



February 14, 2018, 2:00PM
Conference Room 329

House Committee on Consumer Protection & Commerce

The Honorable Roy M. Takumi, Chair, CPC Committee
The Honorable Linda Ichiyama, Vice Chair, CPC Committee

**Re: TESTIMONY IN SUPPORT
HB 1812 HD 2, 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. We would like to thank the committee for the opportunity to testify in **support** of HB 1812 HD2, 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.

The Department of Human Services recently reversed its policy on permitting surrogates to act as Medicaid authorized representatives, effectively preventing surrogates from acting responsibly on a person's behalf to obtain and continue Medicaid benefits necessary for their care and well-being. Understandably, the Department apparently came to this determination based on a review of the limited powers currently prescribed to a medical surrogate in the State of Hawaii. Moreover, the Department likely believes that language promulgated in Hawaii Administrative Rule §17-1711.1-9, which allows "someone acting responsibly for the applicant" to submit an application for Medicaid benefits on a patient's behalf, is already sufficient. However, Aloha Nursing Rehab Centre strongly supports this bill because without this legislation, patients will nonetheless be at significant risk of losing or being denied Medicaid benefits to receive necessary medical care, services, and/or treatment. Furthermore, this bill will lead to a much greater access to care for our elders in Hawaii's post-acute care community.

1. Medicaid recipients and applicants are reliant upon current surrogates to continue necessary Medicaid eligibility.

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 Medicaid benefits. Persons residing in nursing homes often lack the capacity to designate a Power of Attorney, and furthermore, are completely reliant upon the nursing facility and their surrogates for their healthcare decision-making and daily needs. Because of the inability to designate a power of attorney, often an incapacitated person must obtain guardianship, itself a lengthy and costly process, for the sole purpose of continuing their Medicaid



benefits. While it is true that “someone acting responsibly for the applicant” may submit an application on a patient’s behalf, in this facility’s experience, this authority does not extend to long-term care (LTC) applications. Moreover, because of the additional documentation required for LTC Medicaid renewals, medical surrogates without some other legal authority are incapable of completing Medicaid renewals for LTC Medicaid beneficiaries.

A. This legislation will allow medical surrogates to complete long-term care applications.

Many of the supplemental Medicaid LTC application forms require some designation of legal authority to complete the forms on a patient’s behalf. For example, Medicaid LTC application Department Form Number 8003,¹ pertaining to reporting requirements for individuals requesting coverage of LTC services, requires in pertinent part that “*AUTHORIZED REPRESENTATIVES MUST PROVIDE A COPY OF THE POWER OF ATTORNEY, GUARDIANSHIP DOCUMENT OR A COMPLETED DHS 1121, DESIGNATE AUTHORIZED REPRESENTATION FORM & INFORMATION WHERE THEY MAY BE [sic].” (capitalization in original). For an additional example, Medicaid LTC application Department Form Number 1169A,² pertaining to maintenance of lien status, requires in pertinent part that “THE AUTHORIZED REPRESENTATIVE SIGNING ON BEHALF OF A BENEFICIARY MUST ATTACH COPY OF POWER OF ATTORNEY OR GUARDIANSHIP DOCUMENT AND PROVIDE THEIR CURRENT MAILING ADDRESS.” (capitalization in original). This form additionally allows only for the applicant or authorized representative to sign.

It is in the facility’s experience that for LTC Medicaid applications, the Department has generally required a written designation of authorized representation or other legal authority to complete Medicaid LTC forms, save for the previous policy, in effect for approximately ten months, which allowed surrogates to complete these forms. Understandably, the Department may have the concern that only individuals with a formal designation of authorized representation or legal authority can accurately attest to the applicant or beneficiary’s financial status. This legislation however will *not* allow a surrogate to inaccurately attest to facts on the application or renewal; rather, this bill only grants the legal authority to the medical surrogate to act as a Medicaid authorized representative – the surrogate must still abide by rules and responsibilities prescribed under state and federal law. Indeed, for many individuals, it is possible to verify financial information without additional legal authority. This legislation would grant medical surrogates the necessary legal authority to act as a Medicaid authorized representative to complete not just medical Medicaid applications, but LTC applications as well.

