



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

March 28, 2018

TO: The Honorable Senator Brain T. Taniguchi, Chair
Senate Committee on Judiciary

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 1812 HD3 SD1 – RELATING TO HEALTH**

Hearing: Thursday, March 29, 2018, 9:30 a.m.
Conference Room 016, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates and agrees with amendments made by the Senate Committee on Human Services and supports the SD1. DHS asks the effective date by amended to be effective upon approval.

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 act on behalf of a patient during the Medicaid application process and for Medicaid related matters.

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. Just last year, we attempted 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. The bill ensures 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.

Thank you for the opportunity to testify on this measure.



March 29, 2018 at 9:30 AM
Conference Room 016

Senate Committee on Judiciary

To: Chair Brian T. Taniguchi
Vice Chair Karl Rhoads

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

Re: **Testimony in Support**
HB 1812 HD 3 SD 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 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.

Thank you for your consideration of this matter.

Testimony of
Jonathan Ching
Government Relations Specialist

Before:
Senate Committee on Judiciary
The Honorable Brian T. Taniguchi, Chair
The Honorable Karl Rhoads, Vice Chair

March 29, 2018
9:30 a.m.
Conference Room 016

Re: HB1812 HD3 SD1, Relating to Health

Chair Taniguchi, Vice-Chair Rhoads, and committee members, thank you for this opportunity to provide testimony on HB1812 HD3 SD1, which authorizes a health care surrogate to be an authorized representative to assist a patient with a Medicaid application and eligibility process and in communications with the Department of Human Services.

Kaiser Permanente Hawai'i SUPPORTS HB1812 HD3 SD1

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 find a satisfactory solution to this issue.

Thank you for the opportunity to testify on this important measure.



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Brian T. Taniguchi, Chair
The Honorable Karl Rhoads, Vice Chair
Members, Committee on Judiciary

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

Date: March 29, 2018

Hrg: Senate Committee on Judiciary Decision Making; Thursday, March 29, 2018 at 9:30AM in Room 016

Re: **Support for HB 1812 HD3, SD1, Relating to Health**

My name is Paula Yoshioka and I am the Vice President of Government Relations and External Affairs at The Queen's Health Systems. We would like to express our **support** for HB 1812 HD3, SD1, Relating to Health. This bill authorizes a health care surrogate to be an authorized representative to assist a patient with a Medicaid application and eligibility process and in communications with the Department of Human Services. It also specifies the duties and obligations of the surrogate.

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 and related documentation 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, legal guardianship, 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

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.

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 helping 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 time and attention to this important issue.



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March 29, 2018 at 9:30 AM
Conference Room 016

Senate Committee on Judiciary

To: Chair Brian T. Taniguchi
Vice Chair Karl Rhoads

From: Amy Lee
Executive Director
Aloha Nursing Rehab Centre

Re: **Testimony in Support**
HB 1812 HD 3 SD 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.

March 29, 2018 at 9:30 AM
Conference Room 016



House Committee on Health and Human Services

To: Chair Brian Taniguchi
Vice Chair Karl Rhoads

From: Dee Robinson
Administrator
One Kalakaua Senior Living

Re: **Testimony in Support**
HB 1812 HD 3 SD 1, Relating to Health/Surrogate Decision Makers

Thank you for the opportunity to testify in **support** of HB 1812 HD 3 SD 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 on 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 3 SB 1.

HB-1812-SD-1

Submitted on: 3/28/2018 12:11:39 AM

Testimony for JDC on 3/29/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Support	No

Comments: