrogate to be treated as an Authorized Representative. The latter is defined in federal law and has specific responsibilities via Medicaid, and the applicant/beneficiary. However, upon further review of section 327E-5 HRS, the health care surrogate law, we rescinded the procedure manual chapter in December 2017. Thus, the health care surrogate procedure had only been in place for ten months and did not become a standard practice as stated in Section 1.

The differences between turning in an application on behalf of an incapacitated person per section 17-1711.1-9 HAR, and treating a health care surrogate as an Authorized Representative relative to Medicaid services, are that there are a number of additional forms to receive Medicaid long term supports and services (LTSS) that can only be signed by the individual, their Authorized Representative, or Power of Attorney. LTSS require information not only about household make-up, income and assets, but also about one's home and estate. Of note, when one receives LTSS, Medicaid is also required to recover from one's estate any costs that the state has made on the person's behalf for their services. Consequently, the request for LTSS includes financial decisions in addition to health care decisions.

For these reasons, using a health care surrogate clearly should only be used as a last resort when other options are not available, such as power of attorney or legal guardianship. We have been advocating that applicants, providers, advocates and/or family members discuss filling out the DHS 1121 Designate Authorized Representative form, or the Appendix C on their application at the point of application should there be a need for one later. That way in the event an individual becomes incapacitated or unable to represent themselves and requires assistance to apply for Medicaid LTSS, the authorized representative, legal guardian or person with power of attorney is proactively identified.

To address the various issues above, we have considered amending the definitions in section 327E-2, HRS, of either "health care" or "health care decision" so that timely and

necessary decisions may be made to stabilize the appropriate care and placement of the incapacitated person; these decisions may include the selection, application and maintenance of health care coverage, as well as applying for Medicaid LTSS process, until such time that an authorized representative or power of attorney is identified and available, or a guardian is appointed. We are willing to work with the proponents of this measure to draft the best language and find a satisfactory solution.

We also suggest changes to the proposed paragraph "(i)". The new language is highlighted and italicized:

(i) A surrogate may act *as an authorized representative* on the patient's behalf *for the purposes of medicaid including, but not limited to, assisting* with a medicaid application, redetermination of eligibility, and other on-going medicaid-related communications with the department of human services. *For the purposes of medicaid, [T]the surrogate may access the records of the patient on whose behalf the surrogate was designated to act, and must agree to maintain, or be legally bound to maintain, the confidentiality of any information provided by the department of human services, in compliance with all state and federal confidentiality laws. The surrogate's status as an authorized representative for the purposes of medicaid terminates when revoked by the patient who no longer lacks decisional capacity, upon appointment or availability of an agent or guardian of the person, or upon the patient's death.*

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



February 8, 2018 at 9:00 AM
Conference Room 329

House Committee on Health and Human Services

To: Chair John M. Mizuno
Vice Chair Bertrand Kobayashi

Re: **Testimony in Support**
HB 1812 HD 1, Relating to Health

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 170 member organizations who represent almost every aspect of the health care continuum in Hawaii. Members include acute care hospitals, skilled nursing facilities, home health agencies, hospices, assisted living facilities and durable medical equipment suppliers. In addition to providing access to appropriate, affordable, high quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 20,000 people statewide.

The Healthcare Association of Hawaii would like to thank the committee for the opportunity to **support** this legislation, which would clarify that surrogate decision-makers are able to apply for critical health care coverage that will provide benefits and financial protection on behalf of patients who lack decisional capacity. According to Hawaii Revised Statutes §327-E5, a surrogate may be appointed to make health-care decisions for a patient who lack decisional capacity. The surrogate decision-maker is authorized to make health-care decisions based on the wishes of the patient or, if the patient's wishes are unknown or unclear, then they must make decisions based on the patient's best interest.

Prior to January 2018, it was standard practice to allow a surrogate appointed under §327-E5 to apply for Medicaid benefits on behalf of a patient who lacked decision-making capacity and did not have a power of attorney or advance care directive. This practice seemed to be in line with Hawaii Administrative Rules §17-1711.1-9, the Department of Human Services "must accept an application for medical assistance and any documentation required to establish eligibility from an applicant, an adult who is in the applicant's household or family, an authorized representative, *or if the applicant is a minor or incapacitated, someone acting responsibly for the applicant*" (emphasis added.)

