SB

291

Alaska State Legislature

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Judiciary Committee

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Resources Committee
Rules Committee
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Senator Robin L. Taylor
Senate Majority Leader

SPONSOR STATEMENT

SENATE BILL 291

Senate Bill 291 is a major revision to Alaska Statute title 18, Chapter 12, "Rights of the Terminally Ill". It is intended to offer Alaskans some assurance that their wishes will be carried out with regard to medical treatment and life-sustaining procedures.

Last year the Legislature added provisions to the Living Will form suggested in Alaska law to add the option of organ and tissue donation. In the course of hearing that bill it became clear that our law as currently written offers little assurance that an incapacitated persons wishes will be carried out.

AS 18.12.010 states that a living will is operative "only if the declarant's condition is determined to be terminal". That is a call many doctors seem reluctant to make. The result is that heroic measures are often taken against the will of the patient.

A 1995 study published in the Journal of the American Medical Association found that doctors often misunderstand or ignore a patient's request with the result that large numbers of people still die alone, in pain and tethered to mechanical ventilators in intensive-care units.

Sponsor Statement - SB 291
Page Two

The law is explicit. Every competent adult has the right to make fundamental decisions regarding his or her medical treatment. This includes the right to accept or refuse treatment and to prepare an advance directive.

SB 291 states that an advance directive or living will is given operative effect only <u>if it has been medically determined that the declarant is in a serious medical condition</u>.

It defines "medically determined" as requiring a determination from two physicians, one of whom must be the attending physician, who have personally examined the person.

Serious medical condition is defined as A) a terminal condition; B) a permanently unconscious condition; C) a condition in which the administration of life-sustaining procedures would not benefit the patient's medical condition and would cause permanent and severe pain; and D) a progressive illness that will be fatal and is in an advanced stage; the person is consistently and permanently unable to communicate by any means, to swallow food and water safely, to care for the person's self, and to recognize the person's family and other people; and it is very unlikely that the person's condition will substantially improve.

We used Oregon law as the model for SB 291. It allows an individual to decide for themselves what they want done or not done in each of these situations. Oregon law was cited in that JAMA study as respecting the wishes of the patient.

Section eight of the bill sets out the conditions under which life sustaining procedures can be withheld or withdrawn when an individual does not have an advance directive.

Section seven makes it clear that nothing in this chapter is intended to condone, authorize or approve mercy killing or assisted suicide.

SB 291 will take Alaska into the 21st century with a law that allows individuals to make decisions regarding health care with more assurance that those wishes will be carried out in the event they are unable to speak for themselves.

FAX/Memorandum (Page 1 of 1)

To: Ralph - Senator Taylor's Office

From: Matt Anderson, EMS Unit Manager

Date: 2/24/98 4:03 PM

Subject: Clarification: "Serious Medical Condition" vs. "Qualifying Medical Condition"

SB 291 would extend most activities which previously were limited to patients with a "terminal condition" to those who are in a "serious medical condition." The latter phrase seems adequately defined.

We believe that the phrase "serious medical condition" is used so frequently, and in so many different contexts, that most readers of the statute will not feel the need to look for its definition and will, instead, make assumptions about eligibility for enrollment in the state's do-not-resuscitate program.

In contrast, the phrase "qualifying medical condition" is equally specific in meaning and encourages the reader to look for the definition.

Since the intent of bill includes extending some of its provisions to those included in the proposed definition of "serious medical condition," it is imperative that the reader be directed to the definition. We believe the change in phrases to "qualifying medical condition" does that without modifying the intent of the legislation.

Please give me a call if you have any questions about this issue.

Post-It® Fax Note 7671	Date 2/24/98 # of pages ▶ 1
To Ralph	From TERRY B.
Co./Dept. Sen. Taylor	Co. LAA LEGAL
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Fax #	Fax #

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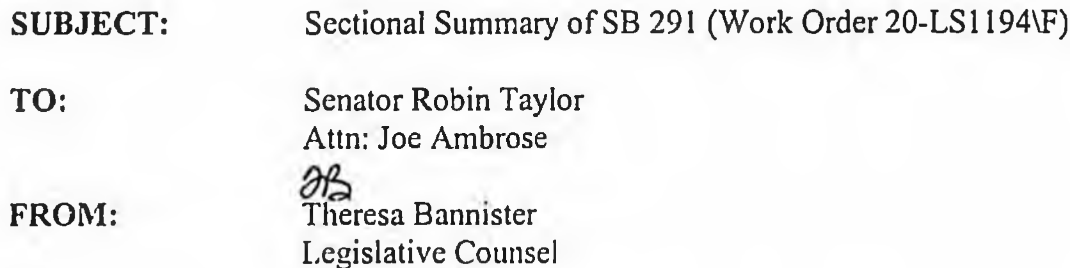
MEMORANDUM — February 23, 1998



SUBJECT: Sectional Summary of SB 291 (Work Order 20-LS1194\F)

TO: Senator Robin Taylor
Attn: Joe Ambrose

FROM: Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Makes amendments conforming AS 13.26.344(l) to the bill's new provisions in AS 18.12.

Section 2. Enlarges the scope of a declaration to include directions regarding artificially administered nutrition and hydration. Changes the test for when a declaration is given operative effect.

Section 3. Rewrites the recommended contents of a declaration.

Section 4. Indicates how long a declaration is effective.

Section 5. Directs the attending physician to record the condition of the declarant and the contents of the declarant's declaration in the declarant's medical record when the physician has determined that the declarant is in a serious medical condition.

Section 6. Directs certain persons to provide certain specified care to patients from whom life-sustaining procedures or artificially administered nutrition and hydration are withheld or withdrawn.

Section 7. States that the chapter does not condone, authorize, or approve mercy killing or permit certain acts or omissions to end life. States that the withholding or withdrawing of a life-sustaining procedure or artificially administered nutrition and hydration under the chapter does not constitute a suicide, assisting a suicide, mercy killing, or assisted suicide.

Section 8. AS 18.12.093 establishes the conditions for withholding or withdrawing life-sustaining procedures from incapable persons who do not have declarations. AS 18.12.095

establishes a presumption that certain persons have consented to artificially administered nutrition and hydration, establishes exceptions to that presumption, and establishes the conditions for withholding or withdrawing artificially administered nutrition and hydration.

Section 9. Amends the definition of "life-sustaining procedure."

Section 10. Amends the definition of "qualified patient."

Section 11. Amends the definition of "terminal condition."

Section 12. Adds definitions to AS 18.12.

Section 13. Repeals a subsection that sec. 7 of the bill now addresses.

If I may be of further assistance, please advise.

TLB:jdr
98-101.jdr

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 291

Revision Date (Note if correction)		Dept. Affected	Law
Title	An Act relating to living wills, do not resuscitate orders, anatomical gifts, and the care and treatment of persons ...	BRU	Civil Division
		Component	Human Services
Sponsor	Senator Taylor		
Requester	Senate Judiciary Committee	Component Serial No.	2208

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: ______

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

SB 291 amends Title 18, Chapter 12, relating to living wills and do not resuscitate orders. The Department of Law's Human Services attorneys are often called upon by the Division of Senior Services and the Long Term Care Ombudsman to provide advice regarding these issues. SB 291 is not anticipated to increase this workload, and will have no fiscal impact on the department.

Prepared by	Joan M. Kasson	Phone	465-5370
Division	Attorney General's Office	Date	2/17/98
Approved by Commissioner	Bruce M. Botelho, Attorney General	Date	2/17/98
Agency	Department of Law		

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THE CHASE REVIEW

[illegible] the author's seriousness of purpose and ensures that the court is not being asked to make a life-or-death decision based upon casual remarks." *In re O'Connor*, 72 N.Y.2d at 531, 531 N.E.2d at 613.

Among the typical reasons for choosing a health care proxy rather than a Living Will is the flexibility of the proxy. For example, a proxy provides a mechanism for making many types of health care decisions at the time when a decision must be made. A Living Will, to be effective, must set forth the maker of the Will's decisions with respect to medical treatment prior to his or her incompetency and before decisions need to be made. In addition, a proxy allows for decisions about all aspects of health care. A proxy is not limited to decisions regarding life sustaining treatment and may encompass many other kinds of care the individual may need.

Nevertheless, a Living Will can be extremely important in several respects. First, it does provide a mechanism which allows the patient to specify with clarity his or her wishes regarding life sustaining medical treatment rather than relying upon the decisions of a health care agent. Second, the Living Will provides evidence of the patient's wishes regarding the refusal of medical treatment, which evidence should meet even the strict "clear and convincing" standard adopted by some states. Therefore it should be respected by other jurisdictions as well as the one under whose laws it was executed. As indicated, it is not clear whether a health care agent has the power to act in a jurisdiction which has not enacted a health care proxy statute. Even if it has such a statute, it is not certain what the effect may be if the other jurisdiction prescribes a form, a method of execution or a time limit for using the proxy which is different from that specified by the law governing the form actually executed by the patient. For instance, some states limit the agent's authority. *See, e.g.*, Cal. Civ. Code § 2435 (prohibiting, among other acts, consent to psychosurgery and abortion). Nonetheless, it could well be that a patient's direction on these matters would be binding.