¹ As of revision date October 2016. See *DHS Forms*, STATE OF HAWAII DEPT. OF HUMAN SVCS., <https://medical.mybenefits.hawaii.gov/web/kolea/home-page/-/hawaii-footer-content/showFooterPages?pageTo=DHSForms> (last visited Feb. 12, 2018).

² As of revision date October 2016. See *DHS Forms*, STATE OF HAWAII DEPT. OF HUMAN SVCS., <https://medical.mybenefits.hawaii.gov/web/kolea/home-page/-/hawaii-footer-content/showFooterPages?pageTo=DHSForms> (last visited Feb. 12, 2018).



B. This legislation will allow medical surrogates to renew long-term care benefits.

Many of the supplemental Medicaid LTC renewal forms also require some designation of legal authority to complete the LTC supplemental forms on a patient's behalf. On or about July 2016, this facility received notification that effective August 2016, every Medicaid LTC eligibility renewal will require all the Medicaid LTC supplemental forms to be completed in addition to the Medicaid renewal pre-populated form – the same supplemental forms that are required for a Medicaid LTC application. For the foregoing reasons, this legislation would also grant medical surrogates the legal authority to act as a Medicaid authorized representative to renew Medicaid LTC benefits on an annual basis.

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

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. If surrogates are permitted to responsibly apply for and maintain an individual's Medicaid benefits, while concurrently making healthcare decisions, then nursing facilities and foster homes will likely be more amenable to accepting Medicaid residents for long-term placement where they otherwise would have denied admission. This legislation will greatly relieve hospitals the burden of the challenge in discharging patients needing LTC services that otherwise lack a power of attorney or guardian to . Consequently, this legislation will reduce the burden on Hawaii's healthcare resources by permitting a greater access to care.

For the foregoing reasons, Aloha Nursing Rehab Centre thanks the committee for the opportunity to testify in support of HB 1812 HD2.

Respectfully submitted by,

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

Testimony of
Jonathan Ching
Government Relations Specialist

Before:
House Committee on Consumer Protection & Commerce
The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair

February 14, 2018
2:00 p.m.
Conference Room 329

Re: HB1812 HD2, Relating to Health

Chair Takumi, Vice-Chair Ichiyama, and committee members, thank you for this opportunity to provide testimony on HB1812 HD2, 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 HD2 and 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.

Kaiser Permanente Hawai'i looks forward continuing to work with stakeholders, including the Department of Human Services Med-QUEST division, to draft the best language and find a satisfactory solution to this issue. We respectfully ask the committee to consider adopting the following amendment on page 6, lines 1-6 as follows:

(i) A surrogate may act as a medicaid authorized representative, pursuant to federal and state medicaid laws relating to authorized representatives, on the patient's behalf to assist with, execute, and submit an application for [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. The surrogate must agree to be legally bound by the federal and state authorities related to authorized representatives, including but not limited to, maintaining 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.

We believe this language would clarify that the surrogate is explicitly afforded authority to assist and submit an application for Medicaid, redetermination of eligibility, and other on-going Medicaid-related communications with the Department of Human Services.

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



February 14, 2018 at 2:00 PM
Conference Room 329

House Committee on Consumer Protection and Commerce

To: Chair Roy M. Takumi
Vice Chair Linda Ichiyama

From: Paige Heckathorn
Senior Manager, Legislative Affairs
Healthcare Association of Hawaii

Re: **Testimony in Support**
HB 1812 HD 2, 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 healthcare 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 authorized representatives who can apply patients for critical healthcare coverage that will provide benefits and financial protection for those who lack decisional capacity. According to Hawaii Revised Statutes (HRS) §327-E5, a surrogate may be appointed to make healthcare decisions for a patient who lacks decisional capacity. The surrogate decision-maker is authorized to make healthcare 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, the Department of Human Services (DHS) accepted applications for Medicaid benefits from surrogates appointed under §327-E5 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, which states 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.)

Our members were notified in January 2018 that this application option would no longer be available. 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.

