

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 28, 2003

1:47 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative Jim Holm
Representative Dan Ogg
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

DEPARTMENT OF LAW: BRIEFING ON LITIGATION

- HEARD [See the 1:05 p.m. minutes for this date]

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

HOUSE BILL NO. 18

"An Act relating to the liability of parents and legal guardians of minors who destroy property."

- SCHEDULED BUT NOT HEARD

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
02/27/03		(H)	Heard & Held
02/27/03		(H)	MINUTE(HES)
03/06/03		(H)	HES AT 3:00 PM CAPITOL 106
03/06/03		(H)	Moved CSHB 25(HES) Out of Committee
03/06/03		(H)	MINUTE(HES)
03/10/03	0488	(H)	HES RPT CS(HES) NT 7DP
03/10/03	0488	(H)	DP: GATTO, WOLF, HEINZE, SEATON,
03/10/03	0488	(H)	CISSNA, KAPSNER, WILSON
03/10/03	0488	(H)	FN1: ZERO(HSS)
03/10/03	0488	(H)	REFERRED TO JUDICIARY
03/26/03		(H)	JUD AT 1:00 PM CAPITOL 120
03/26/03		(H)	<Bill Hearing Postponed to 3/28> -- Meeting Canceled --
03/28/03		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE BRUCE WEYHRAUCH
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 25.

PAUL MALLEY, President
Aging With Dignity
Tallahassee, Florida
POSITION STATEMENT: Provided comments during discussion of HB
25.

EDIE ZUKAUSKAS, Staff Attorney
Disability Law Center of Alaska, Inc.
Anchorage, Alaska
POSITION STATEMENT: Explained the proposed amendments to HB 25.

ROBERT B. BRIGGS, Staff Attorney
Disability Law Center of Alaska, Inc.
Juneau, Alaska
POSITION STATEMENT: Assisted with the explanation of the
proposed amendments to HB 25.

JENS SAAKVITNE, Executive Director
Life Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 25.

RONALD A. COWAN, Long Term Care Ombudsman
Alaska Mental Health Trust Authority
Department of Revenue (DOR)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 25 as amended.

MARGUERITE STETSON, Executive Council Member for Advocacy
AARP Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 25.

CHARLOTTE DAVIS
Fairbanks Alaska

POSITION STATEMENT: Testified in support of HB 25 and suggested
some changes.

RICHARD RAINERY, Executive Director
Alaska mental Health Board
Office of the Commissioner
Department of Health & Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 25 as amended.

SHELLY OWENS, Health Program Manager
Community Health & Emergency Medical Services
Division of Public Health
Department of Health & Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 25 and responded
to questions.

SIOUX PLUMMER DOUGLAS
Juneau Hospice Foundation;
Juneau End of Life Task Force
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 25.

MARIE DARLIN, Coordinator
Capital City Task Force
AARP
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 25.

SAM TRIVETTE, President
Retired Public Employees of Alaska (RPEA)
Alaska Public Employees Association/American Federation of
Teachers (APEA/AFT)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 25.

ACTION NARRATIVE

TAPE 03-25, SIDE A

Number 0001

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting back to order at 1:47 p.m. Representatives McGuire, Holm, Ogg, Gara, and Gruenberg were present at the call back to order. Representatives Anderson and Samuels arrived as the meeting was in progress. [For the briefing by the Department of Law, see the 1:05 p.m. minutes for this date.]

HB 25 - HEALTH CARE SERVICES DIRECTIVES

Number 0053

CHAIR MCGUIRE announced that the final 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." [The latest version was CSHB 25(HES).]

Number 0059

REPRESENTATIVE BRUCE WEYHRAUCH, Alaska State Legislature, sponsor, noted that during the 22nd legislature, a version of HB 25, then sponsored by Representative Bill Hudson, passed the House without opposition, and that this year, with changes made in the House Health, Education and Social Services Standing Committee, along with provisions regarding what has come to be known as the "Five Wishes," HB 25 now includes provisions pertaining to the Uniform Anatomical Gift Act. He relayed that his interest in this legislation stems from the fact that although his father had previously established power of attorney and health care directives for himself, he did not tell his wife where he kept that documentation; as a consequence, no one knew

what his preferences for end-of-life treatment were, and thus he ultimately lingered in a very poor state for more than a year.

