

CS FOR HOUSE BILL NO. 442(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 3/3/06

Referred: Judiciary

Sponsor(s): REPRESENTATIVE WEYHRAUCH

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the validity of advance health care directives, individual health care
2 instructions, and do not resuscitate orders; relating to the revocation of advance health
3 care directives; relating to do not resuscitate orders; relating to resuscitative measures;
4 relating to the liability and discipline of health care providers, institutions, and facilities;
5 relating to an individual's capacity for making health care decisions; and providing for
6 an effective date."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * **Section 1.** AS 13.52.010(k) is amended to read:

9 (k) An advance health care directive, including an advance health care
10 directive that is made in compliance with the laws of another state, is valid for
11 purposes of this chapter **if** [TO THE EXTENT THAT] it complies with [THE LAWS
12 OF] this **chapter, regardless of where or when it was executed or communicated**
13 [STATE].

1 * **Sec. 2.** AS 13.52.010 is amended by adding a new subsection to read:

2 (l) Notwithstanding the sample form provided under AS 13.52.300, an individual
3 instruction that would be valid by itself under this chapter is valid even if the
4 individual instruction is contained in a writing that also contains a durable power of
5 attorney for health care and the durable power of attorney does not meet the
6 witnessing or other requirements of this chapter.

7 * **Sec. 3.** AS 13.52.020(c) is amended to read:

8 (c) In the case of mental illness, an advance health care directive may be
9 revoked in whole or in part at any time by the principal if the principal does not lack
10 capacity and is competent. A revocation is effective when a competent principal with
11 capacity communicates the revocation to a [THE ATTENDING] physician or other
12 health care provider. The [ATTENDING] physician or other health care provider shall
13 note the revocation on the principal's medical record. In the case of mental illness, the
14 authority of a named agent and an alternative agent named in the advance health care
15 directive continues in effect as long as the advance health care directive appointing the
16 agent is in effect or until the agent has withdrawn. For the purposes of this subsection,
17 a principal is not considered competent when

18 (1) it is the opinion of the court in a guardianship proceeding under
19 AS 13.26, the opinion of two physicians, at least one of whom is a psychiatrist, or the
20 opinion of a physician and a professional mental health clinician, that the principal is
21 not competent; or

22 (2) a court in a hearing under AS 47.30.735, 47.30.750, or 47.30.770
23 determines that the principal is gravely disabled; in this paragraph, "gravely disabled"
24 has the meaning given in AS 47.30.915(7)(B).

25 * **Sec. 4.** AS 13.52.060(d) is amended to read:

26 (d) Except as provided in (e), (f), and (i) [(e) AND (f)] of this section, a health
27 care provider, health care institution, or health care facility providing care to a patient
28 shall comply with

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

1 (2) a health care decision for the patient made by a person then
 2 authorized to make health care decisions for the patient to the same extent as if the
 3 decision had been made by the patient while having capacity.

4 * **Sec. 5.** AS 13.52.060 is amended by adding a new subsection to read:

5 (i) Notwithstanding the exception in (e) of this section for do not resuscitate
 6 orders, a health care provider may perform cardiopulmonary resuscitation or other
 7 resuscitative measures on a patient even if there is a do not resuscitate order for the
 8 patient if the condition requiring cardiopulmonary resuscitation or other resuscitative
 9 measures is precipitated by complications arising out of medical services being
 10 provided by the health care provider to the patient.

11 * **Sec. 6.** AS 13.52.065(a) is amended to read:

12 (a) A [AN ATTENDING] physician may issue a do not resuscitate order for a
 13 patient of the physician. The physician shall document the grounds for the order in the
 14 patient's medical file.

15 * **Sec. 7.** AS 13.52.065(f) is amended to read:

16 (f) A do not resuscitate order may not be made ineffective unless a physician
 17 revokes the do not resuscitate order, **a patient for whom the order is written and**
 18 **who has capacity requests that the do not resuscitate order be revoked, or the**
 19 **patient for whom the order is written is under 18 years of age and the parent or**
 20 **guardian of the patient requests that the do not resuscitate order be revoked. Any**
 21 **physician of a patient for whom** [. A REQUEST TO REVOKE] a do not resuscitate
 22 order **is written** may **revoke the do not resuscitate** [ONLY BE MADE BY THE
 23 PERSON FOR WHOM THE] order [IS WRITTEN OR,] if the person for whom the
 24 order is written **requests that the physician revoke the do not resuscitate order** [IS
 25 UNDER 18 YEARS OF AGE, BY THE PARENT OR GUARDIAN OF THE
 26 PERSON].

