

CS FOR SENATE BILL NO. 365 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/4/92
Referred: Finance

Sponsor(s): SENATOR CRAFT

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to living wills and do not resuscitate orders; and providing for an
2 effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 18.12 is amended by adding new sections to read:

5 Sec. 18.12.035. **DO NOT RESUSCITATE ORDERS AND PROTOCOLS.** (a) An
6 attending physician may issue a do not resuscitate order for a patient of the physician. The
7 physician shall document the grounds for the order in the patient's medical file.

8 (b) The Department of Health and Social Services shall, by regulation, adopt a do not
9 resuscitate protocol that sets out a standardized method of procedure for the withholding of
10 cardiopulmonary resuscitation by physicians and other health care providers. The regulations
11 must include standardized procedures for implementing a do not resuscitate order issued in a
12 jurisdiction outside of this state. The regulations may not be adopted unless they have been
13 approved by the State Medical Board.

14 (c) A health care provider other than a physician shall comply with the do not resuscitate

1 protocol adopted under (b) of this section when presented with any of the following: DNR
2 identification, an oral do not resuscitate order issued directly by a physician, or a written do not
3 resuscitate order entered on a form prescribed by the Department of Health and Social Services.

4 Sec. 18.12.037. LIVING WILL AND DNR IDENTIFICATION. The Department of
5 Health and Social Services shall develop standardized designs for DNR identification cards,
6 forms, necklaces, and bracelets that signify, when carried or worn, that the possessor has
7 executed a declaration under this chapter or is a patient for whom a physician has issued a do
8 not resuscitate order.

9 * Sec. 2. AS 18.12.040(a) is amended to read:

10 (a) A qualified patient or a patient for whom a physician has issued a do not
11 resuscitate order has the right to make decisions regarding use of cardiopulmonary
12 resuscitation and other life-sustaining procedures as long as the patient is able to do so. If a
13 qualified patient or patient for whom a physician has issued a do not resuscitate order is not
14 able to make these decisions, the declaration or do not resuscitate protocol governs decisions
15 regarding use of cardiopulmonary resuscitation and other life-sustaining procedures.

16 * Sec. 3. AS 18.12.050(b) is amended to read:

17 (b) If the policies of a health care facility preclude compliance with the declaration of
18 a qualified patient under this chapter or a do not resuscitate order issued by an attending
19 physician, or the facility is unwilling to accept DNR identification as evidence of the
20 existence of a declaration or do not resuscitate order, that facility shall take all reasonable
21 steps to notify the patient or, if the patient is not able to make treatment decisions, the patient's
22 guardian, of the facility's policy and shall take all reasonable steps to effect the transfer of the
23 patient to the patient's home or to a facility where the provisions of this chapter can be carried
24 out.

25 * Sec. 4. AS 18.12.060(a) is amended to read:

26 (a) In the absence of actual notice of the revocation of a declaration or do not
27 resuscitate order, as applicable, the following, while acting in accordance with the do not
28 resuscitate protocol adopted under AS 18.12.035 or with the other requirements of this
29 chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

30 (1) a physician who causes the withholding or withdrawal of life-sustaining
31 procedures from a qualified patient or the withholding or withdrawal of cardiopulmonary

1 resuscitation from a patient for whom a do not resuscitate order has been issued or who
2 possesses DNR identification;

3 (2) a person who participates in the withholding or withdrawal of
4 cardiopulmonary resuscitation or other life-sustaining procedures under the direction or with
5 the authorization of a physician or upon discovery of DNR identification upon a person;

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

7 * Sec. 5. AS 18.12.060 is amended by adding a new subsection to read:

8 (c) A person who causes or participates in the providing of cardiopulmonary resuscitation
9 or other life-sustaining procedures after an oral or written request to do so communicated to the
10 person by another who possesses DNR identification is not subject to civil or criminal liability
11 for failing to honor the intent of the DNR identification nor is the person guilty of unprofessional
12 conduct for that action. The health care facility in which actions described in this subsection are
13 undertaken is also not subject to civil or criminal liability for the failure to honor the intent of
14 DNR identification.

15 * Sec. 6. AS 18.12.070 is amended to read:

16 Sec. 18.12.070. PENALTIES. (a) An attending physician who fails to comply with a
17 do not resuscitate order or the declaration of a qualified patient or to make the necessary
18 arrangements to effect a transfer under AS 18.12.050 has no right to compensation for medical
19 services provided to a [QUALIFIED] patient after withholding or withdrawal should have been
20 effective or after transfer should have occurred and may be liable to the [QUALIFIED] patient
21 and to the heirs of the [QUALIFIED] patient for a civil penalty not to exceed \$1,000.00 plus the
22 actual costs associated with the failure to comply with the order or declaration, and this shall
23 be the exclusive remedy at law for damages.

24 (b) A person who wilfully conceals, cancels, defaces, obliterates, or damages the DNR
25 identification or declaration of another person without the other's [DECLARANT'S] consent
26 or who falsifies or forges a revocation of the DNR identification or declaration of another
27 person may be civilly liable to the other person [QUALIFIED PATIENT] and to the heirs of
28 the other person [QUALIFIED PATIENT].

29 * Sec. 7. AS 18.12.080(a) is amended to read:

30 (a) Death resulting from the withholding or withdrawal of cardiopulmonary
31 resuscitation or other life-sustaining procedures under a do not resuscitate order or protocol,

1 under a declaration, or upon discovery of DNR identification on a person and in accordance
2 with this chapter does not, for any purpose, constitute a suicide or homicide.

3 * Sec. 8. AS 18.12.080(b) is amended to read:

4 (b) The issuing of a do not resuscitate order, the possession of DNR identification,
5 or the making of a declaration under AS 18.12.010 does not affect in any manner the sale,
6 procurement, or issuance of a policy of life insurance, nor does it modify the terms of an existing
7 policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any
8 manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified
9 patient or the withholding or withdrawal of cardiopulmonary resuscitation from an insured
10 patient who possesses DNR identification or for whom a do not resuscitate order has been
11 issued, notwithstanding any term of the policy to the contrary.

12 * Sec. 9. AS 18.12.080(c) is amended to read:

13 (c) A physician, health care facility, or other health care provider, and a health care
14 service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or
15 nonprofit hospital plan, may not require a person to execute a declaration, obtain a do not
16 resuscitate order from a physician, or possess DNR identification as a condition for being
17 insured for, or receiving, health care services.

18 * Sec. 10. AS 18.12.080(d) is amended to read:

19 (d) This chapter creates no presumption concerning the intention or intended treatment
20 of an individual who does not have DNR identification, has not executed a declaration, or for
21 whom a do not resuscitate order has not been issued with respect to the use, withholding, or
22 withdrawal of cardiopulmonary resuscitation or the use, withholding, or withdrawal of other
23 life-sustaining procedures in the event of a terminal condition.

24 * Sec. 11. AS 18.12.080(e) is amended to read:

25 (e) Nothing in this chapter increases or decreases the right of a patient to make decisions
26 regarding use of cardiopulmonary resuscitation or other life-sustaining procedures as long as
27 the patient is able to do so, or impairs or supersedes any right or responsibility that a person has
28 to effect the withholding or withdrawal of medical care in a lawful manner. In that respect, the
29 provisions of this chapter are cumulative.

30 * Sec. 12. AS 18.12.090 is amended to read:

31 Sec. 18.12.090. RECOGNITION OF DECLARATIONS AND ORDERS EXECUTED

1 **OR ISSUED** IN OTHER STATES. A declaration, **do not resuscitate order, or DNR**
2 **identification** executed, **issued, or authorized** in another state or a territory or possession of the
3 United States in compliance with the law of that jurisdiction is effective for purposes of this
4 chapter.

5 * Sec. 13. AS 18.12.100 is amended by adding new paragraphs to read:

6 (8) "cardiopulmonary resuscitation" means cardiopulmonary resuscitation or a
7 component of cardiopulmonary resuscitation;

8 (9) "DNR identification" means identification substantially similar to that
9 approved under AS 18.12.037;

10 (10) "do not resuscitate order" means a directive from a licensed physician that
11 emergency cardiopulmonary resuscitation should not be administered to a particular person;

12 (11) "do not resuscitate protocol" means the protocol developed under
13 AS 18.12.035(b).

14 * Sec. 14. The commissioner of health and social services shall promptly begin the procedure to
15 adopt regulations implementing AS 18.12.035 and 18.12.037, enacted by sec. 1 of this Act, so that the
16 regulations can take effect as soon as practicable.

17 * Sec. 15. AS 18.12.035(b) and 18.12.037, enacted by sec. 1 of this Act, and sec. 14 of this Act take
18 effect immediately under AS 01.10.070(c).

19 * Sec. 16. Except as provided in sec. 15 of this Act, this Act takes effect on the effective date of the
20 regulations adopted under AS 18.12.035 or 18.12.037, enacted by sec. 1 of this Act, whichever is later.
21 The commissioner of health and social services shall notify the revisor of statutes and the lieutenant
22 governor of that date.