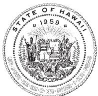
Deciding "Who Cares?"

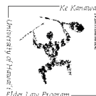
A Legal Handbook for Hawai`i's Caregivers, Families and Older Persons

By
James H. Pietsch & Lenora H. Lee

University of Hawai`i Elder Law Program

All Counties of Hawai`i Edition





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DECIDING "WHO CARES?"

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INTRODUCTION

DECIDING "WHO CARES?": A Legal Handbook For Hawai`i's Older Persons, Families, and Other Caregivers will guide you in a simplified way through several areas of legal concerns facing caregivers and the persons they care for. This is a sequel to our most popular handbook, *Deciding What If?*

Baby Boomers are at the center of a new focus at the intersection of law, aging, and medicine. Many are caregivers for the first time and need to know about resources and support for their role as caregivers. Most importantly, they need to get a head start on planning ahead for themselves. By planning ahead and using the information contained in this handbook, you can help decide who cares for you when you need help.

Portions of this handbook, and in particular the materials pertaining to health care decision making, were adapted with permission from *The Elder Law Hawai`i Handbook*, (Pietsch & Lee, 1998) published and copyrighted by the University of Hawai`i Press. Also, some materials in this handbook were adapted from federal and state publications.

Caution: While this handbook contains practical and helpful information, it is not intended to serve as a "do-it-yourself" legal guide nor as a substitute for professional legal advice. If you have legal questions you should seek the advice of an attorney. For information about caregiving resources in other states, call the National Eldercare Locator at 1 (800) 677-1116 or visit their website at: http://www.eldercare.gov/.

The University of Hawai`i Elder Law Program (UHELP) is grateful to the Elderly Affairs Division, Department of Community Service, City and County of Honolulu for the opportunity to provide legal services to older persons for over a decade and a half at the William S. Richardson School of Law. We also wish extend our aloha to the Executive Office on Aging, Hawai`i State Department of Health, Hawai`i County Office on Aging, the Kaua`i County Agency on Elderly Affairs, the Maui County Office on Aging, and especially to the Elderly Affairs Division of the City and County of Honolulu. They make possible the publication of this handbook for all care receivers and caregivers in our community.

We especially wish to thank Scott Suzuki, Attorney-at-Law, for his contribution to portions of this handbook and to our law clerk, Kyle Kagihara, for his assistance.

Best wishes for a long, prosperous and rewarding life,
James H. Pietsch, Attorney and Professor of Law
Lenora H. Lee, Paralegal
University of Hawai`i Elder Law Program (UHELP)

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CHAPTER 1

PLANNING FOR THE FUTURE: INCAPACITY, GUARDIANSHIP, ALTERNATIVES TO GUARDIANSHIP, AND PROTECTIVE SERVICES

Often older persons, and are faced with the question, "Who will care for me when I am unable to care for myself?" Frailty, illness, mental incapacity, fear, language barriers, and poverty are just a few of the reasons why some elders are unable to manage their own affairs and may need the assistance of a caregiver. They need someone to take care of them and many have no one to help. To make matters worse, some of our senior citizens are being abused, neglected, or exploited by strangers, acquaintances, and even families.

LIFETIME PLANNING

This handbook is designed to utilize a "lifetime planning" approach that takes into consideration personal, financial, social, and health care needs. The handbook starts with planning for incapacity, guardianship, alternatives to guardianship, and protective services. It then proceeds to medical treatment and health care decisions. Important information about advance directives for health care, surrogate decision making, and donations of organs and bodies are included to round out your planning considerations. Equally important information about basic estate planning issues, financing health care, including long-term care, Medicare, Medicaid and Veterans' benefits follow. Financial and estate planning issues are addressed in Chapter 4 of this handbook. That chapter includes a section on an issue of importance to native Hawaiians, namely procedures for successorship to Hawaiian Home Lands leaseholds which are different from the procedures under the probate laws in Hawai`i. Often, prior planning and knowing what to look out for can help prevent problems and start you on the way to a satisfying future and a legacy of caring.

INCAPACITY AND MEMORY LOSS

Although adults are presumed to be "competent," it is a "rebuttable" presumption. In working with clients, the question often arises as to whether the individual has the "capacity" to make decisions. Judicial declarations of incompetency are infrequent and usually not required. The most common court cases where capacity is an issue involve guardianship, conservatorship, adult

protective services, and civil commitment. The concept of capacity, or incapacity, is more activity specific. To be considered legally valid, each decisional activity (e.g., 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.

There is a difference between memory loss and dementia. A person can have short-term memory loss, for example, but not have dementia—"Where did I put those keys?". Dementia is a term which applies to a medical disorder which may be evidenced by symptoms of damage or disease to the brain's cognitive function. Dementia may be reversible or it may be irreversible and progressive. A person with dementia may suffer from short-term (or long term) memory loss or confusion or disorientation or may lose the ability to problem-solve or to complete multi-step activities. Sometimes dementia may also have an effect on a person's personality or behavior or attention span. Having dementia does not necessarily mean having Alzheimer's Disease.

Memory loss is a problem that many older persons (as well as many younger persons) worry about but having memory loss does not necessarily mean that an individual loses the capacity to make decisions for his or her self. The aging process can have an effect on memory by changing how the brain stores and recalls information. As a person 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 a person can often remember events from long ago with great clarity but cannot remember more recent events such as the introduction of people he or she has just met.

Of course, dementia, including Alzheimer's Disease, can cause memory loss but other things that can cause memory loss include poor nutrition, the side effects from head injuries, heart attacks, strokes, alcohol, depression, disease, illness, drugs, including chemotherapy, anesthesia, and anti-depressants and other medical treatments.

Memory loss can be a serious problem if it starts to affect your daily living and your 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 your doctor's approval, putting objects (including keys) in the same place, and by keeping healthy (including eating nutritious foods and especially vegetables), and, maybe by not worrying too much about forgetting things. Talk to your doctor if you are worried and follow his or her suggestions about keeping your body and brain functioning at optimum levels.

Decisional Capacity

An individual is usually considered to have decisional capacity when he or she is sufficiently able (capacitated) to receive, understand, and evaluate information, and to communicate a particular choice. This means, minimally, that he or she has the ability to understand the nature of the problem or activity he or she is facing, to understand available alternative courses of action (including no action), to understand the possible risks and benefits attached to each alternative, and that he or she is able to express a choice. Note that decisional capacity is different from "undue influence," which can be exerted by one person over another person. The more difficult cases involve situations where an individual may be experiencing diminished capacity and may also be subjected to the undue influence of another person to do or not to do something.

Whether a person is considered to have decisional capacity depends on each specific situation. For example, a judge may declare a person legally incapacitated to manage his or her own affairs and appoint a guardian or conservator for that person. However, that person may still be deemed to have sufficient mental capacity to execute a will. Likewise, while that person has the capacity to execute a will, he or she may not have the mental capacity to enter into a contract.

Guardianship and Conservatorship

When a person is incapable of making or communicating necessary decisions for his or her own safety or to take care of his or her 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. In 2005, the Uniform Guardianship and Protective Proceedings Act (UGPPA) went into effect in Hawai`i. It changed the terminology used in the law from "guardian of the person" and "guardian of the property" to "guardian" and "conservator," respectively.

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 his or her affairs. 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 or conservatorship of the same person can be consolidated in either court at the court's discretion. The petitioner, the individual who asks the court to be the one to care for another person, can act both as the guardian and as the conservator of an incapacitated person. Finally, transfer of jurisdiction is permissible if it is determined to be in the best interest of the ward or protected person.

Under the UGPPA, a guardianship or a conservatorship for a person or his or her 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, the incapacitated person's 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 person and property if a conservatorship is required, that the appointment is in the incapacitated person's best interest, and that it is necessary or desirable to continue the care and supervision of the incapacitated person.

A guardianship or conservatorship will last until the death, resignation, removal, or court termination of the guardian or conservator. The ward (under a guardianship) or protected person (under a conservatorship) can also petition the court to terminate the guardianship or conservatorship when he or she regains or attains the capacity or ability to take care of his or her person and property again.

Guardianship

A guardian can be appointed by a parent, spouse, or reciprocal beneficiary by means of a will or other signed writing. 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 will 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.

A guardian can also be 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. Except as otherwise limited by the court, a guardian has the duty to make decisions regarding the ward's support, care, education, health, and welfare. The guardian should only exercise his or her authority as necessitated by the ward's limitations and, to the extent possible, should encourage the ward to participate in making decisions for himself or herself.

The guardian should also encourage the ward to regain or attain the capacity to manage his or her own affairs.

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.

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 he or she 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. The appointment of a conservator vests title in the conservator as trustee to all property of the ward 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 ward 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 the incapacitated person's assets (his or her estate) is less than $10,000, the Clerk of the Circuit Court may be appointed to act as conservator and will be responsible

for all actions. For estates of this size, often most of the clerk's work as conservator will involve managing the person's bank account. To have the Clerk of the Circuit Court establish conservatorship of an incapacitated person with assets of less than $10,000, a family member, social worker, or other interested person may call the Small Estates and Guardianship Office to start the process. The Small Estates and Guardianship Office will ask for a letter from a physician stating that the person is incapable of managing his or her financial affairs. To help determine if the incapacitated person is qualified to have the Clerk of the Circuit Court become his or her 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 person's assets.

After the necessary information has been gathered, the Small Estates and Guardianship Office prepares a petition for conservatorship. After the judge approves the petition, the ward's bills and checks can be sent directly to the Small Estates and Guardianship Office for payment. The conservatorship will continue until the ward dies, once again becomes capable of handling his or her own financial affairs, or until a successor guardian is appointed.

Public Guardian

As a state-funded program at the Judiciary, the Office of the Public Guardian (OPG) serves as guardian for mentally incapacitated adults if there is no willing and suitable person, family member, relative, or close friend that could serve.

The OPG also provides temporary guardianship in emergency situations. While the OPG can be appointed guardian of the ward, another organization, legal services agency, private practice attorney, or person must be the one to file the petition with the court and obtain the appropriate documents to name the OPG as guardian. With the assistance of a "*pro se* packet," you can file your own petition on behalf of the incapacitated person. Information about such "do-it-yourself" packets is available through the OPG and the Family Court.

Trust Companies and Attorneys as Conservators

Being a conservator can be complicated, time consuming, and require a great deal of responsibility. For these reasons, friends and family members are not the only ones who can be appointed conservator. Where substantial assets are concerned (usually in excess of $100,000), private trust companies and private attorneys are usually willing to be conservators for incapacitated wards. To establish a conservatorship, the trust company or attorney must go through the same proceedings as a private individual.

Alternatives to Guardianship and Conservatorship

A guardianship or a conservatorship involves time delays, costs, and loss of privacy. Obtaining the required documents, (such as birth certificates, marriage certificates, and a doctor's assessment) going through the judicial process, giving notice to the interested parties, and attending the court proceedings normally take several months. Filing fees and attorneys' fees and costs are incurred with each proceeding. Further, guardianship documents and proceedings are matters of public record and, accordingly, the financial affairs of the ward may become public knowledge.

With proper advance planning, guardianship or conservatorship proceedings may not be necessary. Less restrictive alternatives can serve the purpose of providing necessary assistance. Executing an advance directive for health care, obtaining a power of attorney, establishing a trust, becoming a representative payee, or maintaining a joint account to pay bills are a few of the frequently used alternatives.

Powers of Attorney

A power of attorney is a powerful tool that can be used in planning for incapacity. As such, it can be an important alternative to guardianship or conservatorship. A power of attorney is a written instrument through which a person designates another person to be his or her agent (or "attorney-in-fact") and grants that person authority to perform certain acts on his or her behalf. Powers of attorney can be drafted to take effect immediately or on a future date and can be made for a specific period or to last indefinitely until death. Springing powers of attorney "spring" into effect upon some subsequent future event. You should realize that there is generally no requirement for an individual or organization to accept a power of attorney. To be certain whether your power of attorney will be accepted by a particular organization or financial institution, you should check this out with them in advance. Ask your attorney for advice about this common problem.

Powers of attorney come in two basic types: "general" and "special." A general power of attorney is a very broad and sweeping grant of authority and should be used with extreme caution. Unless prescribed by law or regulation, this instrument authorizes another person to do any legal act, which you, the "principal," might do for yourself. In contrast, a special power of attorney grants authority to an individual to act on your behalf in specific matters. Since it is limited in scope, the use of a special power of attorney reduces the risks involved in giving another person power. You have the right to revoke, terminate, or modify a power of attorney at any time.

Powers of attorney are important legal documents, which can affect the management of your property and your personal affairs. You should know and trust the person to whom you grant such power. Generally speaking, it is wise to limit the powers granted and the duration of those

powers as much as possible. Remember, once an individual (your agent) acts on your behalf with permission (your power of attorney), it may be impossible to undo what he or she has done. You may wish to ask your lawyer to include a "self-executing revocation date" if you do not want your agent to have power indefinitely. Keep track of to whom you give your power of attorney and where it is. You can revoke (or cancel) a power of attorney orally or in writing. To be safe, you may wish to do it in writing and give the revocation to your agent and to any person or organization your agent may have had dealings with. With a few exceptions, death automatically terminates the power of attorney. Under the new Uniform Anatomical Gifts Act, effective, July 1, 2008, for example, an agent under a health care power of attorney, may donate a decedent's body or body parts. (See Chapter 2 for details.)

Durable Powers of Attorney

Mental disability of the principal terminates a power of attorney unless the instrument contains a provision that states that the power will not be terminated by such disability. There are certain words that need to be included in the power of attorney for it to be considered "durable."

Words Necessary to Create Durable Power of Attorney

Phrases such as "these powers will not be affected by my disability or incapacity" or "these powers will only be effective upon my incapacity or disability" would serve to create a durable power of attorney. The latter phrase would create a springing durable power of attorney which would be useful for individuals who do not want to grant powers effective immediately but who do want someone to have powers in the event of incapacity.

Caution

You should know that, generally speaking, no person or organization must accept a power of attorney and many organizations have their own forms or required formats. For example, the Internal Revenue Service has its own Power of Attorney Form 2848 which contains information and authority the IRS requires in designating an agent. It is especially important for you to "tailor" your power of attorney to address powers you grant over real estate. Some institutions require a more detailed and formal way of describing the property that an agent has power over and, of course, it would be a good idea for you or your attorney to find this out before the document is created.

Powers of attorney can be dangerous in the wrong hands. In Hawai`i, as across the nation, there are increasing reports of financial abuse, exploitation, and theft through the use of powers of attorney. Be especially careful when you give a power of attorney to someone to handle your real estate

property. Be sure that you trust the person to whom you give a power of attorney and make sure you read and understand the document before you sign it. If you have doubts, trust your instincts and don't sign it until you are satisfied that the person is trustworthy or that your attorney has built in sufficient protections in your document. Note that durable powers of attorney can include health care powers but only if such powers are specifically stated in the document. Information about "Durable Powers of Attorney for Health Care" are discussed in detail in Chapter 2.

Trusts

A trust is simply an arrangement you (the "settlor") make to give your property to a trustee (it could be yourself), who holds it for you or your beneficiaries. Living trusts are very useful as estate planning tools as you will read in more detail in Chapter 4 and can be used in conjunction with "Medicaid Planning" as you will read in Chapter 3. Trusts can also be used in planning for incapacity. If a person should become incompetent or incapable of handling his or her own affairs, the trust can be a very useful and effective alternative to conservatorship. The trust can be used to manage any property you place in it. This can include your home and rental properties, vehicles, bank and savings accounts, stocks and bonds, and virtually anything you can hold title to. Your trustee can use and manage your assets in accordance with your instructions and can be held fiduciarily responsible for his or her actions. Under this framework you can be a little more assured that your assets will be used for your care and for the payment of your bills in the event you are not able to do so. Although a court-appointed guardian could accomplish the same thing, the appointment of a guardian takes time and money and many matters could remain undone in the meantime. Also, if you set up your own living trust, you get to decide who is in charge of managing your financial affairs when you become incapacitated and you get to set the rules.

One of the most important considerations in setting up a living trust is proper transfer of the property you want the trust to manage into the trust. It is not automatic and may require the services of an attorney.

Representative Payees

When a person has memory loss, is incompetent, or does not understand the process of paying bills, a representative payee can be appointed to handle his or her government benefits. The representative payee then receives checks (or direct deposit of funds) from the Social Security Administration, the Department of Veterans Affairs, or other agencies and he or she must use the money for the needs of the beneficiary. Different agencies have different procedures for designating or appointing a representative payee. You will need to apply to the particular agency to be appointed.

Once you are appointed as a representative payee, you need to determine how best to decide how to use the benefits for the individual's personal care and well being. The Social Security Administration has made it clear that any money left after meeting the beneficiary's current and reasonably foreseeable needs must be saved and maintained on behalf of the beneficiary. Periodically, the Social Security Administration will ask you to complete a form to account for the funds you have received. As a representative payee, you will need to keep Social Security informed of changes that may affect the beneficiary's eligibility for benefits.

Money Management, Direct Deposit, Joint Accounts, Electronic Banking and the Internet

One of the most common reasons that an older adult becomes the subject of guardianship and conservatorship proceedings is that the individual experiences difficulty managing his or her financial affairs when depositing checks, writing checks, and/or paying bills. While many people still pay bills and manage their investments the old fashioned way, computers and the Internet have dramatically changed the way people take care of their finances. Electronic banking is a term that can be used to describe a variety of tools and methods used in managing finances, including electronic funds transfer, direct deposit, pay-by phone systems, personal computer banking and debit card purchases.

Money management is a catch-all term for a wide range of services provided by individuals and organizations to help people manage their financial affairs. Money management includes check writing, bill paying, depositing money, balancing checkbooks, filing taxes and even financial counseling. Very often, close family members can provide basic, simple money management services. These days, much of the work can be done electronically over the Internet. For example, a daughter living on one island can easily make bill payments (including utility and credit card payments) for her parents on another island just the way she makes her own bill payments. She can also manage savings accounts, mutual funds, stock portfolios and other financial resources and can file federal and state tax returns over the Internet. A word of caution—there are many schemes and scams perpetrated, especially since Internet and telephone transactions do not occur face-to-face. Be very cautious to whom you reveal your bank account information and especially to people or companies you do not know.

There are also non-profit and for-profit agencies that provide these services, usually on a contractual fee basis. If you use these services, make sure that your money manager is insured and bonded to protect you from theft or loss of funds.

Direct deposit is a program that electronically delivers your incoming checks directly to your personal checking, or savings account at a bank or other financial institution you designate. To

sign up, just take your next check to wherever you do your banking and tell them you want to sign up for direct deposit. They can tell you whether your checks can be directly deposited and answer any questions you may have. You can also do this online through the Internet. Once you set up a direct deposit account you may also wish to set up an automatic payment system to pay for recurring bills such as electricity, water, mortgage and insurance payments. Usually you just need to look at the bill statement to get information on how to make automatic payments—it takes the worry out of forgetting to make payments.

A joint account can be useful for a person who needs help in writing checks (the old fashioned way) and in depositing funds into an account because it permits another person to have complete access to the funds. While this is a very simple and often useful tool to help pay bills, it is very important to note that this alternative can be very risky because the person whose name is added to the account is generally considered a co-owner of the account and can withdraw all of the money!

Protective Services

The term "protective services" encompasses a wide range of services and actions to help persons who experience difficulty or who are incapable of managing their own personal affairs. These services can include providing health, nutrition, transportation, nursing and chore services, representative payeeships, governmental intervention, guardianship, and civil commitments. Further, protective services are often used to address incidents of elder abuse.

Elder Abuse

Abuse and neglect of the elderly is a serious problem, that, until recently, has not received the same attention or resources as child abuse or domestic violence. Elder abuse has been described as a "hidden epidemic" in our society. Elder abuse can be defined as physical or mental mistreatment or injury or neglect that harms or threatens an elderly person. Elder abuse is often distinguished from ordinary crimes directed against the elderly 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 the overall problem of elder abuse, various laws do provide protection to vulnerable and dependent adults, including the elderly.

Examples of the Types of Elder Abuse

The National Center on Elder Abuse defines seven different types of elder abuse:

- ♦ 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 Abuse—the infliction of anguish, pain, or distress through verbal or nonverbal acts.
- ♦ Financial/Material Abuse—the illegal or improper use of an elder's monies, funds, property (including an elder's home or other real estate), or assets.
- ♦ 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 elder or by a person who has assumed responsibility for providing care to the elder.
- ♦ Self-Neglect—a behavior that threatens the elder's health or safety.

Some of the 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 abuse drugs or alcohol. Others use abuse as a means of control over the older person. Some use abuse as revenge or a "pay back" 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 victim.

Abuse and neglect of the elderly take place most commonly in the victim's home 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 elderly 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 available. Some resources are listed in the back of this handbook.

Financial Abuse

Financial abuse can happen to anyone. 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 your 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.

Financial exploitation can include taking cash from a person, 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.

These days, reverse mortgages and home equity loans can serve the purpose of providing cash not only to you, the homeowner, but 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. These days, mailbox 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 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.
- ♦ File your complaint with the Federal Trade Commission (FTC) telephone 1-877-438-4338.
- ♦ Visit the FTC website at www.consumer.gov/idtheft/ to obtain ID theft affidavits.
- ♦ If you are a victim of identity theft, contact the three major credit bureaus to place a fraud alert or to obtain a copy of your credit report (fees may be incurred):
  - ♦ Equifax 1-800-525-6285
  - ♦ Experian 1-888-397-3742
  - ♦ TransUnion 1-800-680-7289

Who Cares?

If you are a caregiver or a care recipient, the answer to the question, "Who cares?", is very important. Caring for an individual can be burdensome, especially in cases where the care recipient has a life-changing illness such as Alzheimer's Disease. The question, "Who cares?", is asked to make you think about who will give care when needed and to help you understand the responsibilities and stresses the job entails.

Caring for an older person or a disabled person (or both) can be difficult, stressful, and, sometimes, thankless. You may be caring for more than one person. The person you are caring for may not appreciate what you are doing, may be demanding, may be abusive toward you, or may not even recognize you. He or she may need constant supervision. You may not have enough time to sleep much less take care of your own personal matters. You risk neglecting yourself as well as the person(s) you care for if you do not have the proper tools, training, finances, support and respite. This can lead to actual abuse of the person you are caring for, allegations of abuse filed against you, or even abuse directed to you. 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. Under a new law, effective July 1, 2009 and discussed below, caregiver neglect will be specifically addressed in Hawai`i's Adult Protective Services Law.

Other family members may not be willing or able to help. You or another family member may be suffering from anger or guilt about caregiving duties toward your loved one. Family conflicts are not uncommon. A common example is a situation where a sibling who for years has not been caring for a parent flies in from another state and attempts to "take over" the situation.

To add to the caregiver's problems, many health care providers, especially long-term-care facilities, are requesting caregivers to sign documents to personally assume financial responsibility for the person receiving care. This is often done in the admission process when emotions are high 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 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 many facilities use is to ask you to sign the document voluntarily. Always have these types of documents reviewed by a lawyer before signing them. At least read the document to find those provisions making you responsible and cross them out. Also, when signing documents on behalf of another, it is usually wise to make it clear that you are signing as the guardian, trustee or agent under a power of attorney and not in your personal capacity. If your loved one 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.

Danger Signs That You May Need Help:

- You are often angry at your situation.
- You are being abused by the person you are caring for.
- You are overwhelmed by the care that needs to be provided.
- You are having financial problems.
- You are always tired and you neglect yourself.
- You are turning to alcohol or drugs to deal with the situation.
- You resent that you are not getting enough support from other family members.

Although each situation is different, try to get help or share some of your burdens with others rather than to risk "caregiver abuse." Take care of yourself first, get some rest and perhaps, a physical checkup. You may also benefit from receiving various social services.

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 put you in touch with services that include *Kupuna* Care for elders, respite services for caregivers, help in bathing, transportation and shopping, Meals on Wheels, Home Health Services, hospice care for the terminally ill, and legal services for socially or economically needy elders. Phone numbers for the county offices on aging are listed in the "Resources for Caregivers" section at the end of this handbook.

Long-Term Care Facilities

In assuring that adequate protection is provided to a frail or vulnerable person, sometimes it is necessary to use the services of a long-term care facility that provides intermediate-level and skilled-level care to persons who require nursing services. A comparison of nursing homes certified by Medicare and Medicaid is provided at the "Nursing Home Compare" website accessible through www.medicare.gov/. 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 persons 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 should also ask the ARCH operator for the most recent survey/inspection findings done by the licensing agency. For concerns about a facility, the Long Term Care Ombudsman can be contacted at 808-586-0100. Refer to the Residential Options for Hawai`i's Seniors Guidebook available online at www.hacm.net for more details.

Self-Neglect

Certain people may be forced into or may choose lifestyles that may seem strange to you. Many older persons are 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 a person's life because of his or her 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 choices are to offer social or legal services or to attempt to persuade individuals to change their lifestyle. Under a new law, effective July 1, 2009 and discussed below, the state of Hawai`i will have new authority to help protect certain vulnerable persons from self-neglect.

Tips to Avoid Being Abused

Abuse can happen to anybody.

You can apply the following tips to yourself or to the person you may be caring for:

- Avoid isolation. Surround yourself with trusted family, friends and advisors.
- Track your assets and be mindful of changes you did not initiate.
- Safeguard your credit cards, checkbooks and ATM or bankcards.
- Use direct deposits for Social Security, pension, and other income.
- Be careful when opening joint accounts.
- Develop a plan for managing your assets if you become unable to manage them yourself.
- Contact authorities if you suspect a problem. Do not be ashamed if you become a victim.

Laws to Protect Abused Elderly

While no specific laws in Hawai`i address the overall problem of 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. Much elder abuse can be considered criminal and enhanced penalties upon convicton may often be sought by the prosecutor if the crime is directed against an older or vulnerable person.

Further, there are laws that have established agencies to investigate and prevent further abuse against certain members of society. The State of Hawai`i Office of the Long-Term Care Ombudsman has the power to investigate incidents of alleged abuse in long-term care facilities such as nursing homes and care homes. The Medicaid Investigations Division of the Department of the Attorney General of the State of Hawai`i has the power to investigate and prosecute alleged incidents of abuse in health care facilities that receive Medicaid funding. The Attorney General also has the authority under the Elder Justice Act to seek damages from institutional caregivers who abuse or neglect their residents who are 62 years of age or over. There are even a variety of consumers laws affording additional protections to persons 62 years of age or over, including requirements for financial institutions to report suspected financial abuse, enhanced penalties for securities violations, and penalties against mortgage brokers or solicitors for violations.

Adult Protective Services

The most comprehensive law currently providing protection is the Dependent Adult Protective Services law, which will be amended by a new law on July 1, 2009. The current law, as of the date of this publication, recognizes that the elderly and the mentally or physically impaired form a significant and identifiable segment of the population which is particularly subject to risks of abuse, neglect, and exploitation. This law also recognizes that a person's dependency status, not age, is often encountered in cases of abuse, neglect and exploitation. The Dependent Adult Protective Services law requires certain persons who, in the performance of their professional or official duties, know or have reason to believe that a dependent adult has been abused and is threatened with imminent abuse to promptly report the matter orally to the Department of Human Services (DHS). The Adult Protective Services (APS) Unit of the DHS takes reports of suspected abuse. On O`ahu, you can call the APS Hotline by dialing 808-832-5115. Please see the "Resources for Caregivers" section at the end of this booklet to reach APS on the neighbor islands. APS is required to investigate reports of alleged abuse against a dependent adult and has the authority to prevent further abuse. This may require legal action in the Family Court, which has overall jurisdiction over cases of dependent adult abuse.

Upon receiving a report that abuse of a dependent adult has occurred and is imminent, APS investigates. By law, APS is entitled to have access to the allegedly abused dependent adult and may seek the assistance of the police to gain access. If abuse is discovered, DHS must take action to prevent further abuse. It should be noted that DHS can only act with the consent of the victim, unless it obtains court authorization to provide necessary services. A new, more comprehensive law is effective July 1, 2009, and is discussed below.

A New Adult Protective Services Law

In 2008 the Hawai`i State Legislature made significant changes to the current Dependent Adult Protective Services Law and the Governor subsequently signed Act 154 into law, effective July 1, 2009. These changes serve to protect vulnerable individuals, including older persons more so than under the old law. The new law deletes "dependent" from its title and is called "Adult Protective Services." Changes include deleting the term "dependent," adding a more inclusive term,"vulnerable," and giving the Department of Human Services the jurisdiction to investigate cases of abuse of a vulnerable adult who has incurred abuse or is in danger of abuse if immediate action is not taken.

Under the new law, mandated reporters are required to report cases of abuse of a vulnerable adult who has incurred abuse or is in danger of abuse if immediate action is not taken. In addition, the department is required to investigate these cases.

Under the new law a "vulnerable adult" means 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 himself or herself from abuse.

Under the new law, "abuse" means any of the following, separately or in combination:

- Physical abuse,
- Psychological abuse,
- Sexual abuse,
- Financial exploitation,
- Caregiver neglect, or
- Self-neglect.

"Caregiver neglect" means 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; or
- Protect the vulnerable adult from abuse by third parties.

"Self-neglect" means:

- A vulnerable adult's inability or failure, 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;
    - Management of one's financial assets, and
- The vulnerable adult appears to lack 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.

This new law will make it even more compelling for individuals who suspect abuse to report it. You should call APS whenever you suspect "elder" abuse. You can also call them to find out more about the new law when it goes into effect on July 1, 2009. Despite these new changes, it is important to note that there is still no specific "elder abuse" law in Hawai`i.

Long-Term Care Ombudsman

As previously mentioned, Hawai`i has a Long-Term Care Ombudsman/Advocate Law which grants investigative and access authority to the Long-Term Care Ombudsman. As an independent and politically neutral examiner, the Ombudsman receives, investigates and resolves problems with or complaints against long-term care facilities. 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 or his or her 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.

Other Interventions and Remedies

The Hawai`i Disability Rights Center may be able to assist certain disabled victims. 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. 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 Courts) 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 abuse to Adult Protective Services to help with your safety and protection. In an emergency, call 911 for help. Should you do so, be calm and clear about the location of the emergency.

CHAPTER 2

PLANNING FOR THE FUTURE: MEDICAL TREATMENT AND HEALTH CARE DECISIONS

As medical science continues to make progress toward permitting people to live healthier and longer lives, many individuals are now deciding to take charge of their own medical decisions in consultation with physicians, family members, clergy, and close friends.

MEDICAL TREATMENT AND INFORMED CONSENT

In Hawai`i, as in all other states, competent individuals have the fundamental right to control the decisions relating to their own medical 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 is the concept of informed consent. In Hawai`i, the State of Hawai`i Medical Board establishes standards for health care providers to follow in giving information to a patient or to a patient's guardian or legal surrogate, if the patient is not competent 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:

- The condition to be treated;
- A description of the proposed treatment or surgical procedure;
- The intended and anticipated results;
- 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 alterative treatments or not undergoing treatment, and the recognized benefits of the recognized alternative treatments or procedures.

Patient Self-Determination Act

Most health care facilities must comply with Medicare and Medicaid rules regarding patients' right to control their health care treatment under a federal law commonly referred to as the "Patient Self-Determination Act" (PSDA). It requires organizations participating in Medicare and Medicaid, and specifically, hospitals, nursing facilities, home health agencies, hospices, and prepaid health care organizations to do five things:

1. Provide written information to patients at the time of admission or initial provision of services about patients' rights under state law to make decisions about what medical care they want or do not want, including their right to accept or refuse life-sustaining or life-prolonging medical treatment;
2. Maintain written policies and procedures regarding advance directives, and provide written information to patients about what those policies are;
3. Document in the patients' medical records whether they have executed advance directives;
4. Ensure compliance with state law at each health care organization which is subject to the new federal law, and;
5. Provide (individually or with others) for the education of the staff and community on issues concerning advance directives.

Health Care Decisions

More and more people have decided to face the question of how health care decisions will be made when they are no longer able to make these decisions for themselves. No matter what an individual desires, it is important to communicate those desires so that health care providers will know what to do when that person can no longer make decisions. In determining how he or she wishes to be treated, an individual may want to discuss these matters with family, friends, clergy, and other advisors. Individuals should make sure that these personal desires are made known to concerned individuals and especially to health care providers.

Health care encompasses much more than medical treatment and decisions about end-of-life issues. In Hawai`i, the Uniform Health Care Decisions Act (Modified) 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.

Health Information and HIPAA

For the most part, with a few exceptions, patient records belong to the patient and such information is considered confidential. A federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), requires that "covered entities" such as health plans, health care providers (e.g., hospitals and nursing facilities), or health care clearinghouses verify a person's identity to ensure that it is the patient or a delegated or authorized "personal representative" who is requesting the patient's medical records. Due to the complexity and confusion of the HIPAA statute, an individual who needs access to medical records on behalf of an incapacitated patient may have a difficult time gaining access to those records unless they can produce evidence of their authority to receive medical information, including reviewing the medical file, on behalf of the patient.

