



REPRESENTATIVE LINDSEY HOLMES

HOUSE DISTRICT 26

House Bill 71 Sponsor Statement

An Act relating to a registry for advance health care directives.

An advance health care directive is a document that allows a person to designate what health care they wish to receive and who can make medical decisions for them in the case that they are incapacitated. Alaska Statute 13.52.010 provides that anyone may fill out an advance health care directive, but it does not provide a system to store and access these important documents.

Medical emergencies can occur at any place at any time. A person may be on vacation and not have a copy of their advance health care directive with them, or family members may simply be too distraught to remember or find a copy of the directive. In cases like these, medical professionals and family members need an effective tool to locate and access information on a patient's health care wishes.

House Bill 71 would establish a voluntary registry of advance health care directives for the State of Alaska. The registry would be strictly voluntary—no person would ever be required to submit his or her advance health care directive to the registry, and directives not filed with the registry would remain every bit as valid. Other features of the registry include:

- Hospitals and similar health care facilities would have 24-hour online access to their patients' records in case of emergencies.
- A person or his or her agent, guardian or surrogate would be able to request copies of their directive.
- The Department of Health and Social Services would be able to charge modest fees to pay for administrative costs of the registry.
- All advance health care directives in the registry would be confidential.
- An individual could update or remove his or her advance health care directive from the registry at any time.

A number of other states already use an advance health care directive registry to ensure that patients' wishes are available to guide the decisions of doctors and loved ones during medical emergencies.

Please join me in helping to ensure that Alaskans' medical decisions are respected by supporting this legislation.

HOUSE BILL NO. 71

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES HOLMES, DAHLSTROM, MILLETT, AND KAWASAKI

Introduced: 1/20/09

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a registry for advance health care directives."

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

3 * Section 1. AS 13.52.080 is amended by adding a new subsection to read:

4 (d) A health care facility is not subject to civil or criminal liability for

5 (1) acting in reliance on an advance health care directive obtained from
6 the directive registry established under AS 13.52.310; or7 (2) not checking the directive registry established under AS 13.52.310
8 to determine if a patient of the health care facility has filed an advance health care
9 directive on the registry.

10 * Sec. 2. AS 13.52.223(a) is amended to read:

11 (a) When a hospital refers an individual at or near death to a procurement
12 organization, the organization may make a reasonable search of the directive
13 registry established under AS 13.52.310 and shall make a reasonable search of the
14 other records of the department and a donor registry.

15 * Sec. 3. AS 13.52.223(b) is amended to read:

(b) A procurement organization shall be allowed reasonable access to information in the records of the department, except as provided under AS 13.52.310, to ascertain whether an individual at or near death is a donor.

* Sec. 4. AS 13.52 is amended by adding a new section to read:

Sec. 13.52.310. Advance health care directive registry. (a) The department shall establish and maintain a registry for advance health care directives.

(b) An individual who has made a written directive for the individual may file the directive with the department for placement in the directive registry.

(c) Except as provided in this subsection and by (d) of this section, the directive registry is confidential, and the department may not use the information in the directive registry for another purpose. The department may release

(1) information on or a copy of a directive in the registry to the

(A) individual who made the directive;

(B) agent, guardian, or surrogate of the individual who made the directive; or

(C) health care facility where the individual who made the directive is a patient;

(2) a copy of a directive in the registry to a hospital in another state if requested by the

(A) individual who made the directive; or

(B) agent, guardian, or surrogate of the individual who made the directive.

(d) The department shall make the registry accessible for viewing on the Internet 24 hours a day to a health care facility to obtain information on or a copy of a directive for an individual who is a patient at the health care facility.

(e) The department is not required to review a directive for validity or compliance with this chapter or another law before placing the directive in the registry.

(f) The department shall remove a directive from the registry and return it to the individual who made the directive if the individual, or the individual's agent, guardian, or surrogate requests that the directive be removed.

1 (g) The department shall review the registry every five years and remove
2 directives of individuals who have been deceased for six months or more.

