

CS FOR HOUSE BILL NO. 25(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/7/03

Referred: Finance

Sponsor(s): REPRESENTATIVES WEYHRAUCH, Ogg, Kookesh, Seaton, Crawford, Joule, Gara, Masek, Morgan, Wilson

SENATORS Wilken, Dyson, Bunde

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 durable power of attorney
 14 for health care, which may authorize the agent to make any health care decision the
 15 principal could have made while having capacity. The power remains in effect
 16 notwithstanding the principal's later incapacity and may include individual
 17 instructions. The power must be in writing, contain the date of its execution, be
 18 signed by the principal, and be 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 durable power of attorney for health care may not be an owner, operator, or
 25 employee of the health care institution at which the principal is receiving care.

26 (d) A witness for a durable 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 durable power of
 31 attorney for 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 durable power of attorney for health care or by operation of law then
5 existing.

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

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

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

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

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

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

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

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

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

1 **Sec. 13.52.020. Revocation of advance health care directive.** (a) Except in
 2 the case of mental illness under (c) of this section, an individual may revoke the
 3 designation of an agent only by a signed writing or by personally informing the
 4 supervising health care provider.

5 (b) Except in the case of mental illness under (c) of this section, an individual
 6 may revoke all or part of an advance health care directive, other than the designation
 7 of an agent, at any time and in any manner that communicates an intent to revoke.

8 (c) In the case of mental illness, an advance health care directive may
 9 be revoked in whole or in part at any time by the principal if the principal does not
 10 lack capacity and is not incompetent, a revocation is effective when a capable,
 11 competent principal communicates the revocation to the attending physician or other
 12 health care provider, and the attending physician or other health care provider shall
 13 note the revocation on the principal's medical record. In the case of mental illness, the
 14 authority of a named agent and an alternative agent named in the advance health care
 15 directive continues in effect as long as the advance health care directive appointing the
 16 agent is in effect or until the agent has withdrawn. For the purposes of this subsection,
 17 a person is considered incompetent when it is the opinion of the court in a
 18 guardianship proceeding under AS 13.26, the opinion of two physicians, at least one
 19 of whom is a psychiatrist, or the opinion of a physician and a professional mental
 20 health clinician, that an individual's ability to receive and evaluate information
 21 effectively or communicate decisions is impaired to the extent that the individual lacks
 22 the capacity to make mental health treatment decisions.

23 (d) A health care provider, agent, guardian, or surrogate who is informed of a
 24 revocation shall promptly communicate the fact of the revocation to the supervising
 25 health care provider and to any health care institution at which the patient is receiving
 26 care.

27 (e) A decree of annulment, divorce, dissolution of marriage, or legal
 28 separation revokes a previous designation of a spouse as agent unless otherwise
 29 specified in the decree or in a durable power of attorney for health care.

30 (f) An advance health care directive that conflicts with an earlier advance
 31 health care directive revokes the earlier directive to the extent of the conflict.

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

6 **Sec. 13.52.030. Decisions by surrogate.** (a) Except in the case of mental
 7 health treatment, a surrogate may make a health care decision for a patient who is an
 8 adult or emancipated minor if an agent or guardian has not been appointed or the agent
 9 or guardian is not reasonably available, and if the patient has been determined by the
 10 primary physician to lack capacity.

11 (b) A surrogate may make a decision regarding mental health treatment for a
 12 patient who is an adult or emancipated minor if

13 (1) an agent or guardian has not been appointed or the agent or
 14 guardian is not reasonably available;

15 (2) the mental health treatment is needed on an emergency basis; and

16 (3) the patient has been determined to lack capacity by

17 (A) two physicians, one of whom is a psychiatrist; or

18 (B) a physician and a professional mental health clinician.

19 (c) Except as provided for anatomical gifts in AS 13.52.170(b), an adult or
 20 emancipated minor may designate an individual to act as surrogate by personally
 21 informing the supervising health care provider. In the absence of a designation, or if
 22 the designee is not reasonably available, a member of the following classes of the
 23 patient's family who is reasonably available, in descending order of priority, may act
 24 as surrogate:

25 (1) the spouse, unless legally separated;

26 (2) an adult child;

27 (3) a parent; or

28 (4) an adult sibling.

29 (d) If none of the individuals eligible to act as surrogate under (c) of this
 30 section is reasonably available, an adult who has exhibited special care and concern
 31 for the patient, who is familiar with the patient's personal values, and who is

1 reasonably available may act as surrogate.

2 (e) A surrogate shall communicate the surrogate's assumption of authority as
3 promptly as practicable to the members of the patient's family specified in (c) of this
4 section who can be readily contacted.

5 (f) If more than one member of a class under (c)(2) - (4) of this section
6 assumes authority to act as surrogate, the members of that class do not agree on a
7 health care decision, and the supervising health care provider is informed of the
8 disagreement, the supervising health care provider shall comply with the decision of a
9 majority of the members of that class who have communicated their views to the
10 provider. If the class is evenly divided concerning the health care decision and the
11 supervising health care provider is informed of the even division, that class and all
12 individuals having a lower priority under (c)(2) - (4) of this section are disqualified
13 from making the decision, and the primary physician shall make the decision based on
14 the best interests of the patient.

15 (g) A surrogate shall make a health care decision in accordance with the
16 patient's individual instructions, if any, and other wishes to the extent known to the
17 surrogate. Otherwise, the surrogate shall make the decision in accordance with the
18 surrogate's determination of the patient's best interest. In determining the patient's best
19 interest, the surrogate shall consider the patient's personal values to the extent known
20 to the surrogate.

21 (h) A health care decision made by a surrogate for a patient is effective
22 without judicial approval.

23 (i) An individual may, at any time, disqualify another person, including a
24 member of the individual's family, from acting as the individual's surrogate by a
25 signed writing or by personally informing the supervising health care provider of the
26 disqualification.

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

30 (k) A supervising health care provider may require an individual claiming the
31 right to act as a surrogate for a patient to provide a written declaration under penalty of

1 perjury stating facts and circumstances reasonably sufficient to establish the claimed
2 authority.

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

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

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

10 **Sec. 13.52.050. Obligations of health care provider.** (a) Before
11 implementing a health care decision made for a patient, a supervising health care
12 provider, if possible, shall promptly communicate to the patient the decision made and
13 the identity of the person making the decision.

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

19 (c) A supervising health care provider who makes or is informed of a
20 determination that a patient lacks or has recovered capacity, or that another condition
21 exists that affects an individual instruction or the authority of an agent, a guardian, or a
22 surrogate, shall promptly record the determination in the patient's health care record
23 and communicate the determination to the patient, if possible, and to any person then
24 authorized to make health care decisions for the patient.

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

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

30 (2) a health care decision for the patient made by a person then
31 authorized to make health care decisions for the patient to the same extent as if the

1 decision had been made by the patient while having capacity.

2 (e) A health care provider may decline to comply with an individual
3 instruction or a health care decision for reasons of conscience, except for a do not
4 resuscitate order. A health care institution may decline to comply with an individual
5 instruction or health care decision if the instruction or decision is contrary to a policy
6 of the institution that is expressly based on reasons of conscience and if the policy was
7 timely communicated to the patient or to a person then authorized to make health care
8 decisions for the patient.

9 (f) A health care provider or institution may decline to comply with an
10 individual instruction or a health care decision that requires medically ineffective
11 health care or health care contrary to generally accepted health care standards
12 applicable to the health care provider or institution.

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

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

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

20 (3) unless the patient or person then authorized to make health care
21 decisions for the patient refuses assistance, immediately make all reasonable efforts to
22 assist in the transfer of the patient to another health care provider or institution that is
23 willing to comply with the instruction or decision.

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

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

31 (b) The department shall by regulation adopt a protocol, subject to the

1 approval of the State Medical Board, for do not resuscitate orders that set out a
2 standardized method of procedure for the withholding of cardiopulmonary
3 resuscitation by health care providers and health care institutions.

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

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

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

19 (f) A physician may not revoke a do not resuscitate order at the request of a
20 person, and a person may not make a do not resuscitate order ineffective, unless the
21 person making the request or proposing to make the order ineffective is the person for
22 whom the order has been issued. However, if the person for whom the order has been
23 issued is not capable of expressing an opinion on the subject, the request or proposal
24 may be made by the parent or guardian of the person for whom the order has been
25 issued if the person for whom the order has been issued is under 18 years of age.

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

30 **Sec. 13.52.080. Immunities.** (a) A health care provider or institution acting
31 in good faith and in accordance with generally accepted health care standards

1 applicable to the health care provider or institution is not subject to civil or criminal
2 liability or to discipline for unprofessional conduct for

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

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

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

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

15 (5) causing or participating in providing cardiopulmonary resuscitation
16 or other life-sustaining procedures

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

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

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

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

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

30 (b) A person who intentionally falsifies, forges, conceals, defaces, or
31 obliterates an individual's advance health care directive or a revocation of an advance

1 health care directive without the individual's consent, or who coerces or fraudulently
 2 induces an individual to give, revoke, or not to give an advance health care directive,
 3 is liable to that individual for damages of \$2,500 or actual damages resulting from the
 4 action, whichever is greater, plus attorney fees as provided by court rule.

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

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

11 (c) An individual who is a qualified patient, including an individual for whom
 12 a physician has issued a do not resuscitate order, has the right to make a decision
 13 regarding the use of cardiopulmonary resuscitation and other life-sustaining
 14 procedures as long as the individual is able to make the decision. If an individual who
 15 is a qualified patient, including an individual for whom a physician has issued a do not
 16 resuscitate order, is not able to make the decision, the protocol adopted under
 17 AS 13.52.060 for do not resuscitate orders governs a decision regarding the use of
 18 cardiopulmonary resuscitation and other life-sustaining procedures.

19 **Sec. 13.52.110. Status of copy.** A copy of a written advance health care
 20 directive, revocation of an advance health care directive, or designation or
 21 disqualification of a surrogate has the same effect as the original.

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

25 (b) Notwithstanding any other provision of law, if the withholding or
 26 withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures is
 27 consistent with this chapter, death resulting from the withholding or withdrawal of
 28 cardiopulmonary resuscitation or other life-sustaining procedures under a do not
 29 resuscitate order, under the protocol for do not resuscitate orders established under
 30 AS 13.52.060, or under a do not resuscitate identification found on an individual does
 31 not, for any purpose, constitute a suicide or homicide.

1 (c) The issuance of a do not resuscitate order under this chapter, the
2 possession of do not resuscitate identification under this chapter, or the making of a
3 health care directive under this chapter does not affect in any manner the sale,
4 procurement, or issuance of a policy of life insurance, and does not modify the terms
5 of an existing policy of life insurance. A policy of life insurance is not legally
6 impaired or invalidated in any manner by the withholding or withdrawal of life-
7 sustaining procedures from an insured individual or the withholding or withdrawal of
8 cardiopulmonary resuscitation from an individual who possesses do not resuscitate
9 identification or for whom a do not resuscitate order has been issued, notwithstanding
10 any term of the policy to the contrary.

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

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

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

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

27 (h) This chapter does not authorize an agent or a surrogate to consent to the
28 admission of an individual to a mental health facility unless the individual's written
29 advance health care directive expressly so provides, and the period of admission may
30 not exceed 17 days.

31 (i) This chapter does not affect other statutes of this state governing treatment

1 for mental illness of an individual involuntarily committed to a mental health facility.

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

8 **Sec. 13.52.140. Judicial relief.** On petition of a patient, the patient's agent,
9 guardian, or surrogate, or a health care provider or institution involved with the
10 patient's care, the superior court may enjoin or direct a health care decision or order
11 other equitable relief. A proceeding under this section is governed by AS 13.26.165 -
12 13.26.320.

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

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

21 **Sec. 13.52.170. Persons who may make an anatomical gift.** (a) A person
22 who is 18 years of age or older and who has capacity may make an anatomical gift to
23 take effect upon the person's death of all or a part of the person's body.

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

- 30 (1) the spouse;
31 (2) an adult son or daughter;

1 (3) a parent;
2 (4) an adult brother or sister;
3 (5) a guardian of the decedent at the time of death;
4 (6) another person authorized or under obligation to dispose of the
5 body.

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

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

14 **Sec. 13.52.190. Examination authorized.** An anatomical gift authorizes an
15 examination necessary to assure medical acceptability of the gift for the purposes
16 intended.

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

20 **Sec. 13.52.210. Investigations by law enforcement and medical personnel.**
21 Law enforcement or medical personnel who respond to the scene of an accident or
22 emergency involving the death of a person shall make a reasonable search for an
23 anatomical gift document or other information identifying the bearer as a donor or as
24 an individual who has refused to make an anatomical gift. If the law enforcement or
25 medical personnel know that the person executed an anatomical gift, they shall inform
26 appropriate hospital personnel or an appropriate organization that arranges for or
27 otherwise handles anatomical gifts of the gift. Failure to make a reasonable search
28 required under this section is not a basis for civil or criminal liability but may be the
29 basis for appropriate disciplinary sanctions.

30 **Sec. 13.52.220. Manner of making anatomical gifts.** (a) An anatomical gift
31 may be made by will. If made by will, the gift takes effect upon the death of the

1 testator before probate. If the will is not probated or is declared invalid for
2 testamentary purposes, the gift, to the extent that it has been acted upon in good faith,
3 is valid and effective.

4 (b) An anatomical gift may be made by a document other than a will,
5 including an advance health care directive under AS 13.52.300. The gift takes effect
6 upon the death of a donor. The document, which may be a card designed to be carried
7 on a person, shall be signed by a donor, or by another person at the donor's direction,
8 although the execution of an advance health care directive under AS 13.52.010(b) may
9 not be done by one person at the direction of another person. If signed by another
10 person at a donor's direction, the signer shall sign in the presence of two persons or a
11 person who is qualified to take acknowledgments under AS 09.63.010. Delivery of
12 the document of an anatomical gift during a donor's lifetime is not necessary to make
13 the gift valid.

14 **Sec. 13.52.230. Anatomical gifts without specified donees.** An anatomical
15 gift may be made to a specified donee or without specifying a donee. If a donee is not
16 specified, the gift may be accepted by the attending physician as donee upon or after
17 the death of a donor. If the gift is made to a specified donee who is not available at the
18 time and place of death of a donor, the attending physician, upon or following the
19 death of a donor, in the absence of any express indication that the donor desired
20 otherwise, may accept the gift as donee.

21 **Sec. 13.52.240. Anatomical gifts by other persons.** An anatomical gift by a
22 person designated in AS 13.52.170(b) shall be made by a document signed by the
23 person or made by the person's telegraphic message, recorded telephonic message,
24 witnessed telephonic consent, or another recorded message.

25 **Sec. 13.52.250. Delivery of document of an anatomical gift.** If an
26 anatomical gift is made by a donor to a specified donee, the will, card, or other
27 document, or an executed copy of it, may be delivered to a donee to expedite the
28 appropriate procedure for removing or transplanting a part of the donor's body
29 immediately after death. Delivery of a document is not necessary for a valid gift. The
30 will, card, or other document, or an executed copy of it, may be deposited in a
31 hospital, bank, storage facility, or registry office to facilitate the procedure for

1 removing or transplanting a part of a donor's body after death. On the request of an
2 interested person on or after a donor's death, the person in possession of the document
3 shall produce the document for examination. In this section, the terms "bank" and
4 "storage facility" mean a facility licensed, accredited, or approved under the laws of
5 any state for storage of human bodies or parts of human bodies.

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

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

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

21 **Sec. 13.52.280. State autopsy laws.** The provisions of AS 13.52.170 -
22 13.52.260 are subject to the autopsy provisions of AS 12.65.

23 **Sec. 13.52.290. Recognition of anatomical gifts executed, issued, or**
24 **authorized in other states.** An anatomical gift executed, issued, or authorized in
25 another state in compliance with the law of that jurisdiction is effective for the
26 purposes of this chapter.

27 **Sec. 13.52.300. Optional form.** The following sample form may be used to
28 create an advance health care directive. The other sections of this chapter govern the
29 effect of this or any other writing used to create an advance health care directive. This
30 form may be duplicated. This form may be modified to suit the needs of the person, or
31 a completely different form may be used that contains the substance of the following

1 form or otherwise complies with this chapter:

2 **ADVANCE HEALTH CARE DIRECTIVE**

3 **Explanation**

4 You have the right to give instructions about your own health
5 care. You also have the right to name someone else to make health
6 care decisions for you. This form lets you do either or both of these
7 things. It also lets you express your wishes regarding the designation
8 of your health care provider. If you use this form, you may complete or
9 modify all or any part of it. You are free to use a different form if the
10 form contains the substance of this form or otherwise complies with the
11 requirements of AS 13.52.

12 Part 1 of this form is a durable power of attorney for health
13 care. Part 1 lets you name another individual as an agent to make
14 health care decisions for you if you become incapable of making your
15 own decisions or if you want someone else to make those decisions for
16 you now even though you are still capable. You may name an alternate
17 agent to act for you if your first choice is not willing, able, or
18 reasonably available to make decisions for you. Unless related to you,
19 your agent may not be an owner, operator, or employee of a health care
20 institution where you are receiving care.

21 Unless the form you sign limits the authority of your agent,
22 your agent may make all health care decisions for you. This form has a
23 place for you to limit the authority of your agent. You do not have to
24 limit the authority of your agent if you wish to rely on your agent for all
25 health care decisions that may have to be made. If you choose not to
26 limit the authority of your agent, your agent will have the right to

27 (a) consent or refuse consent to any care, treatment, service, or
28 procedure to maintain, diagnose, or otherwise affect a physical or
29 mental condition, including the administration or discontinuation of
30 psychotropic medication;

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

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

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

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

6 Part 2 of this form lets you give specific instructions for your
7 end-of-life health care. Choices are provided for you to express your
8 wishes regarding the provision, withholding, or withdrawal of
9 treatment to keep you alive, including the provision of artificial
10 nutrition and hydration, as well as the provision of pain relief
11 medication. Space is provided for you to add to the choices you have
12 made or for you to write out any additional wishes.

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

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

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

19 After completing this form, sign and date the form at the end
20 and have the form witnessed by one of the two alternative methods
21 listed below. Give a copy of the signed and completed form to your
22 physician, to any other health care providers you may have, to any
23 health care institution at which you are receiving care, and to any health
24 care agents you have named. You should talk to the person you have
25 named as your agent to make sure that the person understands your
26 wishes and is willing to take the responsibility.

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

PART 1

DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

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

(name of individual you choose as agent)

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

(home phone) (work phone)

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

(name of individual you choose as first alternate agent)

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

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent

(name of individual you choose as second alternate agent)

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

(home phone) (work phone)

(2) AGENT'S AUTHORITY. My agent is authorized to make all health care decisions for me, including decisions to provide,

1 withhold, or withdraw artificial nutrition and hydration, and all other
2 forms of health care to keep me alive, except as I state here:

3 _____
4 _____
5 _____

6 (Add additional sheets if needed.)

7 (3) WHEN AGENT'S AUTHORITY BECOMES
8 EFFECTIVE. Except in the case of mental illness, my agent's authority
9 becomes effective when my primary physician determines that I am
10 unable to make my own health care decisions unless I mark the
11 following box. In the case of mental illness, unless I mark the
12 following box, my agent's authority becomes effective when a court
13 determines I am unable to make my own decisions, or, in an
14 emergency, if my primary physician or another health care provider
15 determines I am unable to make my own decisions. If I mark this box
16 [], my agent's authority to make health care decisions for me takes
17 effect immediately.

18 (4) AGENT'S OBLIGATION. My agent shall make
19 health care decisions for me in accordance with this durable power of
20 attorney for health care, any instructions I give in Part 2 of this form,
21 and my other wishes to the extent known to my agent. To the extent
22 my wishes are unknown, my agent shall make health care decisions for
23 me in accordance with what my agent determines to be in my best
24 interest. In determining my best interest, my agent shall consider my
25 personal values to the extent known to my agent.

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

31 PART 2

1 INSTRUCTIONS FOR HEALTH CARE

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

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

13 (A) Choice To Prolong Life

14 I want my life to be prolonged as long as
15 possible within the limits of generally accepted health care
16 standards; OR

17 (B) Choice Not To Prolong Life

18 I do not want my life to be prolonged if (i) I have
19 an incurable and irreversible condition that will result in my
20 death within a relatively short time; (ii) I become unconscious
21 and, to a reasonable degree of medical certainty, I will not
22 regain consciousness; or (iii) the likely risks and burdens of
23 treatment would outweigh the expected benefits.

24 (7) ARTIFICIAL NUTRITION AND HYDRATION.
25 Artificial nutrition and hydration must be provided, withheld, or
26 withdrawn in accordance with the choice I have made in paragraph (6)
27 unless I mark the following box. If I mark this box , artificial
28 nutrition and hydration must be provided regardless of my condition
29 and regardless of the choice I have made in paragraph (6).

30 (8) RELIEF FROM PAIN. If I mark this box , I
31 direct that treatment to alleviate pain or discomfort should be provided

1 to me even if it hastens my death.

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

6 _____
7 _____

8 Conditions or limitations: _____

9 _____
10 (Add additional sheets if needed.)

11 PART 3

12 ANATOMICAL GIFT AT DEATH

13 (OPTIONAL)

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

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

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

20 [] (B) I give the following organs, tissues, or
21 other body parts only _____
22 _____

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

25 (i) transplant;

26 (ii) therapy;

27 (iii) research;

28 (iv) education;

29 PART 4

30 MENTAL HEALTH TREATMENT

31 This part of the declaration allows you to make decisions in

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

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

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

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

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

19 Conditions or limitations: _____
20 _____.

21 (12) ELECTROCONVULSIVE TREATMENT. If I
22 become incapable of giving or withholding informed consent for
23 mental health treatment, my wishes regarding electroconvulsive
24 treatment are as follows:

25 _____ I consent to the administration of electroconvulsive
26 treatment.

27 _____ I do not consent to the administration of
28 electroconvulsive treatment.

29 Conditions or limitations: _____
30 _____.

31 (13) ADMISSION TO AND RETENTION IN

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

5 _____ I consent to being admitted to a health care facility
6 for mental health treatment for up to _____ days. (The number of
7 days not to exceed 17.)

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

10 Conditions or limitations: _____

11 _____.

12 OTHER WISHES OR INSTRUCTIONS

13 _____

14 _____

15 _____

16 Conditions or limitations: _____

17 _____.

18 PART 5

19 PRIMARY PHYSICIAN

20 (OPTIONAL)

21 (14) I designate the following physician as my primary
22 physician:

23 _____

24 (name of physician)

25 _____

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

27 _____

28 (phone)

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

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(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 durable 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.

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(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 durable 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.

(date)(signature of witness)

(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)

1
2
3 **Sec. 13.52.390. Definitions.** In this chapter, unless the context otherwise
4 requires,

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

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

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

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

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

17 (B) the degree of physical pain or discomfort caused to the
18 individual by the treatment or the withholding or withdrawal of the treatment;

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

22 (D) the effect of the treatment on the life expectancy of the
23 patient;

24 (E) the prognosis of the patient for recovery, with and without
25 the treatment;

26 (F) the risks, side effects, and benefits of the treatment or the
27 withholding of treatment; and

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

31 (5) "capacity" means an individual's ability to understand the

1 significant benefits, risks, and alternatives to proposed health care and to make and
2 communicate a health care decision;

3 (6) "cardiopulmonary resuscitation" means cardiopulmonary
4 resuscitation or a component of cardiopulmonary resuscitation;

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

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

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

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

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

16 (12) "emancipated minor" means a minor whose disabilities have been
17 removed under AS 09.55.590 or who has arrived at the age of majority as determined
18 under AS 25.20.020;

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

21 (14) "guardian" means a judicially appointed person having authority
22 to make a health care decision for an individual;

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

25 (16) "health care decision" means a decision made by an individual or
26 the individual's agent, guardian, or surrogate regarding the individual's health care,
27 including

28 (A) selection and discharge of health care providers and
29 institutions;

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

1 (C) direction to provide, withhold, or withdraw artificial
2 nutrition and hydration if withholding or withdrawing artificial nutrition,
3 artificial hydration, or artificial nutrition and hydration is in accord with
4 generally accepted health care standards applicable to health care providers or
5 institutions; and

6 (D) the administration or withdrawal of psychotropic
7 medications, the use of electroconvulsive treatment, and the admission to a
8 mental health facility;

9 (E) making an anatomical gift at death;

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

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

16 (19) "hospital" means

17 (A) a hospital licensed, accredited, or approved under the laws
18 of a state; or

19 (B) a hospital operated by the United States government or a
20 subdivision of the United States government;

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

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

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

28 (23) "mental health treatment" means electroconvulsive treatment,
29 treatment with psychotropic medication, or admission to and retention in a health care
30 facility for mental health treatment;

31 (24) "part" means organs, tissues, eyes, bones, arteries, blood, fluids,

1 or another portion of a human body;

2 (25) "person" means an individual, corporation, business trust, estate,
3 trust, partnership, association, joint venture, government, governmental subdivision,
4 agency, instrumentality, or another legal or commercial entity;

5 (26) "physician" means an individual authorized to practice medicine
6 or osteopathy under AS 08.64;

7 (27) "power of attorney for health care" means the designation of an
8 agent to make health care decisions for the individual granting the power;

9 (28) "primary physician" means a physician designated by an
10 individual, or by the individual's agent, guardian, or surrogate, to have primary
11 responsibility for the individual's health care or, in the absence of a designation or if
12 the designated physician is not reasonably available, a physician who undertakes the
13 responsibility;

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

20 (30) "reasonably available" means able to be contacted with a level of
21 diligence appropriate to the seriousness and urgency of a patient's health care needs,
22 and willing and able to act in a timely manner considering the urgency of the patient's
23 health care needs;

24 (31) "state" means a state of the United States, the District of
25 Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession
26 subject to the jurisdiction of the United States;

27 (32) "supervising health care provider" means the primary physician or
28 the physician's designee, or the health care provider or the provider's designee who has
29 undertaken primary responsibility for an individual's health care;

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

1 **Sec. 13.52.395. Short title.** This chapter may be cited as the Health Care
2 Decisions Act.

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

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

19 (b) An employee of the department who processes an identification card
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, by placement of posters and brochures in the office where the
23 application is taken, and by oral advice, if requested, make known to the applicant the
24 procedure necessary to execute **an anatomical** [A] gift under **AS 13.52** [AS 13.50 OR
25 A LIVING WILL UNDER AS 18.12].

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

27 (c) An employee of the department who processes an application for
28 registration or renewal of registration, other than an application received by mail or an
29 application for registration under AS 28.10.152, shall ask the applicant orally whether
30 the applicant wishes to execute an anatomical gift [OR A LIVING WILL]. The
31 department shall make known to all applicants the procedure for executing **an**

1 **anatomical** [A] gift under **AS 13.52 (Health Care Decisions Act)** [AS 13.50
 2 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER AS 18.12
 3 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)] by displaying posters
 4 in the offices in which applications are taken, by providing a brochure or other written
 5 information to each person who applies in person or by mail, and, if requested, by
 6 providing oral advice.

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

8 (d) An employee of the department who processes a driver's license
 9 application, other than an application received by mail, shall ask the applicant orally
 10 whether the applicant wishes to execute an anatomical gift [OR A LIVING WILL].
 11 The 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. 7.** AS 28.15.111(b) is amended to read:

19 (b) The department shall provide, at the time that an operator's license is
 20 issued, a form for a document by which the owner of a license may make an
 21 anatomical gift under **AS 13.52** [AS 13.50 OR A LIVING WILL UNDER AS 18.12].
 22 The document (1) may not be larger than an operator's license, (2) must contain
 23 sufficient space for the signature of two witnesses [OR A PERSON WHO IS
 24 QUALIFIED TO TAKE ACKNOWLEDGMENTS UNDER AS 09.63.010], **and** (3)
 25 [MUST USE THE FORMS AND DESIGNS DEVELOPED UNDER AS 18.12.037,
 26 AND (4)] must provide a means by which the owner may cancel the **anatomical** gift
 27 [OR THE LIVING WILL]. If the document is executed by the applicant, it shall be
 28 sealed in plastic and attached to the license. [A SYMBOL DEVELOPED UNDER
 29 AS 18.12.037 INDICATING THE EXISTENCE OF THE ANATOMICAL GIFT OR
 30 LIVING WILL DOCUMENT MUST BE DISPLAYED IN THE LOWER RIGHT-
 31 HAND CORNER ON THE FACE OF THE DRIVER'S LICENSE.]

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

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

7 * **Sec. 9.** AS 47.30.825(b) is amended to read:

8 (b) The patient and the following persons, at the request of the patient, are
9 entitled to participate in formulating the patient's individualized treatment plan and to
10 participate in the evaluation process as much as possible, at minimum to the extent of
11 requesting specific forms of therapy, inquiring why specific therapies are or are not
12 included in the treatment program, and being informed as to the patient's present
13 medical and psychological condition and prognosis: (1) the patient's counsel, (2) the
14 patient's guardian, (3) a mental health professional previously engaged in the patient's
15 care outside of the evaluation facility or designated treatment facility, (4) a
16 representative of the patient's choice, (5) a person designated as the patient's **agent or**
17 **surrogate** [ATTORNEY-IN-FACT] with regard to mental health treatment decisions
18 under **AS 13.52** [AS 13.26.332 - 13.26.358, AS 47.30.950 - 47.30.980, OR OTHER
19 POWER-OF-ATTORNEY], and (6) the adult designated under AS 47.30.725. The
20 mental health care professionals may not withhold any of the information described in
21 this subsection from the patient or from others if the patient has signed a waiver of
22 confidentiality or has designated the person who would receive the information as an
23 **agent or surrogate under AS 13.52** [ATTORNEY-IN-FACT] with regard to mental
24 health treatment.

