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Original sponsors: Clocksin, Goll
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BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 269 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the rights of the terminally
7 ill."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 18 is amended by adding a new chapter to read:

10

CHAPTER 12. RIGHTS OF TERMINALLY ILL.

11

Sec. 18.12.010. DECLARATION RELATING TO USE OF LIFE-SUSTAINING

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PROCEDURES. (a) A competent adult may execute a declaration at any

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time directing that life-sustaining procedures be withheld or with-

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drawn from that adult; but the declaration is given operative effect

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only if the declarant's condition is determined to be terminal and the

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declarant is not able to make treatment decisions. The declaration

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shall be signed by the declarant, or another at the declarant's direc-

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tion, and in either case shall be witnessed by two persons. A witness

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may not be (1) related to the declarant by blood or marriage; (2)

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entitled to a portion of the estate of the declarant under a will of

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the declarant or a codicil to the will then existing or, at the time

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of the declaration, by operation of law then existing; (3) a claimant

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against a portion of the estate of the declarant at the time of the

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declarant's death at the time of the execution of the declaration; or

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(4) directly financially responsible for the declarant's medical care.

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A physician or health care provider may presume, in the absence of

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actual notice to the contrary, that the declaration complies with this

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chapter and is valid.

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(b) It is the responsibility of the declarant to notify the

1 declarant's physician of the declaration. A physician or other health
2 care provider who is provided a copy of the declaration shall make it
3 a part of the declarant's medical records.

4 (c) A declaration may, but need not, be in the following form:

5 DECLARATION

6 If I should have an incurable or irreversible condition that will
7 cause my death within a relatively short time, it is my desire that my
8 life not be prolonged by administration of life-sustaining procedures.
9 If my condition is terminal and I am unable to participate in de-
10 cisions regarding my medical treatment, I direct my attending phy-
11 sician to withhold or withdraw procedures that merely prolong the
12 dying process and are not necessary to my comfort or to alleviate
13 pain.

14 Signed this _____ day of _____, _____.

15 Signature _____

16 City, Borough and State of Residence _____

17 The declarant is known to me and voluntarily signed this document
18 in my presence.

19 Witness _____

20 Address _____

21 Witness _____

22 Address _____

23 Sec. 18.12.020. REVOCATION OF DECLARATION. (a) A declaration
24 may be revoked at any time and in any manner by which the declarant is
25 able to communicate an intent to revoke, without regard to mental or
26 physical condition. A revocation is only effective as to the attend-
27 ing physician or any health care provider acting under the guidance of
28 that physician upon communication to the physician or health care
29 provider by the declarant or by another to whom the revocation was

1 communicated.

2 (b) The attending physician or health care provider shall make
3 the revocation a part of the declarant's medical record.

4 Sec. 18.12.030. RECORDING DETERMINATION OF TERMINAL CONDITION
5 AND CONTENTS OF DECLARATION. When an attending physician who has been
6 notified of the existence and contents of a declaration determines
7 that the declarant is in a terminal condition, the physician shall
8 record that determination and the contents of the declaration in the
9 declarant's medical record.

10 Sec. 18.12.040. TREATMENT OF QUALIFIED PATIENTS. (a) A qual-
11 ified patient has the right to make decisions regarding use of life-
12 sustaining procedures as long as the patient is able to do so. If a
13 qualified patient is not able to make these decisions, the declaration
14 governs decisions regarding use of life-sustaining procedures.

15 (b) This chapter does not prohibit the application of any med-
16 ical procedure or intervention, including the provision of nutrition
17 and hydration, considered necessary to provide comfort, care, or
18 alleviation of pain.

19 (c) Unless the declaration provides otherwise, the declaration
20 of a qualified patient known to the attending physician to be pregnant
21 is given no effect as long as it is probable that the fetus could
22 develop to the point of live birth with continued application of
23 life-sustaining procedures.

24 Sec. 18.12.050. TRANSFER OF PATIENTS. (a) An attending physi-
25 cian who is unwilling to comply with the requirements of AS 18.12.030
26 or who is unwilling to comply with the declaration of a qualified
27 patient under AS 18.12.040 shall take all reasonable steps to effect
28 the transfer of the declarant to another physician.

29 (b) If the policies of a health care facility preclude

1 compliance with the declaration of a qualified patient under this
2 chapter, that facility shall take all reasonable steps to effect the
3 transfer of the patient to a facility in which the provisions of this
4 chapter can be carried out.

