

CS FOR HOUSE BILL NO. 442(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/29/06

Referred: Rules

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
3 individual instruction that would be valid by itself under this chapter is valid even if
4 the individual instruction is contained in a writing that also contains a durable power
5 of 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16 agent is in effect or until the agent has withdrawn.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 new subsections 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 (j) The provisions of (i) of this section do not apply when a health care
 12 provider performs emergency medical services to a patient in the field, unless an
 13 online physician orders the health care provider to perform cardiopulmonary
 14 resuscitation or other resuscitative measures; in this subsection,

15 (1) "health care provider" does not include a physician;

16 (2) "in the field" does not include in a health care facility, health care
 17 institution, hospital, or mental health facility;

18 (3) "online physician" means a physician who is immediately available
 19 in person or by radio or telephone, when medically appropriate, for communication of
 20 medical direction to health care providers.

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

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

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

26 (f) A do not resuscitate order may not be made ineffective unless a physician
 27 revokes the do not resuscitate order, **a patient for whom the order is written and**
 28 **who has capacity requests that the do not resuscitate order be revoked, or the**
 29 **patient for whom the order is written is under 18 years of age and the parent or**
 30 **guardian of the patient requests that the do not resuscitate order be revoked. Any**
 31 **physician of a patient for whom** [. A REQUEST TO REVOKE] a do not resuscitate

1 order **is written** may **revoke the do not resuscitate** [ONLY BE MADE BY THE
 2 PERSON FOR WHOM THE] order [IS WRITTEN OR,] if the person for whom the
 3 order is written **requests that the physician revoke the do not resuscitate order** [IS
 4 UNDER 18 YEARS OF AGE, BY THE PARENT OR GUARDIAN OF THE
 5 PERSON].

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

7 (a) **A** [IF A] health care provider or health care institution **that acts** [MAKES
 8 REASONABLE EFFORTS, WITH A LEVEL OF DILIGENCE APPROPRIATE TO
 9 THE SERIOUSNESS AND URGENCY OF THE SITUATION, TO ENSURE THE
 10 VALIDITY OF AN ADVANCE HEALTH CARE DIRECTIVE OR A PERSON'S
 11 ASSUMPTION OF AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR A
 12 PATIENT, A HEALTH CARE PROVIDER OR INSTITUTION ACTING] in good
 13 faith and in accordance with generally accepted health care standards applicable to the
 14 health care provider or institution is not subject to civil or criminal liability or to
 15 discipline for unprofessional conduct for

16 (1) providing health care information in good faith under
 17 AS 13.52.070;

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

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

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

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

29 (6) causing or participating in providing cardiopulmonary resuscitation
 30 or other life-sustaining procedures

31 (A) under AS 13.52.065(e) when an individual has made an

1 anatomical gift; [OR]

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

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

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

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

9 (c) A health care provider, health care institution, or health care facility is not
10 subject to civil or criminal liability, or to discipline for unprofessional conduct, if a do
11 not resuscitate order prevents the health care provider, health care institution, or health
12 care facility from attempting to resuscitate a patient who requires cardiopulmonary
13 resuscitation or other resuscitative measures because of complications arising out of
14 health care being administered to the patient by the health care provider, health care
15 institution, or health care facility. This subsection does not apply if the complications
16 suffered by the patient are caused by gross negligence or reckless or intentional
17 actions on the part of the health care provider, health care institution, or health care
18 facility.

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

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

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

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

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

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

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

13 DIRECTIONS TO REGULATIONS ATTORNEY. The regulations attorney in the
14 Department of Law shall

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

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

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

20 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 RETROACTIVITY. Sections 1 - 12 of this Act are retroactive to January 1, 2005.

23 * **Sec. 15.** This Act takes effect immediately under AS 01.10.070(c).