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

26 (f) A patient capable of giving informed consent has the absolute right to
27 accept or refuse electroconvulsive therapy or aversive conditioning. A patient who
28 lacks substantial capacity to make this decision may not be given this therapy or
29 conditioning without a court order unless the patient expressly authorized that
30 particular form of treatment in **an advance health care directive** [A
31 DECLARATION] properly executed under **AS 13.52** [AS 47.30.950 - 47.30.980] or

1 has authorized an **agent or surrogate under AS 13.52** [ATTORNEY-IN-FACT] to
 2 make this decision and the **agent or surrogate** [ATTORNEY-IN-FACT] consents to
 3 the treatment on behalf of the patient.

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

5 **Sec. 47.30.836. Psychotropic medication in nonemergency.** An evaluation
 6 facility or designated treatment facility may not administer psychotropic medication to
 7 a patient in a situation that does not involve a crisis under AS 47.30.838(a)(1) unless
 8 the patient

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

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

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

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

21 (d) An evaluation facility or designated treatment facility may administer
 22 psychotropic medication to a patient without the patient's informed consent if the
 23 patient is unable to give informed consent but has authorized the use of psychotropic
 24 medication in **an advance health care directive** [A DECLARATION] properly
 25 executed under **AS 13.52** [AS 47.30.950 - 47.30.980] or has authorized an **agent or**
 26 **surrogate under AS 13.52** [ATTORNEY-IN-FACT] to consent to this form of
 27 treatment for the patient and the **agent or surrogate** [ATTORNEY-IN-FACT] does
 28 consent.

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

30 (d) Upon the filing of a petition under (b) of this section, the court shall direct
 31 the office of public advocacy to provide a visitor to assist the court in investigating the

1 issue of whether the patient has the capacity to give or withhold informed consent to
 2 the administration of psychotropic medication. The visitor shall gather pertinent
 3 information and present it to the court in written or oral form at the hearing. The
 4 information must include documentation of the following:

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (B) resident's right to pursue a grievance under AS 47.33.340;
- 2 (C) resident's right to protection from retaliation under
- 3 AS 47.33.350;
- 4 (D) provisions of AS 47.33.510, regarding immunity; and
- 5 (E) home's house rules;
- 6 (8) an **acknowledgment** [ACKNOWLEDGEMENT] and agreement
- 7 relating to home safekeeping and management of the resident's money, as required by
- 8 AS 47.33.040;
- 9 (9) a copy of the resident's living will, if any, **or an advance health**
- 10 **care directive made under AS 13.52, if any;** and
- 11 (10) a copy of a power of attorney or other written designation,
- 12 **including an advance health care directive made under AS 13.52,** of an agent,
- 13 representative, or surrogate by the resident.

14 * **Sec. 15.** AS 13.26.332(L), 13.26.335(1), 13.26.344(I); AS 13.50.010, 13.50.014,

15 13.50.016, 13.50.020, 13.50.030, 13.50.040, 13.50.050, 13.50.060, 13.50.065, 13.50.068,

16 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,

17 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,

18 47.30.952, 47.30.954, 47.30.956, 47.30.958, 47.30.960, 47.30.962, 47.30.964, 47.30.966,

19 47.30.968, 47.30.970, 47.30.972, and 47.30.980 are repealed.

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

21 read:

22 CONTINUING EFFECT OF EXISTING DOCUMENTS. (a) An anatomical gift

23 made under AS 13.50 or AS 18.12, repealed by sec. 15 of this Act, before the effective date of

24 secs. 1 - 15 of this Act continues in effect under AS 13.50 or AS 18.12, as those chapters exist

25 before the effective date of secs. 1 - 15 of this Act, until the donation is revoked.

26 (b) A power of attorney that is made under AS 13.26.332(L), 13.26.335(1), or

27 13.26.344(I), repealed by sec. 15 of this Act, before the effective date of secs. 1 - 15 of this

28 Act and that contains authority for health care services under AS 13.26.332(L),

29 AS 13.26.335(1), or 13.26.344(I), repealed by sec. 15 of this Act, continues in effect under

30 AS 13.26.332(L), 13.26.335(1), and 13.26.344(I), as those provisions exist before the

31 effective date of secs. 1 - 15 of this Act, until the power of attorney is revoked.

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

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

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

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

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

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

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

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

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

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

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

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

31 (4) in 7 AAC 16.090(1), replace the reference to "AS 18.12.100" with

1 "AS 13.52.390";

2 (5) in 7 AAC 16.090(3), replace ""do-not-resuscitate order" in AS 18.12.100"

3 with ""do not resuscitate order" in AS 13.52.390."

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

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