REPRESENTATIVE WEYHRAUCH suggested that many people don't end their lives the way they would wish simply because they haven't given clear directives regarding their end-of-life decisions. He noted that the Five Wishes grew out of a national movement. House Bill 25 incorporates provisions regarding advanced health care directives into one place in statute: for example, the organ donation program, the living will program, the "Comfort One Do-Not-Resuscitate (DNR) Program", and "expanded durable power of attorney forms." The language in HB 25 attempts to lay out an extensive, comprehensive approach to all end-of-life matters such as organ donations, mental health treatment, disposition of the body, and other issues. He mentioned that there are some proposed amendments in members' packets.

Number 0391

REPRESENTATIVE ANDERSON moved to adopt CSHB 25(HES) as the working document. There being no objection, CSHB 25(HES) was before the committee.

Number 0398

PAUL MALLEY, President, Aging With Dignity, relayed that Aging With Dignity is the organization which created and distributes the Five Wishes advanced directive that has become somewhat of a national model for effective advanced care planning. The Five Wishes advanced directive document is now used by more than 2 million Americans and is being distributed by approximately 5,000 organizations including hospitals; hospices; places of worship; [private] companies that distribute it to employees; the U.S. Department of State, the U.S. Department of Justice, and the Food and Drug Administration (FDA), to their employees; the State of Florida, to its employees; and other large employers.

MR. MALLEY noted that Aging With Dignity was founded by Jim Towey in 1996, and that Mr. Towey was legal counsel for 12 years to Mother Teresa of Calcutta and did volunteer work in her homes for the dying in India and Mexico, where he saw how important it is to care for the dying with the utmost dignity. Mr. Malley said that Mr. Towey contrasted the care those people received with how the dying are treated in America, where oftentimes they are not receiving the kind of care at the end of life that they would wish.

MR. MALLEY relayed that the Five Wishes document was written with three goals in mind. The first goal was to make it easy to use and understand, so that people could sit down in their living rooms and fill it out with their families. The second goal was to include more than just medical issues, because national research has shown that when people are asked about care at the end of life, they say things like, "I want to be at home if that's possible" or "I want to have my family with me" or "I don't want to be in pain," and similar types of personal-care preferences. In contrast, in the past, the only question people have commonly been asked is whether they wish to be on life-support treatment, which is a question that many people simply don't wish to talk about. And the third goal was to facilitate communication. He mentioned that situations similar to the one that Representative Weyhrauch described happen frequently, adding that facilitating communication is possible when working with a document that is written in layman's terms.

MR. MALLEY noted that when Aging with Dignity introduced the Five Wishes document, it had the support and guidance of the Robert Wood Johnson Foundation, and had legal counsel from the American Bar Association's Commission on [Law and Aging], which looked at the existing advanced-care-planning laws of all 50 states. At that time, there were 33 states that allowed residents to put their wishes in their own words instead of a "state-written mandatory form" for a durable power of attorney for health care, or for their living will. Currently, there are 15 states, including Alaska, that require residents to put their wishes on a "state-written form."

Number 0737

MR. MALLEY pointed out that HB 25 would change that, with the benefit being that Alaska residents will be able to say, in their own words, what's important to them if they get sick and can no longer speak for themselves. This is a trend that's picking up speed across the country, he noted; in just a few years, three states have actually made the change - California, Hawaii, and West Virginia - and several other states are now considering legislation to do so - Alaska, Texas, Indiana, Ohio, and Wisconsin. The changes proposed by HB 25 have proven effective and helpful, he remarked.

MR. MALLEY, in conclusion, shared the following experience:

Last month I was in New England and had just given a presentation, and a woman, I could see her coming up to me from the back of the crowd, had a tear in her eye. And she said that it had been a year since her husband had passed away. And she said for the last 28 days of his life he was in a coma, and he'd filled out his Five Wishes document before. And they had his Five Wishes document sitting by his bedside. And she said, "this was wonderful because all of our family - his sons, his daughters - his doctors, his nurses could come in and pick up that document and know exactly what he wanted."

She said: "My family wanted so badly to be a good care giver to him but we didn't know what to do. But we looked in Five Wishes and found out that he wanted to have pictures of his grandkids nearby, and that he wanted to have certain music played; that he wanted us to be there with him as much as we could. And we were able to do something because he expressed that." "Then, when the doctors told us that he was not likely to recover and we had to make a decision about life-support treatment," this woman said that she went to her son, and her son said, "Absolutely not; we cannot do this; we cannot remove Dad from life-support treatment because it will kill him." And she said, "Here's this document that your father filled out, and he showed us his Five Wishes." And the son looked at it and said, "This is in Dad's handwriting, this is what he wanted, it's not our decision to make, it was Dad's decision, and he made it, so this is what we need to do."

Number 0847

MR. MALLEY continued:

So the family was able to make the decision, and they were at peace with it. That same day, as they were looking through his Five Wishes -- one of the options in Five Wishes that you have to choose is that you want your family members to make peace with each other, if that's possible, before your death; it's not always possible, but it's something to think about and to talk about. Well, this man had put a big star next to that. And his two sons saw that. These were two sons who hadn't spoken in five years. And that day

that their father died, they spoke for the first time, and for the ... year since [then they] have been great friends. And that speaks to the human element in what's involved at the end of life - the conversations that need to happen that so often don't - that by passing this legislation, you are encouraging and promoting in the homes and the families in Alaska. So, I thank you for that.

REPRESENTATIVE GARA thanked Mr. Malley for his work, adding that "this is akin to a civil rights movement that you've been working on."

Number 0965

EDIE ZUKAUSKAS, Staff Attorney, Disability Law Center of Alaska, Inc., explained that the Disability Law Center is mandated by the federal government to protect and advocate for individuals with disabilities, and its obligations are to pursue administrative, legal, and other appropriate remedies that are necessary to protect the rights of these individuals with disabilities, and to protect the individuals from abuse and/or neglect. She said that she is the "mental health attorney" and has the specific duty of working on behalf of individuals with mental illness.

MS. ZUKAUSKAS said that she became involved with HB 25 as soon as she heard that the "previous mental health treatment bill was being replaced," because she needed to ensure that individuals with mental illness retained their hard-earned protections while receiving the benefits of "this new bill." She then listed the entities and individuals she has worked with toward that end, and mentioned that in addition to the amendments that were adopted in the House Health, Education and Social Services Standing Committee, she has provided Representative Weyhrauch with other suggested amendments for the House Judiciary Standing Committee to consider.

MS. ZUKAUSKAS turned members' attention to proposed Amendment 1, which read [original punctuation provided]:

At page 3-4. insert (b)(1) Except in the case of mental illness, an individual.....

(2) In the case of mental illness, a declaration may be revoked in whole or in part at any time by the principal if the principal is neither

incapable nor incompetent. A revocation is effective when a capable, competent, principal communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the principal's medical record. The authority of a named agent and an alternative agent named in the declaration continues in effect as long as the declaration appointing the agent is in effect or until the agent has withdrawn.

MS. ZUKAUSKAS mentioned that proposed Amendment 1 refers to revocation in so far as it affects individuals with mental illness, and that "incompetent" is included because it is part of the legal definition. On the reasoning behind proposed Amendment 1, she relayed that consumers feel that this advanced directive is not effective at all because of the possibility of coercion, intimidation, or undue influence when they are incapacitated.

REPRESENTATIVE GARA sought clarification that proposed Amendment 1 is intended to amend proposed Sec. 13.52.020.

MS. ZUKAUSKAS said it is.

REPRESENTATIVE GRUENBERG surmised, then, that proposed Amendment 1 would be inserted on page 4, line 3.

MS. ZUKAUSKAS agreed, adding that proposed Amendment 1 would create a subsection (b)(1) and a subsection (b)(2).

Number 1290

CHAIR McGUIRE stated, "Representative Samuels has moved Amendment 1" [text provided previously]. She indicated that there being no objection, Amendment 1 was adopted.

MS. ZUKAUSKAS turned members' attention to proposed Amendment 2, which read [original punctuation provided]:

At page 28, line 4, delete "guardian or conservator" and insert "person"

MS. ZUKAUSKAS indicated that proposed Amendment 2 would clarify the definition of "guardian".

REPRESENTATIVE GRUENBERG remarked that "guardian" is already defined, though differently, in AS 13.26.

CHAIR McGUIRE offered that Ms. Zukauskas is proposing to eliminate that existing definition.

REPRESENTATIVE GRUENBERG argued that that is not what Ms. Zukauskas is proposing, and opined that proposed Amendment 2 would simply be adding a different definition. He pointed out that the existing definition of "guardian", in AS 13.26, has a very specific meaning as it relates to the "incapacitated persons' chapter of the Uniform Probate Code." He noted that with regard to the definition in proposed AS 13.52.390, the same term is being used in a slightly different way. He offered his concern that this might create confusion because it will then become a question of whether one is "a 13.26 guardian or a 13.52 guardian." He mentioned that a guardian is a person who's a guardian of another person - one who makes decisions for the person, whereas a conservator is the person who manages the affairs of the estate.

Number 1479

ROBERT B. BRIGGS, Staff Attorney, Disability Law Center of Alaska, Inc., explained that the definitions in proposed Sec. 13.52.390 relate only to terms as they would be used with regard to the health care decisions referred to in proposed AS 13.52. He posited that proposed Amendment 2 would address the very concern expressed by Representative Gruenberg, because it will limit the definition to, "a judicially appointed person having the authority to make a health care decision for an individual". He acknowledged that perhaps this concept could be solidified by cross-referencing the definition in AS 13.26.

REPRESENTATIVE GRUENBERG surmised that they might just want to do that. He mentioned that under AS 13.26, an institution can be appointed as a conservator, and that under Title 1, a person can include a company.

MR. BRIGGS offered to work on a definition that will encompass all of the entities that are capable of [qualifying as a guardian with regard to proposed AS 13.52].

REPRESENTATIVE GRUENBERG remarked that this might also include the Office of Public Advocacy (OPA).

CHAIR McGUIRE asked Representative Weyhrauch whether he would prefer for the committee to go ahead and adopt proposed Amendment 2 and he could work out the technical details later, or whether he would prefer for the committee to set aside proposed Amendment 2 until that issue is resolved.

[Representative Weyhrauch replied from the audience; therefore, his answer was not audible on tape.]

CHAIR McGUIRE, in response to Representative Weyhrauch's answer, asked for a motion to adopt Amendment 2 [text provided previously].

Number 1585

AN UNIDENTIFIED COMMITTEE MEMBER stated, "So moved."

CHAIR McGUIRE asked whether there were any objections to Amendment 2. There being no objection, Amendment 2 was adopted "with the caveat that [Representative Weyhrauch would work on the details of the definition further, with those interested]."

MS. ZUKAUSKAS turned members' attention to proposed Amendment 3, which read:

At page 29, lined 3-4, insert after line 3, (20) **"incompetent" means that, in the opinion of the court in a guardianship proceeding under AS 13.26, in the opinion of two physicians that include a psychiatrist, or in the opinion of a physician and a professional mental health clinician, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.**

At page 29, line 9, insert after line 9, (23) **"mental health treatment" means electroconvulsive treatment, treatment with psychotropic medication, and admission to and retention in a facility for a period not to exceed 17 days.**

MS. ZUKAUSKAS relayed that proposed Amendment 3 would clarify the meaning of "incompetent" as it applies in the revocation provision, and would clarify what is included in the definition of "mental health treatment".

Number 1672

REPRESENTATIVE SAMUELS made a motion to adopt Amendment 3.

REPRESENTATIVE GRUENBERG asked a question concerning the term "electroconvulsive treatment".

MS. ZUKAUSKAS remarked that what had once been called "electric-shock" is now called "electroconvulsive" or ECT - electroconvulsive therapy. She added that as far as she knows, ECT is not used in Alaska; rather, the language is being added to the definition under the assumption that advanced health care directives will be reciprocal in participating states.

REPRESENTATIVE GRUENBERG asked whether conforming changes regarding the term "electroconvulsive" need to be made elsewhere in statute.

MS. ZUKAUSKAS indicated that if such were the case, she would have no objections.

Number 1741

REPRESENTATIVE SAMUELS made a motion to amend Amendment 3, to add the phrase, "renumber accordingly". There being no objection, Amendment 3 was amended.

REPRESENTATIVE GRUENBERG said he had no objections to Amendment 3 [as amended], but asked that research be done about whether conforming changes regarding the term "electroconvulsive" will need to occur to other statutes.

Number 1765

CHAIR McGUIRE noted there were no further objections to Amendment 3, as amended. Therefore Amendment 3, as amended, was adopted.

MS. ZUKAUSKAS turned members' attention to proposed Amendment 4, which read [original punctuation provided]:

At page 4, delete lines 20-29, and insert:

Sec. 13.52.030. Decisions by surrogate. (a)

Except in the case of mental health treatment, a surrogate may make a health care decision for a patient who is an adult or emancipated minor if an agent or guardian has not been appointed, or the agent

or guardian is not reasonably available, if the patient has been determined to lack capacity by the primary physician;

(b) A surrogate may make a decision regarding mental health treatment for a patient who is an adult or emancipated minor if an agent or guardian has not been appointed, or the agent or guardian is not reasonably available, the mental health treatment is needed on an emergency basis, and the patient has been determined to lack capacity by

(1) two physicians that include a psychiatrist; or

(2) one physician and a professional mental health clinician"

Reletter accordingly subsections beginning on page 4, lines 30 and following.

MS. ZUKAUSKAS said that proposed Amendment 4 would define the limits of authority for a surrogate, adding that it will carve out an exception showing that a surrogate may not make any [mental] health care treatment decisions and yet will still enable individuals to take advantage of the "death with dignity that's intended by this bill."

[On members' copies of proposed Amendment 4, a slanted line ran across the proposed new subsection (b); after some discussion, it was determined that that mark was an error created during the copying process, and that proposed Amendment 4 does stipulate that the remainder of proposed Sec. 13.52.030 would be relettered. Thus proposed Amendment 4 is as provided above.]

Number 1890

REPRESENTATIVE SAMUELS made a motion to adopt Amendment 4.

MR. BRIGGS added that Amendment 4 will clarify when a surrogate can act if the issue relates to mental health treatment.

Number 1966

CHAIR McGUIRE noted there were no objections to Amendment 4. Therefore, Amendment 4 was adopted.

Number 2003

JENS SAAKVITNE, Executive Director, Life Alaska, after noting that Life Alaska is a tissue and organ donor program, said simply that he supports HB 25 and is available for questions.

Number 2030

RONALD A. COWAN, Long Term Care Ombudsman, Alaska Mental Health Trust Authority, Department of Revenue (DOR), said simply that he supports HB 25 with its amendments and is available for questions.

Number 2085

MARGUERITE STETSON, Executive Council Member for Advocacy, AARP Alaska, said that she supports HB 25, stating that the advanced directives - the Five Wishes - are important. A discussion regarding a person's wishes should take place within a family, she added. A number of years ago, the AARP had a program to encourage people to have advanced directives, and at that time, she relayed, she and her husband talked about their feelings and wrote down on paper, using the advanced directive format, what they wanted to happen. She remarked that most hospitals now ask a person whether he/she has an advanced directive.

MS. STETSON said that when her husband passed away suddenly last year while they were vacationing in Arizona, the first thing the doctor in the emergency room asked her was whether her husband had an advanced directive. Fortunately, her husband did, and she said that it was important that she knew he did not want to be placed on life support when the medical outcome indicated there was no hope; she also noted that because her husband had filled out an advanced directive, she knew that he wanted to be cremated. These were all difficult decisions that had to be made within 24 hours, in a state where they did not reside. She mentioned that her advice to anyone is that an advanced directive, or Five Wishes, should be discussed and a form should be completed by everyone.

