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Bannister
4/16/15

CS FOR HOUSE BILL NO. 99()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES DRUMMOND, Josephson, Gruenberg

A BILL

FOR AN ACT ENTITLED

**"An Act relating to the voluntary termination of life by 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 an affirmative 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 an affirmative 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 Termination of Life.

Sec. 13.55.010. Individuals allowed to terminate life. (a) A qualified individual may terminate the qualified individual's life under this chapter. To be

1 qualified, an individual shall

2 (1) be a resident of this state;

3 (2) be 21 years of age or older;

4 (3) have been determined by the individual's attending physician, the
5 individual's consulting physician, the individual's psychiatrist, or the individual's
6 psychologist to be capable;

7 (4) have been determined by the individual's attending physician and
8 consulting physician to be suffering from a terminal disease; and

9 (5) have voluntarily expressed the wish to die.

10 (b) An individual does not qualify under (a) of this section solely because of
11 the individual's age or disability.

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

15 (1) dispense medication directly to the qualified individual, including
16 ancillary medications intended to facilitate the desired effect or minimize the qualified
17 individual's discomfort; or

18 (2) write a prescription for the medication for the qualified individual
19 and personally or by mail deliver the prescription for the medication to a pharmacist,
20 who may dispense the medication to the qualified individual, the attending physician,
21 or an expressly identified agent of the qualified individual.

22 **Sec. 13.55.030. Requests for medication.** (a) To receive medication under this
23 chapter, a qualified individual shall make an oral request and a written request to the
24 qualified individual's attending physician. The qualified individual shall repeat the oral
25 request to the qualified individual's attending physician more than 15 days after
26 making the initial oral request.

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

31 (c) Notwithstanding (a) of this section, if a qualified individual is not

1 physically able to sign a written request, the qualified individual may direct another
2 individual to sign for the qualified individual.

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

10 **Sec. 13.55.050. Written request requirements.** (a) A written request for
11 medication under this chapter must be in substantially the form described in
12 AS 13.55.060, signed and dated by the qualified individual, and witnessed by at least
13 two other individuals. The attending physician may not witness the request. The
14 witnesses shall, in the presence of the qualified individual, attest that, to the best of
15 their knowledge and belief, the qualified individual is capable, acting voluntarily, and
16 not under undue influence to sign the request.

17 (b) Only one witness may be

18 (1) a relative of the qualified individual by blood, marriage, or
19 adoption;

20 (2) an individual who, at the time the qualified individual signs the
21 request, would be entitled to a portion of the estate of the qualified individual at death
22 under a will or by operation of law; or

23 (3) an owner, operator, or employee of a health care facility where the
24 qualified individual is receiving medical treatment or is a resident.

25 (c) If the qualified individual is an inpatient in a long-term care facility when
26 the qualified individual signs the request, one of the witnesses shall be an individual
27 designated by the facility who has the qualifications established by the department by
28 regulation. In this subsection, "long-term care facility" includes an assisted living
29 home as defined in AS 47.32.900 and a nursing facility as defined in AS 47.32.900.

30 **Sec. 13.55.060. Form for written request.** A request for a medication under
31 this chapter must be in substantially the following form:

REQUEST FOR MEDICATION TO END MY LIFE

I, _____, am 21 years of age or older and of sound mind.

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

I have been fully informed of my diagnosis, prognosis, the nature of the medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care, and pain control.

I request that my attending physician prescribe medication that will end my life in a humane and dignified manner.

INITIAL ONE OF THE FOLLOWING:

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

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

_____ I have no family to inform of my decision.

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

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

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

Signed: _____

Dated: _____

DECLARATION OF WITNESSES

We declare that the person signing this request

(1) is personally known to us or has provided proof of identity;

(2) in our presence signed or directed another person to sign this request;

(3) is not an individual for whom either of us is the attending physician; and

(4) to the best of our knowledge and belief,

(A) has the ability to make and communicate health care decisions to health care providers; and

(B) is acting voluntarily and not under undue influence.

_____ Witness 1 Date: _____

_____ Witness 2 Date: _____

NOTE: One witness may not be a relative (by blood, marriage, or adoption) of the individual signing this request, may not be entitled to a portion of the individual's estate on death, and may not own, operate, or be employed at a health care facility where the person is an individual or resident. If the individual is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility.

Sec. 13.55.070. 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 13.55.090;

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

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

(8) inform the qualified individual that the qualified individual has an opportunity to rescind the request at any time and in any manner and offer the qualified 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 qualified individual is making an informed decision;

(10) fulfill the requirements of AS 13.55.130 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 written consent,

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

(B) deliver the written prescription personally or by mail 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.

1 **Sec. 13.55.080. Confirmation by consulting physician.** Before an individual
2 becomes a qualified individual under this chapter, a consulting physician shall
3 examine the individual and the individual's relevant medical records, confirm in
4 writing the attending physician's diagnosis that the individual is suffering from a
5 terminal disease, and verify that the individual is capable, is acting voluntarily, and
6 has made an informed decision.

7 **Sec. 13.55.090. Counseling referral.** If the attending physician or the
8 consulting physician determines that an individual may be suffering from a psychiatric
9 or psychological disorder or depression causing impaired judgment, either physician
10 shall refer the individual for counseling, and the attending physician may not dispense
11 or prescribe medication until the person performing the counseling determines that the
12 individual is not suffering from depression or a psychiatric or psychological disorder
13 causing impaired judgment.

14 **Sec. 13.55.100. Informed decision.** An attending physician may not dispense
15 or prescribe medication unless the qualified individual has made an informed decision.
16 Immediately before dispensing or prescribing medication under this chapter, the
17 attending physician shall verify that the qualified individual is making an informed
18 decision.

19 **Sec. 13.55.110. Family notification.** The attending physician may not deny a
20 qualified individual's request for medication if the qualified individual declines or is
21 unable to notify the qualified individual's next of kin.

22 **Sec. 13.55.120. Waiting periods.** An attending physician may not dispense
23 medication or write a prescription for medication for a qualified individual unless
24 more than 15 days have elapsed between the qualified individual's initial oral request
25 and the writing of the prescription and more than 48 hours have elapsed between the
26 qualified individual's written request and the writing of the prescription.

27 **Sec. 13.55.130. Medical record documentation requirements.** Before a
28 qualified individual receives medication under this chapter, the medical record of the
29 qualified individual must contain

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

(2) all written requests by a qualified individual for medication under this chapter;

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

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

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

(6) 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;

(7) 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. 13.55.140. 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. 13.55.150. Immunity. (a) A person is not subject to civil or criminal liability or professional disciplinary action, including disciplinary action by a licensing authority, for participating 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.

1 **Sec. 13.55.160. No duty to participate.** A health care provider is not under a
2 duty, whether by contract, statute, or other legal requirement, to dispense medication,
3 prescribe medication, or otherwise participate in the provision of medication to a
4 qualified individual under this chapter. If a health care provider is unable or unwilling
5 to carry out a qualified individual's request under AS 13.55.030 and the qualified
6 individual transfers the qualified individual's care to another health care provider, the
7 transferring health care provider shall provide to the other health care provider, at the
8 qualified individual's request, a copy of the qualified individual's relevant medical
9 records.

10 **Sec. 13.55.170. Prohibition against participation; sanctions.** (a)
11 Notwithstanding another provision of law to the contrary, a health care provider may
12 prohibit another health care provider from participating in this chapter on the premises
13 of the prohibiting health care provider if the prohibiting health care provider notifies
14 the other health care provider of the prohibiting health care provider's policy regarding
15 not participating in this chapter. This subsection does not prevent a health care
16 provider from providing health care services to an individual if the health care services
17 do not constitute participating in this chapter.

18 (b) Notwithstanding AS 13.55.150 and 13.55.160, a health care provider may
19 sanction another health care provider as follows if the sanctioning health care provider
20 notifies the sanctioned health care provider before participating under this chapter that
21 the sanctioning health care provider prohibits participating in this chapter:

22 (1) loss of privileges, loss of membership, or other sanction provided
23 under the bylaws, policies, or procedures of the sanctioning health care provider if the
24 sanctioned health care provider is a member of the sanctioning health care provider's
25 medical staff and is participating in this chapter while on the health care facility
26 premises of the sanctioning health care provider; in this paragraph, "health care
27 facility premises" does not include the private medical office of the sanctioned health
28 care provider even if located on the health care facility premises of the sanctioning
29 health care provider;

30 (2) termination of lease or other contract or imposition of nonmonetary
31 remedies provided by the lease or other contract if the sanctioned health care provider

1 is participating in this chapter while on the premises of the sanctioning health care
2 provider or on property that is owned by or under the direct control of the sanctioning
3 health care provider; in this paragraph, "remedies" does not include the loss or
4 restriction of medical staff privileges or exclusion from a provider panel; or

5 (3) termination of a contract or imposing other nonmonetary remedies
6 provided by a contract if the sanctioned health care provider is participating in this
7 chapter while acting in the course and scope of the sanctioned health care provider's
8 capacity as an employee, except as a member of the sanctioning health care provider's
9 medical staff, or independent contractor of the sanctioning health care provider; this
10 paragraph does not prevent

11 (A) a health care provider from participating in this chapter
12 while acting outside the course and scope of the health care provider's capacity
13 as an employee or independent contractor; or

14 (B) an individual from contracting with the individual's
15 attending physician or consulting physician to act outside the course and scope
16 of the physician's capacity as an employee or independent contractor of the
17 sanctioning health care provider.

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

21 (d) Suspension or termination of staff membership or privileges under (b) of
22 this section is not reportable under AS 08.64.336.

23 (e) In this section,

24 (1) "notifies" means delivers a written statement to the health care
25 provider specifically informing the health care provider before the health care
26 provider's participation in this chapter of the sanctioning health care provider's policy
27 about participation in activities covered by this chapter;

28 (2) "participating in this chapter" means performing the duties of an
29 attending physician under AS 13.55.070, the function of a consulting physician under
30 AS 13.55.080, or the counseling function under AS 13.55.090; in this paragraph,
31 "performing the duties" does not include

1 (A) making an initial determination that an individual has a
2 terminal disease and informing the individual of the medical prognosis;

3 (B) providing information about this chapter to an individual at
4 the request of the individual;

5 (C) providing an individual with a referral to another physician
6 at the request of the individual; or

7 (D) contracting with the individual's attending physician or
8 consulting physician to act outside the course and scope of the health care
9 provider's capacity as an employee or independent contractor of a sanctioning
10 health care provider.

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

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

17 (2) exerts undue influence on an individual to request medication for the
18 purpose of ending the individual's life or to destroy a rescission of the individual's
19 request.

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

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

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

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

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

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

3 (c) The department shall adopt regulations under AS 44.62 (Administrative
4 Procedure Act) to facilitate the collection of information about compliance with this
5 chapter. The information collected is not a public record under AS 40.25.100, and the
6 department may not make the information available for inspection by the public.

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

12 **Sec. 13.55.220. Construction of chapter.** (a) This chapter may not be
13 construed to authorize or require a health care provider to provide health care contrary
14 to generally accepted health care standards applicable to the health care provider.

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

20 **Sec. 13.55.230. Insurance or annuity policies; contracts.** Notwithstanding
21 AS 21.45.250 or another provision to the contrary, a person may not condition the
22 sale, procurement, issuance, rate, delivery, issuance for delivery, or other aspect of a
23 life, health, or accident insurance or annuity policy or another contract on the making
24 or rescission of a request by a qualified individual for medication under this chapter.

25 **Sec. 13.55.240. Coordination with other law.** A written or oral request for
26 medication under this chapter is not an advance health care directive under AS 13.52,
27 and AS 13.52 does not apply to an activity allowed by this chapter.

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

30 (1) "attending physician" means the physician who has primary
31 responsibility for the care of the individual and treatment of the individual's terminal

1 disease;

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

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

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

13 (5) "department" means the Department of Health and Social Services;

14 (6) "health care facility" means a private, municipal, or state hospital;
15 independent diagnostic testing facility; primary care outpatient facility; skilled nursing
16 facility; kidney disease treatment center, including freestanding hemodialysis units;
17 intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or
18 Alaska Veterans' Home administered by the department under AS 47.55; private,
19 municipal, or state facility employing one or more public health nurses; and long-term
20 care facility;

21 (7) "health care provider" means a person licensed, certified, or
22 otherwise authorized or permitted by the law of this state to administer health care or
23 dispense medication in the ordinary course of business or practice of a profession; in
24 this paragraph, "person" includes a state correctional facility as defined in
25 AS 33.30.901 and a health care facility;

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

29 (A) qualified individual's medical diagnosis;

30 (B) qualified individual's prognosis;

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

1 prescribed;

2 (D) probable result of taking the medication to be prescribed;

3 and

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

5 and pain control;

6 (9) "medically confirmed" means that a consulting physician who has
7 examined the individual's relevant medical records has confirmed the medical opinion
8 of the attending physician;

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

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

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

15 (13) "qualified individual" means an individual who is qualified under
16 AS 13.55.010 to end the individual's life under this chapter;

17 (14) "request" means a request under AS 13.55.030;

18 (15) "terminal disease" means an incurable and irreversible disease that
19 has been medically confirmed and that will, within reasonable medical judgment,
20 produce death within six months;

21 (16) "undue influence" means the control of an individual by a person
22 who stands in a position of trust or confidence to exploit wrongfully the trust,
23 dependency, or fear of the individual to gain control over the decision making of the
24 individual.

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

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

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

1 TRANSITION: REGULATIONS. The Department of Health and Social Services may
2 adopt regulations authorized by AS 13.55, enacted by sec. 3 of this Act. The regulations take
3 effect under AS 44.62 (Administrative Procedure Act), but not before January 1, 2016.

4 * **Sec. 6.** Section 5 of this Act takes effect immediately under AS 01.10.070(c).

5 * **Sec. 7.** Except as provided in sec. 6 of this Act, this Act takes effect January 1, 2016.