



The Fundamental Elder Law Hawai'i Handbook, for the Akamai Kūpuna, Older Persons, their Families and Caregivers

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The University of Hawai'i Elder Law Program (UHELP) was established in 1991 at the William S. Richardson School of Law to help educate future lawyers about elder law and to pursue educational and advocacy programs for older persons, their families and caregivers in our community. This publication was funded through a grant from the Hawai'i Justice Foundation and support from the William S. Richardson School of Law at the University of Hawai'i at Mānoa.

PREFACE

ABOUT THIS BOOK

“The Fundamental Elder Law Handbook for Hawai‘i’s Older Persons, Families and Caregivers” provides a concise guide to several important areas of legal concerns affecting older persons. Portions of this book are taken or adapted from federal, state and the University of Hawai‘i Elder Law Program’s (UHELP) publications and websites. This book is accessible on our website (<https://www.hawaii.edu/uhelp>) through the support of the William S. Richardson School of Law at the University of Hawai‘i at Mānoa.

We include selected popular forms you may find helpful in addressing various legal situations such as health care decision making, basic estate planning, elder abuse prevention, and caregiving. Several forms are found in the Hawai‘i Revised Statutes (HRS) and in the websites of appropriate agencies or organizations and from our series of UHELP handbooks. For those who wish to look up sections of pertinent law and to do more research, several citations are made to the state of Hawai‘i and to federal statutes as well as to their websites. You may notice that a simplified manner of citation is used to make reading this handbook easier. For a formal citation, you may want to refer to the origin of the citation, e.g., (HRS Sections 560:2-501-504) would be cited formally as Haw. Rev. Stat. §§ 560:2-501-504.

We also added several updates to this handbook. We include information about changes to health care decision making that will become fully effective in 2026 as well as information helpful to carers and caregiving, including preparing for the death of a family member, friend or care recipient. As caregiving will eventually affect all of us, we include a chapter on this important subject. We answer the question, “Who cares?” with forms, checklists and resources as we anticipate that chances are each of us will eventually either be a caregiver or a care recipient.

Related to caring for others is caring for oneself. The demographics of our country and especially of our state indicate that there is a rapidly increasing number of older persons who are aging without having a traditional family or friends to turn to for help or support. We, thus, present information on widowhood, “solo agers” and being on your own.

As you age, you may become more vulnerable. You may be an easy target for scammers and unscrupulous people. Although it is an unfortunate reflection of current times, we include a chapter on elder abuse and protective services. Protective services refer to various laws, regulations and legal tools, practices designed to protect individuals who are unable to protect themselves or adequately handle their own financial, health care, or other activities of daily life.

We provide updated information on Medicare and Medicaid although, when this handbook was being written, we were uncertain about the future of these and other federally-supported programs as our country faced major transitions.

Finally, we include our *Kōkua Packet - An Organizer for What Matters to Me*. Over the years, the University of Hawai'i Elder Law Program (UHELP) has cautioned *kūpuna* and their families to “Prepare for the Worst and Expect the Best.” We hope that the *Kōkua Packet* will encourage you to think about what matters to you and to record important information about yourself and help you organize your records. This way, you and your family and those who care for you may be more at ease knowing that you have planned ahead and have expressed what you would have wanted under various circumstances. And a word of caution: As you organize your thoughts and documents, carefully guard your personal information like your social security number, usernames and passwords, and other personal information.

Warning: While this book contains practical and helpful information, it is not intended to serve as a “do-it-yourself” legal guide or as a substitute for professional legal advice. If you have legal questions, you should seek the advice of an attorney. The forms included in this handbook are for educational purposes only and are not intended to be used directly from this handbook and you may need to have entirely different documents drafted for your needs. If the information and forms in this handbook confuse you, it certainly is another reason to seek the advice and services of an attorney. In addition, be aware that laws and forms often change and your attorney can keep you up to date.

Note: The term “attorney” rather than “lawyer” is used in this handbook. Although there is very little distinction made between the two, the terms, attorney and lawyer, are often used interchangeably in the United States. A lawyer is someone who is trained in the law but may not actually practice law. Attorney or the longer version, “attorney-at-law,” is considered the official term for a lawyer in the United States who is “admitted to the bar,” (usually by taking a bar examination) and who is permitted by a particular court system to practice law before its courts in that particular jurisdiction.

The University of Hawai'i Elder Law Program is grateful to the Hawai'i Justice Foundation and to the University of Hawai'i School of Law for their support in printing this handbook. We extend a special *mahalo* to attorney Scott Suzuki for his input with respect to health care financing and special needs trusts and to attorney Neva Keres for her assistance in editing.

Aloha,

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CHAPTER

1

OLDER PERSONS and ELDER LAW

INTRODUCTION AND OVERVIEW OF ELDER LAW

Before addressing substantive issues, we should clarify how to address those who comprise the older segment of our population. Should they be called “senior citizens,” or “older persons,” or “elders,” or “elderly,” or some other term? In Hawai‘i, older individuals are often called *kūpuna*, which denotes ancestor or grandparent.

To put emphasis on the preferred terminology, the June 2017 *Journal of the American Geriatrics Society (JAGS)* adopted the *American Medical Association Manual of Style* including qualified recommendations for the language used to describe older people. They adopted “older adult(s)” and “older person/people” as preferred terminology, explicitly advocating against using “the elderly,” “senior(s),” and/or “senior citizen(s)” because “[they] connote discrimination and certain negative stereotypes.” Since then, leading scholars and researchers have mainly adopted the recommendations as their own. In our practice, we use the term, “*kupuna*,” as the preferred terminology. It means elder and reflects our island tradition of respect toward our older population.

A related question is, “What is an older person?” Is it a chronological, biological, psychological, functional or social age? There is no standard found in federal or state of Hawai‘i law. The federal government and the states have used different ages for different purposes. For example, age 40 is the threshold age under the federal Age Discrimination in Employment Act found in Section 631 of Title 29 of the United States Code. Age 60 is the age of eligibility for most services and programs under the Older Americans Act found in Section 3002 of Title 42 of the United States Code. Age 62 is the age a worker is eligible for Social Security early retirement benefits under Title III of the Social Security Act found in Sections 401-433 of Title 42 of the United States Code. Under the Social Security Act, 65 was originally the standard age for full Social Security retirement benefits. This age is increasing for people born after 1938 and will increase from 65 to 67 depending upon the year of birth. Regarding elder abuse statutes, different state “elder abuse” statutes vary on their age criteria for protective services. Although Hawai‘i has no single specific elder abuse statute, its Adult Protective Services Act found at HRS 346-221 protects “vulnerable” adults, including vulnerable older persons, no matter their age. In this act, the legislature recognized that “it is a person's vulnerability, not necessarily age,

which is often encountered in cases of abuse, neglect, and exploitation. While advanced age alone is not sufficient reason to intervene in a person's life, the legislature finds that many elders have become subjects of abuse, neglect, and exploitation. Substantial public interest exists to ensure that this segment of the population receives protection.”

No matter what age or term is used to categorize “older persons,” growing older is complicated, but even more so when you are on your own without a spouse or partner or adult children or relatives or even friends that you can turn to for support. The term “solo ager” has become increasingly popular. It is a term coined by Dr. Sara Geoff Gerber in her 2019 book, *Essential Retirement Planning for Solo Agers*. She points out that the percentage of U.S. residents aged 65 or older continues to grow and the growth of those 85 years of age and older is the fastest growing segment of our population. Older persons, and especially solo agers, face legal needs ranging from estate and health care planning to planning for mental incapacity and future caregiving needs, and even to issues of the possibility of abuse, neglect and financial exploitation.

ELDER LAW—CLIENTS AND ISSUES

Elder Law is the continually evolving field of law that addresses issues older persons face. Rather than being defined by technical legal distinctions or by a specific age, elder law is defined by the client to be served. In a sense, many attorneys could think of themselves as elder law attorneys, especially when they are preparing estate planning documents, settling an estate, counseling a client about a pension or retirement plan, or Social Security benefits.

The lawyer who practices elder law may handle a range of issues and may serve both older and younger persons but has a good grounding in serving a specific demographic of clients—older persons. Elder law attorneys usually have a good understanding of the aging process and the changes that can arise, including problems in making sound decisions and protecting oneself from abuse and exploitation. They are usually very familiar with caregiving issues and working with health care professionals, such as social workers, doctors, nurses, psychologists, and other professionals who may provide support and assistance to older clients and their families.

An “elder law attorney” should be prepared to consider and respond to the particular needs of the clients, which may include aspects of life even outside the field of law, such as the social supports, health care needs and the lifestyle of the client. The elder law attorney should also be a change agent to ensure that laws, policies, and social structures are fair to all, including older persons.

Elder law attorneys focus on the legal needs of older individuals and work with a variety of legal tools and techniques to meet their clients' goals and objectives. “Special needs” attorneys who work with individuals with disabilities are now also included under an umbrella with elder law attorneys in an organization called the National Academy of Elder Law Attorneys, Inc. (NAELA) as well as their own “Special Needs Alliance.” NAELA describes elder and special needs law as encompassing many

different fields of law.

The NAELA website (<https://www.naela.org/>) lists various fields of law in which an Elder Law attorney might practice, for example:

- Preservation/transfer of assets to avoid spousal impoverishment when one spouse enters a nursing home,
- Medicare claims and appeals,
- Social Security and disability claims and appeals,
- Supplemental and long-term health insurance issues,
- Tax planning,
- Disability planning, including use of durable powers of attorney, living trusts, and “living wills” (advance health care directives) for financial management and health care decisions, and other means of delegating management and decision making to another in case of incompetency or incapacity,
- Access to health care in a managed care environment,
- Conservatorships and guardianships,
- Estate planning, including planning for the management of one’s estate during life and its disposition on death through the use of trusts, wills, and other planning documents,
- Probate and administration of estates,
- Administration and management of trusts,
- Long-term care placements in nursing homes and life-care communities,
- Nursing home issues, including questions of patients’ rights and nursing home quality,
- Elder abuse and fraud recovery cases,
- Housing issues, including discrimination and unfair home equity conversions,
- Age discrimination in employment,
- Retirement, including public and private retirement benefits, survivor benefits, and pension benefits,
- Health law,
- Mental health law.

Most elder law attorneys concentrate in a particular area relating to elder law, so they do not specialize in every one of these areas. Therefore, when attorneys say that they practice elder or special needs law, a potential client should find out which of these matters the attorney handles.

Attorneys who primarily work with older persons and people with disabilities appreciate the complex financial and social decisions their clients face. Elder law and special needs attorneys bring to their practice a knowledge of their clients that allows them and their staff to discount the myths relating to aging but recognize the possible decline in competence and the need to accommodate disabilities as part of aging. At the same time, they will take into account and understand some of the true physical and mental difficulties that often accompany the aging process. They are also aware that their clients may be tied into a formal or informal system of family caregivers, social workers, geriatric care

managers, psychologists, and other professionals who manage their health, finances and daily routine. They may also be aware that their clients may not have any formal or informal system to assist them at all.

ELDER LAW AT THE UNIVERSITY OF HAWAI‘I

The University of Hawai‘i Elder Law Program (UHELP) has been an integral part of the William S. Richardson School of Law at the University of Hawai‘i at Mānoa for over thirty years. It is funded by the University of Hawai‘i with supplemental grant support from the Indigent Legal Assistance Fund of the Hawai‘i Judiciary and from the Hawai‘i Justice Foundation.

UHELP has multiple interrelated missions: to train and educate future attorneys and future health care professionals about elder law issues, to provide advocacy and direct legal services to those 60 years old and older who are socially and/or economically needy, including veterans, and to educate and conduct community outreach services, including providing educational seminars for our *kupuna*, including solo agers, caregivers, and service providers.

In its role as an educator, UHELP offers instructional law classes and experiential learning classes to law students and select graduate students who are studying health care, public health and social work. The courses (currently) are 1) Law, Aging and Medicine (formerly known as the Elder Law course), 2) Health Law, 3) Advanced Health Law (Experiential) and 4) the Elder Law Clinic.

UHELP is directed by a professor/attorney who has the primary responsibilities for the day-to-day supervision of the legal services and the educational components of the program. UHELP also has an administrative director/legal assistant and occasionally, a law clerk or research assistant. Several attorneys in private practice in the community volunteer to assist the program on a part-time basis.

While UHELP attempts to assist as many people as possible, UHELP has limited resources. UHELP cannot assist with business, real estate or landlord matters or criminal law matters, or with claims or with personal injury or other fee-generating cases. Individuals may apply for services if they are 60 years or older and are socially or economically needy, or if they are an individual who is a caregiver of an older person and needs basic information on behalf of the older person. Each request for services is evaluated in accordance with staff and resource capabilities.

CAPACITY AND COMPETENCY

“Capacity,” “incapacity,” “competency,” and “incompetency” are terms elder law attorneys hear and work with on a regular basis. When working with older clients or clients suspected of having diminished capacity, it is imperative that an attorney determine whether their client or potential client has the mental capacity to make informed decisions. Not only can a lack of mental capacity affect daily living activities, safety, and the ability to live independently, but it can also impact the ability to enter into contracts for goods and services, including legal services, to execute valid legal documents and even to make personal health care decisions.

Capacity is a complex subject and often it is helpful to start with the question “Capacity for what?” Each specific activity that involves a decision, such as whether to enter into contracts, to provide informed consent for medical treatment or to execute a will, trust, advance directive, or power of attorney, may have a different required level of decisional capacity to be considered “valid.”

Describing a person’s ability or “capacity” to accomplish particular tasks, such as remembering to pay one’s bills or calculating how much change one is owed, may be a useful and meaningful way of looking at mental capacity. It enables professionals to assess vulnerability more effectively and develop effective service plans. Understanding a client’s mental capacity can help meet the vulnerable person’s needs while avoiding unnecessary, restrictive, or intrusive interventions.

The terms “incompetency” and “incapacity” are often used almost interchangeably, even in statutes, which makes any differentiation that much more difficult. Whichever term is used, it is important to look at the context of the situation and determine whether the wording is used as a legal term or as a medical term. Generally, competence is a legal finding determined under the law, and capacity is a determination of whether an individual can understand the nature and effect of one’s acts. While the legal world is moving more toward adopting the medical model, the words “competency or incompetency” have a particular place in the law. In American law, competence traditionally relates to the mental ability of an individual to participate in legal proceedings. Hawai‘i’s statutes, as do many other states’ statutes, generally use the terms “capacity” and “incapacity” when addressing judicial proceedings involving civil matters such as guardianship and conservatorship.

INCAPACITY, MEMORY LOSS AND DEMENTIA (MAJOR NEUROCOGNITIVE DISORDER)

Mental incapacity or serious memory loss can affect activities of daily living, safety, and the ability to live independently, to make personal choices or to execute valid legal documents that may affect a person's life. The law recognizes that adults (generally persons over age 18) usually have the right to manage their own affairs, conduct business, and among other things, to make independent health care decisions. Although an adult is presumed to have capacity, it is a "rebuttable" presumption. In working with clients, the question often arises as to whether the individual has the capacity to make decisions about specific matters.

To be considered legally valid, each decisional activity, for example, provision of informed consent for medical treatment, execution of a will, completion of an advance health care directive, etc., may require a different level of decisional capacity. These are areas in which doctors and lawyers often work together to help assess an individual's ability to make decisions. In addition to primary care physicians and geriatricians, other health care professionals, such as psychiatrists, psychologists and certain nurses and social workers with advanced training, may assess capacity. Psychiatrists are medical doctors who have taken many years of additional training in mental, emotional, and behavioral disorders. Psychologists, while not medical doctors, hold advanced degrees in the study of the mind and behavior in relation to a particular field of knowledge or activity. Psychiatrists and psychologists are often called on to provide treatment or therapy or counseling to patients as well as to test individuals for mental, emotional, and behavioral problems and for mental capacity. Mental capacity issues can involve such matters as an individual's competency to participate in a criminal trial or in an involuntary civil commitment procedure, or having the capacity to execute a legal document.

Very often fees for treatment and therapy are covered by insurance, but other "forensic work," especially relating to common civil legal issues, such as determination of decisional capacity to execute a will or a trust, may not be covered. A person's attending physician, psychiatrist, or psychologist may also bring in other professionals (such as a speech therapist) to assess a difficult case. Information about determining capacity and an example of a capacity screening tool are included at the end of this chapter.

Judicial findings of incapacity are most often in the context of determining whether the appointment of a guardian or conservator is necessary or commitment to a mental health institution is appropriate. Following presentation of evidence in a hearing, a judge may find an individual to be legally incapacitated and appoint a guardian to make decisions on behalf of the "ward" or appoint a conservator to protect a "protected person" or, if the court proceeding involves mental health issues, to authorize involuntary mental health treatment. Different courts hear different types of cases.

The evidence required usually includes the testimony of the primary physician or a psychiatrist or psychologist or other medical authority such as a geriatrician or internist, or neurologist skilled in the field of the purported disability of the person who is the subject of the proceeding.

There is no single section of the law that states the judicial authority and procedures required to find a person legally incapacitated. Likewise, there is no court process for individuals to request an opinion, determination, or a finding that they are mentally capacitated. Also, there is still no single conclusive test to determine capacity in court. Retroactive determinations can be made about an individual's capacity to execute a will or power of attorney, usually after a person is dead or becomes clearly incapacitated. Most of the time, determinations of legal capacity or incapacity follow a petition by representatives of an agency or concerned individuals who feel that the subjects of the petition cannot adequately care for themselves or manage their property or that they pose a danger to themselves or others.

There is a difference between memory loss and “dementia,” which is a term many people fear to hear. First of all, the American Psychiatric Association and the American Psychological Association are replacing the term “dementia” in favor of the new term, “major neurocognitive disorder”(MNCD), but the older term as well as “mild cognitive impairment” or MCI (now replaced by “minor neurocognitive disorder” or mNCD) are still commonly used. These changes came about after the dementia diagnosis and diagnostic criteria were incorporated in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (Fifth Edition) published by the American Psychiatric Association. MCI (or mNCD) is often seen in the early stages of dementia (MNCD).

To continue with memory loss, you can have short-term memory loss but not have dementia (MNCD). Notably, dementia (MNCD) is a term that applies to a medical disorder which may be evidenced by symptoms of damage or disease to the brain's cognitive function. Dementia (MNCD) may be reversible or irreversible and progressive. For example, a urinary tract infection may cause a temporary spell of what may appear to be dementia (MNCD), but it is often reversible. A person with dementia (MNCD) may suffer from short-term or long-term memory loss, confusion or disorientation or may lose the ability to problem-solve or to complete multi-step activities. Sometimes dementia (MNCD) may also have an effect on a person's personality, behavior or attention span.

Memory loss is a problem that many older persons (as well as many younger persons) worry about. “Where did I put those keys?” is a common example. However, having memory loss does not necessarily mean that you lose the capacity to make decisions. The aging process can affect memory by changing how the brain stores and recalls information. Memory loss may be a sign of a problem with the brain's ability to create or “lay down memory,” but it does not necessarily mean that a person should be considered decisionally incapacitated. As one ages, brain chemistry changes and brain cells die and are never replaced. Since the older brain has fewer brain cells and stores information differently than a younger brain, memory loss is not unusual. As one ages, it often becomes more difficult to recall stored information, especially newly stored information. This is why individuals may often be able to remember events from long ago with great clarity but cannot remember more recent events, such as the introduction of people they may have just met.

In addition to dementia (MNCD), memory loss can be caused by other things such as poor nutrition,

the side effects from head injuries, heart attacks, strokes, alcohol consumption, depression, disease, or illness. Drugs, including prescription and non-prescription drugs, chemotherapy, anesthesia, and antidepressants as well as other medical treatments can also lead to memory loss.

Memory loss can be a serious problem if it affects a person's daily living and decision-making capability. Most people can learn to cope with memory loss (and sometimes, the associated confusion) by keeping busy, making lists, following a daily routine, including exercising (with a doctor's approval), putting objects (such as keys) in the same place, and by keeping healthy (including eating nutritious foods and especially a variety of vegetables), and maybe by not worrying too much about forgetting things. A doctor, and especially a geriatrician, can also suggest how to keep the body and brain functioning at optimum levels.

While there are different types of dementia (MNCD) depending on the cause, Alzheimer's disease is the most commonly diagnosed form and can place a great burden on caregivers. Alzheimer's disease is an irreversible progressive brain disease that slowly destroys memory and thinking skills, and eventually, even the ability to carry out the simplest tasks. Symptoms usually develop slowly and get worse over time, becoming severe enough to interfere with daily tasks. Although current Alzheimer's treatments cannot stop Alzheimer's from progressing, they can temporarily slow the worsening of symptoms and improve quality of life for those with Alzheimer's and their caregivers. For more information, see <https://www.alz.org>.

Some examples of specific capacities follow. These are also featured in pertinent sections of this handbook.

CAPACITY IN MAKING A WILL

According to *H.R.S. § 560: 2-501*, "An individual eighteen or more years of age who is of sound mind may make a will." In one of the most well-known cases to address capacity in a will under common law standards, which are applicable in Hawai'i, an English court in *Banks v Goodfellow (1870) LR 5 QB 549*, set out the basics of what it takes for a testator to be considered to be of sound mind:

- a. Must understand the nature of the act being performed,
- b. Must know the nature and extent of one's property,
- c. Must be cognizant of the natural objects of one's bounty (spouse, children, parents and other close relatives),
- d. Must be capable of forming an orderly scheme of distribution of one's property.

A Hawai'i case, *In re Estate of Coleman*, 1 Haw. App. 136, 615 P.2d 760 (1980), set the current standards in Hawai'i. It found that the presumption of law is in favor of testamentary capacity.

CAPACITY TO MAKE HEALTH CARE DECISIONS (AND TO MAKE AN ADVANCE HEALTH CARE DIRECTIVE)

According to the definition found in HRS Chapter 327E-2 (the Uniform Health Care Decisions Act (Modified)), “capacity means the individual’s ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision.” Although all adults are presumed to have sufficient capacity, this is a rebuttable presumption.

CAPACITY AND UNDUE INFLUENCE AND THE ADULT PROTECTIVE SERVICES ACT

The concepts of undue influence and mental capacity are often joined. Undue influence refers to whether individuals are acting freely and are paying adequate attention to the consequences of their actions. It is seen as a process or method used to commit financial or other exploitation through manipulation or deceit. For example, perpetrators use various techniques and manipulations to gain power and compliance, often exploiting the trust, dependency and fear. Over time, the perpetrators may gain control over the decision-making of their unwitting victims.

Inducing someone to sign a legal document or give a gift, for example, may constitute abuse if the person does not fully understand the transaction, appreciate the value of what was given away, or comprehend the implications of performing the deed. Some of the first questions often raised are “did this person understand what they were doing and the cost or value of the gift or property? Was coercion, trickery, or undue influence employed?”

Note: Undue influence may exist without mental impairment and mental impairment may exist without undue influence. People are more vulnerable to manipulation when they have certain psychological or medical conditions, such as dementia. Both address the issue of vulnerability. If a person takes advantage of an older person’s vulnerability and obtains their assets, the act can be investigated by Adult Protective Services and could even be prosecuted as a crime.

HRS Section 346-222 defines capacity as, “the ability to understand and appreciate the nature and consequences of making decisions concerning one’s person or to communicate such decisions.” In the definition of “financial exploitation,” it points out that exploiting a vulnerable adult through undue influence may constitute abuse under the law. “The exploitations may involve coercion, manipulation, threats, intimidation, misrepresentation, or exertion of undue influence.”

While the Adult Protective Services law refers to vulnerable adults, anyone of any age can be unduly influenced, including those stressed, ill, sleep deprived, lonely, or frightened; and older persons may be especially vulnerable.

DETERMINING DECISIONAL CAPACITY

As previously indicated, the concept of capacity (and incapacity) is related to specific activities and is sometimes referred to as “decision-making capacity.” The determination of decisional capacity is considered by many to be within the domain of the medical profession rather than within the domain of the courts. In general, decisional capacity is usually considered to be present when an individual is

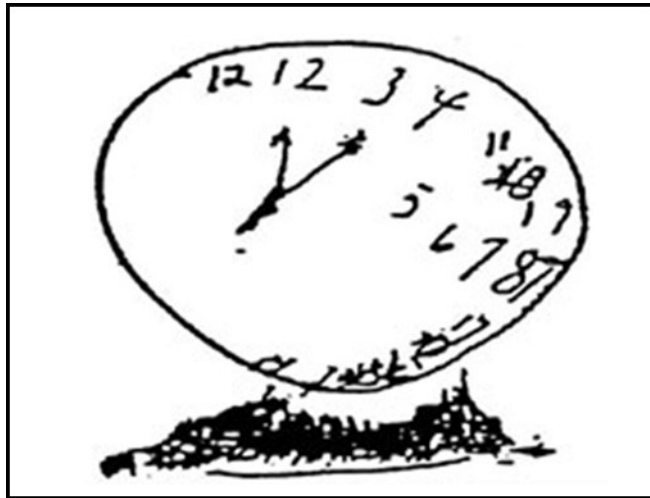
sufficiently able (capacitated) to make particular decisions, if, minimally, they possess the ability to understand the nature of the problem or activity they are facing, to understand available alternative courses of action (including no action), to understand the possible risks and benefits attaching to each of these alternatives, to be able to deliberate and evaluate the information, and to be able to express a reasoned choice that is consistent over time. Accordingly, each specific activity that involves a decision, such as the provision of informed consent for medical treatment or the execution of a will, trust, advance directive, or power of attorney, may have a different required level of decisional capacity to be considered legally effective.

Medical diagnoses and prognoses utilized in conjunction with legal standards in assessing capacity are still evolving. Most experts no longer consider capacity to be like a light bulb—either it is on, or it is off. Most experts agree that people have a series of abilities or capacities that may be present, lacking, or diminished. As more service providers (including attorneys and doctors) work with individuals or families of individuals who are totally, partially, or intermittently mentally incapacitated, it becomes clear that not only is it often difficult to determine how to assess the capacities and what the best courses of action might be, but it may also be difficult to assess and to fulfill the ethical requirements of attorneys' and health care providers' professional responsibilities toward their clients or patients.

A determination of legal incapacity is dependent upon definitions and interpretations of differing jurisdictions and is also dependent upon the section of the law pertaining to the situation in question. Since a determination of legal incapacity can have a dramatic and long-lasting effect on a person's life, incapacity should be supported by evidence of functional impairment over time. Also, age, eccentricity, poverty or medical diagnosis alone should not be sufficient to justify a finding of incapacity.

CLIENT CAPACITY SCREENING TESTS

Many capacity screening tests have been developed by psychiatrists and psychologists. A very simple and helpful test is the "Clock Drawing Test." The "Clock Drawing Test" is one method that has been used as a brief cognitive screen by professionals skilled in the field of mental functioning for individuals with questionable competency. The test starts by requesting a client to "draw a clock and put in all the numbers." The client is then asked to "set the time at a quarter to seven" or some other time. Points are given for accomplishing certain instructions in a certain way.



Health care professionals can use several more sophisticated cognitive tests, including the Mini Mental State Exam or MMSE[®] and the Montreal Cognitive Assessment or MoCA[®] and the Saint Louis University Mental Status (SLUMS) Examination.

Form 1: Montreal Cognitive Assessment (MOCA)

The instructions for the MoCA[®] indicate that the test may be administered by anyone who understands and follows the instructions, but only a health professional with expertise in the cognitive field may interpret the results.

MONTREAL COGNITIVE ASSESSMENT (MOCA)		NAME :	Date of birth :
		Education :	DATE :
		Sex :	
VISUOSPATIAL / EXECUTIVE 		Draw CLOCK (Ten past eleven) (3 points)	POINTS

Form 2: The Saint Louis University Mental Status (SLUMS) Examination

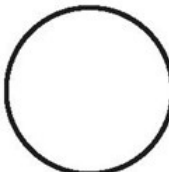



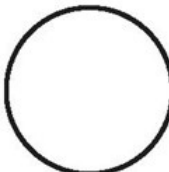
The Saint Louis University Mental Status (SLUMS) Examination is another example and has been adopted by Veterans Administration Health Facilities.

VAMC SLUMS EXAMINATION

Questions about this assessment tool? E-mail aging@slu.edu

Name _____ Age _____

Is the patient alert? _____ Level of education _____

____/1 ____/1 ____/1 ____/3 ____/3 ____/5 ____/2 ____/4 ____/2 ____/8	<p>1 1. What day of the week is it?</p> <p>1 2. What is the year?</p> <p>1 3. What state are we in?</p> <p>4 4. Please remember these five objects. I will ask you what they are later. Apple Pen Tie House Car</p> <p>5 5. You have \$100 and you go to the store and buy a dozen apples for \$3 and a tricycle for \$20.</p> <p>1 How much did you spend?</p> <p>2 How much do you have left?</p> <p>6 6. Please name as many animals as you can in one minute. 0 0-4 animals 1 5-9 animals 2 10-14 animals 3 15+ animals</p> <p>7 7. What were the five objects I asked you to remember? 1 point for each one correct.</p> <p>8 8. I am going to give you a series of numbers and I would like you to give them to me backwards. For example, if I say 42, you would say 24. 0 87 1 648 1 8537</p> <p>9 9. This is a clock face. Please put in the hour markers and the time at ten minutes to eleven o'clock.</p> <div style="display: flex; align-items: center;"> <div style="margin-right: 20px;"> <p>2 Hour markers okay</p> <p>2 Time correct</p> </div>  </div> <p>1 10. Please place an X in the triangle.</p> <div style="display: flex; align-items: center;"> <div style="margin-right: 20px;">    </div>  </div> <p>1 Which of the above figures is largest?</p> <p>11 11. I am going to tell you a story. Please listen carefully because afterwards, I'm going to ask you some questions about it.</p> <p>Jill was a very successful stockbroker. She made a lot of money on the stock market. She then met Jack, a devastatingly handsome man. She married him and had three children. They lived in Chicago. She then stopped work and stayed at home to bring up her children. When they were teenagers, she went back to work. She and Jack lived happily ever after.</p> <div style="display: flex; justify-content: space-between;"> <p>2 What was the female's name?</p> <p>2 What work did she do?</p> </div> <div style="display: flex; justify-content: space-between;"> <p>2 When did she go back to work?</p> <p>2 What state did she live in?</p> </div>
--	--

TOTAL SCORE _____

SCORING			
HIGH SCHOOL EDUCATION		LESS THAN HIGH SCHOOL EDUCATION	
27-30	-----	NORMAL	----- 25-30
21-26	-----	MILD NEUROCOGNITIVE DISORDER	----- 20-24
1-20	-----	DEMENTIA	----- 1-19

CLINICIAN'S SIGNATURE _____

DATE _____

TIME _____

SH Tariq, N Tumosa, JT Chibnall, HM Perry III, and JE Morley. The Saint Louis University Mental Status (SLUMS) Examination for detecting mild cognitive impairment and dementia is more sensitive than the Mini-Mental Status Examination (MMSE) - A pilot study. *Am J Geriatr Psych* 14:900-10, 2006.

CHAPTER

3

WILLS, TRUSTS, AFFIDAVITS FOR THE COLLECTION OF PERSONAL PROPERTY AND RELATED DOCUMENTS

In this chapter you will learn some basic concepts about the distribution of assets upon death, including wills and trusts and affidavits for the collection of personal property and related documents. In succeeding chapters, you will learn about other commonly used estate and longevity planning tools, such as powers of attorney, advance health care directives and written instruments to control the disposition of remains.

Statutory provisions most relevant to wills are found in Chapter 560 of Hawai'i Revised Statutes (HRS), Hawai'i's Uniform Probate Code, which will be referred to as the Hawai'i Probate Code or just Probate Code. Laws regarding trust are found mainly in HRS Chapter 554, Hawai'i's Uniform Trust Code. Be aware that as laws change, such changes can significantly affect your estate plan. Federal law has the most impact on the tax liability of your estate upon death while the state probate and trust laws such as the Hawai'i Probate Code and the Uniform Trust Code have the most impact on who gets your estate upon death if you haven't made plans. Over the past few years, significant changes to the federal tax law, the Probate Code, and even to Medicaid laws have had a big impact on estate planning.

DISTRIBUTION OF ASSETS

The distribution of property upon death is an ancient custom used by early Greeks and Romans to transfer property to their male heirs. It is also mentioned in early religious texts. Today, a will can form the basis of "estate planning," which is the development of a plan to manage your assets while you are still alive and to pass assets upon your death to those whom you choose. Effective estate planning can make the transfer as easy as possible, avoid unnecessary costs and taxes, and provide the desired security for the beneficiaries. In the broadest sense, it can also include other areas of importance, for example, in Hawai'i, pet owners can make provisions for their animals through pet trusts.

Estate planning includes the process of determining what you own, deciding how to distribute your property after death, planning for estate taxes if any, and implementing a plan such as executing a will

or setting up a trust to accomplish your goals and objectives. Good estate planning is important for

controlling and preserving assets for yourself and your beneficiaries. As you plan your estate, keep in mind estate taxes. Although the federal estate tax exemption rose to \$13,610,000 in 2024, on January 1, 2026, the exemption is scheduled to be reset to \$5,00,000 (indexed to inflation) unless Congress acts prior to then.

For most individuals, these taxes include gift taxes and estate taxes. In 2025 the federal gift tax exemption was \$19,000. In other words, each year you **could** give away \$19,000 tax free to as many individuals as you wish without tax consequences. Take heed that this amount may be re-set in following years.

You may want to consult with your accountant when you plan your estate.

A word of caution: If you receive federal benefits you may want to ask a lawyer if you are the recipient of such a gift, whether it disqualifies you for such benefits and then you can act with that information in mind.

Don't confuse federal and state estate taxes with the federal gift tax, mentioned above. The federal estate tax applies to your taxable estate upon your death. If your estate has a high enough value, you will need to pay estate taxes on what you are giving either through the probate process or otherwise after you die. The lifetime federal estate and gift tax exemption was increased to \$13.99 million in 2025 (or \$27.98 million for couples) but, under current law, if unchanged, it will be decreased by half at the start of 2026.

Note that Hawai'i is a state that levies estate taxes. This means that Hawai'i residents are subject to both federal and state estate taxes. See your elder law attorney or estate planning attorney, especially if you think your estate may be taxed upon your death.

Note that, at least currently, Hawai'i's estate tax has no effect on people having less than \$5.49 million in assets at death, which includes most people. When an individual's taxable estate exceeds this exemption amount, the estate tax starts at a 10% rate and gradually rises to a maximum of 20% for estates that are at least \$10 million over the exemption amount.

Although a "simple will" may seem to be one of the easiest ways to provide for survivors, it may not always be the best option for even a moderate estate. Trusts and other techniques in estate planning can help reduce taxes, avoid probate, and manage property. For example, joint ownership with the right of survivorship or naming your trust as your beneficiary may avoid probate but may not always avoid taxes or provide for the management of an estate.

Be aware that in addition to the distribution of assets, in a will, individuals may appoint a "personal representative" (also known as an executor) to act on behalf of the deceased. Note that powers of attorney cease at death and the agent named in the power of attorney ceases to be in charge. The personal representative named in the will is appointed by the court to take charge of the matters of the estate and has the authority to settle the estate with court approval.

Be aware that, depending on state laws, unmarried couples living together do not automatically inherit from each other and common law marriages are not recognized in Hawai'i. This could be extremely difficult if one had cared for the other partner and was left with nothing. In many instances, children who had abandoned their parent(s) during their last days, return, lay claim to the parent's assets and turn away their parent's partner, leaving the partner bereft unless a will or a trust or some other mechanism outlined below has been established. Also, be aware that similar issues may arise with respect to the inheritance of children born to parents who are not married to each other. However, civil unions, reciprocal beneficiary relationships and same sex marriage are recognized in Hawai'i and do afford certain protections. Check with your attorney.

WHAT IS A WILL?

