SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 54
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE DRUMMOND

Introduced: 3/27/17
Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

"An Act providing an end-of-life option for terminally ill individuals; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 11.41.115 is amended by adding a new subsection to read:
  (g) In a prosecution under AS 11.41.100(a)(1) or 11.41.110(a)(1) or (2), it is a defense that the defendant was performing an action allowed under AS 13.55.

* Sec. 2. AS 11.41.120 is amended by adding a new subsection to read:
  (c) In a prosecution under this section, it is a defense that the defendant was performing an action allowed under AS 13.55.

* Sec. 3. AS 13 is amended by adding a new chapter to read:

  Chapter 55. Voluntary Ending of Life.

Sec. 13.55.010. Individuals allowed to end life. (a) As provided in this chapter, a qualified individual may use medicine obtained from the qualified individual's attending physician to end the qualified individual's life.
(b) To be a qualified individual under (a) of this section, an individual must

1. be a resident of this state;
2. be 18 years of age or older;
3. have been determined to be capable;
4. have been determined to be suffering from a terminal disease; and
5. have voluntarily expressed the wish to die.

(c) An individual does not qualify under (b) of this section solely because of

the individual's age or disability.

Sec. 13.55.020. Attending physician and pharmacist authority. If a
qualified individual's attending physician complies with this chapter, the attending
physician may

1. dispense medication directly to the qualified individual, including
ancillary medications intended to facilitate the desired effect or minimize the qualified
individual's discomfort; or
2. write a prescription for the medication for the qualified individual
and in person, by mail, or by electronic transmission deliver the prescription for the
medication to a pharmacist, who may dispense the medication to the qualified
individual, the attending physician, or an expressly identified agent of the qualified
individual.

Sec. 13.55.030. Requests for medication. (a) To receive medication under this
chapter, a qualified individual shall make an oral request to the qualified individual's
attending physician. The qualified individual shall repeat the oral request to the
qualified individual's attending physician not sooner than 15 days after making the
initial oral request.

(b) Notwithstanding (a) of this section, if a qualified individual is not
physically able to speak, a qualified individual may make an oral request by whatever
means the qualified individual can use to make the request, including electronic
means, as long as the request is made in person.

Sec. 13.55.040. Right to rescind request. When a qualified individual makes
the second oral request under AS 13.55.030, the attending physician shall offer the
qualified individual an opportunity to rescind the initial oral request. A qualified
individual may rescind a request at any time and in any manner without regard to the
qualified individual's mental state. An attending physician may not dispense or
prescribe medication under this chapter unless the attending physician offers the
qualified individual an opportunity to rescind the request.

Sec. 13.55.050. Attending physician duties and authority. (a) The attending
physician shall

(1) make the initial determination of whether an individual has a
terminal disease, is capable, and has made the request for medication voluntarily;

(2) request that the individual demonstrate that the individual is a
resident of this state;

(3) inform the individual of the

(A) individual's medical diagnosis;

(B) individual's prognosis;

(C) potential risks associated with taking the medication;

(D) probable result of taking the medication; and

(E) feasible alternatives, including comfort care, hospice care,

and pain control;

(4) refer the individual to a consulting physician for medical
confirmation of the diagnosis and for a determination that the individual is capable and
acting voluntarily;

(5) refer the individual for counseling if appropriate under
AS 13.55.070;

(6) recommend that the individual notify the individual's next of kin;

(7) counsel the individual about the importance of having another
person present when the individual takes the medication prescribed under this chapter
and of not taking the medication in a public place;

(8) inform the individual that the individual has an opportunity to
rescind the request at any time and in any manner and offer the individual an
opportunity to rescind the request at the end of the 15-day waiting period under
AS 13.55.030;

(9) immediately before dispensing or prescribing medication under this
chapter, verify that the individual is making an informed decision;

(10) fulfill the requirements of AS 13.55.110 for medical record documentation;

(11) ensure that all appropriate steps are carried out under this chapter before dispensing or prescribing medication to enable a qualified individual to end the qualified individual's life under this chapter; and

(12) if the attending physician has a current federal Drug Enforcement Administration registration number and complies with applicable regulations, dispense medication directly, including ancillary medications intended to facilitate the desired effect or minimize the qualified individual's discomfort, or, with the qualified individual's consent,

(A) contact a pharmacist and inform the pharmacist of a prescription for the medication; and

(B) deliver the written prescription in person, by mail, or by electronic transmission to the pharmacist who will dispense the medication to the qualified individual, the attending physician, or an agent of the qualified individual who is expressly identified as an agent by the qualified individual.

