

ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE

April 19, 2004

1:34 p.m.

TAPE (S) 04-24

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Lyda Green, Vice Chair
Senator Gary Wilken
Senator Bettye Davis
Senator Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 25(JUD)

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

MOVED SCS CSHB 25(HES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 25

SHORT TITLE: HEALTH CARE SERVICES DIRECTIVES

SPONSOR(S): REPRESENTATIVE(S) WEYHRAUCH

01/21/03	(H)	PREFILE RELEASED (1/10/03)
01/21/03	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	(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 (H) HES RPT CS(HES) NT 7DP
 03/10/03 (H) DP: GATTO, WOLF, HEINZE, SEATON,
 03/10/03 (H) CISSNA, KAPSNER, WILSON
 03/26/03 (H) JUD AT 1:00 PM CAPITOL 120
 03/26/03 (H) -- Meeting Canceled --
 03/28/03 (H) JUD AT 1:00 PM CAPITOL 120
 03/28/03 (H) Heard & Held
 03/28/03 (H) MINUTE(JUD)
 03/31/03 (H) JUD AT 1:00 PM CAPITOL 120
 03/31/03 (H) Moved CSHB 25(JUD) Out of Committee
 03/31/03 (H) MINUTE(JUD)
 04/07/03 (H) JUD RPT CS(JUD) NT 5DP
 04/07/03 (H) DP: SAMUELS, HOLM, GARA, OGG, MCGUIRE
 04/07/03 (H) FIN REFERRAL WAIVED
 05/06/03 (H) TRANSMITTED TO (S)
 05/06/03 (H) VERSION: CSHB 25(JUD)
 05/07/03 (S) READ THE FIRST TIME - REFERRALS
 05/07/03 (S) HES, JUD
 05/16/03 (S) HES AT 1:30 PM BUTROVICH 205
 05/16/03 (S) Heard & Held
 05/16/03 (S) MINUTE(HES)
 03/08/04 (S) HES AT 1:30 PM BUTROVICH 205
 03/08/04 (S) Heard & Held
 03/08/04 (S) MINUTE(HES)
 03/24/04 (S) HES AT 1:30 PM BUTROVICH 205
 03/24/04 (S) Heard & Held
 03/24/04 (S) MINUTE(HES)
 04/02/04 (S) HES AT 1:30 PM BUTROVICH 205
 04/02/04 (S) Bill Postponed to 04/07/04
 04/07/04 (S) HES AT 1:30 PM BUTROVICH 205
 04/07/04 (S) -- Rescheduled to 5:30 pm 04/07/04 --
 04/07/04 (S) HES AT 5:30 PM BUTROVICH 205
 04/07/04 (S) -- Rescheduled from 1:30 04/07/04 --
 04/14/04 (S) HES AT 1:30 PM BUTROVICH 205
 04/14/04 (S) Heard & Held
 04/14/04 (S) MINUTE(HES)
 04/16/04 (S) HES AT 1:30 PM BUTROVICH 205
 04/16/04 (S) Heard & Held
 04/16/04 (S) MINUTE(HES)
 04/19/04 (S) HES AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

KELLY CONRIGHT, M.D.
 Providence Extended Care;
 Mary Conrad Center

Anchorage, Alaska

POSITION STATEMENT: Answered questions pertaining to HB 25.

MS. SUSAN MILLER

Anchorage, Alaska

POSITION STATEMENT: Supported HB 25.

MARIA WALLINGTON, M.D.

Providence Alaska Medical Center

Anchorage, Alaska

POSITION STATEMENT: Answered questions pertaining to HB 25.

Representative Bruce Weyhrauch

Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 25

ACTION NARRATIVE

TAPE 04-24, SIDE A

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Wilken, Davis, Guess, and Chair Dyson. Senator Green arrived while the meeting was in progress.

HB 25-HEALTH CARE SERVICES DIRECTIVES

The committee took up CSHB 25(JUD).

CHAIR DYSON said his intention was to hear amendments on CSHB 25(JUD) and also to hear from anybody wishing to testify. He acknowledged there was widespread support for the bill and he had been told this product may be the best in the nation, and if that was true it was to the credit of Representative Weyhrauch and his staff and a lot of people working long and hard on this bill; he said he was pleased and proud of these efforts.

KELLY CONRIGHT, M.D., medical director of two nursing homes - Providence Extended Care and Mary Conrad Center - testified via teleconference and said she was one of several physicians in the state who cares for the greatest number of people in treatment at the end of life.

CHAIR DYSON stated that neither he nor the sponsor would be offering the draft language that Dr. Conright may have seen that

takes nutrition and artificial hydration out of the life-sustaining sections of the bill.

DR. CONRIGHT said that Dr. Wallington had informed her of concerns regarding changes in the language specifically related to withholding and withdrawing nutrition/hydration. She asked if this amendment was on the table for discussion.

CHAIR DYSON said he didn't believe it would be, but if it comes up he would give Dr. Conright a chance to testify.

