

SENATE BILL NO. 159

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATOR RIEGER

Introduced: 4/13/95

Referred: HES, JUD

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14 has withdrawn.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; 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 or by two physicians that my ability to receive and evaluate information
11 effectively or communicate decisions is impaired to such an extent that I lack
12 the capacity to refuse or consent to mental health treatment. "Mental health
13 treatment" means electroconvulsive treatment, treatment of mental illness with
14 psychotropic medication, and admission to and retention in a health care
15 facility for a period up to 17 days.

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

19 _____
20 _____.

21 PSYCHOTROPIC MEDICATIONS

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

25 _____ I consent to the administration of the following medications: _____
26 _____

27 _____ I do not consent to the administration of the following medications: ____
28 _____

29 Conditions or limitations: _____
30 _____.

31 ELECTROCONVULSIVE TREATMENT

1 treatment if I become incapable of giving or withholding informed consent for
2 that treatment.

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

6 NAME _____

7 ADDRESS _____

8 TELEPHONE NO. _____

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

14 OTHER DOCUMENTS

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

20 _____ jointly with consent of each other as to my mental health
21 treatment;

22 _____ separately without each other's consent as to my mental health
23 treatment.

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

27 _____
28 (Signature of Declarant/Date)

29 AFFIRMATION OF WITNESSES

30 We affirm that the principal is personally known to us, that the principal
31 signed or acknowledged the principal's signature on this declaration for mental

1 health treatment in our presence, that the principal appears to be of sound mind
2 and not under duress, fraud, or undue influence, and that neither of us is a
3 person appointed as an attorney-in-fact by this document; the principal's
4 attending physician or mental health service provider or a relative of the
5 physician or provider; the owner, operator, or relative of an owner or operator
6 of a facility in which the principal is a patient or resident; or a person related
7 to the principal by blood, marriage, or adoption.

8 Witnessed By:

9 _____

10 (Signature of Witness/Date)

(Printed Name of Witness)

11 _____

(Address)

12 _____

(Telephone Number)

13 _____

14 (Signature of Witness/Date)

(Printed Name of Witness)

15 _____

(Address)

16 _____

(Telephone Number)

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20
21 ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT

22 I accept this appointment and agree to serve as attorney-in-fact to make
23 decisions about mental health treatment for the principal. I understand that I
24 have a duty to act in a manner consistent with the desires of the principal as
25 expressed in this appointment. I understand that this document gives me
26 authority to make decisions about mental health treatment only while the
27 principal is incapable as determined by a court or two physicians. I understand
28 that the principal may revoke this declaration in whole or in part at any time
29 and in any manner when the principal is not incapable.

30 _____

31 (Signature of Attorney-in-fact/Date)

(Printed name)

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(Address)

(Telephone Number)

(Signature of Alternate Attorney-in-fact/Date) _____
(Printed name)

(Address)

(Telephone Number)

NOTICE TO PERSON MAKING A DECLARATION
FOR MENTAL HEALTH TREATMENT

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

(1) This document allows you to make decisions in advance about three types of mental health treatment: psychotropic medication, electroconvulsive therapy, and short-term (up to 17 days) admission to a treatment facility. 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 incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments.

(2) You may also appoint a person as your attorney-in-fact to make these treatment decisions for you if you become incapable. The person you appoint has a duty to act consistent with your desires as stated in this document or, if your desires are not stated or otherwise made known to the attorney-in-fact, to act in a manner consistent with what the person in good faith believes to be in your best interest. For the appointment to be effective, the person you appoint must accept the appointment in writing. The person also has the right to withdraw from acting as your attorney-in-fact at any time.

(3) This document will continue in effect for a period of three years

1 unless you become incapable of participating in mental health treatment decisions. If
2 this occurs, the directive will continue in effect until you are no longer incapable.

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

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

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

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

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

24 (2) "attorney-in-fact" means an adult properly appointed under
25 AS 47.30.950 - 47.30.980 to make mental health treatment decisions for a principal
26 under a declaration for mental health treatment and also means an alternative attorney-
27 in-fact;

28 (3) "facility" means a

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

30 (B) nursing home; or

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

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

7 (5) "mental health treatment" means electroconvulsive treatment,
8 treatment with psychotropic medication, and admission to and retention in a facility
9 for a period not to exceed 17 days.

10 * **Sec. 2.** AS 13.26.335 is amended to read:

11 Sec. 13.26.335. ADDITIONAL OPTIONAL PROVISIONS TO STATUTORY
12 FORM POWER OF ATTORNEY. Each of the following provisions may be included
13 in a statutory form power of attorney:

14 (1) IF YOU HAVE GIVEN THE AGENT AUTHORITY REGARDING
15 HEALTH CARE SERVICES UNDER SUBDIVISION (L), COMPLETE THE
16 FOLLOWING:

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

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

20 () I have executed a separate declaration under
21 AS 47.30.950 - 47.30.980 regarding mental health treatment. If I
22 have appointed an attorney-in-fact under AS 47.30.950 - 47.30.980,
23 I authorize that attorney-in-fact and the attorney-in-fact whom I
24 have appointed in this document to serve

25 () jointly with consent of each other as to my
26 mental health treatment

27 () separately without each other's consent as to my
28 mental health treatment.

29 () I have not executed a separate declaration under
30 AS 47.30.950 - 47.30.980.

31 (2) YOU MAY DESIGNATE AN ALTERNATE ATTORNEY-IN-

1 FACT. ANY ALTERNATE YOU DESIGNATE WILL BE ABLE TO EXERCISE
2 THE SAME POWERS AS THE AGENT(S) YOU NAMED AT THE BEGINNING
3 OF THIS DOCUMENT. IF YOU WISH TO DESIGNATE AN ALTERNATE OR
4 ALTERNATES, COMPLETE THE FOLLOWING:

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

8 First alternate or successor attorney-in-fact
9 _____
10 (Name and address of alternate)

11 _____
12 Second alternate or successor attorney-in-fact
13 _____
14 (Name and address of alternate)

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

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

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

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

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

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

1 procedures;

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

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

9 (5) consent or refuse to consent to the principal's psychiatric care, but
10 the consent does not authorize a voluntary commitment or placement in a mental
11 health treatment facility, electroconvulsive [CONCLUSIVE] or electric-shock therapy,
12 psychosurgery, sterilization, or an abortion except that, if the principal has properly
13 executed a declaration under AS 47.30.950 - 47.30.980, the agent may consent to
14 voluntary commitment or placement in a mental health treatment facility and
15 electroconvulsive or electric-shock therapy if that consent is consistent with the
16 wishes expressed in the declaration under AS 47.30.950 - 47.30.980 and if the
17 principal has not designated another attorney-in-fact to have exclusive authority
18 to make decisions regarding mental health treatment;

19 (6) [(5)] arrange for care or lodging of the principal in a hospital,
20 nursing home, or hospice;

21 (7) [(6)] grant releases to health care professionals or health care
22 institutions;

23 (8) [(7)] hire, discharge, or compensate an attorney, accountant, expert
24 witness, or assistant when the agent considers the action to be desirable for the proper
25 execution of the powers described in this subsection; and

26 (9) [(8)] do any other act or acts, that the principal can do through an
27 agent, and that the agent considers desirable or necessary to provide for the principal's
28 physical or mental well being.

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

30 (b) The patient and the following persons, at the request of the patient, are
31 entitled to participate in formulating the patient's individualized treatment plan and to

1 participate in the evaluation process as much as possible, at minimum to the extent of
2 requesting specific forms of therapy, inquiring why specific therapies are or are not
3 included in the treatment program, and being informed as to the patient's present
4 medical and psychological condition and prognosis: (1) the patient's counsel, (2) the
5 patient's guardian, (3) a mental health professional previously engaged in the patient's
6 care outside of the evaluation facility or designated treatment facility, (4) a
7 representative of the patient's choice, **(5) a person designated as the patient's**
8 **attorney-in-fact with regard to mental health treatment decisions under**
9 **AS 13.26.332 - 13.26.358, AS 47.30.950 - 47.30.980, or other power-of-attorney,** and
10 **(6) [(5)] the adult designated under AS 47.30.725.** The mental health care professionals
11 may not withhold any of the information described in this subsection from the patient
12 or from others if the patient has signed a waiver of confidentiality **or has designated**
13 **the person who would receive the information as an attorney-in-fact with regard**
14 **to mental health treatment.**

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

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

24 * **Sec. 6.** AS 47.30.836 is amended to read:

25 Sec. 47.30.836. PSYCHOTROPIC MEDICATION IN NONEMERGENCIES.
26 An evaluation facility or designated treatment facility may not administer psychotropic
27 medication to a patient in a situation that does not involve a crisis under
28 AS 47.30.838(a)(1) unless **the patient**

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

1 (2) authorized the use of psychotropic medication in a declaration
2 properly executed under AS 47.30.950 - 47.30.980 or authorized an attorney-in-
3 fact to consent to the use of psychotropic medication for the patient and the
4 attorney-in-fact does consent; or

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

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

9 (a) Except as provided in (c) **and (d)** of this section, an evaluation facility or
10 designated treatment facility may administer psychotropic medication to a patient
11 without the patient's informed consent, regardless of whether the patient is capable of
12 giving informed consent, only if

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

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

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

24 (B) may include an initial dosage and may authorize additional,
25 as needed, doses; if additional, as needed, doses are authorized, the order must
26 specify the medication, the quantity of each authorized dose, the method of
27 administering the medication, the maximum frequency of administration, the
28 specific conditions under which the medication may be given, and the
29 maximum amount of medication that may be administered to the patient in a
30 24-hour period;

31 (C) is valid for only 24 hours and may be renewed by a

1 physician for a total of 72 hours, including the initial 24 hours, only after a
2 personal assessment of the patient's status and a determination that there is still
3 a crisis situation as described in (1) of this subsection; upon renewal of an
4 order under this subparagraph, the facts supporting the renewal shall be written
5 into the patient's medical record.

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

7 (d) An evaluation facility or designated treatment facility may administer
8 psychotropic medication to a patient without the patient's informed consent if the
9 patient is unable to give informed consent but has authorized the use of psychotropic
10 medication in a declaration properly executed under AS 47.30.950 - 47.30.980 or has
11 authorized an attorney-in-fact to consent to this form of treatment for the patient and
12 the attorney-in-fact does consent.