

**ALASKA STATE LEGISLATURE
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES
STANDING COMMITTEE**

February 27, 2003
3:04 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Cheryll Heinze
Representative Paul Seaton
Representative Kelly Wolf
Representative Sharon Cissna
Representative Mary Kapsner

MEMBERS ABSENT

Representative Carl Gatto, Vice Chair

COMMITTEE CALENDAR

CONFIRMATION HEARINGS

PROFESSIONAL TEACHING PRACTICES COMMISSION

Lawrence Lee Oldaker - Auke Bay
Craig Baker - Kodiak
Vivian Dailey - Fairbanks
Kimberly Jockusch - Anchorage

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 25

"An Act relating to health care decisions, including do not resuscitate orders and the donation of body parts, and to powers of attorney relating to health care, including the donation of body parts; and providing for an effective date."

HEARD AND HELD

PREVIOUS ACTION

BILL: HB 25

SHORT TITLE:HEALTH CARE SERVICES DIRECTIVES
SPONSOR(S): REPRESENTATIVE(S)WEYHRAUCH

Jrn-Date	Jrn-Page		Action
01/21/03	0038	(H)	PREFILE RELEASED (1/10/03)
01/21/03	0038	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0038	(H)	HES, JUD, FIN
02/13/03		(H)	HES AT 3:00 PM CAPITOL 106
02/13/03		(H)	Heard & Held
02/13/03		(H)	MINUTE(HES)
02/27/03		(H)	HES AT 3:00 PM CAPITOL 106

WITNESS REGISTER

LAWRENCE LEE OLDAKER, Appointee
to the Professional Teaching Practices Commission
Auke Bay, Alaska
POSITION STATEMENT: Testified as appointee to the Professional
Teaching Practices Commission.

CRAIG BAKER, Appointee
to the Professional Teaching Practices Commission
Kodiak, Alaska
POSITION STATEMENT: Testified as appointee to the Professional
Teaching Practices Commission.

VIVIAN DAILEY, Appointee
to the Professional Teaching Practices Commission
Fairbanks, Alaska
POSITION STATEMENT: Testified as appointee to the Professional
Teaching Practices Commission.

KIMBERLY JOCKUSCH, Appointee
to the Professional Teaching Practices Commission
Anchorage, Alaska
POSITION STATEMENT: Testified as appointee to the Professional
Teaching Practices Commission.

REPRESENTATIVE BRUCE WEYHRAUCH
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: As sponsor of HB 25, provided background
information and explained amendments to the committee.

LINDA SYLVESTER, Staff
to Representative Bruce Weyhrauch
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented amendments to CSHB 25, Version D, and answered questions from the committee.

JENS SAAKVITNE, Director
Life Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of Amendment 3 to CSHB 25, Version D, and answered questions from the committee.

MARIA WALLINGTON, M.D., Ethicist
Providence Health Systems
Anchorage, Alaska

POSITION STATEMENT: Asked questions about CSHB 25, Version D, expressed concerns, and answered questions from the committee.

RICHARD BLOCK
Christian Science Committee on Publications
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 25.

RON COWAN, Long Term Care Ombudsman
Mental Health Trust Authority
Department of Revenue
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 25 and suggested any fine-tuning can be done in the next committee of referral.

MARGUERITE STITSON
AARP

Anchorage, Alaska

POSITION STATEMENT: Testified during hearing on HB 25 in support of advance directives.

ROGER BRONSON, Executive Director
Alaska Mental Health Consumer Web
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 25, suggesting any changes can be addressed in the next committee of referral.

EDIE ZUKAUSKAS, Attorney
Disability Law Center of Alaska, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in support of CSHB 25, Version D, and answered questions from the members.

SIOUX DOUGLAS
Hospice and Home Care of Juneau

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 25.

MARIE HELM

Juneau, Alaska

POSITION STATEMENT: Testified in support of CSHB 25, Version D.

CAROLE EDWARDS, R.N., Member

Legislative Committee, Alaska Nurses Association

Juneau, Alaska

POSITION STATEMENT: Testified in conceptual support of CSHB 25, Version D; expressed concerns and answered questions from the committee.

MARK JOHNSON, Chief

Community Health and Emergency Medical Services

Division of Public Health

Department of Health and Social Services

POSITION STATEMENT: Testified on CSHB 25, Version D, and answered questions from the committee.

RICHARD RAINERY, Executive Director

Alaska Mental Health Board

Department of Health and Social Services

Juneau, Alaska

POSITION STATEMENT: Testified in support of CSHB 25, Version D, and offered suggested changes.

ROSALIE WALKER, President

Juneau Chapter of AARP;

Board Member, Older Persons Action Group (OPAG)

POSITION STATEMENT: Testified about the importance of HB 25 and encouraged the committee to continue to work on it.

MARIE DARLIN

Capitol City Task Force, AARP

Juneau, Alaska

POSITION STATEMENT: During hearing on HB 25, said she is glad the committee is taking time to ensure that it is done correctly.