State or other law determines who is authorized to act as a personal representative for purposes of HIPAA. In Hawai`i, this would usually include an individual who 1) has been delegated such authority by the patient in writing, or 2) has been appointed by the court to act as guardian, or 3) has been appointed by the patient as an agent in a power of attorney for health care or 4) has been selected as a "non-designated surrogate" by consensus of "interested persons" or 5) has been appointed by the patient as a designated surrogate acting on behalf of the patient. For deceased patients, the personal representative (or executor) of the patient's estate may qualify. More detailed information about the roles and authority of these individuals, as well as sample language regarding the release of health care information, is included later in this chapter.

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 his or her body and life. 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 the state of Hawai`i. This law uses the term "individual instruction" rather than "living will" (which is still in use in several other states). This and other information about the UHCDA will be discussed in greater detail later in this chapter.

Although advance directives are generally used in the context of making end-of-life decisions, the laws of the State of Hawai`i cover a broad range of advance directives and make it easy

for individuals to have their instructions followed. Accordingly, directions such as declining any cardio-pulmonary resuscitation in the future or donating organs may be considered in a broad sense to be advance-directives. Another example is a document which specifies decisions in advance with respect to mental health conditions. 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 to make health care decisions for the patient. Although written advance directives concerning life sustaining medical treatment are encouraged and preferred under Hawai`i law, they are not required. An adult or emancipated minor may give an individual instruction regarding health care. The instruction, oral or written, may be limited to take effect only if a specified condition arises.

In Hawai`i advance health care directive formats generally follow the optional form found in Hawai`i's UHCDA. 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 but it is still best to take preventive measures and check out the laws in another state ahead of time. This is particularly important if you are moving to another state or if you are planning on spending an extended period in that state. Some of this homework can be accomplished by looking the information up on the Internet, asking a family member or friend living in that area to find out from a health care provider, or by asking an elder law attorney about advance directive guidelines and forms in that state.

Do Not Resuscitate (DNR) Codes

DNRs are orders not to provide cardio-pulmonary 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. Out-of-hospital DNRs, often referred to as "Comfort Care Only," (CCO-DNR) or "Rapid Identification Documents," will be discussed later in this chapter.

In-hospital DNRs are placed by a physician 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 a 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 Cardio-pulmonary Resuscitation" order. The DNR order is only an order to forego 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. The decision to refuse CPR may also be made orally by a mentally competent 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.

Individual Instructions for Health Care

A good way to make your desires known concerning health care decisions, including life sustaining medical treatment is to make an "individual instruction" in accordance with Hawai`i's Uniform Health Care Decisions Act (Modified) (UHCDA). As previously mentioned, the individual instruction takes the place of what was commonly called the "living will" under old law. Individual instructions 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 attending physician and ask him or her to "chart" your discussions by placing the information you provide in your medical file. You can provide an individual instruction in writing, for example by writing a letter to your physician. The letter can let your physician know about your desires for health care in the future.

Usually an individual instruction is incorporated into an advance directive 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. The UHCDA provides an optional sample form with an accompanying explanation. Sample forms created by UHELP (long and short) are found at the end of this chapter. In the long form, choices are provided for you to express your wishes 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 out any additional wishes. This form may be modified to suit your needs, or you may use a completely different form. A sample short form is also included at the end of this chapter.

Health Care Power of Attorney

In addition to the "individual instruction" for health care, you should consider making a health care power of attorney (also called a "durable power of attorney for health care" or "medical power of attorney"). This can be done in the advance health care directive under the UHCDA. Do not confuse the durable power of attorney for health care, which expressly addresses health care decisions and which has different execution requirements, with the durable powers of attorney discussed in Chapter 1, which may or may not include health care decisions. Again, sample forms of advance directives which include 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 lets you continue to stay in charge of your own destiny.

Under Hawai`i law, 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. 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 you need him or her.

Unless related to you, your agent 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 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 if the physician is a close friend and is not your treating physician.

Powers of attorney for health care must be witnessed or notarized. For the power of attorney to be valid for making health care decisions, you must sign it:

- Before two "qualified" adult witnesses who are personally known to you and who are present when you sign. These witnesses must also sign the document.
- OR 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 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 the principal by blood, marriage, or adoption, nor 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.

What To Do With Your 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 forms 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 he or she 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 in your medical file(s). 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 your agent.

You can ask to have AHCD (Advanced 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 file. You can also "register" your advance directive with an electronic document bank for advanced health care directives, such as Healthcare Directive Partners at www.myhealthdirective.com, for a small fee. Individuals may also deposit their advance directives at the Healthcare Directive Partners and give permission for participating health care facilities to obtain them in the event of incapacitating illness or accident.

Revocation/Effectiveness of Advance Health Care Directive

The UHCDA 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 an 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 a decedent's body or body parts under the new Uniform Anatomical Gifts Act, effective, July 1, 2008 (see below), a health care power of attorney ceases to be effective upon the death of the principal.

Comfort Care Only—DNR Directives

Advance directives are not generally used to make emergency resuscitation decisions although they may be used as the basis to withhold cardio-pulmonary resuscitation attempts in cases where a person has been determined to be in a condition as stated in his or her advance directive. As previously discussed, traditionally, DNR codes only apply in situations when you are a patient in a health care facility. However for several years Hawai`i law has permitted terminally ill patients to obtain a special bracelet or necklace which would tell "first responders" not to resuscitate them in an emergency. This is referred to as "Comfort Care Only-Do-Not-Resuscitate," (CCO-DNR) or "Rapid Identification Documents." In 2006 the law was changed to remove the terminal illness requirement and to make other changes to the law make it easier to complete a "CCO-DNR" document.

The Department of Health is required under the revised law to adopt rules for emergency medical services. These rules include uniform methods of rapidly identifying an adult person who has certified, or for whom has been certified, in a written CCO-DNR document that he or she or (consistent with the previously discussed UHCDA) the person's guardian, agent, or surrogate, directs 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. These rules further directs that the person is to receive CCO, including oxygen, airway suctioning, splinting of fractures, pain medicine, and other measures required for comfort.

The written document containing the certification needs to be signed by the person or, consistent with the UHCDA, the person's guardian, agent, or surrogate and by any two other adult persons who personally know him or her. The Department of Health provides forms and instructions to complete the forms as well as information about the law. It is important to note that the person, or the person's guardian, agent, or surrogate, may verbally revoke the CCO-DNR document at any time, including during the emergency situation.

Surrogate Decision-Making

Who is it that will 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. Since 1999, Hawai`i's UHCDA (Modified) has provided a mechanism for surrogates to make decisions for incapacitated individuals. A surrogate is a person who is not a guardian or health care agent but has the authority to make decisions for the patient.

Under the UHCDA surrogate provisions, a patient may designate or disqualify any individual to act as a surrogate by personally informing the supervising health care provider. In the absence of such a designation, or if the designee is not reasonably available, a surrogate may be appointed to make a health care decision for the patient. A surrogate may make a health care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian has been appointed or the appointed agent or guardian is not reasonably available. The process of appointing a surrogate is somewhat complicated under Hawaii's modified version of the UHCDA.

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." 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, any adult member of the patient's family (a parent, sibling, child or grandchild), 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.

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 provides 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.

This particular provision is subject to interpretation and some have claimed that it is unconstitutional as written. This reinforces the notion that an individual should appoint an agent through a health care power of attorney or designate a surrogate if the person wishes to grant another person the power to make health care decisions for the patient that the patient could make on the patient's own behalf.

The law provides that the non-designated surrogate shall make health care decisions for the patient based on the wishes of the patient, or, if those wishes are unknown or unclear, on the patient's best interest. The decision of a 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 pre-existing, long-term mental or physical disability, or a patient's economic status. A non-designated surrogate must 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.

Whether the surrogate is "designated" or "non-designated," a health care decision made by a surrogate for a patient is effective without judicial approval. Further, 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.

It is important to reiterate that the constitutionality of the non-designated surrogate provisions under the UHCDA have been questioned. Without going into any of the details, it is clear that it even more crucial for an individual in Hawai`i to consider designating an agent in a health care power of attorney or, at a minimum, designating a surrogate by informing the supervising health care provider.

Anatomical Gifts—Donations of Organs and Bodies

A new Uniform Anatomical Gift Act was passed by the Legislature and enacted into law in 2008. It makes it much easier to donate a body or a body part for transplantation, therapy, research or education. It permits any individual eighteen years of age, prior to the death of the donor, to give all or any part of his or her 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 an 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 word, "organ donor." During a terminal illness or injury to the donor, he or she 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 new law also has provisions for revoking a donation and for refusing to make such a gift.

Upon death, a number of people in an order of priority established under the new law, can make an anatomical gift on behalf of the decedent for purpose of transplantation, therapy, research, or education. The priority classes of individuals include agents under a health care power of attorney, spouses (or reciprocal beneficiary), adult children, parents, adult grandchildren, grandparents, adults who have exhibited special care or concern for the decedent, guardian, and others who may have the authority to dispose of the decedent's body. The new law provides detailed instructions if there are objections to the donation.

The John A. Burns School of Medicine at the University of Hawai`i has a program through which it accepts bodies for scientific purposes. However, 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 or if the body is not located on O`ahu.

Contact the Organ Donor Center for more information about organ donation and the School of Medicine about donation of bodies.

Autopsies

Autopsies can be authorized under the provisions of the Uniform Anatomical Gift Act, previously discussed. In addition, under other provisions of Hawai`i law, "if, in the opinion of the coroner, or of the coroner's physician, or of the prosecuting attorney, or of the chief of police (in the City and County of Honolulu), an autopsy of the remains of any human body appearing to have come to death under circumstances that would indicate that the death was a result of violence, or as the result of any accident, or by suicide, or suddenly when in apparent health, or when unattended by a physician, or in prison, or in a suspicious or unusual manner, or within twenty-four hours after admission to a hospital or institution, or if it is necessary in the interest of the public safety or welfare, that person shall cause to have performed such an autopsy."

Forms

We have included the following forms:

- Checklist for Making an Advance Health Care Directive
- Sample Short Form for Advance Health Care Directive
- Sample Long Form for Advance Health Care Directive

CHECKLIST FOR MAKING AN ADVANCE HEALTH CARE DIRECTIVE

- ❑ Talk with family members, friends, spiritual advisors, physicians, other health care providers, and other trusted persons about what would be important to you if you become terminally or irreversibly ill or injured and you can no longer communicate your health-care decisions or other wishes.

- ❑ Ask someone you trust and whom you can depend on to be your health care agent and discuss your wishes with this person. Select an alternate health care agent in case your agent is unable to serve.

- ❑ Complete either one of the enclosed simplified forms, change or cross out provisions, or make an entirely different document. Add pages if you like.

- ❑ Have two qualified witnesses or a notary public witness your signature.

- ❑ Inform family members, your spouse, parents, children, siblings, friends, physicians, and other health care providers that you have executed an advance health care directive and that you expect them to honor your instructions. Keep them informed about your current wishes.

- ❑ Give copies of the document to your health care agent, health care providers, family, close friends, clergy, or any other individuals who might be involved in caring for you.

- ❑ Place the executed document in your medical files.

- ❑ When you renew your driver's license or State I.D., you may designate that you have an advance directive by putting "AHCD" (which stands for Advance Health Care Directive) on it.

- ❑ Make plans to review the document on a regular basis. If necessary, make a new document and keep people informed of any changes.

- ❑ Do not delay!

SAMPLE SHORT FORM FOR ADVANCE HEALTH CARE DIRECTIVE

MY NAME IS ____

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

PART 2: INDIVIDUAL INSTRUCTIONS FOR HEALTH CARE

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:

____ ❑ (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, or (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. OR

____ ❑ (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.

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. OTHER MATTERS: A copy of this form has the same effect as the original.

My agent shall not be obligated to assume any personal financial responsibility when making decisions in accordance with this document. My agent has the authority to request, receive, examine, copy, and consent to the disclosure of medical or any other healthcare information, including medical files and records. This includes my delegated authority for my agent to act as my personal representative for release of all individually identifiable health information concerning me by both covered and non-covered entities under the provisions of the Health Insurance Portability and Accountability Act (HIPAA) and/or other Federal and State laws pertaining to health care and health care information. My agent shall have the authority to decide

whether to execute a Comfort Care Only Document which instructs first responders and other health care providers not to provide Cardio-Pulmonary Resuscitation in an emergency.

X ______________________________ ______________________________

(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 (Two Witnesses)

First Witness

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)

______________________________ ______________________________

(My Printed Name) (Address of Witness)

Second Witness

I am not the person appointed as agent by this document, and I am not a health care provider, nor an employee of a health care provider or facility.

______________________________ ______________________________

(Signature of Witness) (Date)

______________________________ ______________________________

(My Printed Name) (Address of Witness)

ALTERNATIVE NO. 2 (Notary Public)

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 Notary Certification

____
(Signature of Notary Public)

My Commission Expires:__________

SAMPLE 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) (Work 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) (Work phone) (E-mail or other means of contact)

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 health care decision for me, I designate as my second alternate agent:

____

(Name of individual you choose as first alternate agent)

____

(Address) (City) (State) Zip code)

____

(Home phone) (Work 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 provide consent (or refuse consent) to and to enter into contracts on my behalf for 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 as well as decisions to participate in education, research and experimental programs.
- ♦ To make decisions regarding orders not to resuscitate or to attempt resuscitation ((DNR or DNAR), including out-of-hospital "Comfort Care Only-Do-Not-Resuscitate" (CCO-DNR) 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 AIDS (Acquired Immune Deficiency Syndrome) 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 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, organizations, institutions and programs, including long-term care facilities and hospice programs and to make and change health care choices and options relating to plans, services, and benefits without my agent incurring any personal financial liability.
- ♦ To apply for public or private health care programs and benefits, to include Medicare, Medicaid, Med-Quest or other federal, state, local or private programs without my agent incurring any personal financial liability.

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

____

____

____

(Consult with a mental health professional and/or attorney for appropriate language if you wish to give your agent additional information or instructions about decisions regarding mental illness.

You may make a separate mental illness advance directive or include such 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 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. My agent shall not be obligated to assume any personal financial responsibility when making decisions in accordance with this document.

(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 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 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: **(You may cross out any unwanted provisions.)**

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:

____ ❑ (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, or (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. OR

____ ❑ (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.

(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. Examples of additional instructions include preferences to receive Hospice Care and/or to die at home.) I direct that:

____

____

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 University of Hawaii for its research and education purposes. **(Obtain information/forms from the medical school's Department of Anatomy.)**

PART 4
PRIMARY PHYSICIAN/HEALTH CARE 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 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, a preference to remain at home, etc.)

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) (Phone)

PART 6
OTHER MATTERS (OPTIONAL)

(15) I wish to provide instructions relating to the following matters (disposition of body, funeral, burial/cremation, memorial, etc.

____
____
____
____
____

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

SIGNATURE: Sign and date the form here:

______________________________ ______________________________

(Sign Your Name) (Date)

____

(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, Hawaii 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, Hawaii 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.

____________________________ ____________________________

(Signature of Witness) (Date)

____________________________ ____________________________

(Printed Name of Witness) (Address of Witness)

ALTERNATIVE NO. 2 (Notary Public)

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 Notary Certification

____
(Signature of Notary Public)

My Commission Expires:__________

CHAPTER 3

FINANCING HEALTH CARE, INCLUDING LONG–TERM CARE

Good health is one of the most important gifts one can receive. Unfortunately, health care can become quite expensive and, thus, out of reach for many. Planning ahead is important. You should know what health care coverage is available and what you can afford. Try not to sell yourself short when it comes to health care coverage. Also, be sure to take advantage of the various federal and state initiatives for seniors in the area of health care. Not only are prescription drugs becoming more expensive but a somewhat complicated system of prescription drug benefit plans has been offered under Medicare and Medicaid since 2006. Fortunately, Medicare beneficiaries with limited incomes may now qualify for extra help in paying for prescription drugs.

Medicare

The Medicare program is a federal health insurance program for people 65 or older and certain disabled people. There have been significant changes recently made by Congress through the Medicare Modernization Act (MMA) and you can expect more in the years to come. Medicare is run by the Centers for Medicare and Medicaid Services, or CMS (formerly Health Care Financing Administration), of the U.S. Department of Health and Human Services. Social Security Administration offices across the country take applications for Medicare and provide general information about the program. Currently, Medicare has no resource limitations for basic eligibility, although there may be certain categories of individuals who may have to pay higher premiums or who may be eligible for subsidies or who may benefit from the new Medicare Part D, a prescription drug program. Medicare helps pay health care bills for people 65 and over who are eligible to receive Social Security retirement benefits and for those under 65, who have been entitled to disability benefits for 24 months. Also, insured workers and their dependents who have permanent kidney failure or Lou Gerhig's Disease may be entitled to Medicare coverage.