27 * **Sec. 8.** AS 13.52.080(a) is amended to read:

28 (a) A [IF A] health care provider or health care institution **that acts** [MAKES
 29 REASONABLE EFFORTS, WITH A LEVEL OF DILIGENCE APPROPRIATE TO
 30 THE SERIOUSNESS AND URGENCY OF THE SITUATION, TO ENSURE THE
 31 VALIDITY OF AN ADVANCE HEALTH CARE DIRECTIVE OR A PERSON'S

1 ASSUMPTION OF AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR A
 2 PATIENT, A HEALTH CARE PROVIDER OR INSTITUTION ACTING] in good
 3 faith and in accordance with generally accepted health care standards applicable to the
 4 health care provider or institution is not subject to civil or criminal liability or to
 5 discipline for unprofessional conduct for

6 (1) providing health care information in good faith under
 7 AS 13.52.070;

8 (2) complying with a health care decision of a person based on a **good**
 9 **faith** [REASONABLE] belief that the person has authority to make a health care
 10 decision for a patient, including a decision to withhold or withdraw health care;

11 (3) declining to comply with a health care decision of a person based
 12 on a **good faith** [REASONABLE] belief that the person then lacked authority;

13 (4) complying with an advance health care directive and
 14 [REASONABLY] assuming **in good faith** that the directive was valid when made and
 15 has not been revoked or terminated;

16 (5) participating in the withholding or withdrawal of cardiopulmonary
 17 resuscitation under the direction or with the authorization of a physician or upon
 18 discovery of do not resuscitate identification upon an individual;

19 (6) causing or participating in providing cardiopulmonary resuscitation
 20 or other life-sustaining procedures

21 (A) under AS 13.52.065(e) when an individual has made an
 22 anatomical gift; [OR]

23 (B) because an individual has made a do not resuscitate order
 24 ineffective under AS 13.52.065(f) or another provision of this chapter; **or**

25 **(C) because the patient is a woman of childbearing age and**
 26 **AS 13.52.055 applies;** or

27 (7) acting in good faith under the terms of this chapter or the law of
 28 another state relating to anatomical gifts.

29 * **Sec. 9.** AS 13.52.080 is amended by adding a new subsection to read:

30 (c) A health care provider, health care institution, or health care facility is not
 31 subject to civil or criminal liability, or to discipline for unprofessional conduct, if a do

1 not resuscitate order prevents the health care provider, health care institution, or health
 2 care facility from attempting to resuscitate a patient who requires cardiopulmonary
 3 resuscitation or other resuscitative measures because of complications arising out of
 4 health care being administered to the patient by the health care provider, health care
 5 institution, or health care facility. This subsection does not apply if the complications
 6 suffered by the patient are caused by gross negligence or reckless or intentional
 7 actions on the part of the health care provider, health care institution, or health care
 8 facility.

9 * **Sec. 10.** AS 13.52.150 is amended to read:

10 **Sec. 13.52.150. Do not resuscitate orders and identification of other**
 11 **jurisdictions.** A do not resuscitate order or a do not resuscitate identification
 12 executed, issued, or authorized in another state or a territory or possession of the
 13 United States is valid [IN COMPLIANCE WITH THE LAW OF THAT
 14 JURISDICTION IS RECOGNIZED] for the purposes of this chapter if it complies
 15 with the laws of this state. A health care provider or health care institution may
 16 presume, in the absence of actual notice to the contrary, that [. HOWEVER,] the
 17 do not resuscitate order or the do not resuscitate identification complies [MAY BE
 18 IMPLEMENTED ONLY TO THE EXTENT THAT THE IMPLEMENTATION
 19 DOES NOT CONFLICT] with the laws of this state, regardless of where or when it
 20 was executed, issued, or authorized, and that the patient is a qualified patient.

21 * **Sec. 11.** AS 13.52.390(7) is amended to read:

22 (7) "capacity," except in (9) of this section, means an individual's
 23 ability to receive and evaluate information effectively and to make and effectively
 24 [OR] communicate health care decisions [TO THE EXTENT NECESSARY TO
 25 MAKE MENTAL HEALTH TREATMENT DECISIONS];

26 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
 27 read:

28 CONTINUING EFFECT OF DO NOT RESUSCITATE ORDERS. A do not
 29 resuscitate order made under AS 18.12 before January 1, 2005, continues in effect under
 30 AS 13.52 unless the do not resuscitate order is made ineffective under AS 13.52.065(f),
 31 amended by sec. 7 of this Act, or under another provision of AS 13.52.

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

3 DIRECTIONS TO REGULATIONS ATTORNEY. The regulations attorney in the
4 Department of Law shall

5 (1) replace in 7 AAC 16.010(d)(5) the reference to "an attending physician's
6 DNR order" with "a DNR order by a physician of the patient";

7 (2) replace in 7 AAC 16.010(d)(5)(B) the reference to "attending physician"
8 with "physician of the patient";

9 (3) delete in 7 AAC 16.010(g) "attending."

10 * **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).