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365

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. Senate Bill 365

Revision Date: _____ Dept. Affected Health & Social Services
 Title: Living wills and do not resuscitate orders BRU: State Health Services
 Component: Public Health Administration
 Sponsor: Craft
 Requestor: HES COMPONENT SERIAL NO. 0-60-40602-292

Expenditures/Revenues

(Thousands of Dollars)

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES						
TRAVEL	1.0					
CONTRACTUAL	9.3					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.3	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING:

(Thousands of Dollars)

	FY93	FY94	FY95	FY96	FY97	FY98
GENERAL FUND	10.3					
FEDERAL FUNDS						
OTHER						
TOTAL	10.3	0.0	0.0	0.0	0.0	0.0

POSITIONS:

	FY93	FY94	FY95	FY96	FY97	FY98
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

The department would need to contract out the writing of the regulations which are mandated by SB 365. A contract for 3 months of writing and walking the regulations through the adoption procedure would cost \$6.0. Additional costs associated with the adoption procedure are as follows:
 Printing - \$0.5, Mailings - \$0.3, Advertising \$1.5, 2 Teleconferences @ \$7.0

Prepared by: Peter M. Nakamura, MD, MPH *P.M.N.*
 Division: Public Health

Phone: 465-3090
 Date: 1/29/92

Approved by Commissioner: Theodore A. Mala, MD, MPH *Theodore A. Mala*
 Agency: Department of Health and Social Services

Date: 30 Jan 1992

Distribution (by preparer):
 Legislative Finance OMB
 Legislative Sponsor Impacted Agency(ies)
 Requestor

ALASKA STATE LEGISLATURE

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Shirley Craft
Alaska State Senator

To: Senator Arliss Sturgulewski, Chair, *AS*
Senate Health, Education and Social Services Committee

From: Senator Shirley Craft

Date: January 30, 1992

Re: **Senate Bill 365**
"An Act relating to living wills and do not resuscitate orders; and providing for an effective date."

BACKGROUND

Do not resuscitate (DNR) orders are a request by an individual to not be resuscitated upon cardiopulmonary failure. A DNR order can be obtained through an oral request to your doctor or by filling out a DNR order form. If an individual has an incurable or painful illness, he or she may not want to be resuscitated.

Physicians, emergency response personnel and home care nurses all use different guidelines when responding to DNR orders. SB 365 would streamline DNR procedures for all health care professionals, and provide added assurance that an individual's wish will be carried out.

SB 365 PROVIDES FOR THE FOLLOWING:

SB 365 reinforces an individual's wish to not be resuscitated by requesting the Department of Health and Social Services to develop: (1) DNR identification such as bracelets, necklaces, forms and wallet size cards; and (2) regulations for standard DNR procedures.

DNR identification will help alert medical personnel who may not be familiar with the individual, or his or her wish to not be resuscitated. For instance, in the case of a motor vehicle accident or an emergency situation occurring at home when the individual's doctor or next of kin are not available.

A health care provider, other than a physician, is required to comply with DNR protocol, when they are presented with DNR identification.

DNR Orders
January 30, 1992
Page 2

Physicians or medical personnel who act in accordance with a DNR order, will not be subject to civil or criminal liability, or be found guilty of unprofessional conduct.

Physicians or medical personnel who do not feel comfortable complying with a DNR order, must transfer the individual to a facility that will comply or to the individual's home.

Physicians or medical personnel who are aware of the individual's DNR order, but do not honor the request, will be penalized up to \$1,000.00 and be held responsible for the actual costs associated with their failure to comply. (These requirements are the same stipulations required by state law for living wills, in section 5, of AS 18.12.070.)

The Alaska statutes address living wills, but do not enforce an individual's choice to not be resuscitated. I urge your early scheduling and favorable consideration of this measure. I would be happy to answer any questions you may have and provide further information upon request.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR CRAFT

TO: SB 365

Page 3, lines 4 - 6:

Delete "persons who cause or participate in providing cardiopulmonary resuscitation or other life-sustaining procedures after an oral or written request communicated to them by a person who possesses DNR identification;"

Page 3, line 7:

Delete "(4)"

Delete "providing,"

Delete the second "1"

Page 3, after line 8:

Insert a new bill section to read:

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

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

Renumber the following bill sections accordingly.