Without this legislation, the waitlist issue may be exacerbated. Waitlisted patients are individuals who no longer require an acute level of care, but who cannot be discharged to another setting for more appropriate care. The costs incurred by hospitals for caring for waitlisted healthcare patients are significant. A 2014 report by the Hawaii Health Information Corporation found that there were 7,055 patients who were waitlisted in Hawaii hospitals in 2011. The costs to hospitals of taking care of those patients was \$1,259 per day, with a net annual loss of approximately \$60 million. Further, patients who need acute care services may not be able to access a hospital bed if it is taken up by an individual who no longer meets that level of care but cannot be moved to an appropriate facility.

We ask for your consideration of a few amendments to the legislation to ensure clarity. Those amendments are included at the end of this testimony, with relevant sections highlighted. The main requests would be to:

1. Clarify that surrogates should be considered a Medicaid authorized representative; and
2. Ensure that surrogates may assist with, submit, and execute a Medicaid application for all programs, while protecting a patient's records.

We have some concerns on a potential amendment stating that "The surrogate must agree to be legally bound by the federal and state authorities related to authorized representatives..." This seems to require surrogates appointed under this chapter to complete documentation that could create potentially unnecessary barriers to getting needed medical care for patients who lack decisional capacity and may, in practice, defeat the purpose of this legislation. We do agree with amendments to ensure that the confidentiality of patient records is maintained.

Thank you for your consideration of our support and suggested amendments.

SECTION 2. Section 327E-2, Hawaii Revised Statutes, is amended to read as follows:

§327E-2 Definitions. Whenever used in this chapter, unless the context otherwise requires:

"Advance health-care directive" means an individual instruction or a power of attorney for health care.

"Agent" means an individual designated in a power of attorney for health care to make a health-care decision for the individual granting the power.

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

(1) The effect of the treatment on the physical, emotional, and cognitive functions of the patient;

(2) The degree of physical pain or discomfort caused to the individual by the treatment or the withholding or withdrawal of the treatment;

(3) The degree to which the individual's medical condition, the treatment, or the withholding or withdrawal of treatment, results in a severe and continuing impairment;

(4) The effect of the treatment on the life expectancy of the patient;

(5) The prognosis of the patient for recovery, with and without the treatment;

(6) The risks, side effects, and benefits of the treatment or the withholding of treatment; and

(7) The religious beliefs and basic values of the individual receiving treatment, to the extent that these may assist the surrogate decision-maker in determining benefits and burdens.

"Capacity" means 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.

"Emancipated minor" means a person under eighteen years of age who is totally self-supporting.

"Guardian" means a judicially appointed guardian having authority to make a health-care decision for an individual.

"Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual's physical or mental condition, including:

(1) Selection and discharge of health-care providers and institutions;

(2) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and

(3) Direction to provide, withhold, or withdraw artificial nutrition and hydration; provided that withholding or withdrawing artificial nutrition or hydration is in accord with generally accepted health care standards applicable to health-care providers or institutions.

"Health-care decision" means a decision made by an individual or the individual's agent, guardian, or surrogate, regarding the individual's health care.

"Health-care institution" means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

"Health-care provider" means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

"Individual instruction" means an individual's direction concerning a health-care decision for the individual.

"Interested persons" means 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 any adult who has exhibited special care and concern for the patient and who is familiar with the patient's personal values.

"Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Physician" means an individual authorized to practice medicine or osteopathy under chapter 453.

"Power of attorney for health care" means the designation of an agent to make health-care decisions for the individual granting the power.

"Primary physician" means a physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

"Reasonably available" means able to be contacted with a level of diligence appropriate to the seriousness and urgency of a patient's health care needs, and willing and able to act in a timely manner considering the urgency of the patient's health care needs.

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

"Supervising health-care provider" means the primary physician or the physician's designee, or the health-care provider or the provider's designee who has undertaken primary responsibility for an individual's health care.

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

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

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

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

(c) Upon locating interested persons, the primary physician, or the physician's designee, shall inform such persons of the patient's lack of decisional capacity and

that a surrogate decision-maker should be selected for the patient.