ACTION NARRATIVE

TAPE 03-19, SIDE A

Number 0001

CHAIR PEGGY WILSON called the House Health, Education and Social Services Standing Committee meeting to order at 3:04 p.m. Representatives Wilson, Wolf, Heinze, Seaton, Cissna, and Kapsner were present at the call to order. Representative Gatto was excused from committee due to illness.

CONFIRMATION HEARINGS

Professional Teaching Practices Commission

Number 0120

CHAIR WILSON announced that confirmation hearings for the appointees to the Professional Teaching Practices Commission would be taken up as the first order of business.

Number 0139

LAWRENCE LEE OLDAKER, Appointee, to the Professional Teaching Practices Commission, gave a brief history of his professional career. He said he is currently a professor emeritus at the University of Alaska Southeast, and has completed a three-year tenure on the Professional Teaching Practices Commission, currently serving as the chairman. Mr. Oldaker told the committee his experience as a school superintendent and work in guiding leadership programs that train principals and superintendents have made him keenly aware of legal and ethical responsibilities of educators. He said he taught a law class and has always tried to focus on legal and ethical responsibilities. Mr. Oldaker said he believes his service on the commission is a logical extension of those academic and professional experiences he has had.

Number 0225

REPRESENTATIVE KAPSNER made a motion to advance the confirmation of Lawrence Lee Oldaker, appointee to the Professional Teaching Practices Commission, to the joint session for consideration. There being no objection, the confirmation of Lawrence Lee Oldaker was advanced.

Number 0350

CRAIG BAKER, Appointee to the Professional Teaching Practices Commission, testified via teleconference and gave a brief history of his professional career. He told the committee he has been teaching at Kodiak High School for 19 years. Mr. Baker

said it an honor to be appointed to the commission, and he looks forward to the opportunity to uphold the ethics of his profession.

Number 0406

REPRESENTATIVE WOLF asked Mr. Baker if he believes serving on the commission would hamper his ability to be a good teacher.

Number 0441

MR. BAKER responded that he does not see it as a hindrance to teaching, but rather an enhancement. He told the committee that he has already attended meetings and feels he has learned a great deal about the commission.

Number 0472

REPRESENTATIVE CISSNA made a motion to advance the confirmation of Craig Baker, appointee to the Professional Teaching Practices Commission, to the joint session for consideration. There being no objection, the confirmation of Craig Baker was advanced.

Number 0534

VIVIAN DAILEY, Appointee to the Professional Teaching Practices Commission, testified via teleconference and gave a brief history of her professional career. She told the committee she is currently the principal of North Pole High School, where she has served for the past seven years. Ms. Dailey said that she would like to serve on the commission to continue to promote ethics among educators in Alaska. She said she feels it is important to have a principal on the commission and she is pleased to serve in that role.

Number 0605

REPRESENTATIVE HEINZE made a motion to advance the confirmation of Vivian Dailey, appointee to the Professional Teaching Practices Commission, to the joint session for consideration. There being no objection, the confirmation of Vivian Dailey was advanced.

Number 0644

KIMBERLY JOCKUSCH, Appointee to the Professional Teaching Practices Commission, testified via teleconference and gave a

brief history of her professional career. She told the committee that she has been teaching in the Anchorage School District for 15 years. Ms. Jockusch said that she feels educators should adhere to the highest standards. She feels it is important that the commission monitor the teaching profession, work proactively with new teachers, and sanction teachers when there is a problem.

Number 0704

REPRESENTATIVE SEATON asked if there is a mentoring role in the Professional Teaching Practices Commission.

Number 0727

MS. JOCKUSCH replied that she does not believe there is a mentoring component in the commission because its role is to look at ethical behaviors of teachers. However, Ms. Jockusch said that she believes mentoring is a critical part of what districts are doing around the state.

Number 0752

REPRESENTATIVE WOLF asked what "Box it, Bag it Mathematics" is.

Number 0766

MS. JOCKUSCH responded that it is a way of putting together materials to teach mathematics. It is a hands-on method of learning mathematics. The program was done in Anchorage about 10 years ago.

Number 0779

REPRESENTATIVE SEATON made a motion to advance the confirmation of Kimberly Jockusch, appointee to the Professional Teaching Practices Commission, to the joint session for consideration. There being no objection, the confirmation of Kimberly Jockusch was advanced.

HB 25-HEALTH CARE SERVICES DIRECTIVES

Number 0839

CHAIR WILSON announced that the next order of business would be HOUSE BILL NO. 25, "An Act relating to health care decisions, including do not resuscitate orders and the donation of body

parts, and to powers of attorney relating to health care, including the donation of body parts; and providing for an effective date."

Number 0849

REPRESENTATIVE BRUCE WEYHRAUCH, Alaska State Legislature, told the committee he has appreciated working on this bill with Representatives Heinze, Seaton, and Cissna, their staff, professionals in the mental health and disability groups, hospital sectors, and senior citizens groups. He told the committee a lot of good comments and feedback have come in, and what he has found through the course of those discussions is that there are a lot of passionate, interested people working on the issues.