Page 5, line 11:

Delete "13"

Insert "14"

Page 5, line 13:

Delete "14"

Insert "15"

AMENDMENT

OFFERED IN THE SENATE,

BY SENATOR CRAFT

TO: SB 365

Pg. 4, line 16:

after the word "or" insert "the use, withholding, or
withdrawal of"

The State Medical Association suggests this amendment to
make the language uniform with the other sections of the bill -
(see pg. 4 line 15 where "use, withholding or withdrawal" is used.)

Pg. 4, line 17:

after procedures, leave in IN THE EVENT OF A TERMINAL
CONDITION.

The State Medical Association feels that deleting this
phrase will actually weaken the bill, and therefore suggests that
it be left in.

Section 9 is stating that:

In the event of a terminal illness no presumption will
be made concerning the intention or intended treatment of someone
who does not have "do not resuscitate" identification or a "do not
resuscitate" order.

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is (date)

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Sec. 18.12.020. Revocation of declaration. (a) A declaration may be revoked at any time and in any manner by which the declarant is able to communicate an intent to revoke, without regard to mental or physical condition. A revocation is only effective as to the attending physician or any health care provider acting under the guidance of that physician upon communication to the physician or health care provider by the declarant or by another to whom the revocation was communicated.

(b) The attending physician or health care provider shall make the revocation a part of the declarant's medical record. (§ 1 ch 144 SLA 1986)

Sec. 18.12.030. Recording determination of terminal condition and contents of declaration. When an attending physician who has been provided a copy of a declaration determines that the declarant is in a terminal condition, the physician shall record that determination and the contents of the declaration in the declarant's medical record. (§ 1 ch 144 SLA 1986)

SB365 (18.12.035)*

(18.12.037)

Would be inserted here.

The other portions of the bill will amend existing Statute

Sec. 18.12.040. Treatment of qualified patients. (a) A qualified patient has the right to make decisions regarding use of life-sustaining procedures as long as the patient is able to do so. If a qualified patient is not able to make these decisions, the declaration governs decisions regarding use of life-sustaining procedures.

(b) This chapter does not prohibit the application of any medical procedure or intervention, including the provision of nutrition and hydration, considered necessary to provide comfort care or alleviation of pain. The declaration may provide that the declarant does not want nutrition or hydration administered intravenously or by gastric tube.

(c) The declaration of a qualified patient known to the attending physician to be pregnant is given no effect as long as it is probable that the fetus could develop to the point of live birth with continued application of life-sustaining procedures. (§ 1 ch 144 SLA 1986)

Opinions of attorney general. — Subsection (c) is constitutionally problematic. Under settled case law, a woman has a constitutional right to make a determination regarding her pregnancy during the first two trimesters of her pregnancy. Subsection (c), in essence, would take this constitutionally recognized right from a woman who has expressed her wishes, and perhaps even alter the form declaration to state her specific wishes, regarding life-sustaining measures during her first two trimesters of pregnancy. The ineffective-

ness of the declaration does not, however, deprive the pregnant and terminally ill woman of any other lawful means to effect the withholding or withdrawal of medication. When an incompetent person's life cannot be saved in any meaningful sense by modern medicine, and the patient's family and the attending physician are in agreement that life-sustaining procedures would only prolong the process of death, it appears reasonable that life-sustaining procedures would be withheld or withdrawn. June 6, 1986. Op. Att'y Gen.

POSITION PAPER

SENATE BILL NO. 365

A Bill for an Act entitled: "An Act relating to living wills and do not resuscitate orders; and providing for an effective date."

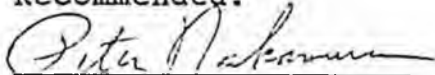
ANALYSIS

SB 365 complements current statutes on the rights of the terminally ill by adding specific recognition of do not resuscitate (DNR) orders to the existing legislation on the rights of the terminally ill to make a declaration relating to the use of life-sustaining procedures. A new section (18.12.035), allows attending physicians to issue do not resuscitate orders, requires the Department of Health and Social Services, with the approval of the State Medical Board, to issue regulations adopting a standardized protocol governing the withholding of cardiopulmonary resuscitation by physicians and other health care providers, and establishes the requirements under which health care providers other than physicians must comply with do not resuscitate orders. Section 18.12.037 requires the Department of Health and Social Services to develop standardized designs for DNR identification cards, forms, necklaces, and bracelets to indicate that the possessor has executed a living will or that a DNR order has been issued by a physician. Other provisions of the Bill amend existing statutory provisions by including DNRs along with living wills in areas such as immunities for health care providers acting under the provisions of living wills and DNR orders, penalties, etc.

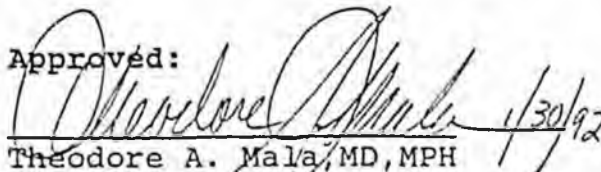
Do not resuscitate orders are issued only in the case of terminal illness. Existing statutes on living wills appear to apply only to physicians, persons participating in the withholding or withdrawal of life-sustaining procedures from a qualified patient under the direction of with the authorization of a physician, and health care facilities in which the withholding or withdrawal occurs. Under existing practice, emergency response providers (EMT's and paramedics) are required to institute cardiopulmonary resuscitation on site even if the sick person has a living will. A properly executed DNR order and procedural protocol recognized by all concerned parties would help to avoid futile and unwanted interventions. Similarly, within health care institutions, DNR orders are necessary in the absence of a living will when attempts at resuscitation serve only to prolong the process of dying.

POSITION

The Department of Health and Social Services supports enactment of: SB 365.

Recommended:


Peter M. Nakamura, MD, MPH
Director
Division of Public Health

Approved:


Theodore A. Mala, MD, MPH
Commissioner
Health and Social Services

Alaska State Legislature



SENATOR
ARLISS STURGULEWSKI

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ANCHORAGE, ALASKA 99501
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While in Juneau
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Senate

March 13, 1992

Alfred E. Sundquist
3384 Mt. Vernon Ct.
Anchorage, Alaska 99503

Dear Al:

Thank you for your letter in support of SB 365 "An Act relating to living wills and do not resuscitate orders." As chairman of the Senate Health, Education and Social Services Committee, I held a hearing on this bill on February 18. Senate Bill 365 did pass out of my committee on that date with my "do pass" recommendation.

This legislation is now in the Senate Judiciary Committee and I would encourage you to let the members of that committee know of your support for this bill. Senate Judiciary Committee members are Senators Halford, Chairman; Rodey; Adams; Collins; and Frank.

Again, thank you for letting me know of your support for SB 365.

Kindest regards,

A handwritten signature in cursive script that reads "Arliss".

Arliss Sturgulewski
Alaska State Senator

Alfred E. Sundquist
3384 Mt. Vernon Ct.
Anchorage, AK 99503
March 11, 1992

The Honorable Arliss Sturgulewski
Room 427
State Capital
Juneau, AK 99801-1182

Dear Senator Sturgulewski;

I am writing in support of Senate Bill 365 which I understand is currently under review by your HES Committee.

This is the bill that enhances the Living Will Statute, A.S. 18.12, by including the withholding of cardiopulmonary resuscitation with the withholding of withdrawal of other life sustaining procedures from a qualified patient. Such withholding would seem to be entirely compatible with the intent and purpose of the Living Will Statute which provides patients with personal choice in the treatment of their terminal illness.

Your early and favorable action on this bill will be much appreciated.

Sincerely,

Alfred E. Sundquist

*103 58-55
2/18/92
A. W. Pass
12/11/91 S. J. W.*

PUBLIC OPINION MESSAGE

DEAR: SENATOR STURGULEWSKI

NAME: HOWARD O. WITHRON, CHAIRMAN
TITLE: LEGISLATIVE COMMITTEE
ADDRESS: 3407 SPEHARD ROAD, #14
CITY: ANCHORAGE ZIP: 99503
PHONE: 561-7069
BILL NO: SB 365
SUBJECT: LIVING WILLS AND DNR ORDERS
MESSAGE: I URGE AMENDMENTS AS INDICATED AND SENT FOR A FLOOR VOTE. /CMR

POMID: 03153734
DATE: 92/04/15
TIME: 15:37:34
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