A will is a legal document that expresses your wishes for the distribution of property (the estate) upon death, who should be appointed to administer your estate and how other matters are to be resolved upon your death. When you make a will, you are called a "testator." The contents of your will can be changed as many times as you, the testator, wish, up to the time of death, provided that each new will or change to an existing will (called a codicil) meets the requirements of the law. A will does not take effect until death and it only applies to property owned at the time of death. There are several types of property: "Real property" refers to land and the buildings on the land; "personal property" includes such possessions as money, clothes, cars, jewelry, and so on, and "intellectual property" which includes patents and copyrights. All of these types of property can be included in the estate.

During the extended period of isolation caused by the COVID-19 pandemic, more individuals decided to take charge and to look into "do-it-yourself" ("DIY") wills, including holographic wills, to be discussed below, which have been valid in Hawai'i since 1997 under the provisions of HRS Section 560-2-502. However, a law review article, "Do-It-Yourself Wills," (53 UC DAVIS L. REV. 2357, 2020) by Professor David Horton at the University of California, Davis, School of Law, provides us with some helpful information. He found that (1) it is unclear whether people who create their own wills are less wealthy than those who hire lawyers, (2) there is some evidence that DIY devices are particularly useful for testators who fall gravely ill, and (3) even controlling for the effect of other variables, DIY wills are correlated with a statistically significant increase in the odds of litigation. So, a word of caution: seek legal advice.

REQUIREMENTS FOR MAKING A WILL

The requirements for making and executing a will are rather simple and can be found in HRS Sections 560:2-501-504.

- First, according to HRS § 560: 2-501, "An individual eighteen or more years of age who is of sound mind may make a will." As previously indicated in the previous chapter, using an old English case, *Banks v Goodfellow* and a Hawai'i case, *In re Estate of Coleman*, essentially, in order to be considered to be of sound mind, a testator:

- a. Must understand the nature of the act being performed,
 - b. Must know the nature and extent of one's property,
 - c. Must be cognizant of the natural objects of one's bounty (spouse, children, parents and other close relatives),
 - d. Must be capable of forming an orderly scheme of distribution of one's property.
- Second, the testator must intend for the document to be the testator's will and have the intention to sign it. This also means that the testator is not under any "undue influence" of others to make the will. Although it is difficult to define, undue influence basically means a person's actions are not voluntary and/or that somebody is taking improper advantage of that person through any influence they may have.
 - Third, the legal requirements (formalities) must be satisfied such as putting the will in writing, signing it, and under most circumstances, having it properly witnessed.

A valid will in Hawai'i must be in writing and must be signed by the testator or by someone who signs on behalf of the testator in their presence and at their request. A will does not necessarily have to be typed or word-processed and there is no specified format that must be followed. Traditionally, the testator and at least two persons who witnessed the signing must also sign the will. Even though this requirement has changed in several states, the best practice may still be to have the signing of the will witnessed. While it may be a valid will even if the witnesses are persons who stand to inherit, it would be wiser to have disinterested witnesses. Often, an attorney can provide witnesses for this purpose and witnesses do not have to read the will itself.

To make it easier upon death to prove that the testator was of sound mind when the testator executed the will and was not under any undue influence, a will may be made "self-proved" by the acknowledgment of the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state, usually a notary public.

Finally, there is no requirement to be a citizen to make a will or to inherit. However, certain provisions of the federal tax law affect non-citizens who inherit from a citizen. For proper estate planning for non-citizens, an attorney will need to understand the tax laws in this country as well as the succession laws and inheritance laws of other countries.

Except for holographic wills, which will be discussed below, the law requires that wills be witnessed by at least two witnesses. The law does not prohibit witnesses from inheriting under the will. However, using interested witnesses may open the door to a will contest if there are disgruntled heirs. A wise course of action would be to have "disinterested" witnesses. An attorney can usually provide witnesses who do not have to read the will itself. It would also be wise for the testator to execute a self-proved will document to accompany the will and have all the parties sign the document before a notary. The self-proved will document can then be attached to the will. The self-proved will document, which is signed by the testator and witnesses before a notary, makes certain assertions about the witnessing of the will and the mental status of the testator. This will help prove that the will was executed properly

and will make it more readily accepted by the probate court without having to call upon witnesses.

HOLOGRAPHIC WILLS

“Holographic” wills have been valid in Hawai‘i since 1997 and are authorized in HRS § 560: 2-502. In general terms, a holographic will is a will in the handwriting of the testator and is not typewritten or produced on a word processor. It is possible to use a “fill-in-the-blank” will commonly found in a stationery store or on the internet and still have it considered a holographic will, provided that the essential elements are in the handwriting of the testator. Although witnesses are not required, to be safe, it may be wise to have two persons witness the signing of the will, but then the will would not be “holographic.” In sum, a will is valid, witnessed or not, if the signature and material portions of the document are in the handwriting of the person making the will.

It is important to note that there are certain restrictions on what can and cannot be done with an estate through a will. For example, a provision in a will purporting to penalize any interested person for contesting the will or initiating other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings. Also, even if you leave your spouse or other survivors out of your will, they may be able to claim a homestead allowance, exempt property allowance, family allowance, or an elective share, which, in the state of Hawai‘i, can be substantial. These are good reasons to discuss your will with a qualified attorney.

PERSONAL REPRESENTATIVE

Upon death, assets personally owned (not in trust or owned jointly with rights of survivorship by anyone else) will need to be administered and distributed according to the estate plan in a will or in accordance with intestate succession laws. The person who will administer these assets and who will take care of other matters relating to the estate is called a personal representative. The term “executor” was commonly used in the past. It is advisable for alternate personal representatives to be named because if for some reason the chosen personal representative cannot act, the alternates will be able to. If the personal representative and all the alternates are unable to act, the court will name a person to fill this role.

The court-appointed personal representative may or may not be someone the decedent would want to administer his or her estate and, unless it is provided otherwise, he or she may have to post a bond and may have to report frequently to the court. Such complications may be avoided by making one’s intentions known in a will. In Hawai‘i, a personal representative does not need to be a resident of the state provided that the nonresident submits to the jurisdiction of the Hawai‘i state courts. In Hawai‘i, a person who is nominated in a will as a personal representative has the authority to carry out the decedent’s burial or cremation and funeral or memorial instructions, even before the will is probated.

A person may, through a will:

1. Appoint or nominate a personal representative (executor) for his or her estate,
2. Nominate a guardian for a minor or a mentally incapacitated person,
3. Make provisions for pet(s),
4. Establish a “testamentary trust” to manage assets for a beneficiary after death,
5. Make provisions for the donation of the body and organs,
6. Give instructions concerning the funeral and burial/cremation,
7. Make provisions for waiver of bond which otherwise might be required of the personal representative,
8. Give detailed provisions for unmarried partners, for adopted children and for children born to unmarried parents,
9. Disinherit people, and
10. Make a designation of apportionment of estate taxes, if there is a very large estate.

A will can also provide instructions for collecting and distributing a decedent’s assets. Such administration may be court-supervised. A probated will provides a short statute of limitations within which claims against the estate must be filed or be extinguished. A will provides an affordable means of accomplishing estate planning goals and can provide coverage for matters outside trusts or other will substitutes. The personal representative has a fiduciary responsibility to settle and distribute the estate in accordance with the decedent’s wishes. A will can be revoked or changed relatively easily. In an emergency, recall that one can even make his or her own “do-it-yourself” holographic will.

You may wish to ask your attorney about including a “list of tangible personal property” which lists specific items of personal property you wish to distribute upon death and which can be changed by you any time before death without having to make a new will or codicil.

Included in this chapter is a sample of a very short and uncomplicated will with a self-proved will document. After the will and self-proved document is a sample “Letter to My Personal Representative.”

TESTATE AND INTESTATE

Persons who die with a valid will are considered to have died “testate.” On the other hand, if they die without a valid will, they are considered to have died “intestate,” even if they have a trust or other will substitute, as described earlier in this chapter. If they die intestate and if they have property in their own name, that property will be distributed to surviving relatives in accordance with the “intestate succession” laws of Hawai‘i. If they die intestate without any surviving relatives and without naming anyone or any organization as beneficiaries in a trust or will or will substitute, their estate will likely “escheat” to the state. Finally, even if they die testate but without any surviving beneficiaries or relatives, their estate will also likely escheat to the state. However, escheat is generally used as a last resort.

Having a will does not avoid probate. On the contrary, if a will is chosen as the instrument to distribute one’s estate, it will still need to go through the court probate process if the deceased owned any real estate in his or her name alone, or if the total value of the deceased’s personal property in his or her name exceeds \$100,000. Trusts, which will be discussed later, may help avoid probate. A will, however, is still the most common tool people use to plan their estates. There are many advantages

to a will and even if individuals have a will substitute, such as a living trust, they still should consider making a will too. Making a will is a well-established and, usually, a rather simple way to distribute property (real and personal) upon death.

Uniform Real Property Transfer on Death Act

The Hawai'i State Legislature enacted the Uniform Real Property Transfer on Death Act in 2011. The act enables an owner of real property to pass the property directly to a beneficiary on the owner's death without having to go through probate. The property passes by operation of law by means of a transfer on death (TOD) deed. During the owner's lifetime, the beneficiary of a TOD deed has no interest in the property and the owner retains full power to transfer or encumber the property or to revoke the deed. Upon the owner's death, the property passes to the beneficiary, much like the recorded TOD deed survivorship feature of joint tenancy in a checking account for example.

The TOD deed offers a number of advantages over joint tenancy, such as:

1. Since the TOD deed does not convey an immediate interest to the beneficiary, the property is not subject to partition or to the beneficiary's creditors.
2. The deed remains revocable, enabling the owner to make a different disposition of the property.
3. The recorded TOD deed does not trigger an acceleration clause in a mortgage or a property tax reassessment during the transferor's life.
4. The recorded TOD deed does not create adverse Medicaid consequences for either the owner or the beneficiary.

Hawaiian Home Lands Leaseholds Successorship

Unlike traditional state laws of probate and inheritance, the Department of Hawaiian Home Lands has its own set of rules provided by law for the granting of leases and leasehold succession. The Department of Hawaiian Home Lands is governed by the Hawaiian Homes Commission Act of 1920, enacted by the U.S. Congress to protect and improve the lives of native Hawaiians. The act created a Hawaiian Homes Commission to administer certain public lands, called Hawaiian home lands, for homesteads. The Act was incorporated as a provision in the State Constitution in 1959 when Hawai'i was granted statehood. Responsibility for the Commission and the Hawaiian home lands was transferred to the State at that time. Except for provisions that increase benefits to lessees or relate to administration of the Act, the law can be amended only with the consent of Congress.

Before registering for Hawaiian Home Lands leases, applicants must meet two requirements: (1) the applicant must be at least 18 years old and (2) be a native Hawaiian with not less than 50 percent Hawaiian ancestry. Do not confuse this definition with that of the Office of Hawaiian Affairs (OHA). OHA defines those with any quantum of Hawaiian blood as "Hawaiian."

If the deceased person was a native Hawaiian and owned a Hawaiian Homes homestead lease, a will is not sufficient to pass the leasehold lease to his or her heirs. One must complete a "Designation of Beneficiary Form" provided by the Department of Hawaiian Home Lands (DHHL) to name his or her designee. The form and information about tracing his or her genealogy, determining Hawaiian ancestry, and determining blood quantum is available at their website at <http://www.hawaii.gov/dhhl/>.

TRUSTS

A trust is simply an arrangement a person (the settlor) makes to give property to a trustee, who holds it for the settlor or the settlor's beneficiaries. The settlor can be his or her own trustee or another person or a financial institution may be appointed to act as the trustee. There are basically two different kinds of trusts: a "revocable living trust" which takes effect during one's life or a "testamentary trust" in a will, which does not take effect until death. However, testamentary trusts (since they are created in wills) do not avoid probate.

If the trust commences during the life of the maker and is revocable, the maker may be his or her own trustee, manage the trust, dissolve, cancel or terminate the trust, change the trust at any time, manage and make decisions concerning the trust, and appoint a successor trustee to carry on after death or incapacity. The trustee may also be given instructions, including but not limited to, instructions on property management, income and principal distribution, distribution of property upon settlor's death or the beneficiaries' deaths, and the amount of the trustee's fee, if any. Usually this is written down in a trust agreement. In many trusts, settlors will continue to control their assets since they have a right to freely amend or revoke the trust agreement. Further, trusts can ensure that property can be managed if settlors should become incompetent or incapable of handling their own affairs. There is no requirement to involve a trust company in the management or distribution of trust assets.

While revocable living trusts can be revoked or changed, irrevocable trusts usually cannot be revoked or changed except under very limited circumstances with the consent of the beneficiaries after the agreement has been signed or after the trust maker dies. These irrevocable trusts are usually used for estate planning purposes to reduce the size of a taxable estate, to protect assets from creditors and for use in charitable estate planning. These types of trusts as well as other complicated types of trusts will usually be used to address specific situations.

In the past, trusts were mainly used to avoid the time and the cost of probate since property included in a living trust usually does not go through probate. The current law provides a more expedited probate process for most estates. Hawai'i law does not require a fee equal to a percentage of the value of the probate assets. The legal fees involved are usually based on the amount of time involved for the attorney to assist the personal representative to settle the probate estate. Most attorney's fees are based on an hourly rate. Living trusts are now also commonly used to prepare for potential future incapacity.

If a revocable living trust is created, make sure the property is placed or transferred into the trust. If there is a failure to "fund" the trust, by making the trust the owner of the property, the trust cannot control that property and the goals of one's estate plan may not be accomplished. Also, be

aware that revocable living trusts usually cannot by-pass eligibility guidelines for public benefits programs such as Medicaid. Medicaid laws relating to eligibility for coverage for long-term care may result in disqualification for individuals if their home is in a trust.

A trust can be seen as both an effective tool for estate planning as well as for planning for incapacity. If the person who has set up a trust should become incapable of handling his or her own affairs, the trust can be a very useful and effective alternative to conservatorship in managing property. If the settlor and the beneficiary are the same person, that person's autonomy and self-determination in regard to management of property may be preserved during periods of incapacity through instructions incorporated into the trust. The trustee (or successor trustee) is given instructions by the settlor on how to use the property for the benefit of the beneficiary during periods of incapacity.

One of the most important considerations in setting up a living trust is to properly transfer into the trust the property that is to be managed. This can include home and rental properties, vehicles, bank and savings accounts, stocks and bonds, and virtually anything that is tangible and can be legally owned. Transferring title of the property to the trust is not automatic. Once property is transferred into a trust, the trustee can use and manage the property in accordance with instructions in the trust.

FORM 3
SAMPLE SIMPLE WILL AND SELF-PROVED WILL DOCUMENT

LAST WILL AND TESTAMENT OF
JANE DOE

**PART A GENERAL
PROVISIONS**

I, Jane Doe, residing at 2513 Dole Street, Honolulu, Hawai'i 96822, declare this to be my Will and I revoke any and all prior Wills and codicils.

I am married to Sonny Doe. I have two children, namely, Fawn Doe of San Francisco, California and John Doe of Honolulu, Hawai'i.

Except as provided in this Will, I have intentionally omitted to provide for any other persons, whether they claim to be related to me or not.

**PART B DISTRIBUTION OF PROBATE
ESTATE**

It is my intention by this Will to dispose of my probate estate comprising of all my property, real, personal, or mixed, tangible or intangible, of whatever nature and wherever situated, of which I may be seized or possessed or to which I may be entitled or have an interest at the time of my death.

I have made, or may from time to time make, a written letter to my Personal Representative. This letter lists certain items of personal property to be distributed and provides information and instructions to my Personal Representative. I urge my Personal Representative and beneficiaries to respect these wishes. This letter, if made, shall be stored in conjunction with this Will.

Except as may be provided in the previously mentioned letter to my Personal Representative, I give all right, title and interest to my property, real, personal or mixed, tangible or intangible, wherever situated and of whatever nature to my husband, Sonny Doe. In the event that he shall die before me, die within 30 days of my death, or if we should die at the same time, then I give all right, title and interest to my property, real, personal or mixed, tangible or intangible wherever situated and of whatever nature to those of my children who survive me and to the surviving descendants of them who do not survive, "per stirpes." The term "per stirpes" as used in this Will means that the property is divided into as many equal shares as there are:

- (1) Surviving children of the designated ancestor; and
- (2) Deceased children who left surviving descendants.

Each surviving child, if there is any, is allocated one share. The share of each deceased

child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

PART C

PERSONAL REPRESENTATIVE PROVISIONS

I nominate and appoint my husband, Sonny Doe, as my Personal Representative. In the event that my Personal Representative predeceases me or shall for any reason refuse or be unable to serve or continue to serve as my Personal Representative, then I appoint my son, John Doe, as my Personal Representative. I request that no bond be required of my Personal Representative. I give said Personal Representative the fullest power and authority, as granted by law, in all matters and questions of my estate, to act at such times and upon such terms and conditions as my Personal Representative may deem advisable.

I request my Personal Representative to pay my funeral expenses and expenses of my last illness out of my estate as soon after my death as can be done conveniently without unnecessary sacrifice of any of the property of my estate. I give my Personal Representative power to pay, to provide for the payment of, to extend, or to renew any legally enforceable indebtedness upon such terms and for such time as my Personal Representative deems appropriate.

I grant my Personal Representative the authority to carry out my instructions relating to the disposition of my body, including funeral, memorial and burial arrangements.

IN WITNESS WHEREOF, I have executed my Will by signing this page on this _____ day of _____, 20_____ at Honolulu, Hawai'i.

JANE DOE

SIGNED, AND DECLARED by the said Testator, JANE DOE, to be said Testator's Will and in the presence of us, who have signed our names as witnesses at Honolulu, Hawai'i, this _____ day of _____, 20_____ .

(Witness)

(Witness)

(Address)

(Address)

State of Hawai'i _____)
) SS
County of _____)

We, Jane Doe, _____ and _____,
the testator and the witnesses, respectively, whose names are signed to the attached or foregoing
instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator
signed and executed the instrument as her last Will and that she had signed willingly or directed another
to sign for her and that she executed it as her voluntary act for the purposes therein expressed; and
that each of the witnesses, in the presence and hearing of the testator, signed the Will as witness and
that to the best of the knowledge of each of the witnesses, the testator was at that time eighteen or
more years of age, of sound mind and under no constraint or undue influence.

JANE DOE

Subscribed, sworn to and acknowledged before me by Jane Doe, and subscribed and sworn to before
me by _____ and _____, witnesses,
this _____ day of _____, 20____.

Notary Seal
(Signature of Notary Public)

My Commission Expires: _____

NOTARY CERTIFICATION

Document Date _____ # Pages: _____

Name: _____, _____ Circuit

Document Description: **WILL AND SELF-PROVED WILL
DOCUMENT**

Signature _____ Date _____

Notary Certification

FORM 4: SAMPLE LETTER TO PERSONAL REPRESENTATIVE

LETTER TO MY PERSONAL REPRESENTATIVE

I am writing this letter to provide my Personal Representative with basic information about my estate, to provide directions on what to do upon my death, and to provide for the disposition of certain items of “tangible” personal property upon my death. I may, from time to time, change this letter and/or the list of tangible personal property to be distributed upon my death. If I make changes, I will add the changes to this letter or add additional pages. When I add to this letter, I will sign and date such changes and I will keep this letter with my will.

I have gathered all of the legal and financial documents that I feel are important and have placed them in the filing cabinet in the living room. I have labeled the file, “Estate Plan.” There is a bright label which states that there is “Important Legal Information Inside” on the outside of the drawer. There is also a “Kōkua Packet,” an organizer for “What Matters To Me” in a plastic bag in the file with much helpful information.

My healthcare documents are taped to the door of my refrigerator.

At the time of my death, I would like to have my body cremated as soon as possible. I do not want my body to be embalmed. I have already made arrangements and have paid for a cremation. My contract with the R.I.P. Funeral Home and instructions from the funeral home are all in my filing cabinet in my living room under “Estate Plan.” I do not want to have a formal memorial service. I would like my family and friends to take my ashes and scatter them in the ocean off Diamond Head.

Upon my death, please be sure to contact my brother, Robert Doe, who is in the Merchant Marine. Although his address changes constantly, his most recent address should be in the previously mentioned “Kōkua Packet” as well as his email address and cell phone number.

(Name)

(Date)

(Signature)

COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT (PERSON)

Probate of a small estate without real property may be avoided by an individual entitled to the estate through the execution of an “affidavit for the collection of personal property.” If, at the time of death, the value of an estate is no more than \$100,000, not including the value of any motor vehicles registered in the deceased person’s name, then their “successors” (spouse, reciprocal beneficiary, civil union partner, children, or other relatives or beneficiaries named in the will) who are entitled to the property can obtain legal ownership of that property by completing an affidavit (a written sworn statement). After an individual’s death, any person claiming to be the successor of the decedent may present an affidavit to any person indebted to the decedent or having possession of tangible personal property of the decedent. The affidavit is submitted to the institution or person holding the property. Note that the affidavit must be notarized, and a certified copy of the death certificate must accompany the affidavit.

This affidavit is often used to close a bank or savings account, which is valued at less than \$100,000, or to transfer ownership of a car. The value of other types of property may have to be appraised by a qualified appraiser. The value of the car registered in the deceased person’s name is not included in determining the value of total assets.

The law is found in HRS 560:3-1201. Please note that one of the phrases, chose in action, refers to a right to personal things of which the owner has not the possession, but merely a right of action for their possession. (From Black’s Law Dictionary).

Section **560:3-1201 Collection of personal property by affidavit.**

(a) Any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, chose in action, or other intangible personal property belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing the debt, obligation, stock, chose in action, or other intangible personal property to a person or persons claimed to be the successor or successors of the decedent or to the Department of Human Services where the Department has a claim against the estate pursuant to section 346-15 or 346-37, upon being presented a death certificate for the decedent and an affidavit made by or on behalf of the claimed successor or successors or the Department of Human Services stating that:

- (1) The gross value of the decedent’s estate in this State does not exceed \$100,000; except that any motor vehicles registered in the decedent’s name may be transferred regardless of value pursuant to this section;
- (2) No application or petition for the appointment of a personal representative is pending or has been granted in this State; and
- (3) (A) The claimed successor or successors are entitled to the property and explaining the relationship of the claimed successor or successors to the decedent; or
(B) The Department of Human Services has a claim against the estate pursuant to section 346-15 or 346-37.

The affidavit of the Department of Human Services shall have priority over any other claim presented

pursuant to this section.

(b) Upon presentation of an affidavit meeting the requirements of subsection (a), any person having legal authority to issue a certificate or other evidence of ownership of tangible personal property or a debt, obligation, stock, chose in action, or other intangible personal property belonging to the decedent shall change the registered ownership of the decedent's interest in the property from the decedent to the decedent's claimed successor or successors and shall issue a certificate or other document evidencing the ownership of the property by the decedent's claimed successor or successors.

Section **560:3-1202 Effect of affidavit.** The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if that person dealt with a personal representative of the decedent. That person is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

We also include a copy of the Collection of Personal Property by Affidavit of the Decedent and Collection of Personal Property (Automobile) by Affidavit of the Decedent as provided on the State of Hawai'i Judiciary website. (See the following websites)

<https://www.courts.state.hi.us/docs/form/hawaii/3CE210.pdf>

[https:// www.courts.state.hi.us/docs/form/hawaii/3CE312.pdf](https://www.courts.state.hi.us/docs/form/hawaii/3CE312.pdf)

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Notary Certification

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PREPARING FOR SOMEONE'S END OF LIFE, DISPOSITION OF REMAINS, AND ORGAN AND BODY DONATION

Preparing For Death

This handbook contains several chapters, including this chapter, which are intended to assist older persons and their caregivers (or carer) in planning for potential incapacity and for the end of life. We start this chapter from the perspective of an individual (the carer) who is caring for someone who is in the final stages of life and whose death is expected. More general information about caregiving is included in Chapter 8.

The last few weeks of someone's life can be full of physical and emotional changes. If you are the carer at home and you are the spouse or partner (civil union partner, reciprocal beneficiary or another relationship status), it will help if you understand what to expect. As with inheritance issues discussed in the previous chapter, many of your rights after the death of your care recipient depend on state law. You should seek legal advice if you are uncertain about your status vis-à-vis your relationship, such as being able to remain in your care recipient's home, receive promised compensation, and even have a compatible relationship with the care recipient's children who may or may not resent you.

Your role as carer, whether as a spouse, partner, family member, friend or otherwise, will change as the person becomes less able to do things for themselves and must depend on you.

As a carer, you may want to be sure that your care recipient has a POLST form and an Advance Health Care Directive form handy. (A more detailed discussion of the Advance Health Care Directive, POLST and their forms are found in Chapter 5).

A Provider Order for Life Sustaining Treatment (POLST) form contains medical orders that specify the type of care someone would like in the event of a medical emergency. This form can be quickly understood by all healthcare professionals, including emergency response services and other first responders. Under Hawai'i law, "first responder personnel" means a person who has successfully completed a United States Department of Transportation approved First Responder Course of training in emergency basic life support. The POLST form is transferable to all healthcare settings and usually produced on a distinctive bright green form. A POLST form is explained and signed by a physician, advanced practice registered nurse (APRN), or physician assistant (PA) and the patient or the patient's legally authorized representative. The Advance Health Care Directive gives directions about future medical care when someone is no longer able to speak for themselves.

As people approach the end of their life, complex issues in addition to health care decisions can arise. You may want to think about and talk to them about end-of-life arrangements to ensure they are in order before your spouse or partner, relative or friend dies. This could include:

- making sure they have an up-to-date will
- making sure that they have told someone where their important paperwork is located
- making sure someone knows any particular wishes for their funeral or memorial.

Some of this information may have already been documented in an advance health care directive. The person may have already provided clear instructions for health care/and or appointed a health care agent as outlined in Chapter 5.

When a very sick or old person dies, an expected death is not usually considered an emergency and you will not need to call 911 immediately. However, you will still need to call 911 soon after to get a medical professional to declare the person dead. You will need to also arrange for a mortuary to move the body. A declaration of death is needed to start planning a funeral or memorial and handle the deceased's legal affairs. It is suggested obtaining at least a dozen copies of the death certificate at the time of death from the Hawai'i State Department of Health as it is difficult to obtain more copies later.

If your cared one passes away at a hospital, hospice or in an assisted living facility, a doctor or nurse on staff will make the official call as to the time of death and sign the death certificate. In anticipation of death, you may have already made prior arrangements to have the body moved. The hospice palliative care team can give you more guidance on what to do.

At home, there are things that you will need to organize and a written plan of action prepared in advance will help.

Advance care planning (ACP) should take place before an illness or crisis occurs and is the first part of the range of planning for one's wishes for the future. Advance Health Care Directives and Provider Orders for Life-Sustaining Treatment (POLST) forms are key documents. If there is an emergency, call 911 who will ask if you need an ambulance. In an emergency, emergency medical service (EMS) or other first responders may ask about POLST forms and, perhaps, Advance Health Care forms. The first responders may include police, firefighters, or (EMS) personnel.

In true emergencies, EMS and other first responders will seek the POLST form (usually green) first for directions to find out the type of life-sustaining treatment to provide or not provide. They may at first seem abrupt, but for them, time is crucial and they know that life and death decisions are important, so they want to make sure that they have as much information as they need. They may also ask to see the Advance Health Care Directive form to give guidance as to how they should treat the patient if life-sustaining treatment is not an issue.

To be prepared, it would be wise to have the POLST form and Advance Health Care Directive form easily accessible. Some may tape them onto their refrigerator door, others may keep them at their bedside. Others may have them in a "file of life" or a "vial of life" or even attached to their *Kōkua Packet*, included at the end of this handbook. There could also be a list of things to do, with names and phone numbers of whom to contact. Consider which family members and friends and associates to be contacted.

State law is explained in more detail in this chapter but the personal representative (executor) of the estate or family members or the individual designated in a written instrument to control disposition of

remains normally organizes the funeral or cremation or memorial. The funeral director CAN liaise with all relevant parties.

The death certificate is an important document because the estate cannot be administered without it. The death certificate is usually ordered for by the funeral director at the time the death is registered. It is suggested that two dozen death certificates be ordered. Although copies of the full death certificate can be purchased directly from the Department of Health Registry of Births, Deaths and Marriages, it takes a much longer long time to obtain one.

You should also consider planning ahead with respect to writing an obituary and determining if you will have access to stock and bank and savings accounts and other financial resources upon the death of your care recipient.

Grief

The grieving process can be very difficult and you should give yourself time to heal at your own pace. Hospice personnel and spiritual advisors can be especially helpful but you may require more help through support groups or even therapists, counselors or a psychologist or a psychiatrist. Kokua Mau offers a list of support groups for support and information at <https://kokuamau.org/grief-and-bereavement/>

But, most of all, you should prioritize taking care of yourself so that you can care for your loved one, family member, or friend.

DISPOSITION OF REMAINS

There are various ways individuals can choose to dispose of their remains upon death: burial, cremation and, most recently in Hawai'i, by "water cremation." Act 294 signed by the governor in July of 2022 provides the authority for water cremation (or hydrolysis or aquamation) in Hawai'i. In the new law, "water cremation means alkaline hydrolysis, which is the reduction of human remains to bone fragments and essential elements using heat, pressure, water, and base chemical agents." Another provision in the law describes where this occurs. It defines a "Hydrolysis" facility as a structure, room, or other space in a building or structure containing hydrolysis equipment, to be used for water cremation. The definition of crematory is also amended to mean "a structure containing a furnace used or intended to be used for the conventional cremation of human remains."

The new law recognizes the cultural significance of *iwi kūpuna*, or ancestral bones, that is rooted in Native Hawaiian burial tradition which includes reducing remains to skeletal components and interring the *iwi* in a *kapa* or *lauhala* container.

WHO DECIDES?

Hawai'i's Disposition of Remains Act found in HRS Chapter 531B specifies the individuals who have the right to determine what happens to the deceased's body or ashes. A person may provide written directions for the location, manner, and conditions of disposition of the person's remains in a will, in a

pre-need contract in accordance with HRS Chapter 441 (Cemetery and Funeral Trusts), or by any written document signed by the person and notarized. A person who wishes to authorize another person to control the disposition of the person's remains may execute a "written instrument to control disposition of remains" before a notary public. The written directions may also include arrangements for funeral goods and services to be provided upon that person's death and takes precedence over wishes or other direction by any other person.

Otherwise, HRS § 531B-4 provides:

- (a) Unless a decedent has left directions in writing for the disposition of remains pursuant to [this chapter] or a person has forfeited the right of disposition pursuant to [this chapter], the following persons, in the priority listed, have the right to control the disposition of the decedent's remains and the location, manner, and conditions of disposition of the decedent's remains:
 - (1) A person designated by the decedent in a testamentary disposition or a written instrument executed in accordance with [this chapter];
 - (2) The surviving spouse, if the decedent was legally married at the time of death; the surviving partner, if the decedent had legally entered into a civil union at the time of death; or the surviving reciprocal beneficiary, if the decedent was in a reciprocal beneficiary relationship at the time of death;
 - (3) The sole surviving child of the decedent, or if there is more than one surviving child, the majority of the surviving children. Less than the majority of the surviving children shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving children and the other surviving children cannot be located or have not responded within five days of the notification of the decedent's death;
 - (4) The surviving parent or parents of the decedent. Only one surviving parent shall be vested with the rights and duties of this section if that surviving parent used reasonable efforts to notify the other surviving parent and the other surviving parent cannot be located or has not responded within five days of the notification of the decedent's death;
 - (5) The surviving sibling of the decedent, or if there is more than one surviving sibling, the majority of the surviving siblings. Less than the majority of the surviving siblings shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving siblings and the other surviving siblings cannot be located or have not responded within five days of the notification of the decedent's death;
 - (6) The surviving grandparent of the decedent, or if there is more than one surviving grandparent, the majority of the surviving grandparents. Less than the majority of the surviving grandparents shall be vested with the rights and duties of this section if they

have used reasonable efforts to notify all other surviving grandparents and the other surviving grandparents cannot be located or have not responded within five days of the notification of the decedent's death;

- (7) The surviving grandchild of the decedent, or if there is more than one surviving grandchild, the majority of the surviving grandchildren. Less than the majority of the surviving grandchildren shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving grandchildren and the other surviving grandchildren cannot be located or have not responded within five days of the notification of the decedent's death;
 - (8) The guardian of the decedent at the time of the decedent's death, if one had been appointed;
 - (9) The personal representative of the estate of the decedent;
 - (10) The person in the next degree of kinship to the decedent, in descending order, subject to descent and distribution under the laws of succession of the State. If there is more than one person of the same degree of kinship to the decedent, any person of that degree may exercise the right of disposition;
 - (11) If the disposition of the remains of the decedent is the responsibility of the State or a political subdivision of the State, the public officer, administrator, or employee responsible for arranging the final disposition of decedent's remains; and
 - (12) In the absence of any person under paragraphs (1) through (10) of this section, any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, after attesting in writing that a good faith effort has been made to notify the individuals under paragraphs (1) through (10) of the decedent's death, and no persons have agreed to assume the responsibilities or have responded within five days of the notification.
- (b) If a United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, was in effect at the time of death for a decedent who died in a manner described by title 10 United States Code sections 1481(a)(1) through (8), the DD Form 93 controls any other written instrument described in section 531B-3 or 531B-5 with respect to designating a person to control the disposition of the decedent's remains. Notwithstanding section 531B-3 or 531B-5, the form is legally sufficient if it is properly completed, signed by the decedent, and witnessed in the manner required by the form.

CEMETERIES

When purchasing a cemetery plot for the burial of remains, most commonly, you purchase the right to use the land for a burial plot for a set number of years. Contact the cemetery to find out. Be aware that public assistance eligibility rules regarding ownership limitations for cemetery plots apply.

VETERANS CEMETERIES

Burials for qualified veterans (including U.S. war allies) and their dependents can be buried in the **Hawai'i State Veterans Cemetery** on O'ahu or Veterans cemeteries on Hawai'i, Kaua'i, Maui, Molokai or Lāna'i.

National Memorial Cemetery of the Pacific (The Punchbowl)

Information from the Veterans Administration National Cemetery Administration follows: <https://www.cem.va.gov/cems/nchp/nmcp.asp>

"Burial in a national cemetery is open to all members of the armed forces who have met a minimum active duty service requirement and were discharged under conditions other than dishonorable.

A Veteran's spouse, widow or widower, minor dependent children, and under certain conditions, unmarried adult children with disabilities may also be eligible for burial. Eligible spouses and children may be buried even if they predecease the Veteran. Members of the reserve components of the armed forces who die while on active duty or who die while on training duty, or were eligible for retired pay, may also be eligible for burial.

The National Memorial Cemetery of the Pacific currently has space available for cremated remains in the columbarium. We may be able to accommodate casketed remains in the same gravesite of previously interred family members. Periodically, however, burial space may become available due to disinterment from an existing gravesite or for other reasons. If burial space is available at the time of request, the cemetery will assign a gravesite to an eligible Veteran or family member. Since there is no way to know in advance when a gravesite may become available, please contact the cemetery at the time of need to inquire whether space is available."

