

HB

25

Proof of Enrollment

Comfort One Identification Form

The Comfort One Identification form is printed on 8.5" x 11" carbonless paper with the Comfort One logo (see brochure cover page) printed at the top. The form contains the patient's name, address, date of birth, and gender. To be valid, the form must be signed by both the patient, if the patient is able, and the patient's physician.

Comfort One Wallet Card

The wallet card is detached from a larger form and measures approximately 2.5 inches x 3.5 inches. The Comfort One logo is printed at the top. The front of the wallet card contains the patient's name, date of birth, and gender. A serial number for the card is printed vertically on the front side of the card. The reverse side lists the name of the patient's physician and the physician's contact number.

Comfort One Bracelet

The bracelet has a gold chain, gold border, and a green background. The Comfort One logo is prominently displayed on the bracelet in white and gold lettering.

Confirming the Patient's Identity



Under the Alaska DNR Protocol, the following are acceptable methods of confirming the patient's identity:

- ? the patient communicating the patient's name;
- ? the patient's hospital or other institutional identification arm band;
- ? the patient being personally known to the physician or other health care provider;
- ? the patient's driver's license or credit card; or
- ? another person having identified the patient.

If the patient is unconscious or otherwise unresponsive to questions regarding the patient's identity, the physician or other health care provider may rely solely on the Comfort One bracelet worn by the patient without using further methods to identify the patient.

Do Not Resuscitate Protocols

Once the DNR status and patient's identity have been confirmed, and the patient is pulseless or apneic, the protocols are easy to follow:

- ? **If the patient does not have a valid DNR order**, the standard treatment and transport protocols, including CPR, should be employed.
- ? **If the patient DOES have a valid DNR order**, resuscitation efforts should not be initiated or, if already in progress, terminated immediately.

Palliative Care

Health care personnel should provide comfort care as appropriate for the patient and within the scope of lawful activities for the individual health care provider.

The Alaska Comfort One Program

Information for Health Care Providers



Alaska Department of Health and Social Services
Division of Public Health
Section of Community Health and EMS
Box 110616
Juneau, AK 99811-0616
(907)465-3027/FAX: 465-4101

The Alaska Comfort One Program

Information for Health Care Providers

Overview

Some individuals who are terminally ill do not wish to have life saving measures, such as cardiopulmonary resuscitation, performed when they go into respiratory or cardiac arrest.

In October, 1996, Alaska laws and regulations established the "Comfort One Program" to help health care providers identify terminally ill persons who have expressed these wishes. In addition, the program establishes a protocol for health care providers to respect these wishes once the person has been identified as being enrolled in the program.

This brochure is intended to provide health care providers with information on the Comfort One Do Not Resuscitate (DNR) protocol found in Alaska regulations (7 AAC 16.010 - 7 AAC 16.090).

Definition of Health Care Provider

Health care provider means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession. For the purposes of this statute, an individual who is certified to administer cardiopulmonary resuscitation appears to fall within the definition of a "health care provider" as defined in AS 18.12.100(7) with respect to activities related to CPR. Consequently even those certified to administer only limited health care must, by statute, respect the Comfort One form, wallet card, or bracelet.

At the time the physician enrolls the patient in the Comfort One program, the patient is given a copy of the enrollment form and a wallet card. Patients and families are encouraged to keep them in a visible or easily accessible location.

The person may choose to purchase a Comfort One bracelet. Bracelets are only available to those enrolled in the Comfort One program and are particularly useful for persons who travel outside the home. Bracelets may be purchased through the patient's attending physician.

The Comfort One form, wallet card, and optional bracelet serve as proof to the health care provider that the person is enrolled in the program.

There are two steps to identifying the Do Not Resuscitate patient set out in the regulations, including confirming the identity of the patient and determining whether the patient has a valid DNR order.

It is important to ensure that both criteria are met prior to treating the patient as if he or she has a valid DNR order.

