

**HOUSE BILL NO. 318**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVES TOOHEY, B.Davis**

**Introduced: 4/21/95**

**Referred: Health, Education and Social Services, Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

**1 "An Act relating to advance directives for mental health treatment."**

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

**3 \* Section 1.** AS 47.30 is amended by adding new sections to read:

**4 ARTICLE 11. PERSONAL DECLARATION OF PREFERENCES**  
**5 FOR MENTAL HEALTH TREATMENT.**

**6 Sec. 47.30.950. DECLARATION.** (a) An adult of sound mind may make a  
**7 declaration of preferences or instructions regarding mental health treatment. The**  
**8 preferences or instructions may include consent to or refusal of mental health**  
**9 treatment.**

**10 (b) A declaration for mental health treatment continues in effect for three years**  
**11 or until revoked, whichever is sooner. The authority of a named attorney-in-fact and**  
**12 an alternative attorney-in-fact named in the declaration continues in effect as long as**  
**13 the declaration appointing the attorney-in-fact is in effect or until the attorney-in-fact**  
**14 has withdrawn. If a declaration for mental health treatment has been invoked and is**  
**15 in effect at the expiration of three years after its execution, the declaration remains**

1 effective until the principal is no longer incapable.

2 Sec. 47.30.952. DESIGNATION OF ATTORNEY-IN-FACT. (a) A  
3 declaration may designate a competent adult to act as attorney-in-fact to make  
4 decisions about mental health treatment. An alternative attorney-in-fact may also be  
5 designated to act as attorney-in-fact if the original designee is unable or unwilling to  
6 act at any time. An attorney-in-fact who has accepted the appointment in writing may  
7 make decisions about mental health treatment on behalf of the principal only when the  
8 principal is incapable. The decisions must be consistent with desires the principal has  
9 expressed in the declaration.

10 (b) The following may not serve as attorney-in-fact:

11 (1) the attending physician or mental health service provider, or an  
12 employee of the physician or provider, if the physician, provider, or employee is  
13 unrelated to the principal by blood, marriage, or adoption;

14 (2) an owner, operator, or employee of a health care facility in which  
15 the principal is a patient or resident if the owner, operator, or employee is unrelated  
16 to the principal by blood, marriage, or adoption.

17 (c) An attorney-in-fact may withdraw by giving notice to the principal. If a  
18 principal is incapable, the attorney-in-fact may withdraw by giving notice to the  
19 attending physician or provider. The attending physician or provider shall note the  
20 withdrawal as part of the principal's medical record. A person who has withdrawn  
21 under the provisions of this subsection may rescind the withdrawal by executing an  
22 acceptance after the date of the withdrawal. The acceptance must be in the same form  
23 as provided by AS 47.30.970 for accepting an appointment. A person who rescinds  
24 a withdrawal shall give notice to the principal if the principal is capable or to the  
25 principal's health care provider if the principal is incapable.

26 (d) The designation of an attorney-in-fact under this section supersedes a  
27 previous or subsequent designation of an attorney-in-fact regarding mental health  
28 treatment unless otherwise specifically provided in the declaration executed under  
29 AS 47.30.950 - 47.30.980 or in the document that designates the other attorney-in-fact.

30 Sec. 47.30.954. SIGNATURE; WITNESSES. (a) A declaration is effective  
31 only if it is signed by the principal and two competent adult witnesses. The witnesses

1 must attest that the principal is known to them, signed the declaration in their presence,  
2 appears to be of sound mind, and is not under duress, fraud, or undue influence.

3 (b) The following may not serve as a witness to the signing of a declaration:

4 (1) the attending physician or mental health service provider or a  
5 relative of the physician or provider;

6 (2) an owner, operator, or relative of an owner or operator of a health  
7 care facility in which the principal is a patient or resident; or

8 (3) a person related to the principal by blood, marriage, or adoption.

9 Sec. 47.30.956. OPERATION OF DECLARATION. (a) A declaration  
10 becomes operative when it is delivered to the principal's physician or other mental  
11 health treatment provider and remains valid until revoked or expired. The physician  
12 or provider shall act in accordance with an operative declaration when the principal has  
13 been found to be incapable. The physician or provider shall continue to obtain the  
14 principal's informed consent to all mental health treatment decisions if the principal is  
15 capable of providing informed consent or refusal.

16 (b) Upon being presented with a declaration, a physician or other provider  
17 shall make the declaration a part of the principal's medical record. When acting under  
18 authority of a declaration, a physician or provider shall comply with it to the fullest  
19 extent possible, consistent with reasonable medical practice, the availability of  
20 treatments requested, and applicable law. If the physician or other provider is unwill-  
21 ing at any time to comply with the declaration, the physician or provider may  
22 withdraw from providing treatment consistent with the exercise of independent medical  
23 judgment and shall promptly notify the principal and the attorney-in-fact and document  
24 the notification in the principal's medical record.

25 Sec. 47.30.958. POWERS OF ATTORNEY-IN-FACT. (a) The  
26 attorney-in-fact does not have authority to make mental health treatment decisions  
27 unless the principal is incapable.

28 (b) The attorney-in-fact is not, as a result of acting in that capacity, personally  
29 liable for the cost of treatment provided to the principal.

30 (c) Except to the extent the right is limited by the declaration or any federal  
31 law, an attorney-in-fact has the same right as the principal to receive information

1 regarding the proposed mental health treatment and to receive, review, and consent to  
2 disclosure of medical records relating to that treatment. This right of access does not  
3 waive any evidentiary privilege.

4 (d) In exercising authority under the declaration, the attorney-in-fact has a duty  
5 to act consistently with the desires of the principal as expressed in the declaration. If  
6 the principal's desires are not expressed in the declaration and not otherwise known by  
7 the attorney-in-fact, the attorney-in-fact has a duty to act in what the attorney-in-fact  
8 in good faith believes to be the best interests of the principal.

9 (e) An attorney-in-fact is not subject to criminal prosecution, civil liability, or  
10 professional disciplinary action for an action taken in good faith under a declaration  
11 for mental health treatment.

12 Sec. 47.30.960. LIMITATIONS. A person may not be required to execute or  
13 to refrain from executing a declaration as a criterion for insurance, as a condition for  
14 receiving mental or physical health services, or as a condition of discharge from a  
15 health care facility.

16 Sec. 47.30.962. ACTIONS CONTRARY TO DECLARATION. The physician  
17 or provider may subject the principal to mental health treatment in a manner contrary  
18 to the principal's wishes as expressed in a declaration for mental health treatment only

19 (1) if the principal is committed to a treatment facility under this  
20 chapter and treatment is authorized in compliance with AS 47.30.825 - 47.30.865; or

21 (2) in cases of emergency endangering life or health.

22 Sec. 47.30.964. RELATION TO OTHER STATUTES. A declaration does not  
23 limit any authority provided in this chapter either to take a person into custody or to  
24 admit, retain, or treat a person in a health care facility.

25 Sec. 47.30.966. REVOCATION. A declaration may be revoked in whole or  
26 in part at any time by the principal if the principal is not incapable. A revocation is  
27 effective when a capable principal communicates the revocation to the attending  
28 physician or other provider. The attending physician or other provider shall note the  
29 revocation as part of the principal's medical record.

30 Sec. 47.30.968. LIMITED IMMUNITY. A physician or provider who  
31 administers or does not administer mental health treatment according to and in good

1 faith reliance upon the validity of a declaration is not subject to criminal prosecution,  
2 civil liability, or professional disciplinary action resulting from a subsequent finding  
3 of a declaration's invalidity.

4 Sec. 47.30.970. FORM OF DECLARATION. A declaration for mental health  
5 treatment shall be in substantially the following form:

6 DECLARATION FOR MENTAL HEALTH TREATMENT

7 I, \_\_\_\_\_  
8 \_\_\_\_\_, being an adult of sound mind, wilfully and voluntarily make this  
9 declaration for mental health treatment to be followed if it is determined by a  
10 court, two physicians that include a psychiatrist, or one physician and a mental  
11 health clinician that my ability to receive and evaluate information effectively  
12 or communicate decisions is impaired to such an extent that I lack the capacity  
13 to refuse or consent to mental health treatment. "Mental health treatment"  
14 means electroconvulsive treatment, treatment of mental illness with  
15 psychotropic medication, and admission to and retention in a health care  
16 facility for a period up to 17 days.

