

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

March 6, 2003

3:04 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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."

- MOVED CSHB 25(HES) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 25

SHORT TITLE:HEALTH CARE SERVICES DIRECTIVES

SPONSOR(S): REPRESENTATIVE(S) WEYHRAUCH, Ogg

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
02/27/03		(H)	Heard & Held
02/27/03		(H)	MINUTE(HES)

WITNESS REGISTER

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

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

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

POSITION STATEMENT: Testified on CSHB 25(HES) and answered
questions from the members.

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

POSITION STATEMENT: Testified in support of CSHB 25, Version H,
asked and answered questions from the committee.

SHELLY OWENS, Health Program Manager
Division of Community Health and Emergency Medical Services
Department of Health and Social Services
Juneau, Alaska

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

BOB TAYLOR, Acting Director
Commission on Aging
Department of Administration
Juneau, Alaska

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

ACTION NARRATIVE**TAPE 03-22, 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, Gatto, Wolf, and Heinze were present at
the call to order. Representatives Seaton, Cissna, and Kapsner
arrived as the meeting was in progress.

HB 25-HEALTH CARE SERVICES DIRECTIVES

Number 0080

CHAIR WILSON announced that the first 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."

CHAIR WILSON told the committee the sponsor has provided a new version of CSHB 25(HES) [23-LS0137\H, Bannister, 3/6/03] which will come before the committee today. [No motion was made, but Version H was treated as the working document.]

Number 0153

LINDA SYLVESTER, Staff to Representative Bruce Weyhrauch, Alaska State Legislature, explained that the changes in the bill include incorporation of all the mental health changes discussed in a previous meeting and the inclusion of the anatomical gift donations language. She told the committee they worked closely with Life Alaska, which is the clearinghouse for organ donations for Alaska. Ms. Sylvester said Jens Saakvitne is online to answer any questions the committee might have. She also pointed out the many individuals who are online or in the audience that are available to answer questions from the members.

Number 0369

REPRESENTATIVE GATTO asked the status on the surrogates issue.

Number 0403

MS. SYLVESTER told the committee that Edie Zukauskas, an attorney for the Disability Law Center of Alaska, Inc. will address Representative Gatto's question. Ms. Sylvester went on to say that she got together with Edie Zukauskas and Dr. Wallington to discuss exempting surrogates from any mental health care decisions. If a person has mental health issues, that person can make a directive for his/her general health care issues, but is precluded from assigning a surrogate.

Number 0487

REPRESENTATIVE GATTO asked what the legal definition of a surrogate is with respect to this bill.

EDIE ZUKAUSKAS, Attorney, Disability Law Center of Alaska, Inc. ("Disability Law Center"), replied there is probably more than one definition, depending on the context in which it is used. The Disability Law Center's concern with surrogates in this bill is that the mental health community has never before been involved with surrogates because their goals and values differ from family and friends. What the Disability Law Center would like to accomplish with this bill is to assure that the mental health community could partake in the benefits of the bill, but assure that a surrogate not be appointed in the event it is a mental health issue. Ms. Zukauskas said she does not believe it is a major issue; however, it is imperative to hear from the consumers. She told the committee that Richard Rainery [Executive Director, Alaska Mental Health Board, Department of Health and Social Services] is familiar with this issue and believes it can be dealt with in the House Judiciary Standing Committee.

Number 0603

CHAIR WILSON said she agrees with Edie Zukauskas that the House Judiciary Standing Committee would be the appropriate venue to deal with this issue. Chair Wilson told the committee Bob Briggs of the Disability Law Center was unable to meet with the committee today. The center is still working on a definition of mental health treatment, and believes that issue can also be dealt with in the House Judiciary Standing Committee.

MS. ZUKAUSKAS responded to Representative Gatto's request for a general definition of surrogate by saying a surrogate is someone who acts in the place of another when that person is unable to speak for himself or herself.

Number 0668

MS. SYLVESTER pointed out the definition of a surrogate in the bill on page 30, line 9, which says "'surrogate' means an individual, other than a patient's agent or guardian, authorized under this chapter to make a health care decision for the patient." She told the committee the bill lays out the hierarchy of individuals in the order of who might be a surrogate.

Number 0750

REPRESENTATIVE HEINZE asked if the issue previously discussed by Dr. Wallington [at an earlier hearing] concerning situational depression was clarified in the new bill.