HAWAI'I STATE VETERANS CEMETERY

There is a state Veterans cemetery on each major island. A list appears at <https://dod.hawaii.gov/ovs/veteran-cemeteries>

- Gravesites in Hawai'i State Veterans Cemetery (HSVC) cannot be reserved in advance. However, families are encouraged to prepare in advance by discussing cemetery options, and by collecting the veteran's military information.
- Burial use: These cemeteries are for veterans, their spouses, and minor children who are under 21 years of age or under 23 years of age if pursuing a course of instruction at an approved educational institution. Unmarried adult children who are physically or mentally disabled and incapable of self-support before reaching the age of 21 years are also eligible for burial. Family members utilize a one-grave concept with interments at 6', 8' and 10' depths. Cremains may be placed in a niche in the columbarium wall or inurned in a ground plot.
- HSVC will provide a gravesite, marker, perpetual care of the gravesite, and will open and close the grave. **The veteran's family must pay for mortuary services provided by Funeral Directors and other related costs, usually including transportation of remains.**
- **COST:** The Department of Veterans Affairs will pay the plot/interment allowance fee for wartime and peacetime veterans. The plot allowance fee does not apply to the MEMORIAL WALL where the ashes are scattered, there is no charge for the placement of a Memorial Marker. Fees are subject to change without notification.
- To establish burial eligibility in the Hawai'i State Veterans Cemetery, a copy of the veteran's official military discharge document with the character of discharge is required, i.e., *DD214*, *WDAGO 53-55*, or *VA Statement of Service verifying the veteran's military service*. (The discharge certificate alone is not sufficient.) The following information must also be provided: The veteran's full name; rank; branch of service; date of entry and discharge of service; Social Security number and VA claim number; date of birth; and date of death.
- At the time of need, the Funeral Director shall contact the Hawai'i State Veterans Cemetery on behalf of the family to schedule the interment date. If the family is not using the services of a mortuary, the family may call direct to arrange for burial date and time.
- The same procedures are followed if the veteran's eligible spouse or dependent predeceases the veteran. In most cases, one gravesite is provided for the burial of all eligible family members and a single marker is provided. When both spouses are veterans, two gravesites and two headstones may be provided, if requested.
- **Headstone: Flat Granite Markers** (for ground burial) and **Bronze Markers** (for Columbarium wall niche) are ordered by HSVC. Upon arrival, markers are emplaced on the gravesite or niche.
- **Funeral services are not held at Hawai'i State Veterans Cemetery**, but a final Committal Service may be held at the cemetery not to exceed ten (10) minutes in length. Viewing facilities are not available. Banquet facilities are also not available.

- **Military Honors:** If military honors are desired, the Mortuary will arrange for the military honors prior to the Committal Service, by calling the appropriate military service organization to see if it can be provided.
- In absence of military honors, the cemetery staff may play a recorded version of Taps at the Committal Shelter.
- Full military honors will be provided for retirees only, which may consist of uniformed pallbearers, flag-folding detail, rifle salute, and a bugler playing Taps, and a chaplain. If requested, the detail may be modified or shortened to be consistent with the number of people available to provide honors. Veterans will be provided a bugler, and a minimum of a two-person team to fold and present the flag.
- BURIAL FLAG: The Department of Veterans Affairs will provide one burial flag per veteran. Most veterans, reservists and former reservists are eligible to receive a burial flag. At the time of need, request for a burial flag will be made through the mortuary; HSVC will assist the family in requesting a burial flag.
- For additional information or assistance, write to:

HAWAII STATE VETERANS CEMETERY

45-349 Kamehameha Highway, Kaneohe, Hawai'i 96744 or
call (808) 369-3575 Fax No. (808) 233-3633.

In accordance with HRS 531B-5, a person who wishes to authorize another person to control the disposition of remains and the arrangements for funeral goods and services may execute a written instrument before a notary public. The written instrument shall be in substantially the following form:

FORM 7:

WRITTEN INSTRUMENT TO CONTROL DISPOSITION OF REMAINS

State of _____)
)
County of _____)

I, _____ do hereby designate _____ as the sole person who will have the right to determine and decide the disposition of my remains upon my death and the arrangements for funeral goods and services. I have/have not attached specific directions concerning the disposition of my remains. If I have attached specific directions, the designee shall substantially comply with the specific directions, provided the directions are lawful and there are sufficient resources in my estate to carry out the directions.

SIGNATURE: Sign and date the form here:

_____	_____
<i>(Sign your name)</i>	<i>(Date)</i>

<i>(Print your name)</i>	

DECLARATION OF NOTARY:

Subscribed and sworn before me, _____ (insert name of notary public), on this _____ day of _____, in the year _____.

Notary Seal

(Signature of Notary Public)

My Commission Expires: _____

NOTARY CERTIFICATION

Document Date _____ # Pages: _____

Name: _____, _____ Circuit

Document Description: **WRITTEN INSTRUMENT TO
CONTROL DISPOSITION OF REMAINS**

Signature _____ Date _____

Notary Certification

DONATION OF ORGANS AND BODIES

The Uniform Anatomical Gift Act, found in HRS Chapter 327, provides the legal basis for donating a body or a body part for transplantation, therapy, research or education. It permits any individual at least eighteen years of age, prior to the death of the donor, to give all or any part of the individual's body for medical or dental education, research, advancement of medical science or dental science, therapy or transplantation.

The agent under a health care power of attorney or a guardian may also make the anatomical gift. The gift becomes effective upon death without waiting for probate. Evidence of an intent to donate organs can be made by a will or by some other document such as a donor card, or a driver's license imprinted with the words, "organ donor." During a terminal illness or injury to the donor, a person may make an anatomical gift by any form of communication addressed to at least two individuals who are at least eighteen years of age, one of whom is a disinterested witness. The law also has provisions for revoking a donation and for refusing to make such a gift.

A number of people, in an order of priority established under the law, can make an anatomical gift on behalf of a deceased person for purposes of transplantation, therapy, research, or education. The priority classes of individuals include agents under a health care power of attorney, spouses, reciprocal beneficiaries, civil union partners, adult children, parents, adult grandchildren, grandparents, adults who have exhibited special care or concern for the decedent, guardians, and others who may have the authority to dispose of the decedent's body. The law provides detailed instructions if there are objections to the donation. For more information about organ donations or about body donations and,

potentially, to register to be an organ, tissue and eye donor, contact the Hawai'i Legacy of Life Center at (808) 599-7630 or <https://legacyoflifehawaii.org>.

THE WILLED BODY PROGRAM FOR RESEARCH AND EDUCATION

The John A. Burns School of Medicine at the University of Hawai'i has a program through which it accepts bodies for research and education. At times the program pauses and temporarily suspends acceptance of donated bodies, such as happened during the COVID 19 pandemic.

See: <https://jabsom.hawaii.edu/about/giving/willed-body/index.html>

THE IMPORTANCE OF BODY DONATION

Anatomy is the study of the structure and function of the human body. It is one of the most important courses in the education of physicians, therapists, and all other health care professions. The study of anatomy comes early in the medical curriculum and serves as the foundation for other courses.

In addition, physicians in residency training and those in practice often pursue special courses in anatomy to enhance their skills and learn new techniques. Body donation plays a critical role in helping medical and health-related science students to master the complex anatomy of the human body and provides researchers with an essential tool for discoveries to help patients.

The willed body program at the medical school encourages the donation of bodies but it does reserve the right to refuse bodies, for example, when it does not need any more or when the body is not in an appropriate condition for the school's purposes. If the body is not located on O'ahu, arrangements must be made to transport it to O'ahu. For more information, contact the Willed Body Program at the University of Hawai'i John A. Burns School of Medicine at (808) 692-1447 or wbdonor@hawaii.edu or through <https://jabsom.hawaii.edu/about/giving/willed-body/index.html>.

Each year to show their appreciation to the donors and their families, medical students and staff participate in a Memorial Service to honor these "silent teachers." Traditionally, canoes are sent with students to scatter the ashes of the "silent teachers" in the ocean amidst chants and lei.

HEALTH CARE DECISION MAKING, ADVANCE HEALTH CARE DIRECTIVES, POLST, SURROGACY, AND ADVANCE MENTAL HEALTH DIRECTIVES

HEALTH CARE DECISION MAKING

An Important Note:

As this version of the handbook was being finalized, significant changes to the law were being considered by the legislature to take effect in 2026. The most significant change would be the enactment of an entirely new Uniform Health Care Decisions Act (Modified) or UHCDA for our state, thereby replacing the current UHDA. Shortly after the effective date of any new UHCDA, we plan to upload it to our website www.hawaii.edu/uhelp for your information. The new UHCDA would have an effect on almost every area of health care decision making and there would be new terminology, new provisions regarding legally authorized representatives for patients who lack decisional capacity, new provisions regarding mental health decision making, and new model advance directive forms. However, the legislation provides: “An advance health care directive created before January 1, 2026, shall be valid on January 1, 2026, if it complies with this chapter or complied at the time of creation with the law of the state in which it was created.”

The legislature stated its purpose in changing the existing law;

The legislature finds that in 1999, the legislature passed the Uniform Health-Care Decisions Act (1993), which was enacted and codified as chapter 327E, Hawaii Revised Statutes, and in 2004, passed an advance mental health care directives law, which was enacted and codified as chapter 327G, Hawaii Revised Statutes.

The legislature further finds that these laws should be updated and consolidated into one unified law regarding health care decisions to avoid confusion and conflicting provisions. In 2023, the Uniform Law Commission approved and recommended for enactment in all states the Uniform Health-Care Decisions Act (2023). While existing state law addresses advance directives broadly, the Uniform Health-Care Decisions Act (2023) does so more comprehensively by dividing various types of advance directives

into separate sections for power of attorney for health care, health care instructions, and advance mental health care directives.

Among other things, the Uniform Health-Care Decisions Act (2023) expands upon the framework for determining whether an individual has capacity, removes legal hurdles for creating advance directives, addresses both advance health care directives and advance mental health care directives within the same statutory framework, and allows an individual to assent to a "Ulysses clause" in an advance mental health care directive, which allows an individual to include an instruction that prevents the individual from revoking the advance directive if the individual is experiencing a psychiatric or psychological event specified in the directive.

Therefore, the purpose of this Act is to update laws concerning advance health care directives and advance mental health care directives by adopting the Uniform Health-Care Decisions Act (2023) in amended form.

We begin this chapter with an explanation of the requirements for informed consent and how important it is to know and understand your medical treatment and to communicate your desires. Without informed consent a patient's rights might be violated, which can result in a negligence claim against a health care provider.

From there, we discuss the 1999 Uniform Health Care Decisions Act (UHCDA) as amended, which provides the basis for health care decision making in Hawai'i, including who has the authority to make health care decisions for an incapacitated patient. Note that partners, including same-sex partners who are not married to each other (and who are not reciprocal beneficiaries or civil union partners), who desire their partners to have the authority to act as a legally authorized representative for health care, must affirmatively take steps to designate their partner, preferably in a document. This chapter outlines the processes and documents that would be most helpful. Without such designation, a partner may have limited or no rights regarding the health care decision making, including access to medical information, treatment planning and decision making for their partner, and, perhaps, even visitation.

In this chapter we offer two optional forms for the Advance Directive: A "Short Form" (most often used) and a "Long Form" (used to include more details of your end-of-life wishes). The Long Form includes instructions concerning donation of organs, hospice care, religious or spiritual information and additional information about what is important to you.

In addition to advance health care directives, we discuss the POLST (Provider Orders for Life-Sustaining Treatment) form and how it differs from the Advance Directive and when it is used. It was revised in 2023 but older versions of the form remain valid.

The last subject discussed in this chapter is "Surrogate Decision Making," which in Hawai'i, is different from surrogate decision making in other states and as you will read, selecting a surrogate decision-maker in cases where an incapacitated individual has not designated a surrogate or other legally authorized representative is unique to Hawai'i. Although Hawai'i law requires signing a formal declaration, there is no surrogate form in the statute. UHELP developed a form which has been adopted or adapted by several facilities and is included in this chapter.

HEALTH CARE DECISIONS AND INFORMED CONSENT

In Hawai'i, as in all other states, mentally capacitated individuals have the fundamental right to control the decisions relating to their own health care. This includes decisions whether to have life-sustaining medical treatment or surgical procedures provided, continued, withheld, or withdrawn. The basis for making medical treatment decisions lies in the concept of informed consent. In Hawai'i, under HRS § 671-3, the Hawai'i Medical Board establishes standards for health care providers to follow in giving information to a patient or to a patient's guardian, health care agent or legal surrogate, if the patient lacks the capacity to give an informed consent. The standards include provisions which are designed to reasonably inform a patient, a patient's guardian or legal surrogate of the following matters:

- The condition to be treated;
- A description of the proposed treatment or surgical procedure;
- The intended and anticipated results of the proposed treatment or procedure;
- The recognized possible alternative forms of treatment;
- The recognized alternative treatments or procedures, including the option of not providing these treatments or procedures;
- The recognized material risk of serious complications or mortality associated with:
 - The proposed treatment;
 - The recognized alternative treatments or procedures; and not undergoing any treatment or procedure;
 - and the recognized benefits of the recognized alternative treatments or procedures.

UNIFORM HEALTH CARE DECISIONS ACT (MODIFIED)

The Uniform Health Care Decisions Act was drafted by The Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws) and approved by the American Bar Association House of Delegates to consolidate various state laws dealing with all decisions about adult health care and health care powers of attorney.

The Hawai'i State Legislature did not adopt the Uniform Health Care Decisions Act in its entirety, but modified it, thus the parenthetical "Modified" in its title. It was codified as the Uniform Health Care Decisions Act (Modified), often abbreviated as UHCDA, under HRS Chapter 327E, which contains most, but not all, of Hawai'i's laws pertaining to health care decision making and includes provisions relating to advance health care directives and surrogate decision making. If a new UHCDA is enacted it may be designated HRS Chapter 327M.

In Hawai'i, the Uniform Health Care Decisions Act (Modified) or UHCDA in HRS § 327E-2, defines health care as any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual's physical or mental condition, including:

- Selection and discharge of health care providers and institutions;

- Approval or disapproval of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and
- 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.

The UHCDA addresses advance health care directives as well as the “surrogate” consent law provisions which will be discussed later in this chapter under “Surrogate Decision-Making.” It also sets out the duties of health care providers in following the instructions of a legally authorized decision-maker.

ADVANCE HEALTH CARE DIRECTIVES

The term “Advance Health Care Directive,” sometimes shortened to “Advance Directive,” applies to all directives, instructions, or even desires that a person may communicate in writing, orally or in some other fashion, concerning decisions about medical treatment and health issues relating to their body and life and which can be used to provide instructions for health care when they cannot communicate their wishes.

The term “living will” was popular for many years but was confusing to many. In 1999, the Uniform Health Care Decisions Act (Modified), or UHCDA, was enacted in Hawai‘i and can be found in HRS Chapter 327E. This law uses the terms “advance health care directive.” Advance health care directives in Hawai‘i may include “durable powers of attorney for health care” and “individual instructions for health care.” The term “living will” is still in use in several other states and by certain agencies, including the Department of Veterans Affairs and generally has the same meaning as individual instructions for health care used in Hawai‘i.

Most commonly, advance directives are thought of as those written documents which provide health care providers with information about a patient’s desires concerning medical treatment and which contain a designation of an agent in a power of attorney for health care to make health care decisions for the patient. Note: Powers of attorney for health care are not included under the provisions of the Uniform Power of Attorney Act, which will be discussed in Chapter 7 but need to be completed in accordance with the UHCDA, the provisions of which will be discussed in detail in this chapter.

Before discussing advance directive forms, it is important to provide some context. During the COVID-19 pandemic, there was a new sense of urgency and interest in advance health care planning to help ensure that patients’ wishes were accurately documented and respected. Right from the beginning of the crisis, there was a demand for information and an increase in completing advance directives. With the pandemic experience in mind and as both science and medical treatment protocols progress and allow people to live healthier and longer lives, more individuals are now deciding to take charge of their own medical decisions in consultation with physicians, other health care providers, family members, clergy, and close friends.

ADVANCE DIRECTIVE FORMATS

In Hawai'i, advance health care directive formats generally follow the optional form found in HRS § 327E-16 but there is no required form under law. The sample advance directive forms found in this chapter are based on this format although they contain differences. An advance health care directive is never required but it can be very helpful. Every state has different laws and formats and some health care facilities may be reluctant to recognize out-of-state documents. There continues to be a strong movement toward creating uniformity among the states and especially in the "portability" of documents. It is particularly important to take preventive measures and look into the laws in another state ahead of time if you are moving to another state or if you plan to spend an extended period in that state. Note that an advance medical directive executed for members of the armed services or military dependents pursuant to 10 U.S. Code 1044 C is exempt from any requirement of form, substance, formality, or recording that is provided for under the laws of an individual state.

While the UHCDA provides an optional sample form, which may be duplicated, this form may be modified to suit the needs of the person, or a completely different form may be used that contains the substance of the optional form found in the UHCDA. Sample long version and short version forms used by UHELP are found at the end of this chapter.

Both sample forms provide you with a section in which you can designate a health care agent in a durable power of attorney for health care and a section in which you can provide your individual instructions for health care regarding the provision, withholding, or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief medication. Space is provided for you to add to the choices you have made or for you to write in any additional wishes.

INDIVIDUAL INSTRUCTIONS FOR HEALTH CARE

Including "individual instructions for health care," sometimes called "individual instructions," in your advance directive is a good way to make your desires known concerning health care decisions, including life-sustaining medical treatment. As previously mentioned, the term "individual instructions" takes the place of what was commonly called the "living will" under the old law. Individual instructions for health care may be made orally or in writing and can cover virtually all aspects of health care. If made orally, it may be best for you to provide the instruction directly to your physician or other health care provider and ask them to document your discussions by placing the information you provide in your medical record or chart. You can also provide individual instructions in writing, for example, by writing a letter to your health care provider. The letter can let them know about your desires for health care in the future. Usually, individual instructions for health care are incorporated in an advance directive health care document, which can also include the designation of an agent through a health care power of attorney, directions concerning organ donations, and the designation of a health care provider, among other matters.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

In addition to the individual instruction for health care, you should consider making a durable power of attorney for health care, also called a “health care power of attorney” or “medical power of attorney” and can be accomplished in the advance health care directive form under the UHCDA. Do not confuse the durable power of attorney for health care, which expressly addresses health care decisions and has different execution requirements, with the powers of attorney under the Uniform Power of Attorney Act discussed in the Power of Attorney portion of the chapter covering guardianship, conservatorship and their alternatives.

Sample long and short forms of advance directives provided at the end of this chapter including health care powers of attorney are provided at the end of this chapter. If you are confused about the type of power of attorney you have, make sure to ask an attorney for advice and guidance. Giving a trusted health care agent the authority to carry out your individual instructions or to make health care decisions in the absence of such instructions is becoming a common method of planning for the future. It helps you continue to stay more in charge of your own destiny. To help enhance your future autonomy and self-determination, consider filling out a “What Matters to Me” type of statement in your advance health care directive.

Under HRS § 327E-3, you can choose to have the powers in the health care power of attorney take effect when you become incapable of making your own decisions or you can have it take effect immediately even when you are still capable. However, you always retain the right to make your own decisions about your health care and to revoke this authority as long as you are mentally capacitated.

You may also name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. This is a very important consideration since you cannot always be sure if your primary agent will be available to make decisions when needed.

Unless related to you, your agent in the health care power of attorney may not be an owner, operator, or employee of a health care institution where you are receiving care. Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you.

Practically speaking, a physician or other health care provider normally will not want to act or perhaps will not be able to act as your agent, unless you are related to the physician or other provider or if the physician or other provider is a close friend and is not your treating physician.

EXECUTION AND WITNESSING

Powers of attorney for health care must be properly witnessed or notarized as provided in HRS § 327E-3 and 16. For the durable power of attorney for health care to be valid for making health care decisions, you may sign it before two “qualified” adult witnesses who are personally known to you and who are present when you sign and who must also sign the document. In the alternative, you may sign the document before a notary public in the state that acknowledges your signature.

A witness for a power of attorney for health care cannot be a health care provider, an employee of a health care provider or facility, or the agent you have designated in your health care power of attorney. At least one of the individuals used as a witness for a power of attorney for health care must be

someone who is neither related to you, the principal, by blood, marriage, or adoption, nor entitled to any portion of the estate upon your death under any will or codicil you may have made prior to the execution of the power of attorney for health care or by operation of law then existing.

REVOCATION/EFFECTIVENESS OF ADVANCE HEALTH CARE DIRECTIVES

HRS § 327E-4 makes it clear that you may revoke an advance directive, including a health care power of attorney. However, you may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider. You may revoke all or part of an advance health care directive, other than the designation of an agent, at any time and in any manner that communicates intent to revoke. A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care. Except for the donation of your body or body parts under Hawai'i's Uniform Anatomical Gifts Act, a health care power of attorney ceases to be effective upon your death.

WHAT TO DO WITH AN ADVANCE HEALTH CARE DIRECTIVE

When you complete an advance directive, which can include individual instructions and/or a power of attorney for health care, give a copy of any signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care and to any health care agents you have named. You should talk to the person you have named as agent to make sure that your agent understands your wishes and is willing to take on the responsibility. Once again, make sure that you consider designating alternate health care agents in case your first choice is unwilling or unable to act on your behalf.

Make certain that a copy of your executed document is placed into your medical record or chart. You may have several medical records or charts if you receive health care from several providers. This is your responsibility. In case of an emergency that requires a decision concerning your health care, make sure that you keep a copy where it is immediately available to you or your health care agent.

You can ask to have the initials, AHCD (Advance Health Care Directive), put on your driver's license or state identification card to indicate that you have made an advance directive. This will encourage people to look for the advance directive in an emergency, if for some reason you have not had it placed in your medical record or chart.

The following forms were drafted under the provisions of HRS Chapter 327E. If a new UHCD is enacted, new model forms are to be drafted by the Hawai'i Attorney General's Office in coordination with the Department of Health and are to be fully in effect in January 2026. Until then, the following forms can still be executed and used.

FORM 8: SHORT FORM ADVANCE HEALTH CARE DIRECTIVE

PART 1

HEALTH CARE POWER OF ATTORNEY DESIGNATION OF AGENT:

I designate the following individual as my agent to make health care decisions for me:

(Name and relationship of individual designated as health care agent)

(Address)

(City) (State) (Zip code)

(Home phone) (Work phone)

(E-mail)

If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make decisions for me, I designate the following individual as my alternate agent:

(Name and relationship of individual designated as alternate health care agent)

(Address)

(City) (State) (Zip code)

(Home phone) (Work phone)

(E-mail)

WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE:

My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. If the following box is not marked, I authorize my primary physician to disclose to the agent(s) I designate above health information relevant to whether or not I am unable to make my own health care decisions.

____ ☐ If I mark this box, my agent's authority to make health care decisions for me takes effect immediately. However, I always retain the right to make my own decisions about my health care and

to revoke this authority as long as I am mentally capacitated.

AGENT'S AUTHORITY AND OBLIGATION:

I intend my agent's authority to be as broad as possible subject only to any instructions and limitations I may state in Part 2 of this form or as I may otherwise provide orally or in writing. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

NOMINATION OF A GUARDIAN:

If a guardian needs to be appointed for me by a court, I nominate my agent.

PART 2 INSTRUCTIONS FOR HEALTH CARE:

(If you are satisfied with allowing your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may add wording you may prefer and you may strike through any wording you do not want.)

A. END-OF-LIFE DECISIONS:

I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below: (Check only one box on the following page.)

____ ☐ (a) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, **OR**

____ ☐ (b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

____ ☐ (c) Choice To Be Made By Health Care Agent

I want my agent who is designated in Part 1 of this document or in a separate document to make end-of-life decisions for me.

(If you wish to add to the instructions or to write your own, you may do so in section D below.)

B. ARTIFICIAL NUTRITION AND HYDRATION FOOD AND FLUIDS:

Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have made in the preceding paragraph A unless I mark the following box.

☐ If I mark this box, artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph A.

C. RELIEF FROM PAIN:

 ☐ If I mark this box, I direct that treatment to alleviate pain or discomfort should be provided to me even if it hastens my death.

D. ADDITIONAL INSTRUCTIONS OR INFORMATION (Optional–“What is Important to Me.”)

What is important to you, what makes your life worth living, the things you value, your thoughts on life-prolonging treatment, preferences for physician/health care facility/hospice, directions for organ/body donation, or spiritual information, etc.)

 ☐ If I mark this box, I have attached additional instructions or information that I wish to incorporate into this advance directive. (Sign and date each added page and attach to this form.)

E. OTHER MATTERS: A copy of this document has the same effect as the original. (You may strike through any of the following provisions with which you do not agree.)

My agent has the following powers with respect to my health care:

- a. To talk with health care providers and insurers and to arrange for and authorize my treatment, admission to or discharge from any hospital, nursing home, residential care, assisted-living, home health, hospice or similar facility or service and to apply for public or private health care benefits and apply for and change any health care-related service, facility, program, benefit or insurance for me.
- b. To request, receive, examine, copy and consent to the disclosure of protected health information, such as medical or any other health care information, including personally identifiable information, medical files and records under federal and state law including the Health Insurance Portability and Accountability Act (HIPAA) as my personal representative.

- c. To act as Medicaid authorized representative, pursuant to federal and state Medicaid laws relating to authorized representatives, on my 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.
- d. To sign necessary documents on my behalf related to the above matters without my agent assuming personal financial responsibility.

(My Signature) (Date)

(My Printed Name)

(My Address)

WITNESSES:

This document must either be signed by two qualified adult witnesses who witness or acknowledge the signature; or be acknowledged before a notary public in the state.

ALTERNATIVE NO. 1 (WITNESSES)

FIRST WITNESS*

*I declare under penalty of false swearing pursuant to section 710-1062, Hawai'i Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, nor an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

(Signature of Witness)

(Date)

(Printed Name of Witness)

(Address of Witness)

SECOND WITNESS**

**I declare under penalty of false swearing pursuant to section 710-1062, Hawai'i Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of

Signature of Witness) (Date)

(Printed Name of Witness)

(Address of Witness)

State of Hawai'i _____)
 _____) SS
 County of _____)

On this _____ day of _____, in the year _____, before me,

(Insert name of Notary Public) appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it.

Notary Seal

(Signature of Notary Public)

(Printed Name)

My Commission Expires: _____

NOTARY CERTIFICATION

Document Date _____ # Pages: _____

Name: _____, _____ Circuit

Document Description: **ADVANCE HEALTH CARE DIRECTIVE**

Signature _____ Date _____

Notary Certification

FORM 9: LONG FORM ADVANCE HEALTH CARE DIRECTIVE

MY NAME IS _____

MY ADDRESS IS _____
(Address)

(City) (State) (Zip code)

PART 1 DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health care decisions for me:

(Name of individual you choose as agent)

(Address)

(City) (State) (Zip code)

(Home phone) (Other phone)

(E-mail or other means of contact)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, I designate as my first alternate agent:

(Name of individual you choose as first alternate agent)

(Address)

(City) (State) (Zip code)

(Home phone) (Other phone)

(E-mail or other means of contact)

(2) AGENT'S AUTHORITY: **(Strike through any of the following provisions you do not want. You can add provisions on the form or attach additional pages.)**

My agent is authorized to make all of the following health care decisions for me:

- To consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition, including admission to or discharge from a health care facility or program, approval or disapproval of diagnostic tests, medical or surgical procedures, programs of medication, the use of alternative or complementary therapies.
- To make decisions to participate in education, research and experimental programs.
- To make decisions regarding orders not to resuscitate, including out-of-hospital Provider Orders For Life-Sustaining Treatment (POLST) documents, as well as decisions to provide, withhold, or withdraw nutrition and hydration, and all other forms of health care to keep me alive.
- To request, receive, examine, copy, and consent to the disclosure of medical or any other health care information, including medical files and records. I also grant my agent the power to authorize, or to revoke any authorization for, the release, disclosure and use of any of my health and medical information, including, but not limited to, my entire medical record, my medical bills, all information in my medical records relating to Acquired Immune Deficiency Syndrome (AIDS) or HIV, alcohol and/or drug abuse treatment, or behavioral or mental health services, and any written opinion relating to my capacity, my competency, or my ability to manage my own affairs or to make my own decisions, and such power shall apply to any information governed by the Patient Protection and Affordable Care Act (PPACA) and the Health Insurance Portability and Accountability Act of 1996 (also known as HIPAA), 42 USC 1320d and 45 CFR 160-164, and any other applicable federal, state or local statute or regulation. In addition, my agent shall have the power to pay any fee charged for duplication of records, and to release health care providers and other entities from all liability and claims whatsoever pertaining to the disclosure of information as contained in the records released pursuant to such authorization.
- To communicate with, select and discharge health care providers, insurers, organizations, institutions and programs, including outpatient, acute care, long-term care and hospice programs and to make and change health care choices and options relating to plans, services, benefits and payments; to assist with, submit, and execute applications, redeterminations of eligibility, and other on-going related communications with public or private health care and benefit programs and to act as my authorized representative for federal, state, local or private programs, to include Medicare, Medicaid, Med-Quest and Veterans' programs without my agent incurring any personal financial liability.

To make all other health care decisions for me, except as I state here:

(You may make a separate mental health advance directive or include provisions in this advance directive. Use additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box.

____ ☐ If I mark this box, my agent's authority to make health care decisions for me takes effect immediately. However, I always retain the right to make my own decisions about my health care and to revoke this authority as long as I am mentally capacitated.

(4) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes communicated by me to my agent or, otherwise, to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate my agent. If another person is appointed as guardian and my agent is willing and able to act, I would prefer my agent to have precedence in making health care decisions for me.

PART 2 INSTRUCTIONS FOR HEALTH CARE

(If you are satisfied with allowing your agent to determine what is best for you with respect to end-of-life decisions, you need not fill out this part of the form. **If you do fill out this part of the form, you may strike through any wording you do not want.**)

(6) END-OF-LIFE DECISIONS: I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below: **Check only one box.**

____ ☐ (a) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, OR

____ ☐ (b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

(If you wish, you may add to the instructions or write your own in paragraph (9))

(7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have made in paragraph (6) unless I mark the following box.

____ ☐ If I mark this box, artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (6)

(8) RELIEF FROM PAIN: If I mark the following box,

____ ☐ I direct that treatment to alleviate pain or discomfort should be provided to me even if it hastens my death.

(9) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here:)

PART 3

DONATION OF ORGANS/BODY AT DEATH (optional)

(10) Upon my death: (Mark applicable box(es):

- ☐ (a) I give any needed organs, tissues, or parts, OR
- ☐ (b) I give the following organs, tissues, or parts only

-
- ☐ (c) My gift is for the following purposes:
(Strike through any of the following you do not want)
- Transplant
 - Therapy
 - Research
 - Education

- ☐ (d) I give my body to the John A. Burns School of Medicine for its research and education purposes. **(Obtain information/forms from the Medical School's Department of Anatomy, Biochemistry and Physiology—Willed Body Program.)**

PART 4

PRIMARY PHYSICIAN/HEALTH CARE/HOSPICE FACILITY (optional)

(11) I designate the following physician as my primary physician:

(Name of physician)

(Address)

(City)

(State)

(Zip code)

(Phone)

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

(Name of physician)

(Address)

(City)

(State)

(Zip code)

(Phone)

(12) I have the following preference of hospice care, hospitals and/or nursing homes if I require such care:

(You may name a facility, or you may indicate a preference for hospice care administered at home or in a hospice facility, a preference not to be institutionalized.)

PART 5: RELIGIOUS OR SPIRITUAL INFORMATION (optional)

(13) I identify with the following church, temple, or other spiritual group:

(14) I would like to receive my spiritual care from:

(Name of individual or group)

(Address)

(City)

(State)

(Zip code)

(Contact Phone/E-mail)

PART 6: ADDITIONAL INSTRUCTIONS OR INFORMATION (optional) WHAT IS IMPORTANT TO ME

(15) You may provide information about yourself, what is important to you, your ethical, spiritual and religious instructions, requests for prayer and forgiveness, what makes your life worth living, and the things you value, etc. You may also include additional information about when you would not want your

life prolonged by medical treatment (examples: if not able to communicate, if not able to enjoy eating), where you want to spend your last days, etc.:

____ ☐ If I mark this box, I have attached additional instructions or information (Sign and date each added page and attach to this form.)

(16) EFFECT OF COPY: A copy of this form has the same effect as the original.

SIGNATURE: **Sign and date the form here:**

_____	_____
<i>(Sign Your Name)</i>	<i>(Date)</i>

(Print Your Name)

WITNESSES: The power of attorney portion of this document will not be valid for making health care decisions unless it is either (a) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; or (b) acknowledged before a notary public in the state.

ALTERNATIVE NO. 1 (WITNESSES)

FIRST WITNESS

I declare under penalty of false swearing pursuant to section 710-1062, Hawai'i Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, nor an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

(Date)

(Address of Witness)

I declare under penalty of false swearing pursuant to section 710-1062, Hawai'i Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, nor an employee of a health care provider or facility.

(Date)

(Address of Witness)

State of Hawai'i _____)
) SS
County of _____)

(Insert name of notary public) appeared _____ ,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person
whose name is subscribed to this instrument, and acknowledged that he or she executed it.

(Signature of Notary Public)

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NOTARY CERTIFICATION

Document Date _____ # Pages: _____

Name: _____, _____ Circuit

Document Description: **ADVANCE HEALTH CARE DIRECTIVE**

Signature _____ Date _____

Notary Certification

PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST)

In 2009, the Hawai'i legislature passed a law providing for a health care protocol called Physician Orders for Life-Sustaining Treatment (POLST), which is found in HRS Chapter 327K. In 2014, the Hawai'i legislature passed legislation providing for the expansion of the existing law to give advanced practice registered nurses (APRN), in addition to physicians, the authority to sign what are now called Provider Orders for Life-Sustaining Treatment.

In 2022, the law was expanded to give Physician Assistants (PAs) the same authority. The POLST is a medical order which contains information and directions about an individual patient's health care decisions in the event of an emergency or chronic health care condition. This includes end-of-life decisions, such as cardiopulmonary resuscitation (CPR) and tube feeding which emergency medical personnel and other health care professionals are required to follow. By law, the POLST form is not an advance directive but a provider order signed by a physician or an APRN or PA and, accordingly, is immediately actionable. In 2023 a new POLST form was adopted for use in Hawai'i but older versions are still recognized.

DNR/DNAR

Before taking a look at the specifics of the POLST law and form, it is important to understand some basic information about emergency treatment and what is popularly known as "DNR codes." Do Not Resuscitate (DNR) codes are orders not to provide cardiopulmonary resuscitation (CPR) attempts to a person who has stopped breathing or whose heart has stopped beating. There are two basic types of DNRs, "in-hospital" and "out-of-hospital" DNRs.

In-hospital DNRs are placed by a physician or other authorized health care provider with the patient's (or patient's legally authorized decision-maker's) consent in the patient's treatment chart. A "code" defines the type of medical action to be taken when a patient suffers from medical distress such as a cardiac or respiratory arrest in a hospital or other health care facility. It is important to know that, in such an emergency, the patient may routinely be resuscitated unless there is a written DNR order in the medical record. This order is sometimes called a "Do Not Attempt Resuscitation" (DNAR) or "No Cardiopulmonary Resuscitation" (No CPR) order, or "Allow Natural Death" (AND) order. The DNR order is only an order to forgo the otherwise automatic initiation of CPR and it does not alter other treatment decisions. CPR can include such emergency medical interventions as artificial breathing, chest compressions, cardiac defibrillation (using electric shocks), and certain drugs.

A patient can designate an agent under a health care power of attorney to make such decisions to place a DNR order. The decision to refuse CPR may also be made orally by a mentally capacitated patient to the treating physician. This can also serve as the basis for the DNR order, which is usually signed by the attending physician or supervising health care provider. DNR orders (or "no codes") are placed in the patient's medical chart and, thereafter, emergency procedures to resuscitate the patient will not be carried out. DNR codes are often written if it is felt that future resuscitation efforts would be

futile.

Under a 1994 Hawai'i law (as amended in 2006), the Hawai'i Department of Health established a program for out-of-hospital DNRs, often referred to as "Comfort Care Only" (CCO-DNR) or "Rapid Identification Documents" but this program has been suspended indefinitely, although bracelets and necklaces issued under the program are still recognized. Wearing a state-approved CCO-DNR necklace or bracelet notified emergency medical services personnel, first responder personnel, and health care providers not to administer chest compressions, rescue breathing, defibrillation, or medication to restart the heart or the person's breathing and that the person was to receive comfort care only (CCO), including oxygen, airway suctioning, splinting of fractures, pain medicine, and other measures required for comfort. Once again, this program has been suspended indefinitely and POLST forms, described below are intended to take the place of such bracelets or pendants, which are still recognized but no longer issued.

POLST FORM

The POLST form, first authorized in 2009, is a medical order which contains information and directions about an individual patient's health care decisions in the event of an emergency or chronic health care condition. This includes end-of-life decisions, such as cardiopulmonary resuscitation (CPR) and tube feeding which emergency medical personnel and other health care professionals are required to follow.