17 I understand that I may become incapable of giving or withholding  
18 informed consent for mental health treatment due to the symptoms of a  
19 diagnosed mental disorder. These symptoms may include:

20 \_\_\_\_\_  
21 \_\_\_\_\_.

22 PSYCHOTROPIC MEDICATIONS

23 If I become incapable of giving or withholding informed consent for  
24 mental health treatment, my wishes regarding psychotropic medications are as  
25 follows:

26 \_\_\_\_\_ I consent to the administration of the following medications: \_\_\_\_\_  
27 \_\_\_\_\_

28 \_\_\_\_\_ I do not consent to the administration of the following medications: \_\_\_\_  
29 \_\_\_\_\_

30 Conditions or limitations: \_\_\_\_\_  
31 \_\_\_\_\_.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

ELECTROCONVULSIVE TREATMENT

If I become incapable of giving or withholding 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: \_\_\_\_\_  
\_\_\_\_\_.

ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding admission to and retention in a health care facility for mental health treatment are as follows:

\_\_\_\_\_ I consent to being admitted to a health care facility for mental health treatment for up to \_\_\_\_\_ days.  
\_\_\_\_\_ I do not consent to being admitted to a health care facility for mental health treatment.

This directive cannot, by law, provide consent to retain me in a facility for more than 17 days.  
Conditions or limitations: \_\_\_\_\_  
\_\_\_\_\_.

ADDITIONAL PREFERENCES OR INSTRUCTIONS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Conditions or limitations: \_\_\_\_\_  
\_\_\_\_\_.

ATTORNEY-IN-FACT

I appoint:  
NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
TELEPHONE NO. \_\_\_\_\_

1 to act as my attorney-in-fact to make decisions regarding my mental health  
2 treatment if I become incapable of giving or withholding informed consent for  
3 that treatment.

4 If the person named above refuses or is unable to act on my behalf, or  
5 if I revoke that person's authority to act as my attorney-in-fact, I authorize the  
6 following person to act as my attorney-in-fact:

7 NAME \_\_\_\_\_  
8 ADDRESS \_\_\_\_\_  
9 TELEPHONE NO. \_\_\_\_\_

10 My attorney-in-fact is authorized to make decisions that are consistent  
11 with the wishes I have expressed in this declaration or, if not expressed, as are  
12 otherwise known to my attorney-in-fact. If my wishes are not expressed and are  
13 not otherwise known by my attorney-in-fact, my attorney-in-fact is to act in  
14 what my attorney-in-fact believes to be my best interests.

15 OTHER DOCUMENTS

16 \_\_\_\_\_ I have executed a general power-of-attorney or a power-of-attorney  
17 under AS 13.26 that includes the power to make decisions regarding health care  
18 services for myself. I authorize the attorney-in-fact appointed under this  
19 declaration and the attorney-in-fact appointed under a general power-of-attorney  
20 under AS 13.26 to serve

21 \_\_\_\_\_ jointly with consent of each other as to my mental health  
22 treatment;

23 \_\_\_\_\_ separately without each other's consent as to my mental health  
24 treatment.

25 \_\_\_\_\_ I have not executed a general power-of-attorney or a power-of-attorney  
26 under AS 13.26 that includes the power to make decisions regarding health care  
27 services for myself.

28 \_\_\_\_\_  
29 (Signature of Declarant/Date)

30 \_\_\_\_\_  
31 (Address)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

\_\_\_\_\_  
(Telephone Number)

AFFIRMATION OF WITNESSES

We affirm that the principal is personally known to us, that the principal signed or acknowledged the principal's signature on this declaration for mental health treatment in our presence, that the principal appears to be of sound mind and not under duress, fraud, or undue influence, and that neither of us is a person appointed as an attorney-in-fact by this document; the principal's attending physician or mental health service provider or a relative of the physician or provider; the owner, operator, or relative of an owner or operator of a facility in which the principal is a patient or resident; or a person related to the principal by blood, marriage, or adoption.

Witnessed By:

\_\_\_\_\_  
(Signature of Witness/Date)                      (Printed Name of Witness)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Signature of Witness/Date)                      (Printed Name of Witness)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone Number)

ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT

I accept this appointment and agree to serve as attorney-in-fact to make decisions about mental health treatment for the principal. I understand that I have a duty to act in a manner consistent with the desires of the principal as expressed in this appointment. I understand that this document gives me authority to make decisions about mental health treatment only while the

1 principal is incapable as determined by a court, two physicians that include a  
2 psychiatrist, or one physician and a mental health clinician. I understand that  
3 the principal may revoke this declaration in whole or in part at any time and  
4 in any manner when the principal is not incapable.

5 \_\_\_\_\_  
6 (Signature of Attorney-in-fact/Date) (Printed name)  
7 \_\_\_\_\_  
8 (Address)  
9 \_\_\_\_\_  
10 (Telephone Number)

11 \_\_\_\_\_  
12 (Signature of Alternate Attorney-in-fact/Date) (Printed name)  
13 \_\_\_\_\_  
14 (Address)  
15 \_\_\_\_\_  
16 (Telephone Number)

17 NOTICE TO PERSON MAKING A DECLARATION  
18 FOR MENTAL HEALTH TREATMENT

19 This is an important legal document. It creates a declaration for mental  
20 health treatment. Before signing this document, you should know these  
21 important facts:

22 (1) This document allows you to make decisions in advance about three  
23 types of mental health treatment: psychotropic medication, electroconvulsive therapy,  
24 and short-term (up to 17 days) admission to a treatment facility. The instructions that  
25 you include in this declaration will be followed only if a court, two physicians that  
26 include a psychiatrist, or a physician and a professional mental health clinician believe  
27 that you are incapable of making treatment decisions. Otherwise, you will be  
28 considered capable to give or withhold consent for the treatments.

29 (2) You may also appoint a person as your attorney-in-fact to make  
30 these treatment decisions for you if you become incapable. The person you appoint  
31 has a duty to act consistent with your desires as stated in this document or, if your

1 desires are not stated or otherwise made known to the attorney-in-fact, to act in a  
2 manner consistent with what the person in good faith believes to be in your best  
3 interest. For the appointment to be effective, the person you appoint must accept the  
4 appointment in writing. The person also has the right to withdraw from acting as your  
5 attorney-in-fact at any time.

6 (3) This document will continue in effect for a period of three years  
7 unless you become incapable of participating in mental health treatment decisions. If  
8 this occurs, the directive will continue in effect until you are no longer incapable.

9 (4) You have the right to revoke this document in whole or in part at  
10 any time you have not been determined to be incapable. YOU MAY NOT REVOKE  
11 THIS DECLARATION WHEN YOU ARE CONSIDERED INCAPABLE BY A  
12 COURT, TWO PHYSICIANS THAT INCLUDE A PSYCHIATRIST, OR A  
13 PHYSICIAN AND A PROFESSIONAL MENTAL HEALTH CLINICIAN. A  
14 revocation is effective when it is communicated to your attending physician or other  
15 provider.

16 (5) If there is anything in this document that you do not understand,  
17 you should ask a lawyer to explain it to you. This declaration will not be valid unless  
18 it is signed by two qualified witnesses who are personally known to you and who are  
19 present when you sign or acknowledge your signature.

20 Sec. 47.30.972. PENALTY. It is a class A misdemeanor for a person without  
21 authorization of the principal to knowingly alter, forge, conceal, or destroy a  
22 declaration executed under AS 47.30.950 - 47.30.980, the reinstatement or revocation  
23 of a declaration executed under AS 47.30.950 - 47.30.980, or any other evidence or  
24 document reflecting the principal's desires and interests with the intent or effect of  
25 affecting a mental health care decision. In this section, "knowingly" has the meaning  
26 given in AS 11.81.900(a).

27 Sec. 47.30.980. DEFINITIONS. In AS 47.30.950 - 47.30.980,

28 (1) "attending physician" means the licensed physician who has primary  
29 responsibility for the care and treatment of the declarant;

30 (2) "attorney-in-fact" means an adult properly appointed under  
31 AS 47.30.950 - 47.30.980 to make mental health treatment decisions for a principal

1 under a declaration for mental health treatment and also means an alternative attorney-  
2 in-fact;

3 (3) "facility" means a

4 (A) designated treatment facility, as defined in AS 47.30.915;

5 (B) nursing home; or

6 (C) assisted living home licensed under AS 47.33;

7 (4) "incapable" means that, in the opinion of the court in a guardianship  
8 proceeding under AS 13.26, in the opinion of two physicians that include a  
9 psychiatrist, or in the opinion of a physician and a professional mental health clinician,  
10 a person's ability to receive and evaluate information effectively or communicate  
11 decisions is impaired to such an extent that the person currently lacks the capacity to  
12 make mental health treatment decisions;

13 (5) "mental health treatment" means electroconvulsive treatment,  
14 treatment with psychotropic medication, and admission to and retention in a facility  
15 for a period not to exceed 17 days;

16 (6) "professional mental health clinician" means a person having at  
17 least a master's degree in psychology, social work, counseling, child guidance, or  
18 nursing with specialization or experience in mental health; if employed by a mental  
19 health physician clinic, a "professional mental health clinician" must also be licensed  
20 to practice in the state in which service is being provided or be a clinical member in  
21 good standing of the American Association for Marriage and Family Therapy, and be  
22 working in the clinician's field of expertise; in this paragraph, "mental health physician  
23 clinic" means a clinic, operated by one or more psychiatrists, that exclusively or  
24 primarily provides mental health services furnished by a psychiatrist or by one or more  
25 licensed psychologists, licensed psychological associates, licensed clinical social  
26 workers, licensed nurse practitioners, licensed psychiatric nursing clinical specialists,  
27 or clinical members in good standing of the American Association for Marriage and  
28 Family Therapy, who are working in their field of expertise under the direct  
29 supervision of a psychiatrist.

30 \* **Sec. 2.** AS 13.26.335 is amended to read:

31 Sec. 13.26.335. ADDITIONAL OPTIONAL PROVISIONS TO STATUTORY

1 FORM POWER OF ATTORNEY. Each of the following provisions may be included  
2 in a statutory form power of attorney:

3 (1) IF YOU HAVE GIVEN THE AGENT AUTHORITY REGARDING  
4 HEALTH CARE SERVICES UNDER SUBDIVISION (L), COMPLETE THE  
5 FOLLOWING:

6 ( ) I have executed a separate declaration under AS 18.12,  
7 known as a "Living Will."

8 ( ) I have not executed a "Living Will."

9 (    ) **I have executed a separate declaration under**  
10 **AS 47.30.950 - 47.30.980 regarding mental health treatment. If I**  
11 **have appointed an attorney-in-fact under AS 47.30.950 - 47.30.980,**  
12 **I authorize that attorney-in-fact and the attorney-in-fact whom I**  
13 **have appointed in this document to serve**

14 (    ) **jointly with consent of each other as to my**  
15 **mental health treatment**

16 (    ) **separately without each other's consent as to my**  
17 **mental health treatment.**

18 (    ) **I have not executed a separate declaration under**  
19 **AS 47.30.950 - 47.30.980.**

20 (2) YOU MAY DESIGNATE AN ALTERNATE ATTORNEY-IN-  
21 FACT. ANY ALTERNATE YOU DESIGNATE WILL BE ABLE TO EXERCISE  
22 THE SAME POWERS AS THE AGENT(S) YOU NAMED AT THE BEGINNING  
23 OF THIS DOCUMENT. IF YOU WISH TO DESIGNATE AN ALTERNATE OR  
24 ALTERNATES, COMPLETE THE FOLLOWING:

25 If the agent(s) named at the beginning of this document is  
26 unable or unwilling to serve or continue to serve, then I appoint the  
27 following agent to serve with the same powers:

28 First alternate or successor attorney-in-fact

29 \_\_\_\_\_  
30 (Name and address of alternate)  
31 \_\_\_\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

Second alternate or successor attorney-in-fact

\_\_\_\_\_

(Name and address of alternate)

(3) YOU MAY NOMINATE A GUARDIAN OR CONSERVATOR. IF YOU WISH TO NOMINATE A GUARDIAN OR CONSERVATOR, COMPLETE THE FOLLOWING:

In the event that a court decides that it is necessary to appoint a guardian or conservator for me, I hereby nominate       (Name and address of person nominated)       to be considered by the court for appointment to serve as my guardian or conservator, or in any similar representative capacity.

\* Sec. 3. AS 13.26.344(1) is amended to read:

(1) In the statutory form power of attorney, the language conferring general authority with respect to health care services, shall be construed to mean that, as to the health care of the principal, whether to be provided in the state or elsewhere, the principal authorizes the agent to

(1) have access to and disclose to others medical and related information and records;

(2) consent or refuse to consent to medical care or relief for the principal from pain, but the agent may not authorize the termination of life-sustaining procedures;

(3) take all steps necessary to enforce a properly executed declaration under AS 18.12;

(4) **take all steps necessary to enforce a properly executed declaration under AS 47.30.950 - 47.30.980 unless the principal has provided that an attorney-in-fact appointed under AS 47.30.950 - 47.30.980 shall have exclusive authority with regard to mental health treatment and the attorney-in-fact appointed under AS 47.30.950 - 47.30.980 has not withdrawn;**

(5) consent or refuse to consent to the principal's psychiatric care, but the consent does not authorize a voluntary commitment or placement in a mental health treatment facility, **electroconvulsive** [CONCLUSIVE] or electric-shock therapy,

1 psychosurgery, sterilization, or an abortion **except that, if the principal has properly**  
2 **executed a declaration under AS 47.30.950 - 47.30.980, the agent may consent to**  
3 **voluntary commitment or placement in a mental health treatment facility and**  
4 **electroconvulsive or electric-shock therapy if that consent is consistent with the**  
5 **wishes expressed in the declaration under AS 47.30.950 - 47.30.980 and if the**  
6 **principal has not designated another attorney-in-fact to have exclusive authority**  
7 **to make decisions regarding mental health treatment;**

8 (6) [(5)] arrange for care or lodging of the principal in a hospital,  
9 nursing home, or hospice;

10 (7) [(6)] grant releases to health care professionals or health care  
11 institutions;

12 (8) [(7)] hire, discharge, or compensate an attorney, accountant, expert  
13 witness, or assistant when the agent considers the action to be desirable for the proper  
14 execution of the powers described in this subsection; and

15 (9) [(8)] do any other act or acts, that the principal can do through an  
16 agent, and that the agent considers desirable or necessary to provide for the principal's  
17 physical or mental well being.

18 \* **Sec. 4.** AS 47.30.825(b) is amended to read:

19 (b) The patient and the following persons, at the request of the patient, are  
20 entitled to participate in formulating the patient's individualized treatment plan and to  
21 participate in the evaluation process as much as possible, at minimum to the extent of  
22 requesting specific forms of therapy, inquiring why specific therapies are or are not  
23 included in the treatment program, and being informed as to the patient's present  
24 medical and psychological condition and prognosis: (1) the patient's counsel, (2) the  
25 patient's guardian, (3) a mental health professional previously engaged in the patient's  
26 care outside of the evaluation facility or designated treatment facility, (4) a  
27 representative of the patient's choice, **(5) a person designated as the patient's**  
28 **attorney-in-fact with regard to mental health treatment decisions under**  
29 **AS 13.26.332 - 13.26.358, AS 47.30.950 - 47.30.980, or other power-of-attorney,** and  
30 **(6) [(5)] the adult designated under AS 47.30.725.** The mental health care professionals  
31 may not withhold any of the information described in this subsection from the patient