DR. CONRIGHT asked if at this point the intention was to not add [the amended language] in.

CHAIR DYSON said that was correct.

DR. CONRIGHT responded that being the case, she didn't need to testify, and said, "It's a fantastic bill."

MS. SUSAN MILLER, testifying via teleconference from Anchorage, said she was the chairperson from the family council of the Anchorage Pioneers' Home, but she was not representing the group. She testified in support of CSHB 25(JUD) and said she was similarly concerned about the proposed amendment, but apparently it was not going to be brought up. She said she would not take up time testifying unless that amendment was going to be proposed.

CHAIR DYSON asked her to stand by; if the amendment comes up, she would have a chance to testify.

CHAIR DYSON said there were a few people available to answer questions, including Dr. Wallington who helped greatly on this bill, Carole Edwards, Marie Darlin, and Sam Trivette. Emily Nenon from ACS was also standing by in case something new was brought up.

CHAIR DYSON asked if there were any amendments.

SENATOR GRETCHEN GUESS spoke to Amendment 1. [The amendment was before the committee.] She referred to the pregnancy section and an attorney general's opinion as to whether it was unconstitutional; she told members that in order to protect this bill, even though severability is in state law, this language says that if any of the provisions of this chapter are unconstitutional, the rest of the bill goes forward and won't be

held up because of a ruling or any court cases. [Amendment 1 reads:]

A M E N D M E N T 1

OFFERED IN THE SENATE

BY SENATOR GUESS

TO: SCS CSHB 25(HES), Draft Version "C"

Page 23, following line 16:

Insert new material to read:

"Sec. 13.52.290. Severability. If a provision of this chapter, or the application of this chapter to a person or circumstance is held invalid, including being held unconstitutional, the invalidity does not affect the other provisions or applications of this chapter that can be given effect without the invalid provision or application."

CHAIR DYSON objected for purposes of discussion. He said he understood that the sponsor was fine with this amendment. He asked if there was further objection. There being none [his objection was treated as withdrawn], he announced that Amendment 1 was adopted.

CHAIR DYSON said he had [conceptual Amendment 2]. He referenced page 15, line 29, and moved to amend, by adding the following sentence to that line: "Permanent unconsciousness must be certified by a neurologist." He asked if there was any objection.

SENATOR GUESS said she would object until she understood further.

CHAIR DYSON noted that Senator Green had joined the meeting.

SENATOR GARY WILKEN said he'd like to hear Representative Weyhrauch's opinion of Amendment 2.

REPRESENTATIVE BRUCE WEYHRAUCH, sponsor of HB 25, testified that he and Chair Dyson had talked about this, and his concern was that, although accessing a neurologist is not a problem in a metropolitan area with a hospital, access is not available in smaller villages and, to comply with this provision, access would need to be through a phone or fax and it might be difficult. He referred to the need for involving technology to keep someone alive until the next day when a telephone call could be made to a neurologist.

CHAIR DYSON said what's being talked about is a qualifying condition for the withdrawal of life support and his understanding is this is not a situation with a lot of time pressure. Every rural medical facility has, not only a phone connection, but also Internet connection, and with today's telemedicine, x-rays and electrocardiograms can also be exchanged. He said he had a copy of a document, "Model Standing Orders for Treatment Protocols," which lists protocols necessary when making medical decisions in emergency and very difficult situations, and it appears to be very carefully thought out. He quoted from page 5: "These protocols are fairly liberal. They do not require contact and medical control for many orders. This is in recognition of the communication difficulties in the state." He said the treatment procedures listed follow Alaska's curriculum with few exceptions.

REPRESENTATIVE WEYHRAUCH said that it needs to be clear this is about a qualifying condition regarding a person whose death is imminent; the consultation could be via phone, Internet, or mail, and the person wouldn't necessarily need to observe the patient. Representative Weyhrauch expressed concern that the environment of dying be both legally and personally satisfying to the person's involved family, suggesting something such as short consultation with a neurologist, confirming that the neurologist concurs that the person will die.

CHAIR DYSON said, "All of us are driven by anecdotal but true stories of people who have apparently been in a coma, in a vegetative state, for days, weeks, months or longer. Something happens and they're there, and we're wanting to err on the side of being respectful of life and make sure that we get somebody who is qualified in the area, i.e. a neurologist, to make the determination that to the best of our understanding now, this person is in a permanent, irreversible condition of being unconscious."

SENATOR WILKEN removed his objection.

SENATOR DAVIS asked why it would have to be a neurologist and not some other type of doctor.

CHAIR DYSON responded because determination of permanent unconsciousness is a difficult diagnosis to make and "when you're talking about letting someone die, an irreversible decision, it's important to get the best information and expertise available."

REPRESENTATIVE WEYHRAUCH asked Chair Dyson about the use of the word "certified." "Certified doesn't mean notarized with a gold stamp on it. Does it mean, 'I discussed it, put it in the patient's chart or records, or the neurologist stated to me?'" He asked how this was envisioned.