The department recently changed its policy on this matter, and surrogates are now unable to submit applications for important insurance coverage. This could mean serious financial consequences for patients, who may become financially responsible for services that could have been covered by Medicaid. This will burden patients, their families, and the providers who are treating the patient. This legislation will help to clarify the long-standing practice of continuing to allow surrogates to ensure that patients have needed insurance for their care. Thank you for your consideration of this matter.

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

Affiliated with the American Hospital Association, American Health Care Association, National Association for Home Care and Hospice, American Association for Homecare and Council of State Home Care Associations

February 8, 2018 at 9:00 AM
Conference Room 329

House Committee on Health and Human Services

To: Chair John M. Mizuno
Vice Chair Bertrand Kobayashi

Re: **Testimony in Support**
HB 1812 HD 1, Relating to Health

Aloha Nursing Rehab Centre is a 141-bed Skilled Nursing Facility located in Kaneohe, ministering to the needs of 450 seniors and their families annually and employing 190 dedicated staff. For thirty years, Aloha Nursing has been contributing positively to the community and to the state economy.

Aloha Nursing Rehab Centre would like to thank the committee for the opportunity to **support** this legislation, which would clarify that surrogate decision-makers are able to apply for critical health care coverage that will provide benefits and financial protection on behalf of patients who lack decisional capacity. According to Hawaii Revised Statutes §327-E5, a surrogate may be appointed to make health-care decisions for a patient who lack decisional capacity. The surrogate decision-maker is authorized to make health-care decisions based on the wishes of the patient or, if the patient's wishes are unknown or unclear, then they must make decisions based on the patient's best interest.

Prior to January 2018, it was standard practice to allow a surrogate appointed under §327-E5 to apply for Medicaid benefits on behalf of a patient who lacked decision-making capacity and did not have a power of attorney or advance care directive. This practice seemed to be in line with Hawaii Administrative Rules §17-1711.1-9, the Department of Human Services "must accept an application for medical assistance and any documentation required to establish eligibility from an applicant, an adult who is in the applicant's household or family, an authorized representative, *or if the applicant is a minor or incapacitated, someone acting responsibly for the applicant*" (emphasis added.)

The department recently changed its policy on this matter, and surrogates are now unable to submit applications for important insurance coverage. This could mean serious financial consequences for patients, who may become financially responsible for services that could have been covered by Medicaid. This will burden patients, their families, and the providers who are treating the patient.

Moreover, because these particular beneficiaries are incapacitated, they are unable to designate a power of attorney, and thus, must obtain guardianship for the sole purpose of continuing their Medicaid benefits. Guardianship is a lengthy and costly process, often requiring six months or more in non-emergency cases for the court to grant to an individual. This requirement will needlessly flood the courts with guardianship requests that could otherwise be avoided.

This legislation will help to clarify the long-standing practice of continuing to allow surrogates to ensure that patients have needed insurance for their care. Thank you for your consideration of this matter.

February 8, 2018 at 9:00 AM
Conference Room 329



House Committee on Health and Human Services

To: Chair John M. Mizuno
Vice Chair Bertrand Kobayashi

From: Dee Robinson
Administrator
One Kalakaua Senior Living

Re: **Testimony in Support**
HB 1812 HD 1, Relating to Health/Surrogate Decision Makers

Thank you for the opportunity to testify in **support** of HB 1812 HD 1, which helps to clarify that surrogate decision makers are able to apply for health care coverage, such as Medicaid, on behalf of patients who lack the ability to do so on their own. According to HRS 327-E5, a surrogate may be appointed to make health care decisions for a patient that lacks decisional capacity. The surrogate decision maker is authorized to make health care decisions based on the wishes of the patient or, if the patient's wishes are unknown or unclear, then they are able to make decisions based on the patient's best interest.

Surrogates are used when a patient does not have an advance care directive or legal decision maker such as a power of attorney. Prior to this year, it has been standard practice to allow these surrogates to apply for Medicaid benefits on behalf of a patient that lacked decision making capability, so that the patient is able to get the needed benefits and financial assistance to provide for their care. This practice seemed to be in line with HAR 17-1711.1-9, Department of Health, wherein it states that the DOH must accept an application for medical assistance and any documentation required to establish eligibility from an applicant, an adult who is the applicant's household or family, an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for the applicant.

Recently DOH changed their policy and is not allowing surrogates to submit applications for these benefits, despite the need for this critical coverage. This not only has significant ramifications for the patient (increased financial burden, lack of appropriate care/services, etc.) but also for those providers that assist and care for these patients. This legislation helps to clarify that the long standing, appropriate practice of allowing surrogates to submit these applications on behalf of patients that lack the ability to do so on their own, should be reinstated.

Thank you for the opportunity to testify in support of HB 1812 HD 1.



February 8, 2018; 9:00 A.M.
Conference Room 329

House Committee on Health and Human Services

The Honorable John M. Mizuno, Chair, HHS Committee
The Honorable Bertrand Kobayashi, Vice Chair, HHS Committee

**Re: TESTIMONY IN SUPPORT
HB 1812 HD 1, Relating to Health**

Aloha Nursing Rehab Centre is a skilled nursing facility licensed for 141 Medicare/Medicaid beds located in Kaneohe, Hawaii. Our skilled nursing facility has been in operation and served our community since 1988, providing for the needs of 450 seniors and their families annually. Aloha Nursing Rehab Centre would like to thank the committee for the opportunity to testify in **support** of HB 1812 HD1, which authorizes a health care surrogate to serve as an authorized representative to assist an individual with applying for Medicaid, determining eligibility, and to participate in other ongoing communications with the Department of Human Services.

Prior to January 2018, it was standard practice to allow a surrogate appointed under Hawaii Revised Statutes §327-E5 to apply for Medicaid benefits on behalf of the individual who lacked decision making capacity, and otherwise lacked a power of attorney or guardian to act. This practice is consistent with Hawaii Administrative Rules §17-1711.1-9, which provides that the Department of Human Services “must accept an application for medical assistance and any documentation required to establish eligibility from an applicant, an adult who is in the applicant’s household or family, an authorized representative, or *if the applicant is a minor or incapacitated, someone acting responsibly for the applicant.*” (emphasis added). However, the Department recently changed its policy on this matter, effectively preventing surrogates from acting responsibly on a person’s behalf to obtain and continue Medicaid benefits necessary for their care and well-being.

Aloha Nursing Rehab Centre (Facility) supports this legislation because the legislation (1) will benefit the Facility’s residents who are currently reliant upon surrogates to continue their Medicaid benefits necessary to receive medical care; (2) will save the Facility money on costs associated with potential termination of residents’ Medicaid benefits arising out of a loss of authorized represent to continue Medicaid benefits and on costs associated with guardianship proceedings; and (3) will lead to a greater access to care for our elders in Hawaii’s post-acute care community.

- 1. Medicaid Recipients are reliant upon current surrogates to continue necessary Medicaid eligibility.**



The Facility has had residents who were incapacitated but had a designated surrogate to make healthcare decisions, and completed Medicaid renewals for continued Medicaid eligibility. These residents often lack the capacity to designate a Power of Attorney, and furthermore, are completely reliant upon the Facility and their surrogates for their healthcare, social, and financial needs. Preventing current surrogates to continue Medicaid beneficiaries' necessary Medicaid benefits and to act on their behalf for Medicaid eligibility purposes only serves to harm the beneficiaries themselves and the nursing facilities that are providing the very care necessary to their survival and well-being.

Moreover, because these particular individuals are incapacitated, they are unable to designate a power of attorney, and thus, must obtain guardianship for the sole purpose of continuing their Medicaid benefits. Guardianship is a lengthy and costly process, often taking several months or more. This legislation will prevent needless guardianship proceedings for the sole purpose of designating a guardian to continue Medicaid eligibility. Furthermore, the act of applying for and renewing an applicant or beneficiary's Medicaid benefits is simply a decision of whether and how to provide for the applicant or beneficiary's medical needs and reasonably falls within the Hawaii Revised Statute §327-E5's scope.

