

CS FOR HOUSE BILL NO. 25(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 3/10/03

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES WEYHRAUCH, Ogg

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to health care decisions, including do not resuscitate orders,
2 anatomical gifts, and mental health treatment decisions, and to powers of attorney
3 relating to health care, including anatomical gifts and mental health treatment
4 decisions; and providing for an effective date."

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

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 PURPOSE. A principal purpose of this Act is to provide a comprehensive coordinated
9 approach to the making of health care decisions, including anatomical gifts. To achieve this
10 purpose, this Act repeals the current statutory devices that cover health care decisions and
11 consolidates the subject into one chapter.

12 * **Sec. 2.** AS 12.65.100 is amended to read:

13 **Sec. 12.65.100. Unclaimed bodies.** When a person dies and no person
14 appears to claim the body for burial, and no provision is made for the body under

1 **AS 13.52** [AS 13.50], the Department of Health and Social Services, upon
 2 notification, shall request a court order authorizing the body to be plainly and decently
 3 buried or cremated and the remains decently interred. A judicial officer shall issue the
 4 requested order upon the sworn testimony or statement of a representative of the
 5 Department of Health and Social Services that a person has not appeared to claim the
 6 body for burial and provision is not made for the body under **AS 13.52** [AS 13.50].

7 * **Sec. 3.** AS 13 is amended by adding a new chapter to read:

8 **Chapter 52. Health Care Decisions Act.**

9 **Sec. 13.52.010. Advance health care directives.** (a) Except as provided in
 10 AS 13.52.170(a) an adult or emancipated minor may give an individual instruction.
 11 The instruction may be oral or written. The instruction may be limited to take effect
 12 only if a specified condition arises.

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

19 (1) signed by at least two individuals, each of whom witnessed either
 20 the signing of the instrument by the principal or the principal's acknowledgment of the
 21 signature of the instrument; or

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

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

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

27 (1) a health care provider;

28 (2) an employee of a health care provider or facility; or

29 (3) the agent.

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

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

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

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

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

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

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

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

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

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

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

28 (k) An advance health care directive is valid for purposes of this chapter if it
29 complies with this chapter or if it was executed in compliance with the laws of the
30 state where it was executed.

31 **Sec. 13.52.020. Revocation of advance health care directive.** (a) An

1 individual may revoke the designation of an agent only by a signed writing or by
2 personally informing the supervising health care provider.

3 (b) An individual may revoke all or part of an advance health care directive,
4 other than the designation of an agent, at any time and in any manner that
5 communicates an intent to revoke.

6 (c) A health care provider, agent, guardian, or surrogate who is informed of a
7 revocation shall promptly communicate the fact of the revocation to the supervising
8 health care provider and to any health care institution at which the patient is receiving
9 care.

10 (d) A decree of annulment, divorce, dissolution of marriage, or legal
11 separation revokes a previous designation of a spouse as agent unless otherwise
12 specified in the decree or in a power of attorney for health care.

13 (e) An advance health care directive that conflicts with an earlier advance
14 health care directive revokes the earlier directive to the extent of the conflict.

15 **Sec. 13.52.025. Rescission of withdrawal by agent.** A person who has
16 withdrawn as an agent may rescind the withdrawal by executing an acceptance after
17 the date of the withdrawal. A person who rescinds a withdrawal shall give notice to
18 the principal if the principal is capable or to the principal's health care provider if the
19 principal is incapable.

20 **Sec. 13.52.030. Decisions by surrogate.** (a) Except in the case of mental
21 health treatment, a surrogate may make a health care decision for a patient who is an
22 adult or emancipated minor if an agent or guardian has not been appointed or the agent
23 or guardian is not reasonably available, and if the patient has been determined to lack
24 capacity by

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

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

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

30 (b) Except as provided for anatomical gifts in AS 13.52.170(b), an adult or
31 emancipated minor may designate an individual to act as surrogate by personally

1 informing the supervising health care provider. In the absence of a designation, or if
2 the designee is not reasonably available, a member of the following classes of the
3 patient's family who is reasonably available, in descending order of priority, may act
4 as surrogate:

- 5 (1) the spouse, unless legally separated;
- 6 (2) an adult child;
- 7 (3) a parent; or
- 8 (4) an adult sibling.

9 (c) If none of the individuals eligible to act as surrogate under (b) of this
10 section is reasonably available, an adult who has exhibited special care and concern
11 for the patient, who is familiar with the patient's personal values, and who is
12 reasonably available may act as surrogate.

13 (d) A surrogate shall communicate the surrogate's assumption of authority as
14 promptly as practicable to the members of the patient's family specified in (b) of this
15 section who can be readily contacted.

16 (e) If more than one member of a class under (b)(2) - (4) of this section
17 assumes authority to act as surrogate, the members of that class do not agree on a
18 health care decision, and the supervising health care provider is informed of the
19 disagreement, the supervising health care provider shall comply with the decision of a
20 majority of the members of that class who have communicated their views to the
21 provider. If the class is evenly divided concerning the health care decision and the
22 supervising health care provider is informed of the even division, that class and all
23 individuals having a lower priority under (b)(2) - (4) of this section are disqualified
24 from making the decision, and the primary physician shall make the decision based on
25 the best interests of the patient.

26 (f) A surrogate shall make a health care decision in accordance with the
27 patient's individual instructions, if any, and other wishes to the extent known to the
28 surrogate. Otherwise, the surrogate shall make the decision in accordance with the
29 surrogate's determination of the patient's best interest. In determining the patient's best
30 interest, the surrogate shall consider the patient's personal values to the extent known
31 to the surrogate.

1 (g) A health care decision made by a surrogate for a patient is effective
2 without judicial approval.

3 (h) An individual may, at any time, disqualify another person, including a
4 member of the individual's family, from acting as the individual's surrogate by a
5 signed writing or by personally informing the supervising health care provider of the
6 disqualification.

7 (i) Unless related to the patient by blood, marriage, or adoption, a surrogate
8 may not be an owner, operator, or employee of a residential long-term health care
9 institution at which the patient is receiving care.

10 (j) A supervising health care provider may require an individual claiming the
11 right to act as a surrogate for a patient to provide a written declaration under penalty of
12 perjury stating facts and circumstances reasonably sufficient to establish the claimed
13 authority.

14 **Sec. 13.52.040. Decisions by guardian.** (a) A guardian shall comply with
15 the ward's individual instructions and may not revoke a ward's advance health care
16 directive executed before the ward's incapacity.

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

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

21 **Sec. 13.52.050. Obligations of health care provider.** (a) Before
22 implementing a health care decision made for a patient, a supervising health care
23 provider, if possible, shall promptly communicate to the patient the decision made and
24 the identity of the person making the decision.

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

30 (c) A supervising health care provider who makes or is informed of a
31 determination that a patient lacks or has recovered capacity, or that another condition

1 exists that affects an individual instruction or the authority of an agent, a guardian, or a
2 surrogate, shall promptly record the determination in the patient's health care record
3 and communicate the determination to the patient, if possible, and to any person then
4 authorized to make health care decisions for the patient.

5 (d) Except as provided in (e) and (f) of this section, a health care provider or
6 institution providing care to a patient shall comply with

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

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

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

20 (f) A health care provider or institution may decline to comply with an
21 individual instruction or a health care decision that requires medically ineffective
22 health care or health care contrary to generally accepted health care standards
23 applicable to the health care provider or institution.

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

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

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

31 (3) unless the patient or person then authorized to make health care

1 decisions for the patient refuses assistance, immediately make all reasonable efforts to
 2 assist in the transfer of the patient to another health care provider or institution that is
 3 willing to comply with the instruction or decision.

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

7 **Sec. 13.52.060. Do not resuscitate protocol and identification**
 8 **requirements.** (a) An attending physician may issue a do not resuscitate order for a
 9 patient of the physician. The physician shall document the grounds for the order in the
 10 patient's medical file.

11 (b) The department shall by regulation adopt a protocol, subject to the
 12 approval of the State Medical Board, for do not resuscitate orders that sets out a
 13 standardized method of procedure for the withholding of cardiopulmonary
 14 resuscitation by health care providers and health care institutions.

15 (c) The department shall develop standardized designs and symbols for do not
 16 resuscitate identification cards, forms, necklaces, and bracelets that signify, when
 17 carried or worn, that the carrier or wearer is an individual for whom a physician has
 18 issued a do not resuscitate order.

19 (d) A health care provider other than a physician shall comply with the
 20 protocol adopted under (b) of this section for do not resuscitate orders when the health
 21 care provider is presented with a do not resuscitate identification, an oral do not
 22 resuscitate order issued directly by a physician if the applicable hospital allows oral do
 23 not resuscitate orders, or a written do not resuscitate order entered on and as required
 24 by a form prescribed by the department.

25 (e) Notwithstanding (d) of this section, if an individual has made an
 26 anatomical gift to occur at death and is in a hospital when a do not resuscitate order is
 27 to be implemented for the individual, the do not resuscitate order may not be
 28 implemented until the subject of the anatomical gift can be evaluated to determine if it
 29 is suitable for donation.

30 (f) A physician may not revoke a do not resuscitate order at the request of a
 31 person, and a person may not make a do not resuscitate order ineffective, unless the

1 person making the request or proposing to make the order ineffective is the person for
 2 whom the order has been issued. However, if the person for whom the order has been
 3 issued is not capable of expressing an opinion on the subject, the request or proposal
 4 may be made by the parent or guardian of the person for whom the order has been
 5 issued if the person for whom the order has been issued is under 18 years of age.

6 **Sec. 13.52.070. Health care information.** Unless otherwise specified in an
 7 advance health care directive, a person then authorized to make health care decisions
 8 for a patient has the same rights as the patient to request, receive, examine, copy, and
 9 consent to the disclosure of medical or other health care information.

10 **Sec. 13.52.080. Immunities.** (a) A health care provider or institution acting
 11 in good faith and in accordance with generally accepted health care standards
 12 applicable to the health care provider or institution is not subject to civil or criminal
 13 liability or to discipline for unprofessional conduct for

14 (1) complying with a health care decision of a person apparently
 15 having authority to make a health care decision for a patient, including a decision to
 16 withhold or withdraw health care;

17 (2) declining to comply with a health care decision of a person based
 18 on a reasonable belief that the person then lacked authority;

19 (3) complying with an advance health care directive and reasonably
 20 assuming that the directive was valid when made and has not been revoked or
 21 terminated;

22 (4) participating in the withholding or withdrawal of cardiopulmonary
 23 resuscitation or other life-sustaining procedures under the direction or with the
 24 authorization of a physician or upon discovery of do not resuscitate identification upon
 25 an individual;

26 (5) causing or participating in providing cardiopulmonary resuscitation
 27 or other life-sustaining procedures

28 (A) under AS 13.52.060(e) when an individual has made an
 29 anatomical gift; or

30 (B) because an individual has made a do not resuscitate order
 31 ineffective under AS 13.52.060(f) or another provision of this chapter; or

1 (6) acting in good faith under the terms of this chapter or the law of
2 another state relating to anatomical gifts.

3 (b) An individual acting as an agent, a guardian, or a surrogate under this
4 chapter is not subject to civil or criminal liability or to discipline for unprofessional
5 conduct for health care decisions made in good faith.

6 **Sec. 13.52.090. Statutory damages.** (a) A health care provider or institution
7 that intentionally violates this chapter is liable to the aggrieved individual or the
8 individual's estate for damages of \$500 or actual damages resulting from the violation,
9 whichever is greater, plus attorney fees as provided by court rule.

10 (b) A person who intentionally falsifies, forges, conceals, defaces, or
11 obliterates an individual's advance health care directive or a revocation of an advance
12 health care directive without the individual's consent, or who coerces or fraudulently
13 induces an individual to give, revoke, or not to give an advance health care directive,
14 is liable to that individual for damages of \$2,500 or actual damages resulting from the
15 action, whichever is greater, plus attorney fees as provided by court rule.

16 **Sec. 13.52.100. Capacity.** (a) This chapter does not affect the right of an
17 individual to make health care decisions while having capacity to make health care
18 decisions.

19 (b) An individual is rebuttably presumed to have capacity to make a health
20 care decision, to give or revoke an advance health care directive, and to designate or
21 disqualify a surrogate.

22 (c) An individual who is a qualified patient, including an individual for whom
23 a physician has issued a do not resuscitate order, has the right to make a decision
24 regarding the use of cardiopulmonary resuscitation and other life-sustaining
25 procedures as long as the individual is able to make the decision. If an individual who
26 is a qualified patient, including an individual for whom a physician has issued a do not
27 resuscitate order, is not able to make the decision, the protocol adopted under
28 AS 13.52.060 for do not resuscitate orders governs a decision regarding the use of
29 cardiopulmonary resuscitation and other life-sustaining procedures.

30 **Sec. 13.52.110. Status of copy.** A copy of a written advance health care
31 directive, revocation of an advance health care directive, or designation or

1 disqualification of a surrogate has the same effect as the original.

2 **Sec. 13.52.120. Effect of this chapter.** (a) This chapter does not create a
3 presumption concerning the intention of an individual who has not made or who has
4 revoked an advance health care directive.

5 (b) Notwithstanding any other provision of law, if the withholding or
6 withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures is
7 consistent with this chapter, death resulting from the withholding or withdrawal of
8 cardiopulmonary resuscitation or other life-sustaining procedures under a do not
9 resuscitate order, under the protocol for do not resuscitate orders established under
10 AS 13.52.060, or under a do not resuscitate identification found on an individual does
11 not, for any purpose, constitute a suicide or homicide.

12 (c) The issuance of a do not resuscitate order under this chapter, the
13 possession of do not resuscitate identification under this chapter, or the making of a
14 health care directive under this chapter does not affect in any manner the sale,
15 procurement, or issuance of a policy of life insurance, and does not modify the terms
16 of an existing policy of life insurance. A policy of life insurance is not legally
17 impaired or invalidated in any manner by the withholding or withdrawal of life-
18 sustaining procedures from an insured individual or the withholding or withdrawal of
19 cardiopulmonary resuscitation from an individual who possesses do not resuscitate
20 identification or for whom a do not resuscitate order has been issued, notwithstanding
21 any term of the policy to the contrary.

22 (d) This chapter does not create a presumption concerning the intention or
23 intended treatment of an individual who does not have do not resuscitate
24 identification, has not executed a health care directive, or for whom a do not
25 resuscitate order has not been issued with respect to the use, withholding, or
26 withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures.

27 (e) This chapter does not increase or decrease the right of an individual to
28 make decisions regarding the use of cardiopulmonary resuscitation or other life-
29 sustaining procedures as long as the individual is able to do so, and does not impair or
30 supersede any right or responsibility that a person has to effect the withholding or
31 withdrawal of medical care in a lawful manner.

1 (f) This chapter does not authorize mercy killing, assisted suicide, euthanasia,
2 or the provision, withholding, or withdrawal of health care, to the extent prohibited by
3 other statutes of this state.

4 (g) This chapter does not authorize or require a health care provider or
5 institution to provide health care contrary to generally accepted health care standards
6 applicable to the health care provider or institution.

7 (h) This chapter does not authorize an agent or a surrogate to consent to the
8 admission of an individual to a mental health facility unless the individual's written
9 advance health care directive expressly so provides.

10 (i) This chapter does not affect other statutes of this state governing treatment
11 for mental illness of an individual involuntarily committed to a mental health facility.

12 **Sec. 13.52.130. Prohibited requirements.** As a condition of receiving or
13 being insured for health care services, a health care provider, a health care institution,
14 a health care service plan, an insurer issuing health insurance, a self-insured employee
15 welfare benefit plan, or a nonprofit hospital plan may not require an individual to
16 execute a health care directive, obtain a do not resuscitate order from a physician, or
17 possess do not resuscitate identification.

18 **Sec. 13.52.140. Judicial relief.** On petition of a patient, the patient's agent,
19 guardian, or surrogate, or a health care provider or institution involved with the
20 patient's care, the superior court may enjoin or direct a health care decision or order
21 other equitable relief. A proceeding under this section is governed by AS 13.26.165 -
22 13.26.320.

23 **Sec. 13.52.150. Uniformity of application and construction.** This chapter
24 shall be applied and construed to carry out its general purpose to make uniform the
25 law with respect to the subject of this chapter among states enacting it.

26 **Sec. 13.52.160. Do not resuscitate orders and identification of other**
27 **jurisdictions.** A do not resuscitate order or a do not resuscitate identification
28 executed, issued, or authorized in another state or a territory or possession of the
29 United States in compliance with the law of that jurisdiction is effective for the
30 purposes of this chapter.

31 **Sec. 13.52.170. Persons who may make an anatomical gift.** (a) A person

1 who is 18 years of age or older and who has capacity may make an anatomical gift to
2 take effect upon the person's death of all or a part of the person's body.

3 (b) Notwithstanding AS 13.52.030(b), when, in the priority list set out in this
4 section, there is not a person in a prior class who is available at the time of death, and
5 in the absence of actual notice of contrary indications by the decedent or actual notice
6 of opposition by a member of the same or a prior class, any of the following persons,
7 listed in order of priority, may make an anatomical gift of all or a part of a decedent's
8 body for a purpose specified in AS 13.52.220:

- 9 (1) the spouse;
- 10 (2) an adult son or daughter;
- 11 (3) a parent;
- 12 (4) an adult brother or sister;
- 13 (5) a guardian of the decedent at the time of death;
- 14 (6) another person authorized or under obligation to dispose of the
15 body.

16 (c) The persons authorized by (b) of this section may make the anatomical gift
17 after or immediately before death.

18 **Sec. 13.52.180. Acceptance of anatomical gift.** If the donee of an
19 anatomical gift has actual notice of a contrary indication by the decedent or that a gift
20 by a member of a class identified in AS 13.52.170(b) is opposed by a member of the
21 same class or a prior class, the donee may not accept the gift. However, an anatomical
22 gift that is not revoked by the donor before death is irrevocable and does not require
23 the consent or concurrence of any person after the donor's death.

24 **Sec. 13.52.190. Examination authorized.** An anatomical gift authorizes an
25 examination necessary to assure medical acceptability of the gift for the purposes
26 intended.

27 **Sec. 13.52.200. Superiority of donee's rights.** The rights of the donee
28 created by the gift are superior to the rights of other persons, except as provided for
29 autopsies under AS 13.52.270.

30 **Sec. 13.52.210. Investigations by law enforcement and medical personnel.**
31 Law enforcement or medical personnel who respond to the scene of an accident or

1 emergency involving the death of a person shall make a reasonable search for an
 2 anatomical gift document or other information identifying the bearer as a donor or as
 3 an individual who has refused to make an anatomical gift. If the law enforcement or
 4 medical personnel know that the person executed an anatomical gift, they shall inform
 5 appropriate hospital personnel or an appropriate organization that arranges for or
 6 otherwise handles anatomical gifts of the gift. Failure to make a reasonable search
 7 required under this section is not a basis for civil or criminal liability but may be the
 8 basis for appropriate disciplinary sanctions.

9 **Sec. 13.52.220. Manner of making anatomical gifts.** (a) An anatomical gift
 10 may be made by will. If made by will, the gift takes effect upon the death of the
 11 testator before probate. If the will is not probated or is declared invalid for
 12 testamentary purposes, the gift, to the extent that it has been acted upon in good faith,
 13 is valid and effective.

14 (b) An anatomical gift may be made by a document other than a will,
 15 including an advance health care directive under AS 13.52.300. The gift takes effect
 16 upon the death of a donor. The document, which may be a card designed to be carried
 17 on a person, shall be signed by a donor, or by another person at the donor's direction,
 18 although the execution of an advance health care directive under AS 13.52.010(b) may
 19 not be done by one person at the direction of another person. If signed by another
 20 person at a donor's direction, the signer shall sign in the presence of two persons or a
 21 person who is qualified to take acknowledgments under AS 09.63.010. Delivery of
 22 the document of an anatomical gift during a donor's lifetime is not necessary to make
 23 the gift valid.

24 **Sec. 13.52.230. Anatomical gifts without specified donees.** An anatomical
 25 gift may be made to a specified donee or without specifying a donee. If a donee is not
 26 specified, the gift may be accepted by the attending physician as donee upon or after
 27 the death of a donor. If the gift is made to a specified donee who is not available at the
 28 time and place of death of a donor, the attending physician, upon or following the
 29 death of a donor, in the absence of any express indication that the donor desired
 30 otherwise, may accept the gift as donee.

31 **Sec. 13.52.240. Anatomical gifts by other persons.** An anatomical gift by a

1 person designated in AS 13.52.170(b) shall be made by a document signed by the
 2 person or made by the person's telegraphic message, recorded telephonic message,
 3 witnessed telephonic consent, or another recorded message.

4 **Sec. 13.52.250. Delivery of document of an anatomical gift.** If an
 5 anatomical gift is made by a donor to a specified donee, the will, card, or other
 6 document, or an executed copy of it, may be delivered to a donee to expedite the
 7 appropriate procedure for removing or transplanting a part of the donor's body
 8 immediately after death. Delivery of a document is not necessary for a valid gift. The
 9 will, card, or other document, or an executed copy of it, may be deposited in a
 10 hospital, bank, storage facility, or registry office to facilitate the procedure for
 11 removing or transplanting a part of a donor's body after death. On the request of an
 12 interested person on or after a donor's death, the person in possession of the document
 13 shall produce the document for examination. In this section, the terms "bank" and
 14 "storage facility" mean a facility licensed, accredited, or approved under the laws of
 15 any state for storage of human bodies or parts of human bodies.

16 **Sec. 13.52.260. Rights and duties at death.** (a) The time of death shall be
 17 determined by a physician who attends a donor at death, or, if a physician is not
 18 attending a donor at death, by the physician who certifies the death. The physician
 19 may not participate in the procedures for removing or transplanting a part of the body.

20 (b) A donee may accept or reject an anatomical gift. If a donee accepts a gift
 21 of an entire body, a donee may, subject to the terms of the gift, authorize embalming
 22 and the use of the body in funeral services. If a gift is of a part of the body, a donee,
 23 upon the death of a donor and, before embalming, shall have the part removed without
 24 unnecessary mutilation.

25 (c) After removal of the part of the body, custody of the remainder of the body
 26 vests in the surviving spouse, next of kin, or a person other than the spouse or next of
 27 kin who is authorized to dispose of the body. A person described in AS 13.52.170(b)
 28 and the estate of a donor may not be held liable for the cost of an examination under
 29 AS 13.52.190 or any costs related to the removal, storage, or transportation of an
 30 anatomical gift.

31 **Sec. 13.52.280. State autopsy laws.** The provisions of AS 13.52.170 -

1 13.52.260 are subject to the autopsy provisions of AS 12.65.

2 **Sec. 13.52.280. Recognition of anatomical gifts executed, issued, or**
 3 **authorized in other states.** An anatomical gift executed, issued, or authorized in
 4 another state in compliance with the law of that jurisdiction is effective for the
 5 purposes of this chapter.

6 **Sec. 13.52.300. Optional form.** The following sample form may be used to
 7 create an advance health care directive. The other sections of this chapter govern the
 8 effect of this or any other writing used to create an advance health care directive. This
 9 form may be duplicated. This form may be modified to suit the needs of the person, or
 10 a completely different form may be used that contains the substance of the following
 11 form or otherwise complies with this chapter:

12 ADVANCE HEALTH CARE DIRECTIVE

13 Explanation

14 You have the right to give instructions about your own health
 15 care. You also have the right to name someone else to make health
 16 care decisions for you. This form lets you do either or both of these
 17 things. It also lets you express your wishes regarding the designation
 18 of your health care provider. If you use this form, you may complete or
 19 modify all or any part of it. You are free to use a different form if the
 20 form contains the substance of this form or otherwise complies with the
 21 requirements of AS 13.52.

22 Part 1 of this form is a power of attorney for health care. Part 1
 23 lets you name another individual as an agent to make health care
 24 decisions for you if you become incapable of making your own
 25 decisions or if you want someone else to make those decisions for you
 26 now even though you are still capable. You may name an alternate
 27 agent to act for you if your first choice is not willing, able, or
 28 reasonably available to make decisions for you. Unless related to you,
 29 your agent may not be an owner, operator, or employee of a health care
 30 institution where you are receiving care.

31 Unless the form you sign limits the authority of your agent,

1 your agent may make all health care decisions for you. This form has a
2 place for you to limit the authority of your agent. You do not have to
3 limit the authority of your agent if you wish to rely on your agent for all
4 health care decisions that may have to be made. If you choose not to
5 limit the authority of your agent, your agent will have the right to

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

10 (b) select or discharge health care providers and institutions;

11 (c) approve or disapprove diagnostic tests, surgical procedures,
12 programs of medication, and do not resuscitate orders; and

13 (d) direct the provision, withholding, or withdrawal of artificial
14 nutrition and hydration and all other forms of health care; and

15 (e) make an anatomical gift following your death.

16 Part 2 of this form lets you give specific instructions for your
17 end-of-life health care. Choices are provided for you to express your
18 wishes regarding the provision, withholding, or withdrawal of
19 treatment to keep you alive, including the provision of artificial
20 nutrition and hydration, as well as the provision of pain relief
21 medication. Space is provided for you to add to the choices you have
22 made or for you to write out any additional wishes.

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

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

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

29 After completing this form, sign and date the form at the end
30 and have the form witnessed by one of the two alternative methods
31 listed below. Give a copy of the signed and completed form to your

1 physician, to any other health care providers you may have, to any
2 health care institution at which you are receiving care, and to any health
3 care agents you have named. You should talk to the person you have
4 named as your agent to make sure that the person understands your
5 wishes and is willing to take the responsibility.

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

11 PART 1

12 DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

13 (1) DESIGNATION OF AGENT: I designate the
14 following individual as my agent to make health care decisions for me:

15 _____
16 (name of individual you choose as agent)

17 _____
18 (address) (city) (state) (zip code)

19 _____
20 (home phone) (work phone)

21 OPTIONAL: If I revoke my agent's authority or if my agent is
22 not willing, able, or reasonably available to make a health care decision
23 for me, I designate as my first alternate agent

24 _____
25 (name of individual you choose as first alternate agent)

26 _____
27 (address) (city) (state) (zip code)

28 _____
29 (home phone) (work phone)

30 OPTIONAL: If I revoke the authority of my agent and first
31 alternate agent or if neither is willing, able, or reasonably available to

1 make a health care decision for me, I designate as my second alternate
2 agent

3 _____
4 (name of individual you choose as second alternate agent)

5 _____
6 (address) (city) (state) (zip code)

7 _____
8 (home phone) (work phone)

9 (2) AGENT'S AUTHORITY: My agent is authorized to
10 make all health care decisions for me, including decisions to provide,
11 withhold, or withdraw artificial nutrition and hydration, and all other
12 forms of health care to keep me alive, except as I state here:

13 _____
14 _____
15 _____
16 (Add additional sheets if needed.)

17 (3) WHEN AGENT'S AUTHORITY BECOMES
18 EFFECTIVE: Except in the case of mental illness, my agent's authority
19 becomes effective when my primary physician determines that I am
20 unable to make my own health care decisions unless I mark the
21 following box. In the case of mental illness, unless I mark the
22 following box, my agent's authority becomes effective when a court
23 determines I am unable to make my own decisions, or, in an
24 emergency, if my primary physician or another health care provider
25 determines I am unable to make my own decisions. If I mark this box [
26], my agent's authority to make health care decisions for me takes effect
27 immediately.

28 (4) AGENT'S OBLIGATION: My agent shall make
29 health care decisions for me in accordance with this power of attorney
30 for health care, any instructions I give in Part 2 of this form, and my
31 other wishes to the extent known to my agent. To the extent my wishes

1 are unknown, my agent shall make health care decisions for me in
 2 accordance with what my agent determines to be in my best interest. In
 3 determining my best interest, my agent shall consider my personal
 4 values to the extent known to my agent.

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

10 PART 2

11 INSTRUCTIONS FOR HEALTH CARE

12 If you are satisfied to allow your agent to determine what is best
 13 for you in making health care decisions, you do not need to fill out this
 14 part of the form. If you do fill out this part of the form, you may strike
 15 any wording you do not want. There is a state protocol that governs the
 16 use of do not resuscitate orders by physicians and other health care
 17 providers. You may obtain a copy of the protocol from the state
 18 Department of Health and Social Services.

19 (6) END-OF-LIFE DECISIONS: I direct that my health
 20 care providers and others involved in my care provide, withhold, or
 21 withdraw treatment in accordance with the choice I have marked
 22 below: (Check only one box.)

23 (A) Choice To Prolong Life

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

27 (B) Choice Not To Prolong Life

28 I do not want my life to be prolonged if (i) I have
 29 an incurable and irreversible condition that will result in my
 30 death within a relatively short time; (ii) I become unconscious
 31 and, to a reasonable degree of medical certainty, I will not

1 regain consciousness; or (iii) the likely risks and burdens of
2 treatment would outweigh the expected benefits.

3 (7) ARTIFICIAL NUTRITION AND HYDRATION:
4 Artificial nutrition and hydration must be provided, withheld, or
5 withdrawn in accordance with the choice I have made in paragraph (6)
6 unless I mark the following box. If I mark this box [], artificial
7 nutrition and hydration must be provided regardless of my condition
8 and regardless of the choice I have made in paragraph (6).

9 (8) RELIEF FROM PAIN: If I mark this box [], I
10 direct that treatment to alleviate pain or discomfort should be provided
11 to me even if it hastens my death.

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

16 _____
17 _____
18 Conditions or limitations: _____
19 _____.

20 (Add additional sheets if needed.)

21 PART 3
22 ANATOMICAL GIFT AT DEATH
23 (OPTIONAL)

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

27 (10) Upon my death: (mark applicable box)

28 [] (A) I give any needed organs, tissues, or
29 other body parts, OR

30 [] (B) I give the following organs, tissues, or
31 other body parts only _____

[] (C) My gift is for the following purposes
(strike any of the following you do not want):

- (i) transplant;
- (ii) therapy;
- (iii) research;
- (iv) education;

PART 4

MENTAL HEALTH TREATMENT

This part of the declaration allows you to make decisions in advance about mental health treatment. The instructions that you include in this declaration will be followed only if a court, two physicians that include a psychiatrist, or a physician and a professional mental health clinician believe that you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments.

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

(11) PSYCHOTROPIC MEDICATIONS. If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychotropic medications are as follows:

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

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

Conditions or limitations: _____

_____.

(12) ELECTROCONVULSIVE TREATMENT. If I

1 become incapable of giving or withholding informed consent for
2 mental health treatment, my wishes regarding electroconvulsive
3 treatment are as follows:

4 _____ I consent to the administration of electroconvulsive
5 treatment.

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

8 Conditions or limitations: _____

9 _____.

10 (13) ADMISSION TO AND RETENTION IN
11 FACILITY. If I become incapable of giving or withholding informed
12 consent for mental health treatment, my wishes regarding admission to
13 and retention in a health care facility for mental health treatment are as
14 follows:

15 _____ I consent to being admitted to a health care facility
16 for mental health treatment for up to _____ days.

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

19 Conditions or limitations: _____

20 _____.

21 OTHER WISHES OR INSTRUCTIONS

22 _____

23 _____

24 _____

25 Conditions or limitations: _____

26 _____.

27 PART 5

28 PRIMARY PHYSICIAN

29 (OPTIONAL)

30 (14) I designate the following physician as my primary
31 physician:

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(name of physician)

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

(phone)

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

(name of physician)

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

(phone)

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

(16) SIGNATURES: Sign and date the form here:

(date)(sign your name)

(print your name)

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

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

(A) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; or

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

ALTERNATIVE NO. 1

Witness

I swear under penalty of perjury under AS 11.56.200 that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider or an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

(date)(signature of witness)

(printed name of witness)

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

Witness

I swear under penalty of perjury under AS 11.56.200 that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, or an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

(date)(signature of witness)

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(printed name of witness)

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

ALTERNATIVE NO. 2

State of Alaska

_____ Judicial District

On this ____ day of _____, in the year
_____, before me, _____
(insert name of notary public) appeared
_____, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the person
whose name is subscribed to this instrument, and acknowledged that
the person executed it.

