



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

March 19, 2018

TO: The Honorable Senator Josh Green, Chair
Senate Committee on Human Services

FROM: Pankaj Bhanot, Director

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

Hearing: Wednesday, March 21, 2018, 2:45 p.m.
Conference Room 016, State Capitol

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

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). HB 1812 HD3 bill largely addresses those concerns.

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. See section 327E-5(i), Hawaii Revised Statutes.

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. Additional clarity may be needed regarding accessing records to ensure that it is clear that only references the Medicaid records held by DHS.

Thank you for the opportunity to testify on this measure.



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

March 19, 2018

TO: The Honorable Senator Josh Green, Chair
Senate Committee on Human Services

FROM: Pankaj Bhanot, Director

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

Hearing: Wednesday, March 21, 2018, 2:45 p.m.
Conference Room 016, State Capitol

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

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). HB 1812 HD3 bill largely addresses those concerns.

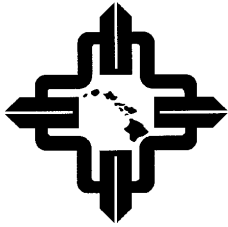
Under the current Hawaii Administrative Rules (HAR) §17-1711.1-12, and federal law at 42 C.F.R. §435.923, an individual must designate their authorized representative in writing. Written designation accepted by DHS under existing State law includes a power of attorney or

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. See section 327E-5(i), Hawaii Revised Statutes.

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. Additional clarity may be needed regarding accessing records to ensure that it is clear that only references the Medicaid records held by DHS.

Thank you for the opportunity to testify on this measure.



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Quality Healthcare For All"

Senate Committee on Human Services
Senator Josh Green, Chair
Senator Stanley Chang, Vice Chair

March 21, 2018
Conference Room 16
2:45 p.m.
Hawaii State Capitol

**Testimony Supporting House Bill 1812, HD3 Relating to Health.
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. Specifies the duties and obligations of the surrogate**

Linda Rosen, M.D., M.P.H.
Chief Executive Officer
Hawaii Health Systems Corporation

On behalf of the Hawaii Health System Corporation (HHSC) Corporate Board of Directors, we are in **support** of H.B. 1812, HD3 Relating to Health, 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.

HHSC supports this measure to assist patients in the Medicaid eligibility and application process. We also support and would appreciate the Committee's consideration of the amendment proposed by the Healthcare Association of Hawaii.

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



March 21, 2018 at 2:45 PM

Conference Room 016

Senate Committee on Human Services

To: Chair Josh Green
Vice Chair Stanley Chang

From: Amy Lee
Executive Director
Aloha Nursing Rehab Centre

Re: **Testimony in Support**
HB 1812 HD 3, 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 authorized representatives who can apply patients for critical healthcare coverage that will provide benefits and financial protection for those who lack decisional capacity. We would also request a small **amendment** in Section (i) on page 6, line 16.

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.

To ensure that surrogates may sufficiently act on behalf of patients, we would request a small amendment to section (i) on page 6, line 16. The portion in red is the requested addition.

(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, submitting, and executing a medicaid application, redetermination of eligibility, and other on-going medicaid-related communications with the department of human services. For the purposes of medicaid, the surrogate may access the records of the patient on whose behalf the surrogate was designated to act. The surrogate shall 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 shall terminate 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 look forward continuing to work with the relevant parties and the legislature on this measure, which is critical to ensuring that patients have access to needed health insurance. Thank you for your consideration of this matter.

Testimony of
Jonathan Ching
Government Relations Specialist

Before:
Senate Committee on Human Services
The Honorable Josh Green, M.D, Chair
The Honorable Stanley Chang, Vice Chair

March 21, 2018
2:45 p.m.
Conference Room 016

Re: HB1812 HD3, Relating to Health

Chair Green, Vice-Chair Chang, and committee members, thank you for this opportunity to provide testimony on HB1812 HD3, 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 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 find a satisfactory solution to this issue. We respectfully ask the committee to consider adopting the following amendment on Section 3, page 6, line 16 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 for the purposes of medicaid including, but not limited to assisting with, **submitting, and executing** a medicaid application, redetermination of eligibility, and other on-going medicaid-related communications with the department of human services. For the purposes of medicaid, the surrogate may access the records of the patient on whose behalf the surrogate was designated to act. The surrogate shall 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 shall terminate 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.



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Josh Green, Chair
The Honorable Stanley Chang, Vice Chair
Members, Committee on Human Services
Paula Yoshioka

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

Date: March 20, 2018

Hrg: Senate Committee on Human Services Hearing; Wednesday, March 21, 2018 at 2:45AM in Room 016

Re: **Support for HB 1812 HD3, 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, 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 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

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.

We concur with the amendments proposed by the Healthcare Association of Hawaii seeking clarifications in the bill.

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



March 21, 2018, 2:45 PM

Conference Room 016

Senate Committee on Human Services

To: The Honorable Josh Green, Chair, Human Services Committee
The Honorable Stanley Chang, Vice Chair, Human Services Committee

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

Re: **TESTIMONY IN SUPPORT**
HB 1812 HD 3, 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 HD3, 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. Aloha Nursing Rehab Centre strongly supports this bill because without this legislation, patients will 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. Finally, we respectfully ask the committee to consider adopting amended language, discussed below.