2. The legislation will allow nursing facilities to save money on costs associated with residents' Medicaid terminations and Guardianship applications.

If surrogates are no longer able to act responsibly on Medicaid applicants or beneficiaries' behalf, then necessary Medicaid benefits are in grave jeopardy of being terminated due to the inability of the individual to act on their own to secure and maintain benefits. As a result of Medicaid eligibility terminations, nursing facilities, foster homes, and even hospitals will potentially be left providing care without any reimbursement, and will be unable to provide for a safe discharge due to a lack of payer source in place to pay for the individual's care. Furthermore, it will likely fall to nursing facilities to pay for guardianship proceedings, as most Medicaid beneficiaries lack the funds or means to pay for guardianship. This legislation will allow surrogates to secure and maintain vulnerable persons' Medicaid benefits, and thus relieve nursing facilities of the costs associated with Medicaid terminations and guardianship, and otherwise mitigate our courts' and the Office of the Public Guardian's time and resources spent on unnecessary guardianship applications.

3. This legislation will lead to a greater access to care for Hawaii's elders.

If surrogates are permitted to responsibly apply for and maintain an individual's Medicaid benefits, while concurring making healthcare decisions, then nursing facilities and foster homes will likely be more amenable to accepting Medicaid residents for long-term placement that otherwise lack a power of attorney (no longer an option for an incapacitated individual), or guardian. Hospitals will moreover likely have a much easier time discharging patients needed post-acute care services. Consequently, this legislation will reduce the burden on Hawaii's healthcare resources by permitting a greater access to care.



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For the foregoing reasons, Aloha Nursing Rehab Centre thanks the committee for the opportunity to testify in support of HB 1812 HD1.

Respectfully submitted by,

Patrick M. Harrison
Department of Social Services
Aloha Nursing Rehab Centre

To: The Honorable John M. Mizuno, Chair
The Honorable Bertrand Kobayashi, Vice Chair
Members, Committee on Health & Human Services

From: Paula Yoshioka, Vice President of Government Relations and External Affairs, The Queen's Health Systems

Date: Wednesday, February 7, 2018

Hrg: House Committee on Health & Human Services Hearing; Thursday, February 8, 2018 at 9:00AM in Room 329

Re: **Support for HB 1812 HD1, Relating to Health**

My name is Paula Yoshioka, and I am a Vice President of Government Relations and External Affairs at The Queen's Health Systems. We would like to express our **strong support** for HB 1812 HD1, Relating to Health. This bill authorizes a health care surrogate to be an authorized representative to assist a patient with a Medicaid application, redetermination of eligibility, and other related communications with the Department of Human Services.

Health care surrogates are designated or appointed to make health care decisions on behalf of a patient that lacks the capacity to do so. This is an important and necessary role that ensures timely patient care. However, due to a recent change in the interpretation of Hawaii Administrative Rules, Chapter 17-1711.1-12, the health care community was notified that health care surrogates would no longer be able to act as authorized representatives to assist a patient with a Medicaid application including redetermination of eligibility.

These changes are highly problematic for Queen's. We have 21 patients currently waiting for discharge to long-term care facilities who are directly affected by this issue as they had family members acting as health care surrogates that filled out their Medicaid application or redetermination of eligibility forms on their behalf. Going forward this would continue to be a problem affecting our discharge waitlist. The only recourse would be to go through the lengthy court-appointed guardianship process which can take 4-6 months to navigate, further exacerbating our discharge waitlist issue.

As the only Level I Trauma Center, Comprehensive Stroke Program, and provider of transplant services, Queen's is committed to ensuring access to those in need of our specialty acute care and trauma services. Timely discharge to the appropriate level of care is critical for our community so that we do not enter the unfortunate situation where another patient is in need of acute care, but may not be able to access a hospital bed because the Emergency Department may be on divert, the census is full, and a waitlisted patient occupies an acute care bed.

This bill helps to alleviate our discharge waitlist issue by granting Medicaid authorized representative authority to health care surrogates in statute.

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.

