

HOUSE BILL NO. 371

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES BROWN AND TOOHEY, Finkelstein, Davies

Introduced: 12/29/95

Referred: Health, Education and Social Services, State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the rights of terminally ill persons."**

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

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

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

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

10 (2) consent or refuse to consent to medical care or relief for the
11 principal from pain, but the agent may not authorize the termination of life-sustaining
12 procedures **nor originate a request for medication for the purpose of ending the**
13 **principal's life;**

14 (3) take all steps necessary to enforce a properly executed declaration
15 **or a request for medication** under AS 18.12;

1 (4) consent or refuse to consent to the principal's psychiatric care, but
2 the consent does not authorize a voluntary commitment or placement in a mental
3 health treatment facility, convulsive or electric-shock therapy, psychosurgery,
4 sterilization, or an abortion;

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

7 (6) grant releases to health care professionals or health care institutions;

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

11 (8) do any other act or acts that the principal can do through an agent
12 and that the agent considers desirable or necessary to provide for the principal's
13 physical or mental well-being.

14 * **Sec. 2.** AS 18.12 is amended by adding a new section to read:

15 Sec. 18.12.005. FINDINGS; PURPOSE. (a) The legislature finds that the
16 people of the state have a fundamental right to make their own end-of-life decisions.
17 The right should include the ability to make a conscious and informed choice to enlist
18 the assistance of the medical profession in prescribing medication that will make death
19 as humane and dignified as possible.

20 (b) To enable competent adults of this state to exercise this right, this chapter
21 provides a method of

22 (1) permitting expression of people's wishes;

23 (2) protecting consenting health care professionals; and

24 (3) safeguarding against abuse of these procedures.

25 * **Sec. 3.** AS 18.12 is amended by adding a new section to read:

26 Sec. 18.12.015. REQUEST FOR MEDICATION TO END ONE'S LIFE IN A
27 HUMANE AND DIGNIFIED MANNER. (a) A competent person who is at least 18
28 years old and is a resident of the state may execute a revocable request for medication
29 that can be self-administered for the purpose of ending the person's life in a humane
30 and dignified manner, but the request for medication may be given operative effect
31 only if the condition of the requester is determined to be terminal and other

1 requirements of this chapter have been met. The request for medication shall be
2 signed by the requester and witnessed by two adults who at the time of witnessing

3 (1) are not related to the requester by blood, marriage, or adoption;

4 (2) are not entitled to a portion of the estate of the requester under a
5 will or by operation of law;

6 (3) do not have a creditor's claim against the requester and do not
7 anticipate making a claim against the estate of the requester; and

8 (4) are not the requester's attending physician, an employee of the
9 attending physician, a health care provider, or an employee of a health care provider.

10 (b) It is the responsibility of the requester to give the written request for
11 medication to the requester's physician. A physician or other health care provider shall
12 make it a part of the requester's medical records.

13 (c) The requester's request for medication may, but need not, be in the
14 following form:

15 REQUEST FOR MEDICATION
16 TO END MY LIFE IN A
17 HUMANE AND DIGNIFIED MANNER

18 I, _____, over the age of 18 years and of
19 sound mind, do voluntarily make known my desire that I want to end
20 my life in a humane and dignified manner when I have a condition or
21 illness certified to be terminal by my attending physician and at least
22 one consulting physician.

23 Upon my oral or written request for medication after execution
24 of this document but no sooner than 10 days after execution of this
25 document, and after I have been fully informed of my diagnosis,
26 prognosis, the nature of medication to be prescribed and potential
27 associated risks, the expected result and irreversible consequences, and
28 the feasible alternatives, including comfort care, hospice care, and pain
29 control, I ask my attending physician to prescribe medication that I can
30 use to end my life in a humane and dignified manner.

31 Determining the time and place of my death shall be in my sole

1 discretion and I understand that I must administer the medication to
2 myself.

3 Initial one of the following:

4 (1) _____ I have informed my family of my decision
5 and taken their opinions into consideration.

6 (2) _____ I have decided not to inform my family of
7 my decision.

8 (3) _____ I have no family to inform of my decision.

9 I understand that I have the right to rescind this request for
10 medication at any time.

11 I understand the full import of this request for medication, and
12 I expect to die when I take the medication to be prescribed.

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

15 Dated: _____ Signed: _____

16 Requester

17 Place: _____

18 STATEMENT OF WITNESSES

19 I declare under penalty of perjury that the maker of this request
20 for medication

21 (1) is personally known to me or has provided proof of
22 identity;

23 (2) signed this request for medication in my presence;

24 (3) appears to be of sound mind and not under duress,
25 fraud, or undue influence; and

26 (4) is not a patient for whom either of us is attending
27 physician, health care provider, or an employee of a health
28 provider.