Medicare Coverage

There are two important rules to remember when Medicare coverage is an issue. First, Medicare can cover 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 you in a

hospital or skilled nursing facility when the kind of care you need could be provided elsewhere. Also, Medicare will not cover your stay in the hospital or skilled nursing facility longer than you need to be there. Medicare coverage will end when further inpatient care is no longer reasonable and necessary.

Second, Medicare generally does not pay for extended long-term care. Medicare also 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 if you meet certain conditions.

Eligibility for Medicare is determined by the Social Security Administration (SSA). The Centers for Medicare and Medicaid Services (CMS), a federal agency within the Department of Health and Human Services (HHS), is responsible for the overall administration of the program. Medical bills and claims are handled by private insurance companies under contract with HHS and monitored by the government.

Extra Help for Medicare Beneficiaries

The Hawai`i Department of Human Services (DHS) Medicaid Program can help pay for your Medicare Part A and Part B Insurance deductibles and premiums through several programs: the federal assistance plan for Medicare Qualifying Individuals (QI), Qualified Medicare Beneficiary Program (QMB), and Specified Low-Income Medicare Beneficiary Program (SLMB). (Information about Medicaid is contained in section later on in this handbook.) QMB pays Medicare Part A premiums, Part B premiums, and Medicare deductibles and coinsurance amounts for Medicare services. SLMB pays for Medicare Part B premiums for individuals who have Medicare Part A, a low monthly income, and limited resources. QI pays all or part of the Medicare Part B premium for people with income higher than allowed for the SLMB Program. These are relatively under-utilized programs and can be of significant benefit to many individuals. Information is readily available through Medicare or the Hawai`i Department of Human Services (DHS).

Medicare Part A

There were two major parts to the original or "traditional" Medicare program. These two parts (Part A and Part B) continue to this day under the original program and two additional parts were added more recently (Part C and Part D). 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.

Private insurance companies that handle Part A are known as "fiscal intermediaries." They are contracted by the federal government to administer the Medicare program involving the Part A providers of services (hospitals, nursing homes, and home health agencies which participate in the Medicare program). Insurance companies, which administer coverage and payment functions for participating Part B providers (physicians and other practitioners), are called "carriers." In addition to paying claims, fiscal intermediaries and carriers 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 requires inpatient hospital care. Following a hospital stay, Part A also covers the expense of inpatient care in an extended care facility. 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.

After payment of an insurance deductible ($1,024 in 2008) reasonable hospital costs are covered for 90 days in any single "spell of illness" (also referred to as a "benefit period"). This 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. Again, the Medicare eligible patient is responsible for an insurance deductible ($1,024 in 2008) for each spell of illness. A patient may pay more than one deductible amount per year if he or she has more than one "spell of illness." A patient will also have to pay a co-insurance amount per day ($256 in 2008) for the 61st through the 90th day of care, and coinsurance charges ($512 per day in 2008) for "lifetime reserve" days used. After these days are used, the patient or his or her insurer is responsible for the entire bill. Currently, each eligible Medicare Part A enrollee is entitled to a total of 60 reserve days to draw upon.

Medicare Part A has very limited coverage for skilled nursing facility (SNF) care. Generally, a physician must order care. There is a requirement for a three-day hospitalization immediately prior to or within 30 days following entry into an SNF. Co-insurance payments are also required ($128 per day in 2008) for days 21 to 100. Coverage is limited to 100 days per spell of illness and custodial care is not covered. Note that most individuals in nursing homes do not require skilled care and are, thus, not eligible for Medicare coverage.

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 performed on a daily basis.

A certified terminally ill patient 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.

Medicare Part B

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. It includes coverage for medically necessary physicians' service, outpatient hospital services, outpatient physical therapy and speech pathology services, home health services, diagnostic tests and medical appliances (durable medical equipment). 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.)

As under Part A, there are certain deductible and co-insurance amounts the Part B recipient must pay. The Part B annual deductible (for 2008) consists of the first $135 of covered services plus the first three pints of blood. After application of the annual deductible, payment under Part B will be made for 80 percent of the remaining reasonable charges or costs of covered services. The Part B recipient pays the remaining 20 percent co-insurance amount. However, there is no co-insurance requirement for home health services under Part B and no deductible or co-insurance for certain inpatient radiological and pathological services rendered by a physician and diagnostic laboratory tests. Also, the co-insurance payment is waived if the recipient purchases used durable medical equipment. Under current law, all bills under Part B must be submitted directly by the physician or supplier to the carrier. The Part B premium depends on a person's income. In 2008 the monthly premiums start at $96.40 for individuals with incomes up to $82,000 and increase up to $238.40 per month for those earning over $250,000 per month.

Medicare Part C—Medicare Advantage

In addition to the original Medicare Plan, there are several Medicare option plans to choose from. These options are collectively known as Medicare Advantage (formerly called Medicare+Choice) or Medicare Part C. These options include Medicare Managed Care Plans provided by Health Maintenance Organizations (HMOs), and newer private fee-for-service plans. If you decide to join a Medicare Advantage Plan, you must be enrolled in Medicare Part A and Part B. Accordingly, you will have to pay the monthly Medicare Part B premium ranging from $96.40 to $238.40 in

2008, depending on your income. In addition, you may have to pay a monthly premium to your Medicare Advantage Plan for the extra benefits that they may offer.

Currently, in Hawai`i, examples of managed care plans that are available include the various plans offered by HMSA's 65C, the Kaiser Foundation Health Plan, and the United Healthcare Insurance Company. Enrollment in managed care plans may be limited to certain geographic areas or to the number of people who can be enrolled. Limited enrollment periods apply to all plans.

If you have end-stage renal disease (ESRD), you usually cannot join a Medicare Advantage plan. However, if you are already in a plan, you can stay in the plan you are in or join another plan offered by the same company in the same state. If you have had a successful kidney transplant, you may be able to join a plan.

What you pay out-of-pocket depends on whether the plan charges a monthly premium in addition to your 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 you use and whether the plan covers them.

In sum, if you are enrolled in Medicare, you can join a Medicare Advantage plan if:

- ♦ You have both Medicare Part A (Hospital Insurance) and Medicare Part B (Medical Insurance).
- ♦ You live in the service area of the plan.
- ♦ You do not have ESRD (permanent kidney failure requiring dialysis or a kidney transplant).

Managed Care Plans (Health Maintenance Organizations—HMOs)

While many individuals still participate in the original Medicare fee-for-service program, a growing trend among Medicare beneficiaries is to look into "managed care" plans through health maintenance organizations (HMOs). Managed care plans for Medicare recipients can be seen as a collaboration between insurers and health care delivery systems. Medicare HMOs provide you with coverage for Parts A and B and, except for the HMOs contracted co-payments, you do not have to pay the Medicare deductibles or the Medicare co-payments.

When you join an HMO, some of your options may be more limited than in a fee-for-service plan. Your choice of doctors and coverage outside of your HMO service area may be limited to urgent

care. The doctor who has treated you all your life and knows your medical history may not belong to the HMO. In some instances, you may see a different doctor each time you go. However, you can often choose a primary care physician from available doctors within the HMO.

Even though the cost for HMOs may be less than fee-for-service plans, there is some criticism that older or disabled individuals enrolled in an HMO may not get all the medical services they need. There is a fear that because HMOs are reimbursed differently by Medicare and because these individuals may require expensive and extensive medical care, HMOs may not provide the highest level of care for them. To be fair, some studies point out that care does not change for the worse when a person enrolls in an HMO. Since it is to the HMO's advantage to keep the patient healthy and away from using up costly medical services, some suggest that care can even be better. This seems to be especially the case if the person is younger and healthier. Before selecting an HMO, read the contract to find out how conflicts are resolved, what services are covered or not covered, and what the restrictions are if you use an outside doctor.

Private Fee-for-Service Plans

In private fee-for-service plans, a private company provides health care coverage to people with Medicare who join this plan. It, rather than the Medicare program, decides how much it pays and how much you pay for the services rendered. You can go to any doctor or hospital that accepts the terms of the plan's payment. The private company pays a fee for each doctor visit or service you get and you also may pay a fee. In a private fee-for-service plan, you may pay more if the plan lets doctors, hospitals, and other providers bill you more than the plan pays for services.

Medicare Part D—Prescription Drugs

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 created a voluntary outpatient prescription drug benefit, known as Medicare Part D, which began on January 1, 2006. Drug coverage is provided through competing private Part D plans sponsored by health care organizations, which may charge premiums, deductibles, or co-payments for drugs. Many Medicare beneficiaries have experienced trouble in figuring out what to do about Medicare Part D and Congress may "tinker" a bit more with this prescription drug benefit as it is fully set in place.

For most Medicare beneficiaries, prescription drug plans offered by insurance companies and other private companies will cover both generic and brand-name prescription drugs. There are two types of Medicare prescription drug plans from which you may choose according to your needs. There are prescription drug plans that add coverage to the Original Medicare Plan. There are also prescription drug coverage that are part of Medicare Health Plans (Medicare Advantage

and Medicare Cost Plans). 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.

"Dual Eligibles" and the State Pharmacy Assistance Program

The new law provides extra help for prescription drug costs for eligible individuals whose income and resources are limited. As a result of the Medicare Prescription Drug, Improvement, and Modernization Act, on January 1, 2006, drug coverage for "dual-eligible beneficiaries" transitioned from Medicaid to Medicare Part D. Dual-eligible beneficiaries are Medicare beneficiaries who receive full Medicaid benefits for services not covered by Medicare. Prior to 2006, state Medicaid programs paid for drugs provided to dual-eligible beneficiaries using a combination of state Medicaid funds and federal matching funds. As of January 1, 2006, Medicaid no longer provides coverage for Part D covered drugs for these beneficiaries. Instead, Medicare provides coverage. 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.

The State Pharmacy Assistance Program (SPAP) is a state-funded program that will pay for Medicare Part D co-payments for certain Hawai`i residents. You may be eligible to enroll if you meet the following criteria:

- ♦ You are a resident of Hawai`i,
- ♦ You are age 65 years or older, or disabled and receiving and eligible for Medicare,
- ♦ You are not a member of a retirement plan who is receiving a benefit from Medicare Part D,
- ♦ You are not enrolled in a public assistance program, other than the Hawaii Rx Plus program, that provides drug benefits other than those provided by Medicare Part D,
- ♦ You are not enrolled in a private sector plan or insurance providing payments for prescription drugs,
- ♦ Your household income (before deductions, not take home pay) does not exceed 100% of the Federal Poverty Level (FPL),
- ♦ Your assets are within the limits set by federal law for applicable family size.

There has been quite a bit of confusion surrounding the implementation of Medicare Part D and one of the best resources for trying to figure out what to do is the Sage Plus Office located at the Executive Office on Aging. Their telephone number is (808) 586-7299 or 1-888-875-9229.

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, and speech therapy and home care. Under the new policy, such services can now 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.

Health Care and Medigap Insurance

As we have seen, Medicare covers many but certainly not all health costs for eligible persons. Supplemental coverage at an additional cost is available. Shopping for supplemental coverage can be confusing and difficult. 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. These supplemental policies are designed primarily to supplement Parts A and B of Medicare. Medigap policies generally supplement the amount of Medicare eligible expenses but usually do not supplement the types of medical expenses covered. No Medicare Supplemental Insurance policy will cover everything which Medicare does not cover. Medigap insurance is regulated by federal and state law. Accordingly, insurance companies offer up to 12 standard Medicare supplement benefit plans. Each of the 12 plans has a letter designation ranging from "A" to "L." Plan A is the most basic and Plan L is the most comprehensive. Plans B to L are, in actuality, Plan A plus a different combination of benefits. While insurance companies are not permitted to change these designations or to substitute other names or titles, they are allowed to add names or titles. Though companies are not required to offer all of the plans, Plan A must be available if they sell any of the other 11 in a state. Check each policy for coverage or exclusion of existing medical conditions.

If you are a potential Medigap policy buyer, be aware of these important facts concerning Medicare and Medicare supplemental policies:

- Medicare does not cover custodial care even if it is provided in what may be called a "skilled nursing facility." Medicare only covers skilled nursing care, which requires ongoing professional supervision. Most Medigap policies also do not cover custodial care and may be vague on the entire subject of nursing home care.
- Actual medical charges may not be entirely covered under either Medicare or Medigap policies. The physician's actual charge may be greater than what Medicare considers "medically necessary" or "customary and reasonable."
- If Medicare pays a percentage of these "allowed" charges and a Medigap policy pays the balance of the "allowed" charges, there still may be an excess amount, which you must pay.
- If you join a Medicare Advantage Plan, your Medigap policy is not applicable. This means it will not pay any deductibles, co-payments, or other cost-sharing under your Medicare Health Plan. Therefore, you may want to drop your Medigap policy if you join a Medicare Advantage Plan. However, you have a legal right to keep the Medigap policy.
- If you are on Medicaid, you may not need a Medigap policy.

Compare the costs and benefits of several policies. Be suspicious of an insurance agent who pressures you to buy one immediately. Ask for a copy of the policy and for time to consider before you buy it. Insurance policies are usually complicated; when you do not understand a policy, or parts of a policy that you are considering signing, have someone you trust, such as a friend or your attorney, read it for you. You should also check with other policyholders to see how the company treats them in general. Do not rely on oral representations.

Appeal Rights

If you are enrolled in the original Medicare plan, you may file an appeal if you think Medicare should have paid for, or did not pay enough for, an item or service you received. If you file an appeal, ask your doctor or provider for any information related to the bill that might help your case. Your appeal rights are on the back of the "Explanation of Medicare Benefits" or "Medicare Summary Notice" that is mailed to you from the company that handles bills for Medicare. The notice will also tell you why your bill was not paid and what appeal steps you can take.

If you are in a Medicare managed care or private fee-for-service plan you may file an appeal if your plan will not pay for, does not allow, or stops a service that you think should be covered or provided. If you think your health could be seriously harmed by waiting, then request a fast decision. The plan must answer you within 72 hours, and must include, in writing, how you may

appeal. After you file your appeal, the plan will review its decision. Then, if your plan does not decide in your favor, your appeal can be reviewed by an independent organization that works for Medicare, rather than the plan. See your plan's membership materials or contact your plan for details about your Medicare appeal rights.

Medicare Information

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. The materials discussed above came from the Centers for Medicare and Medicaid Services. If Medicare becomes too confusing, or if you need more information, call 1-800 MEDICARE (1-800-633-4227).

Medicaid

Medicaid is a program designed to help people with limited income and resources pay for certain health care services. This program is administered by the State and is financed jointly by state and federal funds and as such, Medicaid rules and regulations vary 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 difference between the two programs is that Medicaid is based on financial and other eligibility standards. Hawai`i's version of Medicaid is run by the State of Hawai`i Department of Human Services (DHS) Med-QUEST Division under federal and state guidelines. Medical assistance is provided to eligible residents through several programs:

- The original Medicaid Fee-for-Service (FFS) program is for individuals who are 65 years and older, blind, or disabled. The acronym, "ABD," is used to describe the eligibility requirements for the aged, blind or disabled.
- The Hawai`i QUEST program is for individuals and family members who are not ABD.
- The QUEST-Net program provides a limited coverage "safety net" for FFS or QUEST recipients who become ineligible for assistance due to excess assets or for recipients who voluntarily choose a more limited coverage package.
- A new QUEST Expanded Access program is being planned to replace the State's Medicaid Fee-For-Service system for Aged, Blind and Disabled (ABD). Under the new program (QExA), ABD clients will receive service coordination, outreach, improved access and enhanced quality of healthcare services by becoming members of health plans through a managed care delivery system. Two health plans will be offered under QExA: Evercare and Ohana Health Plan. Both plans provide all healthcare services covered by Medicaid.

- The name, "Expanded Access" describes the additional benefits the program offers, such as:
    - A service coordinator to coordinate services and assure that the client is accessing services,
    - A primary care physician (PCP) to coordinate all care in conjunction with the service coordinator,
    - An annual health assessment to determine what services are required and what medical needs are so that they can be met,
    - Disease management programs (hypertension, heart disease, diabetes, renal disease, to name a few).

- Enrollment begins October 1, 2008 and goes through December 1, 2008. QExA goes into effect Feb 1, 2009.

The Med-QUEST Division's Eligibility Branch processes and screens the applications for completeness and schedules eligibility interviews for the applicant or the appointed representative. The eligibility worker will process the application and make an eligibility determination, usually within 45 days or within 60 days if the certification of disability status is involved. If a determination is not made within the proper time frame because of the department's delay, "presumptive medical assistance" may be provided until a determination is made.

An individual who wishes to qualify for basic Medicaid cannot be receiving more than a certain amount per month in income and cannot have more than a certain limited amount in assets based on federal poverty level guidelines. In 2008, to qualify for the original Medicaid FFS program in Hawai`i, a single person could not receive more that $11,960 in yearly income nor have more than $2,000 in assets. These levels will change every year and will vary depending on the number of people in the household. Certain income and/or assets of other individuals may be "deemed" to the Medicaid applicant. Coverage for long-term care for married people is an exception to the basic rules and will be discussed later.