Patients with Out of State DNR Orders

A Do Not Resuscitate order issued in another state or a territory or possession of the United States should be considered valid by the caregiver and the patient should be treated in accordance with the Alaska Comfort One Protocols (AS 18.12.090).

Revocation of DNR Orders

A Do Not Resuscitate order may be revoked by:

- ? the qualified DNR patient;
- ? the patient's attending physician;
- ? a third party to whom the patient conveyed an intent to revoke; or
- ? the parent or guardian of the person for whom the order has been written if the person enrolled in the Comfort One program is less than 18 years of age.

The health care provider should carefully document the revocation. In some cases, the patient may simply destroy copies of the Comfort One form and wallet card.

The protocol (regulations) requires that the physician or other health care provider (EMT Paramedic, etc.) immediately proceed with patient assessment and care, including cardiopulmonary resuscitation, until the patient's identity is confirmed and the patient is determined to have a valid DNR order.

Establishing the Patient's DNR Status

The caregiver should establish the patient's DNR status through at least one of the following means:

- ? a Comfort One form or Comfort One card for the patient;
- ? a Comfort One bracelet worn or carried by the patient;
- ? a DNR identification for the patient that is from another state, a territory, or a possession of the United States;
- ? an attending physician's DNR order, when the order is in writing and a copy has been provided or seen by the physician or other health care provider; or
- ? a verbal order has been issued directly to the physician or health care provider by the attending physician.

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Emergency Medical Care

If a health care provider finds evidence of enrollment in the Alaska Comfort One program, and confirms the patient's identity, the health care provider will not start CPR. If CPR had been started prior to determining the patient is enrolled in the Comfort One program, it will be stopped.

If the health care providers are unable to confirm that the patient is enrolled in the Comfort One program, they will provide emergency medical care, including CPR, according to their normal guidelines. The Alaska Comfort One protocols do not affect the provision of medical care other than CPR.

A person may revoke his or her status as a Comfort One patient at any time. For example, the person enrolled in the Comfort One program may destroy the wallet card and form, and may choose not to wear the optional Comfort One Bracelet. The person's attending physician should be notified by the patient that such actions have been taken to avoid any confusion in the event the health care providers contact the physician for advice. Patients who are receiving care from Hospice organizations or from other health care providers should ensure that these personnel are notified of the revocation as well. In addition, the patient may communicate the intent to revoke the Comfort One status directly to the health care provider.

Other Related Programs

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Some emergency medical services agencies and fire departments in Alaska have programs which can provide additional services to those enrolled in the Comfort One program. In most circumstances, these programs inform law enforcement, medical, and other key personnel of an expected home death to provide for the least intrusive response. Persons interested in these types of services should ask their physicians to contact the local fire department or ambulance service for additional information.

For more information about the Alaska Comfort One program, contact the Alaska Section of Community Health and Emergency Medical Services at (907)465-3027 or visit its website at <http://www.chems.alaska.gov>.

Comfort One forms and bracelets are available to authorized health care providers from:

Southern Region EMS Council, Inc.
6130 Tuttle Place
Anchorage, AK 99507-2140
(907)562-6449/FAX: (907)562-9893

Interior Region EMS Council, Inc.
3522 Industrial Avenue
Fairbanks, AK 99701
(907)456-3978/FAX: (907)456-3970

Southeast Region EMS Council, Inc.
P. O. Box 259
Sitka, AK 99835
(907)747-8005/FAX:(907)747-1406

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The Alaska Comfort One Program

Information for Patients and Families



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The Alaska Comfort One Program

Information for Patients and Families

Overview

Some individuals who are terminally ill do not wish to have life saving measures, such as cardiopulmonary resuscitation (CPR), performed when their breathing and heartbeat stop.

In October, 1996, Alaska laws and regulations established the "Comfort One Program" to help health care providers identify terminally ill persons who have expressed these wishes. In addition, the program establishes a protocol for health care providers to respect these wishes once the person has been identified as being enrolled in the program.