Number 0835

MARIA WALLINGTON, M.D., Ethicist, Providence Health System, responded that the issue has been resolved since the exclusion of surrogates is limited to only those issues surrounding mental illness. She said her concern was that someone who had other medical issues needing to be decided would be left with no one to decide for him/her if surrogates were eliminated.

REPRESENTATIVE HEINZE asked Dr. Wallington about her concern expressed in a previous meeting where a physician might be unaware of a patient's having situational depression in his/her medical background.

DR. WALLINGTON responded that her concern was based on the exact opposite situation. She was concerned about someone who had been treated for situational depression who now needed treatment for a medical problem unrelated to that depression; however, the individual could not speak for himself or herself.

Number 0842

CHAIR WILSON asked Dr. Wallington if the new version of the bill addresses her concerns.

DR. WALLINGTON responded that she is happy with the bill.

Number 0859

REPRESENTATIVE SEATON asked if the section on "do not resuscitate" (DNR) orders addressed the concerns of the nurses association.

MS. SYLVESTER explained that the DNR section authorizes the DNR protocol. She said a hospital may have its own policies that may be driven by concerns other than the statutes, such as liability. So the hospital may have policies that are more restrictive than what the statute would allow. For example, the state does not force physicians to treat someone in a particular way; there is a mechanism to opt out. An analogy would be that an individual would not expect a hospital run by the Catholic

Church to provide abortions on demand; even though state law allows abortion, the hospital is not forced to provide that procedure.

Number 0990

REPRESENTATIVE GATTO asked if a surrogate has any authority to overrule a policy in a situation where an individual has an order for DNR, but a hospital has a policy of resuscitating.

Number 1020

SHELLY OWENS, Health Program Manager, Division of Community Health and Emergency Medical Services, Department of Health and Social Services, spoke of the importance of having the ability to give oral DNR orders for communities that do not have a resident physician or for emergency medical technicians (EMTs) to be able to receive a verbal DNR from the primary physician. She told the committee this is currently in existing law and does not change in this bill. Ms. Owens said the division's primary goal is to assure that the Comfort One Program remains intact if this bill passes. She said she understands the nurses' concern that there could be a conflict in a situation where a physician is in the community and could come into the hospital to write a DNR order, but to change that and remove the ability to issue an oral DNR order would be problematic for bush communities and EMTs. Ms. Owens said hospitals are able to exercise more restrictive policies, but she is unaware of problems resulting from that, since this is currently existing law.

REPRESENTATIVE GATTO spoke about the conflict between the surrogate with a DNR order and the hospital's policy that prevents honoring it. He asked what happens in that situation.

MS. OWENS responded that the bill provides that when there is a conflict and the health care provider does not want to honor a particular health care directive, that will be communicated. The patient will be transferred to another facility or health care provider that will honor the directive.

REPRESENTATIVE GATTO clarified his question by saying he is concerned about an emergency situation when there is a DNR order but the hospital has a policy that DNR's are not honored. He asked if there is something in statute that covers this situation.

Number 1204

CHAIR WILSON commented that that kind of emergency is the reason this bill is important, so that when an emergency happens those questions are asked.

REPRESENTATIVE GATTO said he would like to know what happens in a case where the hospital has a policy and the surrogate has a DNR order. He asked where that is addressed in the bill.

MS. OWENS referred to page 7 of the bill, which provides that a health care provider may decline to comply with an individual's instruction for reasons of conscience, except for a DNR order. She said that the Comfort One Program is for the pre-hospital environment where a patient is at home, and an EMT or volunteer [out in the Bush] is called.

CHAIR WILSON said she has served as an EMT in a small community and her experience has been that the EMTs stay on top of who is ill or terminally ill. Everyone knows which individuals have DNR orders.

Number 1344

REPRESENTATIVE SEATON said he wants to clarify some confusion about the nurses association's concern about conflict in a situation where the hospital has a policy not to accept oral DNR orders, but the statute would require her to accept an oral DNR order. Representative Seaton said on page 8, subsection (d) still seems to be a problem. He told the committee that may not be a problem unless there are hospitals in Alaska that do not honor either oral or written DNR orders.

Number 1404

CHAIR WILSON shared her experience as a nurse where doctors are reminded that they must write a DNR order to comply with the hospital's policy. Chair Wilson said the nurses association's concern was in an instance when a nurse talks to a doctor on the phone and is given an oral DNR order in violation of hospital policy, in which case the nurse will have to insist the doctor come to the hospital and write the DNR order if that is the hospital policy.