Assets such as 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 (new rules apply), 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 he or she meets other eligibility criteria. Assets owned in certain types of trusts may also be considered "exempt." In recent years, several noteworthy rules have changed relating to how Medicaid views the home property.

As indicated in the Medicare section of this handbook, if the person's income is insufficient to meet the entire cost of medical care, a person may become eligible for supplementary medical assistance. These persons 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) programs or Qualifying Individuals (QI) Programs. Through the DHS Med-QUEST Division, QI, QMB, and SLMB can help pay for your Medicare Part A and Part B Insurance deductibles and premiums. These programs pay the balance of qualified hospital and doctor's bills not paid by Medicare.

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. If you need help with your medical bills you should apply for benefits at the state DHS. Note that Medicaid beneficiaries who are enrolled in Medicare usually do not need to purchase Medigap insurance.

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 applicant that he or she has the right to file a request for a "fair hearing" within 90 days from the date of the notice. Once the applicant 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 he or she may further appeal the decision.

Paying For Long-Term Care

It is very important to note that Medicare does not provide for an unlimited number of days in a hospital. Any Medicare coverage continues only for acute stages of illness or injury and does not cover an extended stay in a nursing home. Medicare does not pay for "custodial care" and, on average, across the nation, pays for only a very small percentage of services provided in "skilled nursing facilities," which are commonly referred to as nursing homes.

The three most common means of financing long-term care are by direct payment by patients or their families, by long-term care insurance, or by the Medicaid program. Coverage under

Medicaid requires that individuals have certain limited incomes and assets, as discussed in the previous section. For long-term care purposes a crucial recent change to note concerning the ownership of a home is that a home owned in a trust is no longer considered an exempt asset. Individuals and their advisors need to take this into consideration when planning for the future.

Other more complicated changes involve the Deficit Reduction Act of 2005 (DRA). The DRA provides for a denial of benefits for an individual who has more than $500,000 equity in a home. However, states have the authority to increase the limit to an amount not greater than $750,000 and Hawai`i is expected to adopt this figure. The new provision does provide exceptions to the general rule requiring denial of assistance. The denial shall not apply to an individual whose spouse, or child who is under 21, blind or disabled, and is lawfully residing in the home. It permits individuals to use a reverse annuity mortgage or home equity to reduce their total equity. It also requires that a process be established to waive the application of the denial of eligibility in cases of demonstrated hardship. This includes situations where individuals cannot take action to reduce the equity in the property, for example, when the individual is mentally incapacitated and does not have a guardian or agent under a power of attorney to take such action. As of the date of printing, the State of Hawai`i will adopt rules to comply with the requirements of the DRA, effective February 2009.

Although most individuals do not qualify for Medicaid, it would be very wise to look into this program to determine eligibility and alternatives. As usual, pre-planning is most important. There are dramatic exceptions for married people.

Spousal Impoverishment Provisions (Medicaid)

The figure for the average cost of skilled nursing care in Hawai`i has been set in 2008 at $7,314 per month. For many married couples, the cost of providing long-term care for just one spouse can cause both spouses to be impoverished. Congress has created special rules to prevent this "spousal impoverishment" through the Medicare Catastrophic Coverage Act (MCCA).

The MCCA protects 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 "institutional spouse" the spouse who lives at home is referred to as the "community spouse." The MCCA protects the community spouse from impoverishment by allowing that spouse to retain a much larger sum of resources and income than under general Medicaid rules.

Review the new policy in the previous section regarding the home as an exempt asset (or "excluded resource"). Recall that having a home in a trust may disqualify a person for Medicaid long-term care coverage. Having more than $750,000 in equity in the home may, likewise, disqualify the person under the new state guidlines.

Under 2008 standards, if the couple's "non-excluded resources" exceed $104,400, then only the excess of $104,400 will be attributed to the institutionalized spouse in determining eligibility. In other words, the institutional spouse may retain $2,000 of his/her own assets and the community spouse will be able to keep up to $104,400 in assets in addition to such "excluded assets" as the family residence, an automobile, and household and personal effects. This Community Spouse Resource Allowance (CSRA) dramatically different from basic Medicaid eligibility standards of $2,000 per person or $3,000 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 institutional spouse may retain.

In 2008, the institutional spouse is allowed to keep $30 of his or her own income each month. (This personal needs allowance may increase to $50 a month in 2009.) The rest of the institutional spouse's income is allocated between the community spouse and the nursing facility expenses.

The community spouse's income is not considered to be available to the institutional spouse. Rather, the institutional spouse may be permitted to give some of his or her income to the community spouse. In 2008, the community spouse can retain up to $2,610 of the institutional spouse's monthly income as a minimum monthly maintenance needs allowance (MMMNA). The level of the MMMNA "spousal allowance" varies each year to take into consideration the cost of living factors (this yearly increase takes place on January 1). Thus, if the community spouse has income of less than $2,610 per month he or she can request an amount of money from the institutionalized spouse that would bring his or her income up to $2,610. The rest of the institutional spouse's income will be applied to his or her long-term care expenses.

The "income first rule" applies when determining whether to allocate additional resources to the community spouse to bring that spouse's income up to the minimum monthly maintenance needs allowance under the Medicaid spousal impoverishment provisions. The DRA requires states to first assume that all income that could be allocated from the institutionalized spouse to the community spouse has been allocated to that spouse before allocating any additional resources.

As mentioned above, the DRA went into effect in February of 2006 and the State of Hawai`i DHS Med-QUEST Division's instructions on how these changes will be implemented should be in effect in February 2009. For an update of changes to Medicaid Long-Term Care Spousal Impoverishment provisions, you may wish to look at the Med-QUEST website www.med-quest.us or contact the Center for Medicare and Medicaid Services at 1-877- 267-2323 (toll-free) or visit their website at www.cms.hhs.gov or ask a qualified counselor such as an elder law attorney or the Executive Office on Aging's Sage Plus Office at (808) 586-7299 or 1-888-875-9229.

Transfer of Assets Penalties

The transfer of any assets, other than the home (under certain circumstances), for less than fair market value (i.e., a "gift"), for the purpose of qualifying for benefits can result in a period of disqualification. If such a transfer occurs, Medicaid eligibility will be denied the applicant for as many months as would have been required to spend the uncompensated value of the transferred asset on nursing home care, based on the average cost of nursing home care in the community. In other words, the Medicaid department will calculate a penalty period by dividing the total value of all gifts during the look-back period by $7,314. The resulting number will be the number of months a person will not receive medical assistance for long-term care through the Medicaid program.

As mentioned several times, Medicaid rules are subject to change and the most dramatic change recently passed by Congress involved transfer of asset penalties. Until 2006, there was a 36-month "look-back period" upon application for Medicaid long-term care coverage and a 60-month look-back period for assets transferred into an "irrevocable trust." If there had been a transfer during the look-back period, a period of disqualification as described above may have occurred commencing on the date of transfer of assets. However, for transfers after February 2006 the look-back period is now 60 months for all transfers (outright transfers as well as transfers to and from certain trusts).

The new law further provides that the beginning date for the period of ineligibility is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility. In other words, the penalty period does not automatically start at the time of transfer of assets but would normally be at the time a person applies for and otherwise qualifies for assistance. If the transferred asset is a home, however, such a transfer will not be penalized if the transfer is to the individual's spouse, blind or disabled child, or a child under 21 years of age, a sibling with equity interest who resided in the individual's home for one year before institutionalization, or the individual's son or daughter who lived in the individual's home

for two years prior to the individual's institutionalization and had provided care for the individual which allowed the individual to reside at home rather than being institutionalized.

Individuals affected by these provisions 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. Procedures provide a timely process for determining whether an undue hardship waiver will be granted, and a process under which an adverse determination can be appealed. There are also procedures for determining whether transfers were made for reasons other than to qualify for medical assistance.

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" the bulk of their assets before they can qualify for coverage under Medicaid. In the past, the purchase of certain annuities had become a method of trying to maximize the spousal impoverishment provisions. Following the enactment of the Deficit Reduction Act of 2005, however, long-term care planning involving annuities must be re-considered. For purposes of being eligible for long-term care services under Medicaid, the applicant or his or her spouse must disclose any interest in an annuity (or similar financial instrument that may be specified by the Secretary of Health and Human Services). Further, 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) such as purchases of life estates. An individual would be best served by asking the previously mentioned Med-QUEST or CMS offices or a qualified counselor such as an elder law attorney or the Sage Plus Office 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.

Currently, a lien will not be placed on the home of an individual in a nursing facility if there is a stated intention to return to the property. 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 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 medical institution and returned home or the following individuals are lawfully residing in the home:

- ♦ The recipient's surviving spouse,
- ♦ The recipient's child under the age of 21,
- ♦ 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,

- ♦ 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,
- ♦ 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 the 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 in at home rather than 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"

As you can see, 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 new 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 do not rely on the information contained in this handbook without checking with a knowledgeable professional or agency. Be especially careful if you are considering transferring your 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 you consult an elder law or estate-planning attorney before making transfers of any assets for less than fair market value. Otherwise, at least check with Sage Plus or the Med-QUEST Division of the Department of Human Services about transfer penalty provisions when trying to qualify for Medicaid.

Long-Term Care Insurance

With the high cost of nursing homes and other long-term care, more and more individuals are trying to figure out whether they need nursing home or other long-term care insurance or whether they can manage without it. Most people want to be able to control their own finances and long-term care setting.

Several decades ago, insurance companies began offering nursing home insurance. Soon they began to offer optional "riders" to cover the cost of in-home health care and were limited to one-half of the policy's nursing home benefit. What this usually meant was that the insurance policy rider provided some in-home assistance for the activities of daily living but would not pay for full-time care at home. Long-term care insurance coverage may be improving as some of the newer long-term care insurance policies cover at least a portion of the cost of care homes, assisted living facilities, adult daycare centers, and nursing home alternatives. The cost of premiums, however, is still the major factor in most individuals' decisions.

Besides being able to control, at least to some extent, ones' own future, there may be other reasons to consider long-term care insurance. For over a decade, premiums for long-term care insurance have been tax deductible, at least theoretically. This tax deduction, however usually works only for those who itemize their deductions and who meet the Internal Revenue Code requirements for taking medical expenses as a tax deduction.

Problems exist. Abuses in the nursing home insurance industry reportedly continue despite governmental oversight. These abuses include post-claim cancellations, arbitrary benefit denials, delays in payment, agent misrepresentation, and overselling. When deciding whether or not to purchase long-term care insurance, there are various items you should consider. First of all, 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 you if you run into difficulty. Next, find out whether the policy has a guaranteed renewable provision, which means that as long as you continue to pay your premiums on time, the company cannot refuse to continue your policy. Find out whether the policy requires prior hospitalization before you can receive benefits in a nursing home since many people are not hospitalized before entering a nursing home. Find out about restrictions for coverage for pre-existing conditions which may disqualify you. Find out the number of years of coverage offered.

Costs and coverage are key considerations. Premium costs usually increase with each year of coverage provided. 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, 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. Find out if there is an “inflation protection” option to protect your 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 you may not be covered for any other conditions. Look at several policies to compare not only their premiums but also their benefits and restrictions. The State of Hawai`i Department of Commerce and Consumer Affairs can provide you with valuable information in this area.

Veterans Benefits

Persons who have served their country in the military may be entitled to certain benefits. Veterans should apply to the United States Department of Veterans Affairs (VA). If you are a veteran or are caring for a veteran, write, visit, or call the nearest VA regional office. The address and toll-free telephone numbers are in the white pages of the telephone directory under U.S. Government. The State of Hawai`i also has an Office of Veterans Affairs, which can help you get 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 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 veterans disabled by age or disease who are not in need of acute hospitalization and who do not need the skilled nursing services provided in nursing homes.

Signing for Others

It is not unusual for a person who needs care, especially long-term care, to be suffering from diminished capacity or to need some assistance. Under those circumstances, health care providers will often seek signatures from other persons indicating approval of the treatment or admission to

a facility. If you are signing treatment or admission papers for someone else as an agent, guardian, surrogate, or spouse or child, make sure that you do not unintentionally accept personal financial responsibility for the treatment or admission. Except for spouses, there is normally no requirement for one person to be responsible for the health care bills of another person. However some health care providers will ask a person to "voluntarily" accept personal financial responsibility for the patient even though Federal and State law may prohibit requiring acceptance of personal financial responsibility as a condition of treatment or admission to a facility. Read any papers you are asked to sign. If you see something unusual, do not sign and tell the provider that you need to ask for independent advice first. Usually, a good person to ask is an elder law attorney.

CHAPTER 4

BASIC ESTATE PLANNING

Estate Planning

Estate planning can be considered a continuation of the lifetime planning discussed in Chapter 1. Estate Planning is the development of a plan to manage your assets while you are alive and to pass your assets upon your death to those of your choosing. Effective estate planning can make the transfer as easy as possible, avoid unnecessary costs and taxes, and can provide the desired security for your beneficiaries. In the broadest sense, it can also include other areas of importance in planning for death as well as disability. For example, under Hawaii law pet owners can even make provisions for their animals through the use of pet trusts.

Estate planning includes the process of determining what you own, thinking about what you want to do with your property, discovering the tools which enable that transfer to take place, and implementing a plan to accomplish your goals and objectives. Good estate planning is important for controlling and preserving assets for yourself and for your beneficiaries.

Although a “simple will” may seem to be one of the easiest ways to provide for your survivors, it may not be the best option if you have even a moderate estate. Trusts and other techniques of estate planning can reduce taxes, avoid probate, and manage your property during periods of disability and upon your death. So discuss various options with an attorney before making a simple will and be careful about “form wills.” The easiest way may not be the safest. For example, if you choose to use joint ownership as an estate planning tool you may avoid probate but you may not always avoid taxes or have the flexibility of other devices. As with other areas covered in this handbook laws change, and these changes can significantly affect your estate plan.

Federal and State Laws

Federal law has the most impact on the tax liability of your estate upon death while the state probate code has the most impact on who gets your estate upon death. Over the past few years, significant changes to the federal tax law, the Hawai`i Probate Code, and Medicaid laws have had a big impact on estate planning.

Taxes

One of the greatest changes in the field of estate planning over the past decade has been the phase out of the estate tax. Only estates that are larger than all of the applicable exemptions and exclusions need to pay estate taxes. The estate tax is being phased out in two primary ways: 1) the exclusion amount is scheduled to increase and 2) the applicable tax rate is scheduled to decrease. As of the date of the publication of this handbook, the estate tax exclusion is $2 million and the exclusion will increase to $3.5 million in the year 2009.

The estate and gift tax rate has been dropping for the past several years: 50% in 2002, 46% in 2006, and 45% in 2007 through 2009. In 2010, the federal estate tax will be completely eliminated—but only if you die that year. Unless Congress acts before 2011, the estate tax will revert back to what it was prior to the enactment of the Estate Tax Repeal. After 2011, the exclusion amount would then return to $1 million and the rate will increase to 55%, The law may or may not be changed, especially in view of our country's current fiscal problems.

Be sure to consult with an attorney who is familiar with estate planning and tax laws. Although the federal gift tax may be reduced or eliminated, these are other considerations. For example, the basis of the inherited property may change and there may be tax consequences upon the sale of the inherited property.

Wills

A will is a legal document that expresses your wishes for the distribution of your property (or estate) upon death and how you want certain other matters to be resolved when you die. The contents of your will can be changed as many times as you 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. You should know that a will does not take effect until you die and it only applies to property you own at the time of your 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. "Intellectual property" includes patents and copyrights. All of these types of property can be included in your estate.

The requirements for making a will are fairly simple. First, you must be at least 18 years old and of "sound mind." Being of sound of mind means you have the general knowledge of the property you own, the existence of your natural heirs (your spouse, children, parents, and other relatives), the nature and effect of making a will, and the ability to form a plan in your own mind for the distribution of your property. Second, you must intend for the document to be your will and have the intention to sign it. This also means that you are not under any "undue influence" of others to

make the will. Although it is difficult to define, undue influence basically means your actions are not voluntary and or that somebody is taking improper advantage of you through any influence they may have on you. Third, you must satisfy the legal requirements (formalities) of 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 you or by someone who signs your name for you in your presence and at your request. When a person makes a will, he or she is called a "testator." Your will does not necessarily have to be typed or word-processed and there is no specified format that must be followed. Traditionally, you and at least two persons who witnessed your signature must also sign your will. This requirement has changed in several states, including Hawai`i, and will be discussed in the next section. The best practice may still be to have your will witnessed. While it may be a valid will if the witnesses are persons who stand to inherit, it would be wiser to have disinterested witnesses. Your attorney can provide witnesses for you and they do not have to read the will itself.

