

CS FOR SENATE BILL NO. 291(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 2/26/98

Referred: Health, Education and Social Services

Sponsor(s): SENATORS TAYLOR, Ellis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to living wills, do not resuscitate orders, anatomical gifts, and
2 the care and treatment of persons with serious medical conditions."

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

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

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

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

11 (2) consent or refuse to consent to medical care, including the
12 withholding or withdrawal under AS 18.12.093(b) of life-sustaining procedures,
13 or relief for the principal from pain [, BUT THE AGENT MAY NOT AUTHORIZE
14 THE TERMINATION OF LIFE-SUSTAINING PROCEDURES];

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

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7 AS 47.30.950 - 47.30.980 has not withdrawn;

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

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

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

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

24 (9) do any other act or acts that the principal can do through an agent
25 and that the agent considers desirable or necessary to provide for the principal's
26 physical or mental well-being.

27 * **Sec. 2.** AS 18.12.010(a) is amended to read:

28 (a) A competent person who is at least 18 years **of age** [OLD] may execute
29 a declaration at any time directing that life-sustaining procedures **or artificially**
30 **administered nutrition and hydration** be withheld or withdrawn from that person.

31 The declaration is given operative effect only if **it has been medically determined**

1 that the declarant is in a serious medical condition [THE DECLARANT'S
 2 CONDITION IS DETERMINED TO BE TERMINAL] and that the declarant is not
 3 able to make treatment decisions, except that, if the declaration contains an anatomical
 4 gift under AS 13.50, the gift takes effect on [UPON] the death of the person. The
 5 declaration shall be signed by the declarant, or another person at the declarant's
 6 direction. If signed by another person at the declarant's direction, the signer shall sign
 7 in the presence of two persons or a person who is qualified to take acknowledgments
 8 under AS 09.63.010. A person may not charge a fee for preparing a declaration.

9 * **Sec. 3.** AS 18.12.010(c) is repealed and reenacted to read:

10 (c) A declaration may, but need not, be in the following form:

11 LIVING WILL DECLARATION

12 YOU DO NOT HAVE TO FILL OUT AND SIGN THIS FORM

13 Part A. Important Information About This Declaration.

14 This is an important legal document. It can control critical decisions
 15 about your health care. Before signing, consider the following facts:

16 (1) You have the right to name a person to direct your health
 17 care when you cannot do so. This person is called your "agent." You can do
 18 this by executing a health care power of attorney as defined in Part B, Item (G)
 19 of this document.

20 (2) This form is valid only if you sign it voluntarily. If you do
 21 not want a declaration, you do not have to sign this form.

22 (3) Unless you have limited the duration of this declaration, it
 23 will not expire. If you have set an expiration date and you become unable to
 24 direct your health care before that date, this declaration will not expire until
 25 you are able to make those decisions again.

26 (4) You may revoke this document at any time. Notify your
 27 agent and your health care provider of the revocation.

28 (5) Despite this document, you have the right to decide your
 29 own health care as long as you are able to do so. If there is anything in this
 30 document that you do not understand, ask a lawyer to explain it to you.

31 (6) You may cross out words that do not express your wishes

1 or add words that better express your wishes. Witnesses or a person qualified
2 to take acknowledgments under AS 09.63.010 must sign where indicated.

3 Print your name, birth date, and address here:

4 Name _____

5 Birth date _____

6 Address _____

7 Unless revoked or suspended, this declaration will continue for

8 INITIAL ONE:

9 _____ My entire life;

10 _____ Other period (_____ years).

11 Part B. Health Care Instructions.

12 NOTE: In filling out these instructions, keep the following in mind:

13 (1) the term "as my physician recommends" means that you
14 want your physician to try life support if your physician believes it could be
15 helpful and then discontinue it if it is not helping your health condition or
16 symptoms;

17 (2) "life support" and "tube feeding" are defined as follows:

18 (A) "life support" refers to any medical means for
19 maintaining life, including procedures, devices, and medications; if you
20 refuse life support, you will still get routine measures to keep you clean
21 and comfortable;

22 (B) "tube feeding" is food and water supplied artificially
23 by medical device; if you refuse tube feeding, you should understand
24 that malnutrition, dehydration, and death will result;

25 (3) you will get care for your comfort and cleanliness no matter
26 what choices you make;

27 (4) you may either give specific instructions by filling out Items
28 (A) - (D) below, or you may use the general instructions provided by Item (E).