A standardized form, wallet card, and optional bracelet, obtained through a physician, serve to alert health care providers that the patient has been issued a valid Do Not Resuscitate order and that CPR should not be performed or should be stopped when the identification is discovered. This is particularly helpful for prehospital emergency care providers, such as Emergency Medical Technicians and paramedics who often must make split second decisions regarding whether to start CPR.

A Do Not Resuscitate order is different from a "living will." Living wills are designed to allow the patient to express his or her wishes regarding life sustaining treatments and other medical care when unable to make treatment decisions. However, they do not go into effect until the patient is determined to be in a terminal condition and is unable to make treatment decisions. The Alaska Comfort One program removes the uncertainty

of whether the person has a terminal condition and wishes to have CPR performed or not. By preventing unwanted resuscitation efforts, the program provides benefit to patients and their families, as well as to health care providers, during the time surrounding the patient's death.

A terminally ill person who is considering enrolling in the Alaska Comfort One program should discuss this program and other "advance directives," such as living wills, with his or her physician.

A Do Not Resuscitate order is different from a "living will."



Optional Bracelet

Enrolling in the Comfort One Program

To enroll in the Alaska Comfort One program, a person must have a terminal condition and must complete a simple form which may be obtained from the patient's physician. The form must be signed by both the patient and the patient's physician. The top copy of the form is kept by the patient, a second copy is retained by the physician for the person's medical file. The remaining copies may be provided, by the patient or physician, to other health care professionals, such as hospice workers and/or the dispatch center of the local fire department/emergency medical service.

Proof of Enrollment

At the time the physician enrolls the patient in the Comfort One program, the patient is given a copy of the enrollment form and a wallet card. These should be kept in a visible or easily accessible location.

The person may choose to purchase a Comfort One bracelet. Bracelets are only available to those enrolled in the Comfort One program and are particularly useful for persons who travel outside the home. Bracelets may be purchased through the patient's attending physician.

The Comfort One form, wallet card, and optional bracelet serve as proof to the health care provider that the person is enrolled in the program.

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4

ALASKA
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99801-1182

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FAX (907) 465-2273

MEMORANDUM

DATE: May 7, 2003

TO: Senator Fred Dyson
Chair, Senate Health & Social Services Committee

FROM: Rep. Bruce Weyhrauch

SUBJECT: HB 25 – Healthcare Directives, or “The 5 Wishes Bill”

Attached are materials in support of HB 25. At this time I respectfully request a hearing before your committee on this very important piece of legislation. This bill passed the House on Tuesday and will be read across in the Senate today.

It is my desire to start to work on HB 25 as soon as practicable, as so many people are pushing hard for it.

If you have any questions or need further information, I invite you to contact myself, or my aide, Linda Sylvester.

Thank you for your kind attention to this matter.



MEMORANDUM

TO: Members of the Alaska Legislature
SUBJ: AARP 2003 Legislative Agenda
DATE: February 7, 2003

Attached is a background piece we developed for Alaska AARP members so they would know what issues we will be advocating for in the 2003 Legislature. I hope it is helpful to you.

We welcome your suggestions for bills that you think AARP and our members should support.

Recognizing that you have a difficult challenge with many competing priorities, please know that we stand by to help in any way you think appropriate.

Marie Darlin, Coordinator
AARP Alaska Capital City Task Force
415 Willoughby Ave., Apt #506
Juneau, AK 99801

563.3637 voice
463.3580 fax

Juneau based Task Force Members:

Jim Carroll	586.6115
Gene Dau	586.3816
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ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH
HOUSE DISTRICT 4



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MEMORANDUM

DATE: April 9, 2003
TO: House Members
FROM: Rep. Bruce Weyhrauch
SUBJECT: CS for HB 25 (JUD) - Advanced Healthcare Directives or
The Five Wishes Bill

Attached are materials in support of HB 25. Inspired by the Five Wishes legislation that has been adopted in 37 other states, HB 25 expands the options for people who want to prepare for the time when they can no longer speak or act on their own behalf. In addition to the new concept of the Five Wishes, HB 25 takes all of the current provisions related to end-of-life healthcare decisions and places them in one chapter under Alaska law.

These provisions include:

- The Anatomical Gift program
- The Living Will program
- The Comfort One Do-Not-Resuscitate program
- An expanded healthcare durable power of attorney
- Mental Healthcare Directives

My staff has worked closely with the representatives from each group to insure that existing statutes have been integrated into the new chapter of law. As such, HB 25 enjoys broad support from the stakeholders and from numerous community health activist groups such as Hospice and AARP.

HB 25 has absolutely no fiscal impacts to the State of Alaska as it deals with personal decision-making.

I respectfully request your support.

ALASKA STATE LEGISLATURE

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Sectional Analysis

CS for HB 25 (JUD)

"The Five Wishes Bill"

Section 1. States a principal purpose of the bill.

Section 2. Makes technical changes to conform this section to other changes in the bill.

Section 3. Establishes a new chapter called the Health Care Decisions Act.

Sec. 13.52.010(a). Allows a person to give an oral or written individual instruction. The instruction may be limited.

Sec. 13.52.010(b). Allows a person to make written power of attorney for health care. Power of attorney remains effective notwithstanding later incapacity of maker. Power of attorney may include individual instructions. Establishes the technical requirements for the power of attorney.

Sec. 13.52.010(c). Prohibits certain health care institution persons from being agents under a power of attorney for health care, unless related to the principal.

Sec. 13.52.010(d). Prohibits certain persons from acting as witnesses for a power of attorney for health care.

Sec. 13.52.010(e). Requires that at least one witness for a power of attorney for health care meet certain described criteria.

Sec. 13.52.010(f). Establishes the general rule as to when an agent's authority under a power of attorney for health care becomes effective and when the agent's authority ceases.

Sec. 13.52.010(g). Requires that certain determinations be made by a person's primary physician, unless otherwise specified in a written advance health care directive or in the case of

of mental illness.

Sec. 13.52.010(h). Requires an agent to make health care decisions in accordance with the principal's individual instructions and other wishes to the extent known. Otherwise, directs the agent to make decisions in accordance with the agent's determination of the principal's best interest.

Sec. 13.52.010(i). Establishes that an agent's health care decision does not need judicial approval to be effective.

Sec. 13.52.010(j). Allows a written advance health care directive to nominate a guardian.

Sec. 13.52.010(k). Establishes when an advance health care directive is valid under this chapter.

Sec. 13.52.020(a). Except in the case of mental illness, allows an individual to revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

Sec. 13.52.020(b). Except in the case of mental illness an individual to revoke an advance health care directive, except for agent designation, at any time and in any manner that communicates the intent to revoke.

Sec. 13.52.020(c). In the case of mental illness, an advance health care directive may be revoked only when the principal has capacity and is not incompetent. A person is considered to be incompetent when determined by a court during a guardianship proceeding und AS 13.26, or determined by two physicians, one of which is a psychiatrist or mental health clinician.

Sec. 13.52.020(d). Requires health care providers, agents, guardians, and surrogates to promptly communicate a revocation to the supervising health care provider and the health care institution.

Sec. 13.52.020(e). Establishes that a decree of annulment, divorce, dissolution, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or power of attorney.

Sec. 13.52.020(f). Provides that a conflicting advance health care directive revokes an earlier directive to the extent of the conflict.

Sec. 13.52.025. Allows a person who has withdrawn as an agent to rescind the withdrawal.

Sec. 13.52.030(a). Except in the case of mental health treatment, allows a surrogate to make a health care decision for a patient who has been determined to lack capacity if an agent or guardian has not been appointed or is not reasonably available.

Sec. 13.52.030(b). Allows an individual to designate an individual as a surrogate by personally informing the supervising health care provider. If there is no designation, or the designation is not reasonably available, establishes the priority of persons who may act as a surrogate.

Sec. 13.52.030(c). Allows an adult who meets certain described criteria to act as a surrogate if no individual who is eligible under (b) is reasonably available to act as a surrogate.

Sec. 13.52.030(d). Requires a surrogate to communicate the surrogate's assumption of authority as promptly as practicable to the patient's family listed in (b).

Sec. 13.52.030(e). Establishes how to handle certain disagreements about health care decisions.

Sec. 13.52.030(f). Establishes guidelines for surrogates when making health care decisions.

Sec. 13.52.030(g). Establishes that a health care decision by a surrogate is effective without judicial approval.

Sec. 13.52.030(h). Allows an individual to disqualify another person from acting as the individual's surrogate by using a signed writing or by personally informing the supervising health care provider.

Sec. 13.52.030(i). Prohibits, except when related to the patient, a surrogate from being an owner, operator, or employer of the patient's residential long-term health care institution.

Sec. 13.52.030(j). Allows a supervising health care provider to require from an individual claiming to be a surrogate a written declaration to establish the claimed authority.

Sec. 13.52.040(a). Requires a guardian to comply with the ward's individual instructions, and prohibits a guardian from revoking a ward's advance health care directive executed before incapacity, unless a court authorizes it.

Sec. 13.52.040(b). Establishes that a health care decision of an agent takes precedence over that of a guardian, unless a court orders otherwise.

Sec. 13.52.040(c). Provides that a health care decision made by a guardian for the ward is effective without judicial approval, except as provided in (a).

Sec. 13.52.050(a). Requires a supervising health care provider, if possible and before implementing the order, to promptly communicate a health care decision to the patient and identify the person making the decision.

Sec. 13.52.050(b). Requires a supervising health care provider who knows of an advance health care directive, the revocation of a directive, or a surrogate designation or disqualification, to promptly record the item in the patient's record, request a copy if written, and arrange to keep any furnished copy in the record.

Sec. 13.52.050(c). Requires a supervising health care provider who makes or is informed of a determination of a patient's condition that affects an individual instruction or an agent's, a guardian's or a surrogate's authority to promptly record the determination in the patient's record and communicate the determination to the patient, if possible, and to any person then authorized to make the health care decisions for the patient.

Sec. 13.52.050(d). Requires, with certain exceptions, that a health care provider or institution comply with qualifying individual instructions, reasonable instruction interpretations, and health care decisions.

Sec. 13.52.050(e). Permits a health care provider to decline, for reasons of conscience, to comply with individual instructions or health care decisions. Permits a health care institution to decline to comply with individual instructions or health care decisions if contrary to a policy of the institution's that is based on reasons of conscience.

Sec. 13.52.050(f). Permits a health care provider or institution to decline to comply with individual instructions or health care decisions that require medically ineffective health care or care contrary to generally accepted health care standards.

Sec. 13.52.050(g). Establishes the steps that a health care provider or institution must take if declining to comply with an individual instruction or health care decision.

Sec. 13.52.050(h). Prohibits health care providers and institutions from requiring or prohibiting the execution or revocation of advance health care directives as a condition for providing care.

Sec. 13.52.060. Directs the Department of Health and Social Services to adopt a do not resuscitate protocol for health care providers and health care institutions.

Sec. 13.52.070. Provides that, unless otherwise provided in a directive, an authorized person has the same rights as the patient regarding access to and consent to the disclosure of health care information.

Sec. 13.52.080(a). States that a health care provider or institution acting in good faith and under generally accepted health care standards is not subject to civil or criminal liability or to disciplinary actions for complying with qualified health care decisions, declining to comply with what appears to be an unauthorized decision, and complying with a directive and assuming the directive was valid when made and has not been revoked or terminated.

Sec. 13.52.080(b). States that agents, guardians, and surrogates are not subject to civil or criminal liability or to discipline for health care decisions made in good faith.