To make it easier upon death to prove that you were of sound mind when you executed the will and that that you were not under any undue influence, you should execute a "self-proving clause" which is signed by you and your witnesses and is executed before a notary.

Finally, you do not need to be a citizen to make a will or to inherit. You should know, however, that certain provisions of the tax law affect non-citizens who inherit from a citizen. For proper estate planning, non-citizens may need to consult an attorney who understands the tax laws in this country as well as the succession laws and the inheritance laws of other countries.

Holographic Wills

For over ten years, "holographic" wills have been valid in Hawai`i. 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 your signature.

In sum, holographic wills are valid, witnessed or not, if the signature and material portions of the document are in the handwriting of the person making the will. This is becoming a popular way to have a do-it-yourself will or to make a will in an emergency.

Personal Representative

Upon your death, assets you owned personally (not in trust or owned jointly with rights of survivorship by anyone else) will need to be administered and distributed according to your estate plan in your will or in accordance with intestate succession laws, which will be discussed later in this handbook. The person who will administer these assets and who will take care of other matters relating to your estate is called your personal representative. The term "executor" was commonly used in the past and is still sometimes used.

If you do not nominate a personal representative in your will or if the person you nominate is unwilling or unable to act, the person who wants to administer the estate can ask the court to appoint him or her as a personal representative. The court-appointed personal representative may not be someone you would want to administer your estate and, unless you provide otherwise, he or she may have to post a bond and may have to report frequently to the court. You can avoid such complications by making your intentions known in your will. Also, this is why it is important to consider appointing an alternate personal representative. 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, prior to the person's appointment, a person named personal representative (or executor) in a will may carry out written instructions of the decedent relating to the decedent's body, funeral and burial arrangements.

Testate and Intestate

If you die with a valid will you are considered to have died "testate." If you die owning property in your own name and without a valid will you are considered to have died "intestate."

If you die intestate, your property will be distributed to your surviving relatives in accordance with the "intestate succession" laws of Hawai`i. If you have no surviving relatives, your estate will "escheat" to the State. This is also accomplished through the probate process.

Having a will does not avoid probate. On the contrary, if you choose to use a will to distribute your estate, you will still need to go through the probate process, which will be discussed later. Although it may not be the best plan if you have even a moderate estate, a will, etc, is still the most common tool people use to plan their estates.

In your will you can:

- ♦ Appoint or nominate a personal representative (executor) for your estate,
- ♦ Nominate a guardian for a minor or a mentally incapacitated person,
- ♦ Establish a "testamentary trust" to manage your assets for a beneficiary after your death,

- Make provisions for the donation of your body and organs,
- Detail instructions concerning funeral and burial/cremation,
- Make provisions for waiver of bond which otherwise might be required of your personal representative,
- Detail provisions for adopted and illegitimate children,
- Disinherit people, and
- Make a designation of apportionment of estate taxes, if you have a very large estate.

You can also provide instructions for collecting and distributing your assets in your will. Your personal representative has a fiduciary responsibility to settle and distribute the estate in accordance with your wishes. Such administration may be court-supervised. It establishes a death value for property in your estate. A probated will provides a short statute of limitations within which claims against your 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. A will can be revoked or changed relatively easily. You can even make your own "do-it-yourself" holographic will in an emergency.

Will Substitutes

Will substitutes are techniques of transferring property without will formalities and the disadvantages of probate. Some examples include trusts, jointly held property, and "payable on death" assets such as life insurance policies and annuities with named beneficiaries.

Since there are advantages and disadvantages, involved, it is usually wise to have a will in addition to any will substitute, just in case. Seek professional advice before you attempt to "avoid probate." Many people have made serious mistakes by trying to avoid probate without looking at the overall picture. For many, probate may not be that bad of an option, especially if a person desires court supervision of his or her estate. For most estates, probate is a much easier process now than previously. Here are some of the more common will substitutes.

Trusts

In the past, trusts were mainly used to avoid the time and the cost of probate. The current law provides a more expedited process for most estates and did away with statutory fees which averaged about five percent of the net probatable estate. Now there are no statutory probate fees and lawyers are permitted to charge "reasonable fees." This usually means that lawyer's fees are negotiable. There are distinct advantages in making a trust. A trust is simply an arrangement you (the settlor) make to give your property to a trustee, who holds it for you or your beneficiaries. You can be your own trustee or you can appoint another person or a financial institution to act as

your trustee. Trusts can be created in two ways. You can set up a "living trust" which takes effect during your life or you can create a "testamentary trust" in your will, which does not take effect until your death. However, note that testamentary trusts (since they are created in wills) do not avoid probate.

In a trust, you give your trustee instructions, that may include instructions on property management, income and principal distribution, distributon of property when you or other beneficiaries die, and the amount of the trustee's fee, if any. As previously mentioned, pet owners can even make provisions for their animals through the use of pet trusts.

Usually your instructions are written in a trust agreement. In most cases you, as the settlor, can continue to control your assets if you retain the right to freely amend your trust agreement. There is no requirement to involve a trust company in the management or distribution of your trust assets. If your trust commences during your life and is revocable, you can be your own trustee, manage your own trust, change your trust at any time, make decisions concerning your trust, and appoint a successor trustee to carry on after you die or become incompetent. This type of trust is commonly called a "revocable living trust." In addition to your living trust, you should have a will to take care of all other assets that may not have been placed or transferred into the trust.

Property included in a living trust usually does not go through probate. Avoidance of the cost, time, and publicity of probate makes living trusts very appealing. Further, trusts can insure that property can be managed if a person should become incompetent or incapable of handling his or her own affairs. If you create a living trust, make sure that you or your attorney places or transfers your property into the trust. If you fail to "fund" your trust, by making the trust the owner of your property, the trust cannot control that property. Also be aware that revocable living trusts usually cannot bypass eligibility guidelines for public benefits programs such as Medicaid. Also, new Medicaid laws relating to coverage for long-term care disqualify individuals if their home is in a trust.

Before deciding whether or not to use a trust for your estate planning purposes, you should speak to an attorney skilled in this area of law. You should probably avoid "living trust kits" and non-attorney services, especially if you are not well-versed in this increasingly complex area.

Gifts

Many people want to give their property away to others while they are still alive. Not only can you share the enjoyment of a gift with the recipient while you are still alive but you can use gifts as part of your estate plan to help avoid taxes by decreasing the size of your estate when you die. Caution is advised since most people may not have to worry about estate taxes at all as discussed in the section on taxes. You can make a gift of $12,000 (as of 2008) to as many different people

as you like (whether your family or not) without having to pay any gift tax. Further, the recipient of the gift does not have to pay income tax on the gift. Your spouse can also join with you to use his or her $12,000 gift tax exclusion for gifts you are making to others, increasing the value of your joint non-reportable gift to $24,000. One spouse can give to the other spouse an unlimited amount totally tax free (unless he or she is not a citizen). There are other exclusions that you may qualify for when making gifts. Check with your attorney or tax advisor if you are planning to give away gifts exceeding the annual exclusion to any one individual within the year.

Some people use gifts as a means of avoiding probate, reducing estate taxes, or Medicaid planning. Occasionally these plans backfire. You should use great caution when you give away real property such as your home. Once you have given your property away, you may not be able to get it back. There have been too many cases where people, who have given their property to others, including children, later decided they wanted it back or wanted to give it to someone else. It was usually too late by then. Before you give something away make sure you will not need it in the future. In addition, a gift recipient may have to pay higher taxes if he or she later sells the gifted property. Such "capital gains" taxes can be especially burdensome when highly appreciated property such as a home is involved. Tax-wise, it may be more beneficial to retain property until death so that beneficiaries can take advantage of a "stepped-up basis" on the property. This provision may change in 2011 if the present tax law expires. As you can see, these matters can be complicated and you should consult with an attorney before you make any significant gifts.

Property, Probate and Other Topics

There are different ways of owning property. When you are the sole owner, you own the property as a "tenant in severalty." Upon your death, this property must be probated to pass to your heirs. You can own the property as a "tenant in common," through which you own a particular percentage of the property. Upon your death, your share will go through probate. You can also own property as a "joint tenant with rights of survivorship," through which you and one or more other persons own the entire property together. In this type of ownership arrangement, each person has equal rights to share in the use and enjoyment of the entire property during their lives. Upon the death of a joint owner, with certain restrictions, his or her right or share to the property pass automatically by operation of law to the surviving joint owner(s) without going through probate.

There are drawbacks to joint ownership. One drawback is that, except for a certain type of joint ownership for married people and reciprocal beneficiaries, called "tenancy by the entireties," creditors may be able to attach all of or a portion of the jointly held property. Further, joint owners who have equal access to the joint asset may be able to deplete it, even if they had not contributed to it in the first place. Establishing a joint tenancy can trigger a tax liability since anything held

jointly and available to the decedent may be included and taxable in his or her estate. You never know who will die first.

Tenants by the entirety is a form of joint ownership of property with rights of survivorship between spouses or reciprocal beneficiaries only. Many spouses or reciprocal beneficiaries would choose this form of tenancy because it provides protection of the property from the creditors of the spouse or reciprocal beneficiary who has incurred a financial obligation.

The term “jointly held property” can also be used to describe multiple party accounts at a financial institution. Many people use such accounts for convenience during the lives of all parties and as a way to avoid probate. Before setting up an account you should know that concepts of ownership during lifetime and transfers upon death can be quite different for such types of multiple party accounts such as joint tenancy with rights of survivorship, payable-on-death accounts (POD, also called Totten trusts) and trustee accounts have different legal and tax consequences. Check with your financial institution and attorney to make sure you understand the different types of accounts available, their benefits, and drawbacks.

There are some restrictions imposed by law concerning transfers of the account to survivors. A transfer to a survivor of a multiple party account can be set aside in the event the assets in the hands of the personal representative of the deceased party are insufficient to pay taxes, expenses of administration, and homestead and family allowances. Within a two-year period following the death of the deceased party, the personal representative, the surviving spouse, reciprocal beneficiary, or someone acting for a dependent or minor child of the deceased may apply for an accounting for the deceased party’s net contribution to the account to the extent necessary to discharge the “insufficiency.”

Probate

The very word “probate” stirs up so much emotion and so many questions that it might be a good idea to devote an entire section to this subject. It may get you thinking about how to avoid it or it might make you feel more secure just knowing what it is. As previously mentioned, property included in a living trust or in jointly owned property with rights of survivorship usually does not go through probate. It is also important to know that making a will does not avoid probate.

Probate is the court supervised collection of your assets, payment of your bills, payment of your taxes, and distribution of your property to your beneficiaries or heirs. As previously indicated, your estate may have to be probated whether or not you have a will when you die.

Your personal representative or heirs can normally settle your estate informally by filing with the Registrar of the Probate Court, disposing of your personal property, closing out accounts, and making distributions.

Disgruntled and unhappy heirs can ask for a supervised probate procedure. Under those circumstances, your personal representative will normally need a lawyer to take your case before the probate court for a hearing before any distribution. The lawyer's fee is not based on a fee schedule as in the past but on "reasonable fees" to be negotiated between your personal representative and the lawyer.

Probate is normally needed whenever a deceased person owned any interest in property in his or her individual name. Again, if the deceased person had a will, the probate proceeding is called "testate" and, if the deceased person did not have a will, then the probate proceeding is called "intestate." (The state will not take your property if you die without a will or will substitute unless there are no living heirs or beneficiaries. Your property would be distributed to your heirs in accordance with state law even though this may differ from your wishes.)

You should know that there are several disadvantages to probate. Probate takes time, incurs court fees, attorney fees, and personal representative fees. It also permits the public to have access to the particulars of the deceased person's estate. However, probate is still the primary means of transferring assets belonging to a deceased person to his or her beneficiaries. For those who desire to have the court supervise the collection and distribution of their estate and who are not concerned with the disadvantages previously discussed, probate remains a useful option.

You should remember that property owned by you alone is not automatically passed on to your spouse or children or other beneficiaries at your death. Upon your death, the law requires that certain formalities be followed before there can be a legal transfer of ownership.

Small Estates

If, at the time you die you own an interest in real property and the total value of your estate is no more than $100,000 and a personal representative of the estate has not been appointed in the state, the clerk of the court of the judicial circuit in which you were residing or domiciled at the time of your death or where you left property may, upon the verified petition of the clerk or of any interested person, obtain an order authorizing the clerk to administer the estate. As the personal representative, the clerk collects and receives the property and administers the property. The order may be made without notice or hearing at the discretion of the court. The clerk of the court is authorized to collect a fee of three percent of the total value of the estate. If you have a small estate that does not include an interest in real property, your succesors may collect your property through an affidavit described as follows.

Collection by Affidavit

If, at the time you die, you have no real property interests and the value of your estate is no more than $100,000, not including the value of any motor vehicles registered in your name, then your "successors" (such as your spouse or reciprocal beneficiary, 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 your name is not included in determining the value of your assets. Although collection by affidavit is a relatively uncomplicated procedure, an attorney's help may sometimes be required.

Formal Testacy and Supervised Administration

A formal testacy proceeding is used to resolve disputes including whether a decedent left a valid will or whether an estate may be probated or whether a personal representative should be appointed informally.

Supervised administration is available for a probate estate of any size. It is normally used upon a finding by the court that it is necessary to protect persons interested in the estate or is necessary because of the particular circumstances of the situation.

Ancillary Probate

If, when you die, you have property in more than one state (or territory), such property may have to be probated individually in each of those states. Each state has its own procedures concerning property owned by an out-of-state individual.

Department of Hawaiian Home Lands Successorship

Unlike state laws of probate and inheritance, the Department of Hawaiian Home Lands (DHHL) has its own set of rules provided by law for the granting of leases and leasehold succession for beneficiaries of the Hawaiian Homes Commission Act of 1920.

Before registering for Hawaiian Home Lands leases, you must meet two requirements: you must be at least 18 years old and be a native Hawaiian with not less than 50 percent Hawaiian ancestry. The Office of Hawaiian Affairs' (OHA) beneficiaries include individuals of Hawaiian ancestry regardless of blood quantum. OHA defines those with any quantum of Hawaiian blood as "Hawaiian."

If you are a native Hawaiian and have a Hawaiian Homelands homestead lease, remember that a will is not sufficient to pass the leasehold to your heirs. You must complete a "Designation of Beneficiary Form" provided by the DHHL to name your designee. The form and information about tracing your genealogy and determining blood quantum is available at their website at http://www.hawaii.gov/dhhl/ or at the following address:

Department of Hawaiian Home Lands
Applications Branch
P.O. Box 1879
Honolulu, HI 96805
Telephone number: (808) 620-9220

The following information was obtained from the DHHL's "Questions and Answers on Designating Successors."

Section 209 of the Hawaiian Homes Commission Act specifies that only certain relatives may be designated as successors. You may designate only from the following relatives:

1. Your spouse, children, grandchildren, brother or sister provided the person or persons designated have at least 25 percent Hawaiian blood;
2. Father and mother, the widows or widowers of your children, widows or widowers of your brothers and sisters, or your nieces and nephews, provided that person or persons designated have at least 50 percent Hawaiian blood.

The law was changed effective October 27, 1986 by lowering the Hawaiian blood requirement to 25 percent in the case of spouse and children, effective June 27, 1997 in the case of grandchildren, and effective April 20, 2005 in the case of brothers or sisters. It is very important that lessees, whose family members now meet the lower Hawaiian blood requirement and therefore now qualify, file a new designation if they wish to designate such family members as successors.

Note that only children related to you by blood or legally adopted by you can qualify as successors. Children adopted by lessees cannot use their adopted parents' ancestry to meet the Hawaiian blood requirements but must use their natural parents' ancestry. (DHHC has an arrangement with the Family Court to obtain ethnic data about adopted persons without disclosing information from sealed records.)

There is no present requirement as to when this should be done. DHHL recommends that a designation be made at the time the homestead lease documents are executed. If it was not done at the time, it should be done as soon the lessee can decide on a successor. You may change your designation at any time, and as many times as you wish. The law requires that your designation be in writing, filed with the department, and approved by the Hawaiian Homes Commission. The original of the designation is kept by the department. Blank forms are available at all offices at the department.

Occupancy Requirements

According to DHHL residential lease requirements, "the lessee must occupy the residential homestead lot for the duration of the lease." This may pose a problem when a *kupuna* or the individual who is the lessee needs to enter into a long-term care facility or to move. It is possible for the lease to be cancelled if a lessee no longer lives there even though other family members may still live there. Since successorship to the lease occurs only upon death of the lessee, the lessee might be forced to voluntarily surrender the lease or sell it.