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].” (emphasis 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.” (emphasis in original). These forms allow only for the applicant or authorized representative with legal authority 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. 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.

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

¹ DHS 8003, *DHS Forms*, STATE OF HAWAII DEPT. OF HUMAN SVCS., (revised Oct. 2016), <https://medical.mybenefits.hawaii.gov/web/kolea/home-page/-/hawaii-footer-content/showFooterPages?pageTo=DHSForms> (last visited Feb. 12, 2018).

² DHS 1169A, *DHS Forms*, STATE OF HAWAII DEPT. OF HUMAN SVCS., (revised Oct. 2016), <https://medical.mybenefits.hawaii.gov/web/kolea/home-page/-/hawaii-footer-content/showFooterPages?pageTo=DHSForms> (last visited Feb. 12, 2018).



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. Aloha Nursing Rehab Centre was additionally informed 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 post-acute care services that otherwise lack a power of attorney or guardian to apply for or maintain Medicaid LTC benefits for the patient. Consequently, this legislation will reduce the burden on Hawaii's healthcare resources by permitting a greater access to care.

3. Request to adopt amended language.

We respectfully ask the committee to consider adopting the following amendments, in section (i) on page 6 (the portions in yellow are the requested amendments). We propose adding language permitting the surrogate to submit and execute a Medicaid application, so that there is no ambiguity as to whether a surrogate can provide more than mere assistance on a Medicaid application.

(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[,] [submitting, and executing] a medicaid application, redetermination of eligibility, and other on-going medicaid-related communications with the department of human services.

We additionally request the committee consider amending language below to federal and state law instead of authorities because presumably the intent is to ensure the compliance with state and federal law in the exercise of Medicaid authorized representation. Finally, we respectfully request the committee



to consider adding the term “medicaid” preceding authorized representatives to provide clarity, because there are a number of federal regulations pertaining to authorized representation.³

For the purposes of medicaid, the surrogate may access the records of the patient on whose behalf the surrogate was designated to act. The surrogate shall agree to be legally bound by the federal and state authorities [by federal and state law] related[ing] to [medicaid] 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 shall terminate 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.

For the foregoing reasons, Aloha Nursing Rehab Centre thanks the committee for the opportunity to testify in support of HB 1812 HD3.

³ See 42 C.F.R. § 435.923 (2017) (pertaining to authorized representation under the State Medicaid plan). Compare with 45 C.F.R. § 155.227 (2017) (pertaining to authorized representation under the Exchange). See also 42 CFR § 441.735 (2017) (pertaining to an individual’s ‘representative’ “with respect to an individual being evaluated for, assessed regarding, or receiving State plan HCBS.”).

March 21, 2018 at 2:45pm
Conference Room 016



Senate Committee on Human Services

To: Chair Josh Green
Vice Chair Stanley Chang

From: Dee Robinson
Administrator
One Kalakaua Senior Living

Re: **Testimony in Support**
HB 1812 HD3, Relating to Surrogate Decision Makers

Thank you for the opportunity to testify in **support** of HB 1812 HD3, which clarifies that surrogate decision makers are authorized representatives for those residents/patients needing critical healthcare coverage but are unable to manage these tasks on their own due to lack of decisional capacity. These surrogates are needed to apply for healthcare coverage that the resident/patient needs to ensure that they receive appropriate medical care in a timely manner.

According to HRS 327-E5, a surrogate may be appointed to make healthcare decisions for a resident/patient that lacks decisional capacity. The surrogate decision maker is authorized to make healthcare decisions based on the wishes of the resident/patient or, if the residents/patients wishes are unknown or unclear, then they must make decisions based on the resident's/patient's best interests.

Until recently, the Department of Human Services (DHS) had the practice of accepting applications for Medicaid benefits from surrogates appointed under HRS 327-E5 on behalf of the resident/patient, for those residents/patients that did not have other legal decision makers available (such as a power of attorney) and who lacked decision making capacity. As of January 2018, DOH no longer accepts surrogates to apply for benefits for these residents/patients. This could lead to very serious financial consequences for residents/patients who may become financially responsible for services that could have been appropriately covered by Medicaid. This becomes a burden for both the resident/patient and the facilities that are caring for them.

This legislation will help clarify that the practice DHS previously had of allowing surrogates to apply residents/patients for their much needed insurance coverage should be reinstated. Without this legislation, it will surely cause serious adverse effects for many patient/residents and the facilities (both Long Term Care and Acute Care) that care for them.

To ensure that surrogates may sufficiently act on behalf of residents/patients, please amend section (i) on page 6, line 16. The portion in red is the requested addition:

(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, submitting, and executing a medicaid application, redetermination of eligibility, and other on-going medicaid-related communications with the department of human services. For the purposes of medicaid, the surrogate may access the records of the patient on whose behalf the surrogate was designated to act. The surrogate shall 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 shall terminate 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 testify in **support** of HB 1812 HD 3.

HB-1812-HD-3

Submitted on: 3/21/2018 4:20:43 AM

Testimony for HMS on 3/21/2018 2:45:00 PM

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: