

HOUSE BILL NO. 356**IN THE LEGISLATURE OF THE STATE OF ALASKA****EIGHTEENTH LEGISLATURE - SECOND SESSION****BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE****Introduced: 1/10/94****Referred: Health, Education & Social Services, Judiciary****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to living wills and do not resuscitate orders; and providing for
2 an 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)**
6 An attending physician may issue a do not resuscitate order for a patient of the
7 physician. The physician shall document the grounds for the order in the patient's
8 medical file.

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

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

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

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

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

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

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

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

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

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

1 unprofessional conduct:

2 (1) a physician who causes the withholding or withdrawal of
3 life-sustaining procedures from a qualified patient or the withholding or withdrawal
4 of cardiopulmonary resuscitation from a patient for whom a do not resuscitate
5 order has been issued or who possesses DNR identification;

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

10 (3) persons who cause or participate in providing cardiopulmonary
11 resuscitation or other life-sustaining procedures after an oral or written request
12 communicated to them by a person who possesses DNR identification;

13 (4) the health care facility in which the providing, withholding, or
14 withdrawal occurs.

15 * Sec. 5. AS 18.12.070 is amended to read:

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

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

31 * Sec. 6. AS 18.12.080(a) is amended to read:

1 (a) Death resulting from the withholding or withdrawal of cardiopulmonary
2 resuscitation or other life-sustaining procedures under a do not resuscitate order or
3 protocol, under a declaration, or upon discovery of DNR identification on a person
4 and in accordance with this chapter does not, for any purpose, constitute a suicide or
5 homicide.

6 * Sec. 7. AS 18.12.080(b) is amended to read:

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

16 * Sec. 8. AS 18.12.080(c) is amended to read:

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

22 * Sec. 9. AS 18.12.080(d) is amended to read:

23 (d) This chapter creates no presumption concerning the intention or intended
24 treatment of an individual who does not have DNR identification, has not executed
25 a declaration, or for whom a do not resuscitate order has not been issued with
26 respect to the use, withholding, or withdrawal of cardiopulmonary resuscitation or
27 other life-sustaining procedures [IN THE EVENT OF A TERMINAL CONDITION].

28 * Sec. 10. AS 18.12.080(e) is amended to read:

29 (e) Nothing in this chapter increases or decreases the right of a patient to make
30 decisions regarding use of cardiopulmonary resuscitation or other life-sustaining
31 procedures as long as the patient is able to do so, or impairs or supersedes any right

1 or responsibility that a person has to effect the withholding or withdrawal of medical
2 care in a lawful manner. In that respect, the provisions of this chapter are cumulative.

3 * Sec. 11. AS 18.12.090 is amended to read:

4 Sec. 18.12.090. RECOGNITION OF DECLARATIONS AND ORDERS
5 EXECUTED OR ISSUED IN OTHER STATES. A declaration, do not resuscitate
6 order. or DNR identification executed, issued, or authorized in another state or a
7 territory or possession of the United States in compliance with the law of that
8 jurisdiction is effective for purposes of this chapter.

9 * Sec. 12. AS 18.12.100 is amended by adding new paragraphs to read:

10 (8) "cardiopulmonary resuscitation" means cardiopulmonary
11 resuscitation or a component of cardiopulmonary resuscitation;

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

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

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

19 * Sec. 13. The commissioner of health and social services shall promptly begin the
20 procedure to adopt regulations implementing AS 18.12.035 and 18.12.037, enacted by sec. 1
21 of this Act, so that the regulations can take effect as soon as practicable.

22 * Sec. 14. AS 18.12.035(b) and 18.12.037, enacted by sec. 1 of this Act, and sec. 13 of
23 this Act take effect immediately under AS 01.70.070(c).

24 * Sec. 15. Except as provided in sec. 14 of this Act, this Act takes effect on the effective
25 date of the regulations adopted under AS 18.12.035 or 18.12.037, enacted by sec. 1 of this
26 Act, whichever is later. The commissioner of health and social services shall notify the
27 revisor of statutes and the lieutenant governor of that date.