Notary Seal

(Signature of Notary Public)

Sec. 13.52.390. Definitions. In this chapter, unless the context otherwise requires,

(1) "advance health care directive" means an individual instruction or a power of attorney for health care;

(2) "agent" means an individual designated in a power of attorney for health care to make a health care decision for the individual granting the power;

(3) "anatomical gift" means an individual instruction that makes a gift of all or a part of a person's body;

(4) "best interest" means that the benefits to the individual resulting from a treatment outweigh the burdens to the individual resulting from that treatment and includes

(A) the effect of the treatment on the physical, emotional, and cognitive functions of the patient;

(B) the degree of physical pain or discomfort caused to the

1 individual by the treatment or the withholding or withdrawal of the treatment;

2 (C) the degree to which the individual's medical condition, the
3 treatment, or the withholding or withdrawal of treatment, results in a severe
4 and continuing impairment;

5 (D) the effect of the treatment on the life expectancy of the
6 patient;

7 (E) the prognosis of the patient for recovery, with and without
8 the treatment;

9 (F) the risks, side effects, and benefits of the treatment or the
10 withholding of treatment; and

11 (G) the religious beliefs and basic values of the individual
12 receiving treatment, to the extent that these may assist in determining benefits
13 and burdens;

14 (5) "capacity" means an individual's ability to understand the
15 significant benefits, risks, and alternatives to proposed health care and to make and
16 communicate a health care decision;

17 (6) "cardiopulmonary resuscitation" means cardiopulmonary
18 resuscitation or a component of cardiopulmonary resuscitation;

19 (7) "decedent" means a deceased individual, stillborn infant, or fetus;

20 (8) "department" means the Department of Health and Social Services;

21 (9) "donor" means an individual who makes an anatomical gift;

22 (10) "do not resuscitate identification" means an identification card,
23 form, necklace, or bracelet that carries the standardized design or symbol developed
24 by the department under AS 13.52.060 to signify, when carried or worn, that the
25 carrier or wearer is an individual for whom a physician has issued a do not resuscitate
26 order;

27 (11) "do not resuscitate order" means a directive from a licensed
28 physician that emergency cardiopulmonary resuscitation should not be administered to
29 a qualified patient;

30 (12) "emancipated minor" means a minor whose disabilities have been
31 removed under AS 09.55.590 or who has arrived at the age of majority as determined

1 under AS 25.20.020;

2 (13) "generally accepted health care standards" includes the protocol
3 for do not resuscitate orders that is adopted under AS 13.52.060;

4 (14) "guardian" means a judicially appointed guardian or conservator
5 having authority to make a health care decision for an individual;

6 (15) "health care" means any care, treatment, service, or procedure to
7 maintain, diagnose, or otherwise affect an individual's physical or mental condition;

8 (16) "health care decision" means a decision made by an individual or
9 the individual's agent, guardian, or surrogate regarding the individual's health care,
10 including

11 (A) selection and discharge of health care providers and
12 institutions;

13 (B) approval or disapproval of diagnostic tests, surgical
14 procedures, programs of medication, and do not resuscitate orders;

15 (C) direction to provide, withhold, or withdraw artificial
16 nutrition and hydration if withholding or withdrawing artificial nutrition,
17 artificial hydration, or artificial nutrition and hydration is in accord with
18 generally accepted health care standards applicable to health care providers or
19 institutions; and

20 (D) the administration or withdrawal of psychotropic
21 medications, the use of electroconvulsive treatment, and the admission to a
22 mental health facility;

23 (E) making an anatomical gift at death;

24 (17) "health care institution" means an institution, facility, or agency
25 licensed, certified, or otherwise authorized or permitted by law to provide health care
26 in the ordinary course of business;

27 (18) "health care provider" means an individual licensed, certified, or
28 otherwise authorized or permitted by law to provide health care in the ordinary course
29 of business or practice of a profession;

30 (19) "hospital" means

31 (A) a hospital licensed, accredited, or approved under the laws

1 of a state; or

2 (B) a hospital operated by the United States government or a
3 subdivision of the United States government;

4 (20) "individual instruction" means an individual's direction
5 concerning a health care decision for the individual;

6 (21) "life-sustaining procedures" means medical procedures or
7 interventions that, when administered to a qualified patient, will serve only to prolong
8 the dying process;

9 (22) "mental health facility" has the meaning given to "designated
10 treatment facility" in AS 47.30.915;

11 (23) "part" means organs, tissues, eyes, bones, arteries, blood, fluids,
12 or another portion of a human body;

13 (24) "person" means an individual, corporation, business trust, estate,
14 trust, partnership, association, joint venture, government, governmental subdivision,
15 agency, instrumentality, or another legal or commercial entity;

16 (25) "physician" means an individual authorized to practice medicine
17 or osteopathy under AS 08.64;

18 (26) "power of attorney for health care" means the designation of an
19 agent to make health care decisions for the individual granting the power;

20 (27) "primary physician" means a physician designated by an
21 individual, or by the individual's agent, guardian, or surrogate, to have primary
22 responsibility for the individual's health care or, in the absence of a designation or if
23 the designated physician is not reasonably available, a physician who undertakes the
24 responsibility;

25 (28) "qualified patient" means a patient who has been determined by
26 the attending physician to be in a terminal condition; in this paragraph, "terminal
27 condition" means a progressive incurable or irreversible condition that, without the
28 administration of life-sustaining procedures, will, in the opinion of two physicians,
29 when available, who have personally examined the patient, one of whom must be the
30 attending physician, result in death within a relatively short time;

31 (29) "reasonably available" means able to be contacted with a level of

1 diligence appropriate to the seriousness and urgency of a patient's health care needs,
 2 and willing and able to act in a timely manner considering the urgency of the patient's
 3 health care needs;

4 (30) "state" means a state of the United States, the District of
 5 Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession
 6 subject to the jurisdiction of the United States;

7 (31) "supervising health care provider" means the primary physician or
 8 the physician's designee, or the health care provider or the provider's designee who has
 9 undertaken primary responsibility for an individual's health care;

10 (32) "surrogate" means an individual, other than a patient's agent or
 11 guardian, authorized under this chapter to make a health care decision for the patient.

12 **Sec. 13.52.195. Short title.** This chapter may be cited as the Health Care
 13 Decisions Act.

14 * **Sec. 4.** AS 18.65.311 is amended to read:

15 **Sec. 18.65.311. Anatomical gift [OR LIVING WILL DOCUMENT].** (a)
 16 The department shall provide, at the time that an identification card is issued, a form
 17 for a document by which the card holder may make an anatomical gift under AS 13.52
 18 [AS 13.50 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER
 19 AS 18.12 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)]. The
 20 document (1) may not be larger than an identification card, (2) must contain sufficient
 21 space for the signature of two witnesses [OR A PERSON WHO IS QUALIFIED TO
 22 TAKE ACKNOWLEDGMENTS UNDER AS 09.63.010], **and** (3) [MUST USE THE
 23 FORMS AND DESIGNS DEVELOPED UNDER AS 18.12.037, AND (4)] must
 24 provide a means by which the card holder may cancel the gift [OR THE LIVING
 25 WILL]. If the document is executed by the applicant, it shall be sealed in plastic and
 26 attached to the identification card. [A SYMBOL DEVELOPED UNDER
 27 AS 18.12.037 INDICATING THE EXISTENCE OF THE ANATOMICAL GIFT OR
 28 LIVING WILL DOCUMENT MUST BE DISPLAYED IN THE LOWER RIGHT-
 29 HAND CORNER ON THE FACE OF THE IDENTIFICATION CARD.]