One alternative is to transfer a portion of the interest to a qualified person who will need to live there until their *kupuna* or the lessee can return home. For example, a portion of the interest may be transferred to a qualified spouse or child who may live at the residence until the return of their *kupuna*.

Remember, it is best to be prepared. As a lessee, discuss the possibility of your incapacitation. You might refer back to the considerations about durable power of attorney and health care directives which are discussed in other parts of this handbook. You can appoint an agent or a guardian to act on your behalf in dealing with the DHHL. A word of caution, make sure you trust your agent as the power of attorney is a powerful document and actions done on your behalf, generally, cannot be undone.

You can view a copy of DHHL's *Lessees Handbook and Questions and Answers for Designating Successorship* at the following website: http://hawaii.gov/dhhl/lessees

CHAPTER 5

CAREGIVING ISSUES: HIRING A CAREGIVER, COPING WITH DEATH, FINDING A LAWYER

HIRING A CAREGIVER

Finding good caregivers takes work. Often people are disappointed. Many people have a hard time finding a qualified and trustworthy caregiver at an affordable price. You should know that there are increasing reports of caregiver abuse, neglect, theft and financial exploitation. While troubles can be found with any caregiver, professional home caregiver agencies normally have the resources to provide insured, trained, and pre-checked caregivers. Further, such agencies can usually provide short-notice and continuous care with back-up caregivers as necessary. One major drawback of course, is the cost. 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. Even so-called "non-profit" agencies still need to make money to continue in existence.

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.

Even among home health care providers there are differences. For example, Medicare-Certified home health agencies are licensed by the State of Hawai`i and provide part-time, intermittent skilled nursing services with at least one other therapeutic service (occupational, physical, and speech therapy), or medical social services which can be reimbursed by Medicare. 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 (www.hahc.org), which is listed in the resource section of this handbook.

Utilizing a Professional Service Agency

If you do utilize 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 records,
- ♦ References for employees are available.

Although the cost of hiring a private caregiver may be significantly lower than utilizing a professional 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.

Benefits and Burdens of Being an Employer

Hiring your own caregiver may also result in benefits. You become the employer and thus you can demand greater loyalty and can provide greater direction to an employee that you select yourself. While there are advantages to being an employer, you also take on the responsibility for hiring, paying and supervising the caregiver. The responsibilities include those typically associated with running a business which hires people.

- ♦ First, you have to find your own qualified caregiver. This may mean advertising in a newspaper or bulletin board, interviewing candidates, checking on references, checking on driver's licenses and medical records, and even performing abuse/criminal record background checks. You will need to get permission/privacy waiver documents for some of these.

- ♦ Second, you have to enter into an employment agreement. This usually includes a written contract which contains such matters as the job description, scheduling work, back-up help, time off, wages, meals, use of automobile and other equipment, work rules dealing with such issues as alcohol use, smoking, personal phone use, and termination policy, including prior

notification, if any. If you do not have a written agreement, you may be setting yourself up for trouble.

- Third, you have to supervise and manage your caregiver. This usually includes providing necessary introductions, training, orientation, demonstration of preferred techniques, and testing emergency responses. It also includes providing appropriate discipline, including dismissal, reporting to protective services agencies, and even bringing criminal charges.

- Fourth, you have to comply with federal, state, and local laws, regulations, and ordinances. These include legal eligibility, immigration assurance, wage and hour compliance, employment/labor practices, tax and insurance matters. It also includes obtaining tax identification numbers, withholding federal and state taxes, and paying Social Security/Medicare (FICA) and unemployment taxes. It further includes obtaining workers compensation and liability insurance. You will be required to fulfill federal and state record-keeping requirements on each employee to insure compliance with all of these matters.

Even if you hire a caregiver for a short period of time, you will be required to comply with federal and state "nanny taxes" which are technically called "Employment Taxes for Household Employees," if wages to any caregiver exceed $1,600 in 2008.

Checklist

At the end of this overview is a "Checklist for Employers" which will give you a head start in the process of engaging caregivers. The Internal Revenue Service (IRS), Social Security Administration as well as the State Departments of Taxation and Labor can provide you with valuable information, instructions, and required forms for employers. The Immigration and Naturalization Service (INS) can provide information about work registration requirements and legal documentation. A great one source to get you started is the Department of Commerce and Consumer Affairs' Consumer Resource Center.

Caution

You may be tempted to engage a so-called "independent contractor" to try to get the best of both worlds by avoiding the extra cost of a professional caregiver agency while also avoiding the effort of employing a caregiver. You should be aware that employment and tax laws are written in such a manner to presume that a person is an employee and not an independent contractor if the person engaging him or her can control what is done, when it is done and how it is done. If you have the right to control the method and result of the service you are probably an employer. It does not matter whether the person is full or part time.

In Hawai`i, every individual or organization, which becomes "an employing unit" must file a status report (Form UC–1, "Report to Determine Liability") with the Unemployment Security Division of the State Department of Labor within twenty days after hiring an employee. You may call the Business Action Center of the Department of Commerce and Consumer Affairs which will supply you with forms for registering your business. Also, the IRS has a very helpful guide (Publication 926–Household Employer's Tax Guide), which you should read before hiring a caregiver. There are agencies that can help you fill out forms and file necessary taxes for a fee. Of course, your attorney can answer your questions and assist you in this matter.

Insurance

Whether you engage a professional caregiver agency, hire an employee or perhaps engage an independent contractor, make certain that you check with your insurance agent to ensure that your homeowners, automobile and other liability policies cover the caregiver in your home. If you are going to permit or request the caregiver to drive your automobile, check to make sure that he or she has a valid driver's license and whether that person has been convicted of serious traffic offenses. Always check with your automobile insurer to see if your policy covers the caregiver. Further look into having the caregiver bonded for your protection.

Caregiver Contract

Agreements and arrangements made with a caregiver should be documented in a contract. A contract will set the terms and conditions, including services to be provided, fees and dispute resolution. Contracts can avoid misunderstandings as well as provide documentation of the respective rights and responsibilities of all the parties involved. Consult with an attorney if you have questions about any contract.

Criminal History Record Check

It is always a good idea to consider requesting a criminal history record check on prospective employees, especially if they are not well known to you. The Hawai`i Criminal Justice Data Center (part of the Department of the Attorney General–see resource section) is responsible for the statewide criminal history record information system.

Basically, a criminal history record check is a search of a person's criminal history by name or fingerprints. It is also known as a "police abstract" or "rap sheet." Arrest records which have resulted in convictions (found guilty) are considered public record. Arrest records which have resulted in non-convictions or are still pending, are considered confidential and not available to the general public.

Checklist for Employers

A. 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

B. 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/undue influence questions)
___Termination policy

C. 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

D. Taxes, Laws, Regulations, Insurance

___U.S. 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, and other communications:
___Copies of tax, FICA, insurance documents and filed forms
___Home owners, automobile, and liability insurance policies
___Employee bond

Coping with Death and Dying

Survivors go through different emotional stages when confronted with death and dying. Denial, anger, bargaining, depression, and acceptance are mentioned as stages that a person experiences as a way of dealing with the fear and anxiety associated with dying. Counselors say that a person usually goes through each of these emotional stages in some degree or another before a resolution is made and a person is able to return to a somewhat normal life.

Hospice Care

You may have to make the difficult decision where you or a loved one should die—at home, in a hospital, or in a hospice. Caring for a person, making sure they have comfort care, and dealing with the signs and symptoms of death and dying, may be too much for a person or family to handle on their own. More people are choosing hospice care, which can be either home-based or residential-based. Hospice philosophy is based on a belief that death is a part of life and concentrates on relief from pain and support for the individual's emotional and spiritual needs. Hospice often permits an individual to meet his or her life's end in a more peaceful manner than might otherwise be possible.

Most hospice care is covered completely by insurance, Medicare, or Medicaid, but room, board, and medications are not covered. Hospice workers and volunteers are trained to help the dying person, relatives, and friends to prepare for the death process as well as the actual death moment. Hospice workers and volunteers can help with the sad but appropriate way to say "good-bye" and to achieve closure and make the final release possible. The death of the hospice patient is not considered an "emergency" and the body does not have to be moved until the family and friends are ready. The hospice program can also provide immediate emotional support for the survivors.

Kokua Mau is an organization that provides information and resources about end-of-life care. They can be contacted at (808) 585-9977 or to view their website go to:
http://www.kokuamau.org/index.htm

Steps to Take Upon Death

No matter where the death occurs, the survivors will have to make the following decisions:

- Whom to notify,
- What to do with the body,
- What type of ceremony, if any, to have,
- What services and merchandise to purchase.

When Death Occurs at Home

If the patient is not enrolled in a hospice program and if you have not made previous arrangements with the attending physician, call 911. The operator will ask if it is an emergency. Explain that a death has occurred and the circumstances. A medical examiner, paramedic, or coroner may be sent to the address to verify that a death has occurred. Make arrangements with a funeral home or mortuary to remove and store the body until it can be buried or cremated. The morgue will normally not store the body unless there is evidence of a violent or suspicious death, the body is unclaimed or the body has a contagious disease.

The police may need to be notified if the death was unattended or unexpected. If the death was expected and a physician was attending the individual, the physician can inform the survivors what to do. Typically, prearrangements will have been made and the survivors call the prearranged contact at the funeral home or mortuary to take the body. If you are a survivor who will be taking charge of making decisions, you may want to notify relatives, close friends and business associates and arrange for funeral or memorial services. If the deceased or his or her spouse is a veteran contact the Department of Veterans Affairs to see if he or she qualifies for benefits.

When the Death Occurs in a Hospice or Medical Facility

If the death occurred in a hospice or medical facility, the hospice and medical personnel and volunteers can help guide the survivors. If death occurs in another type of health care facility, appropriate procedures, including governmental agency notification, will already be in place.

Problems Associated with Disposition of the Body

Hawai`i law is not very clear when it comes to the authority of relatives or other interested parties claiming and disposing of bodies. When a nursing home, hospital, hospice, doctor, or police notifies the survivor that a death has occurred, the survivors are usually instructed to contact a mortuary or funeral home to make arrangements for the disposition of the body. Problems have occurred when two different parties have different opinions about who should be in charge of disposing the body or what should be done with the body. Hospitals will generally release the body to the "next of kin" or a family member such as the spouse, reciprocal beneficiary or other closely related family member.

Mortuaries and funeral homes will generally follow the directions of the next of kin unless there is evidence of the decedent specifying another party. Sometimes, when there is no legal "next of kin," mortuaries and funeral homes will not honor the wishes of unrelated parties. They are also reluctant to act if there is a dispute as to who can claim the body and make arrangements for its disposition. Conflicts do occur.

To avoid conflicts in an emotionally charged time, it would be best to put into writing who you want to make decisions regarding the disposal of your body. This can be done in a will and expanded upon in a letter to the personal representative. Prior to the person's appointment, a person named as personal representative (or executor) in a will may carry out written instructions of the decedent relating to the decedent's body, funeral and burial arrangements. Directions contained in a power of attorney can be followed when the instructions pertains to anatomical gifts as explained in Chapter 2.

Funeral and Memorial Plans

Funeral or memorial plans can be very simple or they can be very elaborate. Of course, preplanning, which includes a pre-chosen funeral home or mortuary and pre-paid services, would be helpful in most situations. Many people are choosing to belong to a memorial society which is a non-profit organization dedicated to achieve dignity, simplicity, and economy through preplanning. If you are a veteran, ask the Department of Veteran Affairs for advice concerning advance funeral and memorial arrangements. If you are receiving public assistance, you should also know that the state may pay for certain expenses relating to the disposition of your body. Your plan, accordingly, may be as simple as letting your survivors know to call the Department of Human Services for assistance upon your death. Talk to your social worker about this, if you have one.

Funeral and Memorial Services

There have been highly publicized problems about the funeral industry on the mainland and in Hawai`i. When you consider that funeral related decisions are usually made in just a few hours, you can see why people are sometimes exploited. Good business practices should be followed by you as a consumer in getting the contract for services in writing, knowing what you are paying for, knowing which services are not necessary, and seeing that all these services are performed as agreed. Beware of such practices as substitution of one casket for another, or charging for services not needed, such as thank you cards, if you are providing your own, or a flower car if there are no flowers, pallbearers who were not requested, or charging for clothing for the deceased that you are providing. Plans are often made according to the prescribed religious funeral or memorial rites of the deceased and the funeral director, your minister, priest, rabbi, or spiritual advisor can help with the plans.

Funeral plans can include burial, entombment or cremation. Embalming is a method of preserving the appearance of the body for open viewing. Embalming is not always required and is usually unnecessary if the body is to be cremated. Scattering of ashes can be accomplished informally or can involve elaborate ceremonies. While, generally speaking, there is little regulation of scattering

of ashes in Hawai`i, health ordinances may be different in some jurisdictions. The funeral home or mortuary may be able to provide you with information about scattering of ashes. They may discourage such a practice, even if it is legal, if they have their own plan that they may wish to sell to dispose of the ashes.

Memorial services differ from funeral services. Traditionally, funeral services are those which are held in the presence of the body and may include a viewing. Memorial services are held without the body and are usually less costly. Often, memorial services are held when friends and family cannot immediately meet after a death. Other things to consider for a funeral or memorial are the music, the eulogy, the gathering place, food, readings, obituaries, and pallbearers or attendants.

Making Your Own Preparations

In addition to taking into consideration the issues set forth above, there are some additional considerations you may wish to address, especially if you are planning to buy a funeral plot for your own use:

- Who owns the cemetery and are there any restrictions on who can be buried in them?
- Is the cemetery well maintained and is maintenance included in the price of a plot?
- How many individuals may use a single plot and if multiple uses are permitted, do they have to be related?
- Can you change your mind and get a refund or even re-sell the plot?

Prepayment Plans

While preparing for the future need for funeral services and products, be very cautious about paying in advance (prepayment plans) especially if you do not know the company you are dealing with. While most well-established funeral industry entities are trustworthy, there have been many reports of businesses which have mismanaged or stolen funds. Also when mortuaries or funeral homes go out of business, the moneys you prepaid may be completely lost. You may also find that your moneys are non-refundable if you move to another location and do not need the services of that particular plan or if for some other reason you want your money back.

Burial at Punchbowl or Other Military/Veterans Cemeteries

If you are a veteran or a spouse or dependent of a veteran who has served in the uniformed services, you may be entitled to have your remains interred in the Punchbowl or other military cemeteries in Hawai`i or on the mainland. Space is limited at the Punchbowl, especially for burials. Gravesites in Department of Veterans Affairs (VA) national cemeteries cannot be reserved in advance; however, reservations made prior to 1962 will be honored. There is a Hawaii State

Veterans Cemetery located on Oahu as well as veterans cemeteries on Kaua`i, Maui, Lana`i, Moloka`i and the Island of Hawai`i. These are "VA grant funded cemeteries" which are operated by the state with support provided by the federal government. Families are encouraged to prepare in advance by discussing cemetery options, collecting the veteran's military information including discharge papers, and by contacting the cemetery where burial is desired. Call the VA or the state Veteran's Office for information.

Using and Closing Out Bank Accounts

Of immediate financial concern to many who have a joint account or a joint safe deposit box is whether the survivor will have access to the account. Usually the bank will not freeze your assets if it is in a joint account. Since each financial institution's policies differ, check with them ahead of time. Not only can joint accounts be used prior to and after a death but they can also be easier to "close out" than one that is not jointly held with rights of survivorship. Also recall that joint accounts can be useful tools in estate planning to give survivors immediate access to funds upon death. To close out an account that was in the deceased's name only, you will need a death certificate and, depending on the amount in the account, an affidavit or letters from the court naming you as the personal representative of his or her estate.

Finding a Lawyer

Throughout this handbook, we have suggested that you may need to utilize the services of a lawyer. Finding a lawyer can be a very time consuming and stressful experience, and especially for caregivers who are already stressed. Whether or not you or the person you are caring for is "old," you may wish to consider a lawyer who practices "elder law."

Elder Law

Elder law is the relatively new and evolving field of law that addresses issues facing older persons. Rather than being defined by technical legal distinctions, elder law is defined by the client to be served. In a sense, most attorneys could think of themselves as elder law attorneys, especially when they are preparing estate planning documents, or consulting a client on a pension plan or retirement timing or Social Security benefits. Elder law is different from traditional estate planning in that more emphasis is placed on planning for the contingencies of an extended lifetime. This includes planning for the time when finances, health, mental capacity and support structures may change, either rapidly or progressively. The National Academy of Elder Law Attorneys http://naela.org can provide useful information about finding and working with an elder law attorney.