Even though it is not an advance directive, the most frequent use of the POLST form is as a summary of an individual's advance directive decisions and information about life-sustaining treatment. The form turns the information and a patient's expressed desires into a provider's order that is signed by either the physician or APRN or PA and the individual or the guardian or health care agent or surrogate (legally authorized representative or LAR). The individual or the LAR is encouraged to discuss health care treatment decisions with the primary care physician or APRN and document these decisions on a brightly colored POLST form, which as mentioned, is then signed by both the individual or the LAR and the physician or APRN or PA.

The form is preferably lime green in color, so it can be found easily when needed and because it copies clearly on white paper. A plain white copy, completed correctly, and signed by the patient (or LAR) and by a physician or an APRN or a PA is equally legal and valid. The POLST form was modified in 2023 but previous versions are still accepted. For a video that explains the new form go to <https://kokuamau.org/> where a video summary on the basics of POLST and its improvements are explained.

Briefly, a POLST provides the following:

- The orders contained in the standardized form are immediately actionable, signed medical orders;
- The orders address a range of life-sustaining interventions as well as the patient's preferred intensity of treatment for each intervention;
- The form is recognized by the Hawai'i Emergency Medical Services System;
- The form follows the patient between settings of care, including acute care hospitals, nursing facilities and community settings.

Since the POLST form is not an advance directive and does not name an agent or surrogate, an individual should still consider providing individual instructions and appointing a health care agent through an advance directive. One major difference between an advance directive and POLST is that an advance directive covers a wide range of health care decisions and POLST is focused on end-of-life decisions. Another difference is that POLST is used primarily by emergency medical services (EMS) and other first responders and in health care facilities in emergency situations, while advance directives may take more time to consider the patient's condition and appropriate action. In other words, a POLST is immediately actionable as a provider order, while advance directives normally require evaluation and certification of an individual's current condition and establishment that the condition meets the criteria found in the advance directive document.

The combination of POLST and advance directive gives an individual the best opportunity to have health care treatment wishes followed. Individuals can ask their physicians and other providers about both types of forms. The POLST law is rather short and is contained in HRS Chapter 327K and is provided below.

§327K-1 Definitions. As used in this chapter, unless the context otherwise requires:

“Department” means the Department of Health.

“Form” means a provider orders for life-sustaining treatment form adopted by the department.

“Health care provider” means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of the individual's business or profession.

“Legally authorized representative” means an agent, guardian, or surrogate, as those terms are defined in section 327E-2, or agent designated through a power of attorney for health care, as defined in section 327E-2.

“Patient's provider” means a physician licensed pursuant to chapter 453, a physician assistant licensed pursuant to chapter 453, or an advanced practice registered nurse licensed pursuant to chapter 457 who has examined the patient.

“Provider orders for life-sustaining treatment form” means a form signed by a patient, or if incapacitated, by the patient's legally authorized representative and the patient's provider, that records the patient's wishes and that directs a health care provider regarding the provision of resuscitative and life-sustaining measures. A provider orders for life-sustaining treatment form is not an advance health care directive.

§327K-2 [Provider] orders for life-sustaining treatment form; execution; explanation;

compliance; revocation.

- (a) The following may execute a form:
 - (1) The patient;
 - (2) The patient's provider; and
- (b) The legally authorized representative, but only if the patient:
 - (1) Lacks capacity; or
 - (2) Has designated that the legally authorized representative is authorized to execute the form.

The patient's provider may medically evaluate the patient and, based upon the evaluation, may recommend new orders consistent with the most current information available about the individual's health status and goals of care. The patient's provider shall consult with the patient or the patient's legally authorized representative before issuing any new orders on a form. The patient or the patient's legally authorized representative may choose to execute or not execute any new form. If a patient is incapacitated, the patient's legally authorized representative shall consult with the patient's provider before requesting the patient's provider to modify treatment orders on the form. To be valid, a form shall be signed by the patient's provider and the patient, or the patient's provider and the patient's legally authorized representative. At any time, a patient, or, if incapacitated, the patient's legally authorized representative, may request alternative treatment that differs from the treatment indicated on the form.

- (c) The patient's physician or a health care provider shall explain to the patient the nature and content of the form, including any medical intervention or procedures, and shall also explain the difference between an advance health care directive and the form. The form shall be prepared by the patient's physician or a health care provider based on the patient's preferences and medical indications.
- (d) Any health care provider, including the patient's physician, emergency medical services personnel, and emergency physicians shall comply with a properly executed and signed form and treat the patient according to the orders on the form; provided that compliance shall not be required if the orders on the form request medically ineffective health care or health care that is contrary to generally accepted health care standards.
- (e) A patient having capacity, or, if the patient is incapacitated, the patient's legally authorized representative, may revoke a form at any time and in any manner that communicates intent to revoke.

§327K-3 Immunity

- (a) No physician, physician assistant, advanced practice registered nurse, health care professional, nurse's aide, hospice provider, home care provider, including private duty and medicare home health providers, emergency medical services provider, adult residential care home operator, skilled nursing facility operator, hospital, or person

employed by or under contract with a hospital shall be subject to criminal prosecution, civil liability, or be deemed to have engaged in unprofessional conduct for:

- (1) Carrying out in good faith, a decision regarding treatment orders, including cardiopulmonary resuscitation by or on behalf of a patient pursuant to orders in a form and in compliance with the standards and procedures set forth in this chapter; or
 - (2) Providing cardiopulmonary resuscitation to a patient for whom an order not to resuscitate has been issued on a form; provided that the person reasonably and in good faith:
 - (A) Was unaware of the issuance of an order not to resuscitate; or
 - (B) Believed that any consent to treatment orders, including the order not to resuscitate, had been revoked or canceled.
- (b) No person shall be subject to criminal prosecution or civil liability for consenting or declining to consent, in good faith and on behalf of a patient, to the issuance of an order not to resuscitate pursuant to this chapter.

§327K-4 Rules. The director of health may adopt rules in accordance with chapter 91 to carry out this chapter.

FORM 10: PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST) FORM

HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY		
PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST) - HAWAII		
FIRST follow these orders. THEN contact the patient's provider. This Provider Order form is based on the person's current medical condition and wishes. Any section not completed implies full treatment for that section. Everyone shall be treated with dignity and respect.		Patient's Last Name First/Middle Name Date of Birth
		Date Form Prepared
A Check One	CARDIOPULMONARY RESUSCITATION (CPR): ** Person has no pulse and is not breathing ** Attempt Resuscitation/CPR Do Not Attempt Resuscitation/DNAR (Allow Natural Death) (Section B: Full Treatment required) If the patient has a pulse, then follow orders in B and C .	
B Check One	MEDICAL INTERVENTIONS: ** Person has pulse and/or is breathing ** Comfort Measures Only Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. Transfer if comfort needs cannot be met in current location. Limited Additional Interventions Includes care described above. Use medical treatment, antibiotics, and IV fluids as indicated. Do not intubate. May use less invasive airway support (e.g. continuous or bi-level positive airway pressure). Transfer to hospital if indicated. Avoid intensive care. Full Treatment Includes care described above. Use intubation, advanced airway interventions, mechanical ventilation, and defibrillation/cardioversion as indicated. Transfer to hospital if indicated. Includes intensive care. Additional Orders: _____	
C Check One	ARTIFICIALLY ADMINISTERED NUTRITION: Always offer food and liquid by mouth if feasible and desired. (See Directions on next page for information on nutrition & hydration) No artificial nutrition by tube. Defined trial period of artificial nutrition by tube. Long-term artificial nutrition by tube. Goal: Additional Orders: _____	
D Check One	SIGNATURES AND SUMMARY OF MEDICAL CONDITION - Discussed with: Patient or Legally Authorized Representative (LAR). If LAR is checked, you must check one of the boxes below: Guardian Agent designated in Power of Attorney for Healthcare Patient-designated surrogate Surrogate selected by consensus of interested persons (Sign section E) Parent of a Minor Signature of Provider (Physician/APRN/PA licensed in the state of Hawai'i.) My signature below indicates to the best of my knowledge that these orders are consistent with the person's medical condition and preferences. Print Provider Name Provider Phone Number Date Provider Signature (required) Provider License # Signature of Patient or Legally Authorized Representative My signature below indicates that these orders/resuscitative measures are consistent with my wishes or (if signed by LAR) the known wishes and/or in the best interests of the patient who is the subject of this form. Signature (required) Name (print) Relationship (write 'self' if patient) Summary of Medical Condition Official Use Only	
SEND FORM WITH PERSON WHENEVER TRANSFERRED OR DISCHARGED		

HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY																				
PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST) - HAWAII																				
<p>FIRST follow these orders. THEN contact the patient's provider. This Provider Order form is based on the person's current medical condition and wishes. Any section not completed implies full treatment for that section. Everyone shall be treated with dignity and respect.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="padding: 2px;">Patient's Last Name</td> </tr> <tr> <td colspan="2" style="padding: 2px;">First/Middle Name</td> </tr> <tr> <td style="padding: 2px;">Date of Birth</td> <td style="padding: 2px;">Date Form Prepared</td> </tr> </table>		Patient's Last Name		First/Middle Name		Date of Birth	Date Form Prepared												
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A	<p>CARDIOPULMONARY RESUSCITATION (CPR): ** Person has no pulse and is not breathing **</p> <p style="text-align: center;"> Attempt Resuscitation/CPR Do Not Attempt Resuscitation/DNAR (Allow Natural Death) </p> <p>(Section B: Full Treatment required)</p> <p>If the patient has a pulse, then follow orders in B and C.</p>																			
B	<p>MEDICAL INTERVENTIONS: ** Person has pulse and/or is breathing **</p> <p>Comfort Measures Only Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. Transfer if comfort needs cannot be met in current location.</p> <p>Limited Additional Interventions Includes care described above. Use medical treatment, antibiotics, and IV fluids as indicated. Do not intubate. May use less invasive airway support (e.g. continuous or bi-level positive airway pressure). Transfer to hospital if indicated. Avoid intensive care.</p> <p>Full Treatment Includes care described above. Use intubation, advanced airway interventions, mechanical ventilation, and defibrillation/cardioversion as indicated. Transfer to hospital if indicated. Includes intensive care.</p> <p>Additional Orders: _____</p>																			
C	<p>ARTIFICIALLY ADMINISTERED NUTRITION: Always offer food and liquid by mouth if feasible and desired.</p> <p>(See Directions on next page for information on nutrition & hydration)</p> <table style="width: 100%;"> <tr> <td style="width: 50%;">No artificial nutrition by tube.</td> <td style="width: 50%;">Defined trial period of artificial nutrition by tube.</td> </tr> <tr> <td></td> <td>Goal:</td> </tr> <tr> <td colspan="2">Long-term artificial nutrition by tube.</td> </tr> </table> <p>Additional Orders: _____</p>		No artificial nutrition by tube.	Defined trial period of artificial nutrition by tube.		Goal:	Long-term artificial nutrition by tube.													
No artificial nutrition by tube.	Defined trial period of artificial nutrition by tube.																			
	Goal:																			
Long-term artificial nutrition by tube.																				
D	<p>SIGNATURES AND SUMMARY OF MEDICAL CONDITION - Discussed with:</p> <p>Patient or Legally Authorized Representative (LAR). If LAR is checked, you must check one of the boxes below:</p> <table style="width: 100%;"> <tr> <td style="width: 33%;">Guardian</td> <td style="width: 33%;">Agent designated in Power of Attorney for Healthcare</td> <td style="width: 33%;">Patient-designated surrogate</td> </tr> <tr> <td colspan="2">Surrogate selected by consensus of interested persons (Sign section E)</td> <td>Parent of a Minor</td> </tr> </table> <p>Signature of Provider (Physician/APRN/PA licensed in the state of Hawai'i.)</p> <p>My signature below indicates to the best of my knowledge that these orders are consistent with the person's medical condition and preferences.</p> <table style="width: 100%;"> <tr> <td style="width: 50%;">Print Provider Name</td> <td style="width: 20%;">Provider Phone Number</td> <td style="width: 30%;">Date</td> </tr> <tr> <td>Provider Signature (required)</td> <td colspan="2">Provider License #</td> </tr> </table> <p>Signature of Patient or Legally Authorized Representative</p> <p>My signature below indicates that these orders/resuscitative measures are consistent with my wishes or (if signed by LAR) the known wishes and/or in the best interests of the patient who is the subject of this form.</p> <table style="width: 100%;"> <tr> <td style="width: 33%;">Signature (required)</td> <td style="width: 33%;">Name (print)</td> <td style="width: 33%;">Relationship (write 'self' if patient)</td> </tr> <tr> <td colspan="2">Summary of Medical Condition</td> <td>Official Use Only</td> </tr> </table>		Guardian	Agent designated in Power of Attorney for Healthcare	Patient-designated surrogate	Surrogate selected by consensus of interested persons (Sign section E)		Parent of a Minor	Print Provider Name	Provider Phone Number	Date	Provider Signature (required)	Provider License #		Signature (required)	Name (print)	Relationship (write 'self' if patient)	Summary of Medical Condition		Official Use Only
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Provider Signature (required)	Provider License #																			
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Summary of Medical Condition		Official Use Only																		
SEND FORM WITH PERSON WHENEVER TRANSFERRED OR DISCHARGED																				

SURROGATE DECISION MAKING

Who can make health care decisions for an individual no longer capable of making decisions, has no designated health care agent and has no guardian? Historically, health care providers have turned to family members to provide informed consent in these situations. Under the laws of many jurisdictions (and included within the provisions of the UHCDA—HRS 327E), a “surrogate” may make a health care decision for a patient if the patient lacks capacity and no agent or guardian has been appointed or neither the agent nor guardian is available. Hawai‘i law is different.

First, patients who do not have a guardian and have not executed a health care power of attorney may designate or disqualify any individual to act as a surrogate by personally informing the supervising health care provider, which is defined in section 2 of HRS 327E as “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.”

Second, Hawai‘i does not have a “family consent” law, which in some states provides for a hierarchy of decision makers for decisionally incapacitated patients who do not have a guardian, who have not designated a health care agent and who have not designated a surrogate. Instead, Hawai‘i law (in HRS 327E-7) has somewhat unique provisions which provide for health care decision making by appointing a surrogate selected by consensus of “interested persons.”

Upon a determination that a patient lacks decisional capacity to provide informed consent or refusal for medical treatment, the primary physician or the physician’s designee first needs to make “reasonable efforts to notify the patient of the patient’s lack of capacity.” If the patient does not have a guardian and has not designated a health care agent or surrogate, the primary physician, or the physician’s designee, then must make reasonable efforts to locate as many “interested persons” as practicable. The primary physician may rely on such individuals to notify other family members or interested persons. Under this law “interested persons” means the patient’s spouse, unless legally separated or estranged, a reciprocal beneficiary, a civil union partner, 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.

Upon locating the interested persons, the primary physician, or the physician’s designee, must inform such persons of the patient’s lack of decisional capacity and that a surrogate decision-maker should be selected for the patient. The interested persons are to 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. Only interested persons involved in the discussions to choose

a surrogate may initiate such proceedings for the patient.

As explained above, the patient can designate or disqualify a surrogate. Accordingly, interested persons can be “trumped” by an orally designated surrogate. In the same manner, a patient may orally disqualify someone who otherwise might be entitled to make decisions on behalf of the patient, even if they are interested persons and even if they are chosen by consensus of interested persons.

The law provides that a surrogate designated by the patient may “make health care decisions for the patient that the patient could make on the patient’s own behalf.” In other words, a “designated surrogate” may make all decisions for the patient. The law further states that a surrogate not 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.” In other words, a “non-designated surrogate” has certain restrictions on making health care decisions about tube feeding.

Whether the surrogate is “designated” or “non-designated,” the supervising health care provider will 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.

The legislature did not provide any sample form in the statute, but several forms have been developed by health care institutions, some based on an original UHELP sample form. A sample UHELP form follows.

Note that if a new UHCDA is enacted, the requirement to provide such a written declaration will be changed to an optional request by a provider for such a declaration by a “default surrogate” should the provider feel it necessary. There is no model form included in the proposed legislation.

**FORM 11: DECLARATION OF
AUTHORITY
TO ACT AS SURROGATE FOR A PATIENT**

I, _____ (*Name of Surrogate*) under penalty of false swearing, provide the following statement of facts and circumstances establishing my authority to act as surrogate for _____ (*Name of Patient*) who has been determined by the primary physician to lack capacity to make health care decisions and no agent or guardian has been appointed or the agent or guardian is not reasonably available.

(MARK AND COMPLETE APPLICABLE SECTION “A” or “B”)

☐ **A. Patient-Designated Surrogate**

I have been provided information that the above-named patient personally informed the supervising health care provider that I have been designated by the patient to make health care decisions for the patient.

This information was provided to me by the following means:

(e.g., orally by (name of supervising health care provider–primary physician/designee); by letter dated _____ (copy attached); (or as recorded in patient’s health care record)).

I accept appointment as surrogate of the patient.

(*Signature of Surrogate*)

(*Date*)

(*Typed or Printed Name*)

(*Address*)

Contact information (e.g., email, phone numbers, etc.): _____

OR

(see next page)

☐ **B. Appointed (“Non-Patient Designated”) Surrogate**

I have been selected by consensus of interested persons of the above named patient to act as the patient’s surrogate after the primary physician, or the physician’s designee, made reasonable efforts to locate as many interested persons as practicable.

Part B.1. Primary Physician’s Determination of Incapacity

_____ was examined on _____
(Patient’s Name) (Date)

by _____
(Examining Physician)

and was determined to lack the ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision.

_____ (Primary Physician’s Name) _____ (Signature) _____ (Date)

Part B.2. I am an interested person based on my relationship to the patient as:

(Mark or Circle One)

___ Spouse (not legally separated or estranged)

___ Reciprocal Beneficiary ___ Civil Union Partner

___ Adult Child ___ Parent ___ Adult Sibling ___ Adult Grandchild

___ Other Adult who has exhibited special care and concern for the patient and who is familiar with the patient’s wishes.

List additional facts and circumstances to establish claimed authority (if any). Attach additional sheets of paper and relevant documents as necessary.

I accept appointment as surrogate of the patient.

(Signature of Surrogate)

(Date)

(Typed or Printed Name)

(Address)

Contact information (e.g., email, phone numbers, etc.): _____

TERMINOLOGY AND GUIDELINES

Hawai'i Revised Statutes (HRS) Section 327E-5 (i) provides that a supervising health care provider shall require a surrogate to provide a written declaration under penalty of false swearing stating facts and circumstances reasonably sufficient to establish the claimed authority. See HRS Chapter 327E for requirements and guidance under the Uniform Health Care Decisions Act (Modified). In particular see HRS Section 327E-2 for definitions and 327E-5 for procedures in designating, disqualifying or appointing a surrogate under the law.

“Patient” includes individuals in hospitals as well as those residing in nursing facilities or in the community.

“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.

“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 [HRS 327E] to make a health care decision or to act as a [M]edicaid authorized representative for the patient. (In other words, a “surrogate” means an individual (other than a court-appointed guardian or an agent appointed under a health care power of attorney) who has been designated by a patient (“patient-designated surrogate”) or who has been selected by “interested persons” (appointed or “non-patient designated surrogate”) to make health care decisions for a patient who has been determined to lack capacity to provide informed consent to or refusal of medical treatment).

“Interested persons” means the patient’s spouse, unless legally separated or estranged, a reciprocal beneficiary, civil union partner, 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.

A surrogate who has been designated by the patient ("patient-designated surrogate") may make health care decisions for the patient that the patient could make on the patient's own behalf. A surrogate who has not been designated by the patient ("non-designated surrogate") 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 ("non-designated surrogate") 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 ("non-designated surrogate") 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 ("non-designated surrogate") 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.

ADVANCE MENTAL HEALTH CARE DIRECTIVES

Hawai'i law (HRS Chapter 327G), at the time this handbook was finalized also recognized, the right of persons eighteen years of age or older and emancipated minors to make a written advance mental health care directive expressing their preferences and instructions regarding mental health care and treatment, including the consent to, or refusal of, that care and treatment, and to designate an agent or alternate agents to make mental health care decisions on behalf of the individual, when that individual later loses the capacity to make those decisions due to a mental illness. If a new UHCDA is enacted, HRS Chapter 327G is repealed and advance mental health directives will be included in the new UHCDA.

The law indicates that an agent must make health care decisions in accordance with the principal's individual instructions and other wishes to the extent known to the agent. Otherwise, the agent must make the decision in accordance with the agent's determination of the principal's best interest. "Best interest" means that the benefits to the principal resulting from a mental health treatment outweigh the burdens to the principal resulting from that treatment and includes:

- (1) The effect of the mental health treatment on the physical, mental, emotional, and cognitive functions of the principal;
- (2) The degree of physical and mental pain or discomfort caused to the principal by the mental health treatment or the withholding or withdrawal of that treatment;
- (3) The degree to which the principal's medical condition, the mental health treatment, or the

withholding or withdrawal of mental health treatment, results in a severe and continuing impairment;

- (4) The effect of the mental health treatment on the life expectancy of the principal;
- (5) The prognosis of the principal for the recovery or remission, with and without the mental health treatment;
- (6) The risks, side effects, and benefits of the mental health treatment or the withholding of mental health treatment; and
- (7) The religious beliefs and basic values of the principal receiving mental health treatment known to the agent, to the extent that these may assist the agent in determining benefits and burdens.

The form is found in the statute and may be copied or modified.

ADVANCE MENTAL HEALTH CARE DIRECTIVE: OPTIONS AND PROCEDURES

Based on HRS Chapter 327G, you have the right to give instructions about your own mental health care. You also have the right to name someone else to make mental health treatment decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your health care providers. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a list of options you may designate as part of your mental health care and treatment. For ease of designating specific instructions, mark those options in Part 1.

Part 2 of this form is a power of attorney for mental health care. This lets you name another individual as your agent to make mental health treatment decisions for you, if you become incapable of making your own decisions, or if you want someone else to make those decisions for you now, even though you are still capable of making your own decisions. You may name alternate agents to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a health care institution where you are receiving care.

You may allow your agent to make all mental health treatment decisions for you. However, if you wish to limit the authority of your agent, you may specify those limitations on the form. If you do not limit the authority of your agent, your agent will have the right to:

- (1) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a mental condition;
- (2) Select or discharge health care providers and institutions;
- (3) Approve or disapprove diagnostic tests, surgical procedures, and programs of medication; and
- (4) Approve or disapprove of electroconvulsive treatment.

Part 3 of this form lets you give specific instructions about any aspect of your mental health care and treatment. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of medication and treatment. Space is provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 4 of this form must be completed to activate the advance mental health care directive. After completing this form, sign and date the form at the end and have the form witnessed by one or both of the two methods listed below. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any mental health care agents you have named. You should talk to the persons you have named as agents to make sure that they understand your wishes and are willing to take responsibility.

You have the right to revoke this advance mental health care directive or replace this form at any time, unless otherwise specified in writing in the advance mental health care directive.

If you are in imminent danger of causing bodily harm to yourself or others, or have been involuntarily committed to a health care institution for mental health treatment, the advance mental health care directive will not apply.

If a new UHCDA is enacted, the following form will be superseded by a new model form to be drafted by the Hawai`i Attorney General's Office in coordination with the Department of Health and would be fully effective in January 2026. However, the following form is still valid if executed prior to January 2026.

FORM 12:
ADVANCE MENTAL HEALTH DIRECTIVE

PART 1
CHECKLIST OF MENTAL HEALTH CARE OPTIONS

NOTE TO PROVIDER: The following is a checklist of selections I have made regarding my mental health care and treatment. I include this statement to express my strong desire for you to acknowledge and abide by my rights, under state and federal laws, to influence decisions about the care I will receive.

(Declarant: Put a check mark in the left-hand column for each section you have completed.)

- ☐ Designation of my mental health care agent(s).
- ☐ Authority granted to my agent(s).
- ☐ My preference for a court appointed guardian.
- ☐ My preference of treating facility and alternatives to hospitalization.
- ☐ My preferences about the physicians or other mental health care providers who will treat me if I am hospitalized.
- ☐ My preferences regarding medications.
- ☐ My preferences regarding electroconvulsive therapy (ECT or shock treatment).
- ☐ My preferences regarding emergency interventions (seclusion, restraint, medications).
- ☐ Consent for experimental drugs or treatments.
- ☐ Who should be notified immediately of my admission to a facility.
- ☐ Who should be prohibited from visiting me.
- ☐ My preferences for care and temporary custody of my children or pets.
- ☐ Other instructions about mental health care and treatment.

PART 2
**DURABLE POWER OF ATTORNEY FOR MENTAL HEALTH
TREATMENT DECISIONS**

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make mental health care decisions for me:

(Name of individual you choose as agent)

(Address)

(City) (State) (Zip code)

(Home phone) (Work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a mental health care decision for me, I designate as my first alternate agent:

(Name of individual you choose as first alternate agent)

(Address)

(City) (State) (Zip code)

(Home phone) (Work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a mental health care decision for me, I designate as my second alternate agent:

(Name of individual you choose as second alternate agent)

(Address)

(City) (State) (Zip code)

(Home phone) (Work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all mental health care treatment decisions for me, including decisions to provide, withhold, or withdraw medication and treatment, and all other forms of mental health care, except as I state here:

(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my supervising health care provider who is a physician and one other physician or licensed psychologist determine that I am unable to make my own mental health care decisions.

(4) AGENT'S OBLIGATION: My agent shall make mental health care decisions for me in accordance with this power of attorney for mental health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make mental health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 3

INSTRUCTIONS FOR MENTAL HEALTH CARE AND TREATMENT

If you are satisfied in allowing your agent to determine what is best for you, you need not fill out this part of the form. If you do fill out this part of the form, you may strike through any wording you do not want.

(6) My preference of treating facility and alternatives to hospitalization:

(7) My preferences about the physicians or other mental health care providers who will treat me if I am hospitalized:

(8) My preferences regarding medications:

(9) My preferences regarding electroconvulsive therapy (ECT or shock treatment):

(10) My preferences regarding emergency interventions (seclusion, restraint, medications):

(11) Consent for experimental drugs or treatments:

(12) Who should be notified immediately of my admission to a facility:

(13) Who should be prohibited from visiting me:

(14) My preferences for care and temporary custody of my children or pets:

(15) My preferences about revocation of my advance mental health care directive during a period of

incapacity:

- (16) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

(Add additional sheets if needed.)

PART 4 WITNESSES AND SIGNATURES

- (17) EFFECT OF COPY: A copy of this form has the same effect as the original.

- (18) SIGNATURES: Sign and date the form here:

<hr/>	<hr/>
<i>(Sign your name)</i>	<i>(Date)</i>

(Print your name)

(Address)

<hr/>	<hr/>	<hr/>
<i>(City)</i>	<i>(State)</i>	<i>(Zip code)</i>

- (19) WITNESSES: This power of attorney will not be valid for making mental health care decisions unless it is either: (a) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; or (b) acknowledged before a notary public in the State.

AFFIRMATION OF WITNESSES WITNESS

I declare under penalty of false swearing pursuant to section 710-1062, Hawai'i Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud,

or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, nor an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

(Sign your name)

(Date)

(Print your name)

(Address)

(City)

(State)

(Zip code)

WITNESS 2

I declare under penalty of false swearing pursuant to section 710-1062, Hawai'i Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, nor an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

(Sign your name)

(Date)

(Print your name)

(Address)

(City)

(State)

(Zip code)

DECLARATION OF NOTARY:

Subscribed and sworn before me, _____ (insert name of notary public), on this _____ day of _____, in the year _____.

Notary Seal

(Signature of Notary Public)

My Commission Expires: _____

NOTARY CERTIFICATION

Document Date _____ # Pages: _____

Name: _____, _____ Circuit

Document Description: **ADVANCE MENTAL HEALTH DIRECTIVE**

Signature _____ Date _____

Notary Certification

CHAPTER

6

MEDICAL AID IN DYING AND HAWAII'S OUR CARE, OUR CHOICE ACT

MEDICAL AID IN DYING

As of 2024, eleven jurisdictions, Oregon, Washington, Montana, Vermont, California, Colorado, Washington D.C., Hawai'i, New Jersey, Maine, and New Mexico authorize medical aid in dying.

Over the past decades, several bills have been introduced in the Hawai'i legislature that would have legalized Medical Aid in Dying. In 2018 the Hawai'i Legislature passed, and the Governor signed an act that took effect on January 1, 2019. It allowed qualified patients in Hawai'i with a medically confirmed terminal illness with less than six months to live and possessing decisional capacity to determine their own medical care at the end of their lives, to request and obtain a prescription to end their lives pursuant to the provisions of this law.

The Hawai'i law was one of the most restrictive in the nation when first enacted but, in 2023, Hawai'i passed amendments to the Our Care, Our Choice law which made numerous changes. The law now:

Authorizes advanced practice registered nurses to practice medical aid-in-dying. It now authorizes licensed advanced practice registered nurses and clinical nurse specialists with psychiatric or mental health training and licensed marriage and family therapists to provide counseling to a qualified patient. It now reduces from twenty to five days, the mandatory waiting period between the two oral requests required for a qualified patient to obtain a prescription for medication. It also waives the mandatory waiting period for terminally ill qualified patients who are not expected to survive the mandatory waiting period.

Under the statute there are still no provisions for permitting a health care provider to assist a patient who has difficulty in taking the prescribed drugs as they must be ingested by the capacitated patient who is a resident of Hawai'i. Also, the statute does not make provisions to authorize decisions by legally authorized representatives as is permitted in making other health care decisions under the previously mentioned Uniform Health Care Decisions Act, even if the patient specifically grants such power.

The law is rather complex so it is included in its entirety, below.

HAWAI`I'S OUR CARE, OUR CHOICE ACT HRS 327L

327L § 1 Definitions. As used in this chapter:

“Adult” means an individual who is eighteen years of age or older.

“Advanced practice registered nurse” means a registered nurse licensed to practice in the State who has met the qualifications of chapter 457 and who, because of advanced education and specialized clinical training, is authorized to assess, screen, diagnose, order, utilize, or perform medical, therapeutic, preventive, or corrective measures, including prescribing medication.

“Attending provider” means a physician licensed pursuant to chapter 453 or advanced practice registered nurse licensed pursuant to chapter 457 who has responsibility for the care of the patient and treatment of the patient’s terminal disease.

“Capable” means that in the opinion of the patient’s attending provider or consulting provider, psychiatrist, psychologist, or clinical social worker, a patient has the ability to understand the patient’s choices for care, including risks and benefits, and make and communicate health care decisions to health care providers.

“Consulting provider” means a physician licensed pursuant to chapter 453 who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient’s disease or advanced practice registered nurse licensed pursuant to chapter 457 who is qualified by specialty or experience to diagnose and prescribe medication.

“Counseling” means one or more consultations, which may be provided through telehealth, as necessary between a psychiatrist licensed under chapter 453, psychologist licensed under chapter 465, clinical social worker licensed pursuant to chapter 467E, advanced practice registered nurse or clinical nurse specialist licensed under chapter 457 with psychiatric or mental health training, or marriage and family therapist licensed pursuant to chapter 451J, and a patient for the purpose of determining that the patient is capable, and that the patient does not appear to be suffering from undertreatment or nontreatment of depression or other conditions that may interfere with the patient’s ability to make an informed decision pursuant to this chapter.

“Department” means the department of health.

“Health care facility” shall have the same meaning as in section 323D-2.

“Health care provider” means a person licensed, certified, or otherwise authorized or permitted by the law of this State to administer health care or dispense medication in the ordinary course of business or practice of a profession.

“Informed decision” means a decision by a qualified patient to request and obtain a prescription to end the qualified patient’s life pursuant to this chapter. The informed decision shall be based on an appreciation of the relevant facts and made after being fully informed by the attending provider of:

- (1) The medical diagnosis;
- (2) The prognosis;
- (3) The potential risks associated with taking the medication to be prescribed;
- (4) The probable result of taking the medication to be prescribed;
- (5) The possibility that the individual may choose not to obtain the medication or may obtain the medication and may decide not to use it; and
- (6) The feasible alternatives or additional treatment opportunities, including but not limited to comfort care, hospice care, and pain control.

“Medically confirmed” means the medical opinion of the attending provider has been confirmed by a consulting provider who has examined the patient and the patient’s relevant medical records.

“Patient” means a person who is under the care of an attending provider.

“Physician” means a doctor of medicine or osteopathy licensed to practice medicine pursuant to chapter 453 by the Hawai’i medical board.

“Prescription” means prescription medication or medications that the qualified patient may self-administer to end the qualified patient’s life pursuant to this chapter.

“Qualified patient” means a capable adult who is a resident of the State and has satisfied the requirements of this chapter in order to obtain a prescription to end the qualified patient’s life pursuant to this chapter.

“Self-administer” means an individual performing an affirmative, conscious, voluntary act to take into the individual’s body prescription medication to end the individual’s life pursuant to this chapter.

“Telehealth” shall have the same meaning as defined in section 453-1.3.

“Terminal disease” means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.

“Terminal disease” does not include age or any physical disability or condition that is not likely to, by itself, cause death within six months.

327L § 2 Oral and written requests for medication; initiated. Except as otherwise provided in

section 327L-11(c), an adult who is capable, is a resident of the State, and has been determined by an attending provider and a consulting provider to be suffering from a terminal disease, and who has voluntarily expressed the adult's wish to die, may, pursuant to section 327L-9, submit:

(1) Two oral requests, a minimum of five days apart; and **(2)** One written request, for a prescription for medication that may be self-administered for the purpose of ending the adult's life in accordance with this chapter. The attending provider shall directly, and not through a designee, receive all three requests required pursuant to this section.

327L § 3 Form of the written request.

- (a)** A valid written request for a prescription under this chapter shall be substantially in the form described in section 327L-23, and shall be signed and dated by the qualified patient and witnessed by at least two individuals who, in the presence of the qualified patient, attest that to the best of their knowledge and belief the qualified patient is of sound mind, acting voluntarily, and is not being coerced to sign the request.
- (b)** One of the witnesses shall be a person who is not:
 - (1)** A relative of the qualified patient by blood, marriage, or adoption;
 - (2)** A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will, trust, or other legal instrument, or by operation of law; or
 - (3)** An owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.
- (c)** The qualified patient's attending provider at the time the request is signed shall not be a witness.

327L § 4 Attending provider; duties.

- (a)** The attending provider shall:
- (b)**
 - (1)** Make the initial determination of whether a patient has a terminal disease, is capable of medical decision making, and has made the request for the prescription voluntarily;
 - (2)** Require that the patient demonstrate residency pursuant to section 327L-13;
 - (3)** To ensure that the patient is making an informed decision, inform the patient of the:
 - (A)** Patient's medical diagnosis;
 - (B)** Patient's prognosis;
 - (C)** Potential risks associated with taking the medication to be prescribed;
 - (D)** Probable result of taking the medication to be prescribed;
 - (E)** Possibility that the individual may choose not to obtain the medication or may obtain the medication but may decide not to use it; and
 - (F)** Feasible alternatives or additional treatment opportunities, including but not limited to comfort care, hospice care, and pain control;
 - (4)** Refer the patient to a consulting provider for medical confirmation of the diagnosis, and for a determination that the patient is capable and acting voluntarily;
 - (5)** Refer the patient for counseling;
 - (6)** Recommend that the patient notify next of kin;

- (7) Counsel the patient about the importance of having another person present when the qualified patient self-administers the prescription prescribed pursuant to this chapter and of not self-administering the prescription in a public place;
- (8) Inform the patient that a qualified patient may rescind the request at any time and in any manner, and offer the qualified patient an opportunity to rescind the request at the time of the qualified patient's second oral request made pursuant to section 327L-9;
- (9) Verify, immediately prior to writing the prescription for medication under this chapter, that the qualified patient is making an informed decision;
- (10) Fulfill the medical record documentation requirements of section 327L-12;
- (11) Ensure that all appropriate steps are carried out in accordance with this chapter prior to writing a prescription for medication to enable a qualified patient to end the qualified patient's life pursuant to this chapter; and
- (12) Either:
 - (A) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort; provided that the attending provider is authorized to dispense controlled substances pursuant to chapter 329, has a current Drug Enforcement Administration certificate, and complies with any applicable administrative rules; or
 - (B) With the qualified patient's written consent:
 1. Contact a pharmacist of the qualified patient's choice and inform the pharmacist of the prescription; and
 2. Transmit the written prescription personally, by mail, or electronically to the pharmacist, who shall dispense the medication to either the qualified patient, the attending provider, or an expressly identified agent of the qualified patient.
 - (C) Notwithstanding any other provision of law, an attending provider may sign the qualified patient's death certificate. The death certificate shall list the terminal disease as the immediate cause of death.