3 (h) Not filing a directive with the department for placement in the registry
4 does not affect the validity of the directive. Failure to notify the department that a
5 directive in the registry has been revoked does not affect the validity of the revocation.

6 (i) The department may charge a fee to file, return, or provide a copy of or
7 information on a directive filed in the registry, except that the department may not
8 charge a fee for removing a directive from the registry or for answering an inquiry by
9 a health care provider regarding whether an individual has a directive in the registry.
10 The fee may not exceed the department's administrative costs of fulfilling the request.

11 (j) To protect the security of the directives and the information in the
12 directives on the registry, the department shall establish by regulation identification
13 procedures and requirements for an individual, agent, surrogate, guardian, or health
14 care provider to access the registry.

15 (k) In this section,

16 (1) "directive" means a written advance health care directive;

17 (2) "registry" means the registry established by this section.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB071
() Publish Date: _____

Identifier (file name): HB071-DHSS-02-22-09 Dept. Affected: Health & Social Services
Title Advance Health Care Directives Registry RDU Public Health
Component Injury Prevention and Emergency Medical Services
Sponsor Holmes
Requester House HSS Component Number 2876

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Personal Services	156.1		156.1	156.1	156.1	156.1	156.1
Travel	5.0		20.0	5.0	5.0	5.0	5.0
Contractual	50.0		50.0	50.0	50.0	50.0	50.0
Supplies	1.5		1.5	1.5	1.5	1.5	1.5
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	212.6	0.0	227.6	212.6	212.6	212.6	212.6

CAPITAL EXPENDITURES	300.0						
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CHANGE IN REVENUES (
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	512.6		227.6	212.6	212.6	212.6	212.6
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	512.6	0.0	227.6	212.6	212.6	212.6	212.6

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time	2.0		2	2	2	2	2
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

The bill is intended to more effectively honor and implement an individual's advance health care directive by creating a central registry for access by health care providers and procurement organizations. Information Technology Business Applications staff estimate that development of the registry, either by the state or a third party vendor, will require an estimated capital expenditure of \$250K with an additional \$50K to develop an interface with the Bureau of Vital Statistics. Two FTE personnel will be required to enter the documents into the registry and provide access to the information: Public Health Specialist II (R20, step C) at \$100K and an Administrative Clerk III (R10, step C) at \$56.1K. Work stations, lease, phone service, etc. is estimated to be \$19K for the 2 employees. An additional contractual expenditure is system maintenance (10%), or \$25K per year. Training expenditures for hospital and other personnel to access the registry is estimated at \$6K per year, with a one-time travel increase in FY2011 to train hospital personnel. Supplies are estimated at \$1.5K per year. The fund source amount includes the total anticipated operating and capital expenditures.

Prepared by: Beverly Wooley, Director Phone 465-4079
Division Public Health Date/Time 2/2/09 12:00 AM
Approved by: Alison Elgee, Assistant Commissioner Date 2/22/2009
DHSS Finance Management Services

LEGAL SERVICES

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MEMORANDUM

January 23, 2009

SUBJECT: Sectional summary of HB 71, a bill relating to a registry for advance health care directives (Work Order No. 26-LS0289\E)

TO: Representative Lindsey Holmes
Attn: James Waldo

FROM: Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Protects a health care facility from civil or criminal liability for two listed types of actions related to the directive registry.

Section 2. Allows a hospital to make a reasonable search of the directive registry when the hospital refers an individual at or near death to a procurement organization.

Section 3. Makes a procurement organization's access to the department's records subject to the new directive registry provisions.

Section 4. This is the main authorizing section for the directive registry. Directs the department to maintain a registry for advance health care directives. Allows individuals to place their directives in the registry. Makes the registry confidential and indicates when the department may release information from the registry. Directs the department to make the registry accessible for viewing on the Internet 24 hours a day to a health care facility for the facility's patients. States that the department is not required to review a directive for validity or compliance with law before placing it in the registry. Directs the department to remove a directive from the registry and return it to the maker when requested by the maker or an agent, guardian, or surrogate of the maker. Requires the department to review the registry every five years and to remove directives of individuals deceased for six months or more. Provides that not filing a directive does not affect the directive's validity. Provides that failing to tell the department about a revocation does not affect the revocation. Allows the department to charge certain fees to implement the section. Directs the department to adopt regulations about identification procedures and requirements to protect the security of the registry.

If I may be of further assistance, please advise.

TLB:ljw
09-040.ljw

**Representative
Lindsey Holmes**

Capitol Room 405
465-4919
465-2137 fax



MEMORANDUM

Date: 26 January 2009

To: Representative Wes Keller and Representative Bob Herron,
Co-Chairs for House Health and Social Services Committee

From: James R. Waldo, staff to Representative Holmes

RE: State agencies affected by HB 71: Advance Health Care Directives Registry

The state Department of Health and Social Services is the only state department that would be affected by the passage of HB 71.

C

West's Alaska Statutes Annotated Currentness

Title 13. Decedents' Estates, Guardianships, Transfers, and Trusts

Chapter 52. Health Care Decisions Act (Refs & Annos)

→ § 13.52.010. Advance health care directives

(a) Except as provided in AS 13.52.173, an adult may give an individual instruction. Except as provided in AS 13.52.177, the instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(b) An adult may execute a durable power of attorney for health care, which may authorize the agent to make any health care decision the principal could have made while having capacity. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. The power must be in writing, contain the date of its execution, be signed by the principal, and be witnessed by one of the following methods:

(1) signed by at least two individuals who are personally known by the principal, each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgment of the signature of the instrument; or

(2) acknowledged before a notary public at a place in this state.

(c) Unless related to the principal by blood, marriage, or adoption, an agent under a durable power of attorney for health care may not be an owner, operator, or employee of the health care institution at which the principal is receiving care.

(d) A witness for a durable power of attorney for health care may not be

(1) a health care provider employed at the health care institution or health care facility where the principal is receiving health care;

(2) an employee of the health care provider providing health care to the principal, or of the health care institution or health care facility where the principal is receiving health care; or

(3) the agent.

(e) At least one of the individuals used as a witness for a durable power of attorney for health care shall be someone who is not

(1) related to the principal by blood, marriage, or adoption; or

(2) entitled to a portion of the estate of the principal upon the principal's death under a will or codicil of the principal existing at the time of execution of the durable power of attorney for health care or by operation of law then existing.

(f) Unless otherwise specified in the durable power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity and ceases to be effective upon a determination that the principal has recovered capacity.

(g) Unless otherwise specified in a written advance health care directive, a determination that a principal lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, shall be made by

(1) the primary physician, except in the case of mental illness;

(2) a court in the case of mental illness, unless the situation is an emergency; or

(3) the primary physician or another health care provider in the case of mental illness where the situation is an emergency.

(h) An agent shall make a health care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

(i) A health care decision made by an agent for a principal is effective without judicial approval.

(j) A written advance health care directive may include the individual's nomination of a guardian of the individual.

(k) Except as provided in AS 13.52.247(a), an advance health care directive, including an advance health care directive that is made in compliance with the laws of another state, is valid for purposes of this chapter if it complies with this chapter, regardless of where or when it was executed or communicated.

(l) Notwithstanding the sample form provided under AS 13.52.300, an individual instruction that would be valid by itself under this chapter is valid even if the individual instruction is contained in a writing that also contains a durable power of attorney for health care and the durable power of attorney does not meet the witnessing or other requirements of this chapter.

CREDIT(S)

SLA 2004, ch. 83, § 3; SLA 2006, ch. 103, §§ 1, 2, eff. Aug. 5, 2006. Amended by SLA 2008, ch. 100, §§ 10, 11, eff. Sept. 15, 2008.

Current through the 2008 Second Regular and Fourth Special Session of the 25th Legislature

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West's Alaska Statutes Annotated Currentness

Title 13. Decedents' Estates, Guardianships, Transfers, and Trusts

Chapter 52. Health Care Decisions Act (Refs & Annos)

→ § 13.52.020. Revocation of advance health care directive

- (a) Except in the case of mental illness under (c) of this section, a principal may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (b) Except in the case of mental illness under (c) of this section and except as provided by AS 13.52.183, a principal 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.
- (c) In the case of mental illness, an advance health care directive may be revoked in whole or in part at any time by the principal if the principal does not lack capacity and is competent. A revocation is effective when a competent principal with capacity communicates the revocation to a physician or other health care provider. The physician or other health care provider shall note the revocation on the principal's medical record. In the case of mental illness, the authority of a named agent and an alternative agent named in the advance health care directive continues in effect as long as the advance health care directive appointing the agent is in effect or until the agent has withdrawn. For the purposes of this subsection, a principal is not considered competent when
- (1) it is the opinion of the court in a guardianship proceeding under AS 13.26, the opinion of two physicians, at least one of whom is a psychiatrist, or the opinion of a physician and a professional mental health clinician, that the principal is not competent; or
 - (2) a court in a hearing under AS 47.30.735, 47.30.750, or 47.30.770 determines that the principal is gravely disabled; in this paragraph, "gravely disabled" has the meaning given in AS 47.30.915(7)(B).
- (d) A health care provider, agent, guardian, or surrogate who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising health care provider and to any health care institution at which the patient is receiving care.
- (e) 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 durable power of attorney for health care.
- (f) An advance health care directive that conflicts with an earlier advance health care directive revokes the earlier directive to the extent of the conflict.

CREDIT(S)

SLA 2004, ch. 83, § 3; SLA 2006, ch. 103, § 3, eff. Aug. 5, 2006. Amended by SLA 2008, ch. 100, § 12, eff. Sept. 15, 2008.

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Chapter 52. Health Care Decisions Act (Refs & Annos)

→ **§ 13.52.025. Rescission of withdrawal by agent**

A person who has withdrawn as an agent may rescind the withdrawal by executing an acceptance after the date of the withdrawal. A person who rescinds a withdrawal shall give notice to the principal if the principal has capacity or to the principal's health care provider if the principal does not have capacity.

CREDIT(S)

SLA 2004, ch. 83, § 3.

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Chapter 52. Health Care Decisions Act (Refs & Annos)

→ § 13.52.030. Surrogates

(a) Except in the case of mental health treatment and except as provided by AS 13.52.173 and 13.52.193, a surrogate may make a health care decision for a patient who is an adult if an agent or guardian has not been appointed or the agent or guardian is not reasonably available, and if the patient has been determined by the primary physician to lack capacity.

(b) Subject to AS 13.52.055(b), a surrogate may make a decision regarding mental health treatment for a patient who is an adult if

(1) an agent or guardian has not been appointed or the agent or guardian is not reasonably available;

(2) the mental health treatment is needed on an emergency basis; and

(3) the patient has been determined to lack capacity by

(A) two physicians, one of whom is a psychiatrist; or

(B) a physician and a professional mental health clinician.

(c) Except as provided for anatomical gifts in AS 13.52.173, an adult may designate an individual to act as surrogate for that adult by personally informing the supervising health care provider. Except as provided by AS 13.52.173 or 13.52.193, in the absence of a designation, or if the designee is not reasonably available, a member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

(1) the spouse, unless legally separated;

(2) an adult child;

(3) a parent; or

(4) an adult sibling.

(d) Except as provided by (f) of this section or AS 13.52.173 or 13.52.193, if none of the individuals eligible to act as surrogate under (c) of this section is reasonably available, an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available may act as surrogate.

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Title 13. Decedents' Estates, Guardianships, Transfers, and Trusts

^ Chapter 52. Health Care Decisions Act (Refs & Annos)

→ **§ 13.52.040. Decisions by guardian**

(a) Subject to AS 13.52.183, 13.52.193, and 13.52.203, a guardian shall comply with the ward's individual instructions and may not revoke a ward's advance health care directive executed before the ward's incapacity unless a court expressly authorizes the revocation.

(b) Unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) Except as provided in (a) of this section, a health care decision made by a guardian for the ward is effective without judicial approval.

CREDIT(S)

SLA 2004, ch. 83, § 3. Amended by SLA 2008, ch. 100, § 16, eff. Sept. 15, 2008.