Number 2139

CHARLOTTE DAVIS said that she is a public health nurse "with the elders," and is speaking as a private citizen. She complimented everyone that has been working on the bill, acknowledged that it has taken quite a long time to get it where it currently is, and relayed that folks in Fairbanks have been following the bill's progress. She mentioned that in November 2002, there was a study performed by Last Acts that graded the state of Alaska as

an "E" - the lowest grade - on its advanced directives policies, not because it didn't have certain programs, but because it did not have a single, comprehensive advanced directive that would enable people to express things in their own way. She said that HB 25 is an important bill and she supports it.

MS. DAVIS explained that she teaches classes to those who are interested in "doing advanced directives" and helping elders from different cultures complete their advanced directives. She mentioned that there are some things which are confusing to people that HB 25 will help clear up. However, she added, she does have some questions and comments about certain areas of the bill. She said, "First of all, when we came out with a living will, that still creates quite a bit of confusion between living will and regular will"; thus, she added, she really likes "the 'advanced directive for health care' title."

MS. DAVIS said that confusion still exists between a power of attorney, a durable power of attorney for health care, and a power of attorney [for health care], warning that complications may arise where "those" aren't spelled out clearly. She turned to page 2, lines 13-14, and noted that subsection (b) says in part, "An adult or emancipated minor may execute a power of attorney for health care"; meanwhile, in the definition section on page 26, lines 20-21, it says, "'advanced health care directive' means an individual instruction or a power of attorney for health care". She offered the suggestion that subsection (b) be changed to read, "An adult or emancipated minor may execute an individual instruction or a power of attorney for health care decision", in order to clarify this point as much as possible and move away from the terms "power of attorney" and "power of attorney for health care".

MS. DAVIS then turned to language beginning on page 2, line 30, and noted that according to this portion of HB 25, one of at least two individuals used as a witness for a power of attorney for health care may be related to the principal by blood, marriage, or adoption, or may be entitled to a portion of the principal's estate. However, on the sample form contained in HB 25, on page 25, both statements to be signed - one by each witness - contain language stipulating that the witness is not related by blood, marriage, or adoption, nor, to the best of the witness's knowledge, entitled to a portion of the principal's estate. She indicated that this conflict [ought to be corrected].

MS. DAVIS remarked that because there are a variety of forms being used, and because many people fill out these different forms without assistance, she is sometimes reluctant to give credence to the advanced health care directives of an elder when the only witnesses signing the form are family members. In response to a request by Chair McGuire, Ms. Davis provided her phone number so that Representative Weyhrauch could speak further with her after the meeting about the issues she raised.

TAPE 03-25, SIDE B

Number 2328

REPRESENTATIVE ANDERSON turned to language in Section 2 regarding unclaimed bodies. He asked Mr. Saakvitne of Life Alaska whether he would have any objections to an amendment that would allow the state to cremate all unclaimed bodies.

MR. SAAKVITNE said he would have no objection to such an amendment, since the time period during which it is possible to harvest viable organs and tissue is extremely short, rendering unclaimed bodies unsuitable for that purpose.

Number 2299

RICHARD RAINERY, Executive Director, Alaska Mental Health Board, Office of the Commissioner, Department of Health & Social Services (DHSS), indicated simply that the [Alaska Mental Health Board] supports HB 25 as amended.

Number 2263

SHELLY OWENS, Health Program Manager, Community Health & Emergency Medical Services, Division of Public Health, Department of Health & Social Services (DHSS), said that both the division and the department support HB 25. She mentioned that the heart of the bill is the Five Wishes program, which expands Alaska's living will directive. She relayed that the consolidation of Alaska's laws regarding advanced health care directives is based on the structure of the Uniform Health-Care Decisions Act (UHCDA) promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL). She said that her division has been tracking HB 25 to ensure that the provisions of the "Comfort One Do-Not-Resuscitate (DNR) Program" have been incorporated in the bill.

Number 2193

REPRESENTATIVE GRUENBERG directed attention to page 17, line 12. He asked Ms. Owens whether she would interpret the phrase "do not resuscitate orders" to mean an order coming from a person or from a court.

MS. OWENS explained that by definition, a do not resuscitate (DNR) order is an order from a physician.