How to Locate a Lawyer

If you do not have a family lawyer, you may find that a colleague, relative or a friend may have one or know of one who has done a good job for him or her. Word of mouth is often a good way to find a lawyer. Also a person may call lawyer referral services which are usually run by state and local bar associations such as the Hawai`i State Bar Association which does do not charge the public for the referral. Usually a person who calls a lawyer referral service will obtain the names and numbers of attorneys who subscribe to the service and who have indicated a special interest in certain areas of the law. You can also check through the "yellow pages" of the telephone book or respond to commercial advertisements.

Free Legal Services

The Legal Aid Society of Hawai`i and Volunteer Legal Services Hawai`i provide statewide free legal services for eligible clients in certain civil cases. The Public Defender provides free legal services for eligible clients in criminal cases. There are even specialty non-profit law offices such as the University of Hawai`i Elder Law Program for individuals and caregivers on O`ahu and the Senior Law Program on Kaua`i. Finally there are other non-profit organizations, such as the Hawai`i Disability Rights Center and the Domestic Violence Action Center, which utilize attorneys to assist clients.

Attorney Fees

The first question in entering into a relationship with an attorney may very well be, "How much is this going to cost me?" Always ask if your initial conversation will cost you money. It may surprise you that many attorneys do not offer a "free initial consultation" and you will be expected to pay for your time with the attorney even if it is a preliminary meeting and you decide not to retain the attorney. Be especially cautious about "non-refundable" deposits, which can be difficult or impossible to get back if you change your mind about the attorney.

Some attorneys may charge a flat fee for certain services. Even under these circumstances, be careful since any additional tasks, changes or modifications may cost you money. Some attorneys charge on an hourly basis. Under this system, time is truly money. Other attorneys may charge on a "contingent fee basis," a mechanism through which the attorney will receive a percentage of what he or she is able to recover for the client. Of course, not all cases are suitable for payment under a contingent fee basis and the law prohibits contingent fees for certain kinds of cases, such as criminal cases. Finally, you may wish to "shop around" and get several quotes from different attorneys.

Working With Your Lawyer

When you work with your attorney, be prepared and do your homework. Read this book. Keep your appointments. Show your attorney all of the documents affecting your case, not just selected documents. Make a list of concerns. Remember to bring your written questions with you so you will not forget them and be sure to take notes so that you will remember what your attorney told you. Ask questions. Share your own point of view. Be honest with your attorney. Do not hide facts. Stick to the point when you are talking with him or her since, remember, time is money. Make sure you hear and see as well as possible. If you have a hearing aid, wear it. If you have glasses (including reading glasses) bring them and wear them.

Deciding Who Cares for Native Hawaiian Elders?

Alu Like, Inc. is a nonprofit organization for Native Hawaiians. Its *Kumu Kahi* Elderly Services Department includes two projects, *Ke Ola Pono No Nā Kūpuna (Good Health and Living for the Elderly)* that provides nutritional and supportive services for Native Hawaiian elderly 60 years and older and the Native Hawaiian Caregiver Support Program, which receives federal funding from the National Caregivers Support Program. This program helps families caring for an older Native Hawaiian relative, 60 years and older with a chronic illness or disability. It also provides a system of support and services to Native Hawaiian family caregivers and 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 Native Hawaiian Caregiver Support Program provides:

- Information to caregivers about available services,
- Assistance to caregivers in gaining access to supportive services,
- Individual counseling, support groups, and caregiver training to assist caregivers in making decisions and solving problems related to their caregiving responsibilities,
- Respite to enable caregivers to be temporarily relieved from their responsibilities, and
- Limited supplemental services to complement the care provided by the caregiver.

Cost: None

Ke Ola Pono No Nā Kūpuna provides nutrition and supportive services (recreation, education, outreach, and promotion of well-being) to independent Native Hawaiians 60 years of age or older on the islands of Hawai`i, Kaua`i, Maui, Moloka`i and O`ahu.

Daily nutritious congregate meals are available at project sites and home delivered meals are provided to qualified individuals who are unable to attend site activities. Limited transportation services is provided to and from program activity sites and other health-related sites during

regular program hours. Outreach, information, and assistance services link elders to other service agencies and organizations. This program is available to independent individuals of Native Hawaiian ancestry 60 years or older and their spouses. A birth certificate is required for proof of age and ethnicity.

Services include:

- ♦ Daily congregate meal
- ♦ Limited home delivered meal service
- ♦ Education and support services
- ♦ Information and referral services
- ♦ Recreation and social support services
- ♦ Limited transportation services
- ♦ Nutrition and health education
- ♦ Health promotion activities
- ♦ Hawaiian culture activities such as language, hula, history, arts and crafts

Cost: Voluntary donations are accepted.

The phone number to *Kumu Kahi* Elderly Services Department on Oahu is (808)535-1328

DECIDING WHO CARES?

"Prepare for the worst and expect the best" is a strategy that underlies *Deciding Who Cares?* The more you are prepared for your potential needs and the needs of persons you may be caring for, the more likely you will be able to keep yourselves safe, healthy and happy. Make the legal and financial preparations to prepare for the worst. Don't be afraid or embarrassed to accept help. Take care of yourself and the person or persons you are caring for and expect the best. To help you find the best, a list of resources follows.

RESOURCES FOR OLDER PERSONS, FAMILY MEMBERS AND CAREGIVERS

AARP

O`ahu State Office	1-866-295-7282 (toll-free)
Kona Information Center	(808) 334-1212
Kaua`i Information Office	(808) 245-4500
Lahaina Information Office	(808) 661-0159
National	1- 888 OUR-AARP, or
	1- 888 687-2277 (toll-free)
	www.aarp.org
	www.aarp.org/states/hi/
AARP National Legal Training Project	***http://aarpnltp.grovesite.com/***

Administration on Aging, US Department of Health and Human Services

Public Inquiries	1- 202 619-0724
	www.aoa.gov

Adult Protective Services (APS) and Community Care Services Branch
Department of Human Services (DHS)

O`ahu (Adult Protective Service Hotline):	(808) 832-5115
Hawai`i (Big Island) (Hilo)	(808) 933-8820
Hawai`i (Big Island) (Kona)	(808) 327-6280
Kaua`i	(808) 241-3432 or (808) 241-3337
Maui	(808) 243-5151
	(808) 243-5150 After Hours
	www.state.hi.us/dhs/

Aloha United Way 211

Statewide community information and referral service: Dial 211 (free call)

	www.auw.org/2-1-1
O`ahu	(808) 536-1951
Hawai`i Island United Way	
Hilo Office	(808) 935-6393;
	www.hawaiiunitedway.org
Kona Office	(808) 326-7400
	www.hawaiiunitedway.org

Kaua`i United Way	(808) 245-2043 ***www.kauaiunitedway.org/***
Maui United Way	(808) 244-8787 ***www.mauiunitedway.org/***
Alu Like	(808) 535-6700
Alzheimer's Association	1-800-272-3900 (24 hour contact center, toll-free) ***www.alz.org*** ***www.alzhi.org***
O`ahu Aloha Chapter	(808) 591-2771
Hawai`i (Big Island)	(808) 981-2111
Kaua`i Region:	(808) 245-3200
Maui County Region:	(808) 242-8636
American Bar Association (National)	1-312 988-5000 ***www.abanet.org***
American Hospice Foundation	1-202- 223-0204 ***www.americanhospice.org***
Centers for Medicare and Medicaid Services (CMS) (Federal)	1-877-267-2323 (toll-free) 1-866- 226-1819 (TTY toll-free) ***www.cms.hhs.gov***
Credit Reporting Companies:	
Equifax	
To Order a Credit Report:	1- 800-685-11111 (toll-free)
Fraud Alert	1-888-766-0008 (toll-free) ***www.equifax.com***
Experian	
To Order a Credit Report or Report Fraud:	1-888-397-3742 (toll-free) ***www.experian.com***
TransUnion	
Credit Report: (See website)	***www.transunion.com***
Fraud Assistance	1-800-680-7289 (toll-free)

Criminal Justice Data Center, State of Hawai`i

O`ahu	808-587-3100
	www.state.hi.us/hcjdc
	www.hawaii.gov/hcjdc/

Department of Commerce and Consumer Affairs, State of Hawai`i, Business Action Center

O`ahu	808-586-2545

On neighbor islands, call the following numbers followed by 6-2545 and the # sign:

Hawai`i (Big Island):	808-974-4000
Kaua`i:	808-274-3141
Maui:	808-984-2400
Lana`i & Moloka`i:	1- 800-468-4644 (toll-free)
	www.hawaii.gov/dcca
	www.hawaii.gov/dcca/quicklinks/bac/

Department of Commerce and Consumer Affairs, State of Hawai`i, Consumer Resource Center (Consumer Protection)

O`ahu	808-587-3222 or (808) 587-3295

On neighbor Islands, call the following numbers followed by 7-3222 and the # sign:

Hawai`i (Big Island)	808-974-4000
Kaua`i	808-274-3141
Maui:	808-984-2400
Lana`i & Moloka`i	1- 800-468-4644 (toll free)
	www.state.hi.us/dcca
	www.hawaii.gov/dcca

Department of Human Services (DHS), State of Hawai`i Financial/Food stamps and Medical Information (including Medicaid/MedQuest)

General Information:

O`ahu	808-643-1643
Hawai`i (Big Island)	
Hamakua	(808) 775-0523
North Hilo	(808) 933-0331
South Hilo	(808) 959-1208
North Kona	(808) 327-4980
South Kona	(808) 323-7573
Kamuela	(808) 885-4447
Ka`u	(808) 929-7324
Kohala	(808) 889-7141

Kaua`i	
Kaua`i Section Office	(808) 241-3660
Central Kaua`i	(808) 274-3371
East Kaua`i	(808) 822-3475
West Kaua`i	(808) 335-2110
Maui	
East Maui	(808) 984-8300
West Maui	(808) 243-5110
Lana`i	(808) 565-7102
Moloka`i	(808) 553-1715
	www.state.hi.us/dhs
	www.hawaii.gov/dhs/

DHS Med-QUEST Division

O`ahu Applications Unit:	(808) 587-3521
East Hawai`i Island (Hilo)	(808) 933-0339
West Hawai`i Island (Kona)	(808) 327-4970
Kaua`i	(808) 241-3575
Maui	(808) 243-5780
Moloka`i	(808) 553-1758
Lana`i	(808) 565-7102
	www.med-quest.us
	www.hawaii.gov/dhs/Q-Book.html

Department of Labor and Industrial Relations (DLIR), State of Hawai`i
Forms for employing a caregiver

Information Line:	
O`ahu	(808) 586-8842
Hawai`i (Big Island) (Hilo)	(808) 974-6464
Hawai`i (Big Island) (Kona)	(808) 322-4808
Kaua`i	(808) 274-3351
Maui	(808) 984-2072
	http://hawaii.gov/labor/

Eldercare Locator (U.S. Administration on Aging)

1-(800) 677-1116 (toll-free)
www.aoa.dhhs.gov
www.eldercare.gov

Elderly Affairs Division, City and County of Honolulu (Area Agency on Aging)

Information and Assistance Hotline (808) 768-7700

www.elderlyaffairs.com

Executive Office on Aging (including Long-Term-Care Ombudsman and Sage Plus)

O`ahu, General Information (808) 586-0100

From neighbor islands, dial the appropriate phone numbers, then enter "60100" when prompted.

Hawai`i (Big Island)	(808) 974-4000
Kaua`i	(808) 274-3141
Maui	(808) 984-2400
Moloka`i, Lana`i	1- (800) 468-4644 (toll free)
	http://hawaii.gov/health/eoa

Funeral Consumers Alliance of Hawai`i (formerly known as the Memorial Society of Hawai`i)

(808) 638-5580

Hawai`i County Office on Aging (Area Agency on Aging)

(808) 961-8600

www.hawaii-county.com/

Hawai`i Disability Rights Center

(Protection and Advocacy System in Hawai`i): (808) 949-2922

http://www.hawaiidisabilityrights.org

Hawaiian Home Lands

O`ahu (808) 620-9500

Hawai`i State Bar Association

O`ahu (808) 537-1868

www.hsba.org

Healthcare Directive Partners

O`ahu (808) 671-8000

1- (866) 671-8001 (toll-free)

www.myhealthdirective.com

Home Care and Hospice Division of the Healthcare Association of Hawai`i

1- (808) 521-8961

www.hahc.org

Hospice

Hospice Hawai`i Honolulu	(808) 924-9255
	www.hospicehawaii.org
Hospice of Hilo	(808) 969-1733
	www.hospiceofhilo.org/
Hospice of Kona	(808) 334-0334
North Hawai`i Hospice (Waimea, Big Island):	(808) 885-7547
	www.northhawaiihospice.org/
Kaua`i Hospice	(808) 245-7277
	www.kauaihospice.org/
Hospice Maui	(808) 244-5555
	www.hospicemaui.org/
St. Francis Hospice (O`ahu)	(808) 595-7566
	www.stfrancishawaii.org

Kaua`i County Agency on Elderly Affairs (Area Agency on Aging)

(808) 241-4470
www.kauai.gov

Kaua`i Seniors Law Program (808) 246-8868
www.senior law.com

Kokua Mau

(808) 585-9977
www.kokuamau.org

Legal Aid Society of Hawai`i

Hawai`i County Offices	
Hilo:	934-0678
Kona:	329-8331
Kaua`i Office:	245-7580
Maui County Offices	
Main Office	242-0724
Moloka`i	553-3251
Lana`i	565-6089
O`ahu Office	536-4302
	www.legalaidhawaii.org

Maui County Office on Aging (Area Agency on Aging)

(808) 270-7774
www.mauicounty.gov

Medicare	1- (800) 633-4227 (toll-free)
	www.medicare.gov
National Academy of Elder Law Attorneys (NAELA)	
	1- (520) 881-4005
	www.naela.org
National Alliance for Caregiving	***www.caregiving.org***
National Memorial Cemetery of the Pacific	(808) 532-3720
	www.cem.va.gov/nchp/nchp.htm
National Senior Citizens Law Center	***www.nsclc.org/***
Office of the Public Guardian of the Judiciary (OPG)	
	(808) 534-6100 (Oahu)
	http://www.courts.state.hi.us
Organ Donor Center of Hawai`i	
Main Phone (O`ahu)	599-7630
Toll Free	(877) 855-0603
	www.organdonorhawaii.com
Small Estates and Guardianship (Circuit Courts)	
O`ahu	539-4399
Maui	244-2969
Big Island	961-7400
Kaua`i	246-3300
	http://www.courts.state.hi.us
Social Security Administration	1-(800) 772-1213 (toll free)
	www.ssa.gov
Tax Records (Property tax)	
O`ahu (City and County of Honolulu)	(808) 527-5539
Real Property Office (Treasury Division)	(808) 523-4856)
	www.honolulupropertytax.com/
	www.co.honolulu.hi.us/

Hawai`i County
Hilo Office
(808) 961-8354 (Appraisal)
(808) 961-8201 (Clerical)
(808) 961-8282 (Collections)

Kona Office
(Appraisal) (808) 327-3542
(Clerical) (808) 327-3540
www.hawaiipropertytax.com/
www.hawaii-county.com/

Kaua`i
Real Property Assessment (808) 241-6222),
Billing & Collection (808) 241-6555
www.kauaipropertytax.com/
www.kauai.gov

Maui
Assessment and Information (808) 270-7297
Billing & Collection (808) 270-7697
www.mauipropertytax.com/
www.mauicounty.gov/

Temporary Restraining Order (TRO) for abusive family relationships
Family Adult Service Branch of the Family Court

O`ahu	(808) 538-5959
Hawai`i (Big Island)	(808) 969-7798
Hawai`i (Big Island) (Kona)	(808) 322-6090
Kaua`i	(808) 245-6362
Maui	(808) 242-5995
	http://www.courts.state.hi.us

Temporary Restraining Order (TRO) for non-familial relationships

District Court

O`ahu	(808) 538-5151
Hawai`i (Big Island)	(808) 961-74e0
Kaua`i	(808) 482-2303
Maui	(808) 244-2706
	http://www.courts.state.hi.us

Temporary Restraining Order (TRO) Help on Neighbor Islands:

Kaua`i, YWCA	(808) 245-8404;
Domestic Violence Hotline	(808) 245-6362
Sexual Assault Hotline	(808) 245-4144
Maui	
Women Helping Women	(808) 242-0775
West Maui	(808) 877-6888
East Maui	
	www.whwmaui.net/

University of Hawai`i Elder Law Program (UHELP)

O`ahu	(808) 956-6544
	www.hawaii.edu/uhelp

U.S. Department of Veterans Affairs (VA) (Federal)

VA Benefits	1- 800-827-1000 (toll-free)
	www.va.gov

Veterans Services (State Office)

O`ahu	(808) 433-0420
Hawai`i (Big Island)	(808) 933-0315
Kaua`i	(808) 241-3346
Maui	(808) 873-3145
	http://www.dod.state.hi.us/ovs/

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