Most important, health care proxies and Living Wills are not incompatible. Indeed, it may be possible to incorporate both in the same document. *See* the Appendix for a sample form of instrument (not effective in all jurisdictions) which includes both a Living Will and a health care proxy.

CONTENTS OF THE LIVING WILL

The Living Will should state completely and explicitly those areas of health care about which the individual has made definite decisions as to whether he or she wishes, or does not wish, to refuse the treatment.[6] Moreover, the individual should decide whether any desired treatment is to be tried only for a limited period of time and then discontinued if significant improvement is not made after that period of time.

The American Medical Association has prepared a Medical Directive[7] which sets forth in simple chart form common treatments and procedures (from blood transfusions to the use of pain medications) on which an individual records whether he or she definitely wants a particular medical treatment, does not want it, is undecided about it, or wants the treatment tried (at least for a time). The Medical Directive also suggests that these "common" decisions be made based upon various "scenarios", from a persistent vegetative state to one in which the individual suffers from some brain damage which impairs the ability to recognize people and to communicate understandably, but does not have a terminal illness. Many practitioners will find reviewing the "Medical Directive" helpful in counseling clients as to the types of decisions which they should consider expressing in a Living Will.

There are three areas in which it seems to be of particular importance that the individual state a preference as to whether he or she wishes the treatment to be commenced and continued (at all costs), whether it should be tried, but continued only if there is significant improvement or not administered at all. These are: (1) providing artificial nutrition and hydration (the termination of which will end life in a relatively short time); (2) administering pain medications even though they may hasten death and/or retard consciousness; and (3) use of other means of prolonging life (such as mechanical breathing machines, kidney dialysis, and organ transplants) especially those which can be extremely expensive. In some jurisdictions, such as New York, a health care agent may make a decision about artificial nutrition and hydration only if the patient's wishes in that regard are reasonably known or can be reasonably ascertained with diligence. N.Y. Pub. Health Law § 2982(2)(B). In fact, New York encourages an individual to state in the proxy his or her wishes regarding artificial nutrition and hydration and other specific areas of health care. N.Y. Pub. Health Law § 2981(5)(D).

These statements should be as specific as is practicable under the circumstances. Even if the decision is to attempt to prolong life for as long as possible, that should be stated explicitly in the Living Will. If the indi-

vidual is unsure of his or her wishes in a particular area, that lack of assurance should be expressly stated so that other language in the Living Will or other evidence is not used to "construe" what the individual wished.

For many people these decisions are extremely difficult to make. Certain clients will prefer that others make them when they are no longer able to do so. Further, the Living Will cannot cover every conceivable circumstance which may arise. Therefore, individuals should also consider executing a health care proxy.

Although the Supreme Court indicated in the *Cruzan* case that a person could designate someone to make health care determinations, such as the termination of artificial hydration and nutrition, it did not state whether the designee could be empowered to make less "drastic" decisions, such as placing the individual in a permanent health care facility (e.g., a nursing home) when the individual is not terminally ill but has lost the capacity to make such decisions. State law often does not expressly provide whether a medical attorney-in-fact may make such decisions. Unless proscribed by state law, it may be appropriate to consider adding to the document an express provision covering the authority of the surrogate decisionmaker in this (or similar) situations. Where it is not certain that this can be done, it is appropriate, as it generally is in the proxy, to ensure that a "severability" clause is added.

In addition to discussing an individual's wishes regarding health care, the Living Will should state explicitly that the document is intended to constitute a statement which is an expression of the wishes and directions of the individual as to his or her health care in the event that he or she is unable to make those decisions. It should specify that it is intended to be binding upon all persons, including the individual's physician, other health care providers and family. Furthermore, whether or not the Living Will is contained in the same document as the health care proxy, it should state explicitly whether the wishes and directions contained in the Living Will are, or are not, binding upon any health care agent or whether the health care agent is to have the authority to override the Living Will in some or all circumstances. The Living Will also should state whether or not the individual intends the document to expire and, if so, when.

If state law provides how a Living Will is to be executed, that method should be followed precisely. If state law does not set forth the formalities for execution, it is recommended that the instrument be dated, signed at the end by the individual, witnessed by at least two persons, who, as in the case of a Last Will and Testament, set forth their addresses, and that it contain an attestation or acknowledgment provision which is completed by a notary public. The instrument should also contain a statement immediately before the witnesses' signatures that they personally know the individual, that he or she appears to be over the age specified by state law to execute such an instrument (18 years in almost all jurisdictions in the United States) and of sound mind, and that the person has executed the document willingly and free of duress.

Unless prohibited by state law, the Living Will should also contain a "severability" clause.

CONTENTS OF THE HEALTH CARE PROXY

Some states, such as California, have extraordinarily complex and "strict" rules governing the contents of a health care proxy. For example, in California, any printed form of durable power of attorney for health care intended for use by someone who is not receiving the advice of a lawyer, must contain a warning, prescribed in the statute, printed in ten point boldface type. Cal. Civ. Code § 2433. Although, as indicated above, it would appear that a majority of the Supreme Court at the time it decided the *Cruzan* case would have held that there was a constitutional right to appoint a surrogate decisionmaker for health care purposes, it is uncertain whether the Court would hold that a state statute which prescribed strict procedural requirements regarding the form, contents, method of execution and duration of a health care proxy was forbidden by the Constitution. However, since the Supreme Court in *Cruzan* allowed a state to prescribe a standard of evidence for a direction as to health care decisions that is "higher" than that usually applied in civil cases, it is probable that the Court would also uphold a state's right to prescribe a certain form, etc. for a health care proxy. Accordingly, it seems prudent for practitioners to attempt to use a form which complies exactly with the statutory rules of the jurisdiction. Nevertheless, as will be discussed below, it is unclear whether a health care proxy executed in accordance with the formalities of one jurisdiction will be respected in another.

Although the laws of some states (such as California) offer the alternative of witnessing or "notarizing" the health care proxy or durable power of attorney for health care, it seems best, where practicable, that the [illegible] be both witnessed and "notarized."

Death with dignity remains an illusion

■ A national study finds that many doctors aren't following patients' requests to let them die

By SUSAN GILBERT
New York Times News Service

After 25 years of public outcry about the right to die with dignity, doctors still are ignoring patients' last wishes, according to a new study of terminally ill patients.

The study, reported in the current issue of The Journal of the American Medical Association, has found that doctors often misunderstand or ignore the patients' requests, with the result that large numbers of people still die alone, in pain and tethered to mechanical ventilators in intensive-care units.

Twenty-five years since the living will movement began, the study's authors say they have discovered that the wills, which are supposed to give terminally ill patients legal safeguards against unwanted medical treatment, offer virtually no protection.

The study also found that increasing communication between doctors and patients did not help. "People think advance directives are solving the problem," said Dr. William Knaus, one of the researchers who directed the study.

"We have very good information that they aren't, that nothing has changed — the amount of pain at the end of life, the number of people dying alone attached to machines."

The $28 million study, financed by the Robert Wood Johnson Foundation, took place at six medical centers around the

Please turn to

THE OREGONIAN, WEDNESDAY, NOVEMBER 22, 1995

Death: 50 percent spend last days in pain, study says

■ Continued from Page One

country. It was divided into two parts, each one lasting two years and involving similar groups of terminally ill patients.

During the first phase, the researchers gathered base-line information, including the percentage of patients who did not want aggressive medical treatment such as cardiopulmonary resuscitation and mechanical ventilation, the percentage of doctors who knew their patients' wishes, how often aggressive treatment was used and how much pain patients were in before they died.

Thirty-one percent of patients said they did not want cardiopulmonary resuscitation, but 80 percent of the doctors misunderstood or ignored their patients' wishes.

Forty-nine percent of the patients who wanted to avoid cardiopulmonary resuscitation by having their doctors write do-not-resuscitate orders did not get their wish.

Half the patients spent eight or more days in what the researchers defined as an undesirable state — comatose or receiving mechanical ventilation in an intensive-care unit. Half of all patients were also in moderate to severe pain during their last three days of life.

The second phase of the study tested a system called Support, designed to help patients avoid pain and unwanted treatments by fostering better communication between them and their doctors.

After phase two, there was no overall change in the percentage of do-not-resuscitate "requests" that were written, the amount of time it took for doctors to write them, the number of days that dying patients spent in undesirable states and the percentage of patients who died in pain.