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

(e) If any interested person, the guardian, or primary physician believes the patient has regained decisional capacity, the primary physician shall reexamine the patient and determine whether or not the patient has regained decisional capacity and shall enter a decision and the basis for such decision into the patient's medical record and shall notify the patient, the surrogate decision-maker, and the person who initiated the redetermination of decisional capacity.

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

(g) 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.

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

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

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

(i) A surrogate may act as a medicaid authorized representative, pursuant to federal and state medicaid laws relating to authorized representatives, on the patient's behalf to assist with, execute, and submit an application for [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. The surrogate must agree 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.

~~(i)~~ (j) 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."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 3000.

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 13, 2018

TO: The Honorable Representative Roy M. Takumi, Chair
House Committee on Consumer Protection & Commerce

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 1812 HD2 – RELATING TO HEALTH**

Hearing: Thursday, February, 14, 2018, 2:00 p.m.
Conference Room 329, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the measure and offers comments with suggested amendments.

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

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. Allowing an appointed surrogate to act as a Medicaid authorized representative has never been the standard practice for the DHS. It was just last year that DHS attempt to implement new procedures to allow a surrogate to act as an individual's Medicaid authorized representative, but determined that there were other specific issues that needed to be addressed and clarified in order for a surrogate to act as the Medicaid authorized representative (i.e., Medicaid confidentiality and termination).

Under the current Hawaii Administrative Rules (HAR) §17-1711.1-12, and federal law at 42 C.F.R. §435.923, an individual must designate their authorized representative in writing. Written designation accepted by DHS under existing State law includes a power of attorney or

a court order establishing legal guardianship. Under the current State surrogate law, a surrogate is required to provide a written declaration under penalty of false swearing stating facts and circumstances reasonably sufficient to establish the surrogate's authority, to a supervising health-care provider.

If this bill passes, in addition to a power of attorney and order establishing legal guardianship, the DHS would also be able to recognize the surrogate's written declaration as a written designation of authority to act as a patient's Medicaid authorized representative, where the patient or individual lacks decisional capacity, and no agent designated by a power of attorney or a legal guardian has been appointed, or is reasonably available.

To correct the statement that the history of allowing a surrogate to act as the Medicaid authorized representative has been standard practice, we have proposed changes to Section 1 of the bill. The proposed language is italicized and highlighted for easy review.

SECTION 1. The legislature finds that it is critical for the stability of Hawaii's health care system for patients to be covered by private insurance or government subsidized health care coverage whenever possible. *In 2017, the department of human services tried to implement new procedures to allow an appointed surrogate to act as a patient's authorized representative to make health care decisions related to medicaid,* [~~Until recently, it was standard practice to allow an appointed surrogate to make health care decisions,~~] including the decision to apply for medicaid benefits, on behalf of a patient who lacks decision-making capacity and has not executed a power of attorney or [~~advance health care directive~~] *has no legal guardian.* However, [~~it is the understanding of the legislature that surrogates are no longer allowed to submit medicaid applications on behalf of an individual who lacks capacity. This will have dire implications for these~~] *there were additional medicaid requirements necessary to address before achieving this end. Allowing the patient's appointed surrogate to act as the patient's medicaid authorized representative will benefit* individuals, who may become financially responsible for services that [~~should~~] *could* have been covered by medicaid.

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

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

Additionally, to address the various issues raised regarding this bill, the DHS collaborated with other provider stakeholders, and propose the following changes to the definition of "Surrogate" in section 327E-2.

Section 2. Section 327E-2, Hawaii Revised Statutes, is amended by amending the definition of "Surrogate" to read as follows:

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

Finally, we also propose amendments to section 327E-5, HRS, to amend the language in paragraph (d) by adding the reference to the statutory chapter relating to the guardianship of an incapacitated person, and new paragraph (i), to ensure that the surrogate agrees to the federal and state laws regarding authorized representatives, to address confidentiality of Medicaid information, and the termination of the surrogate's status as a Medicaid authorized representative. The proposed language to paragraph (d) is underscored, and the proposed changes to the existing language in paragraph (i) is italicized:

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

. . .