29 I further declare under penalty of perjury that I am not related
30 to the requester by blood, marriage, or adoption, and, to the best of my
31 knowledge, I am not entitled to any part of the estate of the requester

1 under a will now existing or by operation of law, and have no claim nor
2 do I anticipate making a claim against any portion of the estate of the
3 requester.

4 Dated: _____

5 Witness's Signature: _____

6 Print Name: _____

7 Residence Address: _____

8 Dated: _____

9 Witness's Signature: _____

10 Print Name: _____

11 Residence Address: _____

12 (d) A physician may presume, in the absence of actual notice to the contrary,
13 that a request for medication complies with this chapter and is valid.

14 (e) Upon a subsequent oral or written request for medication by the maker of
15 the request for medication, the attending physician shall make the initial determination
16 of whether the requester has a terminal disease, is competent, and has made the request
17 for medication voluntarily, and shall inform the requester of the

18 (1) attending physician's medical diagnosis;

19 (2) attending physician's prognosis;

20 (3) potential risks, probable results, and irreversible consequences of
21 taking the medication to be prescribed; and

22 (4) feasible alternatives, including, but not limited to, comfort care,
23 hospice care, and pain control.

24 (f) After complying with (e) of this section, the attending physician shall refer
25 the patient to a consulting physician for medical confirmation of the diagnosis and for
26 a determination that the patient is competent and acting voluntarily.

27 (g) The attending physician shall ask the patient to notify next of kin of the
28 request for medication. A patient who declines or is unable to notify next of kin may
29 not have the request for medication denied for that reason.

30 (h) In order to receive a prescription for medication to end life in a humane
31 and dignified manner, a qualified patient shall have made a written request for

1 medication under (c) of this section followed by an oral or written request for
2 medication to the attending physician no less than 10 days after making the written
3 request under (c) of this section. A prescription for medication under this chapter may
4 not be written unless the attending physician has verified that the patient is making an
5 informed decision and offered the qualified patient an opportunity to revoke the request
6 for medication.

7 * **Sec. 4.** AS 18.12.020 is amended to read:

8 Sec. 18.12.020. REVOCATION [OF DECLARATION]. (a) A declaration **or**
9 **request for medication** may be revoked at any time and in any manner by which the
10 declarant **or requester** is able to communicate an intent to revoke, without regard to
11 mental or physical condition. A revocation is only effective as to the attending
12 physician or **a** [ANY] health care provider acting under the guidance of that physician
13 upon communication to the physician or health care provider by the declarant **or the**
14 **requester, as applicable,** or by another to whom the revocation was communicated
15 **by the declarant or requester.**

16 (b) The attending physician or health care provider shall make the revocation
17 a part of the declarant's **or requester's** medical record.

18 * **Sec. 5.** AS 18.12.030 is amended to read:

19 Sec. 18.12.030. RECORDING DETERMINATION OF TERMINAL
20 CONDITION AND CONTENTS OF DECLARATION **OR REQUEST FOR**
21 **MEDICATION.** When an attending physician who has been provided a copy of a
22 declaration **or request for medication** determines that the declarant **or requester** is
23 in a terminal condition, the physician shall record that determination and the contents
24 of the declaration **or request for medication** in the declarant's **or requester's** medical
25 record. **When recording a request for medication into the requester's medical**
26 **record under this section, the physician shall also record**

27 **(1) all oral or written requests by a patient for medication to end**
28 **the patient's life in a humane and dignified manner;**

29 **(2) the attending physician's diagnosis and prognosis for the patient**
30 **and the attending physician's determination that the patient is mentally**
31 **competent, acting voluntarily, and has made an informed decision;**

1 (3) the consulting physician's diagnosis and prognosis for the
2 patient and the consulting physician's verification that the patient is mentally
3 competent, acting voluntarily, and has made an informed decision;

4 (4) that the attending physician has made an offer to the patient to
5 let the patient revoke the most recent request for medication;

6 (5) a note by the attending physician indicating that all
7 requirements under this chapter have been met and describing the steps taken to
8 comply with this chapter; and

9 (6) the type of medication, if any, prescribed as a result of the
10 patient's request for medication.

11 * **Sec. 6.** AS 18.12.040(c) is amended to read:

12 (c) The declaration **or request for medication** of a qualified patient known
13 to the attending **or consulting** physician to be pregnant **may not be given operative**
14 **[IS GIVEN NO]** effect as long as it is probable that the fetus could develop to the
15 point of live birth with continued application of life-sustaining procedures.

16 * **Sec. 7.** AS 18.12.050 is amended to read:

17 Sec. 18.12.050. TRANSFER OF PATIENTS. (a) An attending physician who
18 is unwilling to comply with the requirements of AS 18.12.030, **[OR WHO IS**
19 **UNWILLING TO COMPLY WITH]** the declaration of a qualified patient under
20 AS 18.12.040, **or a request for medication of a qualified patient under**
21 **AS 18.12.015** shall withdraw as attending physician but the withdrawal is effective
22 only when the services of another attending physician have been obtained.