CHAIR DYSON said perhaps "licensed" would be a better word.

SENATOR LYDA GREEN suggested using "determined, validated, or confirmed."

REPRESENTATIVE WEYHRAUCH said Providence Alaska Medical Center in Anchorage might have a suggestion, according to protocol.

CHAIR DYSON asked Dr. Wallington for input.

MARIA WALLINGTON, M.D., medical ethicist at Providence Alaska Medical Center, responded that since this is about permanent unconsciousness, "we're not talking about an emergency position as much as somebody in a long term situation, so the urgency is not there." She said it was a good idea to provide for the input of a neurologist, but "I wouldn't use certified because it sounds like there is some kind of legal thing involved." She suggested using "consultation ... verified, or determined."

CHAIR DYSON asked Representative Weyhrauch which of those words he preferred.

REPRESENTATIVE WEYHRAUCH suggested using "verified" as it signifies to acknowledge or concur.

SENATOR GUESS stated that she had two issues, and one goes back to the conversation about telemedicine. "To be honest with you, we haven't even dealt with issues of billing in telemedicine, let alone liability and other issues that this brings up. Telemedicine is far from a place that would be able to verify information in many locations ... let's not kid ourselves that we have this really enhanced telemedicine system in the state, because we don't at this point, which I think does bring back the issues of what happens when you're not near a neurologist. So I still have issues about its applicability statewide."

SENATOR GUESS asked why this amendment was included in this particular section, and then realized it was because "permanent unconsciousness" was within the definition of "qualifying

condition" [a terminal condition or permanent unconsciousness in a patient].

REPRESENTATIVE WEYHRAUCH suggested the sentence, "Permanent unconsciousness must be determined in consultation with a neurologist." He said this would hopefully address the implicit liability concern, but also make it clear that "what we want is this touching [base] with a neurologist who is qualified to opine on the status of the person who is dying."

CHAIR DYSON said he would accept this as a friendly amendment. The new sentence on page 15, line 29, will read: "Permanent unconsciousness must be determined in consultation with a neurologist." He asked if there was any objection.

SENATOR GREEN said, "I just have one thing to say. With some scans and tests given to an unconscious person, does it actually take a neurologist to read the scan to determine that there is permanent unconsciousness?"

REPRESENTATIVE WEYHRAUCH said that generally, permanent unconsciousness has to do with brain function, which is more the purview of a neurologist than a cardiologist or urologist. The implication is that a licensed neurologist will probably not venture into territory if indications are such that somebody else should be consulted with.

CHAIR DYSON asked if either Dr. Conright or Dr. Wallington had any input on this issue.

DR. CONRIGHT said, "You do not need technology necessarily to determine that someone is unresponsive, [in a] vegetative state. This is a clinical decision that is made at the bedside and could probably be done even long distance as in the language of the proposed amendment - consultation with a neurologist - but you do not need technology to come to that determination; it's a clinical bedside assessment."

REPRESENTATIVE WEYHRAUCH referred to Senator Green's question of whether a neurologist was needed to determine unconsciousness, and reiterated, "Is a neurologist in the best position to determine unconsciousness or is there some other practitioner that should be consulted, as to unconscious versus conscious state?"

DR. CONRIGHT said she believed that "most primary care providers, not necessarily specialists, but internists, family

practitioners, this should certainly cover most physicians throughout rural Alaska, including, even in Anchorage, that they can determine that, and if [indisc.] they could consult with neurologists, but having a neurologist at the bedside to make that determination, I think, would be overkill, no pun intended."

CHAIR DYSON said that he has listened in on radio conversations at sea where doctors from the University of Washington and other places have advised medical practitioners and less skilled people: "Check for this. What do you get when this happens? Here's what to do, and so on." That type of telemedicine communication is pervasive and useful in the state and whoever has to make decisions will be able to get that kind of counsel. The WAMI [Washington-Alaska-Montana-Idaho Medical School] Program makes expertise from the University of Washington available throughout the state and works remarkably well.

REPRESENTATIVE WEYHRAUCH mentioned a critical situation that occurred last week in Kodiak. A ground line on a fishing vessel snapped and hit a crewmember in the back; he walked around, went below, became unconscious, and then died. The crew administered CPR for 45 minutes until having a consultation with medical people.

CHAIR DYSON asked if there was any further discussion. He acknowledged that the objection[s] had been withdrawn, and announced that [conceptual] Amendment 2 was adopted. He asked if there was any further testimony or amendments. [There were none.]

SENATOR GUESS moved to report Senate CS for CSHB 25(HES), version C as amended, out of committee with individual recommendations and the attached zero fiscal note.

CHAIR DYSON asked if there was any objection. There being none, it was so ordered.

CHAIR DYSON repeated that it had been mentioned to him that when this bill becomes law, it might be the finest law in the nation and may be a model that others could follow.

There being no further business to come before the committee, Chair Dyson adjourned the meeting at 2:05 p.m.