

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) am H
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14 procedures be withheld or withdrawn from that person; but the declara-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 declaration shall be signed by the declarant, or
18 another at the declarant's direction, and in either case shall be
19 witnessed by two persons or a person qualified to take acknowledge-
20 ments under AS 09.63.010. Any person generally competent to be a
21 witness may act as a witness to the declaration. A person may not
22 charge a fee for preparing a declaration.

23 (b) It is the responsibility of the declarant to provide a copy
24 of the declaration to the declarant's physician.

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

26 DECLARATION

27 If I should have an incurable or irreversible condition that will
28 cause my death within a relatively short time, it is my desire that my
29 life not be prolonged by administration of life-sustaining procedures.

1 ACKNOWLEDGED BY A PERSON QUALIFIED TO TAKE ACKNOWLEDGEMENTS UNDER
2 AS 09.63.010.

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

6 Sec. 18.12.020. REVOCATION OF DECLARATION. (a) A declaration
7 may be revoked at any time and in any manner by which the declarant is
8 able to communicate an intent to revoke, without regard to mental or
9 physical condition. A revocation is only effective as to the attend-
10 ing physician or any health care provider acting under the guidance of
11 that physician upon communication to the physician or health care
12 provider by the declarant or by another to whom the revocation was
13 communicated.

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

16 Sec. 18.12.030. RECORDING DETERMINATION OF TERMINAL CONDITION
17 AND CONTENTS OF DECLARATION. When an attending physician who has been
18 provided a copy of a declaration determines that the declarant is in a
19 terminal condition, the physician shall record that determination and
20 the contents of the declaration in the declarant's medical record.

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

26 (b) This chapter does not prohibit the application of any med-
27 ical procedure or intervention, including the provision of nutrition
28 and hydration, considered necessary to provide comfort care or alle-
29 viation of pain. The declaration may provide that the declarant does

1 not want nutrition or hydration administered intravenously or by
2 gastric tube.

3 (c) The implementation of the declaration of a qualified patient
4 known to the attending physician to be pregnant is suspended as long
5 as the fetus is alive.

6 Sec. 18.12.050. TRANSFER OF PATIENTS. (a) An attending physi-
7 cian who is unwilling to comply with the requirements of AS 18.12.030
8 or who is unwilling to comply with the declaration of a qualified
9 patient under AS 18.12.040 shall withdraw as attending physician but
10 the withdrawal is effective only when the services of another attend-
11 ing physician have been obtained.

12 (b) If the policies of a health care facility preclude compli-
13 ance with the declaration of a qualified patient under this chapter,
14 that facility shall take all reasonable steps to notify the patient
15 or, if the patient is not able to make treatment decisions, the
16 patient's guardian, of the facility's policy and shall take all
17 reasonable steps to effect the transfer of the patient to the
18 patient's home or to a facility where the provisions of this chapter
19 can be carried out.

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

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

26 (2) a person who participates in the withholding or with-
27 drawal of life-sustaining procedures under the direction or with the
28 authorization of a physician;

29 (3) the health care facility in which the withholding or

1 withdrawal occurs.

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

6 Sec. 18.12.070. PENALTIES. (a) An attending physician who
7 fails to comply with the declaration of a qualified patient or to make
8 the necessary arrangements to effect a transfer under AS 18.12.050 has
9 no right to compensation for medical services provided to a qualified
10 patient after withdrawal should have been effective or after transfer
11 should have occurred and may be liable to the qualified patient and to
12 the heirs of the qualified patient for a civil penalty not to exceed
13 \$1000.00 plus the actual costs associated with the failure to comply
14 with the declaration, and this shall be the exclusive remedy at law
15 for damages.

16 (b) A person who wilfully conceals, cancels, defaces, obliterated,
17 or damages the declaration of another without the declarant's
18 consent or who falsifies or forges a revocation of the declaration of
19 another may be civilly liable to the qualified patient and to the
20 heirs of the qualified patient.

21 Sec. 18.12.080. GENERAL PROVISIONS. (a) Death resulting from
22 the withholding or withdrawal of life-sustaining procedures under a
23 declaration and in accordance with this chapter does not, for any
24 purpose, constitute a suicide or homicide.

25 (b) The making of a declaration under AS 18.12.010 does not
26 affect in any manner the sale, procurement, or issuance of a policy of
27 life insurance, nor does it modify the terms of an existing policy of
28 life insurance. A policy of life insurance is not legally impaired or
29 invalidated in any manner by the withholding or withdrawal of life-

1 sustaining procedures from an insured qualified patient, notwithstand-
2 ing any term of the policy to the contrary.

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

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

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

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

20 Sec. 18.12.090. RECOGNITION OF DECLARATIONS EXECUTED IN OTHER
21 STATES. A declaration executed in another state or a territory or
22 possession of the United States in compliance with the law of that
23 jurisdiction is effective for purposes of this chapter.

24 Sec. 18.12.100. DEFINITIONS. In this chapter

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

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

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

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

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

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

17 (7) "terminal condition" means a progressive incurable or
18 irreversible condition that, without the administration of life-sus-
19 taining procedures, will, in the opinion of two physicians, when
20 available, who have personally examined the patient, one of whom must
21 be the attending physician, result in death within a relatively short
22 time.

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