5 Sec. 18.12.060. IMMUNITIES. (a) In the absence of actual
6 notice of the revocation of a declaration, the following, while acting
7 in accordance with the requirements of this chapter, are not subject
8 to civil or criminal liability or guilty of unprofessional conduct:

9 (1) a physician who causes the withholding or withdrawal of
10 life-sustaining procedures from a qualified patient;

11 (2) a person who participates in the withholding or with-
12 drawal of life-sustaining procedures under the direction or with the
13 authorization of a physician;

14 (3) the health care facility in which the withholding or
15 withdrawal occurs.

16 (b) A physician, a health care professional, or a health care
17 facility is not subject to civil or criminal liability for actions
18 under this chapter that are in accord with reasonable medical stan-
19 dards.

20 Sec. 18.12.070. PENALTIES. (a) An attending physician who
21 fails to comply with the declaration of a qualified patient or to make
22 the necessary arrangements to effect a transfer under AS 18.12.050 is
23 civilly liable to the qualified patient and to the heirs of the
24 qualified patient.

25 (b) A person who wilfully conceals, cancels, defaces, obliter-
26 ates, or damages the declaration of another without the declarant's
27 consent or who falsifies or forges a revocation of the declaration of
28 another is civilly liable to the qualified patient and to the heirs of
29 the qualified patient.

1 (c) A person who falsifies or forges the declaration of another
2 person or wilfully conceals or withholds personal knowledge of a
3 revocation under AS 18.12.020, with the intent to cause a withholding
4 or withdrawal of life-sustaining procedures contrary to the wishes of
5 the person or declarant and thereby directly causes life-sustaining
6 procedures to be withheld or withdrawn and death to be hastened vio-
7 lates AS 11.41.100.

8 Sec. 18.12.080. GENERAL PROVISIONS. (a) Except as provided in
9 AS 18.12.070(c) death resulting from the withholding or withdrawal of
10 life-sustaining procedures under a declaration and in accordance with
11 this chapter does not, for any purpose, constitute a suicide or
12 homicide.

13 (b) The making of a declaration under AS 18.12.020 does not
14 affect in any manner the sale, procurement, or issuance of a policy of
15 life insurance, nor does it modify the terms of an existing policy of
16 life insurance. A policy of life insurance is not legally impaired or
17 invalidated in any manner by the withholding or withdrawal of life-
18 sustaining procedures from an insured qualified patient, notwithstand-
19 ing any term of the policy to the contrary.

20 (c) A physician, health care facility, or other health care
21 provider, and a health care service plan, insurer issuing disability
22 insurance, self-insured employee welfare benefit plan, or nonprofit
23 hospital plan, may not require a person to execute a declaration as a
24 condition for being insured for, or receiving, health care services.

25 (d) This chapter creates no presumption concerning the intention
26 of an individual who has not executed a declaration with respect to
27 the use, withholding, or withdrawal of life-sustaining procedures in
28 the event of a terminal condition.

29 (e) Nothing in this chapter increases or decreases the right of

1 a patient to make decisions regarding use of life-sustaining proce-
2 dures as long as the patient is able to do so, or impairs or super-
3 cedes any right or responsibility that a person has to effect the
4 withholding or withdrawal of medical care in a lawful manner. In that
5 respect, the provisions of this chapter are cumulative.

6 (f) This chapter does not condone, authorize, or approve mercy
7 killing or euthanasia.

8 Sec. 18.12.090. RECOGNITION OF DECLARATIONS EXECUTED IN OTHER
9 STATES. A declaration executed in another state in compliance with
10 the law of that state is effective for purposes of this chapter.

11 Sec. 18.12.100. DEFINITIONS. In this chapter

12 (1) "attending physician" means the physician selected by,
13 or assigned to, the patient who has primary responsibility for the
14 treatment and care of the patient;

15 (2) "declaration" means a document executed in accordance
16 with the requirements of AS 18.12.010;

17 (3) "health care provider" means a person who is licensed,
18 certified, or otherwise authorized by the law of this state to admin-
19 ister health care in the ordinary course of business or practice of a
20 profession;

21 (4) "life-sustaining procedure" means a medical procedure
22 or intervention that, when administered to a qualified patient, will
23 serve only to prolong the dying process;

24 (5) "physician" means a person licensed to practice medi-
25 cine in this or any other state;

26 (6) "qualified patient" means a patient who has executed a
27 declaration in accordance with this chapter and who has been de-
28 termined by the attending physician to be in a terminal condition;

29 (7) "terminal condition" means an incurable or irreversible

1 condition that, without the administration of life-sustaining proce-
2 dures, will, in the opinion of the attending physician, result in
3 death within a relatively short time.