

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 54

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE DRUMMOND

Introduced: 3/27/17

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act providing an end-of-life option for terminally ill individuals; and providing for**
2 **an effective date."**

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

4 * **Section 1.** AS 11.41.115 is amended by adding a new subsection to read:

5 (g) In a prosecution under AS 11.41.100(a)(1) or 11.41.110(a)(1) or (2), it is a
6 defense that the defendant was performing an action allowed under AS 13.55.

7 * **Sec. 2.** AS 11.41.120 is amended by adding a new subsection to read:

8 (c) In a prosecution under this section, it is a defense that the defendant was
9 performing an action allowed under AS 13.55.

10 * **Sec. 3.** AS 13 is amended by adding a new chapter to read:

11 **Chapter 55. Voluntary Ending of Life.**

12 **Sec. 13.55.010. Individuals allowed to end life.** (a) As provided in this
13 chapter, a qualified individual may use medicine obtained from the qualified
14 individual's attending physician to end the qualified individual's life.

(b) To be a qualified individual under (a) of this section, an individual must

(1) be a resident of this state;

(2) be 18 years of age or older;

(3) have been determined to be capable;

(4) have been determined to be suffering from a terminal disease; and

(5) have voluntarily expressed the wish to die.

(c) An individual does not qualify under (b) of this section solely because of the individual's age or disability.

Sec. 13.55.020. Attending physician and pharmacist authority. If a qualified individual's attending physician complies with this chapter, the attending physician may

(1) dispense medication directly to the qualified individual, including ancillary medications intended to facilitate the desired effect or minimize the qualified individual's discomfort; or

(2) write a prescription for the medication for the qualified individual and in person, by mail, or by electronic transmission deliver the prescription for the medication to a pharmacist, who may dispense the medication to the qualified individual, the attending physician, or an expressly identified agent of the qualified individual.

Sec. 13.55.030. Requests for medication. (a) To receive medication under this chapter, a qualified individual shall make an oral request to the qualified individual's attending physician. The qualified individual shall repeat the oral request to the qualified individual's attending physician not sooner than 15 days after making the initial oral request.

(b) Notwithstanding (a) of this section, if a qualified individual is not physically able to speak, a qualified individual may make an oral request by whatever means the qualified individual can use to make the request, including electronic means, as long as the request is made in person.

Sec. 13.55.040. Right to rescind request. When a qualified individual makes the second oral request under AS 13.55.030, the attending physician shall offer the qualified individual an opportunity to rescind the initial oral request. A qualified

individual may rescind a request at any time and in any manner without regard to the qualified individual's mental state. An attending physician may not dispense or prescribe medication under this chapter unless the attending physician offers the qualified individual an opportunity to rescind the request.

Sec. 13.55.050. Attending physician duties and authority. (a) The attending physician shall

(1) make the initial determination of whether an individual has a terminal disease, is capable, and has made the request for medication voluntarily;

(2) request that the individual demonstrate that the individual is a resident of this state;

(3) inform the individual of the

(A) individual's medical diagnosis;

(B) individual's prognosis;

(C) potential risks associated with taking the medication;

(D) probable result of taking the medication; and

(E) feasible alternatives, including comfort care, hospice care, and pain control;

(4) refer the individual to a consulting physician for medical confirmation of the diagnosis and for a determination that the individual is capable and acting voluntarily;

(5) refer the individual for counseling if appropriate under AS 13.55.070;

(6) recommend that the individual notify the individual's next of kin;

(7) counsel the individual about the importance of having another person present when the individual takes the medication prescribed under this chapter and of not taking the medication in a public place;

(8) inform the individual that the individual has an opportunity to rescind the request at any time and in any manner and offer the individual an opportunity to rescind the request at the end of the 15-day waiting period under AS 13.55.030;

(9) immediately before dispensing or prescribing medication under this

chapter, verify that the individual is making an informed decision;

(10) fulfill the requirements of AS 13.55.110 for medical record documentation;

(11) ensure that all appropriate steps are carried out under this chapter before dispensing or prescribing medication to enable a qualified individual to end the qualified individual's life under this chapter; and

(12) if the attending physician has a current federal Drug Enforcement Administration registration number and complies with applicable regulations, dispense medication directly, including ancillary medications intended to facilitate the desired effect or minimize the qualified individual's discomfort, or, with the qualified individual's consent,

(A) contact a pharmacist and inform the pharmacist of a prescription for the medication; and

(B) deliver the written prescription in person, by mail, or by electronic transmission to the pharmacist who will dispense the medication to the qualified individual, the attending physician, or an agent of the qualified individual who is expressly identified as an agent by the qualified individual.

(b) Notwithstanding any other provision of law to the contrary, the attending physician may sign the qualified individual's death certificate.

Sec. 13.55.060. Confirmation by consulting physician. Before an individual becomes a qualified individual under this chapter, a consulting physician shall examine the individual and the individual's relevant medical records, confirm in writing the attending physician's diagnosis that the individual is suffering from a terminal disease, and verify that the individual is capable, is acting voluntarily, and has made an informed decision.

Sec. 13.55.070. Counseling referral. If the attending physician or the consulting physician determines that an individual may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the individual for counseling, and the attending physician may not dispense or prescribe medication until the person performing the counseling determines that the individual is not suffering from depression or a psychiatric or psychological disorder

1 causing impaired judgment.

2 **Sec. 13.55.080. Informed decision.** An attending physician may not dispense
3 or prescribe medication unless the qualified individual has made an informed decision.
4 Immediately before dispensing or prescribing medication under this chapter, the
5 attending physician shall verify that the qualified individual is making an informed
6 decision.

7 **Sec. 13.55.090. Family notification.** The attending physician may not deny a
8 qualified individual's request for medication if the qualified individual declines or is
9 unable to notify the qualified individual's next of kin.

10 **Sec. 13.55.100. Waiting periods.** An attending physician may not dispense
11 medication or write a prescription for medication for a qualified individual unless at
12 least 15 days have elapsed between the qualified individual's initial oral request and
13 the writing of the prescription.

14 **Sec. 13.55.110. Medical record documentation requirements.** Before a
15 qualified individual receives medication under this chapter, the medical record of the
16 qualified individual must contain

17 (1) a record of all oral requests by a qualified individual for medication
18 under this chapter;

19 (2) the attending physician's diagnosis, prognosis, and determination
20 that the individual is capable, is acting voluntarily, and has made an informed
21 decision;

22 (3) the consulting physician's diagnosis, prognosis, and verification
23 that the individual is capable, is acting voluntarily, and has made an informed
24 decision;

25 (4) if counseling is performed, a report of the determinations made
26 during counseling and the outcome;

27 (5) a record of the attending physician's offer to the qualified
28 individual to rescind the qualified individual's request at the time of the qualified
29 individual's second oral request under AS 13.55.030;

30 (6) a note by the attending physician indicating that all requirements
31 under this chapter have been met and indicating the steps taken to carry out the

1 request, including a statement describing the medication prescribed.

2 **Sec. 13.55.120. Effect on construction of wills and contracts.** A provision in
3 a will or a contract, whether written or oral, is not valid to the extent that the provision
4 requires, prohibits, imposes a condition on, or otherwise addresses whether an
5 individual may make or rescind a request for medication under this chapter.

6 **Sec. 13.55.130. Immunity; effect of action on status of individuals.** (a) A
7 person is not subject to civil or criminal liability or professional disciplinary action,
8 including disciplinary action by a licensing authority, for participating or otherwise
9 acting in good faith compliance with this chapter, including being present when a
10 qualified individual takes the prescribed medication to end the qualified individual's
11 life under this chapter.

12 (b) A professional organization or association or health care provider may not
13 subject a person to censure, discipline, suspension, loss of license, loss of privileges,
14 loss of membership, or other penalty for participating in or refusing to participate in
15 good faith compliance with this chapter.

16 (c) A request by an individual for, or provision by an attending physician of,
17 medication in good faith compliance with this chapter does not provide the sole basis
18 for the appointment of a guardian or conservator of the individual.

19 **Sec. 13.55.140. No duty to participate.** A health care provider is not under a
20 duty, whether by contract, statute, or other legal requirement, to dispense medication,
21 prescribe medication, or otherwise participate in the provision of medication to a
22 qualified individual under this chapter. If a health care provider is unable or unwilling
23 to carry out a qualified individual's request under AS 13.55.030 and the qualified
24 individual transfers the qualified individual's care to another health care provider, the
25 transferring health care provider shall provide to the other health care provider, at the
26 qualified individual's request, a copy of the qualified individual's relevant medical
27 records.

28 **Sec. 13.55.150. Prohibitions.** Notwithstanding another provision of law to the
29 contrary, a health care provider may not prohibit another health care provider,
30 including an employee, contractor, or lessee of the prohibiting health care provider,
31 from participating in this chapter. However, a health care provider may prohibit

another health care provider, including an employee, contractor, or lessee of the prohibiting health care provider, from allowing a patient of the prohibited health care provider to administer medication on the premises of the prohibiting health care provider if the medication was obtained under this chapter.