Sec. 13.52.090(a). Makes health care provider or institution liable to an aggrieved individual or the individual's estate for damages if the provider or institution intentionally violates this chapter.

Sec. 13.52.090(b). Holds a person engaging in certain described acts relating to an existing directive, to the making of a directive, or to the revocation of a directive liable to the individual concerned for damages.

Sec. 13.52.100(a). Establishes that this chapter does not affect the right of an individual to make health care decisions while having the capacity to make the decisions.

Sec. 13.52.100(b). Establishes a rebuttable presumption that an individual has the capacity to make health care decisions, to give or revoke a directive, and to designate or disqualify a surrogate.

Sec. 13.52.100(c). Establishes that an individual who is a qualified patient can make a decision regarding CPR or other life-sustaining procedures as long as the individual is able to make the decision. If an individual is not able to make the decision, the protocol adopted under AS 16.52.060 for do not resuscitate orders govern.

Sec. 13.52.110. Provides that a copy of a directive, revocation of a directive, or a designation or disqualification of a surrogate is as effective as the original.

Sec. 13.52.120(a). States that this chapter does not create a presumption about the intention of an individual who has not made or who has revoked a directive.

Sec. 13.52.120(b). Provides that death resulting from the withholding or withdrawal of health care of health care under this chapter who does not constitute a suicide or homicide or impair or invalidate an insurance policy or certain annuities.

Sec. 13.52.120(c). States that this chapter does not modify the terms of an existing policy of life insurance.

Sec. 13.52.120(d). States that this chapter does not create a presumption concerning the intention or intended treatment of an individual who has not executed a health care directive.

Sec. 13.52.120(e). States that this chapter does not increase or decrease the right of an individual to make decisions regarding the use of CPR or other life sustaining procedures as long as the individual is able to do so and does not impair or supercede any right or responsibility has to affect the withholding or withdrawal of medical care in a lawful manner.

Sec. 13.52.120(f). States that this chapter does not authorize mercy killing, assisted suicide euthanasia, or the provision healthcare, to the extent prohibited by other statutes of this state.

Sec. 13.52.120(g). States that this chapter does not require a health care provider or institution to provide health care contrary to generally accepted health care standards.

Sec. 13.52.120(h). States that this chapter does not authorize an agent or surrogate to consent to the admission of an individual to a mental health facility unless the advance directive specifically provides, and the period of admission may not exceed 17 days.

Sec. 13.52.120(i). This chapter does not affect the other statutes dealing with an individual involuntarily committed to a mental health facility.

Sec. 13.52.130. States that a DNR may not be required as a condition of receiving insurance or health care services.

Sec. 13.52.140. Allows the superior court, on petition by certain listed persons, to enjoin or direct health care decision or to order other equitable relief.

Sec. 13.52.150. Provides a sample optional form for an advance health care directive. Provides that the form may be modified or a different form used that contains the substance of this sample form.

Sec. 13.52.160. States that a DNR order or DNR identification executed in another state is effective in this state.

Sec. 13.52.190. Defines terms for the new chapter.

Sec. 13.52.195. Calls the chapter the Health Care Decisions Act.

Section 4. Makes changes to conform the section to other parts of the bill and removes the references to living wills and former will chapters.

Section 5. Makes changes to conform the section to other parts of the bill and removes the references to living wills.

Section 6. Makes changes to conform the subsection to other parts of the bill and removes the references to living wills.

Section 7. Makes changes to conform the subsection to other parts of the bill and removes the references to living wills and to the former chapter on living wills.

Section 8. Makes changes to conform the subsection to other parts of the bill.

Section 9. Makes changes to conform the subsection to other parts of the bill.

Section 10. Makes changes to conform the section to other parts of the bill.

Section 11. Makes changes to conform the subsection to other parts of the bill.

Section 12. Adds advance health care directives to the list of items that must be documented when providing the court with information under the subsection.