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Title 13. Decedents' Estates, Guardianships, Transfers, and Trusts

Chapter 52. Health Care Decisions Act (Refs & Annos)

→ **§ 13.52.045. Withholding or withdrawing of life-sustaining procedures**

Notwithstanding any other provision of this chapter, an agent or a surrogate may determine that life-sustaining procedures may be withheld or withdrawn from a patient with a qualifying condition when there is

(1) a durable power of attorney for health care or other writing that clearly expresses the patient's intent that the procedures be withheld or withdrawn; or

(2) no durable power of attorney for health care or other writing that clearly expresses the patient's intent to the contrary, the patient has a qualifying condition as determined under AS 13.52.160, and withholding or withdrawing the procedures would be consistent with the patient's best interest.

CREDIT(S)

SLA 2004, ch. 83, § 3.

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Chapter 52. Health Care Decisions Act (Refs & Annos)

→ **§ 13.52.050. Decisions for exceptional procedures**

Unless there is a durable power of attorney for health care or another writing clearly expressing an individual's intent to the contrary, an agent or surrogate may not consent on behalf of a patient to an abortion, sterilization, psychosurgery, or removal of bodily organs except when the abortion, sterilization, psychosurgery, or removal of bodily organs is necessary to preserve the life of the patient or to prevent serious impairment of the health of the patient.

CREDIT(S)

SLA 2004, ch. 83, § 3.

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Title 13. Decedents' Estates, Guardianships, Transfers, and Trusts

Chapter 52. Health Care Decisions Act (Refs & Annos)

→ § 13.52.055. Pregnancy

(a) Before implementing a health care decision for a woman of childbearing age that would affect a fetus if present, the supervising health care provider shall take reasonable steps to determine whether the woman is pregnant.

(b) Notwithstanding any other provision of this chapter to the contrary, an advance health care directive by a patient or a decision by the person then authorized to make health care decisions for a patient may not be given effect if

(1) the patient is a woman who is pregnant and lacks capacity;

(2) the directive or decision is to withhold or withdraw life-sustaining procedures;

(3) the withholding or withdrawal of the life-sustaining procedures would, in reasonable medical judgment, be likely to result in the death of the patient; and

(4) it is probable that the fetus could develop to the point of live birth if the life-sustaining procedures were provided.

(c) This section does not apply to emergency services in the field.

CREDIT(S)

SLA 2004, ch. 83, § 3.

Current through the 2008 Second Regular and Fourth Special Session of the 25th Legislature

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Title 13. Decedents' Estates, Guardianships, Transfers, and Trusts

Chapter 52. Health Care Decisions Act (Refs & Annos)

→ § 13.52.060. Obligations of health care providers, institutions, and facilities

(a) Before implementing a health care decision made for a patient, a supervising health care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

(b) A supervising health care provider who knows of the existence of an advance health care directive, a revocation of an advance health care directive, or a designation or disqualification of a surrogate shall promptly record its existence in the patient's health care record, shall request a copy if it is in writing, and shall arrange for its maintenance in the health care record if a copy is furnished.

(c) A supervising health care provider who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, a guardian, or a surrogate, shall promptly record the determination in the patient's health care record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

(d) Except as provided in (e), (f), and (i) of this section and by AS 13.52.253, a health care provider, health care institution, or health care facility providing care to a patient shall comply with

(1) an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and

(2) a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(e) A health care provider may decline to comply with an individual instruction or a health care decision for reasons of conscience, except for a do not resuscitate order. A health care institution or health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision is contrary to a policy of the institution or facility that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

(f) A health care provider, health care institution, or health care facility may decline to comply with an individual instruction or a health care decision that requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the provider, institution, or facility. In this subsection, "medically ineffective health care" means health care that according to reasonable medical judgment cannot cure

the patient's illness, cannot diminish its progressive course, and cannot effectively alleviate severe discomfort and distress.