REPRESENTATIVE SEATON pointed out that the nurse would be in violation of either the statute or hospital policy as the bill is now written.

DR. WALLINGTON said she believes the bill says that the health care provider must comply when there is a DNR order. She said if that order comes through Comfort One, or through an oral or written order, the health care provider must comply. She said she does not think the bill is addressing how that order is actuated.

REPRESENTATIVE SEATON said that is exactly the point. This language would require nurses to comply with an oral DNR order even in a case where it is against hospital policy. He said this bill would require the institution to accept oral orders and there is no exception to that.

DR. WALLINGTON replied that she believes what the bill says is that an oral order may be acceptable and not that an oral order must be accepted.

Number 1561

DR. WALLINGTON told the committee that hospitals honor Comfort One orders when the patient is in the hospital.

Number 1624

BOB TAYLOR, Acting Director, Commission on Aging, Department of Administration, testified to the importance of this bill to the commission. He thanked the committee for working to make these issues clearer and easier for the elderly and their families in making these important decisions. He told the committee about a public policy report he was reading recently from the National Academy on Aging Society and the Gerontology Society of America that talks about how important it is to take these fragmented statutes and contain them in one place. He said that the committee is on the cutting edge of this, as only 16 other states have managed to pull everything together into a comprehensive package that makes everything clear to the public and health care providers. Mr. Taylor said the commission applauds the committee's work and hopes the members will pass this bill.

REPRESENTATIVE GATTO asked if there is a copy of a model from some other states that have already made this law.

MR. TAYLOR said the National Academy forum will be looking at what the states have done to see if one model would meet the requirements of all the states. He said the academy is not there yet.

MS. SYLVESTER said the model legislation the sponsor worked from is the Five Wishes legislation that has been adopted in 37 states. This legislation came from the Uniform Health Care Decisions Act model legislation approved by the American Bar Association and inspired by the Florida organization, Aging with Dignity [which was directed by Mother Teresa's attorney]. She said the other model legislation that is in the bill is the mental health care directives, which developed as a result of a grassroots effort in 1996. The law on the [Uniform] Anatomical Gift Act and the living will statute goes back to the 1970s.

Number 1839

REPRESENTATIVE CISSNA said that while Five Wishes may have been a model, this bill is pulling all of these dissimilar things together and putting them in a model for Alaska. She said other states are doing the same thing.

MS. SYLVESTER responded that she recalls that Hawaii has done this and there may be other states who have also done a very comprehensive approach to advance directives.

Number 1917

REPRESENTATIVE SEATON spoke on a possible conceptual amendment, on page 8, line 22, after the word "physician" to insert the words "if oral orders are allowed by the applicable institution". He said the purpose for this amendment would be to provide for the non-physician health care provider in a position of having to either violate hospital procedures or the state statute. If oral orders are allowed by the institution, then the health care provider would be required to follow the order.

DR. WALLINGTON said she has no problem with the amendment.

MS. OWENS had a question about the definition of the word "institution". She said she does not see this impacting a DNR order in the field.

REPRESENTATIVE SEATON said he has no problem substituting the word "hospital" for "institution" in his conceptual amendment.

MS. SYLVESTER referred to the definition of a hospital on page 28, line 29. If the word "hospital" replaced the word "institution", she said the sponsor would not oppose the amendment.

Number 2069

REPRESENTATIVE SEATON moved to adopt Conceptual Amendment 1. He said on page 8, line 22, after the word "physician", insert the words "if oral orders are allowed by the applicable hospital". There being no objection to the amendment, the Amendment 1 was adopted.

REPRESENTATIVE HEINZE asked what would happen if, for example, she traveled to Texas or another state that has not adopted this bill. Would this advance directive be honored?

DR. WALLINGTON responded that she believes hospitals would be delighted that patients have advance directives and would be happy to follow them. However, she told the committee she is not a lawyer, so she is unable to speak to the legal issues. Her thoughts are that since this bill says Alaska will accept directives from other states, it would depend on whether there is similar language in the other state's statutes.

Number 2155

REPRESENTATIVE GATTO moved to report CSHB 25 [Version 23-LS0137\H, Bannister, 3/6/03], as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 25(HES) was reported from the House Health, Education and Social Services Standing Committee.

Number 2190

ADJOURNMENT

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at 3:45 p.m.