REPRESENTATIVE WEYHRAUCH said he has a number of amendments to this bill that he would like to bring before the committee. He also pointed out that the bill has been referred to the House Judiciary Standing Committee.

Number 1013

CHAIR WILSON announced that the procedure the committee will follow in hearing bills is as follows: first, the sponsor of the bill will introduce and explain the legislation; second, professional testimony will be taken; third, public testimony will be taken; fourth, questions will be taken from the committee [because many times the questions members might have will be answered in the course of the hearing]; and finally, the committee will take up amendments. In this case, however, Chair Wilson said since Representative Weyhrauch is the sponsor, the committee will take those amendments whenever he is ready to present them.

Number 1061

CHAIR WILSON moved to adopt CSHB 25, Version 23-LS0137\D Bannister, 2/27/03, as a work draft. There being no objection, Version D was brought before the committee.

REPRESENTATIVE WEYHRAUCH told the committee that this bill brings into one [section in statute] end-of-life health care decisions. The bill deals with powers of attorney for making health care decisions, decisions relating to body parts distribution, and end-of-life care and non-care decisions. The bill addresses who can make those decisions for an individual if

they are incapacitated. It was designed to bring under one roof the kind of decisions that individuals are faced with making at end-of-life for loved ones. Representative Weyhrauch said that a lot of this has been discussed at the previous hearing so he said he would keep his comments brief.

Number 1151

REPRESENTATIVE SEATON asked for a synopsis of the changes in this bill.

REPRESENTATIVE WEYHRAUCH provided a conceptual review of the changes. He said most of the changes he is suggesting have come about as a result of discussions with Dr. Maria Wallington, medical ethicist for Providence Health Care System and the Disability Law Center. He said he also tried to address questions that were raised by Representatives Cissna and Heinze at last week's meeting.

Number 1305

CHAIR WILSON asked if those changes are already in Version D.

REPRESENTATIVE WEYHRAUCH responded that the changes are in the proposed committee substitute. He pointed out that there are some amendments from Representative Cissna and Life Alaska on the tissue-and-organ donation portion of the bill.

CHAIR WILSON asked the sponsor if he would like to present the amendments at this time so those testifying will know what the final bill will look like.

REPRESENTATIVE WEYHRAUCH presented Conceptual Amendment 1 and asked if Linda Sylvester [staff assistant to Representative Weyhrauch] would join him in presenting the amendment. Conceptual Amendment 1 read [original punctuation provided]

Page 4, Line 20

Following (a)
Insert "except in the case of mental illness."

Other conforming amendments within Section 13.52.030, eliminating references to surrogates for mental healthcare directives.

Number 1366

LINDA SYLVESTER, Staff to Representative Bruce Weyhrauch, said that the amendment is important because in general terms the health care directive creates an agent, which is a person who has power of attorney for someone's health care, and also creates a group of people called surrogates. This bill would legally recognize surrogates and the hierarchy whereby the surrogates are selected from a family order. She told the committee there was some consideration given to including mental health care groups in this section of the bill whereby an individual can have a surrogate for mental health care. However, based on conversations with Edie Zukauskas from the Disability Law Center, the decision was made to completely exempt mental health care from surrogates. Ms. Sylvester said if an individual is going to be acting on behalf of another who is mentally ill, that individual will have to be the mentally ill person's guardian [who is appointed by the courts] or agent [having power of attorney].

REPRESENTATIVE WEYHRAUCH told the committee it is important to note that becoming a guardian for someone with mental illness takes an extensive court procedure with a full plan of due process rights in a court of law, with a court finding. He told the committee that is an important consideration because that does not happen easily.

Number 1446

REPRESENTATIVE SEATON moved to adopt Conceptual Amendment 1 [text provided previously]. Without objection, Conceptual Amendment 1 was adopted.

REPRESENTATIVE WEYHRAUCH presented [Conceptual] Amendment 2, which read [original punctuation provided]:

Page 5, Line 22

Following "decision."

Insert "and the primary physician makes the decision based upon the best interest of the patient."

MS. SYLVESTER told the committee Dr. Wallington, an ethicist for Providence Health System, was concerned with the situation when surrogates are in conflict. She told the committee when there is disagreement over medical care, generally the majority rules; however, if the surrogates are evenly divided, then the entire group of surrogates are disqualified. Dr. Wallington was

concerned that in this case it left no one to make decisions in the best interest of the patient. Ms. Sylvester said that the intention was to treat those surrogates as so conflicted; the situation is so volatile, it is time to look outside that group, and the decision reverts to the doctor. Some hospitals have procedures whereby this actually reverts to an ethics committee. There are mechanisms in place to handle these conflicts; this language makes it crystal clear that the decision goes back to the doctor. Ms. Sylvester told the committee this amendment is based on the recommendation of Dr. Wallington, and they believe this amendment clears that confusion.

Number 1610

REPRESENTATIVE HEINZE asked if the physician would then go to an ethics committee or if he/she has the ultimate power.

MS. SYLVESTER replied that hospitals have different ways of dealing with that kind of situation. She told the committee in the real world the doctor is going to be making these decisions. The amendment will give the doctor the legal right to make the decision in the best interest of the patient.

REPRESENTATIVE HEINZE asked if the doctor is required to go to an ethics committee, or if the physician can make that decision without going to an ethics committee.

CHAIR WILSON clarified that each hospital will make its own policy and the doctor will proceed based on what the hospital's rules are.

Number 1629

REPRESENTATIVE SEATON moved to adopt Amendment 2 [text provided previously]. Without objection, Amendment 2 was adopted.

Number 1638

CHAIR WILSON announced the committee will take a brief at-ease at 3:35 p.m. The chair reconvened the meeting at 3:38 p.m.

REPRESENTATIVE WEYHRAUCH began discussion of what he was offering as Amendment 3. He asked the committee to look at the cover letter and attached suggestions from Life Alaska [a tissue and organ donor organization]. The suggestions, titled "Analysis of Current Uniform Anatomical Gift Act," in essence were as follows, with Life Alaska's written comments given in

parentheses; Amendment 3, an inexact copy of the statutes themselves with strikethroughs and nonstandard insertions, in essence did what is shown below each recommendation in brackets:

Recommended deletions:

AS 13.50.014 (Requests by hospitals for anatomical gifts)

[Deleted by Amendment 3]

AS 13.50.016(b) (Exemptions - none)

[Deleted by Amendment 3]

AS 13.50.020 (Potential donees and purposes for which anatomical gifts may be made)

[Deleted by Amendment 3]

AS 13.50.030(d) (Designate donor surgeon - never needed)

[Deleted by Amendment 3]

AS 13.50.030(f) (Covered elsewhere - sample form)

[Deleted by Amendment 3]

AS 13.50.050 (Allows for revocation - covered by new House Bill 25)

[Deleted by Amendment 3]

AS 13.50.065 (Covered by feds)

[NOT deleted by Amendment 3]

AS 13.50.080 (Uniform - general purposes)

[Deleted by Amendment 3]

AS 13.50.090 (Short title)

[Deleted by Amendment 3]

Recommended additions:

Add to AS 13.050.016(a): "Call hosp. or donor program" (Add teeth)

[Amendment 3 added "or donor program" after "inform the appropriate hospital"]

Add to AS 13.50.030(e): "witnessed telephonic consent"

[Subsection (e) in Amendment 3 read, "A gift by a person designated in AS _____ shall be made by a document signed by the person or made by the person's telegraphic, recorded telephonic, or other recorded message."]

MS. SYLVESTER explained the recommendations. She said Life Alaska had done an analysis of existing statute and had made recommended revisions to the Uniform Anatomical Gift Act in current statute. A lot of the provisions are in HB 25, but some are left out and some need improvement. Jens Saakvitne of Life Alaska did the analysis. HB 25 previously did not include a section where law enforcement is supposed to do an investigation on an accident victim's driver's license or on the individual's person to see if there is an anatomical gift card. She told the committee it does not have teeth in it, and it is not a misdemeanor if law enforcement does not do it, but it does result in a lot of good information. A lot of donors are donors as a result of an accident outside of the hospital. Law enforcement will need to call the hospital to bring this to its attention and call the donor organization. She told the committee Mr. Saakvitne is available on line to answer questions from the members.

Number 1789

REPRESENTATIVE CISSNA asked if Amendment 3 is a draft of existing law.

MS. SYLVESTER replied that the committee is looking at the actual statute, the [Uniform Anatomical Gift Donation Act]. She said she struck out the language that is going to be eliminated. For example, it is not necessary to have a surgeon sign anything, because there are other mechanisms that have taken place over the years with hospitals to ensure that these things happen. Ms. Sylvester told the committee that this conceptual amendment uses the original text of the Uniform Anatomical Gift Act. She said this language would be merged into HB 25 where appropriate. Another example of language that is eliminated is where the sample form is removed because this information already exists in HB 25.

Number 1886

JENS SAAKVITNE, Director, Life Alaska, told the committee the original statute of the Uniform Anatomical Gift Act that Alaska adopted was passed by all 50 states and for many years has been

considered the "gold standard." However, Amendment 3 updates a number of points which are needed. He said a typical organ donor tends to be a younger person in good health until a catastrophic event occurs, and those are the people who are least likely to have an advance directive. In Amendment 3 there is language from the Uniform Anatomical Gift Act that would lay out a system of donation and clarify who would make that choice, if there is no directive in place.

CHAIR WILSON asked Mr. Saakvitne if Amendment 3 inserts language in CSHB 25, Version D, that would include forms that are normally signed by individuals when they are admitted into the hospital.

MR. SAAKVITNE replied that 90 percent of the people going into the hospital who end up being organ donors are brought into the hospital in a comatose state. Probably 50 percent of the tissue donors do not go into the hospital at all or are brought in dead on arrival, so there is no opportunity for a patient or patients to sign a directive, unless he/she has done it before hand. Mr. Saakvitne said in 20 years, the majority of people will have a directive signed, but right now, it is a very small percentage.

Number 1967

REPRESENTATIVE CISSNA said Terry Bannister with Legislative Affairs Legal Services expressed concern that it takes time to put amendments together and assure the correct language is included. She said if the changes are substantial it could take a week or two to build the language. Representative Cissna said it is important to have individuals testify on this specific amendment who could help the members understand the implications of it based on their experiences and the effect it would have on people and organizations across the state. Representative Cissna expressed concern in changing existing law without a thorough review of its impact.

CHAIR WILSON replied that the next committee of referral [the House Judiciary Standing Committee] will address the implications of this law.

REPRESENTATIVE CISSNA told the committee that the next committee of referral is the same committee that did wholesale repealing of language last year. She said that the bill that is before the committee now is actually the bill that went through the House Judiciary Standing Committee last year.

CHAIR WILSON replied that if they have done this in the past, they will be much more familiar with it than the Health, Education and Social Services Committee.

Number 2079

REPRESENTATIVE CISSNA replied that this information is of special interest to the people whom the Health, Education and Social Services Committee serves. It is health issues. The House Judiciary Standing Committee deals with judicial issues.

Number 2095

MARIA WALLINGTON, M.D., Ethicist, Providence Health System, asked if the current bill requires hospitals to ask for donations. Currently, Alaska is one of the best states in requiring donation requests.

MR. SAAKVITNE responded that it is not in the language because the federal government already demands that through its conditions of participation. It is mandated by federal law.

MR. SAAKVITNE said he wanted to point out one other important aspect of the amendment in the Uniform Anatomical Gift Act [AS 13.05.060], which guarantees to the decedent's family that there is no cost associated with donations. He said he feels it is important that this is in writing. Another part that he feels is important is the guarantee of separation, which says that the physician who is responsible for pronouncing someone dead, cannot be involved in the donation or surgery of the organ that is transplanted. In some form or other it is crucial to have those safety mechanisms built in.

Number 2173

REPRESENTATIVE SEATON asked if the modifications being discussed would make Alaska out of step or out of compliance with the Uniform Anatomical Gift Act. He asked if this change would create problems between states.

MR. SAAKVITNE responded that the amendment would keep Alaska Statute very much in step with the Uniform Anatomical Gift Act. He said the amendment would not be different from what other states have.

Number 2190

REPRESENTATIVE SEATON moved to adopt Amendment 3 [explanation provided previously].

Number 2200

REPRESENTATIVE KAPSNER told the committee that she does not wish to object; however, she is concerned that the committee is considering action on an amendment of this magnitude without having had time to thoroughly review it.

Number 2250

CHAIR WILSON told the committee Amendment 3 will be set aside, and asked the sponsor to provide the amendment in a format that is normally provided to the committee [through Legislative Affairs Legal Services].

Number 2290

REPRESENTATIVE SEATON withdrew his motion to adopt Amendment 3. Representative Seaton told the committee he wanted to see the amendment integrated into the bill.

REPRESENTATIVE WEYHRAUCH said he would be happy to have Legislative Affairs Legal Services provide this as either an amendment or as a sponsor substitute, whichever the chair prefers.

CHAIR WILSON said the committee will make that decision after all amendments have been presented.

REPRESENTATIVE WEYHRAUCH began discussion of Amendment 4 and told the committee the last amendment he received was from Representative Cissna. He asked if he should present it or if Representative Cissna would prefer to do it. In response to Chair Wilson's inquiry as to whether the amendment is a friendly amendment, he responded that part of it is and part he would like to discuss.

Number 2331

CHAIR WILSON told the committee that she would take testimony of the CSHB 25 [Version D] while copies are made of Amendment 4.

TAPE 03-19, SIDE B

Number 2324

RICHARD BLOCK, Christian Science Committee on Publications, testified via teleconference in support of HB 25. He said that since he does not have a copy of CSHB 25 [Version D] in front of him, he could not speak to that version of the bill. He said that the Christian Science Committee on Publications' greatest concern is for individuals to have the ability or freedom to make his/her own choices with respect to health care. Of particular interest to them is a new proposed section in the bill, Sec. 13.52.010, which introduces the chapter on health care decisions that provides for an advance health care directive. He said their concern is for those who might like to rely exclusively on prayer for healing. In this section individuals can set out how he/she wishes health care be provided and who can or should be designated as the agent for making health care decisions when the individual is no longer able to make them for himself/herself. Mr. Block said the Christian Science Committee finds that to be beneficial because it provides freedom and places the decision making where it really belongs, and that is with the person himself [or herself]. He said the sponsor asked that he be available to answer any questions from the committee. He said he has not heard anything discussed about the adoption of a model bill that was offered sometime ago. The model offers the protections the Christian Science Committee is looking for.

Number 2218

REPRESENTATIVE KAPSNER asked Mr. Block what section he was referring to.

MR. BLOCK replied it was Sec. 13.52.010. This section provides for an individual to select who would make health care decisions and specifically what that individual would want if not able to make those decisions himself/herself. Mr. Block said there are other sections of interest that come later [in the bill] where there is no advance directive and there is a selection of a surrogate. The bill allows for individuals to write down what health care he/she would like under certain circumstances and whom they nominate as their agent for making health care decisions on their behalf.

CHAIR WILSON thanked Mr. Block for being available and calling from Paris, France.

REPRESENTATIVE CISSNA noted that her staff member, Andy Josephson, had worked on Amendment 4 with Legislative Affairs

Legal Services staff, Terry Bannister. Representative Cissna told the committee the amendment is a conceptual amendment and that it took about a week to research and put together. Some of the amendment pertains to the Uniform Anatomical Gift Act in law right now, and some includes language for Title 47 that would be repealed and was repealed by the House Judiciary Standing Committee in last year's bill.

Number 2038

REPRESENTATIVE WEYHRAUCH asked if the chair would hold Amendment 4 until Amendment 3 has been heard.

REPRESENTATIVE SEATON clarified that Amendment 4 is to the original bill, not the proposed committee substitute.

Number 2007

CHAIR WILSON said that she will be setting aside Amendments 3, 4, and 5 [by request of the sponsor]. Chair Wilson asked Representative Weyhrauch, the sponsor, to work with Legislative Affairs Legal Services and bring back a committee substitute that incorporates Amendment 1 and 2, and an amendment that includes Amendment 3.

CHAIR WILSON announced that the committee would proceed with testimony on the bill.

Number 1883

RON COWAN, Long Term Care Ombudsman, Mental Health Trust Authority, Department of Revenue, testified via teleconference in support of HB 25. He told the committee he believes whatever fine-tuning needs to be done can be done in the House Judiciary Standing Committee. He supports the efforts being made not only this year but last year as well.

Number 1831

MARGUERITE STITSON, AARP, testified via teleconference in support of advance directives, speaking on her own behalf as well. She told the committee she and her husband filled out an advance directive over 10 years ago. Last year her husband passed away while they were in another state. She said the first thing the doctor asked her for was an advance directive because her husband had bleeding on the brain and there was no hope of recovery. She told the committee since she did have the

advance directive, she knew what he wanted, and it made it easier on everyone. She said she wanted to express the importance of having an advance directive.

Number 1799

ROGER BRONSON, Executive Director, Alaska Mental Health Consumer Web, testified via teleconference in support of HB 25. Mr. Bronson stated that he believes the bill is a good one and any changes that need to be made can be adequately addressed in the House Judiciary Standing Committee.

CHAIR WILSON told Mr. Bronson he might contact Representative Weyhrauch, since there will be time to address concerns of the bill before it is heard again.

Number 1762

DR. WALLINGTON asked whom she should talk with concerning patients who suffer from depression, for example, in a case where a patient is now unconscious and a doctor needs someone to help make decisions for them. She said she is concerned that physicians will be handicapped if it will be necessary to go to court to appoint a guardian to make decisions for someone who has had mental health problems in the past.

CHAIR WILSON said she believes most people who suffer from mental illness have a guardian.

DR. WALLINGTON said there are many people who have forms of what she would call mental illness, but which would not be considered mental illness by the state. She said, for example, if an individual has had situational depression or may have seen a psychiatrist a few times, that does not mean that he/she cannot carry on life independently.

Number 1691

REPRESENTATIVE WEYHRAUCH asked Dr. Wallington to clarify her question.

DR. WALLINGTON gave an example when an individual is in a car accident, the individual is unconscious with a brain injury, and someone is needed to make decisions on his/her behalf. If the individual does not have a mental health directive or an advance directive, then there is a surrogate possibility after HB 25 becomes law. However, she said her understanding is that the

amendment pertaining to mental health concerns will require that someone with mental health issues have either a guardian or two physicians in determining their incapacity. She said she would like to know what qualifies as a mental illness under this law.

Number 1567

REPRESENTATIVE WEYHRAUCH replied that he would like to have the amendment drafted and have Dr. Wallington take a look at it to see if it addresses her concerns.

Number 1567

EDIE ZUKAUSKAS, Attorney, Disability Law Center of Alaska, Inc. ("Disability Law Center"), said the Disability Law Center is not trying to prevent medical treatment. The issues the law center has in repealing the current statute are to assure that if someone with mental health issues loses capacity, that the treatment is done in a proper way. She said she would be happy to talk to Dr. Wallington on this issue in another forum.

MR. JOSEPHSON commented that he is hearing good discussion on this issue. He said one of the concerns Representative Cissna had with the original bill was the repeal of existing law that requires separate perspective for people with mental health issues.

Number 1480

SIOUX DOUGLAS, Hospice and Home Care of Juneau, testified in support of HB 25. She also spoke in support of the bill based on her personal experiences in losing six close family members in the last four years. Four of those deaths clearly demonstrated the value of an advance directive. She said this bill allows people to have a detailed directive, encourages individuals to die with dignity, and to care for those loved ones very much in the way that these individuals wish to be cared for. This bill encourages people to plan ahead and therefore prevents very difficult last minute decisions. Even if individuals are in a dying state and are mentally very clear, that is still a very tough time to explain to loved ones what an individual wants. She told the committee that this bill is the same as last year's bill, and urged the members to pass this legislation. Ms. Douglas told the committee she was very impressed with the members' willingness to allow this bill to be even more comprehensive. She encouraged the members to clean up all the statutes and not be afraid to repeal what is needed.

