

Offered: 3/15/85
Referred: Judiciary

Original sponsors: Eliason, Ziegler
and V.Fischer

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

1 IN THE SENATE

2

CS FOR SENATE BILL NO. 140 (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 ill;

7

and providing for an effective date."

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

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* 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) Any competent person who is at least 18 years old

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may execute a declaration at any time directing that life-sustaining

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procedures be withheld or withdrawn from that person; but the declara-

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tion is given operative effect only if the declarant's condition is

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determined to be terminal and the declarant is not able to make treat-

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ment decisions. The declaration must be signed by the declarant, or

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another at the declarant's direction, and in either case must be

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witnessed by two persons. The witnesses must be at least 18 years old

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and may not be related to the declarant by blood or marriage. A

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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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Act and is valid.

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

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declarant's physician of the declaration. A physician or other health

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care provider who is provided a copy of the declaration shall make it

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a part of the declarant's medical records.

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

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DECLARATION

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

9 Signed this _____ day of _____, _____.

10 Signature _____

11 City, County and State of Residence _____

12 The declarant is known to me and voluntarily signed this document
13 in my presence.

14 Witness _____

15 Address _____

16 Witness _____

17 Address _____

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

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

28 Sec. 18.12.030. RECORDING DETERMINATION OF TERMINAL CONDITION
29 AND CONTENTS OF DECLARATION. When an attending physician who has been

1 notified of the existence and contents of a declaration determines
2 that the declarant is in a terminal condition, the physician must
3 record that determination and the contents of the declaration in the
4 declarant's medical record.

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

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

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

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

24 (b) If the policies of a health care facility preclude compli-
25 ance with the declaration of a qualified patient under this chapter,
26 that facility shall take all reasonable steps to effect the transfer
27 of the patient to a facility in which the provisions of this chapter
28 can be carried out.

29 Sec. 18.12.060. IMMUNITIES. (a) In the absence of actual

1 notice of the revocation of a declaration, the following, while acting
2 in accordance with the requirements of this chapter, are not subject
3 to civil or criminal liability or guilty of unprofessional conduct:

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

6 (2) a person who participates in the withholding or with-
7 drawal of life-sustaining procedures under the direction or with the
8 authorization of a physician;

9 (3) the health care facility in which the withholding or
10 withdrawal occurs.

11 (b) A physician, health care provider, or health care facility
12 is not subject to civil or criminal liability for actions under this
13 chapter that are in accord with reasonable medical standards.

14 Sec. 18.12.070. PENALTIES. (a) A physician who wilfully fails
15 to transfer in accordance with AS 18.12.050 is guilty of a class A
16 misdemeanor.

17 (b) A physician who wilfully fails to record the determination
18 of terminal condition in accordance with AS 18.12.030 is guilty of a
19 class A misdemeanor.

20 (c) A person who wilfully conceals, cancels, defaces, or oblit-
21 erates the declaration of another without the declarant's consent or
22 who falsifies or forges a revocation of the declaration of another is
23 guilty of a class A misdemeanor.

24 (d) A person who falsifies or forges the declaration of another,
25 or wilfully conceals or withholds personal knowledge of a revocation
26 as provided in AS 18.12.020, with the intent to cause a withholding or
27 withdrawal of life-sustaining procedures, is guilty of a class A
28 misdemeanor.

29 Sec. 18.12.080. GENERAL PROVISIONS. (a) Death resulting from

1 the withholding or withdrawal of life-sustaining procedures under a
2 declaration and in accordance with this chapter does not, for any
3 purpose, constitute a suicide or homicide.

4 (b) The making of a declaration under AS 18.12.020 does not
5 affect in any manner the sale, procurement, or issuance of a policy of
6 life insurance, nor does it modify the terms of an existing policy of
7 life insurance. A policy of life insurance is not legally impaired or
8 invalidated in any manner by the withholding or withdrawal of life-
9 sustaining procedures from an insured qualified patient, notwithstand-
10 ing any term of the policy to the contrary.

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

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

20 (e) Nothing in this chapter increases or decreases the right of
21 a patient to make decisions regarding use of life-sustaining proce-
22 dures as long as the patient is able to do so, nor impairs or super-
23 cedes any right or responsibility that a person has to effect the
24 withholding or withdrawal of medical care in a lawful manner. In that
25 respect, the provisions of this chapter are cumulative.

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

28 Sec. 18.12.090. RECOGNITION OF DECLARATIONS EXECUTED IN OTHER
29 STATES. A declaration executed in another state in compliance with

1 the law of that state is effective for purposes of this chapter.

2 Sec. 18.12.100. DEFINITIONS. In this chapter

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

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

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

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

15 (5) "physician" means a person licensed to practice medi-
16 cine in this state;

17 (6) "qualified patient" means a patient who has executed a
18 declaration in accordance with this chapter and who has been deter-
19 mined by the attending physician to be in a terminal condition;

20 (7) "terminal condition" means an incurable or irreversible
21 condition that, without the administration of life-sustaining proce-
22 dures, will, in the opinion of the attending physician, result in
23 death within a relatively short time.

24 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
25 10.070(c).