23 (b) If the policies of a health care facility preclude compliance with the
24 declaration **or request for medication** of a qualified patient under this chapter or a
25 do not resuscitate order issued by an attending physician, or the facility is unwilling
26 to accept DNR identification as evidence of the existence of a declaration or do not
27 resuscitate order, that facility shall take all reasonable steps to notify the patient or, if
28 the patient is not able to make treatment decisions, the patient's guardian **or other**
29 **person who has the power to make health care decisions for the patient,** of the
30 facility's policy and shall take all reasonable steps to effect the transfer of the patient
31 to the patient's home or to a facility where the provisions of this chapter can be carried

1 out.

2 * **Sec. 8.** AS 18.12.050 is amended by adding a new subsection to read:

3 (c) A physician or health care facility that provides for the transfer of a patient
4 under this section shall transfer, upon request, a copy of the patient's relevant medical
5 records to the new health care provider.

6 * **Sec. 9.** AS 18.12 is amended by adding a new section to read:

7 Sec. 18.12.055. REPORTING REQUIREMENTS. (a) The Department of
8 Health and Social Services may review records maintained under this chapter and may
9 issue appropriate regulations to facilitate the collection of information regarding
10 compliance with this chapter. The information collected under this subsection is
11 confidential and not subject to inspection or copying under AS 09.25.110 - 09.25.125.

12 (b) The Department of Health and Social Services shall prepare and make
13 available to the public an annual statistical report of information collected under (a)
14 of this section.

15 * **Sec. 10.** AS 18.12.060(a) is amended to read:

16 (a) In the absence of actual notice of the revocation of a declaration, **request**
17 **for medication**, or do not resuscitate order, as applicable, the following, while acting
18 in accordance with the do not resuscitate protocol adopted under AS 18.12.035 or with
19 the other requirements of this chapter, are not subject to civil or criminal liability or
20 guilty of unprofessional conduct:

21 (1) a physician who causes the withholding or withdrawal of life-
22 sustaining procedures from a qualified patient or the withholding or withdrawal of
23 cardiopulmonary resuscitation from a patient for whom a do not resuscitate order has
24 been issued or who possesses DNR identification;

25 (2) a person who participates in the withholding or withdrawal of
26 cardiopulmonary resuscitation or other life-sustaining procedures under the direction
27 or with the authorization of a physician or upon discovery of DNR identification upon
28 a person;

29 (3) persons who cause or participate in providing cardiopulmonary
30 resuscitation or other life-sustaining procedures after an oral or written request
31 communicated to them by a person who possesses DNR identification;

1 (4) the health care facility in which the providing, withholding, or
2 withdrawal occurs;

3 **(5) a physician or pharmacist who prescribes, prepares, or**
4 **dispenses medication for a qualified patient to implement a request for medication**
5 **in accordance with the procedures required by this chapter.**

6 * **Sec. 11.** AS 18.12.060 is amended by adding new subsections to read:

7 (c) A professional organization, professional association, or health care
8 provider may not subject to disciplinary measures or other penalty a person based on
9 the person's good faith participation or refusal to participate in procedures authorized
10 under this chapter if the participation or refusal to participate is done in a manner that
11 complies with this chapter.

12 (d) A request for medication by a patient or the provision by an attending
13 physician of medication in good faith compliance with this chapter does not constitute
14 neglect or self-harm and may not be the basis for the appointment of a guardian or
15 conservator for the patient.

16 (e) A provision of a contract that requires a health care provider to comply
17 with a request for medication executed under AS 18.12.015 is void.

18 * **Sec. 12.** AS 18.12.070 is amended to read:

19 Sec. 18.12.070. PENALTIES. (a) An attending physician who **(1)** fails to
20 comply with a do not resuscitate order or the declaration **or request for medication**
21 of a qualified patient **who has complied with the requirements of this chapter; and**
22 **(2) fails** [OR] to make the necessary arrangements to effect a transfer under
23 AS 18.12.050, has no right to compensation for medical services provided to a patient
24 after withholding, [OR] withdrawal, **or the requested medication** should have been
25 effective or after transfer should have occurred and may be liable to the patient and
26 to the heirs of the patient for a civil penalty not to exceed \$1,000 plus the actual costs
27 associated with the failure to comply with the order, [OR] declaration, **or request for**
28 **medication**, and this shall be the exclusive remedy at law for damages.

29 (b) A person who wilfully conceals, cancels, defaces, obliterates, or damages
30 the DNR identification, [OR] declaration, **or request for medication** of another person
31 without the other's consent or who falsifies, **alters**, or forges a revocation of the DNR

1 identification, [OR] declaration, **or request for medication** of another person may be
2 civilly liable to the other person and to the heirs of the other person.