(g) A health care provider, health care institution, or health care facility that declines to comply with an individual instruction or a health care decision shall

(1) promptly inform the patient, if possible, and any person then authorized to make health care decisions for the patient that the provider, institution, or facility has declined to comply with the instruction or decision;

(2) provide continuing care to the patient until a transfer is effected; and

(3) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately cooperate and comply with a decision by the patient or a person then authorized to make health care decisions for the patient to transfer the patient to another health care institution, to another health care facility, to the patient's home, or to another location chosen by the patient or by the person then authorized to make health care decisions for the patient.

(h) Except as provided for civil commitments under AS 47.30.817, a health care provider, health care institution, or health care facility may not require or prohibit the execution or revocation of an advance health care directive as a condition for providing health care.

(i) Notwithstanding the exception in (e) of this section for do not resuscitate orders, a health care provider may perform cardiopulmonary resuscitation or other resuscitative measures on a patient even if there is a do not resuscitate order for the patient if the condition requiring cardiopulmonary resuscitation or other resuscitative measures is precipitated by complications arising out of medical services being provided by the health care provider to the patient.

(j) The provisions of (i) of this section do not apply when a health care provider performs emergency medical services on a patient in the field, unless an online physician orders the health care provider to perform cardiopulmonary resuscitation or other resuscitative measures; in this subsection,

(1) "health care provider" does not include a physician;

(2) "in the field" does not include in a health care facility, health care institution, hospital, or mental health facility;

(3) "online physician" means a physician who is immediately available in person or by radio or telephone, when medically appropriate, for communication of medical direction to health care providers.

CREDIT(S)

SLA 2004, ch. 83, § 3; SLA 2005, ch. 44, § 3; SLA 2006, ch. 103, §§ 4, 5, eff. Aug. 5, 2006. Amended by SLA 2008, ch. 100, § 17, eff. Sept. 15, 2008.

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Title 13. Decedents' Estates, Guardianships, Transfers, and Trusts

^ Chapter 52. Health Care Decisions Act (Refs & Annos)

→ § 13.52.300. **Optional form**

The following sample form may be used to create an advance health care directive. The other sections of this chapter govern the effect of this or any other writing used to create an advance health care directive. This form may be duplicated. This form may be modified to suit the needs of the person, or a different form that complies with this chapter may be used, including the mandatory witnessing requirements:

ADVANCE HEALTH CARE DIRECTIVE**Explanation**

You have the right to give instructions about your own health care to the extent allowed by law. You also have the right to name someone else to make health care decisions for you to the extent allowed by law. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your health care provider. If you use this form, you may complete or modify all or any part of it. You are free to use a different form if the form complies with the requirements of AS 13.52.

Part 1 of this form is a durable power of attorney for health care. A “durable power of attorney for health care” means the designation of an agent to make health care decisions for you. Part 1 lets you name another individual as an agent to make health care decisions for you if you do not have the capacity to make your own decisions or if you want someone else to make those decisions for you now even though you still have the capacity to make those decisions. You may name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a health care institution where you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you that you could legally make for yourself. This form has a place for you to limit the authority of your agent. You do not have to limit the authority of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right, to the extent allowed by law, to

(a) consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition, including the administration or discontinuation of psychotropic medication;

- (b) select or discharge health care providers and institutions;
- (c) approve or disapprove proposed diagnostic tests, surgical procedures, and programs of medication;
- (d) direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care; and
- (e) make an anatomical gift following your death.

Part 2 of this form lets you give specific instructions for any aspect of your health care to the extent allowed by law, except you may not authorize mercy killing, assisted suicide, or euthanasia. 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.

Part 3 of this form lets you express an intention to make an anatomical gift following your death.

Part 4 of this form lets you make decisions in advance about certain types of mental health treatment.

Part 5 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end and have the form witnessed by one of the two alternative methods listed below. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any health care agents you have named. You should talk to the person you have named as your agent to make sure that the person understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health care directive or replace this form at any time, except that you may not revoke this declaration when you are determined not to be competent by a court, by two physicians, at least one of whom shall be a psychiatrist, or by both a physician and a professional mental health clinician. In this advance health care directive, "competent" means that you have the capacity

- (1) to assimilate relevant facts and to appreciate and understand your situation with regard to those facts; and
- (2) to participate in treatment decisions by means of a rational thought process.