30 (b) An employee of the department who processes an identification card
 31 application, other than an application received by mail, shall ask the applicant orally

1 whether the applicant wishes to execute an anatomical gift [OR A LIVING WILL].
 2 The department shall, by placement of posters and brochures in the office where the
 3 application is taken, and by oral advice, if requested, make known to the applicant the
 4 procedure necessary to execute **an anatomical** [A] gift under **AS 13.52** [AS 13.50 OR
 5 A LIVING WILL UNDER AS 18.12].

6 * **Sec. 5.** AS 28.10.021(c) is amended to read:

7 (c) An employee of the department who processes an application for
 8 registration or renewal of registration, other than an application received by mail or an
 9 application for registration under AS 28.10.152, shall ask the applicant orally whether
 10 the applicant wishes to execute an anatomical gift [OR A LIVING WILL]. The
 11 department shall make known to all applicants the procedure for executing **an**
 12 **anatomical** [A] gift under **AS 13.52 (Health Care Decisions Act)** [AS 13.50
 13 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER AS 18.12
 14 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)] by displaying posters
 15 in the offices in which applications are taken, by providing a brochure or other written
 16 information to each person who applies in person or by mail, and, if requested, by
 17 providing oral advice.

18 * **Sec. 6.** AS 28.15.061(d) is amended to read:

19 (d) An employee of the department who processes a driver's license
 20 application, other than an application received by mail, shall ask the applicant orally
 21 whether the applicant wishes to execute an anatomical gift [OR A LIVING WILL].
 22 The department shall make known to all applicants the procedure for executing **an**
 23 **anatomical** [A] gift under **AS 13.52 (Health Care Decisions Act)** [AS 13.50
 24 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER AS 18.12
 25 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)] by displaying posters
 26 in the offices in which applications are taken, by providing a brochure or other written
 27 information to each person who applies in person or by mail, and, if requested, by
 28 providing oral advice.

29 * **Sec. 7.** AS 28.15.111(b) is amended to read:

30 (b) The department shall provide, at the time that an operator's license is
 31 issued, a form for a document by which the owner of a license may make an

1 anatomical gift under **AS 13.52** [AS 13.50 OR A LIVING WILL UNDER AS 18.12].
 2 The document (1) may not be larger than an operator's license, (2) must contain
 3 sufficient space for the signature of two witnesses [OR A PERSON WHO IS
 4 QUALIFIED TO TAKE ACKNOWLEDGMENTS UNDER AS 09.63.010], **and** (3)
 5 [MUST USE THE FORMS AND DESIGNS DEVELOPED UNDER AS 18.12.037,
 6 AND (4)] must provide a means by which the owner may cancel the **anatomical** gift
 7 [OR THE LIVING WILL]. If the document is executed by the applicant, it shall be
 8 sealed in plastic and attached to the license. [A SYMBOL DEVELOPED UNDER
 9 AS 18.12.037 INDICATING THE EXISTENCE OF THE ANATOMICAL GIFT OR
 10 LIVING WILL DOCUMENT MUST BE DISPLAYED IN THE LOWER RIGHT-
 11 HAND CORNER ON THE FACE OF THE DRIVER'S LICENSE.]

12 * **Sec. 8.** AS 47.30 is amended by adding a new section to article 9 to read:

13 **Sec. 47.30.817. Advance health care directives.** A health care provider or a
 14 health care institution may not require or prohibit the execution or revocation of an
 15 advance health care directive as a condition for admission, discharge, or providing
 16 health care. In this section, "advance health care directive," "health care institution,"
 17 and "health care provider" have the meanings given in AS 13.52.390.

18 * **Sec. 9.** 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 **agent or**
 28 **surrogate** [ATTORNEY-IN-FACT] with regard to mental health treatment decisions
 29 under **AS 13.52** [AS 13.26.332 - 13.26.358, AS 47.30.950 - 47.30.980, OR OTHER
 30 POWER-OF-ATTORNEY], and (6) the adult designated under AS 47.30.725. The
 31 mental health care professionals may not withhold any of the information described in

1 this subsection from the patient or from others if the patient has signed a waiver of
 2 confidentiality or has designated the person who would receive the information as an
 3 **agent or surrogate under AS 13.52** [ATTORNEY-IN-FACT] with regard to mental
 4 health treatment.

5 * **Sec. 10.** AS 47.30.825(f) is amended to read:

6 (f) A patient capable of giving informed consent has the absolute right to
 7 accept or refuse electroconvulsive therapy or aversive conditioning. A patient who
 8 lacks substantial capacity to make this decision may not be given this therapy or
 9 conditioning without a court order unless the patient expressly authorized that
 10 particular form of treatment in **an advance health care directive** [A
 11 DECLARATION] properly executed under **AS 13.52** [AS 47.30.950 - 47.30.980] or
 12 has authorized an **agent or surrogate under AS 13.52** [ATTORNEY-IN-FACT] to
 13 make this decision and the **agent or surrogate** [ATTORNEY-IN-FACT] consents to
 14 the treatment on behalf of the patient.

15 * **Sec. 11.** AS 47.30.836 is amended to read:

16 **Sec. 47.30.836. Psychotropic medication in nonemergencies.** An evaluation
 17 facility or designated treatment facility may not administer psychotropic medication to
 18 a patient in a situation that does not involve a crisis under AS 47.30.838(a)(1) unless
 19 the patient

20 (1) has the capacity to give informed consent to the medication, as
 21 described in AS 47.30.837, and gives that consent; the facility shall document the
 22 consent in the patient's medical chart;

23 (2) authorized the use of psychotropic medication in **an advance**
 24 **health care directive** [A DECLARATION] properly executed under **AS 13.52**
 25 [AS 47.30.950 - 47.30.980] or authorized an **agent or surrogate under AS 13.52**
 26 [ATTORNEY-IN-FACT] to consent to the use of psychotropic medication for the
 27 patient and the **agent or surrogate** [ATTORNEY-IN-FACT] does consent; or

28 (3) is determined by a court to lack the capacity to give informed
 29 consent to the medication and the court approves use of the medication under
 30 AS 47.30.839.

31 * **Sec. 12.** AS 47.30.838(d) is amended to read:

1 (d) An evaluation facility or designated treatment facility may administer
 2 psychotropic medication to a patient without the patient's informed consent if the
 3 patient is unable to give informed consent but has authorized the use of psychotropic
 4 medication in an advance health care directive [A DECLARATION] properly
 5 executed under AS 13.52 [AS 47.30.950 - 47.30.980] or has authorized an agent or
 6 surrogate under AS 13.52 [ATTORNEY-IN-FACT] to consent to this form of
 7 treatment for the patient and the agent or surrogate [ATTORNEY-IN-FACT] does
 8 consent.

