

Introduced: 2/17/86  
Referred: Health, Education,  
Social Services, Judiciary  
and Finance

1 IN THE HOUSE

BY MARTIN

2

HOUSE BILL NO. 649

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to medical treatment and care of  
7 incompetent persons."

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

9 \* Section 1. LEGISLATIVE INTENT; PURPOSES. (a) It is the intention of  
10 the legislature to provide for standards and procedures to assure that the  
11 directives of persons regarding their medical treatment and care are  
12 honored and that persons who are unable to direct proper medical treatment  
13 and care are provided appropriate medical treatment, nutrition, and hydra-  
14 tion.

15 (b) This Act shall be construed to effect the following purposes:

16 (1) with limited exceptions, to protect the right of competent  
17 persons to consent to, request, or refuse medical treatment;

18 (2) to ensure that a competent person's decision to request or  
19 refuse medical treatment is given effect after that person becomes incompe-  
20 tent;

21 (3) to ensure that necessary nutrition, hydration, warmth, and  
22 nursing care, though not forms of medical treatment, are provided to  
23 patients;

24 (4) to provide adequate safeguards so that a person's directive  
25 to refuse medical treatment is not a result of duress, coercion, or undue  
26 influence, and so that a patient receives information sufficient to give  
27 full and informed consent before deciding to refuse medical treatment;

28 (5) to establish appropriate standards and procedures that limit  
29 the power of a third party to refuse appropriate medical treatment for an

1 incompetent patient;

2 (6) to ensure that appropriate medical treatment is not withheld  
3 or withdrawn from an incompetent patient who is not in the final stage of a  
4 terminal illness or injury;

5 (7) to ensure that an incompetent patient, who has not made a  
6 competent medical treatment directive, receives appropriate medical treat-  
7 ment; and

8 (8) to protect patients from mercy killing or assisted suicide.

9 \* Sec. 2. AS 18 is amended by adding a new chapter to read:

10 CHAPTER 18. MEDICAL TREATMENT OF INCOMPETENT PERSONS.

11 Sec. 18.18.010. DIRECTIVES REGARDING TREATMENT; APPOINTMENTS;  
12 LIABILITY. (a) An attending physician, or health care provider under  
13 the direction of an attending physician, may not be held civilly or  
14 criminally liable for providing, maintaining, withholding, or with-  
15 drawing beneficial medical treatment, life-prolonging medical treat-  
16 ment, or minimal care to or from an incompetent person if the attend-  
17 ing physician or health care provider acted in good faith reliance on  
18 a document by which the person, while competent,

19 (1) directed that, in the circumstances and under the  
20 conditions described in AS 18.18.030(c), the treatment or care should  
21 be provided, maintained, withheld, or withdrawn to or from that per-  
22 son; or

23 (2) appointed a surrogate with authority to direct health  
24 care providers to provide, maintain, withhold, or withdraw the treat-  
25 ment or care in the circumstances and under the conditions described  
26 in AS 18.18.030(c), and the surrogate, while competent, has directed  
27 the attending physician or health care provider to provide, maintain,  
28 withhold, or withdraw the treatment or care to or from the person.

29 (b) An attending physician or health care provider may rely in

1 good faith on a document executed under (a) of this section if

2 (1) the attending physician has no reason to believe or  
3 suspect that the document was executed as the result of duress, coer-  
4 cion, or undue influence;

5 (2) the document was executed by the person in the presence  
6 of two competent witnesses, who are neither heirs nor health care  
7 providers of the person; and

8 (3) the attending physician has no reason to believe or  
9 suspect that the surrogate, if one was appointed, is the person's  
10 institutional health care provider, life or health insurer, or an  
11 agent of the person's institutional health care provider or life or  
12 health insurer.

13 Sec. 18.18.020. PRESUMPTION REGARDING INCOMPETENT PREGNANT  
14 WOMAN. Notwithstanding other provisions of this chapter, an incompe-  
15 tent woman who is known by the attending physician to be pregnant is  
16 presumed to have directed the use of beneficial medical treatment,  
17 life-prolonging medical treatment, and minimal care that, in the  
18 reasonable medical judgment of the attending physician, would enable  
19 the woman's child to develop sufficiently to survive outside the  
20 woman's body.

21 Sec. 18.18.030. PRESUMPTION REGARDING OTHER INCOMPETENT PERSONS.

22 (a) Except as provided in this section and AS 18.18.020, it is pre-  
23 sumed that an incompetent person has directed health care providers to  
24 provide beneficial medical treatment and at least minimal care to the  
25 person.

26 (b) The presumption of (a) of this section does not apply if

27 (1) the person has issued a directive to the contrary as  
28 provided in AS 18.18.010;

29 (2) the person's surrogate, appointed under AS 18.18.010

1 has issued a directive to the contrary; or

2 (3) the attending physician of the person knows of clear  
3 and convincing evidence that the person, while competent and with a  
4 specific disease or illness, decided, on the basis of information  
5 sufficient to constitute informed consent, that a specific form of  
6 beneficial medical treatment or minimal care should be withheld or  
7 withdrawn.

8 (c) This chapter does not create a presumption in favor of the  
9 use of

10 (1) beneficial medical treatment or minimal care that, in  
11 the reasonable medical judgments of the attending physician and a  
12 second consulting physician, will itself cause severe, intractable,  
13 and longlasting pain to the person;

14 (2) life-prolonging medical treatment for a person if, in  
15 the reasonable medical judgments of the attending physician and a  
16 second consulting physician, the person is

17 (A) chronically and irreversibly incompetent; and

18 (B) in the final stage of a terminal illness or in-  
19 jury; or

20 (3) beneficial medical treatment or minimal care for a  
21 person if, in the reasonable medical judgments of the attending physi-  
22 cian and a second consulting physician,

23 (A) the person is chronically and irreversibly incom-  
24 petent;

25 (B) the person is in the final stage of a terminal  
26 illness or injury;

27 (C) the death of the person is imminent; and

28 (D) the treatment or care does not abolish or allevi-  
29 ate pain or discomfort of the person.

1           (d) The provisions of (c)(3) of this section may not be con-  
2           strued to warrant the withholding or withdrawal of nutrition or of  
3           hydration administered by way of the gastrointestinal tract that would  
4           result in death from starvation or dehydration rather than from an  
5           underlying terminal illness or injury.

6           Sec. 18.18.040. AUTHORITY OF SURROGATE OR GUARDIAN. A surrogate  
7           appointed under AS 18.18.010, a guardian, or other person does not  
8           have authority to make a decision on behalf of another person to  
9           withhold or withdraw beneficial medical treatment, life-prolonging  
10          medical treatment, or minimal care from the person, except in the  
11          circumstances and under the conditions described in AS 18.18.030(c).

12          Sec. 18.18.050. RIGHTS AND DUTIES OF HEALTH CARE PROVIDERS. (a)  
13          This chapter may not be construed to require a health care provider to

14               (1) provide or maintain medical treatment or care in accor-  
15               dance with a person's directive, or the directive of a surrogate, if  
16               giving effect to the directive would be futile in alleviating the  
17               effects of a medical condition; or

18               (2) provide, maintain, withhold, or withdraw medical treat-  
19               ment or care in accordance with a person's directive, or the directive  
20               of a surrogate, if

21                       (A) giving effect to the directive would violate the  
22                       policy or conscientious belief of the health-care provider; and

23                       (B) the health-care provider gives notice of intent to  
24                       refuse to comply with a directive

25                               (i) to the person;

26                               (ii) if the person is incompetent, to the person's  
27                       surrogate; or

28               (3) if the person is incompetent and has no surrogate, to  
29               the person's guardian or other person authorized by law to secure

1 medical treatment and care for the person.

2 (b) A person's health care provider shall enter or cause to be  
3 entered into the permanent medical record of the person a copy of a  
4 document stating, and other evidence of, the person's directive con-  
5 cerning medical treatment and care, and any evidence of revocation of  
6 the directive.

7 (c) This chapter may not be construed to require, or to alter  
8 the duty of, a health care provider to provide medical treatment or  
9 care for which the health care provider will not be reimbursed.

10 Sec. 18.18.060. REVOCATION AND PRECEDENCE OF DIRECTIVES AND  
11 CONSENTS. (a) A document directing the withdrawal or withholding of  
12 treatment or care, or authorizing another to do so, may be revoked by  
13 its declarant in any manner that evidences an intention to revoke,  
14 whether or not the declarant is competent at the time of revocation.

