

Offered: 5/7/86

Original sponsors: Eliason, Ziegler,
V.Fischer, et al

1 IN THE SENATE

BY THE CONFERENCE COMMITTEE

2

CONFERENCE CS FOR SENATE BILL NO. 140

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procedures be withheld or withdrawn from that person; but the declara-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. The witnesses must be at least 18 years old

21

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

22

person may not 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. A physician or other

25

health care provider who is provided a copy of the declaration shall

26

make it 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 I [] do [] do not desire that nutrition or hydration (food
9 and water) be provided by gastric tube or intravenously if
10 necessary.

11 Signed this _____ day of _____, _____.

12 Signature _____

13 Place _____

14 The declarant is known to me and voluntarily signed or
15 voluntarily directed another to sign this document in my presence.

16 Witness _____

17 Address _____

18 Witness _____

19 Address _____

20 State of _____

21 _____ Judicial District

22 The foregoing instrument was acknowledged before me this (date)
23 by (name of person who acknowledged).

24 _____

25 Signature of Person Taking

26 Acknowledgement

27 _____

28 Title or Rank

29 _____

Serial Number, if any

1
2 THIS DECLARATION MUST BE EITHER WITNESSED BY TWO PERSONS OR
3 ACKNOWLEDGED BY A PERSON QUALIFIED TO TAKE ACKNOWLEDGEMENTS UNDER
4 AS 09.63.010.

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

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

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

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

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

28 (b) This chapter does not prohibit the application of any med-
29 ical procedure or intervention, including the provision of nutrition

1 and hydration, considered necessary to provide comfort care or alle-
2 viation of pain. The declaration may provide that the declarant does
3 not want nutrition or hydration administered intravenously or by
4 gastric tube.

5 (c) The declaration of a qualified patient known to the
6 attending physician to be pregnant is given no effect as long as it is
7 probable that the fetus could develop to the point of live birth with
8 continued application of life-sustaining procedures.

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

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

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

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

29 (2) a person who participates in the withholding or with-

1 drawal of life-sustaining procedures under the direction or with the
2 authorization of a physician;

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

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

9 Sec. 18.12.070. PENALTIES. (a) An attending physician who
10 fails to comply with the declaration of a qualified patient or to make
11 the necessary arrangements to effect a transfer under AS 18.12.050 has
12 no right to compensation for medical services provided to a qualified
13 patient after withdrawal should have been effective or after transfer
14 should have occurred and may be liable to the qualified patient and to
15 the heirs of the qualified patient for a civil penalty not to exceed
16 \$1000.00 plus the actual costs associated with the failure to comply
17 with the declaration, and this shall be the exclusive remedy at law
18 for damages.

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

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

28 (b) The making of a declaration under AS 18.12.010 does not
29 affect in any manner the sale, procurement, or issuance of a policy of

1 life insurance, nor does it modify the terms of an existing policy of
2 life insurance. A policy of life insurance is not legally impaired or
3 invalidated in any manner by the withholding or withdrawal of life-
4 sustaining procedures from an insured qualified patient, notwithstand-
5 ing any term of the policy to the contrary.

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

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

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

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

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

27 Sec. 18.12.100. DEFINITIONS. In this chapter

28 (1) "attending physician" means the physician selected by,
29 or assigned to, the patient who has primary responsibility for the

1 treatment and care of the patient;

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

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

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

11 (5) "physician" means a person licensed to practice medi-
12 cine in this state or an officer in the regular medical service of the
13 armed services of the United States or the United States Public Health
14 Service while in the discharge of their official duties, or while
15 volunteering services without pay or other remuneration to a hospital,
16 clinic, medical office, or other medical facility in the 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 a progressive incurable or
21 irreversible condition that, without the administration of life-sus-
22 taining procedures, will, in the opinion of two physicians, when
23 available, who have personally examined the patient, one of whom must
24 be the attending physician, result in death within a relatively short
25 time.

26 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
27 10.070(c).