9 * **Sec. 13.** AS 47.30.839(d) is amended to read:

10 (d) Upon the filing of a petition under (b) of this section, the court shall direct
 11 the office of public advocacy to provide a visitor to assist the court in investigating the
 12 issue of whether the patient has the capacity to give or withhold informed consent to
 13 the administration of psychotropic medication. The visitor shall gather pertinent
 14 information and present it to the court in written or oral form at the hearing. The
 15 information must include documentation of the following:

16 (1) the patient's responses to a capacity assessment instrument
 17 administered at the request of the visitor;

18 (2) any expressed wishes of the patient regarding medication,
 19 including wishes that may have been expressed in a power of attorney, a living will,
 20 an advance health care directive under AS 13.52, or oral statements of the patient,
 21 including conversations with relatives and friends that are significant persons in the
 22 patient's life as those conversations are remembered by the relatives and friends; oral
 23 statements of the patient should be accompanied by a description of the circumstances
 24 under which the patient made the statements, when possible.

25 * **Sec. 14.** AS 47.33.070(a) is amended to read:

26 (a) An assisted living home shall maintain, for each resident of the home, a
 27 file that includes

28 (1) the name and birth date, and, if provided by the resident, the social
 29 security number of the resident;

30 (2) the name, address, and telephone number of the resident's closest
 31 relative, service coordinator, if any, and representative, if any;

1 (3) a statement of what actions, if any, the resident's representative is
2 authorized to take on the resident's behalf;

3 (4) a copy of the resident's assisted living plan;

4 (5) a copy of the residential services contract between the home and
5 the resident;

6 (6) a notice, as required under AS 47.33.030, regarding the depository
7 in which the resident's advance payment money is being held;

8 (7) written **acknowledgment** [ACKNOWLEDGEMENT] by the
9 resident or the resident's representative that the resident has received a copy of and has
10 read, or has been read the

11 (A) resident's rights under AS 47.33.300;

12 (B) resident's right to pursue a grievance under AS 47.33.340;

13 (C) resident's right to protection from retaliation under
14 AS 47.33.350;

15 (D) provisions of AS 47.33.510, regarding immunity; and

16 (E) home's house rules;

17 (8) an **acknowledgment** [ACKNOWLEDGEMENT] and agreement
18 relating to home safekeeping and management of the resident's money, as required by
19 AS 47.33.040;

20 (9) a copy of the resident's living will, if any, **or an advance health**
21 **care directive made under AS 13.52, if any**; and

22 (10) a copy of a power of attorney or other written designation,
23 **including an advance health care directive made under AS 13.52**, of an agent,
24 representative, or surrogate by the resident.

25 * **Sec. 15.** AS 13.26.332(L), 13.26.335(1), 13.26.344(I); AS 13.50.010, 13.50.014,
26 13.50.016, 13.50.020, 13.50.030, 13.50.040, 13.50.050, 13.50.060, 13.50.065, 13.50.068,
27 13.50.070, 13.50.080, 13.50.090; AS 18.12.010, 18.12.020, 18.12.030, 18.12.035, 18.12.037,
28 18.12.040, 18.12.050, 18.12.060, 18.12.070, 18.12.080, 18.12.090, 18.12.100; AS 47.30.950,
29 47.30.952, 47.30.954, 47.30.956, 47.30.958, 47.30.960, 47.30.962, 47.30.964, 47.30.966,
30 47.30.968, 47.30.970, 47.30.972, and 47.30.980 are repealed.

31 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 CONTINUING EFFECT OF EXISTING DOCUMENTS. (a) An anatomical gift
3 made under AS 13.50 or AS 18.12, repealed by sec. 15 of this Act, before the effective date
4 of secs. 1 - 15 of this Act continues in effect under AS 13.50 or AS 18.12, as those chapters
5 exist before the effective date of secs. 1 - 15 of this Act, until the donation is revoked.

6 (b) A power of attorney that is made under AS 13.26.332(L), 13.26.335(1), or
7 13.26.344(I), repealed by sec. 15 of this Act, before the effective date of secs. 1 - 15 of this
8 Act and that contains authority for health care services under AS 13.26.332(L),
9 AS 13.26.335(1), or 13.26.344(I), repealed by sec. 15 of this Act, continues in effect under
10 AS 13.26.332(L), 13.26.335(1), and 13.26.344(I), as those provisions exist before the
11 effective date of secs. 1 - 15 of this Act, until the power of attorney is revoked.

12 (c) A declaration made under AS 18.12, repealed by sec. 15 of this Act, before the
13 effective date of secs. 1 - 15 of this Act continues in effect under AS 18.12, as that chapter
14 exists before the effective date of secs. 1 - 15 of this Act, until the declaration is revoked.

15 (d) A declaration made under AS 47.30.950 - 47.30.980, repealed by sec. 15 of this
16 Act, before the effective date of secs. 1 - 15 of this Act continues in effect under
17 AS 47.30.950 - 47.30.980, as those sections exist before the effective date of secs. 1 - 15 of
18 this Act, until the declaration is revoked.

19 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 EFFECT ON EXISTING INSURANCE POLICIES AND ANNUITIES.
22 AS 13.52.120(c), added by sec. 3 of this Act, does not apply to a policy of insurance or an
23 annuity that was entered into before the effective date of secs. 1 - 15 of this Act.

24 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 TRANSITION: REGULATIONS. The Department of Health and Social Services
27 may proceed to adopt regulations necessary to implement the changes made by secs. 1 - 15 of
28 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
29 before January 1, 2004.

30 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 CONTINUING EFFECT OF CURRENT REGULATIONS. (a) The regulations
2 found at 7 AAC 16, as modified by (b) of this section, continue in effect on and after
3 January 1, 2004, until the Department of Health and Social Services adopts the regulations
4 authorized under sec. 18 of this Act.

5 (b) The regulations attorney in the Department of Law shall

6 (1) in 7 AAC 16.010(a), replace the reference to "AS 18.12.035(b)" with
7 "AS 13.52.060(b)";

8 (2) in 7 AAC 16.010(d)(4), replace the reference to "AS 18.12.090" with
9 "AS 13.52.160";

10 (3) in 7 AAC 16.010(f), replace the reference to "AS 18.12" with "AS 13.52";

11 (4) in 7 AAC 16.090(1), replace the reference to "AS 18.12.100" with
12 "AS 13.52.390";

13 (5) in 7 AAC 16.090(3), replace ""do-not-resuscitate order" in AS 18.12.100"
14 with ""do not resuscitate order" in AS 13.52.390."

15 * **Sec. 20.** Section 18 of this Act takes effect immediately under AS 01.10.070(c).

16 * **Sec. 21.** Except as provided in sec. 20 of this Act, this Act takes effect January 1, 2004.