327L § 5 Consulting provider; confirmation. Before a patient is qualified under this chapter, a consulting provider shall examine the patient and the patient's relevant medical records and confirm, in writing, the attending provider's diagnosis that the patient is suffering from a terminal disease and the attending provider's prognosis, and verify that the patient is capable, is acting voluntarily, and has made an informed decision.

327L § 6 Counseling referral. The attending provider shall refer the patient for counseling. No medication to end a patient's life pursuant to this chapter shall be prescribed until the person performing the counseling determines that the patient is capable, and does not appear to be suffering from undertreatment or nontreatment of depression or other conditions which may interfere with the patient's ability to make an informed decision pursuant to this chapter.

327L § 7 Informed decision. No qualified patient shall receive a prescription for medication to end the qualified patient's life pursuant to this chapter unless the qualified patient has made an informed

decision. Immediately prior to writing a prescription under this chapter, the attending provider shall verify that the qualified patient is making an informed decision.

327L § 8 Family notification. The attending provider shall recommend that the qualified patient notify the qualified patient's next of kin of the request for a prescription pursuant to this chapter. A qualified patient who declines or is unable to notify next of kin shall not have the qualified patient's request denied solely for that reason.

327L § 9 Written and oral requests. Except as otherwise provided in section 327L-11(c), to receive a prescription for medication that a qualified patient may self-administer to end the qualified patient's life pursuant to this chapter, a qualified patient shall have made an oral request and a written request, and reiterate the oral request to the qualified patient's attending provider no less than five days after making the initial oral request. At the time the qualified patient makes the second oral request, the attending provider shall offer the qualified patient an opportunity to rescind the request.

327L § 10 Right to rescind request. A qualified patient may rescind the request at any time and in any manner without regard to the qualified patient's mental state. No prescription under this chapter shall be made available pursuant to section 327L-4(a)(12) if the attending provider has not offered the qualified patient an opportunity to rescind the request at the time of the second oral request made pursuant to section 327L-9.

327L § 11 Waiting periods.

- (a) Except as otherwise provided in subsection (c), no less than five days shall elapse between the qualified patient's initial oral request for a prescription for medication pursuant to sections 327L-2 and 327L-9, and the taking of steps to make available a prescription pursuant to section 327L-4(a)(12).
- (b) No less than forty-eight hours shall elapse between the qualified patient's written request for a prescription for medication pursuant to sections 327L-2 and 327L-9, and the taking of steps to make available a prescription pursuant to section 327L-4(a)(12).
- (c) If the qualified patient's attending provider attests that the qualified patient will, within a reasonable medical judgment, die within five days after making the initial oral request, the five-day waiting period shall be waived and the qualified patient may reiterate the oral request to the attending provider at any time after making the initial oral request.

327L § 12 Medical record; documentation requirements. The following shall be documented or filed in a qualified patient's medical record:

- (1) All oral requests by the qualified patient for a prescription to end the qualified patient's life pursuant to this chapter;
- (2) All written requests by the qualified patient for a prescription to end the qualified patient's life pursuant to this chapter;
- (3) The attending provider's diagnosis and prognosis and determination that the qualified patient is capable, acting voluntarily, and has made an informed decision;
- (4) The consulting provider's diagnosis and prognosis and verification that the qualified patient

is capable, acting voluntarily, and has made an informed decision;

- (5) The counselor's statement of determination that the patient is capable, and does not appear to be suffering from undertreatment or nontreatment of depression or other conditions which may interfere with the patient's ability to make an informed decision pursuant to this chapter;
- (6) The attending provider's offer to the qualified patient to rescind the patient's request at the time of the qualified patient's second oral request made pursuant to section 327L-9; and
- (7) A statement by the attending provider indicating that all requirements under this chapter have been met and indicating the steps taken to carry out the request, including identification of the medication prescribed.

327L § 13 Residency requirement. Only requests made by residents of this State shall be granted under this chapter. Factors demonstrating state residency include but are not limited to:

- (1) Possession of a Hawai'i driver's license or civil identification card;
- (2) Registration to vote in Hawai'i;
- (3) Evidence that the patient owns or leases property in Hawai'i; or
- (4) Filing of a Hawai'i tax return for the most recent tax year.

327L § 14 Reporting requirements.

- (a) Within thirty calendar days of writing a prescription, the attending provider shall submit a copy of the qualified patient's written request, as well as [a] copy of all the documentation required pursuant to section 327L-12 to the department.
- (b) Within thirty calendar days following notification of the qualified patient's death from use of a prescribed medication pursuant to this chapter, or any other cause, the attending provider shall submit any follow-up information to the documentation required pursuant to section 327L-12 to the department.
- (c) The department shall annually collect and review all information submitted pursuant to this chapter. The information collected shall be confidential and shall be collected in such a manner that protects the privacy of all qualified patients, the qualified patients' family, and any attending provider, consulting provider, or counselor involved with a qualified patient pursuant to this chapter. Information collected pursuant to this section by the department shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.
- (d) On or before July 1, 2019, and each year thereafter, the department shall create a report of information collected under subsection (c) and vital statistics records maintained by the department and shall post the report on the department's website. Information contained in the report shall only include:
 - (1) The number of qualified patients for whom a prescription was written pursuant to this chapter;
 - (2) The number of known qualified patients who died each year for whom a prescription was written pursuant to this chapter and the cause of death of those qualified patients;
 - (3) The total number of prescriptions written pursuant to this chapter for the year in which

the report was created as well as cumulatively for all years beginning with 2019;

- (4) The total number of qualified patients who died while enrolled in hospice or other similar palliative care program;
- (5) The number of known deaths in Hawai'i from a prescription written pursuant to this chapter per five-thousand deaths in Hawai'i;
- (6) The number of attending providers who wrote prescriptions pursuant to this chapter;
- (7) Of the people who died as a result of self-administering a prescription pursuant to this chapter, the individual's:
 - (A) Age at death;
 - (B) Education level;
 - (C) Race;
 - (D) Sex;
 - (E) Type of insurance, if any; and
 - (F) Underlying illness; and
 - (G) Any other data deemed appropriate by the department.

327L § 15 Disposal of unused medication. A person who has custody or control of any unused medication dispensed under this chapter after the death of a qualified patient shall personally deliver the unused medication for disposal to the nearest qualified facility that properly disposes of controlled substances, or if none is available, shall dispose of it by lawful means.

327L § 16 Effect on construction of wills or contracts.

- (a) No provision in any will or contract, or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for a prescription to end the person's life pursuant to this chapter, shall be valid.
- (b) No obligation owing under any currently existing contract shall be conditioned or affected by the making or rescinding of a request, by a person, for a prescription to end the person's life pursuant to this chapter.

327L § 17 Insurance or annuity policies. The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any such policy shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for a prescription to end the person's life pursuant to this chapter. A qualified patient's act of using medication to end the qualified patient's life pursuant to this chapter shall have no effect upon a life, health, or accident insurance or annuity policy.

327L § 18 Construction of chapter.

- (a) Nothing in this chapter shall be construed to authorize a health care provider, health care facility, or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this chapter shall not, for any purpose, constitute suicide, assisted suicide, mercy killing, murder, manslaughter, negligent homicide, or any other criminal conduct under the law.

- (b) Nothing in this chapter shall be construed to allow a lower standard of care for qualified patients in the community where the qualified patient is treated or in a similar community.

327L § 19 Immunities; basis for prohibiting health care provider from participation; notification; permissible sanctions.

- (a) Except as provided in section 327L-20 and subsection (c):
 - (1) No person shall be subject to civil or criminal liability or professional disciplinary action for participating or acting in good faith compliance with this chapter, including being present when a qualified patient self-administers the prescribed medication to end the qualified patient's life pursuant to this chapter;
 - (2) No professional organization or association, health care provider, or health care facility shall subject any person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating or refusing to participate in good faith compliance with this chapter;
 - (3) No request by a qualified patient for a prescription or provision by a health care provider of a prescription or medication in good faith compliance with this chapter shall constitute neglect, harm, self-neglect, or abuse for any purpose of law or provide the sole basis for the appointment of a guardian or conservator;
 - (4) No health care provider or health care facility shall be under any duty, whether by contract, statute, or any other legal requirement, to participate in the provision to a qualified patient of a prescription or of medication to end the qualified patient's life pursuant to this chapter. If a health care provider is unable or unwilling to carry out a patient's request under this chapter and the patient transfers the patient's care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider; and
 - (5) No health care facility shall be subject to civil or criminal liability for acting in good faith compliance with this chapter.
- (b) Notwithstanding any other provision of law, a health care facility may prohibit a health care provider from participating in actions covered by this chapter on the premises of the health care facility if the health care facility has notified the health care provider of the health care facility's policy regarding participation in actions covered by this chapter. Nothing in this subsection shall prevent a health care provider from providing health care services to a patient that do not constitute participation in actions covered by this chapter.
- (c) Subsection (a) notwithstanding, if the health care facility has notified the health care provider prior to participation in actions covered by this chapter that the health care facility prohibits participation on its premises in actions covered by this chapter, the health care facility may subject the health care provider to the following sanctions:
 - (1) Loss of privileges, loss of membership, or other sanction provided pursuant to the medical staff bylaws, policies, and procedures of the health care facility if the health care provider is a member of the health care facility's medical staff and participates in actions covered by this chapter while on the premises of the health care facility other than in the private medical office of the health care provider;
 - (2) Termination of lease or other property contract or other nonmonetary remedies

provided by lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the health care provider participates in actions covered by this chapter while on the premises of the health care facility or on property that is owned by or under the direct control of the health care facility; or

- (3) Termination of contract or other nonmonetary remedies provided by contract if the health care provider participates in actions covered by this chapter while acting in the course and scope of the health care provider's capacity as an employee or independent contractor of the health care facility; provided that nothing in this paragraph shall be construed to prevent:

 - (A) A health care provider from participating in actions covered by this chapter while acting outside the course and scope of the health care provider's capacity as an employee or independent contractor; or
 - (B) A patient from contracting with the patient's attending provider, consulting provider, or counselor to act outside the course and scope of those providers' capacity as an employee or independent contractor of the health care facility.
- (d) A health care facility that imposes sanctions pursuant to subsection (c) shall follow all due process and other procedures the health care facility may have that are related to the imposition of sanctions on a health care provider.
- (e) For the purposes of this section:

"Notify" means to deliver a separate statement in writing to a health care provider specifically informing the health care provider before the health care provider's participation in actions covered by this chapter of the health care facility's policy regarding participation in actions covered by this chapter.

"Participation in actions covered by this chapter" means the performance of duties of an attending provider pursuant to section 327L-4, the consulting provider function pursuant to section 327L-5, or the counseling referral function or counseling pursuant to section 327L-6. "Participation in actions covered by this chapter" does not include:

 - (1) Making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis;
 - (2) Providing information about this chapter to a patient upon the request of the patient;
 - (3) Providing a patient, upon the request of the patient, with a referral to another health care provider; or
 - (4) Entering into a contract with a patient as the patient's attending provider, consulting provider, or counselor to act outside of the course and scope of the health care provider's capacity as an employee or independent contractor of a health care facility.
- (f) Action taken pursuant to sections 327L-4 through 327L-6 shall not be the sole basis for disciplinary action under sections 453-8, 465-13, or 467E-12.

327L § 20 Prohibited acts; penalties.

- (a) Any person who intentionally makes, completes, alters, or endorses a request for a prescription made pursuant to section 327L-2, for another person, or conceals or destroys any documentation of a rescission of a request for a prescription completed by another

person, shall be guilty of a class A felony.

- (b) Any person who knowingly coerces or induces a patient by force, threat, fraud, or intimidation to request a prescription pursuant to section 327L-2, shall be guilty of a class A felony.
- (c) Nothing in this section shall limit any liability for civil damages resulting from any intentional or negligent conduct by any person in violation of this chapter.
- (d) The penalties in this chapter are cumulative and shall not preclude criminal penalties pursuant to other applicable state law.

327L § 21 Claims by governmental entity for costs incurred. Any governmental entity that incurs costs resulting from a person terminating the person's life pursuant to this chapter in a public place shall have a claim against the estate of the person to recover costs and reasonable attorneys' fees related to enforcing the claim.

327L § 22 Severability. Any provision of this chapter that is held invalid as to any person or circumstance shall not affect the application of any other provision of this chapter that can be given full effect without the invalid provision or application.

327L § 23 Form of the request. A request for a prescription as authorized by this chapter shall be in substantially the following form:

"REQUEST FOR MEDICATION TO END MY LIFE

I, _____, am an adult of sound mind.

I am suffering from _____, which my attending provider has determined is a terminal disease and that has been medically confirmed by a consulting provider.

I have received counseling to determine that I am capable and not suffering from undertreatment or nontreatment of depression or other conditions which may interfere with my ability to make an informed decision.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, the possibility that I may choose not to obtain or not to use the medication, and the feasible alternatives or additional treatments, including comfort care, hospice care, and pain control.

I request that my attending provider prescribe medication that I may self-administer to end my life.

INITIAL ONE:

_____ I have informed my family of my decision and taken their opinions into consideration.

_____ I have decided not to inform my family of my decision.

_____ I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand the full import of this request and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer and my attending provider has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed: _____

Dated: _____

DECLARATION OF WITNESSES

We declare that the person signing this request:

- (a) Is personally known to us or has provided proof of identity;
- (b) Signed this request in our presence;
- (c) Appears to be of sound mind and not under duress or to have been induced by fraud, or subjected to undue influence when signing the request; and
- (d) Is not a patient for whom either of us is the attending provider.

_____ Witness Date _____

_____ Witness Date _____

NOTE: One witness shall not be a relative (by blood, marriage, or adoption) of the person signing this request, shall not be entitled to any portion of the person's estate upon death and shall not own, operate, or be employed at a health care facility where the person is a patient or resident."

327L § 24 Form of final attestation.

(a) A final attestation form shall be given to a qualified patient at the time an attending provider writes or dispenses the prescription authorized by this chapter and shall be in substantially the following form:

"FINAL ATTESTATION FOR A REQUEST FOR MEDICATION TO END MY LIFE

I, _____, am an adult of sound mind.

I am suffering from _____, which my attending provider has determined is a terminal disease and that has been medically confirmed by a consulting provider.

I have received counseling to determine that I am capable and not suffering from undertreatment or nontreatment of depression or other conditions which may interfere with my ability to make an informed decision.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, the possibility that I may choose not to obtain or not to use the medication, and the feasible alternatives or additional treatment options, including comfort care, hospice care, and pain control.

I understand that I am requesting that my attending provider prescribe medication that I may self-administer to end my life.

INITIAL ONE:

_____ I have informed my family of my decision and taken their opinions into consideration.

_____ I have decided not to inform my family of my decision.

_____ I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand that I still may choose not to use the medication prescribed and by signing this form I am under no obligation to use the medication prescribed.

I am fully aware that the prescribed medication will end my life and while I expect to die when I take the medication prescribed, I also understand that my death may not be immediate and my attending provider has counseled me about this possibility.

I make this request voluntarily and without reservation.

Signed: _____

Dated: _____

(b) The final attestation form shall be completed by the qualified patient within forty-eight hours prior to the qualified [patient's] self-administration of the medication prescribed pursuant to this chapter. Upon the qualified patient's death, the completed final attestation form shall be delivered by the qualified patient's health care provider, family member, or other representative to the attending provider for inclusion in the qualified patient's medical record.

327L § 25 Annual report. The department shall submit to the legislature an annual report no later than twenty days prior to the convening of each regular session. The report shall include but not be limited to:

- (1)** An annual analysis of the implementation of this chapter, including any implementation problems; and
- (2)** Any proposed legislation.

CHAPTER

7

GUARDIANSHIP, CONSERVATORSHIP AND ALTERNATIVES

Guardianship

Hawai'i's Uniform Guardianship and Protective Proceedings Act is codified as Article V of the Uniform Probate Code under Hawai'i Revised Statutes Chapter 560. Guardianship provisions are found in HRS Sections 560: 5-301-318 and conservatorship provisions are found in Sections 560: 5-401-418 Under the UGPPA, a guardianship or a conservatorship for a person or that person's property, is appropriate if that person, for reasons other than being a minor, is unable to "receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance."

The appointment of a guardian or a conservator usually requires rather lengthy and often expensive procedures. The petitioner (i.e., the person who appears before the court to request the appointment of a guardian or conservator), will need to provide medical and personal information about the incapacitated person, any spouse, parents, children, other close relatives, current custodian or guardian, and the proposed guardian or conservator. The court will require confirmation of the incapacitated person's condition, usually through a written report from a doctor. The court must also find that it has jurisdiction over the incapacitated person and property if a conservatorship is required, that the appointment is in the best interest of the incapacitated person, and that it is necessary or desirable to continue the care and supervision of the incapacitated person.

To meet the threshold requirements for guardianship or conservatorship, there must be a finding that the person cannot manage personal affairs such as inability to meet personal needs for medical care, nutrition, clothing, shelter or safety. The UGPPA defines "incapacitated person" as an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.

Thus, when individuals are incapable of making or communicating necessary decisions for their own safety or to take care of their own personal or property interests and effective alternatives have not been set up, it may be appropriate to seek guardianship or conservatorship for that individual. After the Uniform Guardianship and Protective Proceedings Act (UGPPA) went into effect in Hawai'i in 2005, the terminology used in the law changed from "guardian of the person" and "guardian of the property" to "guardian" and "conservator," respectively. Other terms are "ward," which refers to the person for whom guardianship is sought and "protected person," which refers to the person for whom a

conservatorship is sought.

Guardianship and conservatorship involve the legal processes through which someone is appointed by the court to take care of the person or property of an individual who is determined to be incapable of handling personal affairs or property. Hawai'i courts have jurisdiction over guardianships for people domiciled or present in the state and over conservatorships for people who are domiciled and own property in Hawai'i. Court hearings for guardianships of incapacitated persons can be heard in Circuit (Probate) Court or in Family Court. This is what is called "concurrent jurisdiction." Hearings for conservatorships are in the Circuit (Probate) Court. Cases involving the guardianship and conservatorship of the same person can be consolidated in either court at the court's discretion. The petitioner, who is the individual who asks the court to be responsible for the care and protection of another person, can act both as the guardian and as the conservator of an incapacitated person. Finally, transfer of jurisdiction from one court to another is permissible if it is determined to be in the best interest of the ward or protected person.

A guardianship or conservatorship will last until the death, resignation, removal, or court termination of the guardian or conservator. Wards (under guardianships) or protected persons (under conservatorships) can also petition the court to terminate the guardianship or conservatorship if they regain or attain the capacity or ability to take care of their person and property again.

GUARDIANSHIP

Note that while HRS section 560:5-302 provides that a guardian can be appointed by a parent, spouse, or reciprocal beneficiary by means of a will or other signed writing, this is not the usual process. Rather, judicial appointment (see below) is the normal process. Upon the death or incapacity of the appointing parent, spouse or reciprocal beneficiary, if there is no objection by the ward or other interested person and if the guardian accepts the appointment, the guardianship may become effective. The will or writing can specify any limitations on the power of the guardian and is freely revocable until the court appoints a guardian. A guardian who is appointed by such writing must file an acceptance with the court within 30 days of appointment but, again, this is not the normal process.

A guardian is normally appointed by a judge based on a petition that meets certain statutory requirements and which complies with other measures required by the court, such as proper notice to the interested parties. When a petition for guardianship is filed in the court, the person petitioning for guardianship is called the "Petitioner" and the potential ward is called the "respondent."

Among other powers, the guardian will generally have the authority to take custody of the ward and establish the custodial dwelling within this state (or outside the state with court's authorization). The guardian will also be authorized to consent to medical or other care, treatment or service for the ward, to take action to compel support for the ward, and to apply for and receive moneys for the support of the ward. A guardian, without authorization of the court, may not revoke any health care directions set forth in any medical directive or health care power of attorney of which the ward is the principal. However, the appointment of a guardian automatically terminates the authority of any agent designated in the medical directive or health care power of attorney. Making decisions to accept or to refuse

life-sustaining medical treatment, especially at the end of life is one of the most difficult decisions a guardian can make for an incapacitated adult.

While the guardian has almost complete authority over the ward, a guardian cannot borrow money, sell/convey property, make substantial investments, loan money, and do other financial transactions for the ward. (These duties would fall under a Conservatorship).

CONSERVATORSHIP

Conservatorship may be determined to be necessary under a variety of circumstances for the protection of the property (sometimes called estate) of an incapacitated individual. The court may determine that the individual is unable to manage property and business affairs because the individual cannot comprehend and evaluate information or make or communicate decisions even with help or because the individual is missing, detained, or unable to return to the United States. The court may also decide that unless management is provided, the property will be wasted or dissipated. Further, the court may decide that a conservatorship is necessary or desirable when money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support.

Generally, without needing further court approval, a conservator may authorize, direct, or ratify any transaction necessary or desirable to provide for the security, service, or care of the ward or protected person. The appointment of a conservator vests title in the conservator as trustee to all property of the protected person or to the part of the property specified in the court order. Upon notice of the appointment of a conservator, all agents acting under a previously created power of attorney by the protected person must take no further actions without the direct written authorization of the conservator, promptly report to the conservator as to any action taken under the power of attorney, and promptly account to the conservator for all actions taken under the power of attorney.

CONSERVATORSHIPS FOR ESTATES LESS THAN \$10,000

When the value of all of a protected person's assets (the estate) is less than \$10,000, the Clerk of the Circuit Court may be appointed to act as conservator and will be responsible for properly receiving and dispensing the protected person's funds. In addition to managing and administering funds for protected persons, the Estate and Guardianship Clerks communicate with caregivers, guardians of the person, public agencies, and provide many other services that ensure that the protected persons' funds are properly administered. Although it is possible to have the Clerk of the Circuit Court establish a conservatorship for a protected person with assets of less than \$10,000 at the Small Estates and Guardianship Office, be aware that their resources may be limited and their workload may also limit their ability to serve as conservator.

To start the process, contact the Small Estates and Guardianship Office. Among other documents, it will ask for a letter from a physician stating that the incapacitated individual is incapable of managing financial affairs and in need of a conservatorship. To help determine if the incapacitated individual

is qualified to have the Clerk of the Circuit Court become the conservator, the Small Estates and Guardianship Office will require names and addresses of family members and other information, such as bank accounts, to determine the value of the assets involved.

After the necessary information and documents have been submitted and approved, the Small Estates and Guardianship Office prepares a petition for conservatorship. If the judge approves the petition, the protected person's bills and checks can be sent directly to the Small Estates and Guardianship Office for payment. The conservatorship will continue until the protected person dies, once again becomes capable of handling the person's own financial affairs, or until a successor conservator is appointed.

THE FUTURE OF GUARDIANSHIP AND CONSERVATORSHIP

In 2023, a bill was introduced in the Hawai'i Legislature, which would adopt the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act and repeal the current Uniform Guardianship and Protective Proceedings Act. The bill, deferred in 2023 and 2024 would (1) require additional notice and hearing requirements for hearings on petitions for guardianship, conservatorship, or other protective arrangements; (2) require an evaluation of the individual who is the subject of a guardianship or conservatorship proceeding, upon the filing of the petition; (3) allow conservators additional powers; (4) permit an individual who is the subject of a guardianship or conservatorship proceeding to retain the right to vote or marry upon findings entered by the court; and (5) allow less restrictive alternatives to a guardianship or a conservatorship. Among numerous other matters, the bill would change what many consider outdated and offensive terminology and would offer model forms to make it easier for petitioners to seek limited appointments instead of full ones.

Although this bill was not reintroduced in 2025, it may be reintroduced in the future.

As a stopgap measure regarding Guardianship reform, in 2025 legislation was introduced, which if enacted, would allow qualified adults, including adults with a disability, mentally ill adults, and adults sixty-five years of age or older, to enter into supported decision-making agreements (SDMA) with one or more members of a supportive community. Also, legislation for a two year pilot program, which if enacted, would be established in the Probate Court and Family Court of the First Circuit, which if enacted would help fund an indigent respondent's need for resources such as mental evaluations.

ALTERNATIVES TO GUARDIANSHIP/CONSERVATORSHIP

As previously indicated, changes to the guardianship and conservatorship laws are being considered. Currently, a guardianship of the person or conservatorship of the estate inevitably involves the loss of control, autonomy, and privacy for the individual for whom the appointment of a guardian or conservator is sought. It also can entail significant time delays, and costs for the person or entity seeking to be a guardian for the potential ward or protected person. There is also an increasing recognition that persons with disabilities should be entitled to adequate levels of assistance and support to protect them from abuse and to help them exercise their rights to retain their own capacity to make decisions and to take action on their own behalf, including representing themselves in court, deciding where they should live, entering into contracts, voting, and making health care decisions. Utilizing alternatives to

guardianship/conservatorship and supported decision-making frameworks may help address these concerns.

In general, courts may appoint a guardian/conservator only if it finds that a person is incapacitated and that the person's needs cannot be met by less restrictive means, including use of appropriate technological assistance. Further, in many jurisdictions, guardianship/conservatorship laws require that courts grant to a guardian or conservator only those powers necessitated by the ward or protected person's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward or protected person's maximum self-reliance and independence.

Alternatives to guardianship/conservatorship can be viewed both from the perspective of the potential ward or protected person and from the perspective of the guardian or conservator. Guardianship can be a costly, complicated and lengthy process. In the United States, for example, obtaining the required documents (such as birth certificates, marriage certificates, and doctor's assessment), going through the judicial process, giving notice to the interested parties, and attending the court proceedings normally takes several months. Filing fees and attorneys' fees and costs are normally incurred with each proceeding. Further, guardianship and conservatorship documents and proceedings and reports often become matters of public record and, accordingly, the financial affairs of the ward or protected person may become public knowledge.

With proper advance planning, guardianship/conservatorship proceedings may not be necessary if less restrictive alternatives can serve the purpose of providing necessary assistance to an incapacitated adult. Broadly, alternatives can be categorized as those that support the individual as the decision-maker, those in which decision-making responsibility is shared with the individual, and those which the individual or an appointing authority delegates decision-making authority. As will be discussed in this chapter, there are distinct advantages and disadvantages to the use of alternatives to guardianship/conservatorship. There are also distinct advantages and disadvantages within the variety of potentially available alternatives to guardianship/conservatorship. Finally, more than one alternative to guardianship or conservatorship may be required to perform tasks that a guardian or conservator may normally be empowered by a court to take on behalf of an incapacitated person.

Powers of attorney, advance directives for health care, trust arrangements, appointed fiduciaries or representative payeeships, and joint financial accounts to pay bills are just a few of the frequently used alternatives. In the broadest sense, limited guardianship or conservatorship for a specific purpose and "co-decision making" can be considered alternatives to guardianship. Each alternative comes with its attendant costs and trade-offs, advantages and disadvantages, benefits and risks, positives and negatives. In a practical sense, setting up effective alternatives to guardianship requires careful thought and a bit of guessing since sometimes one will never really know if all the personal, health care, legal, and financial needs of an individual are actually covered until the individual becomes incapacitated. In this sense, obtaining a guardianship could be considered as an alternative to unsuccessful alternatives to guardianship, thus completing the circle. Once again, the counsel and advice of an attorney can play a key role in determining potential approaches to planning for incapacity.

POWERS OF ATTORNEY

A power of attorney is a written instrument through which a person, called the "principal" designates another person to be the principal's "agent" and grants the agent authority to perform certain acts on

the principal's behalf. In the past, it was common to call an agent an "attorney-in-fact." While this term may no longer be generally used in power of attorney documents, you may see the term, especially in older documents.

Powers of attorney can be drafted to take effect immediately or on a future date or upon a future contingency. Accordingly, for purposes of serving as an alternate to guardianship a "springing" or contingent power of attorney can be drafted to take effect upon some subsequent future event such as upon the principal's disability or incapacity. A power of attorney can be effective for a specific period or can be effective indefinitely, until death, which normally terminates a power of attorney. Powers of attorney for personal, financial and legal matters will be discussed in this chapter while powers of attorney for health care decisions are discussed in the chapter that deals with advance health care directives.

It is most important to know that in most jurisdictions, mental disability or incapacity of the principal terminates a power of attorney unless the instrument contains a provision that states that the power will not be affected by such disability or incapacity, making it a "durable" power of attorney, or if the underlying statute defaults to the power of attorney being durable. This is the case in Hawai'i.

Hawai'i has enacted the Uniform Power of Attorney Act or UPOAA found in HRS Chapter 551E. Please understand that the UPOAA is a very lengthy and complicated statute and this chapter of the handbook can only provide a brief overview. There are certainly potential benefits to executing a power of attorney but there are also potential risks individuals should ask their attorneys to describe. Once again, this handbook is not intended to provide advice or to encourage or recommend a "do-it-yourself" approach when it comes to powers of attorney. One should seek competent legal advice.

The UPOAA defines the levels of authority granted in a power of attorney to the principal's agent. It requires the agent to act in good faith and within the scope of authority granted in the power of attorney. Under most circumstances, it requires that the powers be accepted within a certain period of time. It provides sample documents to be used to create a statutory form power of attorney. This updated law applies to a power of attorney created before, on, or after April 17, 2014. It repealed the old power of attorney law and the 2014 UPOAA law has significant differences compared to the old law.

The UPOAA contains several mandatory provisions and a number of "default" provisions. A default provision is a provision that applies unless overridden by express language in the POA and is usually preceded by the phrase "unless the power of attorney otherwise provides." The UPOAA's default provisions present a variety of drafting options that allow it to be individually tailored to a principal's needs, interests and preferences. Under the UPOAA, a POA by default is a "durable" power of attorney. "Durable" means not terminated by the principal's incapacity, with respect to a POA. This means that the POA survives the incapacity of the principal and for example, helps avoid the need to initiate expensive and time-consuming conservatorship actions to care for the principal's assets.

The UPOAA serves to enhance the effectiveness of the POA as a vehicle that an individual can use to plan for potential incapacity and to avoid a court appointed guardianship/conservatorship in the event of actual incapacity. "Incapacitated" or "incapacity" means the inability of an individual to manage property or business affairs because the individual:

- Has an impairment in the ability to receive and evaluate information or make or

communicate decisions even with the use of technological assistance; or

- Is missing or detained, (including incarcerated in a penal system), or is outside of the United States and is unable to return.

A major aim of the UPOAA is to prevent, identify and redress the misuse or abuse of a POA by an agent. The law is aimed at striking a balance between preserving the durable power of attorney as a flexible, low cost, and private form of surrogate decision making and deterring use of the power of attorney as a tool for financial abuse of incapacitated individuals.

Under the UPOAA certain specific powers rather than general powers are conferred. This helps eliminate questions about the agent's authority while insuring that the agents are aware of their fiduciary responsibilities. The UPOAA requires the agent to act in good faith and within the scope of authority granted in the power of attorney. "Good faith" means honesty in fact.

The UPOAA provides a form power of attorney that generally must be accepted by any third party and there are civil penalties for refusal to accept it if the third party has assets of the principal. Basically, if a person or entity, such as a bank, is leery about accepting the POA, the person or entity can request an agent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney. The third party can also request an English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English. Lastly, the third party can request a written opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in writing or other record the reason for the request.

With a few exceptions, a person must either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel no later than seven business days after presentation of the power of attorney for acceptance.

If a person requests a certification, a translation or an opinion of counsel, the person must accept the power of attorney no later than five business days after receipt of the certification, translation or opinion of counsel. A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented. There are provisions under the UPOAA that protect the principal from a dishonest agent. An agent who violates this chapter shall be liable to the principal or the principal's successors-in-interest for the amount required to:

Restore the value of the principal's property to what it would have been had the violation not occurred and reimburse the principal or the principal's successors-in-interest for the attorney's fees and costs paid on the agent's behalf.

As previously mentioned there are potentially distinct advantages to powers of attorney but there are also distinct dangers or disadvantages. Powers of attorney can be dangerous in the wrong hands and across the world, there are continuing reports of financial abuse, exploitation, and theft through the use of powers of attorney. There have been efforts to combat such issues but the problems seem to be increasing rather than decreasing, perhaps due to the lingering effects of the COVID-19 pandemic and difficult economic times for many.

The principal should be especially careful when giving a power of attorney to someone to handle real estate matters. Although it is difficult to ascertain, the principal should make every effort to be certain that the agent is trustworthy and, of course, the principal should make sure to read and understand

the document when signing it. If there are any doubts, the principal should not sign the document until the trustworthiness of the agent is assured or, assuming a lawyer is involved, that the lawyer drafting the document has built in sufficient protections in the document.

Under the UPOAA, a principal may designate two or more persons to act as co-agents. Unless the power of attorney otherwise provides, each co-agent may exercise its authority independently. A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function.

Unless the power of attorney otherwise provides, a successor agent:

- (1) Has the same authority as that granted to the original agent; and
- (2) May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

Note again that Hawai'i's UPOAA does not grant the authority to make health care decisions. The UPOAA refers to the Uniform Health Care Decisions Act as the appropriate law under which to make health care decisions. Information about "Durable Powers of Attorney for Health Care" are discussed in detail in the chapter discussing advance directives for health care. However, a principal may, in a POA, nominate a conservator of the principal's estate, or a guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the POA. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

POWERS THAT CAN BE GRANTED

The Statutory Form found in HRS 551E-51 contains two sections through which the principal can grant authority, namely a grant of general authority and (optional) grant of specific authority. A grant of general authority may include Real Property, Tangible Personal Property, Stocks and Bonds, Commodities and Options, Banks and Other Financial Institutions, Operation of Entity or Business, Insurance and Annuities, Estates, Trusts, and Other Beneficial Interests, Claims and Litigation, Personal and Family Maintenance, Benefits from Governmental Programs or Civil or Military Service, Retirement Plans and Taxes.

A grant of specific authority (optional) may include the power to create, amend, revoke, or terminate an *inter vivos* trust, make a gift, subject to the limitations of the Uniform Power of Attorney Act under section 551E 47, Hawai'i Revised Statutes, and any special instructions in this power of attorney, create or change rights of survivorship, create or change a beneficiary designation, authorize another person to exercise the authority granted under this power of attorney, waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan and exercise fiduciary powers that the principal has authority to delegate.

CONSTRUCTION OF AUTHORITY GENERALLY

But what do these powers mean? The extent of powers is not always obvious. The explanation of authority granted to an agent is extremely complicated and lengthy. This is probably one of the best

reasons not to “do it yourself” when it comes to powers of attorney. The explanation of the authority found in the statute is included in the appendix to this chapter, which follows the sample statutory form.

TERMINATION OF POWER OF ATTORNEY OR AGENT’S AUTHORITY

Under HRS Section 551E-6, a power of attorney terminates when:

- (1) The principal dies;
- (2) The principal becomes incapacitated, if the power of attorney is not durable;
- (3) The principal revokes the power of attorney;
- (4) The power of attorney provides that it terminates;
- (5) The purpose of the power of attorney is accomplished; or
- (6) The principal revokes the agent’s authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

An agent’s authority terminates when:

- (1) The principal revokes the authority;
- (2) The agent dies, becomes incapacitated, or resigns;
- (3) An action is filed for the dissolution or annulment of the agent’s marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or
- (4) The power of attorney terminates.

Note that when the principal dies, the power of attorney ceases to be effective. The agent cannot use the power of attorney for even seemingly simple tasks like cancelling subscriptions and the utilities, taking charge of personal property, and other important matters upon death. The personal representative of the deceased’s estate or a successor trustee or conservator, as applicable, generally takes charge.