1 or from others if the patient has signed a waiver of confidentiality **or has designated**  
2 **the person who would receive the information as an attorney-in-fact with regard**  
3 **to mental health treatment.**

4 \* **Sec. 5.** AS 47.30.825(f) is amended to read:

5 (f) A patient capable of giving informed consent has the absolute right to  
6 accept or refuse **electroconvulsive** [ELECTRO-CONVULSIVE] therapy or aversive  
7 conditioning. A patient who lacks substantial capacity to make this decision may not  
8 be given this therapy or conditioning without a court order **unless the patient**  
9 **expressly authorized that particular form of treatment in a declaration properly**  
10 **executed under AS 47.30.950 - 47.30.980 or has authorized an attorney-in-fact to**  
11 **make this decision and the attorney-in-fact consents to the treatment on behalf of**  
12 **the patient.**

13 \* **Sec. 6.** AS 47.30.836 is amended to read:

14 Sec. 47.30.836. PSYCHOTROPIC MEDICATION IN NONEMERGENCIES.

15 An evaluation facility or designated treatment facility may not administer psychotropic  
16 medication to a patient in a situation that does not involve a crisis under  
17 AS 47.30.838(a)(1) unless **the patient**

18 (1) [THE PATIENT] has the capacity to give informed consent to the  
19 medication, as described in AS 47.30.837, and gives that consent; the facility shall  
20 document the consent in the patient's medical chart; [OR]

21 (2) **authorized the use of psychotropic medication in a declaration**  
22 **properly executed under AS 47.30.950 - 47.30.980 or authorized an attorney-in-**  
23 **fact to consent to the use of psychotropic medication for the patient and the**  
24 **attorney-in-fact does consent; or**

25 (3) [THE PATIENT] is determined by a court to lack the capacity to  
26 give informed consent to the medication and the court approves use of the medication  
27 under AS 47.30.839.

28 \* **Sec. 7.** AS 47.30.838(a) is amended to read:

29 (a) Except as provided in (c) **and (d)** of this section, an evaluation facility or  
30 designated treatment facility may administer psychotropic medication to a patient  
31 without the patient's informed consent, regardless of whether the patient is capable of

1 giving informed consent, only if

2 (1) there is a crisis situation, or an impending crisis situation, that  
3 requires immediate use of the medication to preserve the life of, or prevent significant  
4 physical harm to, the patient or another person, as determined by a licensed physician  
5 or a registered nurse; the behavior or condition of the patient giving rise to a crisis  
6 under this paragraph and the staff's response to the behavior or condition must be  
7 documented in the patient's medical record; the documentation must include an  
8 explanation of alternative responses to the crisis that were considered or attempted by  
9 the staff and why those responses were not sufficient; and

10 (2) the medication is ordered by a licensed physician; the order

11 (A) may be written or oral and may be received by telephone,  
12 facsimile machine, or in person;

13 (B) may include an initial dosage and may authorize additional,  
14 as needed, doses; if additional, as needed, doses are authorized, the order must  
15 specify the medication, the quantity of each authorized dose, the method of  
16 administering the medication, the maximum frequency of administration, the  
17 specific conditions under which the medication may be given, and the  
18 maximum amount of medication that may be administered to the patient in a  
19 24-hour period;

20 (C) is valid for only 24 hours and may be renewed by a  
21 physician for a total of 72 hours, including the initial 24 hours, only after a  
22 personal assessment of the patient's status and a determination that there is still  
23 a crisis situation as described in (1) of this subsection; upon renewal of an  
24 order under this subparagraph, the facts supporting the renewal shall be written  
25 into the patient's medical record.

26 \* **Sec. 8.** AS 47.30.838 is amended by adding a new subsection to read:

27 (d) An evaluation facility or designated treatment facility may administer  
28 psychotropic medication to a patient without the patient's informed consent if the  
29 patient is unable to give informed consent but has authorized the use of psychotropic  
30 medication in a declaration properly executed under AS 47.30.950 - 47.30.980 or has  
31 authorized an attorney-in-fact to consent to this form of treatment for the patient and

**1** the attorney-in-fact does consent.