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 telephone) (work telephone)

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 telephone) (work telephone)

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 second alternate agent)

(address) (city) (state) (zip code)

(home telephone) (work telephone)

(2) AGENT'S AUTHORITY. My agent is authorized and directed to follow my individual instructions and my other wishes to the extent known to the agent in making all health care decisions for me. If these are not known, my agent is authorized to make these decisions in accordance with my best interest, including decisions to provide, withhold, or withdraw artificial hydration and nutrition and other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

Under this authority, "best interest" means that the benefits to you resulting from a treatment outweigh the burdens to you resulting from that treatment after assessing

- (A) the effect of the treatment on your physical, emotional, and cognitive functions;
- (B) the degree of physical pain or discomfort caused to you by the treatment or the withholding or withdrawal of the treatment;
- (C) the degree to which your medical condition, the treatment, or the withholding or withdrawal of treatment, results in a severe and continuing impairment;
- (D) the effect of the treatment on your life expectancy;
- (E) your prognosis for recovery, with and without the treatment;
- (F) the risks, side effects, and benefits of the treatment or the withholding of treatment; and
- (G) your religious beliefs and basic values, to the extent that these may assist in determining benefits and burdens.

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE. Except in the case of mental illness, 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. In the case of mental illness, unless I mark the following box, my agent's authority becomes effective when a court determines I am unable to make my own decisions, or, in an emergency, if my primary physician or another health care provider determines I am unable to make my own decisions. If I mark this box ☐, my agent's authority to make health care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION. My agent shall make health care decisions for me in accordance with this durable 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.

(5) NOMINATION OF GUARDIAN. If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named under (1) above, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making health care decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want. There is a state protocol that governs the use of do not resuscitate orders by physicians and other health care providers. You may obtain a copy of the protocol from the Alaska Department of Health and Social Services. A "do not resuscitate order" means a directive from a licensed physician that emergency cardiopulmonary resuscitation should not be administered to you.

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

☐ (A) Choice To Prolong Life

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

☐ (B) Choice Not To Prolong Life

I want comfort care only and I do not want my life to be prolonged with medical treatment if, in the judgment of my physician, I have (check all choices that represent your wishes)

☐ (i) a condition of permanent unconsciousness: a condition that, to a high degree of medical certainty, will last permanently without improvement; in which, to a high degree of medical certainty, thought, sensation, purposeful action, social interaction, and awareness of myself and the environment are absent; and for which, to a high degree of medical certainty, initiating or continuing life-sustaining procedures for me, in light of my medical outcome, will provide only minimal medical benefit for me; or

☐ (ii) a terminal condition: an incurable or irreversible illness or injury that without the administration of life-sustaining procedures will result in my death in a short period of time, for which there is no reasonable prospect of cure or recovery, that imposes severe pain or otherwise imposes an inhumane burden on me, and for which, in light of my medical condition, initiating or continuing life-sustaining procedures will provide only minimal medical benefit;

☐ Additional instructions: _____

(C) Artificial Nutrition and Hydration. If I am unable to safely take nutrition, fluids, or nutrition and fluids (check your choices or write your instructions),

☐ I wish to receive artificial nutrition and hydration indefinitely;

☐ I wish to receive artificial nutrition and hydration indefinitely, unless it clearly increases my suffering and is no longer in my best interest;

☐ I wish to receive artificial nutrition and hydration on a limited trial basis to see if I can improve;

☐ In accordance with my choices in (6)(B) above, I do not wish to receive artificial nutrition and hydration.

☐ Other instructions: _____

(D) Relief from Pain.

☐ I direct that adequate treatment be provided at all times for the sole purpose of the alleviation of pain or discomfort; or

☐ I give these instructions:

(E) Should I become unconscious and I am pregnant, I direct that _____

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

Conditions or limitations: _____

(Add additional sheets if needed.)