"The findings were startling to us," said Knaus, who is chairman of the department of health evaluation sciences at the University of Virginia in Charlottesville.

Dr. Susan W. Tolle, director of the Center for Ethics in Health Care at Oregon Health Sciences University, said the end-of-life picture is not nearly as gloomy in Oregon.

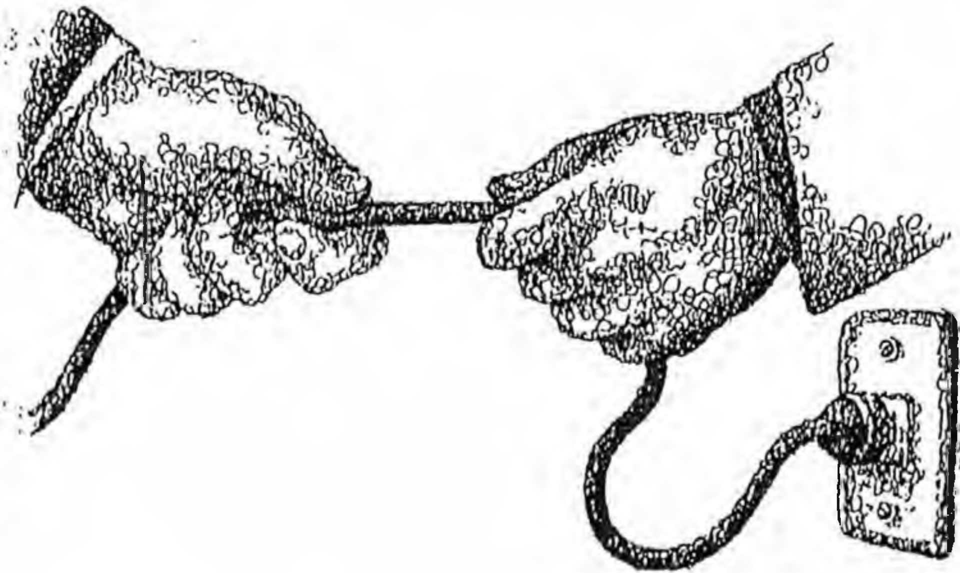
Tolle said 90 percent of the adults who die at University Hospital have made arrangements for physicians not to resuscitate them. Tolle said the figure indicates that advance planning is the rule among Oregonians rather than the exception.

Tolle said special training programs encourage Oregon doctors to find out what kind of care their patients want as they reach the end of their lives. Oregon has progressive laws requiring physicians to administer as many drugs as necessary to ease a patient's pain. Also, she said, public debate over a physician-assisted suicide measure has heightened people's awareness about the rights of terminally ill patients.

The Boston Globe

THE BOSTON GLOBE • THURSDAY, JUNE 28, 1990

The high-tech twilight zone


GEOFFREY MOSS ILLUSTRATION

ELLEN GOODMAN

If you are headed for Missouri – a layover in St. Louis, a weekend in Kansas City – let me suggest that you pack a little something extra in your baggage. A Living Will, for example.

Better yet, a signed and notarized Durable Power of Attorney. Or perhaps a checklist of 30 life-sustaining treatments and your personal attitudes toward them.

You might be wise to send copies of these to a lawyer and to a member of your family. And be sure to tell them that if get sick or have an accident in Missouri, they'd better get your body out of the state as quickly as possible.

This traveler's advisory comes to you courtesy of the Supreme Court. On Monday, the court ruled that people do have the right to stop medical treatment, but only if they are conscious and competent or have left "clear and convincing evidence" of what they want. Otherwise, you may have no more rights than a museum exhibit, a comatose testimony to some state's definition of "life."

If you are like Nancy Cruzan, for example, 25 years old at the time of a car crash, you could end up in a permanent vegetative state for 10, 20, 30 years with no way out. If you are struck down without leaving behind a full record of your attitudes about the major bioethics questions of the day, you could become, as Justice Brennan put it in his eloquent dissent, "a passive prisoner of medical technology."

This is the bottom line in the case of Joe and Joyce Cruzan's daughter. She has spent the seven unconscious years in a Missouri hospital being fed what the nurses call "supper" through a feeding tube. It's the case as well for Christine Busalacchi, a 20-year-old patient in the same hospital, who is wheeled in the same unconscious state to "music therapy" where they play gospel to the former fan of heavy metal.

The court ruled that Nancy had not made her wishes known clearly enough. She had only talked about life and death the way most of us do, conversationally, casually. She "wouldn't want to live that way." She "didn't want to live as a vegetable."

Without more certainty, the majority ruled that Missouri's right to protect "life" was greater than the family's right to defend her "liberty" from medical treatment. In a striking passage, Justice Rehnquist said that there is "no automatic assurance that the view of close family members will necessarily be the same as the patient's."

In short, the state was more trustworthy than the family. Especially the state of Missouri, which has set itself on the extreme end of the pro-life spectrum.

"Once you become incompetent, you're out of it, and your family's out of it" says Boston University bioethicist George Annas. "The view of the court is that Nancy Cruzan should exist to protect the state's unqualified interest in life. That it's always better to be alive than dead. You can treat someone without her consent, but you can't *stop* treating her without consent."

This decision cannot help but raise the anxiety of Americans who have come to regard the end of life, the high-tech "twilight zone," with fear and loathing. For the overwhelming majority of Americans, some 70 to 80 percent, death comes after a series of decisions between patients, families and doctors about treatments to begin, try, end. For each American in a Cruzan-like condition, there are many more who are or will become incompetent before they die.

"I think it is important for people to know they will not lose control at the end," says Susan Wolf, an ethicist at the Hastings Center. "That knowledge allows people to keep going."

Indeed, without that assurance, we may see more preemptive suicides by people like Janet Adkins, who sought out the so-called suicide machine before she would lose her mind to Alzheimer's. We will also, surely, see doctors who hesitate to try experimental treatments out of fear they can't be ended.

Missouri is so far the most intrusive state but the court gives the green light to others. In the meantime, the Cruzans' only hope for an end to the intrusive treatment is to move their daughter, perhaps down the road to Arkansas.

Once, in the '70s, there were families that took a brain-dead child from one state to another that recognized this death. In the 1990s, we may have to shop again for a state that will allow patients and families to end treatment without a suitcase full of documents.

For now, however, a recommendation. The Living Will. Don't leave home without it.

Ellen Goodman is a Globe columnist.

News 7/27/95

Living wills not always binding

❑ **Dear Ann Landers:** Last year, I buried my 91-year-old father. After recurring bouts of cancer, he suffered a stroke. To see this once-vital man reduced to such a condition was heartbreaking.

The doctor insisted on inserting a permanent feeding tube. I explained that my father had made provisions for his care in such an event and did not want to continue his life that way. The doctor's reply was "Do you want your father to starve to death?"

The shock of being the sole caretaker for my 85-year-old mother, and now a dying father, was too much for me. I let the feeding tube be inserted. My father died in the ambulance on the way to the nursing home.

Ann, please tell your readers that the person making the medical decisions for an ill person must be very strong. And just as important as a living will is a medical power of attorney. Without it, a living will doesn't always hold much weight. -- Virginia in Farmington, Mich.

Dear Virginia: I received a great deal of mail after my column on the Medical Directive appeared. Many readers made a point of saying that living wills are not binding in every state and, even when they are honored, the laws often change.

One woman let me know that her grandmother had made specific provisions in her living will for pain killers, but when the time came, her doctor refused her request. Another reader sent alarming information about how unrelated people can file suit in court to prevent a person from terminating medical treatment, even though they have no personal involvement in the situation.

The next letter might provide some help:

❑ **Dear Ann Landers:** Your informed and compassionate

ANN LANDERS

column about living wills and the Medical Directive gave millions of Americans invaluable information about the medical choices available to them at the end of their lives.

The Medical Directive is quite comprehensive and includes a power-of-attorney form, an organ-donor form and a place for a physician's signature. However, some states have their own requirements that may not be covered in the Medical Directive. For this reason, we recommend that people attach a state-specific form to their Medical Directive.

State-specific advance directives are available free of charge from state health departments, local hospitals and state bar associations. Choice in Dying will also provide a copy of a state-specific advance directive to anyone who writes us at Choice in Dying, 200 Varick St., New York, N.Y. 10014 or calls our toll-free number: 1-800-989-WILL.

Thank you, Ann, for getting the word out. — Karen Orloff Kaplan, executive director, Choice in Dying

Dear Karen Kaplan: Thank you for your fine suggestion. For my readers who may have missed it the last time, you can order the Medical Directive (two for $6; five for $11) by writing to The Medical Directive, P.O. Box 6100, Holliston, Mass. 01746-6100.

For five years 22-year-old Christine Busalacchi has lain in a Missouri medical facility in what her doctors call a "persistent vegetative state."

Eventually the case wound up in court. The doctors petitioned to withdraw nonbeneficial medical care; the court declined to intervene. Six months later, still comatose but receiving aggressive treatment, Helga died. Her treatment cost in excess of $700,000, paid for by her insurance and Medicare.

"If we have the right to keep a comatose woman on a respirator for over a year, then how does that justify the *lack* of health care for so many others?" Dr. Miles asks.

No Easy Answers

It's true that the financial toll of maintaining a terminally ill patient has become mind-boggling. Life-support costs range widely, up to or even exceeding $2,000 a day, and these patients take up needed space in intensive-care units.

The emotional cost to families is also immeasurable. Many have likened it to "living in a funeral home, waiting for the funeral."

As serious as these problems are, even worse ones could result from legalized euthanasia. In the Netherlands—where mercy killing is technically illegal but openly practiced—some people are worried. The guidelines for "justified euthanasia," spelled out by the Dutch courts, say the patient must request death and that his condition must be irreversible. Frits Wester, a spokesman for The Netherlands Christian Democrats party and a leading voice against euthanasia, says: "We get a lot of letters from old people who are afraid to go in hospital because they're afraid somebody will kill them."

Other critics point to a possible slide from "voluntary" death toward coerced death, instigated either by medical personnel who deem a patient too costly to maintain, or by family members who may want to speed up inheritance.

In this country more than a million deaths occur in institutions annually; 70 percent of them are the result of a noncontroversial decision not to medicate, operate or resuscitate. Although only about 12 to 20 cases a year actually end up in court, those that do can alter state and Federal laws, as occurred in the now-historic Cruzan case. Nancy Cruzan had lain for eight years in a Missouri Rehabilitation Center (the same one now housing Christine Busalacchi), while her family fought the state all the way to the U.S. Supreme Court for permission to remove her feeding tube in accordance with her own previously stated wishes. They won, and the ruling became a major catalyst for the Patient Self-Determination Act *(see below)*.

Who Plays God?

Even so, the controversy continues to rage. At one end of the debate are people who believe the Hippocratic oath compels physicians *always* to prolong life—never to assist, even passively, in cutting it short. At the other extreme—Derek Humphry and his suicide manual, *Final Exit*; Dr. Jack Kevorkian and his "suicide machine"—are those who believe assisted suicide is an act of mercy. In the middle are people who feel that withholding life support in accordance with a patient's instructions is acceptable, while actively helping someone to die is not.

Opinions may be shifting. In a recent Washington State referendum a proposition calling for physician-assisted euthanasia was defeated by only a narrow margin. Like it or not, Americans are being brought face to face with the issue of dying. Although no one can choose *whether* to die, more and more we are being given a choice of *how* (or how not) to die. Signing a living will and naming a medical proxy can help insure that our wishes will be carried out. ■

"Advance Directives" Advice

If you check into a hospital, expect to be asked about your "advance directives." This query is required by the 1990 Federal Patient Self-Determination Act. You don't have to sign a living will, but you must be informed of that choice. Here's how to prepare advance directives on your own:

- ***Assign a health-care proxy and an alternate.*** **To do this, make out a health-care proxy form** ***(see below).*** **You don't need a lawyer, just two adult witnesses. Be sure that the people you name know your wishes and are willing to make life-and-death decisions for you.**
- ***Sign a living will.*** **Include what you *do* want as well as what you *don't*. For example: Don't say "no medication" if you would want painkillers. Instead, specify "comfort care." Update your living will and health-care proxy every year or so and alert your doctor to their existence. You can cancel your advance directives at any time.**
- ***Send for free living-will and health-care proxy forms.*** **Write to Choice in Dying, Box FC, 200 Varick St., New York, NY 10014. (For appropriate forms, specify your state.)** □

Ruven Afanador

Oregon Health Care System

Information for Patients About Healthcare Decisions

Including Advance Directive Form

By Federal law we are required to provide you the following information about your healthcare rights under Oregon law.

Every competent adult has the right to make fundamental decisions regarding his or her medical treatment. This includes the right to accept or refuse treatment and to prepare an advance directive.

This pamphlet describes the advance directive document available in Oregon. We encourage you to discuss this information with your physician, family members, friends and anyone else who may be involved if you become ill.

In some cases an illness or injury may prevent you from expressing your wishes regarding the medical care you would like to receive.

Oregon law allows you to use a legal document so you can retain control over the medical care you receive when you are unable to express your wishes. That document is called an Advance Directive.

Although the Advance Directive is a legal document, you do not need a lawyer to prepare it. This document, which accompanies this pamphlet, as the last six pages, has instructions that will aid you in completing it. Once you complete it, tear it out of this pamphlet and put it in a safe place. Give copies to family, friends and healthcare providers that are interested in your healthcare.

You are not required to complete this form and no healthcare facility will refuse to care for you or otherwise discriminate against you based on whether or not you have completed an Advance Directive. Regardless of your decision, it is important that you discuss your wishes with your relatives, close friends, spiritual advisor, attorney, physician and other caregivers. Open communication with people who care about you will greatly improve your chances of receiving the healthcare you want if you become unable to express your desires directly.

Health System

PSDA-008 (11/93)

Legacy Health System includes Bishop Morris Care Center, Emanuel Hospital & Health Center, Good Samaritan Hospital & Medical Center, Meridian Park Hospital, Mount Hood Medical Center, Legacy Visiting Nurse Association and CareMark/Managed HealthCare Northwest PPO.

Legacy Health System Statement

Legacy Health System is an organization of healthcare providers dedicated to caring, compassion and excellence.

We are committed as a healthcare system to enhance the quality of life by improving the health status of the communities we serve.

We are further committed to serving all in need within our resources. Our purpose is to provide and manage comprehensive, accessible, integrated healthcare services that emphasize clinical excellence, value and human sensitivity.

We respect the right of individuals to make healthcare decisions, including the right to accept or refuse medical or surgical treatment.

We are committed to serving all patients in need whether or not the patient has executed an Advance Directive.

While we are unable to witness the Advance Directive, you may contact the following departments if you have any questions:

Bishop Morris Care Center	Social Services	227-3791
Emanuel Hospital & Health Center	Social Services Patient Relations Pastoral Services	280-4103 280-4042 280-4151
Good Samaritan Hospital & Medical Center	Pastoral Services Social Services Patient Relations	229-7057 229-7629 229-2408
Legacy Visiting Nurse Association	Social Services	220-1000
Meridian Park Hospital	Admitting	692-2283
Mount Hood Medical Center	Community Health	661-9287

You should also make sure you speak with the following people about your Advance Directive:

- Family
- Close Friends
- Spiritual Advisor
- Physician
- Attorney

Your Right to Make Health Care Decisions in Oregon

Do I have to accept all medical treatment that is available? No. You have a right to accept or refuse any proposed medical tests or treatment.

How will I know how to decide? Your doctor will tell you what treatment or testing he or she recommends. Your doctor will also tell you that there may be alternatives and risks. if you want to know more, your doctor will tell you about the treatment or test, the available alternatives and the material risks. When you have enough information, you decide whether to have the test or treatment.

How can I plan ahead for a time when I may be unable to make decisions? Oregon has an official form you can sign to cover future situations where you are unable to decide. The form is called an Advance Directive. It has two main parts, one called "Health Care Instructions" and the other called "Appointment of Health Care Representative."

How can I control what health care I get if I become unable to make health care decisions? By completing the "Health Care Instructions" on the Advance Directive form. This lets you control the medical treatment you get and under what circumstances you will get it.

How do I appoint someone else to act for me? By making the "Appointment of Health Care Representative" on the Advance Directive form. This lets you select another adult as your representative. That person should be someone you trust to decide about your health care when you cannot do so yourself. Your representative cannot act for you unless you become unable to make your own decisions. You may also appoint an alternative representative. The representative and any alternate must sign the form agreeing to serve. The Advance Directive form lets you say what decisions those persons may make for you. It is a good idea to discuss your wishes with the person(s) you appoint.

How does an advance directive take effect? If you are an adult able to make your own decisions, you can sign an Advance Directive at any time. You do not have to fill out and sign the form if you do not want to. But if you do, your doctor must follow it or allow you to be transferred to a doctor who will. Signing the form will not affect your insurance.

How do I obtain and sign my advance directive? Health care facilities and some stationery stores have the official form. Lawyers and doctors may have one or help you obtain one. In Oregon, the only reliable way to be sure your wishes are followed is to use the official form. Read and follow the "Important Information" at the beginning of the form. If the printed form does not express your wishes, you may cross words out or write your own words in. Do not add anything about money or property. The form must be signed by you and two witnesses who must satisfy special requirements. Send a copy to your doctor and to the person you choose as a representative. Keep the original where it can be easily found.

How long does an advance directive remain in effect? You may write in an expiration date. If you do not, the form will be good until you revoke it. You may revoke it at any time and in any manner, but the best way is by notifying those who have your form. Unless you say otherwise on the form, a new Advance Directive takes priority over an older one. Your representative can withdraw at any time by notifying you or your doctor. Divorce revokes appointment of a spouse but you can reaffirm appointment by signing a new directive.

Are there any decisions my representative can make? Yes. Your representative may not decide about mental health treatment, sterilization, abortion, psychosurgery, shock treatment or mercy killing. You can make advance decisions about mental health treatment using an official form called a "Declaration for Mental Health Treatment," available from some stationery stores or your local mental health agency.

How will my representative make decisions for me? Your representative must act in the way you specify on an Advance Directive form. He or she must also

follow your known wishes. If your representative does not know what you want, he or she must act in your best interest. Your representative does not have to pay your medical bills.

Can my representative prevent or stop life support? Yes, if your Advance Directive form says so. If you have not given specific instructions, the law specifies four critical medical conditions in which your representative may decide about life support for you:

- Life support would not benefit you and would cause you permanent and severe pain;
- You are close to death and life support would only postpone the moment of your death;
- You are permanently unconscious; or
- You are in an advanced stage of a progressive, fatal illness.

The law also allows your representative to decide about life support in other circumstances you designate on the form. But you must get routine care for your cleanliness and comfort. Life support will not be prevented or stopped if your form says you would want it continued.

Can my representative order or stop food or water by tube? Yes, if your Advance Directive form says so. In addition, your representative may prevent or stop tube feeding if you have clearly said that you would refuse it. Otherwise, you must get tube feeding that would prolong your life, unless you have one of the four critical medical conditions that the law specifies. Your representative cannot refuse food or water you can take in a normal way.

How are decisions made for me if I do not have an official form? If you have one of the four critical medical conditions that the law specifies, an Oregon statute allows close relatives and friends to decide about life support for you. Otherwise, the law does not clearly identify the decisions that relatives or friends may make for you. Relatives, friends or others may seek clear authority from a court by being appointed your guardian.

Is an advance directive I signed under another state's law good in Oregon? Yes, if you did not live in Oregon when you signed it. Oregon residents may only use an Oregon form.

Are Oregon's earlier official forms still good? Yes. If you signed a "Power of Attorney for Health Care" or a "Directive to Physicians" before November 4, 1993 you can still use it. Even though the old forms are similar to the Advance Directive, there are some big differences:

- A Directive to Physicians says that you do not want life support which would only postpone your death when you are close to death. It does not cover any other situation.
- A Power of Attorney for health care allows your representative to stop life support if you checked the line on the form referring to "life sustaining procedures." It allows your representative to prevent or stop food and water by tube if you checked the line on the form referring to "artificially administered nutrition and hydration." Otherwise, the form allows your representative to forego tube feeding for you only if you have one of the four critical medical conditions that the law specifies.
- Unless you sign an Advance Directive, the directive to physicians remains in effect unless or until you revoke it. The Power of Attorney for health care expires after seven years unless you are already incapable when it expires.

How can I find out more? By calling Oregon Health Decisions, a private nonprofit corporation (241-0744 or toll free 1-800-422-4805), or by consulting an attorney.

NOTE: This statement reflects Oregon law effective November 4, 1993. It is a general summary of the rights of competent adults in Oregon. It does not contain all the technical details of the law. Also, it does not deal with decisions for minors, for those who are now mentally incapable, or about treatment outside Oregon.

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Advance Directive

You do not have to fill out and sign this form

PART A

Important Information About This Advance Directive

This is an important legal document. It can control critical decisions about your healthcare. Before signing, consider these important facts:

Facts About Part B (Appointing a Healthcare Representative). You have the right to name a person to direct your healthcare when you cannot do so. This person is called your "healthcare representative." You can do this by using Part B of this form. Your representative must accept on Part E of this form.

You can write in this document any restrictions you want on how your healthcare representative will make decisions for you. Your healthcare representative must follow your desires as stated in this document or otherwise made known. If your desires are unknown, your healthcare representative must try to act in your best interest. Your healthcare representative can resign at any time.

Facts About Part C (Giving Healthcare Instructions). You also have the right to give instructions for healthcare providers to follow if you become unable to direct your care. You can do this by using Part C of this form.

Facts About Completing this Form. This form is valid only if you sign it voluntarily and when you are of sound mind. If you do not want an Advance Directive, you do not have to sign this form.

Unless you have limited the duration of this Advance Directive, it will not expire. If you have set an expiration date and you become unable to direct your healthcare before that date, this Advance Directive will not expire until you are able to make those decisions again.

You may revoke this document at any time. To do so, notify your healthcare representative and your healthcare provider of the revocation.

Despite this document you have the right to decide your own healthcare as long as you are able to do so.

If there is anything in this document that you do not understand, ask a lawyer to explain it to you.

You may sign Part B, Part C or both parts. You may cross out words that do not express your wishes or add words that better express your wishes. Witnesses must sign Part D.

PRINT YOUR NAME, BIRTH DATE AND ADDRESS HERE:

____

Name Birth Date

____

Address

UNLESS REVOKED OR SUSPENDED, THIS ADVANCE DIRECTIVE WILL CONTINUE FOR:

Initial One: ____ My Entire Life ____ Other Period (____ Years)

PART B

Appointment of Healthcare Representative

I appoint ______________________ as my healthcare representative. My healthcare representative's address is ____
______________________________________ and my healthcare representative's telephone number is ____________________.

I appoint ______________________ as my alternate healthcare representative. My alternate healthcare representative's address is ______________________________
____
and my alternative healthcare representative's telephone number is ____________________.

I authorize my healthcare representative (or alternate) to direct my healthcare when I cannot do so.

Note: You may not appoint your doctor, an employee of your doctor or an owner, operator or employee of your healthcare facility unless that person is related to you by blood, marriage or adoption or that person was appointed before your admission into the healthcare facility.

1. Limits. Special conditions or instructions:
____
____

Initial if this applies:
____ I have executed a Healthcare Instruction or Directive to Physicians. My healthcare representative is to honor it.

2. Life Support. "Life support" refers to any medical means for maintaining life, including procedures, devices and medications. If you refuse life support, you will still get routine measures to keep you clean and comfortable.

Initial if this applies:
____ My healthcare representative **MAY** decide about life support for me. (If you do not initial this space, then your healthcare representative **MAY NOT** decide about life support.)

3. Tube Feeding. One sort of life support is food and water supplied artificially by medical device, known as tube feeding.

Initial if this applies:
____ My healthcare representative **MAY** decide about tube feeding for me. (If you do not initial this space, then your healthcare representative **MAY NOT** decide about tube feeding.)

SIGN HERE TO APPOINT A HEALTHCARE REPRESENTATIVE

____
Signature of Person Making Appointment

____
Date

PART C

Healthcare Instructions

Note: In filling out these instructions, keep the following in mind:

1. The term "as my physician recommends" means that you want your physician to try life support if your physician believes it could be helpful and then discontinue it if it is not helping your health condition or symptoms.

2. "Life support" and "tube feeding" are defined in Part B above.

3. If you refuse tube feeding, you should understand that malnutrition, dehydration and death will probably result.

4. You will get care for your comfort and cleanliness no matter what choices you make.

5. You may either give specific instructions by filling out Items 1 to 4 below or you may use the general instruction provided by Item 5.

Here are my desires about my healthcare if my doctor and another knowledgeable doctor confirm that I am in a medical condition described below:

1. **Close to Death.** If I am close to death and life support would only postpone the moment of my death:

A. **Initial One**

____I want to receive tube feeding.
____I want tube feeding only as my physician recommends.
____I **DO NOT WANT** tube feeding.

B. **Initial One**

____I want any other life support that may apply.
____I want life support only as my physician recommends.
____I want **NO** life support.

2. **Permanently Unconscious.** If I am unconscious and it is very unlikely that I will ever become conscious again:

A. **Initial One**

____I want to receive tube feeding.
____I want tube feeding only as my physician recommends.
____I **DO NOT WANT** tube feeding.

B. **Initial One**

____I want any other life support that may apply.
____I want life support only as my physician recommends.
____I want **NO** life support.

3. Advanced Progressive Illness. If I have a progressive illness that will be fatal and is in an advanced stage and I am consistently and permanently unable to communicate for any means, swallow food and water safely, care for myself and recognize my family and other people, and it is very unlikely that my condition will substantially improve:

A. **Initial One**

____I want to receive tube feeding.
____I want tube feeding only as my physician recommends.
____I DO NOT WANT tube feeding.

B. **Initial One**

____I want any other life support that may apply.
____I want life support only as my physician recommends.
____I want **NO** life support.

4. Extraordinary Suffering. If life support would not help my medical condition and would make me suffer permanent and severe pain:

A. **Initial One**

____I want to receive tube feeding.
____I want tube feeding only as my physician recommends.
____I **DO NOT WANT** tube feeding.

B. **Initial One**

____I want any other life support that may apply.
____I want life support only as my physician recommends.
____I want **NO** life support.

5. General Instruction.
Initial if this applies:

____ I do not want life to be prolonged by life support. I also do not want tube feeding as life support. I want my doctors to allow me to die naturally if my doctor and another knowledgeable doctor confirm I am in any of the medical conditions listed in Items 1 to 4 above.

6. Additional Conditions or Instructions.

____
____
____

Insert Description of What You Want Done

7. Other Documents. A "healthcare power of attorney" is any document you may have signed to appoint a representative to make healthcare decisions for you.

Initial one:

____ I have previously signed a healthcare power of attorney. I want it to remain in effect unless I appoint a healthcare representative after signing the healthcare power of attorney.

___ I have a healthcare power of attorney and, **I REVOKE IT.**
___ **I DO NOT** have a healthcare power of attorney.

____
Date

SIGN HERE TO GIVE INSTRUCTIONS

____
Signature

PART D

Declaration of Witnesses

We declare that the person signing this Advance Directive:

1. Is personally known to us or has provided proof of identity;
2. Signed or acknowledged that person's signature on this Advance Directive in our presence;
3. Appears to be of sound mind and not under duress, fraud or undue influence;
4. Has not appointed either of us as healthcare representative or alternative representative; and
5. Is not a patient for whom either of us is attending physician.

WITNESSED BY:

Signature of Witness	Date	Printed Name of Witness
______________________	______	______________________
______________________	______	______________________

Note: One witness must not be a relative (by blood, marriage or adoption) of the person signing this Advance Directive. That witness must also not be entitled to any portion of the person's estate upon death. That witness must also not own, operate or be employed at a healthcare facility where the person is a patient or resident.

PART E

Acceptance by Healthcare Representative

I accept this appointment and agree to serve as healthcare representative. I understand I must act consistently with the desires of the person I represent, as expressed in this Advance Directive or otherwise make known to me. If I do not know the desires of the person I represent, I have a duty to act in what I believe in good faith to be that person's best interest. I understand that this document allows me to decide about that person's healthcare only while that person cannot do so. I understand that the person who appointed me may revoke this appointment. If I learn that this document has been suspended or revoked, I will inform the person's current healthcare provider if known to me.

______________________________	________	______________________________
Signature of Healthcare Representative	Date	Printed Name of Healthcare Representative
______________________________	________	______________________________
Signature of Alternative Healthcare Representative	Date	Printed Name of Alternate Healthcare Representative

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/11/98

FURTHER: HESS

Date of 5-Day Notice: 2-19-98
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 2-26-98

Judiciary Committee considered SENATE BILL NO. 291

"An Act relating to living wills, do not resuscitate orders, anatomical gifts, and the care and treatment of persons with serious medical conditions."

and recommends:

[X] **be replaced with** ______ CS FOR SB 291 (JUD)
[ ] adopt **previous** ______ CS ______ (______)
[ ] attached amendment(s)
[ ] adopt Letter of Intent by ______ Committee
[ ] further referral to the ______ Committee

Senate Bill:
[X] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR* ______

SIGNING DO PASS	DP
[signature] Ellis	X
[signature]	✓
CHAIR: [signature] Taylor	✓

OTHER RECOMMENDATIONS	NR	DNP	AM
Mike Miller	✓		
[signature] Parnell	✓		
CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
HSS/EMS	2-20-98	✓	
LAW/CIVIC	2-17-98	✓	

(handwritten in margin beside entries: SB, & CS)

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL

No. 1
Bill Version: CSSB291(JUD)
(S) Publish Date: 2/26/98

Revision Date:
Title: An act related to living wills...
Sponsor: Senator Taylor
Requestor: Senate (JUD)

Dept. Affected: Health and Social Services
BRU: State Health Services
Component: Community Health/EMS Services
COMPONENT SERIAL NO. 2078
See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY99	FY00	FY01	FY02	FY03	FY04
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						
CHANGES IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY99	FY00	FY01	FY02	FY03	FY04
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

POSITIONS:

POSITIONS	FY99	FY00	FY01	FY02	FY03	FY04
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY98) cost: $0.0

ANALYSIS: (Attach a separate page if necessary)

The Section of Community Health will absorb the costs of revising and distributing the forms, training materials, regulations, and brochure to implement changes in the Alaska Comfort One Program which would be necessitated by passage of the bill.

2/20/98

Prepared by: Peter M. Nakamura, MD, MPH
Division: Public Health
Phone: 465-3090
Date: 02/20/98

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services
Date: 2/24/98

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For further distr[illegible] call the Governor's Legislative Office

FISCAL NOTE

No. 2
Bill Version: CSSB291(JUD)
(S) Publish Date: 2/26/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO.

Revision Date (Note if correction)
Title: An Act relating to living wills, do not resuscitate orders, anatomical gifts, and the care and treatment of persons ...
Sponsor: Senator Taylor
Requester: Senate Judiciary Committee

Dept. Affected: Law
BRU: Civil Division
Component: Human Services
Component Serial No.: 2208

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost:

POSITIONS

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

SB 291 amends Title 18, Chapter 12, relating to living wills and do not resuscitate orders. The Department of Law's Human Services attorneys are often called upon by the Division of Senior Services and the Long Term Care Ombudsman to provide advice regarding these issues. SB 291 is not anticipated to increase this workload, and will have no fiscal impact on the department.

Prepared by: Joan M. Kasson — Phone: 465-5370
Division: Attorney General's Office — Date: 2/17/98
Approved by Commissioner: Bruce M. Botelho, Attorney General — Date: 2/17/98
Agency: Department of Law

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FISCAL NOTE

No. 2
Bill Version: CSSB291(JUD)
(S) Publish Date: 2/26/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO.

Revision Date (Note if correction)

Dept. Affected: Law
Title: An Act relating to living wills, do not resuscitate orders, anatomical gifts, and the care and treatment of persons ...
BRU: Civil Division
Component: Human Services
Sponsor: Senator Taylor
Requester: Senate Judiciary Committee
Component Serial No. 2206

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost:

POSITIONS

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

SB 291 amends Title 18, Chapter 12, relating to living wills and do not resuscitate orders. The Department of Law's Human Services attorneys are often called upon by the Division of Senior Services and the Long Term Care Ombudsman to provide advice regarding these issues. SB 291 is not anticipated to increase this workload, and will have no fiscal impact on the department.

Prepared by: Joan M. Kasson
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Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: 2/17/98

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CS FOR SENATE BILL NO. 291(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR TAYLOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to living wills, do not resuscitate orders, anatomical gifts, and
2 the care and treatment of persons with serious medical conditions."
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
4 * **Section 1.** AS 13.26.344(l) is amended to read:
5 (l) In the statutory form power of attorney, the language conferring general
6 authority with respect to health care services shall be construed to mean that, as to the
7 health care of the principal, whether to be provided in the state or elsewhere, the
8 principal authorizes the agent to
9 (1) have access to and disclose to others medical and related
10 information and records;
11 (2) consent or refuse to consent to medical care**, including the**
12 **withholding or withdrawal under AS 18.12.093(b) of life-sustaining procedures,**
13 or relief for the principal from pain [, BUT THE AGENT MAY NOT AUTHORIZE
14 THE TERMINATION OF LIFE-SUSTAINING PROCEDURES];

1 (3) take all steps necessary to enforce a properly executed declaration
2 under AS 18.12;
3 (4) take all steps necessary to enforce a properly executed declaration
4 under AS 47.30.950 - 47.30.980 unless the principal has provided that an attorney-in-
5 fact appointed under AS 47.30.950 - 47.30.980 shall have exclusive authority with
6 regard to mental health treatment and the attorney-in-fact appointed under
7 AS 47.30.950 - 47.30.980 has not withdrawn;
8 (5) consent or refuse to consent to the principal's psychiatric care, but
9 the consent does not authorize a voluntary commitment or placement in a mental
10 health treatment facility, electroconvulsive or electric-shock therapy, psychosurgery,
11 sterilization, or an abortion except that, if the principal has properly executed a
12 declaration under AS 47.30.950 - 47.30.980, the agent may consent to voluntary
13 commitment or placement in a mental health treatment facility and electroconvulsive
14 or electric-shock therapy if that consent is consistent with the wishes expressed in the
15 declaration under AS 47.30.950 - 47.30.980 and if the principal has not designated
16 another attorney-in-fact to have exclusive authority to make decisions regarding mental
17 health treatment;
18 (6) arrange for care or lodging of the principal in a hospital, nursing
19 home, or hospice;
20 (7) grant releases to health care professionals or health care institutions;
21 (8) hire, discharge, or compensate an attorney, accountant, expert
22 witness, or assistant when the agent considers the action to be desirable for the proper
23 execution of the powers described in this subsection; and
24 (9) do any other act or acts that the principal can do through an agent
25 and that the agent considers desirable or necessary to provide for the principal's
26 physical or mental well-being.
27 * **Sec. 2.** AS 18.12.010(a) is amended to read:
28 (a) A competent person who is at least 18 years **of age** [OLD] may execute
29 a declaration at any time directing that life-sustaining procedures **or artificially**
30 **administered nutrition and hydration** be withheld or withdrawn from that person.
31 The declaration is given operative effect only if **it has been medically determined**

1 <u>**that the declarant is in a serious medical condition**</u> [THE DECLARANT'S
2 CONDITION IS DETERMINED TO BE TERMINAL] and <u>**that**</u> the declarant is not
3 able to make treatment decisions, except that, if the declaration contains an anatomical
4 gift under AS 13.50, the gift takes effect <u>**on**</u> [UPON] the death of the person. The
5 declaration shall be signed by the declarant, or another person at the declarant's
6 direction. If signed by another person at the declarant's direction, the signer shall sign
7 in the presence of two persons or a person who is qualified to take acknowledgments
8 under AS 09.63.010. A person may not charge a fee for preparing a declaration.
9 * **Sec. 3.** AS 18.12.010(c) is repealed and reenacted to read:
10 (c) A declaration may, but need not, be in the following form:
11 LIVING WILL DECLARATION
12 YOU DO NOT HAVE TO FILL OUT AND SIGN THIS FORM
13 Part A. Important Information About This Declaration.
14 This is an important legal document. It can control critical decisions
15 about your health care. Before signing, consider the following facts:
16 (1) You have the right to name a person to direct your health
17 care when you cannot do so. This person is called your "agent." You can do
18 this by executing a health care power of attorney as defined in Part B, Item (G)
19 of this document.
20 (2) This form is valid only if you sign it voluntarily. If you do
21 not want a declaration, you do not have to sign this form.
22 (3) Unless you have limited the duration of this declaration, it
23 will not expire. If you have set an expiration date and you become unable to
24 direct your health care before that date, this declaration will not expire until
25 you are able to make those decisions again.
26 (4) You may revoke this document at any time. Notify your
27 agent and your health care provider of the revocation.
28 (5) Despite this document, you have the right to decide your
29 own health care as long as you are able to do so. If there is anything in this
30 document that you do not understand, ask a lawyer to explain it to you.
31 (6) You may cross out words that do not express your wishes

or add words that better express your wishes. Witnesses or a person qualified to take acknowledgments under AS 09.63.010 must sign where indicated.

Print your name, birth date, and address here:

Name ______________________________

Birth date ______________________________

Address ______________________________

Unless revoked or suspended, this declaration will continue for

INITIAL ONE:

_______ My entire life;

_______ Other period (_______ years).

Part B. Health Care Instructions.

NOTE: In filling out these instructions, keep the following in mind:

(1) the term "as my physician recommends" means that you want your physician to try life support if your physician believes it could be helpful and then discontinue it if it is not helping your health condition or symptoms;

(2) "life support" and "tube feeding" are defined as follows:

(A) "life support" refers to any medical means for maintaining life, including procedures, devices, and medications; if you refuse life support, you will still get routine measures to keep you clean and comfortable;

(B) "tube feeding" is food and water supplied artificially by medical device; if you refuse tube feeding, you should understand that malnutrition, dehydration, and death will result;

(3) you will get care for your comfort and cleanliness no matter what choices you make;

(4) you may either give specific instructions by filling out Items (A) - (D) below, or you may use the general instructions provided by Item (E).

Here are my desires about my health care if my doctor and another knowledgeable doctor determine that I am in a medical condition described below:

1 (A) Close to Death. If I am close to death and life
2 support would only postpone the moment of my death
3 INITIAL ONE:
4 _______ I want to receive tube feeding;
5 _______ I want tube feeding only as my physician recommends;
6 _______ I DO NOT WANT tube feeding.
7 INITIAL ONE:
8 _______ I want any other life support that may apply;
9 _______ I want life support only as my physician recommends;
10 _______ I WANT NO life support.
11 (B) Permanently Unconscious. If I am unconscious and
12 it is very unlikely that I will ever become conscious again
13 INITIAL ONE:
14 _______ I want to receive tube feeding;
15 _______ I want tube feeding only as my physician recommends;
16 _______ I DO NOT WANT tube feeding.
17 INITIAL ONE:
18 _______ I want any other life support that may apply;
19 _______ I want life support only as my physician recommends;
20 _______ I WANT NO life support.
21 (C) Advanced Progressive Illness. If I have a
22 progressive illness that will be fatal and the illness is in an advanced
23 stage and I am consistently and permanently unable to communicate by
24 any means, to swallow food and water safely, to care for myself, and
25 to recognize my family and other people, and if it is very unlikely that
26 my condition will substantially improve
27 INITIAL ONE:
28 _______ I want to receive tube feeding;
29 _______ I want tube feeding only as my physician recommends;
30 _______ I DO NOT WANT tube feeding.
31 INITIAL ONE:

1 _______ I want any other life support that may apply;
2 _______ I want life support only as my physician recommends;
3 _______ I WANT NO life support.
4 (D) Extraordinary Suffering. If life support would not
5 help my medical condition and would make me suffer permanent and
6 severe pain,
7 INITIAL ONE:
8 _______ I want to receive tube feeding;
9 _______ I want tube feeding only as my physician recommends;
10 _______ I DO NOT WANT tube feeding
11 INITIAL ONE:
12 _______ I want any other life support that may apply;
13 _______ I want life support only as my physician recommends;
14 _______ I WANT NO life support.
15 (E) General Instructions.
16 INITIAL IF THIS APPLIES:
17 _______ I do not want my life to be prolonged by life support.
18 I also do not want tube feeding as life support. I want my doctors to
19 allow me to die naturally if my doctor and another knowledgeable
20 doctor determine I am in any of the medical conditions listed in Items
21 (A) - (D) above.
22 (F) Additional Conditions or Instructions.
23 ____
24 ____.
25 (G) Other Documents. A "health care power of
26 attorney" is any document you may have signed under the power of
27 attorney laws of Alaska to appoint an agent to make health care
28 decisions for you.
29 INITIAL ONE:
30 _______ I have previously signed a health care power of
31 attorney; I want it to remain in effect unless I appoint another agent

1 after signing the health care power of attorney.

2 _______ I have a health care power of attorney and I REVOKE
3 IT;

4 _______ I DO NOT have a health care power of attorney.

5 (H) Organ Donations. Notwithstanding the other
6 provisions of this declaration, if I have donated an organ under this
7 declaration or by another method, and if I am in a hospital when a do
8 not resuscitate order is to be implemented for me, I do not want the do
9 not resuscitate order to take effect until the donated organ can be
10 evaluated to determine if the organ is suitable for donation.

11 OPTIONAL: In the event of my death, I donate the following
12 part(s) of my body for the purposes identified in AS 13.50.020:

13 _______ Any needed organ or tissue

14 Tissue:

15 _______ Eyes

16 _______ Bone and connective tissue

17 _______ Skin

18 _______ Heart

19 _______ Other: ______________________________

20 Limitations: ______________________________

21 Organ:

22 _______ Heart

23 _______ Kidney(s)

24 _______ Liver

25 _______ Lung(s)

26 _______ Pancreas

27 _______ Other: ______________________________

28 Signed this __________ day of ________________, __________.

29 Signature______________________________

30 Place______________________________

31 If another person is to sign for the declarant at the declarant's

1 direction, the person signing for the declarant must sign in the presence
2 of two persons or a person who is qualified to take acknowledgments
3 under AS 09.63.010. The witness form below may be used for the two
4 witnesses. The acknowledgment form below may be used for the
5 person qualified to take acknowledgments.

6 WITNESS FORM

7 Witness ______________________________

8 Address ______________________________

9 Witness ______________________________

10 Address ______________________________

11 ACKNOWLEDGMENT FORM

12 State of ______________________________

13 ________________ Judicial District

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

16 ______________________________

17 Signature of Person Taking
18 Acknowledgment

19 ______________________________

20 Title or Rank

21 ______________________________

22 Serial Number, if any.

23 * **Sec. 4.** AS 18.12.010 is amended by adding new subsections to read:

24 (e) Unless the period of time that a declaration is to be effective is limited by
25 the terms of the declaration, the declaration continues in effect until the declarant dies
26 or the declaration is revoked under AS 13.50.050 or AS 18.12.020, whichever event
27 occurs first.

28 (f) Notwithstanding (e) of this section, if the declarant is an incapable person
29 at the expiration of the term of the declaration, the declaration continues in effect until
30 the declarant is no longer an incapable person or the declarant dies.

31 * **Sec. 5.** AS 18.12.030 is amended to read:

1 **Sec. 18.12.030. Recording determination of [TERMINAL] condition and**
2 **contents of declaration.** When an attending physician who has been provided a copy
3 of a declaration determines that the declarant is in a <u>serious medical</u> [TERMINAL]
4 condition, the physician shall record that determination and the contents of the
5 declaration in the declarant's medical record.
6 * **Sec. 6.** AS 18.12.040(b) is repealed and reenacted to read:
7 (b) Persons caring for a patient from whom life-sustaining procedures or
8 artificially administered nutrition and hydration are withheld or withdrawn shall
9 provide care to ensure the patient's comfort and cleanliness, including
10 (1) body hygiene, including oral hygiene;
11 (2) reasonable efforts to offer food and fluids orally;
12 (3) medication, positioning, warmth, appropriate lighting, and other
13 measures to relieve pain and suffering; and
14 (4) privacy and respect for the dignity and humanity of the patient.
15 * **Sec. 7.** AS 18.12.080(a) is repealed and reenacted to read:
16 (a) Nothing in this chapter is intended to condone, authorize, or approve mercy
17 killing or to permit an affirmative or deliberate act or omission to end life, other than
18 to allow the natural process of dying. The withholding or withdrawing of a life-
19 sustaining procedure or of artificially administered nutrition and hydration under this
20 chapter does not, for any purpose, constitute a suicide, assisting a suicide, mercy
21 killing, or assisted homicide.
22 * **Sec. 8.** AS 18.12 is amended by adding new sections to read:
23 **Sec. 18.12.093. Withholding or withdrawal of life-sustaining procedures**
24 **from incapable persons.** (a) Life-sustaining procedures that would otherwise be
25 applied to an incapable person who does not have an applicable valid declaration may
26 be withheld or withdrawn under (b) - (f) of this section if the incapable person is
27 medically determined to be in a serious medical condition.
28 (b) An appointed agent of an incapable person who does not have an
29 applicable valid declaration, or a health care agent of the incapable person if the
30 incapable person does not have an appointed agent, may decide whether to withhold
31 or withdraw life-sustaining procedures from the incapable person.

1 (c) If an incapable person does not have an appointed agent or a health care
2 agent, life-sustaining procedures may be withheld or withdrawn upon the direction and
3 under the supervision of the person's attending physician, but only after the physician
4 has consulted with concerned family and close friends of the person.
5 (d) Upon the direction and under the supervision of the attending physician,
6 life-sustaining procedures may be withheld or withdrawn under (b) of this section from
7 an incapable person by the person's appointed agent or health care agent only after the
8 family and close friends of the incapable person have been consulted.
9 (e) Before withholding or withdrawing life-sustaining procedures from a person
10 under this section, the person's attending physician must determine that the conditions
11 of this section have been met.
12 (f) In this section,
13 (1) "appointed agent" means a person appointed an attorney in fact
14 under a health care power of attorney;
15 (2) "health care agent" means the first of the following persons, in the
16 following order, who can be located by reasonable effort of the health care provider
17 and who is willing to serve as the health care agent for the incapable person:
18 (A) the incapable person's guardian if the guardian is authorized
19 to make health care decisions for the incapable person;
20 (B) the spouse of the incapable person;
21 (C) an adult designated by the persons listed in (A), (B), and
22 (D) - (G) of this paragraph who can be located by reasonable effort of the
23 health care provider unless one of the other persons listed in this paragraph
24 objects to the designation; in this subparagraph, "persons listed" means, for the
25 purposes of (D) and (F) of this paragraph, the majority required by (D) and
26 (F) of this paragraph;
27 (D) a majority of the incapable person's children who are adults
28 and who can be located by reasonable effort of the health care provider;
29 (E) a parent of the incapable person;
30 (F) a majority of the incapable person's siblings who are adults
31 and who can be located by reasonable effort of the health care provider; or

(G) an adult relative or adult friend of the incapable person.

Sec. 18.12.095. Consent to artificially administered nutrition and hydration. (a) If a person does not have a declaration that clearly states whether or not the person wants artificially administered nutrition and hydration, it is presumed that, if the person is temporarily or permanently an incapable person, the person has consented to artificially administered nutrition and hydration, except for hyper alimentation, necessary to sustain life, unless

(1) while a capable adult, the person clearly and specifically stated that the person would have refused artificially administered nutrition and hydration in a similar situation;

(2) administration of the nutrition and hydration is not medically feasible or would itself cause severe, intractable, or long-lasting pain;

(3) the person is in a state of permanent unconsciousness;

(4) the person has a terminal condition; or

(5) the person has a progressive illness that will be fatal and is in an advanced stage, the person is consistently and permanently unable to communicate by any means, to swallow food and water safely, to care for the person's self, and to recognize the person's family and other people, and it is very unlikely that the person's condition will substantially improve.

(b) If a person has a declaration that clearly states that the person does not want artificially administered nutrition and hydration or if the presumption established by (a) of this section has been overcome under (a)(1) - (5) of this section, artificially administered nutrition and hydration may be withheld or withdrawn.

(c) Before withholding or withdrawing artificially administered nutrition and hydration from a person under this section, the person's attending physician must determine that the conditions of this section have been met.

(d) The medical circumstances described in (a)(2) - (5) of this section must be medically determined to overcome the presumption established by this section.

*** Sec. 9.** AS 18.12.100(9) is amended to read:

(9) "life-sustaining procedure" means a medical procedure, a pharmaceutical, a medical device, or an intervention that maintains life by

1 <u>**sustaining, restoring, or supplanting a vital function, but does not include routine**</u>
2 <u>**care necessary to sustain patient cleanliness and comfort or artificially**</u>
3 <u>**administered nutrition and hydration**</u> [, WHEN ADMINISTERED TO A
4 QUALIFIED PATIENT, WILL SERVE ONLY TO PROLONG THE DYING
5 PROCESS];
6 * **Sec. 10.** AS 18.12.100(11) is amended to read:
7 (11) "qualified patient" means a patient who has executed a declaration
8 in accordance with this chapter and who has been <u>**medically**</u> determined [BY THE
9 ATTENDING PHYSICIAN] to be in a <u>**serious medical**</u> [TERMINAL] condition;
10 * **Sec. 11.** AS 18.12.100(12) is repealed and reenacted to read:
11 (12) "terminal condition" means a health condition in which death is
12 imminent regardless of treatment, and where the application of life-sustaining
13 procedures or the artificially administered nutrition and hydration serves only to
14 postpone the moment of death of the patient.
15 * **Sec. 12.** AS 18.12.100 is amended by adding new paragraphs to read:
16 (13) "artificially administered nutrition and hydration" means a medical
17 intervention providing food and water by tube, mechanical device, or other medically
18 assisted method, but does not include the usual and typical methods of providing
19 nutrition and hydration, such as the provision of nutrition and hydration by cup, hand,
20 bottle, drinking straw, or eating utensil;
21 (14) "health care power of attorney" means a power of attorney under
22 AS 13.26.332 that includes authority regarding health care services;
23 (15) "incapable" means lacking the ability to make and communicate
24 health care decisions to health care providers, including communication through
25 persons familiar with the patient's manner of communication if those persons are
26 available;
27 (16) "medically determined" means determined by two physicians, one
28 of whom must be the attending physician, who have personally examined the person;
29 (17) "permanently unconscious" means a condition where a person
30 completely lacks an awareness of self and external environment, without a reasonable
31 possibility of a return to a conscious state, and the condition has been confirmed by

1 a neurological specialist who is an expert in the examination of unresponsive persons;
2 (18) "serious medical condition" means
3 (A) a terminal condition;
4 (B) a permanently unconscious condition;
5 (C) a condition in which administration of life-sustaining
6 procedures would not benefit the patient's medical condition and would cause
7 permanent and severe pain; or
8 (D) a progressive illness that will be fatal and is in an advanced
9 stage; the person is consistently and permanently unable to communicate by
10 any means, to swallow food and water safely, to care for the person's self, and
11 to recognize the person's family and other people; and it is very unlikely that
12 the person's condition will substantially improve.
13 * **Sec. 13.** AS 18.12.080(f) is repealed.