Number 1299

MS. DOUGLAS said that her husband, whom she married last year, lost his wife to sudden death and had to make the decision about donating her organs hours later. It was a tough emotional thing to do, even though he and his wife had discussed this.

MS. DOUGLAS told the committee the Juneau End of Life Task Force was formed a couple of years ago, after Bill Moyer's special on television on death and dying in America. A whole momentum developed across America, because people discovered that dying is part of living. In Juneau, there was a town meeting where individuals learned a lot about how much people care about this issue, but had not been able to talk about it before. It makes it easier for people to find, in one place in law, what an individual can do, and it encourages them to do it in a very compassionate way. She urged the members to pass this bill out of committee.

Number 1203

MARIE HELM spoke on behalf of herself and family. She told the committee that she has been a resident of Alaska [Juneau] for the last 20 years. Ms. Helm explained that the importance of advance directives recently hit home for her. She said she lost her mother-in-law earlier this month. She learned a great deal from that experience, as her mother-in-law had been in fragile health for a long time, and had been in various hospitals. In each hospital the atmosphere was very different. She said in each hospital the administration, the physicians, and the staff were working up to their highest sense of what was right and how they could best serve the needs of the patient. However, the end result for the family and the patient could be very different.

MS. HELM said for example, in a hospital in the state of Washington the family's wishes were irrelevant. They [hospital staff and physicians] really did not want to know what the family felt or what was wanted. In fact, even what the patient wanted was not particularly relevant to them. They felt they knew best in this situation and wanted to be free to follow their own wishes. In another hospital, the physicians and the staff were extremely supportive. She said that was the situation they were in when her mother-in-law passed on. Ms. Helm said they were so grateful that they could speak with hospital staff and physicians and be heard, not in a patronizing

way, but in a way that gave dignity in the last moments of her mother-in-law's life. To have the opportunity to have things the way she wanted at the end of her life was very important. Ms. Helm said that as people live their lives with dignity, it is important to leave with a sense of dignity. Ms. Helm thanked the committee for the work they are doing.

Number 1060

CAROLE EDWARDS, Member, Legislative Committee, Alaska Nurses Association, testified in support of HB 25 [Version D]. She told the committee she is an oncology nurse and deals with death and dying. Ms. Edwards told the committee the association conceptually supports this bill. The association thinks it is great to have everything in one place because often nurses are the ones who are between the family, the physician, and the patient.

MS. EDWARDS said the association has two questions or concerns. Under Sec. 13.52.050, which deals with obligations of health care providers, under (g)(3) [page 7, line 28] if the facility does not comply with the wishes of the individual, the facility must immediately make all efforts to transfer the patient to a facility that will comply. In most areas in Alaska there is only one provider. It is not always easy to transfer an individual who is dying. She asked the committee to keep that in mind as they are amending the bill. She said another concern along with this is who would pay for the transfer if the hospital does not go along with what the family wants. She believes that insurance companies will not be too quick to pay. She asked the committee to address this in some way.

DR. WALLINGTON commented on the above-mentioned section, saying she believed it would be inappropriate to ask the hospital to pay for transportation for people who want something other than standard care. She said that she cannot see anyone asking a physician to do something the physician would not do, unless it was something illegal, for instance, assisted suicide.

CHAIR WILSON said that her interpretation is that health care professionals assist the patients in making plans for transfer, including preparations for a move, making calls, and other details that would be helpful.

DR. WALLINGTON agreed that the hospital cannot abandon a patient because he/she does not want to stay there.

Number 0779

MS. EDWARDS said she had an experience sometime ago, when she had a patient that was dying and had spoken with the family, who did not want the patient resuscitated. The physician who was the primary care provider at that time was not comfortable writing DNR [Do Not Resuscitate] orders. Therefore, nurses were required to go charging in and resuscitate a terminally ill cancer patient, whose family did not want him resuscitated. It was a most difficult situation. This physician was always uncomfortable writing DNR orders. She said her next question is about Sec. 13.52.060(d) [page 8], regarding an oral order for DNR from the physician. The bill says an oral or written order can be taken; however, Bartlett [Regional] Hospital ("Bartlett") requires a written order. There needs to be some thought to that issue. The nurses are caught in the middle. She told the committee the doctor is required to come into Bartlett and make a written order because it is the most important order a physician will ever give.

0507

REPRESENTATIVE KAPSNER asked if a required written order would make it more difficult for telemedicine, particularly in rural areas.

MS. EDWARDS replied that remote communities may want to have some input on this, especially in areas that do not have a physician present. Alaska has very unique situations and needs to deal with things on a very different level than the rest of the country.

REPRESENTATIVE KAPSNER said she can see hospitals' concern, but not all Alaskans work under those conditions all the time.