PART 3

ANATOMICAL GIFT AT DEATH

(OPTIONAL)

If you are satisfied to allow your agent to determine whether to make an anatomical gift at your death, you do not need to fill out this part of the form.

(8) Upon my death: (mark applicable box)

☐ (A) I give any needed organs, tissues, or other body parts, OR

☐ (B) I give the following organs, tissues, or other body parts only _____

☐ (C) My gift is for the following purposes (mark any of the following you want):

☐ (i) transplant;

☐ (ii) therapy;

☐ (iii) research;

☐ (iv) education.

☐ (D) I refuse to make an anatomical gift.

PART 4

MENTAL HEALTH TREATMENT

This part of the declaration allows you to make decisions in advance about mental health treatment. The instructions that you include in this declaration will be followed only if a court, two physicians that include a psychiatrist, or a physician and a professional mental health clinician believe that you are not competent and cannot make treatment decisions. Otherwise, you will be considered to be competent and to have the capacity to give or withhold consent for the treatments.

If you are satisfied to allow your agent to determine what is best for you in making these mental health decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(9) PSYCHOTROPIC MEDICATIONS. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding psychotropic medications are as follows:

☐ I consent to the administration of the following medications: _____

☐ I do not consent to the administration of the following medications: _____

Conditions or limitations: _____

(10) ELECTROCONVULSIVE TREATMENT. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding electroconvulsive treatment are as follows:

_____ I consent to the administration of electroconvulsive treatment.

_____ I do not consent to the administration of electroconvulsive treatment.

Conditions or limitations: _____

(11) ADMISSION TO AND RETENTION IN FACILITY. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding admission to and retention in a mental health facility for mental health treatment are as follows:

_____ I consent to being admitted to a mental health facility for mental health treatment for up to _____ days.
(The number of days not to exceed 17.)

_____ I do not consent to being admitted to a mental health facility for mental health treatment.

Conditions or limitations: _____

OTHER WISHES OR INSTRUCTIONS

Conditions or limitations: _____

PART 5

PRIMARY PHYSICIAN

(OPTIONAL)

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

(name of physician)

(address) (city) (state) (zip code)

(telephone)

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)

(telephone)

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

(14) SIGNATURES. Sign and date the form here:

(date) (sign your name)

(print your name)

(address) (city) (state) (zip code)

(15) WITNESSES. This advance care health directive will not be valid for making health care decisions unless it is

(A) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; the witnesses may not be a health care provider employed at the health care institution or health care facility where you are receiving health care, an employee of the health care provider who is providing health care to you, an employee of the health care institution or health care facility where you are receiving health care, or the person appointed as your agent by this document; at least one of the two witnesses may not be related to you by blood, marriage, or adoption or entitled to a portion of your estate upon your death under your will or codicil; or

(B) acknowledged before a notary public in the state.

ALTERNATIVE NO. 1

Witness Who is Not Related to or a Devisee of the Principal

I swear under penalty of perjury under AS 11.56.200 that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney for health care in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, and that I am not

- (1) a health care provider employed at the health care institution or health care facility where the principal is receiving health care;
- (2) an employee of the health care provider providing health care to the principal;
- (3) an employee of the health care institution or health care facility where the principal is receiving health care;
- (4) the person appointed as agent by this document;

(5) related to the principal by blood, marriage, or adoption; or

(6) entitled to a portion of the principal's estate upon the principal's death under a will or codicil.

(date) (signature of witness)

(printed name of witness)

(address) (city) (state) (zip code)

Witness Who May be Related to or a Devisee of the Principal

I swear under penalty of perjury under AS 11.56.200 that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney for health care in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, and that I am not

(1) a health care provider employed at the health care institution or health care facility where the principal is receiving health care;

(2) an employee of the health care provider who is providing health care to the principal;

(3) an employee of the health care institution or health care facility where the principal is receiving health care; or

(4) the person appointed as agent by this document.

(date) (signature of witness)

(printed name of witness)

(address) (city) (state) (zip code)

ALTERNATIVE NO. 2

State of Alaska

_____ Judicial District

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 the person executed it.

Notary Seal

(signature of notary public)

CREDIT(S)

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