29 Here are my desires about my health care if my doctor and another
30 knowledgeable doctor determine that I am in a medical condition described
31 below:

1 (A) Close to Death. If I am close to death and life
 2 support would only postpone the moment of my death

3 INITIAL ONE:

4 _____ I want to receive tube feeding;

5 _____ I want tube feeding only as my physician recommends;

6 _____ I DO NOT WANT tube feeding.

7 INITIAL ONE:

8 _____ I want any other life support that may apply;

9 _____ I want life support only as my physician recommends;

10 _____ I WANT NO life support.

11 (B) Permanently Unconscious. If I am unconscious and
 12 it is very unlikely that I will ever become conscious again

13 INITIAL ONE:

14 _____ I want to receive tube feeding;

15 _____ I want tube feeding only as my physician recommends;

16 _____ I DO NOT WANT tube feeding.

17 INITIAL ONE:

18 _____ I want any other life support that may apply;

19 _____ I want life support only as my physician recommends;

20 _____ I WANT NO life support.

21 (C) Advanced Progressive Illness. If I have a
 22 progressive illness that will be fatal and the illness is in an advanced
 23 stage and I am consistently and permanently unable to communicate by
 24 any means, to swallow food and water safely, to care for myself, and
 25 to recognize my family and other people, and if it is very unlikely that
 26 my condition will substantially improve

27 INITIAL ONE:

28 _____ I want to receive tube feeding;

29 _____ I want tube feeding only as my physician recommends;

30 _____ I DO NOT WANT tube feeding.

31 INITIAL ONE:

- 1 _____ I want any other life support that may apply;
- 2 _____ I want life support only as my physician recommends;
- 3 _____ I WANT NO life support.

4 (D) Extraordinary Suffering. If life support would not
 5 help my medical condition and would make me suffer permanent and
 6 severe pain,

7 INITIAL ONE:

- 8 _____ I want to receive tube feeding;
- 9 _____ I want tube feeding only as my physician recommends;
- 10 _____ I DO NOT WANT tube feeding

11 INITIAL ONE:

- 12 _____ I want any other life support that may apply;
- 13 _____ I want life support only as my physician recommends;
- 14 _____ I WANT NO life support.

15 (E) General Instructions.

16 INITIAL IF THIS APPLIES:

17 _____ I do not want my life to be prolonged by life support.

18 I also do not want tube feeding as life support. I want my doctors to
 19 allow me to die naturally if my doctor and another knowledgeable
 20 doctor determine I am in any of the medical conditions listed in Items
 21 (A) - (D) above.

22 (F) Additional Conditions or Instructions.

23 _____
 24 _____.

25 (G) Other Documents. A "health care power of
 26 attorney" is any document you may have signed under the power of
 27 attorney laws of Alaska to appoint an agent to make health care
 28 decisions for you.

29 INITIAL ONE:

30 _____ I have previously signed a health care power of
 31 attorney; I want it to remain in effect unless I appoint another agent

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

after signing the health care power of attorney.

_____ I have a health care power of attorney and I REVOKE IT;

_____ I DO NOT have a health care power of attorney.

(H) Organ Donations. Notwithstanding the other provisions of this declaration, if I have donated an organ under this declaration or by another method, and if I am in a hospital when a do not resuscitate order is to be implemented for me, I do not want the do not resuscitate order to take effect until the donated organ can be evaluated to determine if the organ is suitable for donation.

OPTIONAL: In the event of my death, I donate the following part(s) of my body for the purposes identified in AS 13.50.020:

_____ Any needed organ or tissue

Tissue:

_____ Eyes

_____ Bone and connective tissue

_____ Skin

_____ Heart

_____ Other: _____

Limitations: _____

Organ:

_____ Heart

_____ Kidney(s)

_____ Liver

_____ Lung(s)

_____ Pancreas

_____ Other: _____

Signed this _____ day of _____, _____.

Signature _____

Place _____

If another person is to sign for the declarant at the declarant's

1 direction, the person signing for the declarant must sign in the presence
2 of two persons or a person who is qualified to take acknowledgments
3 under AS 09.63.010. The witness form below may be used for the two
4 witnesses. The acknowledgment form below may be used for the
5 person qualified to take acknowledgments.

6 WITNESS FORM

7 Witness _____

8 Address _____

9 Witness _____

10 Address _____

11 ACKNOWLEDGMENT FORM

12 State of _____

13 _____ Judicial District

14 The foregoing instrument was acknowledged before me this
15 (date) by (name of person who acknowledged).

16 _____

17 Signature of Person Taking

18 Acknowledgment

19 _____

20 Title or Rank

21 _____

22 Serial Number, if any.

23 * **Sec. 4.** AS 18.12.010 is amended by adding new subsections to read:

24 (e) Unless the period of time that a declaration is to be effective is limited by
25 the terms of the declaration, the declaration continues in effect until the declarant dies
26 or the declaration is revoked under AS 13.50.050 or AS 18.12.020, whichever event
27 occurs first.

28 (f) Notwithstanding (e) of this section, if the declarant is an incapable person
29 at the expiration of the term of the declaration, the declaration continues in effect until
30 the declarant is no longer an incapable person or the declarant dies.

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

1 **Sec. 18.12.030. Recording determination of [TERMINAL] condition and**
 2 **contents of declaration.** When an attending physician who has been provided a copy
 3 of a declaration determines that the declarant is in a **serious medical** [TERMINAL]
 4 condition, the physician shall record that determination and the contents of the
 5 declaration in the declarant's medical record.

6 * **Sec. 6.** AS 18.12.040(b) is repealed and reenacted to read:

7 (b) Persons caring for a patient from whom life-sustaining procedures or
 8 artificially administered nutrition and hydration are withheld or withdrawn shall
 9 provide care to ensure the patient's comfort and cleanliness, including

10 (1) body hygiene, including oral hygiene;

11 (2) reasonable efforts to offer food and fluids orally;

12 (3) medication, positioning, warmth, appropriate lighting, and other
 13 measures to relieve pain and suffering; and

14 (4) privacy and respect for the dignity and humanity of the patient.

15 * **Sec. 7.** AS 18.12.080(a) is repealed and reenacted to read:

16 (a) Nothing in this chapter is intended to condone, authorize, or approve mercy
 17 killing or to permit an affirmative or deliberate act or omission to end life, other than
 18 to allow the natural process of dying. The withholding or withdrawing of a life-
 19 sustaining procedure or of artificially administered nutrition and hydration under this
 20 chapter does not, for any purpose, constitute a suicide, assisting a suicide, mercy
 21 killing, or assisted homicide.

22 * **Sec. 8.** AS 18.12 is amended by adding new sections to read:

23 **Sec. 18.12.093. Withholding or withdrawal of life-sustaining procedures**
 24 **from incapable persons.** (a) Life-sustaining procedures that would otherwise be
 25 applied to an incapable person who does not have an applicable valid declaration may
 26 be withheld or withdrawn under (b) - (f) of this section if the incapable person is
 27 medically determined to be in a serious medical condition.

28 (b) An appointed agent of an incapable person who does not have an
 29 applicable valid declaration, or a health care agent of the incapable person if the
 30 incapable person does not have an appointed agent, may decide whether to withhold
 31 or withdraw life-sustaining procedures from the incapable person.

1 (c) If an incapable person does not have an appointed agent or a health care
2 agent, life-sustaining procedures may be withheld or withdrawn upon the direction and
3 under the supervision of the person's attending physician, but only after the physician
4 has consulted with concerned family and close friends of the person.

5 (d) Upon the direction and under the supervision of the attending physician,
6 life-sustaining procedures may be withheld or withdrawn under (b) of this section from
7 an incapable person by the person's appointed agent or health care agent only after the
8 family and close friends of the incapable person have been consulted.

9 (e) Before withholding or withdrawing life-sustaining procedures from a person
10 under this section, the person's attending physician must determine that the conditions
11 of this section have been met.

12 (f) In this section,

13 (1) "appointed agent" means a person appointed an attorney in fact
14 under a health care power of attorney;

15 (2) "health care agent" means the first of the following persons, in the
16 following order, who can be located by reasonable effort of the health care provider
17 and who is willing to serve as the health care agent for the incapable person:

18 (A) the incapable person's guardian if the guardian is authorized
19 to make health care decisions for the incapable person;

20 (B) the spouse of the incapable person;

21 (C) an adult designated by the persons listed in (A), (B), and
22 (D) - (G) of this paragraph who can be located by reasonable effort of the
23 health care provider unless one of the other persons listed in this paragraph
24 objects to the designation; in this subparagraph, "persons listed" means, for the
25 purposes of (D) and (F) of this paragraph, the majority required by (D) and
26 (F) of this paragraph;

27 (D) a majority of the incapable person's children who are adults
28 and who can be located by reasonable effort of the health care provider;

29 (E) a parent of the incapable person;

30 (F) a majority of the incapable person's siblings who are adults
31 and who can be located by reasonable effort of the health care provider; or

1 (G) an adult relative or adult friend of the incapable person.

2 **Sec. 18.12.095. Consent to artificially administered nutrition and**
 3 **hydration.** (a) If a person does not have a declaration that clearly states whether or
 4 not the person wants artificially administered nutrition and hydration, it is presumed
 5 that, if the person is temporarily or permanently an incapable person, the person has
 6 consented to artificially administered nutrition and hydration, except for hyper
 7 alimentation, necessary to sustain life, unless

8 (1) while a capable adult, the person clearly and specifically stated that
 9 the person would have refused artificially administered nutrition and hydration in a
 10 similar situation;

11 (2) administration of the nutrition and hydration is not medically
 12 feasible or would itself cause severe, intractable, or long-lasting pain;

13 (3) the person is in a state of permanent unconsciousness;

14 (4) the person has a terminal condition; or

15 (5) the person has a progressive illness that will be fatal and is in an
 16 advanced stage, the person is consistently and permanently unable to communicate by
 17 any means, to swallow food and water safely, to care for the person's self, and to
 18 recognize the person's family and other people, and it is very unlikely that the person's
 19 condition will substantially improve.

20 (b) If a person has a declaration that clearly states that the person does not
 21 want artificially administered nutrition and hydration or if the presumption established
 22 by (a) of this section has been overcome under (a)(1) - (5) of this section, artificially
 23 administered nutrition and hydration may be withheld or withdrawn.

24 (c) Before withholding or withdrawing artificially administered nutrition and
 25 hydration from a person under this section, the person's attending physician must
 26 determine that the conditions of this section have been met.

27 (d) The medical circumstances described in (a)(2) - (5) of this section must be
 28 medically determined to overcome the presumption established by this section.

29 * **Sec. 9.** AS 18.12.100(9) is amended to read:

30 (9) "life-sustaining procedure" means a medical procedure, a
 31 pharmaceutical, a medical device, or an intervention that maintains life by

1 sustaining, restoring, or supplanting a vital function, but does not include routine
 2 care necessary to sustain patient cleanliness and comfort or artificially
 3 administered nutrition and hydration [, WHEN ADMINISTERED TO A
 4 QUALIFIED PATIENT, WILL SERVE ONLY TO PROLONG THE DYING
 5 PROCESS];

6 * **Sec. 10.** AS 18.12.100(11) is amended to read:

7 (11) "qualified patient" means a patient who has executed a declaration
 8 in accordance with this chapter and who has been **medically** determined [BY THE
 9 ATTENDING PHYSICIAN] to be in a **serious medical** [TERMINAL] condition;

10 * **Sec. 11.** AS 18.12.100(12) is repealed and reenacted to read:

11 (12) "terminal condition" means a health condition in which death is
 12 imminent regardless of treatment, and where the application of life-sustaining
 13 procedures or the artificially administered nutrition and hydration serves only to
 14 postpone the moment of death of the patient.

15 * **Sec. 12.** AS 18.12.100 is amended by adding new paragraphs to read:

16 (13) "artificially administered nutrition and hydration" means a medical
 17 intervention providing food and water by tube, mechanical device, or other medically
 18 assisted method, but does not include the usual and typical methods of providing
 19 nutrition and hydration, such as the provision of nutrition and hydration by cup, hand,
 20 bottle, drinking straw, or eating utensil;

21 (14) "health care power of attorney" means a power of attorney under
 22 AS 13.26.332 that includes authority regarding health care services;

23 (15) "incapable" means lacking the ability to make and communicate
 24 health care decisions to health care providers, including communication through
 25 persons familiar with the patient's manner of communication if those persons are
 26 available;

27 (16) "medically determined" means determined by two physicians, one
 28 of whom must be the attending physician, who have personally examined the person;

29 (17) "permanently unconscious" means a condition where a person
 30 completely lacks an awareness of self and external environment, without a reasonable
 31 possibility of a return to a conscious state, and the condition has been confirmed by

1 a neurological specialist who is an expert in the examination of unresponsive persons;

2 (18) "serious medical condition" means

3 (A) a terminal condition;

4 (B) a permanently unconscious condition;

5 (C) a condition in which administration of life-sustaining
6 procedures would not benefit the patient's medical condition and would cause
7 permanent and severe pain; or

8 (D) a progressive illness that will be fatal and is in an advanced
9 stage; the person is consistently and permanently unable to communicate by
10 any means, to swallow food and water safely, to care for the person's self, and
11 to recognize the person's family and other people; and it is very unlikely that
12 the person's condition will substantially improve.

13 * **Sec. 13.** AS 18.12.080(f) is repealed.