(i) A surrogate may act as a medicaid authorized representative, pursuant to federal and state medicaid laws relating to authorized representatives, 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, [F]the surrogate may access the records of the patient on whose behalf the surrogate was designated to act. The surrogate must agree to be legally bound by the federal and state authorities related to authorized representatives, including but not limited to, maintaining 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.

HB-1812-HD-2

Submitted on: 2/13/2018 1:36:11 PM

Testimony for CPC on 2/14/2018 2:00:00 PM


Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities Committee of the Democratic Party of Hawaii	Support	No

Comments:



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair
Members, Committee on Consumer Protection & Commerce

From:  Paula Yoshioka, Vice President, The Queen's Health Systems

Date: February 13, 2018

Hrg: House Committee on Consumer Protection & Commerce Hearing; Wednesday, February 14, 2018 at 2:00PM in Room 329

Re: **Support for HB 1812 HD2, 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 **support** for HB 1812 HD2, 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. Prior to January 2018, the Department of Human Services (DHS) accepted applications for Medicaid benefits from surrogates appointed under Hawaii Revised Statutes (HRS) 327-E5 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 Chapter 17-1711.1-9, which states that DHS "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, due to a recent change in the interpretation of the HAR, this option would no longer be available.

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 have family members acting as non-designated health care surrogates to assist with applying or requalifying for Medicaid programs 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

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.

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 helping to clarify the long-standing practice of continuing to allow surrogates to ensure that patients have needed insurance for their care. We concur with the amendments proposed by the Healthcare Association of Hawaii.

Thank you for your time and attention to this important issue.

HB-1812-HD-2

Submitted on: 2/12/2018 7:46:48 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joy Marshall	Individual	Support	No

Comments:

To: The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair
Members, Committee on Consumer Protection & Commerce

From: Colin Hosking, MSW, LSW

Date: Monday, February 12, 2018

Hrg: House Committee on Consumer Protection & Commerce Hearing; February 14, 2018 at
2:00pm in Room 329

Re: Support for HB 1812 HD2, Relating to Health

My name is Colin Hosking, and I am a licensed social worker in the skilled nursing and long-term care community here in the State of Hawaii. I work with patients and their families on a daily basis as a discharge planner and rights advocate. I would like to express **strong support** for HB 1812 HD2, Related to Health. This bill authorizes a health care surrogate to act on behalf of a patient in need of Medicaid services, including assistance with the initial application, redetermination of eligibility, and communicating with the Department of Human Services (DHS).

In my experience as a social worker in a skilled nursing facility and in prior work with DHS Adult Protective Services, I have found that many adults in our state do not possess a Power of Attorney or other legal documentation that would grant a friend or relative the power to make decisions on their behalf in the event they lose capacity. For these individuals, often times a friend or relative volunteering to become a health care surrogate is the only recourse available to ensure the patient's wishes are honored and they receive the services they need. As brought to light by DHS' recent change in interpretation of Hawaii Administrative Rules, Chapter 17-1711.1-12, these health care surrogates can no longer assist patients with a Medicaid application and continued annual eligibility redeterminations.

Without passage of this bill, patients lacking capacity to make decisions will face delays in receiving needed healthcare services. Because they lack capacity, these patients can no longer complete an Advance Health Care Directive or Power of Attorney. Under DHS's new interpretation, the only recourse for these patients is pursuit of guardianship by an interested party. The guardianship process takes anywhere from 4 to 6 months followed by the Medicaid application itself, which has historically taken 3 to 6 months from date of application to date of approval.

In the worst-case scenarios, I have seen individuals wait close to a year before they obtain Medicaid services. In the meantime, patients often accrue large health bills with no guarantee that DHS will retroactively cover health care costs while they were waiting on the guardianship process and Medicaid application. This barrier to care and services hurts the most vulnerable of individuals in our community.

This bill will improve access to Medicaid services by allowing health care surrogates to act on the behalf of patients as authorized representatives.

Thank you for the opportunity to testify in support of HB 1812 HD2.

HB-1812-HD-2

Submitted on: 2/13/2018 3:24:39 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Maria E. Cariaga	Individual	Support	No

Comments: