

---

---

# A BILL FOR AN ACT

RELATING TO HEALTH.

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

1           SECTION 1. The legislature finds that it is critical for  
2 the stability of Hawaii's health care system for patients to be  
3 covered by private insurance or government subsidized health  
4 care coverage whenever possible. Until recently, it was  
5 standard practice to allow an appointed surrogate to make health  
6 care decisions, including the decision to apply for medicaid  
7 benefits, on behalf of a patient who lacks decision-making  
8 capacity and has not executed a power of attorney or advance  
9 health care directive. However, it is the understanding of the  
10 legislature that surrogates are no longer allowed to submit  
11 medicaid applications on behalf of an individual who lacks  
12 capacity. This will have dire implications for these  
13 individuals, who may become financially responsible for services  
14 that should have been covered by medicaid.

15           The legislature finds that it is vital for individuals who  
16 may qualify for medicaid to apply for these benefits without  
17 delay even when they are not capable of making health care



1 decisions for themselves. Further, if an appointed surrogate is  
2 already making important healthcare decisions for a patient, the  
3 surrogate should also be allowed to help the individual apply  
4 for medical care coverage required to access services.

5 The purpose of this Act is to clarify that health care  
6 surrogates appointed under section 327E-5, Hawaii Revised  
7 Statutes, may operate as authorized representatives in order to  
8 assist a patient with the Medicaid application process.

9 SECTION 2. Section 327E-5, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "[+]§327E-5[+] **Health-care decisions; surrogates.** (a) A  
12 patient may designate or disqualify any individual to act as a  
13 surrogate by personally informing the supervising health-care  
14 provider. In the absence of such a designation, or if the  
15 designee is not reasonably available, a surrogate may be  
16 appointed to make a health-care decision for the patient.

17 (b) A surrogate may make a health-care decision for a  
18 patient who is an adult or emancipated minor if the patient has  
19 been determined by the primary physician to lack capacity and no  
20 agent or guardian has been appointed or the agent or guardian is  
21 not reasonably available. Upon a determination that a patient



1 lacks decisional capacity to provide informed consent to or  
2 refusal of medical treatment, the primary physician or the  
3 physician's designee shall make reasonable efforts to notify the  
4 patient of the patient's lack of capacity. The primary  
5 physician, or the physician's designee, shall make reasonable  
6 efforts to locate as many interested persons as practicable, and  
7 the primary physician may rely on such individuals to notify  
8 other family members or interested persons.

9 (c) Upon locating interested persons, the primary  
10 physician, or the physician's designee, shall inform such  
11 persons of the patient's lack of decisional capacity and that a  
12 surrogate decision-maker should be selected for the patient.

13 (d) Interested persons shall make reasonable efforts to  
14 reach a consensus as to who among them shall make health-care  
15 decisions on behalf of the patient. The person selected to act  
16 as the patient's surrogate should be the person who has a close  
17 relationship with the patient and who is the most likely to be  
18 currently informed of the patient's wishes regarding health-care  
19 decisions. If any of the interested persons disagrees with the  
20 selection or the decision of the surrogate, or, if after  
21 reasonable efforts the interested persons are unable to reach a



1 consensus as to who should act as the surrogate decision-maker,  
2 then any of the interested persons may seek guardianship of the  
3 patient by initiating guardianship proceedings pursuant to  
4 chapter 551. Only interested persons involved in the  
5 discussions to choose a surrogate may initiate such proceedings  
6 with regard to the patient.

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

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

18 (g) A surrogate who has not been designated by the patient  
19 may make all health-care decisions for the patient that the  
20 patient could make on the patient's own behalf, except that  
21 artificial nutrition and hydration may be withheld or withdrawn



1 for a patient upon a decision of the surrogate only when the  
2 primary physician and a second independent physician certify in  
3 the patient's medical records that the provision or continuation  
4 of artificial nutrition or hydration is merely prolonging the  
5 act of dying and the patient is highly unlikely to have any  
6 neurological response in the future.

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

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

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



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

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

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

13        SECTION 4. This Act shall take effect upon its approval.



**Report Title:**

Health Care Surrogate; Authorized Representative; Medicaid Application

**Description:**

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. (HB1812 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

