

SB

159

Alaska State Senate

SENATOR STEVE RIEGER
District I

Senate Finance Committee
Chair, Senate Transportation Committee

Legislative Budget and Audit Committee
Administrative Regulation Review Committee
Legislative Council

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Ans'd.....

During Session:
State Capitol, Room 516
Juneau, Alaska 99501
(907) 465-3879

716 West 4th Avenue, Suite 530
Anchorage, Alaska 99501
(907) 258-8188

MEMORANDUM

February 1, 1996

TO: Senator Lyda Green, Chairman
Senate HESS Committee

FROM: Senator Steve Rieger *SR*
Senate District I

RE: Hearing request for SB 159 "An Act relating to advance directives for mental health treatment."

I respectfully request a hearing for SB 159 which is legislation I introduced last session at the request of the Mental Health Consumers of Alaska. Over the interim, I continued discussions with this group and have attached a proposed amendment which addresses changes they would like to see in the legislation.

Thank you for consideration of this scheduling request.

Enclosure

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SPONSOR STATEMENT

SB 159 "An Act relating to advance directives for mental health treatment."

Senate Bill 159 allows individuals to make decisions in advance about three types of mental health treatment: psychotropic medication, electroconvulsive therapy, and a short-term admission of up to 17 days into a treatment facility. These decisions are documented in a declaration for mental health treatment and will be used only during any period in which a patient is incapable of consenting to or refusing treatment.

The declaration is set up so that an individual may also appoint a person as an attorney-in-fact to make those treatment decisions for them if they become incapable. The attorney-in-fact would make sure those written instructions are followed or make treatment decisions for the individual if the instructions have not been written down. The attorney-in-fact must accept the appointment in writing and may withdraw from this duty at any time.

The declaration will remain in effect for three years unless the individual becomes incapable of making mental health treatment decisions. If this occurs, the directive continues in effect until the individual is no longer incapable. The individual has the right to revoke all or part of the declaration at any time as long as they have not been determined to be incapable.

This legislation would enable persons to make their own mental health decisions prior to any future mental health crisis they might encounter. The legislation was requested by the Mental Health Consumers of Alaska.

**To Senator Kelly
Reference HES, STA
12th Feb. 1996**

**From Archivides Kalokerinos
RMB 218 ZA Bourne Lane
Tamworth, NSW. 2340
Australia
Phone (067) 608166
Fax (067) 608344**

**Born 28th Sept. 1927. Glen Innes, Australia
Graduated M.B.,B.S. Jan. 1951, University Sydney
Fellow Royal Society of Tropical Medicine, London**

Retired from full-time practice.

Consultant to various organisations in Australia and overseas and Australian Aboriginal communities.

Special interests - Aboriginal infant and adult health, Vitamin and mineral supplements, nutrition, and problems associated with routine vaccine administrations.

In 1957 I commenced work as the sole medical practitioner in the remote township of Collarenebri, 500 miles north-west of Sydney. There were about 500 Caucasians in the town, 200 Aborigines on the nearby reserve and about 500 Caucasians in the surrounding district.

Before my time in Collarenebri and for the first ten years of my period there an extraordinarily high infant mortality rate, amongst Caucasians and Aborigines, was apparent. During one 24 hour period three Caucasian babies died.

The infant deaths were strange. Some infants who were apparently well or suffering from a trivial illness, were found dead in their cots - typical sudden, unexpected, infant deaths. Other infants who were apparently well, or suffering from trivial complaints, went into unexplained shock from which they could not be resuscitated. Others became excessively irritable, then unconscious and died. In all cases autopsies failed to offer satisfactory explanations for death. In some cases autopsies revealed yellow patches in the liver and it was observed, before death, that these cases displayed varying degrees of liver pain and tenderness.

All other doctors in Australia, including academic staff and State and Commonwealth Departments of Health, denied that infant death rates were high in other areas and denied the existence of the clinical patterns observed by myself. Years later I learned that the problems were widespread across Australia and, indeed, worse in many areas.

In other words, I was deliberately misinformed by some and others appeared incapable of recognising what was going on before their eyes. Sometimes, for reasons not fully understood, epidemics of one of the disease patterns occurs - for example, *The Dark Disease Of Naples, (Italy)* during the late 1970's where infants and children became suddenly unconscious, for no known reason, and died. Two thirds of these cases had upper respiratory infections, the other third had recently received routine vaccinations.

Eventually I found that intramuscular or intravenous Vitamin C, if administered early, reversed the shock state and the unconscious state. I was fortunate because I was always able to commence treatment early.

The first injection of Vitamin C was given in December 1967. From that time on, until I left the area in November 1975, there were no more infant deaths under my care. I was also able to drop the infant mortality rates in neighbouring districts. Other doctors who followed my methods achieved similar results.

However, I did observe that routine immunisations had a dreadful effect on some infants for a period of some weeks following the administration. A few suffered from an apparent immune paralysis and contracted serious bacterial infections. Others went into the strange state of shock or became excessively irritable, then unconscious. Both states could be reversed by intravenous Vitamin C. Bacterial infections were difficult to control.

Because of this routine immunisations were sometimes delayed. The percusses component was sometimes omitted and sick infants received injections of vitamin C.

It is important to note that most standard methods of medical treatment were always employed, before and after the realisation of the importance of Vitamin C and the harm sometimes done by routine vaccinations. What made the difference to mortality rates (and the figures could hardly be more dramatic) was the uses of Vitamin C and care with routine vaccinations.

I should also inform you that in the state of NSW records of vaccinations, including batch numbers, are kept and copies given to all parents.

AMENDMENT

OFFERED IN THE SENATE

TO: SB 159

1 Page 4, line 20:

2 Delete "AS 47.30.825"

3 Insert "AS 47.30.825 - 47.30.865"

4 Page 5, line 10:

5 Delete "or by"

6 Insert ", "

7 After "two physicians":

8 Insert "that include a psychiatrist, or one physician and a professional mental health
9 clinician"

10 Page 7, after line 28:

11 Insert "

12 _____
(Address)

13

14 _____
(Telephone Number) "

15 Page 8, line 27:

16 Delete "or"

17 Insert ", "

18 After "physicians":

19 Insert "that include a psychiatrist, or one physician and a professional mental health
20 clinician"

21 Page 11, line 9, after "days":

1 Insert ";

2 (6) "professional mental health clinician" means a person having at
3 least a master's degree in psychology, social work, counseling, child guidance, or
4 nursing with specialization or experience in mental health; if employed by a mental
5 health physician clinic, a "professional mental health clinician" must also be licensed
6 to practice in the state in which service is being provided or be a clinical member in
7 good standing of the American Association for Marriage and Family Therapy, and be
8 working in the clinician's field of expertise; in this paragraph, "mental health
9 physician clinic" means a clinic, operated by one or more psychiatrists, that
10 exclusively or primarily provides mental health services furnished by a psychiatrist
11 or by one or more licensed psychologists, licensed psychological associates, licensed
12 clinical social workers, licensed nurse practitioners, licensed psychiatric nursing
13 clinical specialists, or clinical members in good standing of the American Association
14 for Marriage and Family Therapy, who are working in their field of expertise under
15 the direct supervision of a psychiatrist"

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 159

Revision Date:	Dept. Affected: <u>Health and Social Services</u>
Title: <u>An Act relating to advance directives for Mental Health Treatment</u>	BRU: <u>MI/DD Services</u>
Sponsor: <u>Rieger</u>	Component: <u>Alaska Psychiatric Institute</u>
Requestor: <u>Senate HES</u>	COMPONENT SERIAL NO. <u>311</u>
	See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY97	FY98	FY99	FY00	FY01	FY02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$0.0

POSITIONS:

FULL-TIME	N/A					
PART-TIME	N/A					
TEMPORARY	N/A					

ANALYSIS:

(Attach a separate page if necessary)

This bill will not have a fiscal impact on the Division.

Prepared by: Leonard Abel, Ph.D.
 Division: DMH&DD
 Approved by Com: Karen Perdue, Commissioner
 Agency: Department of Health & Social Services

Phone: 465-3370
 Date: 01/24/96
 Date: 1/24/96

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SENATE BILL NO. 159
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATOR RIEGER

Introduced: 4/13/95
Referred: HES, JUD

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to advance directives for mental health treatment."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 47.30 is amended by adding new sections to read:

4 ARTICLE 11. PERSONAL DECLARATION OF PREFERENCES
5 FOR MENTAL HEALTH TREATMENT.

6 Sec. 47.30.950. DECLARATION. (a) An adult of sound mind may make a
7 declaration of preferences or instructions regarding mental health treatment. The
8 preferences or instructions may include consent to or refusal of mental health
9 treatment.

10 (b) A declaration for mental health treatment continues in effect for three years
11 or until revoked, whichever is sooner. The authority of a named attorney-in-fact and
12 an alternative attorney-in-fact named in the declaration continues in effect as long as
13 the declaration appointing the attorney-in-fact is in effect or until the attorney-in-fact
14 has withdrawn. If a declaration for mental health treatment has been invoked and is
15 in effect at the expiration of three years after its execution, the declaration remains

SB0159A

-1-

SB 159

New Text Underlined (DELETED TEXT BRACKETED)

COMMITTEE COPY

1 effective until the principal is no longer incapable.

2 Sec. 47.30.952. DESIGNATION OF ATTORNEY-IN-FACT. (a) A
3 declaration may designate a competent adult to act as attorney-in-fact to make
4 decisions about mental health treatment. An alternative attorney-in-fact may also be
5 designated to act as attorney-in-fact if the original designee is unable or unwilling to
6 act at any time. An attorney-in-fact who has accepted the appointment in writing may
7 make decisions about mental health treatment on behalf of the principal only when the
8 principal is incapable. The decisions must be consistent with desires the principal has
9 expressed in the declaration.

10 (b) The following may not serve as attorney-in-fact:

11 (1) the attending physician or mental health service provider, or an
12 employee of the physician or provider, if the physician, provider, or employee is
13 unrelated to the principal by blood, marriage, or adoption;

14 (2) an owner, operator, or employee of a health care facility in which
15 the principal is a patient or resident if the owner, operator, or employee is unrelated
16 to the principal by blood, marriage, or adoption.

17 (c) An attorney-in-fact may withdraw by giving notice to the principal. If a
18 principal is incapable, the attorney-in-fact may withdraw by giving notice to the
19 attending physician or provider. The attending physician or provider shall note the
20 withdrawal as part of the principal's medical record. A person who has withdrawn
21 under the provisions of this subsection may rescind the withdrawal by executing an
22 acceptance after the date of the withdrawal. The acceptance must be in the same form
23 as provided by AS 47.30.970 for accepting an appointment. A person who rescinds
24 a withdrawal shall give notice to the principal if the principal is capable or to the
25 principal's health care provider if the principal is incapable.

26 (d) The designation of an attorney-in-fact under this section supersedes a
27 previous or subsequent designation of an attorney-in-fact regarding mental health
28 treatment unless otherwise specifically provided in the declaration executed under
29 AS 47.30.950 - 47.30.980 or in the document that designates the other attorney-in-fact.

30 Sec. 47.30.954. SIGNATURE, WITNESSES. (a) A declaration is effective
31 only if it is signed by the principal and two competent adult witnesses. The witnesses

1 must attest that the principal is known to them, signed the declaration in their presence,
2 appears to be of sound mind, and is not under duress, fraud, or undue influence.

3 (b) The following may not serve as a witness to the signing of a declaration:

4 (1) the attending physician or mental health service provider or a
5 relative of the physician or provider;

6 (2) an owner, operator, or relative of an owner or operator of a health
7 care facility in which the principal is a patient or resident; or

8 (3) a person related to the principal by blood, marriage, or adoption.

9 Sec. 47.30.956. OPERATION OF DECLARATION. (a) A declaration
10 becomes operative when it is delivered to the principal's physician or other mental
11 health treatment provider and remains valid until revoked or expired. The physician
12 or provider shall act in accordance with an operative declaration when the principal has
13 been found to be incapable. The physician or provider shall continue to obtain the
14 principal's informed consent to all mental health treatment decisions if the principal is
15 capable of providing informed consent or refusal.

16 (b) Upon being presented with a declaration, a physician or other provider
17 shall make the declaration a part of the principal's medical record. When acting under
18 authority of a declaration, a physician or provider shall comply with it to the fullest
19 extent possible, consistent with reasonable medical practice, the availability of
20 treatments requested, and applicable law. If the physician or other provider is unwill-
21 ing at any time to comply with the declaration, the physician or provider may
22 withdraw from providing treatment consistent with the exercise of independent medical
23 judgment and shall promptly notify the principal and the attorney-in-fact and document
24 the notification in the principal's medical record.

25 Sec. 47.30.958. POWERS OF ATTORNEY-IN-FACT. (a) The
26 attorney-in-fact does not have authority to make mental health treatment decisions
27 unless the principal is incapable.

28 (b) The attorney-in-fact is not, as a result of acting in that capacity, personally
29 liable for the cost of treatment provided to the principal.

30 (c) Except to the extent the right is limited by the declaration or any federal
31 law, an attorney-in-fact has the same right as the principal to receive information

1 regarding the proposed mental health treatment and to receive, review, and consent to
2 disclosure of medical records relating to that treatment. This right of access does not
3 waive any evidentiary privilege.

4 (d) In exercising authority under the declaration, the attorney-in-fact has a duty
5 to act consistently with the desires of the principal as expressed in the declaration. If
6 the principal's desires are not expressed in the declaration and not otherwise known by
7 the attorney-in-fact, the attorney-in-fact has a duty to act in what the attorney-in-fact
8 in good faith believes to be the best interests of the principal.

9 (e) An attorney-in-fact is not subject to criminal prosecution, civil liability, or
10 professional disciplinary action for an action taken in good faith under a declaration
11 for mental health treatment.

12 Sec. 47.30.960. LIMITATIONS. A person may not be required to execute or
13 to refrain from executing a declaration as a criterion for insurance, as a condition for
14 receiving mental or physical health services, or as a condition of discharge from a
15 health care facility.

16 Sec. 47.30.962. ACTIONS CONTRARY TO DECLARATION. The physician
17 or provider may subject the principal to mental health treatment in a manner contrary
18 to the principal's wishes as expressed in a declaration for mental health treatment only

19 (1) if the principal is committed to a treatment facility under this
20 chapter and treatment is authorized in compliance with AS 47.30.825; or

21 (2) in cases of emergency endangering life or health.

22 Sec. 47.30.964. RELATION TO OTHER STATUTES. A declaration does not
23 limit any authority provided in this chapter either to take a person into custody or to
24 admit, retain, or treat a person in a health care facility.

25 Sec. 47.30.966. REVOCATION. A declaration may be revoked in whole or
26 in part at any time by the principal if the principal is not incapable. A revocation is
27 effective when a capable principal communicates the revocation to the attending
28 physician or other provider. The attending physician or other provider shall note the
29 revocation as part of the principal's medical record.

30 Sec. 47.30.968. LIMITED IMMUNITY. A physician or provider who
31 administers or does not administer mental health treatment according to and in good

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1 faith reliance upon the validity of a declaration is not subject to criminal prosecution,
2 civil liability, or professional disciplinary action resulting from a subsequent finding
3 of a declaration's invalidity.

4 Sec. 47.30.970. FORM OF DECLARATION. A declaration for mental health
5 treatment shall be in substantially the following form:

6 DECLARATION FOR MENTAL HEALTH TREATMENT

7 I, _____
8 _____, being an adult of sound mind, wilfully and voluntarily make this
9 declaration for mental health treatment to be followed if it is determined by a
10 court (or by) two physicians that my ability to receive and evaluate information
11 effectively or communicate decisions is impaired to such an extent that I lack
12 the capacity to refuse or consent to mental health treatment. "Mental health
13 treatment" means electroconvulsive treatment, treatment of mental illness with
14 psychotropic medication, and admission to and retention in a health care
15 facility for a period up to 17 days.

16 I understand that I may become incapable of giving or withholding
17 informed consent for mental health treatment due to the symptom: of a
18 diagnosed mental disorder. These symptoms may include:

19 _____
20 _____

21 PSYCHOTROPIC MEDICATIONS

22 If I become incapable of giving or withholding informed consent for
23 mental health treatment, my wishes regarding psychotropic medications are as
24 follows:

25 _____ I consent to the administration of the following medications: _____

26 _____

27 _____ I do not consent to the administration of the following medications: _____

28 _____

29 Conditions or limitations: _____

30 _____

31 ELECTROCONVULSIVE TREATMENT

1 If I become incapable of giving or withholding informed consent for
2 mental health treatment, my wishes regarding electroconvulsive treatment are
3 as follows:

4 I consent to the administration of electroconvulsive treatment.

5 I do not consent to the administration of electroconvulsive treatment.

6 Conditions or limitations: _____
7 _____

8 ADMISSION TO AND RETENTION IN FACILITY

9 If I become incapable of giving or withholding informed consent for
10 mental health treatment, my wishes regarding admission to and retention in a
11 health care facility for mental health treatment are as follows:

12 I consent to being admitted to a health care facility for mental health
13 treatment for up to _____ days.

14 I do not consent to being admitted to a health care facility for mental
15 health treatment.

16 This directive cannot, by law, provide consent to retain me in a facility
17 for more than 17 days. *maximum # of days*

18 Conditions or limitations: _____
19 _____

20 ADDITIONAL PREFERENCES OR INSTRUCTIONS

21 _____
22 _____
23 _____
24 Conditions or limitations: _____
25 _____

26 ATTORNEY-IN-FACT

27 I appoint:

28 NAME _____

29 ADDRESS _____

30 TELEPHONE NO _____

31 to act as my attorney-in-fact to make decisions regarding my mental health

1 treatment if I become incapable of giving or withholding informed consent for
2 that treatment.

3 If the person named above refuses or is unable to act on my behalf, or
4 if I revoke that person's authority to act as my attorney-in-fact, I authorize the
5 following person to act as my attorney-in-fact:

6 NAME _____

7 ADDRESS _____

8 TELEPHONE NO. _____

9 My attorney-in-fact is authorized to make decisions that are consistent
10 with the wishes I have expressed in this declaration or, if not expressed, as are
11 otherwise known to my attorney-in-fact. If my wishes are not expressed and are
12 not otherwise known by my attorney-in-fact, my attorney-in-fact is to act in
13 what my attorney-in-fact believes to be my best interests.

14 OTHER DOCUMENTS

15 _____ I have executed a general power-of-attorney or a power-of-attorney
16 under AS 13.26 that includes the power to make decisions regarding health care
17 services for myself. I authorize the attorney-in-fact appointed under this
18 declaration and the attorney-in-fact appointed under a general power-of-attorney
19 under AS 13.26 to serve

20 _____ jointly with consent of each other as to my mental health
21 treatment;

22 _____ separately without each other's consent as to my mental health
23 treatment.

24 _____ I have not executed a general power-of-attorney or a power-of-attorney
25 under AS 13.26 that includes the power to make decisions regarding health care
26 services for myself.

27 _____
28 (Signature of Declarant/Date)

29 AFFIRMATION OF WITNESSES

30 We affirm that the principal is personally known to us, that the principal
31 signed or acknowledged the principal's signature on this declaration for mental

1 health treatment in our presence, that the principal appears to be of sound mind
2 and not under duress, fraud, or undue influence, and that neither of us is a
3 person appointed as an attorney-in-fact by this document; the principal's
4 attending physician or mental health service provider or a relative of the
5 physician or provider; the owner, operator, or relative of an owner or operator
6 of a facility in which the principal is a patient or resident; or a person related
7 to the principal by blood, marriage, or adoption.

8 Witnessed By:

9 _____
10 (Signature of Witness/Date)

_____ (Printed Name of Witness)

11 _____
12 (Address)

13 _____
14 (Telephone Number)

15 _____
16 (Signature of Witness/Date)

_____ (Printed Name of Witness)

17 _____
18 (Address)

19 _____
20 (Telephone Number)

21 ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT

22 I accept this appointment and agree to serve as attorney-in-fact to make
23 decisions about mental health treatment for the principal. I understand that I
24 have a duty to act in a manner consistent with the desires of the principal as
25 expressed in this appointment. I understand that this document gives me
26 authority to make decisions about mental health treatment only while the
27 principal is incapable as determined by a court or two physicians. I understand
28 that the principal may revoke this declaration in whole or in part at any time
29 and in any manner when the principal is not incapable.

30 _____
31 (Signature of Attorney-in-fact/Date)

_____ (Printed name)

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(Address)

(Telephone Number)

(Signature of Alternate Attorney-in-fact/Date) (Printed name)

(Address)

(Telephone Number)

**NOTICE TO PERSON MAKING A DECLARATION
FOR MENTAL HEALTH TREATMENT**

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

(1) This document allows you to make decisions in advance about three types of mental health treatment: psychotropic medication, electroconvulsive therapy, and short-term (up to 17 days) admission to a treatment facility. The instructions that you include in this declaration will be followed only if a court, two physicians that include a psychiatrist, or a physician and a professional mental health clinician believe that you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments.

(2) You may also appoint a person as your attorney-in-fact to make these treatment decisions for you if you become incapable. The person you appoint has a duty to act consistent with your desires as stated in this document or, if your desires are not stated or otherwise made known to the attorney-in-fact, to act in a manner consistent with what the person in good faith believes to be in your best interest. For the appointment to be effective, the person you appoint must accept the appointment in writing. The person also has the right to withdraw from acting as your attorney-in-fact at any time.

(3) This document will continue in effect for a period of three years

1 unless you become incapable of participating in mental health treatment decisions. If
2 this occurs, the directive will continue in effect until you are no longer incapable.

3 (4) You have the right to revoke this document in whole or in part at
4 any time you have not been determined to be incapable. YOU MAY NOT REVOKE
5 THIS DECLARATION WHEN YOU ARE CONSIDERED INCAPABLE BY A
6 COURT, TWO PHYSICIANS THAT INCLUDE A PSYCHIATRIST, OR A
7 PHYSICIAN AND A PROFESSIONAL MENTAL HEALTH CLINICIAN. A
8 revocation is effective when it is communicated to your attending physician or other
9 provider.

10 (5) If there is anything in this document that you do not understand,
11 you should ask a lawyer to explain it to you. This declaration will not be valid unless
12 it is signed by two qualified witnesses who are personally known to you and who are
13 present when you sign or acknowledge your signature.

14 Sec. 47.30.972. PENALTY. It is a class A misdemeanor for a person without
15 authorization of the principal to knowingly alter, forge, conceal, or destroy a
16 declaration executed under AS 47.30.950 - 47.30.980, the reinstatement or revocation
17 of a declaration executed under AS 47.30.950 - 47.30.980, or any other evidence or
18 document reflecting the principal's desires and interests with the intent or effect of
19 affecting a mental health care decision. In this section, "knowingly" has the meaning
20 given in AS 11.81.900(a).

21 Sec. 47.30.980. DEFINITIONS. In AS 47.30.950 - 47.30.980,

22 (1) "attending physician" means the licensed physician who has primary
23 responsibility for the care and treatment of the declarant;

24 (2) "attorney-in-fact" means an adult properly appointed under
25 AS 47.30.950 - 47.30.980 to make mental health treatment decisions for a principal
26 under a declaration for mental health treatment and also means an alternative attorney-
27 in-fact;

28 (3) "facility" means a

29 (A) designated treatment facility, as defined in AS 47.30.915;

30 (B) nursing home; or

31 (C) assisted living home licensed under AS 47.33;

1 (4) "incapable" means that, in the opinion of the court in a guardianship
2 proceeding under AS 13.26, in the opinion of two physicians that include a
3 psychiatrist, or in the opinion of a physician and a professional mental health clinician,
4 a person's ability to receive and evaluate information effectively or communicate
5 decisions is impaired to such an extent that the person currently lacks the capacity to
6 make mental health treatment decisions;

7 (5) "mental health treatment" means electroconvulsive treatment,
8 treatment with psychotropic medication, and admission to and retention in a facility
9 for a period not to exceed 17 days.

10 * Sec. 2. AS 13.26.335 is amended to read:

11 Sec. 13.26.335. ADDITIONAL OPTIONAL PROVISIONS TO STATUTORY
12 FORM POWER OF ATTORNEY. Each of the following provisions may be included
13 in a statutory form power of attorney:

14 (1) IF YOU HAVE GIVEN THE AGENT AUTHORITY REGARDING
15 HEALTH CARE SERVICES UNDER SUBDIVISION (L), COMPLETE THE
16 FOLLOWING:

17 () I have executed a separate declaration under AS 18.12,
18 known as a "Living Will."

19 () I have not executed a "Living Will."

20 () I have executed a separate declaration under
21 AS 47.30.950 - 47.30.980 regarding mental health treatment. If I
22 have appointed an attorney-in-fact under AS 47.30.950 - 47.30.980,
23 I authorize that attorney-in-fact and the attorney-in-fact whom I
24 have appointed in this document to serve

25 () jointly with consent of each other as to my
26 mental health treatment

27 () separately without each other's consent as to my
28 mental health treatment.

29 () I have not executed a separate declaration under
30 AS 47.30.950 - 47.30.980.

31 (2) YOU MAY DESIGNATE AN ALTERNATE ATTORNEY-IN-

1 FACT. AN ALTERNATE YOU DESIGNATE WILL BE ABLE TO EXERCISE
2 THE SAME POWERS AS THE AGENT(S) YOU NAMED AT THE BEGINNING
3 OF THIS DOCUMENT. IF YOU WISH TO DESIGNATE AN ALTERNATE OR
4 ALTERNATES, COMPLETE THE FOLLOWING:

5 If the agent(s) named at the beginning of this document is
6 unable or unwilling to serve or continue to serve, then I appoint the
7 following agent to serve with the same powers:

8 First alternate or successor attorney-in-fact

9 _____

10 (Name and address of alternate)

11 _____

12 Second alternate or successor attorney-in-fact

13 _____

14 (Name and address of alternate)

15 (3) YOU MAY NOMINATE A GUARDIAN OR CONSERVATOR.
16 IF YOU WISH TO NOMINATE A GUARDIAN OR CONSERVATOR, COMPLETE
17 THE FOLLOWING:

18 In the event that a court decides that it is necessary to appoint
19 a guardian or conservator for me, I hereby nominate _____ (Name and
20 address of person nominated) _____ to be considered by the court for
21 appointment to serve as my guardian or conservator, or in any similar
22 representative capacity.

23 * Sec. 3. AS 13.26.344(1) is amended to read:

24 (1) In the statutory form power of attorney, the language conferring general
25 authority with respect to health care services, shall be construed to mean that, as to the
26 health care of the principal, whether to be provided in the state or elsewhere, the
27 principal authorizes the agent to

28 (1) have access to and disclose to others medical and related
29 information and records:

30 (2) consent or refuse to consent to medical care or relief for the
31 principal from pain, but the agent may not authorize the termination of life-sustaining

1 procedures:

2 (3) take all steps necessary to enforce a properly executed declaration
3 under AS 18.12;

4 (4) take all steps necessary to enforce a properly executed
5 declaration under AS 47.30.950 - 47.30.980 unless the principal has provided that
6 an attorney-in-fact appointed under AS 47.30.950 - 47.30.980 shall have exclusive
7 authority with regard to mental health treatment and the attorney-in-fact
8 appointed under AS 47.30.950 - 47.30.980 has not withdrawn;

9 (5) consent or refuse to consent to the principal's psychiatric care, but
10 the consent does not authorize a voluntary commitment or placement in a mental
11 health treatment facility, electroconvulsive [CONCLUSIVE] or electric-shock therapy,
12 psychosurgery, sterilization, or an abortion except that, if the principal has properly
13 executed a declaration under AS 47.30.950 - 47.30.980, the agent may consent to
14 voluntary commitment or placement in a mental health treatment facility and
15 electroconvulsive or electric-shock therapy if that consent is consistent with the
16 wishes expressed in the declaration under AS 47.30.950 - 47.30.980 and if the
17 principal has not designated another attorney in-fact to have exclusive authority
18 to make decisions regarding mental health treatment;

19 (6) [(5)] arrange for care or lodging of the principal in a hospital,
20 nursing home, or hospice;

21 (7) [(6)] grant releases to health care professionals or health care
22 institutions;

23 (8) [(7)] hire, discharge, or compensate an attorney, accountant, expert
24 witness, or assistant when the agent considers the action to be desirable for the proper
25 execution of the powers described in this subsection; and

26 (9) [(8)] do any other act or acts, that the principal can do through an
27 agent, and that the agent considers desirable or necessary to provide for the principal's
28 physical or mental well being.

29 * Sec. 4. AS 47.30.825(b) is amended to read:

30 (b) The patient and the following persons, at the request of the patient, are
31 entitled to participate in formulating the patient's individualized treatment plan and to

1 participate in the evaluation process as much as possible, at minimum to the extent of
2 requesting specific forms of therapy, inquiring why specific therapies are or are not
3 included in the treatment program, and being informed as to the patient's present
4 medical and psychological condition and prognosis: (1) the patient's counsel, (2) the
5 patient's guardian, (3) a mental health professional previously engaged in the patient's
6 care outside of the evaluation facility or designated treatment facility, (4) a
7 representative of the patient's choice, (5) a person designated as the patient's
8 attorney-in-fact with regard to mental health treatment decisions under
9 AS 13.26.332 - 13.26.358, AS 47.30.950 - 47.30.980, or other power-of-attorney, and
10 (6) [(5)] the adult designated under AS 47.30.725. The mental health care professionals
11 may not withhold any of the information described in this subsection from the patient
12 or from others if the patient has signed a waiver of confidentiality or has designated
13 the person who would receive the information as an attorney-in-fact with regard
14 to mental health treatment.

15 * Sec. 5. AS 47.30.825(f) is amended to read:

16 (f) A patient capable of giving informed consent has the absolute right to
17 accept or refuse electroconvulsive [ELECTRO-CONVULSIVE] therapy or aversive
18 conditioning. A patient who lacks substantial capacity to make this decision may not
19 be given this therapy or conditioning without a court order unless the patient
20 expressly authorized that particular form of treatment in a declaration properly
21 executed under AS 47.30.950 - 47.30.980 or has authorized an attorney-in-fact to
22 make this decision and the attorney-in-fact consents to the treatment on behalf of
23 the patient.

24 * Sec. 6. AS 47.30.836 is amended to read:

25 Sec. 47.30.836. PSYCHOTROPIC MEDICATION IN NONEMERGENCIES.

26 An evaluation facility or designated treatment facility may not administer psychotropic
27 medication to a patient in a situation that does not involve a crisis under
28 AS 47.30.838(a)(1) unless the patient

29 (1) [THE PATIENT] has the capacity to give informed consent to the
30 medication, as described in AS 47.30.837, and gives that consent; the facility shall
31 document the consent in the patient's medical chart: [OR]

1 (2) authorized the use of psychotropic medication in a declaration
2 properly executed under AS 47.30.950 - 47.30.980 or authorized an attorney-in-
3 fact to consent to the use of psychotropic medication for the patient and the
4 attorney-in-fact does consent; or

5 (3) [THE PATIENT] is determined by a court to lack the capacity to
6 give informed consent to the medication and the court approves use of the medication
7 under AS 47.30.839.

8 * Sec. 7. AS 47.30.838(a) is amended to read:

9 (a) Except as provided in (c) and (d) of this section, an evaluation facility or
10 designated treatment facility may administer psychotropic medication to a patient
11 without the patient's informed consent, regardless of whether the patient is capable of
12 giving informed consent, only if

13 (1) there is a crisis situation, or an impending crisis situation, that
14 requires immediate use of the medication to preserve the life of, or prevent significant
15 physical harm to, the patient or another person, as determined by a licensed physician
16 or a registered nurse; the behavior or condition of the patient giving rise to a crisis
17 under this paragraph and the staff's response to the behavior or condition must be
18 documented in the patient's medical record; the documentation must include an
19 explanation of alternative responses to the crisis that were considered or attempted by
20 the staff and why those responses were not sufficient; and

21 (2) the medication is ordered by a licensed physician; the order

22 (A) may be written or oral and may be received by telephone,
23 facsimile machine, or in person;

24 (B) may include an initial dosage and may authorize additional,
25 as needed, doses; if additional, as needed, doses are authorized, the order must
26 specify the medication, the quantity of each authorized dose, the method of
27 administering the medication, the maximum frequency of administration, the
28 specific conditions under which the medication may be given, and the
29 maximum amount of medication that may be administered to the patient in a
30 24-hour period;

31 (C) is valid for only 24 hours and may be renewed by a

1 physician for a total of 72 hours, including the initial 24 hours, only after a
2 personal assessment of the patient's status and a determination that there is still
3 a crisis situation as described in (1) of this subsection; upon renewal of an
4 order under this subparagraph, the facts supporting the renewal shall be written
5 into the patient's medical record.

6 * Sec. 8. AS 47.30.838 is amended by adding a new subsection to read:

7 (d) An evaluation facility or designated treatment facility may administer
8 psychotropic medication to a patient without the patient's informed consent if the
9 patient is unable to give informed consent but has authorized the use of psychotropic
10 medication in a declaration properly executed under AS 47.30.950 - 47.30.980 or has
11 authorized an attorney-in-fact to consent to this form of treatment for the patient and
12 the attorney-in-fact does consent.

Advance directives for Mental Health Treatment

Overview

Section 1. Authorizes an individual of sound mind to make a declaration of preferences or instructions regarding mental health treatment. The preferences or instructions may include consent to or refusal of mental health treatment.

Authorizes an individual to designate an attorney-in-fact to make mental health decisions based upon preferred treatment under the declaration. Section also specifies who may not serve as an attorney-in-fact.

Requires signatures from the principal and two competent adult witnesses before a declaration is effective. Section also specifies who may not serve as a witness.

Requires a declaration to be delivered to the principal's physician or other mental health treatment provider before it becomes operative. The declaration must become part of the principal's medical record.

Authorizes an attorney-in-fact the following powers:

- (a) to make mental health decision only if the principal is incapable.
- (b) the attorney-in-fact is not liable for the costs of the treatment.
- (c) grants the attorney-in-fact the same right as the principal to receive information and to review and consent to disclosure of medical records relating to that treatment.
- (d) act within the scope of the declaration and if the principal's desires are not expressed in the declaration, the attorney-in-fact has a duty to act in the best interest of the principal.
- (e) grants attorney-in-fact immunity from criminal prosecution, civil liability, or professional disciplinary action for an action taken in good faith under a declaration for mental health treatment.

Permits a declaration to be revoked at any time by the principal if the principal is not incapable.

Authorizes an individual who has granted a power of attorney or an attorney-in-fact under Title 13 to specify whether they would like the power of attorney or the attorney-in-fact to work jointly or separately with the attorney-in-fact authorized under this legislation.

Alaska State Senate

SENATOR STEVE RIEGER
District 1



Senate Finance Committee
Chair, Senate Transportation Committee

Legislative Budget and Audit Committee
Administrative Regulation Review Committee
Legislative Council

During Session:
State Capitol, Room 510
Juneau, Alaska 99801
(907) 465-3879

718 West 4th Avenue, Suite 530
Anchorage, Alaska 99501
(907) 258-8155

SPONSOR STATEMENT

SB 159 "An Act relating to advance directives for mental health treatment."

Senate Bill 159 allows individuals to make decisions in advance about three types of mental health treatment: psychotropic medication, electroconvulsive therapy, and a short-term admission of up to 17 days into a treatment facility. These decisions are documented in a declaration for mental health treatment and will be used only during any period in which a patient is incapable of consenting to or refusing treatment.

The declaration is set up so that an individual may also appoint a person as an attorney-in-fact to make those treatment decisions for them if they become incapable. The attorney-in-fact would make sure those written instructions are followed or make treatment decisions for the individual if the instructions have not been written down. The attorney-in-fact must accept the appointment in writing and may withdraw from this duty at any time.

The declaration will remain in effect for three years unless the individual becomes incapable of making mental health treatment decisions. If this occurs, the directive continues in effect until the individual is no longer incapable. The individual has the right to revoke all or part of the declaration at any time as long as they have not been determined to be incapable.

This legislation would enable persons to make their own mental health decisions prior to any future mental health crisis they might encounter. The legislation was requested by the Mental Health Consumers of Alaska.

DECLARATION FOR MENTAL HEALTH TREATMENT

By Dorothy Peavey, Executive Director of
Mental Health Consumers of Alaska

An advanced directive is a written instruction, such as a living will or durable power of attorney for health care, relating to the provision of health care when an individual's condition makes him or her unable to make treatment decisions.

The Declaration for Mental Health Treatment is an attempt to bring the advanced directive philosophy to the provision of mental health care — psychotropic medications, electroconvulsive therapy, or short-term (up to 17 days) admission to a treatment facility.

Based on a similar law in Oregon, the Declaration provides an individual the opportunity to spell out his or her preferences in the event of his or her incapacitation. It provides the individual the opportunity to make his or her wishes known on the treatments that have worked in the past and that he or she desires in the future, treatments that have not worked in the past or that he or she does not desire in the future, which physician cares for him or her, in which hospital he or she is treated. Most importantly, it provides for a substitute decisionmaker with whom the doctors would consult should the Declaration not be specific enough or the doctors are recommending a treatment not specified.

The Declaration is initiated when an individual is "of sound mind." Declarations may not name attending physicians or mental health providers as the "attorney-in-fact" (substitute decisionmaker). The attorney-in-fact does not have authority to make mental health treatment decisions unless the principal is "incapable." The instructions that are included in a Declaration will be followed only if a court, two physicians that include a psychiatrist, or a physician and professional mental health clinician believe that the person is incapable of making treatment decisions. Otherwise, an individual is considered capable to give or withhold consent for treatment.

A Declaration may be revoked in whole or in part at any time an individual has not been determined to be incapable. An individual is "incapable," when it is the opinion of a court, two physicians that include a psychiatrist, or a physician and a professional mental health clinician, an individual's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.

In the past two years in Oregon, where they have Declarations, they have found that individuals

who had fought hospitalization and medication in the past, now were more willing to go to the hospital because they felt their decisions would be heeded.

Initially introduced into the Alaska Legislature as House Bill 318 by Representative Cynthia Toohey and as Senate Bill 159 by Senator Steve Rieger, the Declaration should be scheduled for hearings early in the next Legislative Session.

Endorsements of the Declaration may be mailed to either Mental Health Consumers of Alaska, Representative Toohey, or Senator Rieger at "Alaska State Legislature, State Capitol, Juneau, AK 99801-1182."

Dorothy Peavey, Executive Director of Mental Health Consumers of Alaska, would welcome comments and questions at 907-277-3817 or 800-478-3817. ♡

NINETEENTH ALASKA STATE LEGISLATURE

All mail should be sent to: State Capitol
Juneau, AK 99801-1182

REPRESENTATIVES:

Alan Austerman	Brian Porter
Ramona Barnes	Caren Robinson
Tom Brice	Norman Rokeberg
Kay Brown	Jerry Sanders
Con Bunde	Gene Themault
John Davies	Cynthia Toohey
Bettye Davis	Al Vezey
Gary Lee Davis	Bill Williams
Kim Elton	Ed Willis
David Finkenstein	

Richard Foster

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Gene Kubina
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Terry Martin
Beverly Masak
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Drue Pearce
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Steve Rieger
Judith Salo
Bert Sharp
Robin Taylor
John Torgerson
Fred Zharoff



Working for
Alaska's
Mental
Health

Post-it™ Fax Note	7671	Date	1/31/96	# of pages	1
To	Betty	From	Dorothy Peavey		
Co./Dept.	Sen. Riegg	Co.	17 HCA		
Phone #		Phone #	277 3817		
Fax #	465-2069	Fax #	277 2193		

Mental Health Association in Alaska

4050 Lake Otis Parkway, Suite 202 • Anchorage, Alaska 99508-5221 • (907) 563-0880 • Fax (907) 563-0881

October 24, 1995

Dorothy Peavey, M.S.W.
Executive Director
Mental Health Consumers of Alaska
101 East 9th Avenue, Suite 3-A
Anchorage, Alaska 99501

Re: Senate Bill No. 159

"An Act relating to advance directives for mental health treatment."

Dear Dorothy:

The Board of Directors would like to support the legislation the Mental Health Consumers of Alaska has brought to the attention of Alaskan lawmakers, i.e. Senate Bill No. 159. It is our belief that this kind of self-advocacy and self-empowerment process in allowing consumers of mental health treatment services the ability to pre-plan and direct caregivers in treatment issues is simply a matter of basic human rights.

We compliment you personally on the hard work you have completed on this issue. We will stand by you and the Mental Health Consumers of Alaska in assuring this legislation is brought to the attention of the public and those for whom we advocate. Please do not hesitate in listing the Mental Health Association in Alaska as a strong supporter of the advance directives for mental health treatment.

Sincerely:

Jan McGillivray, M.Ed.
CEO/President

Sharon Lundy, M.S.
Chair of the Board

Serving Alaska Since 1953

Home of DART, Depression/Awareness-Recognition-Treatment Program



Southcentral

COUNSELING CENTER

4020 Folker Street · Anchorage, Alaska 99508

(907) 563-1000
FAX 563-2045

November 29, 1995

Senator Steve Rieger
Room 516
State Capitol
Juneau, Ak 99801-1182

Dear Senator Rieger:

This letter is in support of Senate Bill 159, Declaration for Mental Health Treatment. Mental Health Consumers of Alaska used declaration models from other states to work towards developing legislation that would allow Alaskans to establish a document stipulating the consumer's mental health treatment preferences, much like a living will. The consumer would have this document prepared in the event they are declared mentally incompetent.

The management and staff at Anchorage Community Mental Health Services, Inc., support Senate Bill 159, and feel that the declaration process would help to empower the consumer. The ACMHS Board of Directors adopted a recommendation in support of the Declaration for Mental Health Treatment at their October 20, 1994, Board meeting.

The Board, management, and staff of Anchorage Community Mental Health Services appreciated your introduction of Senate Bill 159, and the mental health community applauds your continued support of this bill.

Sincerely,

Ken Taylor
Executive Director

cc: Dorothy Peavey
Mental Health Consumers of Alaska





**Charter North
Behavioral Health System**

2530 DeBarr Road
Anchorage, Alaska 99508
(907) 258-7575 • Fax (907) 277-7844

April 16, 1995

Marveen Coggins
Legislative Aid
Representative Cynthia Toohy
Room 104
State Capital
Juneau, Alaska 99801-1182

Dear Marveen:

Please accept my apology for being so late in responding to your request to review the mental health treatment bill Representative Toohy is considering. I have reviewed the bill and found no problems with it from a facility perspective.

Please feel free to contact me with any further questions or if I can be of further assistance.

Sincerely,


Kathleen M. Cronin
Chief Executive Officer

RECEIVED FEB 05 1996

01-25-96

SUBJECT

Dear Senator Rieger:

I would appreciate
you passing SB 159.
I am ever in a
hospital for treatment
I would like to have
a part in the decision
making.

My ex husband was
hospitalized and forced
to be strapped into bed.
This wasn't fair and he
should be able to make
decisions with the assistance
of an advocate.

Thank you for your
support and taking time
to listen

Sincerely,

Donna Hart
100 Heritage Drive
Wasilla, AK 99654
373-7404

RECEIVED FEB 02 1996

Palmer, AK 99645

P.O. Box 1853
Janet Brady

Sincerely,

I suggest House Bill 318 and
want to see James Senate Bill 159.

Dear Senator Rieger:

29 January 96

RECEIVED FEB 05 1996

Dear Senator Beigun

HB-318 would help mental illness with (unicestones). Having Bio-polar, and a single parent, with numerous hospitalizations I know now what works well that is why I haven't been in for 2 years. Please work with us. These programs + Bills really work, when used right.

Thank you

Jaymie

Jaymie Murphy
2107 Chickaloon
Wasilla AK 99654

RECEIVED FEB 05 1996

Box 1107

Palmer, Ak. 99645

24 Jan 94

Dear Senator Reiger

I am writing to you in regard to SB 159.
I would like to see SB 159 passed. This bill
would allow me choices of care that I can
make before I am in an incapable position.
It is an important step in helping our mental
health care.

Sincerely,

Jerry P. Johnson