(b) Notwithstanding any other provision of law to the contrary, the attending physician may sign the qualified individual's death certificate.

Sec. 13.55.060. Confirmation by consulting physician. Before an individual becomes a qualified individual under this chapter, a consulting physician shall examine the individual and the individual's relevant medical records, confirm in writing the attending physician's diagnosis that the individual is suffering from a terminal disease, and verify that the individual is capable, is acting voluntarily, and has made an informed decision.

Sec. 13.55.070. Counseling referral. If the attending physician or the consulting physician determines that an individual may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the individual for counseling, and the attending physician may not dispense or prescribe medication until the person performing the counseling determines that the individual is not suffering from depression or a psychiatric or psychological disorder
causing impaired judgment.

Sec. 13.55.080. Informed decision. An attending physician may not dispense
or prescribe medication unless the qualified individual has made an informed decision.
Immediately before dispensing or prescribing medication under this chapter, the
attending physician shall verify that the qualified individual is making an informed
decision.

Sec. 13.55.090. Family notification. The attending physician may not deny a
qualified individual's request for medication if the qualified individual declines or is
unable to notify the qualified individual's next of kin.

Sec. 13.55.100. Waiting periods. An attending physician may not dispense
medication or write a prescription for medication for a qualified individual unless at
least 15 days have elapsed between the qualified individual's initial oral request and
the writing of the prescription.

Sec. 13.55.110. Medical record documentation requirements. Before a
qualified individual receives medication under this chapter, the medical record of the
qualified individual must contain

(1) a record of all oral requests by a qualified individual for medication
under this chapter;

(2) the attending physician's diagnosis, prognosis, and determination
that the individual is capable, is acting voluntarily, and has made an informed
decision;

(3) the consulting physician's diagnosis, prognosis, and verification
that the individual is capable, is acting voluntarily, and has made an informed
decision;

(4) if counseling is performed, a report of the determinations made
during counseling and the outcome;

(5) a record of the attending physician's offer to the qualified
individual to rescind the qualified individual's request at the time of the qualified
individual's second oral request under AS 13.55.030;

(6) a note by the attending physician indicating that all requirements
under this chapter have been met and indicating the steps taken to carry out the
request, including a statement describing the medication prescribed.

Sec. 13.55.120. Effect on construction of wills and contracts. A provision in
a will or a contract, whether written or oral, is not valid to the extent that the provision
requires, prohibits, imposes a condition on, or otherwise addresses whether an
individual may make or rescind a request for medication under this chapter.

Sec. 13.55.130. Immunity; effect of action on status of individuals. (a) A
person is not subject to civil or criminal liability or professional disciplinary action,
including disciplinary action by a licensing authority, for participating or otherwise
acting in good faith compliance with this chapter, including being present when a
qualified individual takes the prescribed medication to end the qualified individual's
life under this chapter.

(b) A professional organization or association or health care provider may not
subject a person to censure, discipline, suspension, loss of license, loss of privileges,
loss of membership, or other penalty for participating in or refusing to participate in
good faith compliance with this chapter.

(c) A request by an individual for, or provision by an attending physician of,
medication in good faith compliance with this chapter does not provide the sole basis
for the appointment of a guardian or conservator of the individual.

Sec. 13.55.140. No duty to participate. A health care provider is not under a
duty, whether by contract, statute, or other legal requirement, to dispense medication,
prescribe medication, or otherwise participate in the provision of medication to a
qualified individual under this chapter. If a health care provider is unable or unwilling
to carry out a qualified individual's request under AS 13.55.030 and the qualified
individual transfers the qualified individual's care to another health care provider, the
transferring health care provider shall provide to the other health care provider, at the
qualified individual's request, a copy of the qualified individual's relevant medical
records.