REVOCATION OF A POWER OF ATTORNEY

To revoke a power of attorney, the principal can create a document called a “Revocation of Power of Attorney” or create a new power of attorney that indicates the previous power of attorney is revoked. A principal can rescind a power of attorney at any time, even if the power of attorney has a specified end date, so long as the principal is competent and the agent is notified.

The principal can also prepare, sign, and give a document called “Notice of Revocation” to the agent and other individuals, institutions or agencies who might have dealt with the original power of attorney document. Make sure that they receive a copy of the revocation. Third parties (such as banks or the Bureau of Conveyances if you registered your power of attorney) should also be notified of the revocation.

In addition, if the power of attorney document was registered (which means it was filed with a certain agency such as the Bureau of Conveyances), the revocation must also be registered.

STATUTORY FORM POWER OF ATTORNEY

A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by HRS Chapter 551E.

FORM 13
STATE OF HAWAI'I STATUTORY
POWER OF ATTORNEY FORM

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property, including your money, whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act in chapter 551E, Hawai'i Revised Statutes.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent, you may name a co-agent in the Special Instructions. Co-agents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I _____ name the following person as my agent:
(Name of Principal)

(Name of Agent)

(Agent's Telephone Number)

(Address)

DESIGNATION OF SUCCESSOR AGENT(S) (optional)

If my agent is unable or unwilling to act for me, I name as my successor agent:

(Name of Successor Agent) (Successor Agent's Telephone Number)

(Successor Agent's Address)

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

(Name of Second Successor Agent) (Second Successor Agent's Telephone Number)

(Second Successor Agent's Address)

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act in chapter 551E, Hawai'i Revised Statutes.

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

- () Real Property
- () Tangible Personal Property
- () Stocks and Bonds
- () Commodities and Options
- () Banks and Other Financial Institutions
- () Operation of Entity or Business
- () Insurance and Annuities
- () Estates, Trusts, and Other Beneficial Interests
- () Claims and Litigation
- () Personal and Family Maintenance
- () Benefits from Governmental Programs or Civil or Military Service
- () Retirement Plans
- () Taxes
- () All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY (optional)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- (____) Create, amend, revoke, or terminate an inter vivos trust
- (____) Make a gift, subject to the limitations of the Uniform Power of Attorney Act under section 551E 47, Hawai'i Revised Statutes, and any special instructions in this power of attorney
- (____) Create or change rights of survivorship
- (____) Create or change a beneficiary designation
- (____) Authorize another person to exercise the authority granted under this power of attorney
- (____) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including survivor benefit under a retirement plan
- (____) Exercise fiduciary powers that the principal has authority to delegate

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (optional)

You may give special instructions on the following lines:

EFFECTIVE DATE _____

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF CONSERVATOR OR GUARDIAN (optional)

If it becomes necessary for a court to appoint a conservator or guardian of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of Nominee for conservator or guardian of my estate:

(Nominee's Name) (Nominee's Telephone Number)

(Nominee's Address)

Name of Nominee for guardian of my person:

(Nominee's Name) (Nominee's Telephone Number)

(Nominee's Address)

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

(Your Signature) (Date)

(Your Name Printed) (Your Telephone Number)

(Your Address)

State of _____

County of _____

This document was acknowledged before me on _____ by
(Date)

(Name of Principal)

(Seal, if any)

(Signature of Notary)

My Commission Expires: _____

This document prepared by: _____

NOTARY CERTIFICATION

Document Date _____ # Pages: _____

Name: _____, _____ Circuit

Document Description: **STATE OF HAWAII STATUTORY
POWER OF ATTORNEY FORM**

Signature _____ Date _____

Notary Certification

IMPORTANT INFORMATION FOR AGENT

AGENT'S DUTIES

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

- (1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (2) Act in good faith;
- (3) Do nothing beyond the authority granted in this power of attorney; and
- (4) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:
(Principal's Name) by (Your Signature) as Agent

Unless the Special Instructions in this power of attorney state otherwise, you must also:

- (1) Act loyally for the principal's benefit;
- (2) Avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) Act with care, competence, and diligence;
- (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- (5) Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and
- (6) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

TERMINATION OF AGENT'S AUTHORITY

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

- (1) Death of the principal;
- (2) The principal's revocation of the power of attorney or your authority;
- (3) The occurrence of a termination event stated in the power of attorney;
- (4) The purpose of the power of attorney is fully accomplished; or
- (5) If you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

LIABILITY OF AGENT

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, in chapter 551E, Hawai'i Revised Statutes. If you violate the Uniform Power of Attorney Act in chapter 551E, Hawai'i Revised Statutes, or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

[L 2014, c 22, pt of §1]

[§551E 52] Agent's certification. The following optional form may be used by an agent to certify facts concerning a power of attorney.

AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT'S AUTHORITY

State of _____

County of _____

I, _____, certify under penalty of perjury that
(Name of Agent)

_____ granted me authority as an agent or successor
(Name of Principal)

agent in a power of attorney dated _____.

I further certify that to my knowledge:

- (1) The Principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not terminated;

- (2) If the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;
- (3) If I was named as a successor agent, the prior agent is no longer able or willing to serve; and
- (4) _____
- _____

SIGNATURE AND ACKNOWLEDGMENT

(Agent's Signature) (Date)

(Agent's Name Printed)(Agent's Telephone Number)

(Agent's Address)

This document was acknowledged before me on _____, by
(Date)

(Name of Agent)

(Seal, if any)

(Signature of Notary)

My Commission Expires: _____

This document prepared by: _____

NOTARY CERTIFICATION

Document Date _____ # Pages: _____

Name: _____, _____ Circuit

Document Description: **STATE OF HAWAI'I STATUTORY
POWER OF ATTORNEY FORM AGENT'S CERTIFICATION
AS TO THE VALIDITY OF POWER OF ATTORNEY AND
AGENT'S AUTHORITY**

Signature _____ Date _____

Notary Certification

APPENDIX FOR POWER OF ATTORNEY CHAPTER

[§551E 33] Construction of Authority Generally. Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in sections 551E-34 through 551E-47 or that grants to an agent authority to do all acts that a principal could do pursuant to section 551E-31(c), [if a power of attorney grants to an agent authority to do (or other broadly worded authority in a general power of attorney signed prior to April 17, 2014) all acts that a principal could do], the agent shall have the general authority described in sections 551E-34 through 551E-46, a principal authorizes the agent, with respect to that subject, to:

- (1) Demand, receive, and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended;
- (2) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal;
- (3) Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;
- (4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;
- (5) Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;
- (6) Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor;
- (7) Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation;
- (8) Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal;
- (9) Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and
- (10) Do any lawful act with respect to the subject and all property related to the subject.

[§551E 34] Real property. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property shall authorize the agent to:

- (1) Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;
- (2) Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;
- (3) Pledge or mortgage an interest in real property or right incident to real property as security

- to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
- (4) Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or is asserted;
 - (5) Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including by:
 - (A) Insuring against liability or casualty or other loss;
 - (B) Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;
 - (C) Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; and
 - (D) Purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;
 - (6) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;
 - (7) Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including by:
 - (A) Selling or otherwise disposing of them;
 - (B) Exercising or selling an option, right of conversion, or similar right with respect to them; and
 - (C) Exercising any voting rights in person or by proxy;
 - (8) Change the form of title of an interest in or right incident to real property; and
 - (9) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

[\$551E 35] Tangible personal property. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property shall authorize the agent to:

- (1) Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;
- (2) Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property;
- (3) Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
- (4) Release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property;
- (5) Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

- (A) Insuring against liability or casualty or other loss;
 - (B) Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;
 - (C) Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;
 - (D) Moving the property from place to place;
 - (E) Storing the property for hire or on a gratuitous bailment; and
 - (F) Using and making repairs, alterations, or improvements to the property; and
- (6) Change the form of title of an interest in tangible personal property.

[\$551E 36] Stocks and bonds. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds shall authorize the agent to:

- (1) Buy, sell, and exchange stocks and bonds;
- (2) Establish, continue, modify, or terminate an account with respect to stocks and bonds;
- (3) Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;
- (4) Receive certificates and other evidences of ownership with respect to stocks and bonds; and
- (5) Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

[\$551E 37] Commodities and options. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options shall authorize the agent to:

- (1) Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and
- (2) Establish, continue, modify, and terminate option accounts.

[\$551E 38] Banks and other financial institutions. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions shall authorize the agent to:

- (1) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;
- (2) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;
- (3) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;
- (4) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;
- (5) Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;
- (6) Enter a safe deposit box or vault and withdraw or add to the contents;
- (7) Borrow money and pledge as security personal property of the principal necessary to

borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

- (8) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;
- (9) Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;
- (10) Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and
- (11) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

[\$551E 39] Operation of entity or business. Unless the power of attorney otherwise provides, and subject to the terms of a document or an agreement governing an entity or an entity ownership interest, language in a power of attorney granting general authority with respect to operation of an entity or business shall authorize the agent to:

- (1) Operate, buy, sell, enlarge, reduce, or terminate an ownership interest;
- (2) Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;
- (3) Enforce the terms of an ownership agreement;
- (4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;
- (5) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds;
- (6) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;
- (7) With respect to an entity or business owned solely by the principal:
 - (A) Continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;
 - (B) Determine:
 - (i) The location of its operation;
 - (ii) The nature and extent of its business;
 - (iii) The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;
 - (iv) The amount and types of insurance carried; and
 - (v) The mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors;
 - (C) Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and

- (D) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;
- (8) Put additional capital into an entity or business in which the principal has an interest;
- (9) Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;
- (10) Sell or liquidate all or part of an entity or business;
- (11) Establish the value of an entity or business under a buy-out agreement to which the principal is a party;
- (12) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; and
- (13) Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney. [L 2014, c 22, pt of §1]

[§551E 40] Insurance and annuities. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities shall authorize the agent to:

- (1) Continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;
- (2) Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment;
- (3) Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;
- (4) Apply for and receive a loan secured by a contract of insurance or annuity;
- (5) Surrender and receive the cash surrender value on a contract of insurance or annuity;
- (6) Exercise an election;
- (7) Exercise investment powers available under a contract of insurance or annuity;
- (8) Change the manner of paying premiums on a contract of insurance or annuity;
- (9) Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;
- (10) Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;
- (11) Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;
- (12) Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and
- (13) Pay, from proceeds or otherwise; compromise or contest; and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or

[§551E 41] Estates, trusts, and other beneficial interests. (a) In this section, “estate, trust, or other beneficial interest” means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be, entitled to a share or payment. (b) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests shall authorize the agent to:

- (1) Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest;
- (2) Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise;
- (3) Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;
- (4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;
- (5) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;
- (6) Conserve, invest, disburse, or use anything received for an authorized purpose;
- (7) Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor; and
- (8) Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest.

[§551E 42] Claims and litigation. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation shall authorize the agent to:

- (1) Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief;
- (2) Bring an action to determine adverse claims or intervene or otherwise participate in litigation;
- (3) Seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;
- (4) Make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation;
- (5) Submit to alternative dispute resolution, settle, and propose or accept a compromise;
- (6) Waive the issuance and service of process upon the principal, accept service of process,

appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

- (7) Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value;
- (8) Pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation; and
- (9) Receive money or another thing of value paid in settlement of or as proceeds of a claim or litigation.

[§551E 43] Personal and family maintenance. (a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance shall authorize the agent to:

- (1) Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, and the following individuals, whether living when the power of attorney is executed or later born:
 - (A) The principal's children;
 - (B) Other individuals legally entitled to be supported by the principal; and
 - (C) The individuals whom the principal has customarily supported or indicated the intent to support;
- (2) Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;
- (3) Provide living quarters for the individuals described in paragraph (1) by:
 - (A) Purchase, lease, or other contract; or
 - (B) Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals;
- (4) Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in paragraph (1);
- (5) Pay expenses for necessary health care and custodial care on behalf of the individuals described in paragraph (1);
- (6) Act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, sections 1171 through 1179 of the Social Security Act, title 42 United States Code section 1320d, as amended, and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this State to consent to health care on behalf of the principal;
- (7) Continue any provision made by the principal for automobiles or other means of

transportation, including registering, licensing, insuring, and replacing them, for the individuals described in paragraph (1);

- (8) Maintain credit and debit accounts for the convenience of the individuals described in paragraph (1) and open new accounts; and
- (9) Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations.

(b) Authority with respect to personal and family maintenance shall be neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this chapter.

[§551E 44] Benefits from governmental programs or civil or military service. (a) In this section, “benefits from governmental programs or civil or military service” means any benefit, program, or assistance provided under a statute or regulation, including social security, medicare, and medicaid. (b) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service shall authorize the agent to:

- (1) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in [section] 551E-43(a)(1), and for shipment of their household effects;
- (2) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;
- (3) Enroll in, apply for, select, reject, change, amend, or discontinue, on the principal’s behalf, a benefit or program;
- (4) Prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation;
- (5) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; and
- (6) Receive the financial proceeds of a claim described in paragraph (4) and conserve, invest, disburse, or use for a lawful purpose anything so received.

[§551E 45] Retirement plans. (a) In this section, “retirement plan” means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of the Internal Revenue Code of 1986, as amended:

- (1) An individual retirement account under Internal Revenue Code section 408, title 26 United States Code section 408, as amended;
- (2) A Roth individual retirement account under Internal Revenue Code section 408A, title 26 United States Code section 408A, as amended;
- (3) A deemed individual retirement account under Internal Revenue Code section 408(q), title 26 United States Code section 408(q), as amended;
- (4) An annuity or mutual fund custodial account under Internal Revenue Code section 403(b), title 26 United States Code section 403(b), as amended;

- (5) A pension, profit-sharing, stock bonus, or other retirement plan qualified under Internal Revenue Code section 401(a), title 26 United States Code section 401(a), as amended;
- (6) A plan under Internal Revenue Code section 457(b), title 26 United States Code section 457(b), as amended; and
- (7) A nonqualified deferred compensation plan under Internal Revenue Code section 409A, title 26 United States Code section 409A, as amended.

(b) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans shall authorize the agent to:

- (1) Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;
- (2) Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;
- (3) Establish a retirement plan in the principal's name;
- (4) Make contributions to a retirement plan;
- (5) Exercise investment powers available under a retirement plan; and
- (6) Borrow from, sell assets to, or purchase assets from a retirement plan.

[\$551E 46] Taxes. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes shall authorize the agent to:

- (1) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Internal Revenue Code section 2032A, [title 26] United States Code section 2032A, as amended, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following twenty-five tax years;
- (2) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;
- (3) Exercise any election available to the principal under federal, state, local, or foreign tax law; and
- (4) Act for the principal in all tax matters for all periods before the Internal Revenue Service, or other taxing authority.

[\$551E 47] Gifts. (a) In this section, a gift "for the benefit of" a person includes a gift to a trust, an account under chapter 553A, the Uniform Transfers to Minors Act, and a tuition savings account or prepaid tuition plan as defined under Internal Revenue Code section 529, [title 26] United States Code section 529, as amended.

(b) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts shall authorize the agent only to:

- (1) Make outright to, or for the benefit of, a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code section 2503(b), title 26 United States Code section 2503(b), as amended, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to Internal Revenue Code section 2513, title 26 United States Code section 2513, as

amended, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

- (2) Consent, pursuant to Internal Revenue Code section 2513, title 26 United States Code section 2513, as amended, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(c) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:

- (1) The value and nature of the principal's property;
- (2) The principal's foreseeable obligations and need for maintenance;
- (3) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
- (4) Eligibility for a benefit, a program, or assistance under a statute or regulation; and
- (5) The principal's personal history of making or joining in making gifts.

FORM (14)
17
REVOCATION OF POWER OF ATTORNEY

MY NAME IS _____
(Print or type name)

I revoke any power of attorney appointing or designating the following person:

(Print or type name)

I revoke and make void any and all powers and authority granted in any such power of attorney to act on my behalf.

(Signature)

(Date)

State of Hawai'i)
) SS
City and County of Honolulu)

On this _____ day of _____, 20_____, before me personally appeared _____, to me known to be the person who executed the foregoing instrument and acknowledged that he or she executed the same as his or her free act and deed.

Notary Seal

(Notary Public, State of Hawai'i)

My Commission Expires: _____

NOTARY CERTIFICATION

Document Date _____ # Pages: _____

Name: _____, _____ Circuit

Document Description: **REVOCATION OF POWER OF
ATTORNEY**

Signature _____ Date _____

Notary Certification

CHAPTER

8

CAREGIVING: WHO PROTECTS AND WHO CARES

CAREGIVERS

Chances are you will be a caregiver or care recipient, and in some instances, maybe both. The COVID-19 pandemic has demonstrated that caregivers will need to be able to be adaptive to address a myriad of issues, such as health care, financial and legal issues. Social isolation during the COVID-19 pandemic proved to be especially challenging and, in some cases, damaging.

Even under “normal” circumstances, caring for an older person with a disability (or for more than one person) can be difficult, stressful, and sometimes thankless, especially for a family caregiver. If you are a family caregiver, the person being cared for may be unappreciative, may be demanding, abusive, need constant supervision or may not even recognize you. You may not have enough time to sleep, much less take care of your own personal matters. If you do not have the proper tools, training, finances, support and respite, you may risk neglecting yourself as well as the person(s) being cared for. Some caregivers who are desperate may give up and may even abandon the person they are caring for if they do not know what else to do. This can lead to actual abuse of the person being cared for, allegations of abuse filed against the caregiver, or even abuse directed at the caregiver.

Just as care receivers can be victims of abuse or neglect, caregivers can be victims of stress, anxiety, and caregiver burnout. This can happen when the caregiver has little support in giving care, has few financial resources, and is beset by the enormity of giving care to an older person who may be sick or bedridden or suffers from dementia and requires constant supervision. Other family members may not be willing or able to help. A common example is a situation where a child or sibling who for years has not been caring for a parent flies in from another state and attempts to “take over” the situation. Family conflicts are not uncommon and can be detrimental to the health and the well-being of both care recipient and caregiver. Research has shown that caregivers often are at increased risk for depression and illness. By acknowledging the reality that being a caregiver is filled with stress and anxiety, and understanding the potential for burnout, caregivers can be forewarned and guard against this debilitating condition. It cannot be said too often, that the best way to be an effective caregiver is to know your limitations and to take care of yourself first.

CAREGIVER SERVICES

Sometimes, older persons require help outside of health services. Household chores, transportation, yardwork, grooming, and meal preparation are all areas in which people may need assistance as they grow older.

The local County Offices on Aging, which are the Hawai'i County Office on Aging, the Kaua'i County Agency on Elderly Affairs, the Maui County Office on Aging, and on O'ahu, the Elderly Affairs Division of the City and County of Honolulu, may be able to provide information about various social services.

They can be reached at:

- Hawai'i County Office on Aging: 808-961-8626 ; Kona: 808-323- 4392
- Kaua'i County Agency on Elderly Affairs: 808-241-4470
- Maui County Office on Aging: 808-270-7774
- O'ahu, the Elderly Affairs Division of the City and County of Honolulu: 808-768-7700

CARING FOR NATIVE HAWAIIAN ELDER PERSONS

Older persons of native Hawaiian ancestry may be able to access caregiving services provided by the *Kumu Kahi* (Elderly Services) department of *Alu Like* on O'ahu and the neighbor islands. *Ke Ola Pono No Nā Kūpuna* (Good Health and Living for the Elderly) provides nutritional and supportive services for native Hawaiian persons 60 years and older. The Native Hawaiian Caregiver Support Program helps families caring for an older native Hawaiian person, 60 years and older with a chronic illness or disability. It also provides services to native Hawaiian grandparents or older relatives caring for children age 18 and under who meet certain criteria. A birth certificate is required or proof of age and ethnicity. The phone number to the *Alu Like* Central Administration is (808) 535-6700.

LONG-TERM CARE FACILITIES

When family caregiving becomes too much to handle, sometimes it is necessary to use the services of a long-term care facility that provides various levels of care, such as custodial, intermediate-level and skilled-level care services to persons who require nursing services. Descriptions, comparisons and ratings of nursing homes certified by Medicare and Medicaid are provided at the "Nursing Home Compare" website: <https://www.medicare.gov/NHCompare>

You can search for long-term care facilities on the website by specific geographic areas. Adult Residential Care Homes (ARCH), Expanded ARCH, and Foster Family Homes provide shelter, supervision, and care for persons needing help with daily living activities. Most ARCH and Expanded ARCH facilities are private homes in residential communities, licensed for up to 5 persons. Some offer specialized care, such as for those with Alzheimer's disease. Costs vary depending on amenities and amount of care provided. When choosing an ARCH facility, it is a good idea to interview the caregiver and residents, observe the condition of the physical and social environment, understand the rules on visiting hours and so on. You may also want to inquire about the facility's most recent survey/

inspection findings done by the licensing agency.

The State of Hawai'i, Department of Health, Office of Health Care Assurance provides a list of certified long-term care Nursing Facilities, Care Homes and Adult Day Care Centers in the state, at:
<https://health.hawaii.gov/ohca/state-licensing-section>

Also, for concerns about or assistance in the investigation and resolution of problems or complaints about the care or services provided in long-term care facilities located in Hawai'i, the Hawai'i State Long-Term Care Ombudsman can be contacted at (1-888) 229-2231.

NURSING HOME CONSUMER CAUTION

Caregivers should also be aware that some health care facilities may try to take advantage of their vulnerabilities and the pressure they are under to force them to take a patient home and provide care for their family member so that the facility can discharge the patient. To add to the caregiver's problems, some health care providers, especially long-term care facilities, may request that caregivers sign documents to personally assume financial responsibility for the person receiving care. This is often done in the admission process when emotions are mixed and time is limited. If you sign such a document, you may be required to pay out-of-pocket any expenses not paid by insurance, government benefit programs, or the care recipient's own assets. If you cannot pay, you may be forced to sell your home or file for bankruptcy. You should understand that in Hawai'i there is generally no requirement for you to be responsible for any person other than your spouse or minor children unless you do so voluntarily. Federal law generally prohibits long-term care facilities from requiring you to assume such personal financial responsibility. The loophole that some facilities use is to ask you to sign the document "voluntarily."

You may want to have these types of documents reviewed by an attorney before signing them. Read and review the document and seek out those provisions that make you financially responsible and cross them out if you find them unacceptable. Also, when signing documents on behalf of another, it is usually wise to make it clear that you are signing as a legally authorized person such as the guardian, trustee or agent under a power of attorney and not in your personal capacity. If your care receiver does not have a power of attorney or trust and is still mentally capacitated, discuss getting one or both of these before it is too late.

Another word of caution: Although those in nursing homes may expect a safe environment, they may be victims of employee theft or physical abuse. Residents are often incapacitated and unable to fend for themselves. To prevent nursing home theft or abuse or neglect by the staff, it is very important to not wear that diamond wedding ring in the facility. Take photos of valuables, keep an inventory and have the family visit often so their presence is known.

ELDER ABUSE

The COVID-19 pandemic was particularly harmful to older adults, and there has been a massive

increase in reports of elder abuse during the pandemic. Reports of elder abuse ranged from financial scams to incidents of family violence, with public warnings issued accordingly from the Federal Trade Commission and the American Bar Association. Well before the pandemic, elder abuse was described as a “hidden epidemic” in our society and it just got worse. Elder abuse can be defined as physical or mental mistreatment or injury or neglect that harms or threatens elderly persons. It is often distinguished from ordinary crimes directed against elderly persons by the repetitive character of the acts, often committed by a relative or other caregiver. While there is no specific Hawai‘i law that addresses elder abuse, various laws do provide protection to vulnerable and dependent adults, including elderly persons. Some of these laws will be described in this chapter.

SOME CAUSES OF ELDER ABUSE

There are many causes of abuse. Some abusers purposefully hurt an older person, especially if the older person is defenseless. These abusers may be evil, violent, mentally disturbed, or may abuse drugs or alcohol. Some use abuse as a means of control over the older person. Others use abuse as revenge or “payback” for abuse that the older person may have committed in the past. Poverty or greed can cause abusers to steal money or property from their victims. Caregivers may be tired, or feel worn out or feel trapped or helpless or may be victims themselves.

Abuse and neglect of older persons take place most commonly in the victim’s home, in residential care facilities, and in institutions such as nursing and care homes. In the home setting, the person who cares for the victim may often be the abuser, someone who often has repeated contact with the victim and has the opportunity to commit the abuse. Spouses, children, grandchildren, nieces and nephews, siblings, neighbors, friends and hired caregivers are examples of people who may be abusers. In an institution, abuse is most often committed by employees on those who are physically or mentally incapacitated. Abused older persons often endure the abuse for fear of losing whatever support the abuser may be providing. They may feel helpless and feel they have nowhere to go or no one to turn to. If you feel you are being abused or know someone who is being abused, help is often available. Older women who tend to live longer and make up the largest demographic in the world are more prone to be abused. Abuse toward women may be different from abuse toward men. Often in abuse, there is domestic violence, intimidation or marginalization. Bullying might happen in the laundry room or the parking lot of the residential building, or management might favor others. Older women may be more isolated and poorer as family and friends move away or die.

The National Institute on Aging (<https://www.nia.nih.gov/health/elder-abuse>) identifies a number of different types of elder abuse such as the following:

- Physical Abuse—the use of physical force that may result in bodily injury, physical pain, or impairment;
- Sexual Abuse—non-consensual sexual contact of any kind with an elderly person;
- Emotional or Psychological Abuse—the infliction of anguish, pain, or distress through verbal or nonverbal acts;
- Neglect—the refusal or failure to fulfill any part of a person’s obligations or duties to an elderly person;

- Abandonment—the desertion of an elderly person by an individual who has physical custody of the elderly person or by someone who has assumed responsibility for providing care to the elderly person;
- Financial/Material Abuse—the illegal or improper use of an elderly person’s moneys, funds, property (including an elderly person’s home or other real estate), or assets; and,
- Self-Neglect—a self-behavior that threatens the elderly person’s health or safety.

Financial abuse and exploitation can happen to anyone and as previously indicated, there was a massive increase in reports of elder abuse during the pandemic. Abusers can be charming. They often pretend to be your friend and pressure you into giving them gifts. They may even say they are doing you a favor. They may be strangers or even one’s own family. Trust your instincts. Do not be fooled. Ask questions. Do not sign anything you do not understand. Get advice from your bank, an attorney, or financial advisor before you commit yourself to any course of action involving money and other assets.

Financial exploitation can include theft of cash, abuse of a power of attorney, misuse of ATM or credit cards and withdrawals from joint bank accounts, misappropriation of pension and benefit checks, illegal property transfers, and a variety of frauds and scams. Reverse mortgages and home equity loans can serve the purpose of providing cash not only to you, the homeowner, but also potentially to the abuser. Unless you understand how these programs work and are financed, be careful about encumbering your home with debt, especially if you suspect that the proceeds are not going to be used for your benefit.

IDENTITY THEFT

Identity theft occurs when someone uses your personal information without your permission to commit fraud and other crimes. Mail and garbage theft is a common way of illegally obtaining your personal information. When thieves steal and use your name, Social Security Number, credit card number, checking account number, or other identifying information, you may be sued for moneys you do not owe and you may be refused credit, housing, and bank loans. You may even be accused of a crime you did not commit. Even if it is not your fault, you may have to spend much time and money to clear your name and credit record.

Helpful Tips

- Do not give out your Social Security Number without a good reason;
 - Shred your personal bank checks and credit card receipts before disposing of them;
 - Be suspicious and careful if unsecured websites ask you for personal information which may lead to identity theft;
 - Close any accounts that you think may have been tampered with;
- If you feel you have been a victim of Medicare fraud, the Senior Medicare Patrol (SMP) under the Executive Office on Aging can assist Medicare beneficiaries, their families, and caregivers; call O’ahu 808-586-7281 or toll free: 1-877-808-246 Visit the Federal Trade Commission (FTC) website at <https://www.identitytheft.gov/Information> to obtain information about identity theft, fraud, scams or unfair business practices and get a recovery plan.
- If you are a victim, file your complaint with the FTC at: <https://www.identitytheft.gov>

You can also, contact one of the two major credit bureaus listed below to place a fraud alert and to obtain a copy of your credit report (Be aware that fees may be charged). An initial fraud alert makes it harder for an identity thief to open more accounts in your name.

- Equifax
<http://Equifax.com/personal/credit-report-services>
- Experian
<https://Experian.com/help>
- Transunion
<https://transunion.com/credit-help>

Another type of elder abuse is “caregiver neglect,” described as the failure of a caregiver to exercise that degree of care for a vulnerable adult that a reasonable person with the responsibility of a caregiver would exercise within the scope of the caregiver’s assumed, legal, or contractual duties, including but not limited to the failure to:

- Assist with personal hygiene;
- Protect the vulnerable adult from abandonment;
- Provide, in a timely manner, necessary food, shelter, or clothing;
- Provide, in a timely manner, necessary health care, access to health care, prescribed medication, psychological care, physical care, or supervision;
- Protect the vulnerable adult from dangerous, harmful, or detrimental drugs;
- Protect the vulnerable adult from health and safety hazards; and
- Protect the vulnerable adult from abuse by third parties.

In addition to caregiver neglect, there is “self-neglect,” which occurs when a vulnerable adult is unable to or fails, due to physical or mental impairment, or both, to perform tasks essential to caring for oneself, including but not limited to:

- Obtaining essential food, clothing, shelter, and medical care;
- Obtaining goods and services reasonably necessary to maintain minimum standards of physical health, mental health, emotional well-being, and general safety; or
- Managing financial assets with respect to the above; and,
- Lacking sufficient understanding or capacity to make or communicate responsible decisions and appears to be exposed to a situation or condition that poses an immediate risk of death or serious physical harm.

Self-neglect may also happen when vulnerable people are forced into or choose lifestyles that may seem strange to the observer. Some older persons may be too poor to take proper care of themselves. Others may exhibit unusual behavior due to a physical or mental illness, over- or under- medication, malnutrition, psychological changes, depression or substance abuse. Sometimes people reach the stage where they seem to be causing harm to themselves and appear to need some kind of protection. Deciding to intervene in individuals’ lives because of their eccentricity or self-neglect involves legal, ethical, and practical considerations. Lack of specific laws addressing elder abuse, plus concepts of civil rights, autonomy and self-determination very often limit the ability of concerned individuals and agencies to intervene. Sometimes the only recourse is to offer social or legal services or to attempt to

persuade the individuals to change their lifestyle. As discussed below, the State of Hawai'i has laws to help protect certain vulnerable persons from self-neglect as well as other forms of abuse.

LAWS TO PROTECT ABUSED OLDER PERSONS

While no specific law in Hawai'i addresses "elder abuse," a wide range of laws can be used to protect abused older persons. The Hawai'i Penal Code provides criminal penalties for crimes against all persons in Hawai'i. Frequently, elder abuse can be considered criminal and upon conviction, enhanced penalties may be sought by the prosecutor for the crime directed against an older or vulnerable person. The Hawai'i Penal Code is found in Title 37 of Hawai'i Revised Statutes. In 2021, Act 147, which was passed by the Hawai'i Legislature and signed by the governor, lowered the age at which enhanced penalties apply for crimes listed in HRS Chapter 707, Offenses Against the Person and HRS Chapter 708, Offenses Against Property Rights, from sixty-two years of age to sixty years of age. It also made the commission of certain criminal offenses against an older person's person or property applicable if the perpetrator knows or reasonably should know the older victim's age.

There is a trend in law enforcement to establish specialized units to address crimes directed against older persons with prosecutors often leading the way. For example, there is now an Elder Abuse Justice Unit in the Department of the Prosecuting Attorney of the City and County of Honolulu. They can be contacted at (808) 768-7400 see also: <https://honoluluprosecutor.org/elder-abuse-justice-unit>

ADULT PROTECTIVE SERVICES LAW

The Hawai'i Adult Protective Services (APS) law found in HRS Chapter 346 Part X, is the primary law used to protect abused older persons in Hawai'i. The APS law uses the term, "vulnerable," in defining who would be covered under this law. Note that this is not an "elder abuse" law but a law that provides certain protections to vulnerable individuals in Hawai'i who are 18 years of age or older. Under this law a "vulnerable adult" is a person eighteen years of age or older, who because of mental, developmental, or physical impairment, is unable to: communicate or make responsible decisions to manage the person's own care or resources; carry out or arrange for essential activities of daily living; or protect oneself from abuse.

HRS 346-224 requires certain persons who, in the performance of their professional or official duties, including most health care providers, know or have reason to believe that a vulnerable adult has been abused and is threatened with imminent abuse, to promptly report the matter, orally, to the Department of Human Services (DHS).

Mandated Reporters:

The following persons who, in the performance of their professional or official duties, know or have reason to believe that a vulnerable adult has incurred abuse or is in danger of abuse if immediate action is not taken shall promptly report the matter orally to the department:

- (1) Any licensed or registered professional of the healing arts and any health-related occupation who examines, treats, or provides other professional or specialized services to a vulnerable adult, including physicians, physicians in training, psychologists, dentists,

- nurses, osteopathic physicians and surgeons, optometrists, chiropractors, podiatrists, pharmacists, and other health-related professionals;
- (2) Employees or officers of any public or private agency or institution providing social, medical, hospital, or mental health services, including financial assistance;
 - (3) Employees or officers of any law enforcement agency, including the courts, police departments, correctional institutions, and parole or probation offices;
 - (4) Employees or officers of any adult residential care home, adult day care center, or similar institution;
 - (5) Medical examiners or coroners; and
 - (6) Social workers licensed pursuant to chapter 467E and non-licensed persons employed in a social worker position pursuant to section 467E-6(2).

Guidelines for mandated reporters are found in the following publications of the State of Hawaii:
<https://humanservices.hawaii.gov/ssd/home/adult-services/>

Vulnerable Adult Abuse & Neglect in Hawaii Brochure

<https://humanservices.hawaii.gov/ssd/files/2013/01/DHS-1610-6-15.pdf>

Adult Protective Services Mandated Reporter Guidelines – Are you a mandated reporter?

<https://humanservices.hawaii.gov/ssd/files/2015/10/Guidelines-for-Mandated-Reporters.pdf>

Anyone may make a confidential report to APS by calling 808-832-5115. The department is required to take every good faith effort to maintain the confidentiality of the reporter's identity pursuant to HRS § 346-225 of Hawai'i Revised Statutes but instances of vulnerable adult abuse that may involve a crime are reported to the police or appropriate law enforcement agency with or without the adult's consent.

The APS Unit of the DHS oversees reports of suspected abuse. APS is required to investigate reports of alleged abuse against a vulnerable adult and has the authority to prevent further abuse. However, under HRS §346-230, DHS may act only with the consent of the vulnerable adult, unless it obtains court authorization to provide necessary services. In doing its investigation, it is entitled to have access to the allegedly abused vulnerable adult. Under the State of Hawai'i's administrative rules, APS investigations include but are not limited to:

1. Reasonable efforts to have face-to-face contact with the vulnerable adult and alleged perpetrators of abuse using police assistance as necessary in accordance with HRS § 346-229, of the statute;
2. Collateral contacts as needed with others such as family members, friends of the vulnerable adult, and professionals who may have information about the vulnerable adult relevant to the investigation; and
3. An assessment of the need for protective services and referrals to appropriate resources.

In the process, the department is authorized to arrange for appropriate evaluations to be conducted as necessary to complete the assessment, including but not limited to psychological, medical, or other evaluations in accordance with departmental procedures.

Protective services for vulnerable adults include the development of a protective services plan. Services are provided as determined necessary by the department to prevent further abuse. Such services may

include:

1. Providing counseling to the vulnerable adult alone, and where appropriate, to family members and other collaterals to assist the individuals in recognizing the problems resulting in abuse and in developing alternative means of handling the situation;
2. Assisting the vulnerable adult, the vulnerable adult's family or friends, or legal guardian in locating and arranging for needed services in the vulnerable adult's home or in an alternative living arrangement; and
3. Assisting the vulnerable adult in the initial adjustment to services provided.