Sec. 13.55.160. Prohibition notice. To prohibit another health care provider from allowing a patient to administer medication on the premises of the prohibiting health care provider, the prohibiting health care provider shall notify the prohibited health care provider in writing about the prohibition.

Sec. 13.55.170. Sanctions. (a) Notwithstanding AS 13.55.130 and 13.55.140, if a health care provider violates a prohibition allowed under AS 13.55.150 after receiving a written notice under AS 13.55.160, the prohibiting health care provider may impose the following sanctions on the prohibited health care provider:

(1) loss of privileges, loss of membership, or other sanction provided under the bylaws, policies, or procedures of the prohibiting health care provider if the prohibited health care provider is a member of the prohibiting health care provider's medical staff;

(2) termination of a lease or another contract between the prohibiting health care provider and the prohibited health care provider, or an imposition of nonmonetary remedies provided by the lease or other contract; in this paragraph, "remedies" does not include the loss or restriction of medical staff privileges or exclusion from a medical care provider panel.

(b) A prohibiting health care provider who imposes sanctions under (a) of this section shall follow all procedures that are provided under an applicable contract, the applicable terms of employment, or law for imposing the sanctions.

(c) Suspension or termination of staff membership or privileges under (a) of this section is not reportable under AS 08.64.336.

Sec. 13.55.180. Criminal penalties. (a) A person commits the crime of abuse of life-ending process if the person, with the intent to cause the individual's death or knowing that the death of the individual is substantially certain to result,

(1) without the authorization of the individual, falsely makes, completes, or alters a request for medication or conceals or destroys a rescission of the

1 individual's request; or

2 (2) exerts undue influence on an individual to request medication for
3 the purpose of ending the individual's life or to destroy a rescission of the individual's
4 request; in this paragraph, "undue influence" means the control of an individual by a
5 person who stands in a position of trust or confidence to exploit wrongfully the trust,
6 dependency, or fear of the individual to gain control over the decision making of the
7 individual.

8 (b) Abuse of life-ending process is a class A felony and may be punished as
9 provided in AS 12.55.

10 (c) This chapter does not prevent the imposition of criminal penalties that
11 apply under another law for conduct that is inconsistent with this chapter.

12 **Sec. 13.55.190. Civil penalties.** This chapter does not limit liability for civil
13 damages resulting from a person's negligent conduct or intentional misconduct.

14 **Sec. 13.55.200. Claims for costs incurred.** A governmental entity that incurs
15 expenses that result from a qualified individual's ending the qualified individual's life
16 under this chapter in a public place may file a claim against the estate of the individual
17 to recover the costs and attorney fees related to enforcing the claim.

18 **Sec. 13.55.210. Duties of department.** (a) The department shall annually
19 review a sample of records maintained under this chapter.

20 (b) After dispensing medication under this chapter, a health care provider shall
21 file with the department a copy of the record of dispensing the medication.

22 (c) The department shall adopt regulations under AS 44.62 (Administrative
23 Procedure Act) to facilitate the collection of information about compliance with this
24 chapter. The information collected is not a public record under AS 40.25.110, and the
25 department may not make the information available for inspection by the public.

26 (d) The department shall generate and make available to the public an annual
27 statistical report of the information collected under (c) of this section. The statistical
28 report may not disclose information that is confidential under (c) of this section, but
29 shall present the information in a manner that prevents the identification of particular
30 persons.

31 (e) In this section, "department" means the Department of Health and Social

1 Services.

2 **Sec. 13.55.220. Attending physician qualifications.** (a) To qualify as an
3 attending physician under this chapter, a physician must

4 (1) have primary responsibility for the patient's health care;

5 (2) have primary responsibility for the treatment of the patient's
6 terminal illness; and

7 (3) routinely provide medical care to patients with advanced and
8 terminal illnesses in the normal course of the physician's practice.

9 (b) Notwithstanding (a)(3) of this section, an attending physician's practice
10 may not be primarily or solely made up of individuals requesting medication under
11 this chapter.

12 **Sec. 13.55.230. Construction of chapter.** (a) This chapter may not be
13 construed to authorize or require a health care provider to provide health care contrary
14 to generally accepted health care standards applicable to the health care provider.

15 (b) This chapter may not be construed to authorize a physician or another
16 person to end an individual's life by lethal injection, mercy killing, or active
17 euthanasia. An action allowed by this chapter is an affirmative defense to a criminal
18 charge of homicide, murder, manslaughter, criminally negligent homicide, suicide,
19 assisted suicide, mercy killing, or euthanasia under the law of this state.