15 (b) A clear, convincing, and specific contemporaneous informed  
16 decision made by a competent person on the nature of medical treatment  
17 or care supersedes a preceding informed consent decision or directive  
18 made by the person or the person's surrogate.

19 (c) An informed consent decision or directive of a person takes  
20 precedence over a directive of a surrogate appointed by the person.

21 Sec. 18.18.070. RIGHT TO CONSENT TO OR REFUSE TREATMENT. (a)  
22 This chapter may not be construed to affect the right, or a limitation  
23 on the right, of a competent adult to consent to or refuse medical  
24 treatment or care, except as specifically provided in this chapter.

25 (b) A person may not prohibit or require another person to make  
26 a directive or appoint a surrogate as a condition for being insured  
27 for, or receiving, medical treatment or care.

28 Sec. 18.18.080. EFFECT OF SURROGATE APPOINTMENT. The appoint-  
29 ment of a surrogate under this chapter to direct the providing,

1 maintaining, withholding, or withdrawing of treatment from a person  
2 does not affect the sale, procurement, or issuance of a policy of life  
3 or disability insurance, nor does it modify the terms of an existing  
4 policy. A policy of life or health insurance is not legally impaired  
5 or invalidated by providing, maintaining, withholding, or withdrawing  
6 medical treatment or care to or from an insured person in accordance  
7 with the provisions of a document appointing a surrogate under this  
8 chapter, notwithstanding a provision of the policy to the contrary.

9 Sec. 18.18.100. DEFINITIONS. In this chapter

10 (1) "attending physician" means the physician who has  
11 primary responsibility for the overall medical treatment and care of a  
12 person;

13 (2) "beneficial medical treatment" means the use of medi-  
14 cally appropriate surgical techniques, medications, or technologies to  
15 correct, reverse, or alleviate a life-threatening or health-impairing  
16 condition, or a complication arising from that condition; "beneficial  
17 medical treatment" does not include administration of nutrition by way  
18 of the gastrointestinal tract, administration of hydration, the use of  
19 medications, surgical techniques, and care to abolish or alleviate  
20 pain or discomfort, or experimental medical treatment;

21 (3) "final stage" means the last stage of a terminal ill-  
22 ness or injury from which, even with the use of beneficial medical  
23 treatment, a person will die within a reasonably short period of time;

24 (4) "health care provider" means a person licensed, certi-  
25 fied, or otherwise authorized under state law to administer health  
26 care in the ordinary course of business or practice of a profession;

27 (5) "incompetent person" means a natural person who

28 (A) is a minor, unless the minor is emancipated or is  
29 sufficiently mature to make decisions affecting medical treatment

1 and care;

2 (B) has been declared legally incompetent to make  
3 decisions affecting medical treatment or care; or

4 (C) is unable to make decisions affecting medical  
5 treatment or care;

6 (6) "life-prolonging medical treatment" means beneficial  
7 medical treatment having as its sole purpose the postponement of death  
8 from a terminal illness or injury or from a complication arising from  
9 the illness or injury;

10 (7) "minimal care" means services provided by a health care  
11 provider in the ordinary course of business or practice of a profes-  
12 sion other than beneficial medical treatment, including administration  
13 of nutrition by way of the gastrointestinal tract, administration of  
14 hydration, and the use of medications, surgical techniques, and care  
15 to abolish or to alleviate pain or discomfort;

16 (8) "physician" means a person licensed to practice medi-  
17 cine in the state;

18 (9) "terminal illness or injury" means an incurable and  
19 irreversible medical condition that, even with the use of beneficial  
20 medical treatment, will result in the death of a person from that  
21 condition or a complication arising from that condition.

22 \* Sec. 3. SEVERABILITY. If any provision of AS 18.18.010, 18.18.030,  
23 18.18.040, or 18.18.100, added by sec. 2 of this Act, or the application of  
24 any of the provisions to a person or circumstance is held invalid, then the  
25 invalidity shall cause AS 18.18.010, 18.18.030, 18.18.040, and 18.18.100 to  
26 be held invalid, but the remainder of the provisions added by this Act, and  
27 the application of all the provisions added by this Act to other persons or  
28 circumstances shall not be affected by the invalidity.