CHAIR McGUIRE pointed out that a DNR order is defined on page 27, line 27: "(11) 'do not resuscitate order' means a directive from a licensed physician that emergency cardiopulmonary resuscitation should not be administered to a qualified patient".

REPRESENTATIVE GRUENBERG asked whether the language on page 17, beginning on line 4, would give an agent the authority to override a physician's DNR order if the agent's authority has not been limited by the person/patient.

MS. OWENS, after noting that the language Representative Gruenberg is referring to is located in the sample form, posited that if there is a conflict between the form and statute, statute would prevail. She said that she is assuming that an agent's ability to disapprove a DNR order refers to a DNR order that comes into effect after a person has lost the capacity to express his/her preferences. She said that her interpretation of "disprove" as used in the form does not mean the same as "revoke" as used on page 8 in proposed AS 13.52.060(f). She remarked that not even a physician can revoke a DNR order except at the request of the patient. She acknowledged that perhaps the term "disapprove" may not be the best term.

REPRESENTATIVE GRUENBERG said he is still unclear whether the language "approve or disapprove" allows an agent to override a physician's DNR order if the patient has not specifically limited the agent's authority. He suggested that this is an issue that still needs to be clarified.

Number 1901

SIOUX PLUMMER DOUGLAS, Juneau Hospice Foundation; Juneau End of Life Task Force, testified in support of HB 25. She explained the Juneau End of Life Task Force instigated the introduction of this legislation almost three years ago. She said that HB 25 has improved upon that original legislation, making it more comprehensive, and clearer and easier to understand. She opined that HB 25 is good public policy that will help Alaskans help

themselves, and urged swift passage of HB 25. She relayed that during the past four years, several members of her immediate family passed away, adding that personal experience has shown her how much a lack of information can complicate the last days of one's life.

Number 1778

MARIE DARLIN, Coordinator, Capital City Task Force, AARP, relayed that AARP is in support of HB 25 and has been very involved with this legislation since its inception. She urged the committee to pass HB 25 this year. She opined that HB 25 is needed and will help people as they make their end-of-life decisions. She added that the AARP is pleased with the amendments because they will help clarify some issues.

Number 1713

SAM TRIVETTE, President, Retired Public Employees of Alaska (RPEA), Alaska Public Employees Association/American Federation of Teachers (APEA/AFT), after mentioning that health care is one of the RPEA's primary issues, relayed that from personal experience, he knows that not being able to go to one place in statute to find all the answers regarding end-of-life decisions can make things very difficult for surviving family members. He mentioned that he has friends that deal with these issues on a regular basis, that they have reviewed HB 25, and that they support it. He also said that the RPEA strongly supports HB 25.

MR. COWAN, turning back to the issue of whether an agent has the authority - absent any limitations placed on the agent by the principal - to disapprove of a DNR order, remarked that he interprets the language in question to mean that the agent would, indeed, have the authority. He said that he is encouraged by language on page 3, beginning on line 18, which stipulates that the agent is to make health care decisions in accordance with the principal's instructions, and that absent those instructions, the agent must make a decision that is in the principal's best interest based upon the agent's knowledge of the principal. He opined that this is important because, according to his experience in working with the elderly, there have been a number of times when physicians have taken it upon themselves to issue DNR orders without anybody's input because they believed that the person's health situation was such that he/she may not have a very good quality of life were he/she to survive. He said that he likes the protection afforded by the

agent being able to override a physician's DNR order when that order is issued without the authority of the principal.

REPRESENTATIVE ANDERSON referred to page 3, lines 28-30, which reads: "(k) An advance health care directive is valid for purposes of this chapter if it complies with this chapter or if it was executed in compliance with the laws of the state where it was executed". He asked if this language means that Alaska would be bound by the advanced directives of other states.

REPRESENTATIVE WEYHRAUCH, in response, referred to Ms. Stetson's experience when her husband died while they were on vacation in [Arizona].

CHAIR McGUIRE announced that HB 25 would be held over for the purpose of allowing the sponsor to research some of the issues raised.

ADJOURNMENT

Number 1401

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:00 p.m.