MS. EDWARDS asked if it would be possible to provide that DNR orders be either written or oral, depending on the facilities' requirements.

Number 0467

MARK JOHNSON, Chief, Community Health and Emergency Medical Services, Division of Public Health, Department of Health and Social Services, testified that this is the section he is most interested in. The way he reads the bill, he does not think this precludes Bartlett Regional Hospital from having a written requirement. He said what this language does is allow for the

flexibility that Representative Kapsner is alluding to. In a state like Alaska there are circumstances that are going to occur that are not in a hospital situation. He believes this does not say that Bartlett has to allow oral orders, but he said he is not a legal expert.

Number 0391

REPRESENTATIVE SEATON said he believes the language needs clarity and it can be done in an amendment. He said he does not want to put the nurses in a position where they have to obey the law and violate the hospital's standard of care.

MS. EDWARDS said she has had arguments with doctors in the middle of the night telling her to write the order, and her saying, "I can't."

CHAIR WILSON said she believes the institution's rules would cover the nurse in an instance like that.

MS. EDWARDS told the committee of her minor son who wanted to be an organ donor when he got his driver's license because his father and she are donors. However, he was not allowed to be an organ donor because he was a minor. She told the committee that kids that age are the primary donors. There should be some mechanism considered for minors who want to donate and whose parents approve of that to allow them to be donors. She said the nurses association is supportive of this legislation.

Number 0194

RICHARD RAINERY, Executive Director, Alaska Mental Health Board, Department of Health and Social Services, gave a couple of brief comments about the bill. He wants the committee to know they support HB 25. The concerns he has have been discussed with the sponsor and stem from the fact that the bill repeals the Mental Health Treatment Declaration, a law that was adopted in Alaska in 1996. When this passed it was a result of grassroots consumer efforts, and put Alaska on the forefront in protecting consumer rights. He said the board's concern is that protections currently in law are maintained. This would address some of Dr. Wallington's concerns, he suggested, and also protect some other decision-making conventions in the mental health field. The board has communicated those issues with the sponsor's office, and virtually all of them are addressed in the proposed CS and the amendments adopted today. There are just a

couple left, and the board will make sure those points are discuss with the sponsor before the bill is heard again.

Number 0077

ROSALIE WALKER, President, Juneau Chapter of AARP; Board Member, Older Persons Action Group (OPAG), testified that both organizations have been involved with this bill since its conception two years ago. She said they have worked very closely with the original sponsor, and continue to work closely with the current sponsor by offering the organizations' assistance. She said when the committee starts to "tweak" the bill, they will be ready to "tweak." Ms. Walker stated that this is a very important bill and the committee has shown great respect by the work the members are doing.

TAPE 03-20, SIDE A

Number 0001

MS. WALKER shared a personal experience with the committee about her mother's death last month. She told the members her mother lived in Baltimore, Maryland, where advance directives have been legal since 1993. At that time, the family got together with her mother and agreed on everything. However, when her mother reached the age of 90, she decided she did not want to give her body away. Her mother told the family that as old and dilapidated as she was, she felt there was nothing they [Johns Hopkins Gerontology Department] can do with it. Ms. Walker said her mother had been part of a study with Johns Hopkins Gerontology Department, and the family tried to tell her that there would be some usefulness. Her mother said no, Johns Hopkins need's "young, fresh stuff." So the family had to go through all the procedures again just to change that one portion of the advance directive. It was not that hard, and it was done to please her. She passed away two weeks shy of 94. She had all of her faculties to the end. Ms. Walker said her mother actually remembered more than she wanted her to. Her mother was happy about the directives, but the family was happier because everything she wanted was done. It made it very simple for the family. Ms. Walker urged the committee to continue to work on this bill.

Number 0183

MARIE DARLIN, Capitol City Task Force, AARP, testified in support of HB 25 [Version D]. She concurred with Rosalie Walker that she is happy that the committee is taking the time to

assure that the bill is done correctly. There is a good reason for getting this done. She pointed out the Anchorage Daily News article in Sunday's paper that talked about Alaska's poor end-of-life care. Ms. Darlin told the committee one of the reasons that Alaska got such a poor rating was lack of physicians and nurses, but it says Alaska's laws do not support good care planning such as living wills and powers of attorney for the end-of-life care. Ms. Darlin said the state does have these laws in place, but they are here, there, and everywhere within the statutes. If the legislature can get all of this done now, it would take care of many of the problems and the state would be rated higher for end-of-life care. She said she would leave a copy of the article for the members.

Number 0368

REPRESENTATIVE SEATON asked if the committee could get the bill drafted to include all the amendments and proposed amendments in a proposed committee substitute. He said he believes it will be easier to deal with problems if the bill could be read as a whole.

REPRESENTATIVE CISSNA agreed with Representative Seaton.

Number 0415

CHAIR WILSON announced that a committee substitute will be taken up before the committee on Thursday, March 6. [HB 25 was held over.]

ADJOURNMENT

Number 0451

There being no further business before the committee, the Health, Education and Social Services Standing Committee meeting was adjourned at 4:45 p.m.