Sec. 13.55.150. Prohibitions. Notwithstanding another provision of law to the
contrary, a health care provider may not prohibit another health care provider,
including an employee, contractor, or lessee of the prohibiting health care provider,
from participating in this chapter. However, a health care provider may prohibit
another health care provider, including an employee, contractor, or lessee of the prohibiting health care provider, from allowing a patient of the prohibited health care provider to administer medication on the premises of the prohibiting health care provider if the medication was obtained under this chapter.

Sec. 13.55.160. Prohibition notice. To prohibit another health care provider from allowing a patient to administer medication on the premises of the prohibiting health care provider, the prohibiting health care provider shall notify the prohibited health care provider in writing about the prohibition.

Sec. 13.55.170. Sanctions. (a) Notwithstanding AS 13.55.130 and 13.55.140, if a health care provider violates a prohibition allowed under AS 13.55.150 after receiving a written notice under AS 13.55.160, the prohibiting health care provider may impose the following sanctions on the prohibited health care provider:

(1) loss of privileges, loss of membership, or other sanction provided under the bylaws, policies, or procedures of the prohibiting health care provider if the prohibited health care provider is a member of the prohibiting health care provider's medical staff;

(2) termination of a lease or another contract between the prohibiting health care provider and the prohibited health care provider, or an imposition of nonmonetary remedies provided by the lease or other contract; in this paragraph, "remedies" does not include the loss or restriction of medical staff privileges or exclusion from a medical care provider panel.

(b) A prohibiting health care provider who imposes sanctions under (a) of this section shall follow all procedures that are provided under an applicable contract, the applicable terms of employment, or law for imposing the sanctions.

(c) Suspension or termination of staff membership or privileges under (a) of this section is not reportable under AS 08.64.336.

Sec. 13.55.180. Criminal penalties. (a) A person commits the crime of abuse of life-ending process if the person, with the intent to cause the individual's death or knowing that the death of the individual is substantially certain to result,

(1) without the authorization of the individual, falsely makes, completes, or alters a request for medication or conceals or destroys a rescission of the
individual's request; or

(2) exerts undue influence on an individual to request medication for
the purpose of ending the individual's life or to destroy a rescission of the individual's
request; in this paragraph, "undue influence" means the control of an individual by a
person who stands in a position of trust or confidence to exploit wrongfully the trust,
dependency, or fear of the individual to gain control over the decision making of the
individual.

(b) Abuse of life-ending process is a class A felony and may be punished as
provided in AS 12.55.

(c) This chapter does not prevent the imposition of criminal penalties that
apply under another law for conduct that is inconsistent with this chapter.

Sec. 13.55.190. Civil penalties. This chapter does not limit liability for civil
damages resulting from a person's negligent conduct or intentional misconduct.

Sec. 13.55.200. Claims for costs incurred. A governmental entity that incurs
expenses that result from a qualified individual's ending the qualified individual's life
under this chapter in a public place may file a claim against the estate of the individual
to recover the costs and attorney fees related to enforcing the claim.

Sec. 13.55.210. Duties of department. (a) The department shall annually
review a sample of records maintained under this chapter.

(b) After dispensing medication under this chapter, a health care provider shall
file with the department a copy of the record of dispensing the medication.

(c) The department shall adopt regulations under AS 44.62 (Administrative
Procedure Act) to facilitate the collection of information about compliance with this
chapter. The information collected is not a public record under AS 40.25.110, and the
department may not make the information available for inspection by the public.

(d) The department shall generate and make available to the public an annual
statistical report of the information collected under (c) of this section. The statistical
report may not disclose information that is confidential under (c) of this section, but
shall present the information in a manner that prevents the identification of particular
persons.

(e) In this section, "department" means the Department of Health and Social
Sec. 13.55.220. Attending physician qualifications. (a) To qualify as an attending physician under this chapter, a physician must

(1) have primary responsibility for the patient's health care;

(2) have primary responsibility for the treatment of the patient's terminal illness; and

(3) routinely provide medical care to patients with advanced and terminal illnesses in the normal course of the physician's practice.

(b) Notwithstanding (a)(3) of this section, an attending physician's practice may not be primarily or solely made up of individuals requesting medication under this chapter.

Sec. 13.55.230. Construction of chapter. (a) This chapter may not be construed to authorize or require a health care provider to provide health care contrary to generally accepted health care standards applicable to the health care provider.

(b) This chapter may not be construed to authorize a physician or another person to end an individual's life by lethal injection, mercy killing, or active euthanasia. An action allowed by this chapter is an affirmative defense to a criminal charge of homicide, murder, manslaughter, criminally negligent homicide, suicide, assisted suicide, mercy killing, or euthanasia under the law of this state.

Sec. 13.55.240. Insurance or annuity policies; contracts. Notwithstanding AS 21.45.250 or another provision of law to the contrary, a person may not condition the sale, procurement, issuance, rate, delivery, issuance for delivery, or other aspect of a life insurance policy, health insurance policy, accident insurance policy, or annuity policy, or another contract on the making or rescission of a request by a qualified individual for medication under this chapter.

Sec. 13.55.250. Coordination with other law. A request for medication under this chapter is not an advance health care directive under AS 13.52, and AS 13.52 does not apply to an activity allowed by this chapter.

Sec. 13.55.900. Definitions. In this chapter, unless the context indicates otherwise,

(1) "attending physician" means a physician who qualifies under
AS 13.55.220 as an attending physician;

(2) "capable" means that an individual has the ability to make and communicate health care decisions to health care providers; in this paragraph, "communicate" includes communication through a person familiar with the individual's manner of communicating if the person is available;

(3) "consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis about the individual's disease;

(4) "counseling" means consultation as necessary between a psychiatrist or psychologist and an individual to determine whether the individual is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment;

(5) "health care provider" means a person or health care facility licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care or dispense medication in the ordinary course of business or practice of a profession; in this paragraph, "health care facility" means a private, municipal, or state hospital; independent diagnostic testing facility; primary care outpatient facility; skilled nursing facility; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or Alaska Veterans' Home administered by the department under AS 47.55; state correctional facility as defined in AS 33.30.901; private, municipal, or state facility employing one or more public health nurses; and long-term care facility;

(6) "informed decision" means a decision that is based on an appreciation of the relevant facts and that is made after the attending physician fully informs an individual of the

(A) individual's medical diagnosis;

(B) individual's prognosis;

(C) potential risks associated with taking the medication to be prescribed;

(D) probable result of taking the medication to be prescribed;
(E) feasible alternatives, including comfort care, hospice care, and pain control;

(7) "medication" means medication to end a qualified individual's life under this chapter;

(8) "physician" means a doctor of medicine or osteopathy who is licensed under AS 08.64 to practice medicine or osteopathy;

(9) "prescription" means a prescription for medication to end a qualified individual's life under this chapter;

(10) "prohibited health care provider" means a health care provider that is prohibited by another health care provider under AS 13.55.150;

(11) "prohibiting health care provider" means a health care provider that prohibits another health care provider under AS 13.55.150;

(12) "qualified individual" means an individual who is qualified under AS 13.55.010(b);

(13) "request" means a request under AS 13.55.030;

(14) "terminal disease" means an incurable and irreversible disease that has been medically confirmed and that will, within reasonable medical judgment, produce death within six months; in this paragraph, "medically confirmed" means that a consulting physician who has examined the individual's relevant medical records has confirmed the medical opinion of the attending physician.

* Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 13.55, enacted by sec. 3 of this Act, applies to a contract, will, or life, health, or accident insurance or annuity policy if the contract, will, or policy is delivered or issued for delivery on or after the effective date of sec. 3 of this Act.

* Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Health and Social Services may adopt regulations authorized by AS 13.55, enacted by sec. 3 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before January 1, 2019.
*Sec. 6.* Section 5 of this Act takes effect immediately under AS 01.10.070(c).

*Sec. 7.* Except as provided in sec. 6 of this Act, this Act takes effect January 1, 2019.