3 * **Sec. 13.** AS 18.12.070 is amended by adding new subsections to read:

4 (c) A person who without authorization of the patient intentionally alters or
5 forges a request for medication or conceals a revocation of a request for medication
6 with the intent or effect of causing the patient's death is guilty of a class A felony.

7 (d) A person who intentionally coerces or exerts undue influence on a patient
8 to request medication that can be used for the purpose of ending the patient's life or
9 to destroy a revocation of a request for medication, is guilty of a class A felony.

10 (e) This chapter does not limit liability for civil damages resulting from other
11 negligent conduct or intentional misconduct by any person.

12 (f) The penalties in this chapter do not preclude criminal penalties applicable
13 under other law for conduct that is inconsistent with the provisions of this chapter.

14 * **Sec. 14.** AS 18.12.080(a) is amended to read:

15 (a) Death resulting from the withholding or withdrawal of cardiopulmonary
16 resuscitation or other life-sustaining procedures under a do not resuscitate order or
17 protocol, under a declaration, or upon discovery of DNR identification on a person and
18 in accordance with this chapter does not, for any purpose, **including civil or criminal**
19 **liability**, constitute a suicide or homicide. **Death resulting from medication**
20 **prescribed under a request for medication in accordance with this chapter does**
21 **not, for any purpose, including civil or criminal liability, constitute a suicide or**
22 **homicide if the medication is self-administered by the person who made the**
23 **request for medication and the person who made the request for medication**
24 **controlled the time, place, and manner of death.**

25 * **Sec. 15.** AS 18.12.080(b) is amended to read:

26 (b) The issuing of a do not resuscitate order, the possession of DNR
27 identification, [OR] the making of a declaration under AS 18.12.010, **or a request for**
28 **medication under AS 18.12.015** does not affect in any manner the sale, procurement,
29 or issuance of a policy of life insurance, nor does it modify the terms of an existing
30 policy of life insurance. A policy of life insurance is not legally impaired or
31 invalidated in any manner by the withholding or withdrawal of life-sustaining

1 procedures from an insured qualified patient, [OR] the withholding or withdrawal of
2 cardiopulmonary resuscitation from an insured patient who possesses DNR
3 identification or for whom a do not resuscitate order has been issued, **or the use by**
4 **an insured qualified patient of medication prescribed in compliance with a request**
5 **for medication governed by this chapter,** notwithstanding any term of the policy to
6 the contrary.

7 * **Sec. 16.** AS 18.12.080(c) is amended to read:

8 (c) A physician, health care facility, or other health care provider, and a health
9 care service plan, insurer issuing disability insurance, self-insured employee welfare
10 benefit plan, or nonprofit hospital plan, may not require a person to execute a
11 declaration **or request for medication,** obtain a do not resuscitate order from a
12 physician, or possess DNR identification as a condition for being insured for, or
13 receiving, health care services.

14 * **Sec. 17.** AS 18.12.080(d) is amended to read:

15 (d) This chapter creates no presumption concerning the intention or intended
16 treatment of an individual who does not have DNR identification, has not executed a
17 declaration **or request for medication,** or for whom a do not resuscitate order has not
18 been issued with respect to the use, withholding, or withdrawal of cardiopulmonary
19 resuscitation or other life-sustaining procedures.

20 * **Sec. 18.** AS 18.12.090 is amended to read:

21 Sec. 18.12.090. RECOGNITION OF DECLARATIONS, **REQUESTS FOR**
22 **MEDICATION,** AND ORDERS EXECUTED OR ISSUED IN OTHER STATES.
23 A declaration, **request for life-ending medication,** do not resuscitate order, or DNR
24 identification executed, issued, or authorized in another state or a territory or
25 possession of the United States in compliance with the law of that jurisdiction is
26 effective for purposes of this chapter.

27 * **Sec. 19.** AS 18.12.100(5) is amended to read:

28 (5) "do not resuscitate order" means **an order** [A DIRECTIVE] from
29 a licensed physician that emergency cardiopulmonary resuscitation should not be
30 administered to a particular person;

31 * **Sec. 20.** AS 18.12.100(10) is amended to read:

1 (10) "qualified patient" means a patient who, in accordance with this
2 chapter, has executed a declaration or a request for medication, as applicable, [IN
3 ACCORDANCE WITH THIS CHAPTER] and who has been determined by the
4 attending physician to be in a terminal condition;

5 * **Sec. 21.** AS 18.12.100 is amended by adding new paragraphs to read:

6 (12) "declarant" means a person who has executed a declaration under
7 AS 18.12.010;

8 (13) "intentionally" has the meaning given in AS 11.81.900;

9 (14) "requester" means a person who has executed a request for
10 medication under AS 18.12.015;

11 (15) "request for medication" means a document executed in
12 accordance with the requirements of AS 18.12.015.