We commend the legislature for introducing this measure and ask for your support in passing it.
Thank you for your time and attention to this important issue.

Testimony of
Jonathan Ching
Government Relations Specialist

Before:
House Committee on Health & Human Services
The Honorable John M. Mizuno, Chair
The Honorable Bertrand Kobayashi, Vice Chair

February 8, 2018
9:00 a.m.
Conference Room 329

Re: HB1812 HD1, Relating to Prescription Drugs

Chair Mizuno, Vice-Chair Kobayashi, and committee members, thank you for this opportunity to provide testimony on HB1812 HD1, which authorizes a health care surrogate to be an authorized representative to assist a patient with a Medicaid application, redetermination of eligibility, and other related communications with the Department of Human Services.

Kaiser Permanente Hawai‘i SUPPORTS HB1812 HD1 but requests an AMENDMENT

Prior to January 2018, it was standard practice to allow a surrogate appointed under the Uniform Health-Care Decisions Act, Hawai‘i Revised Statutes §327-E5, to apply for Medicaid benefits on behalf of a patient who lacked decision-making capacity and did not have a power of attorney or advance care directive.

However, as the committee is aware, due to the recent rescinding of the procedure section of Hawai‘i Administrative Rules § 17-1711.1-12, “Authorized Representatives—Surrogate Provisions” by the Department of Human Services Med-QUEST Division, appointed surrogates, who meet the provisions of Hawai‘i law under the Uniform Health-Care Decisions Act, are no longer eligible to be assigned as an “authorized representative” under Medicaid.

Therefore, appointed surrogates are unable to submit applications for important insurance coverage. This change in policy, effective January 11, 2018, will have serious financial and quality of life implications, most notably through prolonged hospitalization of patients. This is likely to exacerbate the issue of waitlisted patients, who no longer need the acute level of care that a hospital provides, but who cannot be safely transferred to a more appropriate setting facility. Finally, this could cause serious financial consequences for patients, who may be responsible for paying for services that could have been covered by Medicaid.

We respectfully ask the committee to consider adopting the following amendment on page 6, lines 1-2 as follows:

1 (i) A surrogate may act on the patient's behalf to assist
2 with, **execute, and complete** a medicaid application, redetermination
3 of eligibility, and other on-going medicaid-related communications
4 with the department of human services. The surrogate may access the
5 records of the patient on whose behalf the surrogate was designated
6 to act.

We believe this language would clarify that the surrogate is explicitly afforded authority to complete a Medicaid application on behalf of the patient.

We respectfully request consideration of our amendment. Thank you for the opportunity to testify on this measure.

HB-1812-HD-1

Submitted on: 2/7/2018 2:42:32 PM

Testimony for HHS on 2/8/2018 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Colin Hosking		Support	Yes

Comments:

Dear Committee Members,

I am writing in support of HB1812, which will allow an authorized representative to assist patients with Medicaid applications and communicate with the Department of Human Services. I am a practicing licensed social worker who previously worked with vulnerable adults as an investigator with Adult Protective Services and I currently work with our kupuna in a skilled nursing facility. I have assisted countless individuals and families apply for Medicaid assistance that they acutely require. Often times these individuals do not have the physical or cognitive ability to navigate the cumbersome MedQUEST application process and require the assistance of family, friends, or professionals such as myself. These individuals often do not have an official Power of Attorney or Legal Guardian that can speak on their behalf.

With that in mind, the MedQUEST division recently communicated that they will no longer be recognizing authorized representatives, placing the health and well-being of the most vulnerable members of our population in jeopardy. These same individuals are often unable to secure a Power of Attorney either due to cognitive impairment or for a lack of interested parties willing to take on the roll. MedQUEST's requirement that these individuals have a legal guardian is even more difficult to fulfill. Obtaining a guardian is a lengthy process, often taking up to six months and is difficult to pursue without hiring an attorney.

If HB1812 does not pass and MedQUEST's policy change stands, the most vulnerable in our state who need Medicaid will be prevented from getting the care they need. For those who already have Medicaid and rely upon an authorized representative to complete their annual renewals, their health coverage and in many cases housing in long-term care facilities is now in jeopardy.

Thank you for your time.