

Offered: 2/5/86
Referred: Rules

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1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 140 (Judiciary)
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 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:

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
12 PROCEDURES. (a) A competent person who is at least 18 years old may
13 execute a declaration at any time directing that life-sustaining
14 procedures be withheld or withdrawn from that person; but the declara-
15 tion is given operative effect only if the declarant's condition is
16 determined to be terminal and the declarant is not able to make treat-
17 ment decisions. The declarant shall subscribe to the declaration in
18 the presence of a judge or magistrate. The judge or magistrate shall
19 inquire on the record whether the declarant understands the importance
20 and effect of the declaration. A judicial officer may not charge a
21 fee for witnessing a declaration. A person may not charge a fee for
22 preparing a declaration.

23 (b) It is the responsibility of the declarant to notify the
24 declarant's physician of the declaration. A physician or other health
25 care provider who is provided a copy of the declaration shall make it
26 a part of the declarant's medical records.

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

28 DECLARATION

29 If I should have an incurable or irreversible condition that will

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

8 Signed this _____ day of _____, _____.

9 Signature _____

10 Place _____

11 Subscribed and sworn to or affirmed before me

12 at _____ on _____.

13 (Date)

14 _____

15 Signature of Officer

16 _____

17 Title of Officer

18 (d) A physician or health care provider may presume, in the
19 absence of actual notice to the contrary, that the declaration com-
20 plies with this chapter and is valid.

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

29 (b) The attending physician or health care provider shall make

1 the revocation a part of the declarant's medical record.

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

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

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

17 (c) The declaration of a qualified patient known to the attend-
18 ing physician to be pregnant has no effect as long as it is probable
19 that the fetus could develop to the point of live birth with continued
20 application of life-sustaining procedures.

21 Sec. 18.12.050. TRANSFER OF PATIENTS. (a) An attending physi-
22 cian who is unwilling to comply with the requirements of AS 18.12.030
23 or who is unwilling to comply with the declaration of a qualified
24 patient under AS 18.12.040 shall withdraw as attending physician but
25 the withdrawal is effective only when the services of another attend-
26 ing physician have been obtained.

27 (b) If the policies of a health care facility preclude compli-
28 ance with the declaration of a qualified patient under this chapter,
29 that facility shall take all reasonable steps to effect the transfer

1 of the patient to a facility in which the provisions of this chapter
2 can be carried out.

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

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

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

12 (3) the health care facility in which the withholding or
13 withdrawal occurs.

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

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

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

28 Sec. 18.12.080. GENERAL PROVISIONS. (a) Death resulting from
29 the withholding or withdrawal of life-sustaining procedures under a

1 declaration and in accordance with this chapter does not, for any
2 purpose, constitute a suicide or homicide.

3 (b) The making of a declaration under AS 18.12.010 does not
4 affect in any manner the sale, procurement, or issuance of a policy of
5 life insurance, nor does it modify the terms of an existing policy of
6 life insurance. A policy of life insurance is not legally impaired or
7 invalidated in any manner by the withholding or withdrawal of life-
8 sustaining procedures from an insured qualified patient, notwithstand-
9 ing any term of the policy to the contrary.

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

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

19 (e) Nothing in this chapter increases or decreases the right of
20 a patient to make decisions regarding use of life-sustaining proce-
21 dures as long as the patient is able to do so, or impairs or super-
22 cedes any right or responsibility that a person has to effect the
23 withholding or withdrawal of medical care in a lawful manner. In that
24 respect, the provisions of this chapter are cumulative.

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

27 Sec. 18.12.090. RECOGNITION OF DECLARATIONS EXECUTED IN OTHER
28 STATES. A declaration executed in another state or a territory or
29 possession of the United States in compliance with the law of that

1 jurisdiction 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; "life-sustaining procedure"
15 does not include nutrition or hydration;

16 (5) "physician" means a person licensed to practice medi-
17 cine in this state or an officer in the regular medical service of the
18 armed services of the United States or the United States Public Health
19 Service while in the discharge of their official duties, or while
20 volunteering services without pay or other remuneration to a hospital,
21 clinic, medical office, or other medical facility in the state;

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

25 (7) "terminal condition" means a progressive incurable or
26 irreversible condition that, without the administration of life-sus-
27 taining procedures, will, in the opinion of the attending physician,
28 result in death within a relatively short time.

29 * Sec. 2. This Act takes effect immediately in accordance with

1 AS 01.10.070(c).