20 **Sec. 13.55.240. Insurance or annuity policies; contracts.** Notwithstanding
21 AS 21.45.250 or another provision of law to the contrary, a person may not condition
22 the sale, procurement, issuance, rate, delivery, issuance for delivery, or other aspect of
23 a life insurance policy, health insurance policy, accident insurance policy, or annuity
24 policy, or another contract on the making or rescission of a request by a qualified
25 individual for medication under this chapter.

26 **Sec. 13.55.250. Coordination with other law.** A request for medication under
27 this chapter is not an advance health care directive under AS 13.52, and AS 13.52 does
28 not apply to an activity allowed by this chapter.

29 **Sec. 13.55.900. Definitions.** In this chapter, unless the context indicates
30 otherwise,

31 (1) "attending physician" means a physician who qualifies under

1 AS 13.55.220 as an attending physician;

2 (2) "capable" means that an individual has the ability to make and
3 communicate health care decisions to health care providers; in this paragraph,
4 "communicate" includes communication through a person familiar with the
5 individual's manner of communicating if the person is available;

6 (3) "consulting physician" means a physician who is qualified by
7 specialty or experience to make a professional diagnosis and prognosis about the
8 individual's disease;

9 (4) "counseling" means consultation as necessary between a
10 psychiatrist or psychologist and an individual to determine whether the individual is
11 capable and not suffering from a psychiatric or psychological disorder or depression
12 causing impaired judgment;

13 (5) "health care provider" means a person or health care facility
14 licensed, certified, or otherwise authorized or permitted by the law of this state to
15 administer health care or dispense medication in the ordinary course of business or
16 practice of a profession; in this paragraph, "health care facility" means a private,
17 municipal, or state hospital; independent diagnostic testing facility; primary care
18 outpatient facility; skilled nursing facility; kidney disease treatment center, including
19 freestanding hemodialysis units; intermediate care facility; ambulatory surgical
20 facility; Alaska Pioneers' Home or Alaska Veterans' Home administered by the
21 department under AS 47.55; state correctional facility as defined in AS 33.30.901;
22 private, municipal, or state facility employing one or more public health nurses; and
23 long-term care facility;

24 (6) "informed decision" means a decision that is based on an
25 appreciation of the relevant facts and that is made after the attending physician fully
26 informs an individual of the

27 (A) individual's medical diagnosis;

28 (B) individual's prognosis;

29 (C) potential risks associated with taking the medication to be
30 prescribed;

31 (D) probable result of taking the medication to be prescribed;

1 and

2 (E) feasible alternatives, including comfort care, hospice care,
3 and pain control;

4 (7) "medication" means medication to end a qualified individual's life
5 under this chapter;

6 (8) "physician" means a doctor of medicine or osteopathy who is
7 licensed under AS 08.64 to practice medicine or osteopathy;

8 (9) "prescription" means a prescription for medication to end a
9 qualified individual's life under this chapter;

10 (10) "prohibited health care provider" means a health care provider
11 that is prohibited by another health care provider under AS 13.55.150;

12 (11) "prohibiting health care provider" means a health care provider
13 that prohibits another health care provider under AS 13.55.150;

14 (12) "qualified individual" means an individual who is qualified under
15 AS 13.55.010(b);

16 (13) "request" means a request under AS 13.55.030;

17 (14) "terminal disease" means an incurable and irreversible disease
18 that has been medically confirmed and that will, within reasonable medical judgment,
19 produce death within six months; in this paragraph, "medically confirmed" means that
20 a consulting physician who has examined the individual's relevant medical records has
21 confirmed the medical opinion of the attending physician.

22 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 APPLICABILITY. AS 13.55, enacted by sec. 3 of this Act, applies to a contract, will,
25 or life, health, or accident insurance or annuity policy if the contract, will, or policy is
26 delivered or issued for delivery on or after the effective date of sec. 3 of this Act.

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

29 TRANSITION: REGULATIONS. The Department of Health and Social Services may
30 adopt regulations authorized by AS 13.55, enacted by sec. 3 of this Act. The regulations take
31 effect under AS 44.62 (Administrative Procedure Act), but not before January 1, 2019.

- 1 * **Sec. 6.** Section 5 of this Act takes effect immediately under AS 01.10.070(c).
- 2 * **Sec. 7.** Except as provided in sec. 6 of this Act, this Act takes effect January 1, 2019.