The department may initiate court action in the Family Court by petitioning for an order for immediate protection when, in accordance with HRS sections 346-231 and 346-232, the department determines that there is reason to believe the vulnerable adult has incurred abuse or is in danger of abuse if immediate action is not taken.

The department may also initiate court action for the appointment of a legal guardian or conservator under article V of HRS Chapter 560, and may consolidate this action with the proceedings for an order for immediate protection.

If the department believes that a person is a vulnerable adult and it appears probable that the vulnerable adult has incurred abuse or is in danger of abuse if immediate action is not taken and the vulnerable adult consents, or if the vulnerable adult does not consent and there is probable cause to believe that the vulnerable adult lacks the capacity to make decisions concerning the vulnerable adult's person, the department may seek an order for immediate protection.

Under HRS §346-251, an individual is presumed to be capable of making decisions concerning the individual's person. However, orders for immediate protection may include:

1. An authorization for the department to transport the person to an appropriate medical or care facility;
2. An authorization for medical examinations;
3. An authorization for emergency medical treatment; and
4. Any other matters as may prevent immediate abuse, pending a hearing.

Under HRS §346-232 (a), the court may also make orders as may be appropriate to third persons, including temporary restraining orders, enjoining them from:

1. Removing the vulnerable adult from the care or custody of another;
2. Actions that would result in abuse of the vulnerable adult;
3. Living at the vulnerable adult's residence;
4. Contacting the vulnerable adult in person or by telephone;
5. Selling, removing, or otherwise disposing of the vulnerable adult's personal property;
6. Withdrawing funds from any bank, savings and loan association, credit union, or other financial institution, or from a stock account in which the vulnerable adult has an interest;
7. Negotiating any instruments payable to the vulnerable adult;
8. Selling, mortgaging, or otherwise encumbering any interest that the vulnerable adult has in real property;

9. Exercising any powers on behalf of the vulnerable adult by representatives of the department, any court-appointed guardian or guardian ad litem, or any official acting on the vulnerable adult's behalf; and
10. Engaging in any other specified act that, based upon the facts alleged, would constitute harm or present a danger of immediate harm to the vulnerable adult or would cause the loss of the vulnerable adult's property.

Note again that if abuse is discovered, DHS must take action to prevent further abuse. However, DHS can only act with the consent of the vulnerable adult unless it obtains court authorization to provide necessary services.

LONG-TERM CARE OMBUDSMAN

As previously stated, Hawai'i has a Long-Term Care Ombudsman/Advocate Law, federally authorized through the Older Americans Act which grants investigative and access authority to the Long-Term Care Ombudsman. As an independent and politically neutral examiner, the Ombudsman identifies, investigates and resolves problems with or complaints against long-term care facilities under the provisions of HRS Section 349-21. Personal data relating to a complaint is treated as confidential and will not be released by the Ombudsman without written permission of the patient/resident's legal representative.

A complaint can be lodged by anyone, including organizations, friends, staff, or anonymous persons. It is a crime to retaliate against any patient or resident who files a complaint with the Ombudsman. Persons in residential long-term care facilities, care homes, and boarding homes in Hawai'i are protected by this law. Investigation begins as soon as possible after the complaint is received. If verified, the facility's staff is asked to make corrections or provide a prompt response. The Ombudsman may also involve other responsible agencies.

NURSING HOME ABUSE

If you have made the difficult decision to place a family member in a nursing home, you should visit often and monitor your family member and the living environment. Take particular note of any sudden changes in your family member's appearance or demeanor, which may signal that some sort of mistreatment is taking place by the staff or another resident. Your family member may be hesitant or unwilling to speak about these abuses, because of embarrassment or fear of retaliation. If you suspect that your family member has been abused or mistreated in a nursing home, or has suffered any type of abuse, contact the Long-Term Care Ombudsman, APS or the Department of the Attorney General Medicaid Investigations Unit (Medicaid Fraud Control Unit) at (808) 586-1058. You may also want to contact an attorney if you are seeking damages.

OTHER INTERVENTIONS AND REMEDIES

The Hawai'i Disability Rights Center may be able to assist certain disabled victims. It can be contacted at 808-949-2922. Also, domestic violence organizations may be able to assist victims who are abused

by household members. Private legal remedies, including actions for breach of contract, and tort and civil fraud may also be pursued.

You can protect yourself from an abusive individual by obtaining a “Temporary Restraining Order” (TRO) from the District or Family Court of the Hawai’i State Judiciary. The Family Court will hear cases in which the abuser is a relative, former spouse, dating partner, someone with whom you have had a child or someone with whom you have lived. Otherwise, the District Court may be able to hear the case. In all instances, you will need to fill out specific forms (available from the Clerk of the respective Court) to give the court information on the alleged abuse and certain contact information. You will also need to participate in a hearing on the matter and may need to pay a filing fee. The TRO will be effective when it is served.

If you are in danger or feel threatened, leave your home if it is unsafe. Get medical attention if you have been injured. Report the abuse to Adult Protective Services at 808-832-5115 to help with your safety and protection. In an emergency, call 911 for help. Should you do so, try to stay calm and clear about the address or location of the emergency so that you can be found and helped. Do not be ashamed to seek help if you are a victim.

CAREGIVING

Caregivers take care of children, other adults, most often parents, spouses, friends or relatives, and help with many things such as: bathing, bill paying and banking assistance for finances, shopping, preparing meals, toileting, eating and medications. To better provide for care and to prepare for the worst, the care receiver should have the following legal documents in place:

- Advance Health Care Directive that names a health care agent and that provides individual instructions for health care;
- POLST (Provider Orders for Life-Sustaining Treatment);
- Powers of Attorney or other instruments to allow an agent access to private information, manage property and financial resources;
- Will and/or Trust;
- Written instrument to control disposition of remains.

And the following important information should be kept handy:

- Medicare or Medicaid information;
- Valid personal ID such as a current passport, driver’s license or state ID;
- REAL IDs are necessary for travelers within the United States effective May 7, 2025. Your driver’s license or state identification card will need to be REAL ID-compliant if you want to use it to fly within the U.S. If your license or state ID is not compliant, and you don’t have another acceptable form of identification, you will have trouble getting through airport security.
- If you need to order one, visit:
[www. Ssa.gov/number-card/replace-card](http://www.Ssa.gov/number-card/replace-card)

- Name and phone number of physician or other health care provider;
- List of emergency numbers;
- List of who to contact such as family members.

As “aging in place,” that is, remaining in your own home and not moving to assisted living or a retirement community, becomes more popular, hiring a caregiver to help with the many tasks and responsibilities makes sense. For more about aging in place see the last topic in this chapter.

Many families have difficulty in finding a qualified and trustworthy caregiver at an affordable price. While abuse, neglect, theft and financial exploitation can happen with any caregiver, professional home caregiver agencies normally have the resources to provide bonded and insured, trained, and pre-checked caregivers. Further, such agencies can usually provide short-notice and continuous care with back-up caregivers, as necessary.

Although agencies may be more costly than hiring caregivers on your own, they provide services that may save you needless worry. For example, they may be better suited to screen applicants and terminate an unsuitable person. They are responsible for payroll, taxes, insurance and all the duties of running a business. Most of all, much of the stress is removed from being a caregiver.

If you hire your own caregiver you may save some money, since you will cut out the built-in overhead costs associated with a business enterprise and its profit objective. But, as an employer, you will need to comply with employment laws and payroll taxes.

TYPES OF CAREGIVERS

The type of caregiver you need, of course, depends on your own particular situation and the types of services and the levels of services required. You may or may not need round-the-clock services. You may or may not need to have household or chore services. You may or may not need close supervision for a frail or vulnerable or physically or mentally disabled person. You may or may not need to have intensive home health care services. Each situation is different and there is no set answer.

There are differences even among home health care providers. For example, Medicare-certified home health agencies are licensed by the State of Hawai'i and are reimbursed by Medicare. They provide part-time, intermittent, skilled nursing services with at least one other therapeutic service ordered by the physician (e.g., occupational, physical and speech therapy). Private duty service providers are hired by individuals to provide services that are not reimbursed by Medicare.

If you need to hire a home health care provider, one way to get assistance in locating an appropriate licensed provider is to use the services of a home care association such as the Home Care and Hospice Division of the Healthcare Association of Hawai'i (<https://www.hah.org>.) Note that physician orders are required for home health services to qualify for Medicare reimbursement.

USING A PROFESSIONAL SERVICE AGENCY

If you decide to hire a professional service agency, check to see if:

- The agency is registered/licensed with the State Department of Commerce and Consumer Affairs;
- The agency is Medicare-certified if you will be seeking Medicare reimbursement;
- The agency has a record of complaints;
- The agency/supervisor is available by phone at all times;
- The agency has written policies and procedures pertaining to patients' bill of rights, services, costs, payment plans, malpractice/injury, thefts, unacceptable behavior, and disputes;
- Employees are insured and bonded;
- Employees are trained;
- Employees are screened for health, background and criminal histories;
- References for employees are available.

Although the cost of hiring a private caregiver may be significantly lower than using a licensed and certified caregiver agency, there are certain drawbacks. For example, Medicare will only provide reimbursement for eligible services provided by a Medicare-certified home health care agency. Private health insurance plans may have the same policies.

FORM 18

CHECKLIST FOR EMPLOYERS

1. RECRUITING

- ☐ Non-discriminatory advertising
- ☐ Personal information permission/Privacy waiver
- ☐ Prior employment reference check
- ☐ Personal reference check
- ☐ Credit check
- ☐ Medical/health check (including contagious diseases)
- ☐ Abuse report check
- ☐ Criminal records history check
- ☐ Interview questionnaire

2. EMPLOYMENT AGREEMENT

- ☐ Enforceable legal contract format
- ☐ Job description
- ☐ Work schedule
- ☐ Back-up help schedule
- ☐ Time-off schedule
- ☐ Wages
- ☐ Meals
- ☐ Use of automobile/equipment
- ☐ Work rules (e.g., smoking, alcohol, personal phone calls, visitors, etc.)
- ☐ Acceptance and exchange of gifts (prohibition with person cared for to avoid theft and undue influence concerns)
- ☐ Termination policy

3. SUPERVISING

- ☐ Introduction to person cared for, family, neighbors, and professionals
- ☐ Training (content, resources, materials, and courses)
- ☐ Orientation to job, home, support facilities and responsibilities
- ☐ Demonstration of preferred manner of commonly performed tasks
- ☐ Testing of emergency notification and substantive procedures
- ☐ Performance reports

- ___ Disciplinary options
- ___ Counseling
- ___ Warning
- ___ Reporting to Adult Protective Services Unit, Department of Human Services
- ___ Reporting to Police
- ___ Dismissal

4. TAXES, LAWS, REGULATIONS, INSURANCE

- ___ US Citizenship or legal authorization to work: INS Form I-9
- ___ Minimum wage determination
- ___ Federal Income Tax Withholding: IRS Form W-4
- ___ Federal Wage and Tax Statement: IRS Form W-2
- ___ State Wage and Tax Statement: IRS Form W-2
- ___ Employer Identification Number Form SS-4
- ___ Federal Insurance Compensation Act (FICA): IRS Form 1040, Schedule H
- ___ Social Security
- ___ Medicare
- ___ Federal Unemployment Tax Act (FUTA): IRS Form 1040, Schedule H
- ___ State Unemployment Tax: Form UCB-6
- ___ State of Hawai'i Business Registration: Form UC-1
- ___ Employee Records

___ Name: _____

___ Address: _____

___ Phone Number/Cell: _____

___ Date and Place of Birth: _____

___ Social Security Number: _____

___ Driver's License Number: _____

___ Date hired: _____

___ Date discharged: _____

___ Dates and amounts of wages: _____

- ___ Copies of contracts, other agreements, records checks, performance reports, termination notice, other communications;

- ___ Copies of Tax, FICA, and Insurance documents and filed forms;

- ___ Homeowner's, automobile, and liability insurance policies;
- ___ Employee bond.

HEALTH CARE FINANCING, INCLUDING LONG-TERM CARE

HEALTH CARE IN THE USA

Unlike many other countries, the United States does not have universal health care for its citizens but it spends more money, both private and public, on health care than any other country. And in tribute to its many health care providers such as nurses, doctors, medical and community social workers, its teams of medical researchers and medical boards, the US has world class hospitals, medical research facilities and well-trained and dedicated people providing health care.

In providing health care, the US has a plethora of publicly funded health care programs such as Medicare and Medicaid, the Children's Health Insurance Program, the Veterans Health Administration, the Defense Health Agency and Tricare, as well as private health care programs such as those financed by employers and those mandated by the Affordable Care Act (ACA) of 2010. To make health care more accessible to all, the ACA expanded Medicaid eligibility and prohibited insurance companies from denying coverage due to pre-existing conditions. The act also mandated that individuals buy insurance (or pay a fine/tax) and that insurers cover a list of "essential health benefits."

MEDICARE

Medicare is our country's health insurance program mainly for people age 65 or older. Certain people younger than age 65 can qualify for Medicare, too, including those with disabilities and those who have permanent kidney failure. Medicare is run by the Centers for Medicare and Medicaid Services, or CMS (formerly Health Care Financing Administration), of the US Department of Health and Human Services (DHHS). Social Security Administration (SSA) offices across the country take applications for Medicare and provide general information about the program. Eligibility for Medicare is determined by the SSA. The CMS, a federal agency within the (DHHS), is responsible for the overall administration of the program. Medical bills and claims are handled by private insurance companies under contract with DHHS and monitored by the government.

Generally, you are eligible for Medicare:

- If you or your spouse worked for at least 10 years in Social Security/Medicare-covered employment (earning at least 40 Social Security credits), and
- You are 65 years or older, and
- You are a citizen or permanent resident of the United States.

If you are under 65 and have End-Stage Renal Disease (permanent kidney failure requiring dialysis or transplant), or you have a disability or have been entitled to Social Security disability benefits for 24 months, you might also qualify for coverage. Others who may be entitled to Medicare coverage are insured workers and their dependents who have Lou Gehrig's disease. Medicare has no resource limitations for eligibility, although there may be certain categories of individuals who may be eligible for subsidies or who may benefit more from Medicare Part D prescription drugs than others.

In most cases, you become eligible for Medicare when you turn 65, but there are a number of circumstances in which you may choose to delay signing up or become eligible earlier. When you enroll in Medicare, you will be able to choose among various options, including the original Medicare (Parts A, B, and D) and a Medicare Advantage Plan (MA), often collectively referred to as Part C. MA plans are private health plans that contract with Medicare to provide Medicare benefits. This chapter will not address the myriad issues relating to Medicare but will provide some basic information.

MEDICARE COVERAGE

There are three important rules to remember when Medicare coverage is an issue:

- First, Medicare covers care that is “reasonable and necessary” for the diagnosis or treatment of an illness or injury. Care is not considered reasonable and necessary, for example, if a doctor places a patient in a hospital or skilled nursing facility when the kind of care the patient needs could be provided elsewhere.
- Second, Medicare will not cover a stay in the hospital or skilled nursing facility longer than a patient needs to be there. Medicare coverage will end when further inpatient care is no longer reasonable and necessary.
- Third, Medicare coverage is limited. Medicare generally does not pay for long-term care. Medicare does not pay for help with activities of daily living or other care that most people can do themselves. Some examples of activities of daily living include eating, bathing, dressing, and using the bathroom. Medicare will help pay for skilled nursing or home health care when certain conditions are met, including a period of prior hospitalization.

One of the most complicated rules for nursing home coverage, under Medicare is the “three-day rule.” This is a statutory requirement that if you are in the traditional Medicare Program, you must spend at least three consecutive days in a hospital as an inpatient in order to qualify for Medicare coverage of

a subsequent stay in a skilled nursing facility (SNF). Under this rule, individuals who were admitted as outpatients for observation or emergency treatment at a hospital do not qualify to have Medicare help finance their stay at a nursing home. In order to qualify for coverage, the doctor has to admit you as an inpatient for at least three consecutive days.

There are two exceptions to the three-day rule: 1) This rule is not usually applied to those enrolled in a Medicare Advantage plan; and 2) It only affects coverage in a skilled nursing facility. If you are discharged to a different kind of facility like a rehabilitation center, Medicare provides coverage under different rules.

Always ask your doctor whether you are an inpatient or under observation or an outpatient. The answer could affect how much you pay for hospital services.

MEDICARE PART A HOSPITAL SERVICES

Hospital Insurance, Part A, helps pay for inpatient hospital care, some inpatient care in a skilled nursing facility, home health care, and hospice care. All persons age 65 and over who are receiving Social Security are automatically enrolled in Part A of Medicare.

You usually do not pay a monthly premium if you or your spouse paid Medicare taxes while working. This is sometimes called “premium-free Part A.” To be eligible for premium-free Part A, an individual must first be “insured” based on their own earnings or those of a spouse, parent, or child. To be insured, the worker must have a specified number of quarters of coverage (QC’s), the exact number required is dependent on whether the person is filing for Part A on the basis of age, disability, or End-Stage Renal Disease (ESRD). QC’s are earned through payment of payroll taxes under the Federal Insurance Contributions Act (FICA) during the person’s working years.

The Part A premium in 2025 is \$285 per month for people having 30-39 quarters of Medicare covered employment. The Part A premium in 2025 is \$518 per month for people who are not otherwise eligible for premium-free hospital insurance and have less than 30 quarters of Medicare covered employment.

Private insurance companies that handle Part A were originally known as “fiscal intermediaries.” Insurance companies, which administer payments to participating Part B providers (physicians and other practitioners), were originally called “carriers.” Congress later directed the Centers for Medicare & Medicaid Services (CMS) to replace the Part A fiscal intermediaries and Part B carriers with A/B Medicare Administrative Contractors (MACs). In addition to paying claims, fiscal MACs are responsible for setting payment rates and charges and assisting providers in complying with Medicare requirements and standards.

Financed primarily through payroll tax deductions, Part A covers expenses incurred during periods

of acute illness that require inpatient hospital care. Following a hospital stay, Part A also covers the expense of inpatient care in an extended care facility, subject to the “three-day rule” described above. Benefits available under Medicare Part A primarily consist of payments to qualified participating hospitals and skilled nursing facilities for expenses incurred by persons as inpatients.

Medicare Part A can pay for home health services if a homebound patient requires “intermittent skilled nursing care,” or physical, occupational, or speech therapy. There is no limit to the number of home health services visits, but the services must be prescribed by a doctor and must not be performed on a daily basis.

Calculating Medicare Part A’s coverage and the deductibles for each benefit period is quite technical: The Medicare Part A inpatient hospital deductible that beneficiaries will pay when admitted to the hospital is \$1,676 in 2025. The Part A inpatient hospital deductible covers beneficiaries’ share of costs for the first 60 days of Medicare-covered inpatient hospital care in a benefit period. In 2025, beneficiaries pay a coinsurance amount of \$419 per day for the 61st through 90th day of a hospitalization in a benefit period, and \$838 per day for lifetime reserve days.

A single “spell of illness” (also referred to as a “benefit period”) is defined as a period of consecutive days that begins the first day a patient receives inpatient hospital or post-hospital extended care services and ends 60 days after the patient is no longer in the hospital or extended care facility. A patient may pay more than one deductible amount per year if the patient has more than one “spell of illness.”

LIMITED SKILLED NURSING FACILITY MEDICARE COVERAGE

Medicare Part A has very limited coverage for skilled nursing facility (SNF) care. Generally, a physician must order care and you must be an inpatient for three consecutive days. Examples of skilled nursing care that requires hospitalization which Medicare would pay for include recovering from an acute health condition such as a heart attack or stroke, physical or occupational therapy after an injury or surgery or care that requires intravenous medications. Custodial care is not covered. Most individuals in nursing homes do not require skilled nursing care and are, thus, not eligible for Medicare coverage. For beneficiaries in skilled nursing facilities (as distinguished from hospitals), the daily coinsurance for days 21 through 100 of extended care services in a benefit period is \$209.50 in 2025. Coverage is limited to 100 days per spell of illness.

Generally, a physician must order nursing facility care. With a three-day hospitalization prior to entering the nursing facility. Check with your health care provider to find out how the three-day stay is calculated and, as of 2024, ask about new appeals rights for those patients who were being observed in the hospital but were considered “outpatients” rather than “inpatients.”

Note that Medicare Part A can pay for home health services if a homebound patient requires

“intermittent skilled nursing care,” or physical, occupational, or speech therapy. There is no limit to the number of home health services visits, but the services must be prescribed by a doctor and must not be performed on a daily basis.

HOSPICE and PALLIATIVE CARE

Hospice care is usually given in your home but may also be covered in a hospice inpatient facility. A certified terminally ill patient (with a life expectancy of 6 months or less) may elect hospice benefits under Medicare. In obtaining Medicare coverage for hospice benefits, the attending physician needs to certify that the patient is terminally ill at the beginning of each period of care, which is limited to two 90-day periods and unlimited 60-day periods for the patient’s lifetime. Hospice care includes medical and supportive services intended to provide comfort to the individual who is terminally ill. Hospice care provides palliative care to manage illness and pain but does not treat the underlying terminal illness. Special co-payment rules apply for hospice care. The room and board expenses of the hospice inpatient facility may also be excluded from coverage.

- Medicare covers hospice care costs through the Medicare Hospice Benefit. See www.medicare.gov/coverage/hospice-care
- Veterans Administration (VA) benefits also cover hospice care. See: www.va.gov/GERIATRICS/Guide/LongTermCare/Hospice_Care.asp
- *Palliative care differs from hospice care. Both focus on comfort, care, and quality of life for individuals with serious illnesses. Hospice care is specifically for those in the final weeks or months of life. Palliative care is available for people with long-term, life-altering *illnesses.*

RESPIRE CARE

If your usual caregiver (often a family member) needs a rest, you, the patient, can get inpatient respite care in a Medicare-approved facility (such as a hospice inpatient facility, hospital, or nursing home). Your hospice provider will arrange this for you. You can stay up to 5 days each time you get respite care. You can get respite care more than once, but it can only be provided on an occasional basis. You may have to pay a co-payment for the respite stay.

MEDICARE PART B OUTPATIENT CARE

Medical Insurance (Part B) helps pay for medically necessary doctors’ services, outpatient hospital services, home health care, and a number of other medical services and supplies that are not covered

by the hospital insurance part of Medicare. It is voluntary and enrollees pay a monthly premium based on income. It includes coverage for medically necessary physicians' services, outpatient hospital services, outpatient physical therapy and speech pathology services, home health services, diagnostic tests and medical appliances (durable medical equipment), including canes, walkers, wheelchairs, lift chairs and mobility scooters. Prosthetic devices are also covered. Talk to your doctor about why you need certain services or supplies and ask if Medicare will cover them.

Part B benefits are designed to supplement and extend the benefits provided by the Part A program. Under Part B, payment can be made for medical and health services and for home health services for up to 100 visits per year. (Remember that Part A can pay for unlimited visits.) When you pay a premium each month for Part B, it is automatically deducted from your benefit payment if you get benefits from one of these programs:

- Social Security
- Railroad Retirement Board
- Office of Personnel Management

If you do not get these benefit payments, you will get a bill every three months. The standard Part B premium amount in 2025 ranges from \$185 if an individual's income is \$106,000 a year or less (\$212,000 or less for those filing a joint tax return), up to \$628.90 a month for individuals whose income is \$500,000 or above (\$750,000 for those filing a joint tax return). The deductible for 2025 is \$257 a year. After you meet your deductible for the year, you typically pay 20% of the Medicare-approved amount for the following:

- Most doctor services (including most doctor services while you're a hospital inpatient)
- Outpatient therapy
- Durable Medical Equipment (DME)

Note that Medicare Part B premiums may change from year to year, and the amount can vary depending on your situation. For many of you, the premium is automatically deducted from your Social Security benefits. If your income exceeds a certain amount, your premium could be higher than the standard premium, as there are different premiums for different income levels.

If you do not sign up for Part B when you are first eligible, you will have to pay a late enrollment penalty. You will have to pay this penalty for as long as you have Part B. The monthly premium for Part B may go up 10% of the standard premium for each full 12-month period that you could have had Part B but did not sign up for it. Also, you may have to wait until the General Enrollment Period (from January 1 to March 31) to enroll in Part B. Coverage will start July 1 of that year.

MEDICARE PART C

MEDICARE ADVANTAGE

Medicare Advantage plans are sometimes referred to as “Medicare Part C” or “MA Plans.” They are offered by private companies and are alternatives to Original Medicare Part A and Part B plans. They include managed health care preferred provider organizations (PPO’s) or health maintenance organizations (HMO’s). Many Medicare services are covered through the plan and are not paid for under Original Medicare. Most Medicare Advantage plans also provide Part D, prescription drug coverage.

If you decide to join a Medicare Advantage Plan, you must be enrolled in Medicare Part A and Part B and, accordingly, must pay the monthly Medicare Part B premium (see above). In addition, enrollees may have to pay a monthly premium to the Medicare Advantage Plan for the extra benefits that they may offer.

In most plans, you need to use the plan’s doctors, hospitals, and other providers or you pay more or all of the costs. Your out-of-pocket costs depend on whether the plan charges a monthly premium in addition to the monthly Part B premium, how much you pay for each visit or service (“co-payments”), the type of health care you need, the types of extra benefits used and whether the plan covers them. Costs, extra coverage, and rules vary by plan.

Medicare Advantage plans have the option of covering more services and medical devices plus an array of non-traditional services for individuals who have chronic health conditions. These may include transportation for medical appointments, nutritional services and improvements to homes and certain chore services to maintain a clean home environment.

Generally, enrollment in these plans has a limited enrollment period. You may have to live in the service area of the plan you want to join, and you may not have End-Stage Renal Disease (ESRD). However, if you are already in a plan, you can stay in the plan or join another plan offered by the same company in the same state. If you have a successful kidney transplant, you also may be able to join a plan. The different types of Medicare Advantage plans include the following:

HEALTH MAINTENANCE ORGANIZATIONS (HMO)

- Health Maintenance Organization Plan (HMO)

In HMO Plans, you cannot get your health care from any doctor, other health care provider, or hospital you chose. You generally must get your care and services from doctors, other health care providers, or hospitals in the plan’s network (except emergency care, out-of-area urgent care, or out-of-area dialysis). In some plans, you may be able to go out-of-network for certain services, usually for a higher cost.

- Exclusive Provider Organization Plan (EPO)

An EPO plan is a type of HMO plan. As a member of an EPO, you can use the doctors and hospitals within the EPO network but cannot go outside the network for care. HMO members have a primary care doctor and must get referrals to see specialists, unlike those in the EPO plan. There are no out-of-network benefits.

- Preferred Provider Organization Plan (PPO)

In most cases, you can get your health care from any doctor, other health care provider, or hospital in PPO Plans. PPO Plans have network doctors, other health care providers, and hospitals. Generally, in a PPO Plan, you pay less if you use doctors, hospitals, and other health care providers that belong to the plan. You pay more if you use doctors, hospitals, and providers outside of the network. Each plan gives you flexibility to go to doctors, specialists, or hospitals that aren't on the plan's list, but it will usually cost more.

- Private Fee for Service Plan (PFFS)

PFFS Plans are offered by private insurance companies. The plan determines how much it will pay doctors, other health care providers, and hospitals, and how much you must pay when you get care. If you join a PFFS Plan that has a network, you can also use any of the network providers who have agreed to always treat plan members. You can also choose an out-of-network doctor, hospital, or other provider, who accepts the plan's terms, but you may pay more.

- Medicare Special Needs Plan (SNP)

There are other less common types of Medicare Advantage Plans that may be available: Medicare SNPs are a type of Medicare Advantage Plan (like an HMO or PPO). Medicare SNPs limit membership to people with specific diseases or characteristics, and tailor their benefits, provider choices, and drug formularies to best meet the specific needs of the groups they serve.

- Medicare Savings Account Plan (MSA)

MSAs combine a high-deductible insurance plan with a medical savings account that you can use to pay for your health care costs.

- High Deductible Health Plan (HDHP)

This plan features higher deductibles than traditional insurance plans but has a lower monthly premium. High deductible health plans (HDHPs) can be combined with a health savings account or a health reimbursement arrangement to allow you to pay for qualified out-of-pocket medical expenses on a pre-tax basis. HDHPs minimum deductible and the maximum amount out-of-pocket limit for self-only and for self-and-family coverage may change each year.

- Health Savings Accounts (HSA)

A health savings account allows individuals covered by high-deductible health plans to receive tax-preferred treatment of money saved for medical expenses.

MEDICARE PART D PRESCRIPTION DRUG PLAN

Medicare offers prescription drug coverage to everyone with Medicare. If you decide not to join a Medicare Prescription Drug Plan when you are first eligible, and you do not have other creditable prescription drug coverage, or you do not get “Extra Help,” (the benefit plan described in the following section) for low-income individuals, you will likely pay a late enrollment penalty.

There are two ways to get Medicare prescription drug coverage:

- Through adding a Medicare Prescription Drug Plan (Part D) or
- Getting a Medicare Advantage Plan (Part C) such as an HMO or PPO that offers Medicare prescription drug coverage.

To get Medicare drug coverage, you must join a plan run by an insurance company or other private company approved by Medicare. Each plan can vary in cost and drugs covered. For most Medicare beneficiaries, prescription drug plans offered by insurance companies and other private companies will cover both generic and brand name prescription drugs. While Medicare prescription drug plans provide insurance coverage for prescription drugs, like other insurance plans, individuals who opt to join will pay a monthly premium and pay a share of the cost of their prescriptions. Costs will vary depending on the drug plan that is chosen. Effective in 2025 there is a \$2,000 out-of-pocket drug spending cap.

DUAL ELIGIBLES

Individuals who qualify for both Medicare and Medicaid are described as dual eligible beneficiaries. Medicare covers their acute care services, while Medicaid covers Medicare premiums and cost sharing, and for those below certain income and asset thresholds, long-term care services. Drug coverage for dual eligible beneficiaries is covered under Medicare Part D. Under Part D, dual eligible beneficiaries will pay reduced co-payments and receive a low-income subsidy to cover their entire deductible and help cover any Medicare prescription drug plan premiums.

Full dual eligible beneficiaries receive full Medicaid benefits including nursing home care, dental care, mental health care, eye care, transportation to and from health providers and prescription drug coverage.

OTHER MEDICAL COVERAGE PLANS “QUIMBY AND SLIMBY,” QI, MEDICARE EXTRA HELP

If you have limited resources and are eligible for Medicare Part A, you may qualify for Medicaid programs that help pay your Medicare premiums. These programs are the federal Medicare Qualifying Individuals (QI) Program, Qualified Medicare Beneficiary (QMB) Program, Specified Low-Income Medicare Beneficiary (SLMB) Program and the Qualified Disabled and Working Individuals (QDWI) Program. They are also known by their phonetic nicknames and acronyms:

- “Quimby”: Qualified Income Beneficiary (QI) pays all or part of the Medicare Part B premium for people with income higher than allowed for the SLMB Program;
- “Slimby”: Specified Low-Income Beneficiary (SLMB) pays for Medicare Part B premiums for individuals who have Medicare Part A, a low monthly income, and limited resources;
- QWD: Qualified Working Disabled program pays for Medicare Part A premiums for those who are blind and disabled, under 65, and who lose their Part A benefits when their earnings exceed federal guidelines;
- Medicare Extra Help: If you qualify for a QMB, SLMB, or QI program, you automatically qualify to get “Extra Help” in paying for Medicare prescription drug coverage.

Individuals who have low income and low resources can apply for and receive extra help for payment of their medical bills from DHS under the Qualified Medicare Beneficiary Program, (QMB), Specified Low-Income Medicare Beneficiary Program (SLMB) or Qualifying Individuals (QI) Programs. Through the DHS Med-QUEST Division, QI, QMB, and SLMB can help pay for Medicare Part A and Part B Insurance deductibles and premiums. These programs pay the balance of qualified hospital and doctors’ bills not paid by Medicare. Individuals with disabilities may be able to go to work or increase their hours of work and still receive Medicaid under the Qualified Working Disabled (QWD) program.

Medicaid will provide inpatient hospital care, outpatient hospital services, laboratory and x-ray services, skilled nursing facility services, the services of physicians, and home health services to those who meet the standards for a “categorically needy” person. Before Medicaid will pay for these services, however, a physician must have ordered them and the hospital rendering the services must be approved for participation in Medicaid. Medicaid may be able to provide some benefits not covered by Medicare such as eyeglasses, hearing aids, drugs, and other health services. Consumers who need help with medical bills should apply for benefits at the appropriate state eligibility offices. Note that Medicaid beneficiaries who are enrolled in Medicare usually do not need to purchase Medigap insurance.

MEDICARE “EXTRA HELP”

Some Medicare enrollees may qualify to get help in paying for prescription drugs. “Extra Help” from Medicare is also called the “low-income subsidy” or LIS. People whose yearly income and resources are below certain limits can qualify for this help. Extra Help is a program that provides additional financial assistance to seniors with limited resources to help pay for prescription drug costs.

Some Medicare beneficiaries are automatically eligible for Extra Help and do not need to apply. These beneficiaries are “deemed eligible,” as long as they:

- Are entitled to Medicare Part A, Medicare Part B, or both: and,
- Receive Supplemental Security Income (SSI); or
- Receive full Medicaid; or
- Are Qualified Medicare Beneficiaries (QMB), Specified Low-Income Medicare Beneficiaries (SLMB), or Qualifying Individuals (QI).

You can apply online at: <https://secure.ssa.gov/i1020/start> or call Social Security at 1-(800) 772-1213 to apply over the phone or to request an application; or apply at your local Social Security office.

MEDICARE COVERAGE FOR ALZHEIMER'S DISEASE

Several years ago, Medicare extended coverage to people with Alzheimer's disease and other forms of dementia. In the past, patients were often automatically denied services when they were diagnosed with dementia on the theory that treatment was not considered "to improve functioning."

These patients often did not receive such services as physical, occupational, mental health and speech therapy and home care. Under current policy, such services can be covered as long as they are determined to be reasonable and medically necessary. Unfortunately, Medicare still will not provide assistance for custodial in-home care or adult day care, long-term care in a nursing home or assisted-living costs. However, some services that are included under Medicare are the following:

- Home health care: Home care coverage under Medicare is available only if a patient is confined to the home and requires physical, occupational or speech therapy, or skilled nursing care, which will be provided from a home health agency under a doctor's plan of treatment. It is important to understand that Medicare likely will not pay for round-the-clock custodial care.
- Rehabilitation care including physical, occupational, or speech therapy: Patients must show that they can benefit from the therapy.
- Mental health services: Part B can cover physical, occupational and speech therapy, as well as psychological counseling if prescribed by a doctor. The counseling must be provided by a Medicare-certified therapist or mental health provider. Patients must show that they can benefit from the therapy.
- Hospice coverage: Medicare coverage is available for Part A beneficiaries, if a physician certifies that the patient is terminally ill (when life expectancy is six months or less), and if the beneficiary chooses to receive hospice care. The coverage is limited to the hospice care and frequently excludes the costs of room and board.
- Medicare pays for most outpatient prescription drugs which include drugs to treat Alzheimer's disease. In general, you get this coverage through private drug insurance plans, called Part D plans. Each plan covers different drugs and has different costs.

MEDIGAP INSURANCE

As noted, Medicare covers many, but certainly not all, health costs for eligible persons. A Medicare Supplemental Insurance Policy, or "Medigap Policy," is a health insurance policy designed to supplement Medicare. It is sold by private insurance companies to fill in certain "gaps" in the federal Medicare program, for example, some Medigap policies cover medical care when you travel outside the US. These supplemental policies are designed primarily to supplement Parts A and B of Medicare. Generally, those who may need Medigap insurance are those who rely on Part A and Part B of Medicare for their health care benefits.

Those who have a Medicare Advantage plan generally do not need Medigap insurance. In fact, several former types of Medigap policies have been discontinued since the Medicare Part D prescription drug plan made them unnecessary.

Some things to know about Medigap policies:

- You must have Medicare Part A and Part B to be eligible for a Medigap policy.
- Any standardized Medigap policy is guaranteed renewable even if you have health problems. This means the insurance company cannot cancel your Medigap policy as long as you pay the premium on a timely basis.
- Some Medigap policies sold in the past cover prescription drugs, but Medigap policies sold after January 1, 2006, are not allowed to include prescription drug coverage. If you want prescription drug coverage, you can join a Medicare Prescription Drug Plan (Part D).
- Medigap policies generally do not cover long-term care, vision or dental care, hearing aids, eyeglasses, or private-duty nursing. Medigap policies generally supplement the amount of Medicare eligible expenses, but usually do not supplement the types of medical expenses covered. The Medigap policy covers co-insurance only after you've paid the deductible (unless the Medigap policy also pays the deductible).
- It's illegal for anyone to sell you a Medigap policy if you have a Medicare Medical Savings Account (MSA) Plan.

MEDICARE APPEAL RIGHTS

Consumers enrolled in the Original Medicare plan may file an appeal if they think Medicare should have paid for, or did not pay enough for, an item or service received. Appeal rights are on the back of the "Explanation of Medicare Benefits" or "Medicare Summary Notice" that is mailed to consumers from the company that handles bills for Medicare. The notice will also tell the consumer why the bill was not paid and what appeal steps are available.

Consumers in a Medicare managed care or private fee-for-service plan may file an appeal if the plan will not pay for, does not allow, or stops a service that the consumer thinks should be covered or provided. If the consumer's health could be seriously harmed by waiting, the consumer may request an expedited decision. The plan must then answer within 72 hours, and must include, in writing, how the consumer may appeal. After an appeal is filed, the plan will review its decision. Then, if the plan does not decide in favor of the consumer, the appeal can be reviewed by an independent organization that works for Medicare, rather than the plan. Consumers should check the plan's membership materials or contact the plan for details about Medicare appeal rights.

MEDICARE RESOURCES

People approaching age 65 should remember that they do not need to retire to get Medicare coverage. The law provides for separate applications for Social Security retirement benefits and for Medicare. Most of the materials discussed above came from the Centers for Medicare and Medicaid Services,

including <https://www.medicare.gov/basics>. Medicare can be reached at 1-(800) MEDICARE (1-(800) 633-4227).

In Hawai'i, SHIP (formerly Sage PLUS) provides volunteer counselors to help with Medicare questions. SHIP can be reached at (808) 586-7299 (toll-free at 1-888-875-9229).

MEDICAID

Medicaid is a public health insurance program for people of limited means administered by the state and financed jointly by state and federal funds. Medicaid is the single largest source of health coverage in the United States. It will pay for many medical services including inpatient hospital care, outpatient hospital services, laboratory and x-ray services, skilled nursing care, nursing home care and home health services.

Medicaid rules and regulations may vary considerably from state to state. It is not unusual to confuse Medicaid and Medicare programs since both were started about the same time, deal with health care, and sound similar. The programs are very different, however. One of the primary differences between the two programs is that Medicaid is based on financial and other eligibility standards. Medicare is a federal program and is based primarily on age and on work history, rather than income.

To be eligible for Medicaid in Hawai'i, you must be a resident of the state of Hawai'i, a US national, citizen, permanent resident, or legal alien, in need of health care/insurance assistance. Your financial situation would be characterized as low income or very low income. You must also be in one of the following groups:

- Pregnant, or
- Responsible for a child 18 years of age or younger, or
- Blind, or
- Have a disability or a family member in your household with a disability or,
- Be 65 years of age or older.

To apply go to: <https://medical.mybenefits.hawaii.gov/web/kolea/home-page>
or call Med-QUEST Customer Service on O'ahu (808) 524-3370; TTY/ TDD (808) 692-7182.

On Neighbor Islands: 1-(800) 316-8005; TTY users, call 1-(800) 603-1201 toll-free for information.

QUALIFYING FOR MEDICAID LONG-TERM CARE

Many older adults are concerned about who would care for them in case they become seriously ill or disabled. Although most long-term care is provided by unpaid family members and friends, people often need more help as they get older and frailer or when an illness or a disability gets worse.

Professional help might be a choice. But a greater concern might be how to finance long-term care.

In general, there are three ways to finance long-term care:

- Personal money, such as savings and investments
- Long-term care insurance
- Medicaid (or other government benefits)

Since Medicaid covers the high cost of long-term care, qualifying for Medicaid long-term care is very desirable. Most people who enter nursing homes do not qualify for Medicaid at first because they pay for the very high costs of this care with their personal resources or long-term care insurance. After the insurance and private funds are spent down, they may become eligible for Medicaid.

Information about Medicaid eligibility in Hawai'i can be found at a number of websites including:

<https://www.medicaidplanningassistance.org/medicaid-eligibility-hawaii>

<https://humanservices.hawaii.gov/mqd/ffs-long-term-care>

SINGLES, SPOUSES AND SPOUSAL IMPOVERISHMENT

When applying for Medicaid, be aware that Medicaid long-term care programs will take into consideration several factors. For example, whether a person is applying for Medicaid non-nursing home care (such as outpatient care or hospitalization) or for Medicaid long-term care; and whether a person who is applying is single or married. These are some of the factors that will affect eligibility and, if you are married, how much money your spouse may keep if you need Medicaid long-term care and your spouse remains in the community.

Some examples of Medicaid eligibility are the following:

- If you are single or married, and applying for Medicaid non-nursing home care:
For Hawai'i residents aged 65 or older, or those who are officially blind or disabled, the monthly income limit is set at 100% of the Federal Poverty Level (FPL). It should be noted that Hawai'i has higher Federal Poverty Level limits (\$17,990 in 2025) In dollar terms; an individual applicant must have income equal to or less than \$1,499 per month (\$17,990 per year) in income; and \$2000 or less in assets. Married couples, with both spouses applying for Medicaid non-nursing home benefits, are able to have income up to \$2,026 per month (\$24,320 per year) and \$3000 in assets. There are certain assets that do not count toward these limits. These amounts are readjusted annually.
- If you are a single applicant applying for Medicaid long-term care:
If an individual is applying for a long-term care benefit, there is no specific income limit. Instead, there is a cost share calculation. This means that the individual will keep the first \$50 of monthly income and the rest will go to the long-term care facility. There is a \$2,000 asset limit, but

certain assets do not count towards this limit.

- If you are married with both spouses applying for Medicaid long-term care:
Each spouse's entire income except for \$75/month per spouse must go towards cost of care. The asset limit is \$3000. There are certain assets that do not count towards this limit.
- If you are a married applicant applying for long-term care and your spouse is in the community: (see spousal impoverishment on the following pages)
- Asset limit: \$2,000 for applicant
Asset limit: \$157,920 for non-applicant community spouse
- The monthly income for the institutionalized spouse that is, the person's entire income except for \$75/month, must go towards cost of care. See the "spousal impoverishment" section for additional information about income for the spouse in the community.

SPENDING DOWN TO QUALIFY - MEDICALLY NEEDY PATHWAY

Exceeding the income limits does not mean an individual cannot qualify for Medicaid. In Hawai'i, the Medically Needy Pathway (also called Medically Needy Spenddown Program) allows those who are categorically aged or disabled who would otherwise be over the income limit, to qualify for Medicaid if they have high medical expenses. They can "spend down" their excess income by paying for medical services and goods, including paying for medical bills, prescription drugs, private health insurance, and medical expenses that Medicaid does not cover. Once they have spent their excess income on medical expenses and reached an income level of \$469 per month for an individual or \$632 per month for a couple, they will be Medicaid eligible for the "spend down" period, which for Hawai'i is one month.

SPOUSAL IMPOVERISHMENT

For many married couples, the cost of providing long-term care for just one spouse can cause both spouses to become impoverished. Thus, Congress has created special rules to prevent this "spousal impoverishment," through the Medicare Catastrophic Coverage Act of 1988 (MCCA). Medicaid calls the spouse who stays in the community and not in the nursing home the "community spouse." The spouse who is applying for long-term care under Medicaid is referred to as the "institutionalized" spouse.

The MCCA helps protect against spousal impoverishment by setting special income and resource rules for married couples. The special rules only apply when a married couple consists of one spouse who needs long-term care services in a skilled nursing facility and one spouse who lives at home. The spouse who needs long-term care is referred to as the "institutionalized spouse" and the spouse who lives at home is referred to as the "community spouse." The MCCA sought to protect the community spouse from impoverishment by allowing that spouse to retain a much larger sum of resources and income than under Original Medicaid rules.

Under 2025 standards, the Community Spouse Resource Allowance is \$157,920. If the couple's "non-

excluded resources” exceed \$157,920 then only the excess of \$157,920 will be attributed to the institutionalized spouse in determining eligibility. In other words, the institutionalized spouse may retain \$2,000 of their own assets and the community spouse will be able to keep up to \$157,920 in assets, in addition to such “excluded assets” as the family residence, an automobile, and household and personal effects. This is dramatically different from basic Medicaid eligibility standards of \$2,000 per person or \$4,000 for a couple. Income is also examined differently under the MCCA than under Original Medicaid rules.

Income is considered to belong to the spouse in whose name the check or other instrument is made payable. However, if the check or instrument is in the name of both spouses, then one-half of the amount will be considered available to each spouse. This rule is called “attribution.” One reason this is so important is because there are limits on the amount of income the institutionalized spouse may retain.

Institutionalized spouses are allowed to keep \$50 of income each month. The rest of the institutionalized spouse’s income will be allocated between the community spouse and the nursing facility expenses.

The community spouse’s income is not considered to be available to the institutionalized spouse. Rather, the institutionalized spouse may be permitted to give some of the institutionalized spouse’s income to the community spouse. In 2025, the Monthly Maintenance Needs Allowance is \$3,948 for spouses in Hawai‘i. Thus, if the community spouse has income of less than \$3,948 per month, the community spouse can request an amount of money from the institutionalized spouse that would bring the community spouse’s income up to \$3,948. The rest of the institutionalized spouse’s income will be applied to their long-term care expenses. The level of the “spousal allowance” can vary to take into consideration the cost of living factors and changes, if any would take place on January 1 of each year.

HOME EQUITY

The Deficit Reduction Act of 2005 (DRA) provides for a denial of benefits for an individual who has more than a certain amount of equity value in a home. The home equity exemption in Hawai‘i in 2025 was set at \$1,097,000. This restriction does not apply if a spouse, minor or disabled child resides in the home. It permits individuals to use tools such as a reverse mortgage or home equity loans to reduce their total equity. It also requires a process to waive the application of the denial of eligibility in cases of demonstrated hardship. The equity value of a home is the current fair market value (FMV), minus any encumbrance on it. An encumbrance is a legally binding debt against the home. This can be a mortgage, reverse mortgage, home equity loan, or other debt secured by the home.

ASSETS – COUNTABLE AND EXEMPT

An applicant must reveal assets. Under Medicaid rules some are countable assets and others are exempt assets. Assets which include but would not be limited to cash, bank savings, stocks and bonds,

and investments (including real estate) are totaled and compared against Medicaid's resource levels, which is generally \$2,000 for a person and \$3,000 for a couple (plus \$250 for each additional person). Property held by persons in their own names such as the home, clothing, household furnishings, and appliances; one wedding and one engagement ring; one burial space per family member; the value of a funeral plan, contract, or trust; and motor vehicles are all considered "exempt" assets that a person may keep and still be eligible if that person meets other eligibility criteria. Assets owned in certain types of trusts may also be considered "exempt." However, in recent years, several federal rules have changed relating to how Medicaid views the home property for individuals who apply for Medicaid long-term care benefits. One primary change to note concerning the ownership of a home is that a home placed in a trust is no longer considered an exempt asset.

TRANSFER OF ASSETS PENALTIES

An application for long-term care assistance through the Medicaid program will require an evaluation of an individual's current assets but will also require details about an individual's or couple's financial transactions during the sixty-month period immediately prior to the application date. This sixty-month period is referred to as the "look-back period." Every application for long-term care assistance will require an applicant to disclose the amount of assets the individual or couple transferred during this look-back period. If an applicant reports that assets were transferred for less than fair market value during this look-back period, the individual may have to wait a certain amount of time before Medicaid will provide long-term care assistance. This waiting period is known as the "penalty period."

The length of the penalty period is calculated by dividing the value of all assets transferred for less than fair market value (i.e., a "gift") during the look-back period by the state average daily cost of long-term care. In 2025 this amount is \$295 per day. For example, if the total gifts during the look-back period were \$295,000, the penalty period would be 1,000 days:

$\$295,000 / \$295 = 1,000$). The penalty period will begin once the applicant is otherwise eligible for Medicaid long-term care assistance.

An individual or a couple may gift certain assets without triggering a penalty period, but these transfers should be done with extreme caution. Even if a gift is not penalized for Medicaid long-term care planning purposes, there may be other unintended consequences. The consequences may be worse than a penalty period, and could range from unnecessary taxation, accidental disinheritance, and even being kicked out of your own home.

Note that there are certain exempt transfers. Spouse-to-spouse gifts regardless of the amounts are exempt from the imposition of any period of Medicaid ineligibility penalty. There are exemptions that apply to the family home. A home can be transferred without penalty to the following individuals:

- A spouse,
- A child under the age of 21,

- A blind or disabled child of any age,
- A sibling who has an “equity interest” in the home and who has lived in the home for at least a year before the Medicaid application is filed,
- A child who has lived in the parent’s home for at least two years before the Medicaid application is filed and who has provided services to help avoid institutionalization of the parent.

Another exempt transfer is the funding of a Medicaid applicant’s assets into a Supplemental Needs Trust, which is also called a Special Needs Trust, which will be discussed in a following section.

When a penalty period is assessed against an applicant, the applicant has a few options to remove the penalty. One option is to seek that the gifts be returned. Returning the gift will remove the penalty but may also cause the applicant to have too many resources to qualify for Medicaid. If the applicant cannot recover the gifted asset, the applicant may ask for an exception based on hardship. For such hardship provisions to apply, the application of the transfer of assets provisions would need to deprive the individual of either medical care such that the individual’s health or life would be endangered, or of food, clothing, shelter, or other necessities of life. Such procedure must provide for notice to recipients that an undue hardship exception exists, a timely process for determining whether an undue hardship waiver will be granted, and a process under which an adverse determination can be appealed.

SPENDING DOWN AND ANNUITIES

Although the spousal impoverishment provisions may make it easier for married individuals to qualify for Medicaid, many people must still “spend down” some of their assets before they can qualify for long-term care assistance through the Medicaid program. Spending excess resources is relatively straight forward but may be difficult if the resources are illiquid or held in tax-qualified investments like retirement accounts. For example, it may not be possible to sell shares of a family home or business. While spousal impoverishment guidelines are helpful, the costs of long-term care can still significantly impact the financial stability of the community spouse.

In looking for creative options to extend private resources, some individuals will consider converting their resources into annuities. For purposes of being eligible for long-term care services under Medicaid, the applicant or the applicant’s spouse must disclose any interest in an annuity (or similar financial instrument that may be specified by the Secretary of Health and Human Services). The purchase of an annuity shall be treated as the disposal of an asset for less than fair market value unless:

- The State is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant under this title; or
- The State is named as such a beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value.

There are numerous other complex issues regarding annuities and other provisions of the Medicare

Catastrophic Coverage Act (MCCA). An individual would be best served by asking the previously mentioned SHIP, Med-QUEST or CMS offices or a qualified counselor such as an elder law attorney for advice regarding the spousal impoverishment provisions of Medicaid.

MEDICAID LIENS AND ESTATE RECOVERY PROVISIONS

Besides a period of ineligibility, federal regulations require the state to recover Medicaid payments from medically institutionalized recipients. The State of Hawai'i now has "lien" and "estate recovery" provisions to seek reimbursement of certain medical costs paid by the state. The state recovery of medical assistance payments is made from the estates of individuals who received assistance while in a nursing facility or from individuals not in nursing facilities who received benefits from the age of 55.

The state may place a lien on the real property of a medically institutionalized individual for the amount of medical assistance received, only after there is a determination that the individual cannot reasonably be expected to be discharged from the institution to return home. This provision is, as with everything else, subject to change. If the Medicaid recipient's stay in the medical institution is likely to be permanent, based on a determination as to whether the recipient can reasonably be expected to be discharged from the medical institution and return home, the state will send a notice to inform the affected recipients that a lien may be placed on the home.

The recipient or the recipient's authorized representative will have the opportunity to request a hearing if they disagree with the state's determination to file a lien. After the notice and the opportunity for a hearing, a lien will be filed on the home if there is no request for a hearing or if the outcome of the requested hearing is in the state's favor.

The state will not impose a lien on the home when the state has determined that the recipient is expected to be discharged from the nursing facility and return home or the following individuals are lawfully residing in the home:

- The recipient's surviving spouse;
- The recipient's child under the age of 22; or,
- A child over 21 years of age who is blind or disabled;
- The recipient's sibling who has an equity interest in the home and who was residing in the home at least one year prior to the recipient's admission to the medical institution.

The lien will be dissolved when the individual returns to the home property after being discharged from the nursing home. A lien on the home does not change the ownership of the property, but secures the asset for future reimbursement to the state for the cost of medical care when the property is sold or transferred. Recovery from the lien on the home will take place when the home is sold or transferred while the recipient is still living. After the death of the recipient, recovery will not be made while:

- The surviving spouse is living; or

- There is a child who is under 21 years; or
- A child over 21 years who is blind or disabled; or
- The recipient's sibling who has an equity interest in the home and who was residing in the home at least one year prior to the recipient's admission to the medical institution; or
- A non-dependent child who resided in the home for a period of at least two years immediately before the recipient's admission to the medical institution and who provided care to the individual that allowed the recipient to reside at home instead of the institution.

These individuals must have continuously lived in the home since the recipient's admission to the medical institution.

Recovery may be waived if it causes hardship under the following conditions:

- The real property is the sole income-producing asset, such as a family farm or other family business;
- The income produced by the property is not greater than one hundred percent of the federal poverty guidelines for the number of family members solely dependent on the real property; or
- The real property is a home of modest value that is occupied by family members who lawfully resided in the home for a continuous period that started at least three months immediately before the recipient's admission to the medical institution and provided care that allowed the recipient to reside at home rather than at an institution;
- These family members do not own other real property and have income not greater than one hundred percent of the federal poverty limit.

CAUTIONS REGARDING "MEDICAID PLANNING"

There are many rules and exceptions that apply as to how the lien is to be placed and when estate recovery will be pursued. In view of the 60-month look-back period, the estate recovery provisions and the risk of liens, it is important to analyze the rules about transferring assets along with potential income, and estate and gift tax consequences in attempting to shelter assets. Medicaid laws have changed and can change again very quickly.

No one knows what the Medicaid rules will be in the future, so individuals should not rely on the information contained in this book for Medicaid planning, and be especially careful if you are considering transferring a home. Some of the saddest cases we have dealt with involved individuals who transferred their homes with the hopes of eventually qualifying for Medicaid long-term care coverage. Some made mistakes in transferring their homes and were disqualified for many years. Some have been subsequently evicted from their homes by their children, grandchildren or other relatives. Some never needed long-term care and were unable to get their homes back.

We recommend that individuals consult an elder law or estate-planning attorney before making transfers of any assets for less than fair market value. Otherwise, they should at least check with SHIP

or the Med-QUEST Division of the Department of Human Services about transfer penalty provisions when trying to qualify for Medicaid.

MEDICAID APPEALS

If an application has been denied or not processed within the required period of time, or if there has been a refusal to pay for medical services, or if there is a determination that the person is no longer eligible for Medicaid, under federal law the individual is entitled to written notice of any such decision. This notice should inform the individual of the right to file a request for a “fair hearing” within 90 days from the date of the notice. Once the individual has filed a request, a decision must be made within 90 days of the filing. If the decision is unfavorable, the government is required to provide information on how the individual may further appeal the decision, including appeals through the courts.

LONG-TERM CARE INSURANCE

Surveys report that Hawai'i's home health costs are among the highest in the nation. With the high cost of nursing homes and the desire to live independently, more and more individuals are examining the pros and cons of whether to buy long-term care insurance or whether they can manage without it.

Consumer advocates and insurance regulators caution that long-term care insurance coverage may not be a good buy for everyone. The policies can be confusing and the terms and features vary widely, from when benefits start and the maximum daily payout to how long benefits last and what services are covered. When deciding whether to purchase long-term care insurance, there are various items consumers should consider.

- Consumers should make sure the company writing the policy is licensed in the state of Hawai'i, or the State Insurance Division may not be able to assist consumers if they run into difficulty.
- Consumers should find out whether the policy has a guaranteed renewable provision, which means that as long as the consumer continues to pay the premiums on time, the company cannot refuse to continue the policy.
- Consumers should find out whether the policy requires prior hospitalization before the consumer can receive benefits in a nursing home since many people are not hospitalized before entering a nursing home.
- Consumers should find out about restrictions for coverage for pre-existing conditions which may disqualify the individual. Most policies have an elimination period or waiting period similar to a deductible. This is the period of time that you pay for care before benefits begin. Elimination days may be from 20 to 120 days and during that time when help is most needed, intended claimants may die and never receive benefits. The longer the deductible period, the lower the premium.
- Consumers should also find out the number of years of coverage offered. Premium costs usually increase with each additional year of coverage provided.

- Consumers should find out how much money the policy pays per day of nursing home care and how much the policy will pay for care provided at home. For nursing home care, consumers should find out the levels of care the policy covers. Traditionally, levels of care include: acute care, skilled nursing care, intermediate care, custodial care and home care. Not all policies cover all levels of care.
- Consumers should find out if there is an “inflation protection” option to protect benefits from inflation. This option can be expensive, however. It is usually best to avoid policies that are disease specific such as “cancer policies” since one may not be covered for any other conditions.
- Consumers should look at several policies to compare not only their premiums but also their benefits and restrictions. Premiums for “qualified” long-term care insurance policies are tax deductible to the extent that they, along with other unreimbursed medical expenses (including Medicare premiums), exceed 10 percent of the insured’s adjusted gross income.

VETERANS’ SERVICES AND BENEFITS

Persons who have served their country in the military may be entitled to certain benefits. Veterans or their caregivers should apply to the United States Department of Veterans Affairs (VA) by writing, visiting, or calling the nearest VA regional office. For information about veterans health care, education, disability and records, see <https://www.va.gov>

The State of Hawai‘i has an Office of Veterans Services (OVS), which can provide information. Generally, veterans who were honorably discharged can qualify for certain benefits. Holders of undesirable or bad conduct discharges may qualify, depending upon the determination of the VA, based on the facts of each case. Dependents and survivors of veterans may also be eligible for certain VA benefits.

One important VA benefit is medical care. VA medical facilities give highest priority to providing medical care to veterans with service-connected disabilities, to those discharged from active duty for a disability incurred or aggravated while in military service, to those receiving a VA pension, to those eligible for Medicaid, former POW’s, and to certain others exposed to nuclear tests. Another benefit is nursing home and outpatient care. The VA provides skilled or intermediate type nursing care and related medical care in VA or private nursing homes for convalescents or persons who are not acutely ill and not in need of hospital care. Outpatient care is provided for disabled veterans who are not in need of acute hospitalization and who do not need the skilled nursing services provided in nursing homes.

Another VA benefit that is of particular interest to many people is the “Improved Pension” or the “Aid and Attendance” (A&A) benefit. The A&A benefit is a monthly cash benefit paid to a VA pensioner who requires the aid of another person, or who is housebound. To be eligible, the veteran must require assistance with activities of daily living, be bedridden, legally blind or in a nursing home.

There are special veterans benefits available to people age 65 and older who either served 90 days or more of honorable active wartime service or served less time but were discharged because of disabilities related to their service. Widows and widowers of such veterans are also eligible for benefits regardless of their age.

Veterans, their families or their caregivers should call or visit the Veterans Administration office in their area for assistance in applying for benefits. The VA website, <https://www.va.gov> can provide information of where they are located and phone contacts. More help is available at the Office of Veterans Services (OVS), the principal state office responsible for the development and management of policies and programs related to veterans, their dependents, and/or survivors. The OVS acts as a liaison between the Governor and veterans organizations and also between the Department of Veterans Affairs and individual veterans. Its objectives are to assist veterans in obtaining state and federal entitlements, to supply the latest information on veterans' issues and to provide advice and support to veterans making the transition back into civilian life. Information about the OVS can be found at <http://dod.hawaii.gov/contact-us> or by calling (808) 433-0420.

SPECIAL NEEDS TRUST or SUPPLEMENTAL NEEDS

Special needs planning is an emerging area of law practice and is primarily seen as a sub-category of estate planning because of the frequent emphasis on the use of trusts. Because public benefits, such as Supplemental Security Income (SSI) and Medicaid, can be absolutely essential for people with disabilities, it is important to know when and how to include special needs planning into a variety of other legal disciplines, including but not limited to long-term care planning and health care law.

The general purpose of a special needs trust (also referred to as a supplemental needs trust) is to permit a person with special needs to benefit from private assets owned by the trust and to still qualify for important public benefits. Government benefits usually will provide for an individual's basic needs—food, shelter, and basic medical care. At least in theory, the special needs trust will supplement such benefits and help the individual enjoy a higher quality of life.

Many of the public benefit programs that assist people with special needs are “means-tested.” In order to qualify for these programs, beneficiaries must be able to show a financial need based on their income and assets. In some cases, applicants for public benefits also may have to report the income and assets of people who are assisting them. The special needs trust is a way to exempt certain assets so that they will not be factored into the particular public benefit program's means-testing. The trust must comply with applicable rules and regulations, but most importantly, must provide sufficient justification as to why the assets in the trust should not be countable within the means-test.

In addition to estate planning contexts, special needs trusts may be appropriate in family law settings,

long-term care planning, and even in the field of personal injury and torts.

If you have a family member or loved one with special needs, you may want to plan for your loved one's future. A special needs trust can help ensure that proper care is provided. Be aware that there are so many different requirements and details that it is advisable that you consult with an experienced Special Needs attorney to help you plan. This is an area that is both technically complicated and subject to change. For example, some states are clarifying what types of transfers will result in a penalty period. At least one state's highest court has decided that an individual over the age of 65 who is applying for long-term care benefits may not be penalized for transferring assets into a pooled special needs trust that is administered for the individual's sole lifetime benefit.

Chapter 10

KŌKUA PACKET

AN ORGANIZER FOR WHAT MATTERS TO ME

The **Kōkua Packet** is an organizer that can be used for planning or emergencies. It is not a legal document but is intended to provide important information and to mark where you may have put your legal documents and other important information. In addition, the **Kōkua Packet** can be used as a guide to help you to put into place legal, financial and health care documents to prepare for the future. At the end of this **Kōkua Packet** there is also space for you to write your own “What Matters to Me” document as well as to write your own obituary. Of course, you can add more pages as needed to provide information you think is important.

What you place in the packet is up to you. Be especially careful about including credit cards, bank accounts, and PIN numbers or log-in and password information which could be used to steal from you. Also, if you are worried about “Identity Theft” and you are uncomfortable in revealing your Social Security number and other personal information, you can omit that information and indicate who has the information or where such information can be found.

You can place your **Kōkua Packet** in a file cabinet, on a shelf or even in your freezer!

If you use any on-line planning tools and or on-line storage of documents, let a trusted person know how to access the information which may include information about your username and password.

Use the **Kōkua Packet** as a guide to start planning today. Remember to “Prepare for the Worst and Expect the Best” and that it is “Never Too Soon and Often Too Late.”



My Kōkua Packet

My Organizer for What Matters To Me

IF YOU HAVE AN EMERGENCY:

CALL 911

**SPEAK CLEARLY AND
BE PREPARED TO GIVE YOUR LOCATION**

YOUR NAME:

YOUR ADDRESS:

YOUR TELEPHONE NUMBER:

DO NOT INCLUDE MATTERS IN THIS PACKET WHICH YOU WISH TO KEEP CONFIDENTIAL. THE CONTENTS MAY BE DISCOVERED AND USED BY DISHONEST PEOPLE.

WE HAVE INSERTED (CAUTION) IN SEVERAL PLACES TO REMIND YOU.

Do you have a POLST Form – Where is it? Is it visible?

Do you have an Advance Health care Directive? --Where is it?

PEOPLE TO CONTACT IN AN EMERGENCY

Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

Health Care Provider or Caregiver: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

DO NOT CONTACT

Name: _____

Relationship: _____

Name: _____

Relationship: _____

Date _____

PERSONAL INFORMATION

Full Name: _____
First Middle Last

Address Line 1: _____
Street Apt. No.

Address Line 2: _____
City State Zip Code

Birth Date: _____ Place of Birth: _____

Maiden or Other Names, Alias/Nickname:

Name of Current Spouse, Reciprocal Beneficiary or Partner to a Civil Union:

Name(s) of Your Former Spouse(s), Reciprocal Beneficiary(ies) or Former Partner(s) to a Civil Union:

Dates of Marriage(s), Partnership(s) and/or Divorce(s), and Dissolution(s) of Relationship(s):

Are you a citizen of the U.S.? Yes ☐ No ☐

If No, are you a legal alien? Yes ☐ No ☐

A citizen of which country? _____

Were you ever in the military? Yes ☐ No ☐

If Yes, service component and dates of service:

Location of military discharge papers:

Religious Affiliation: _____

Name of place of worship: _____

Address: _____

Clubs, hobbies and interests:

PERSONAL RECORDS

Birth Certificate: _____
Where Issued *Its Location*

Marriage Certificate: _____
Where Issued *Its Location*

Divorce Decree or Dissolution Document:

Where Issued *Its Location*

Passport Number: (CAUTION) _____
Country Where Issued *Its Location*

Hawai'i State ID or Driver's License: (CAUTION)

Number *Its Location*

Are there other important documents that you wish to list?

Type of document: _____

Location: _____

Type of document: _____

Location: _____

Type of document: _____

Location: _____

Type of document: _____

Location: _____

CHILDREN

Indicate relationship of child, e.g., if the child is a natural child, child from a former marriage, adopted child, step-child, deceased child, or “hānai” child. (Attach additional pages, if necessary).

#1. Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

#2. Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

#3. Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

#4. Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

#5. Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

#6. Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

FRIENDS, RELATIVES, AND OTHER CONTACTS

Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

ADVISORS

(Accountant, Attorney, Financial Advisor, Social Worker, Spiritual Advisor, Veteran Service Officer, etc.)

Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

Name: _____

Relationship: _____

Address: _____

Phone/Cell: _____

E-mail: _____

PETS

Pets living in household, their names and species, e.g., Polly, my parakeet.

_____	_____
_____	_____
_____	_____

Pet caretaker to be contacted: _____

Address: _____

Phone/Cell: _____

E-mail: _____

Special instructions for pets: _____

Special diets, medications, etc: _____

Veterinarian contact number: _____

PLANTS AND OTHER NEAR AND DEAR THINGS

Plant and care instructions: _____

Plant and care instructions: _____

Care of Other Near and Dear Things: _____

HEALTH CARE INFORMATION AND MEDICAL RECORDS

Primary Physician: _____

Address: _____

Phone/Cell: _____

E-mail: _____

Other Physician or Health Care Professional:

Address: _____

Phone/Cell: _____

E-mail: _____

Other Physician or Health Care Professional: _____

Address: _____

Phone/Cell: _____

E-mail: _____

Dentist: _____

Address: _____

Phone/Cell: _____

E-mail: _____

Case Worker/Social Worker: _____

Address: _____

Phone/Cell: _____

E-mail: _____

HISTORY OF ILLNESSES: _____

MEDICAL INSURANCE:

Health Insurance Provider: _____

Medicare Number: (CAUTION) _____
Location of Card

Medicaid Number: (CAUTION) _____

Long-Term Care Insurance: Company Name: _____

Policy Number (CAUTION)

Supplemental Insurance: Company Name: _____

Policy Number (CAUTION)

PRESCRIPTION DRUGS: What Medications Do You Take?

Name of Drug	Purpose
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Where do you get your prescriptions filled?

Are you allergic to certain medications or have other allergies? If so, what are they?

<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

Do you use special equipment, such as eyeglasses, contact lenses, hearing aids, pacemaker, walker?
If so, what are they?

<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

FINANCIAL INFORMATION

Checking Account:

<hr/>	<hr/>
<i>Financial Institution</i>	<i>Account Number</i>
<hr/>	
<i>Who is (are) on the account</i>	

Savings Account:

<hr/>	<hr/>
<i>Financial Institution</i>	<i>Account Number</i>
<hr/>	
<i>Who is (are) on the account</i>	

Safe Deposit Box:

<hr/>	<hr/>
<i>Financial Institution</i>	<i>Account Number</i>

Who is (are) on the account

Location of key

Certificate of Deposit:

Financial Institution

CD Number

Owner(s)/Beneficiary(ies)

IRA/401K:

Financial Institution

Account Number

Who is (are) on the account

Annuities:

Financial Institution

Owner(s)/Beneficiary(ies)

Real Estate Owned:

Owner(s)

Address

Owner(s)

Address

Mortgage/Reverse Mortgage: _____
Name of Company

If Employed: _____
Employer

Phone or Email

Address

Credit/Debit Cards:

Name of Company

Name of Company

Name of Company

Name of Company

Loans Outstanding:

Name of Company

Name of Company

Refundable Deposits:

Name of Company

Name of Company

Contracts or Warranties:

Name of Company

Name of Company

**ON-LINE ACCOUNTS—EMAIL, BANKING, TRAVEL, ENTERTAINMENT, SHOPPING, ETC.
(CAUTION! DO NOT PUT IN USER NAME OR PASSWORD IF YOU HAVE ANY RESERVATIONS
ABOUT ILLICIT USE IF PACKET IS STOLEN OR MISUSED.)**

Web Address: _____

Username

Password (change regularly)

Web Address: _____

Username

Password (change regularly)

Web Address: _____

Username

Password (change regularly)

Web Address: _____

Username

Password (change regularly)

Web Address: _____

Username

Password (change regularly)

HOUSEHOLD MANAGEMENT NOTES

Tax Returns - Location: _____

Credit Card Payments: _____

Mortgage payments - Financial Institution:

Rent Payment - Landlord/Rental Agency:

Homeowner's Association or Condo Fee: Payee/Agency:

Insurance: Life, Homeowner's/Renter's/Car:

Company

Policy Number

Vehicle(s): Make: _____

Model: _____ Year: _____

Cable Service Provider: _____

Cell Phone Service Provider: _____

Internet Service Provider: _____

Meals on Wheels Contact: _____

Clubs and Other Memberships: _____

Subscriptions: Newspaper, Magazines: _____

Yard and Other Services: _____

PLANNING AHEAD FOR INCAPACITY AND END OF LIFE

DO YOU HAVE THESE LEGAL DOCUMENTS?

Will? Yes ☐ No ☐

Location: _____

Trust? Yes ☐ No ☐

Location: _____

Name of Trustee/Successor Trustee:

Power of Attorney? Yes ☐ No ☐

Location: _____

Agent's Name: _____

DO YOU HAVE THESE HEALTH CARE DOCUMENTS?

Advance Health Care Directive? Yes ☐ No ☐

Location: _____

Provider (Physician) Orders for Life-Sustaining Treatment (POLST) Form?

Yes ☐ No ☐

Location: _____

Do Not Resuscitate Bracelet/Necklace?

Yes ☐ No ☐

Do you have a Funeral/Memorial Plan?

Yes ☐ No ☐

Company's Name: _____

Address: _____

Phone/Cell: _____

E-mail: _____

Have you made arrangements or do you have any specific desires concerning donation of your body/organs?

Yes ☐ No ☐

Do you have a Written Instrument to Control Disposition of Remains form?

Yes ☐ No ☐

If yes, where is it? _____

Burial? Yes ☐ No ☐

Cremation? Yes ☐ No ☐

Disposition of ashes: _____

WRITE YOUR OWN “WHAT MATTERS TO ME” DOCUMENT

The “What Matters to Me” type of form is not a legal form but is a document that conveys your feelings about how you expect others to treat you and others, even when you are no longer able to communicate.

[illegible]

WRITE YOUR OWN OBITUARY

Writing your own obituary gives you a chance to say what you want others to know about you and how you wish to be remembered. It can be part of your life and end-of-life planning and can give peace of mind to your family and friends knowing what you would have wanted.

[illegible]