Section 13. Adds advance health care directives to the list of items that an assisted living home is required to maintain in a patient's file.

Section 14. Repeals certain statutes.

Section 15. Provides that certain existing documents continue until they are revoked.

Section 16. Provides that AS 13.52.120(b) does not apply to certain existing insurance policies and annuities.

Section 17. Directs the Department of Health and Social Services to adopt implementing regulations.

Section 18. Gives bill Sec. 17 an immediate effective date.

Section 19. Gives the rest of the bill an effective date.

ALASKA STATE LEGISLATURE

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CS FOR HB 25 (JUD)

HB 25 offers a "comprehensive simplified" alternative to the power of attorney enacted in Alaska in 1996 relating to health care services and directives for the terminally ill patient. That was not an oxymoron. The legislation is comprehensive because it speaks to the details and instructions that patients put in place regarding their care should they become incapacitated. It is simple in that the directives speak simply to the patient's wishes (the legislation is known nationally as the Five-Wishes) as follows:

My Wish for:

1. The person I want to make care decisions for me when I can't
2. The kind of medical treatment I want or don't want
3. How comfortable I want to be
4. How I want other people to treat me
5. What I want my loved ones to know

The Five Wishes contained in this bill, will produce a document that helps you express how you want to be treated if you are seriously ill and unable to speak for yourself. It is unique among all other living will and health agent forms because it looks to all of a person's needs: medical, personal, emotional and spiritual. Five Wishes also encourages discussing your wishes with your family and physician.

Five Wishes is changing the way America talks about and plans for care at the end of life. Nearly one million copies of the document are circulating throughout the nation, and more than 1,400 organizations are distributing this revolutionary document, including churches, synagogues, hospices, hospitals, doctor and law offices, and social service agencies.

Five Wishes speaks to people in their own language, helping families talk with their physician about a subject that is often avoided as being too hard to face.

Last updated: January 19, 2003

HB 25

Health Care Decisions Act

Sectional Analysis

Section 1

Intent Language

Uncodified law of the State of Alaska.

The purpose of the Health Care Decisions Act is to provide Alaskans with a comprehensive and coordinated approach to making health care decisions including anatomical gifts. It is also the intent of the Act to establish the right of a patient to control their own health care decisions, and absent evidence to the contrary, it is presumed that the patients intend to be kept alive

Section 2

Unclaimed bodies:

Sec. 12.65.100. Unclaimed bodies. Makes technical changes to conform this section to numbering changes in the bill.

Section 3

CHAPTER 52. HEALTH CARE DECISIONS ACT.

Section 13.52.010 Advance health care directives.

Sec. 13.52.010(a). Establishes the right to make instructions in advance. Allows a person to give an oral or written individual instruction. The instruction may be limited to take effect only if a specified condition arises. Except for anatomical gift donations (AS 13.52.170(b), the instruction may be oral or written.

Sec. 13.52.101(b). Establishes the right to execute an advance instruction with a durable power of attorney. Allows a person to make written power of attorney for health care. Power of attorney remains effective notwithstanding later incapacity of maker. Power of attorney may include individual instructions. Establishes the technical requirements for the power of attorney.

Sec. 13.52.010(c). Restrictions for persons who may be agents. Prohibits an owner, operator, or employee of a health care institution where the principal is receiving care from being agents under a power of attorney for health care, unless related to the principal.

Sec. 13.52.010(d). Restrictions for persons who may be witnesses to a durable power of attorney. Prohibits a health care provider, or their employee from acting as witnesses for a power of attorney for health care.

Sec. 13.52.010(e). Additional restrictions for persons who may be witnesses to a durable power of attorney. Requires that at least one witness for a power of attorney for health care not be related to the principal by blood, marriage or adoption, or be a perspective heir to the principal's estate.

Sec. 13.52.010(f). Guideline for when the agent's authority begins and ends. Establishes the general rule that an agent's authority under a power of attorney for health care becomes effective when the principal lacks capacity and ceases when the principal recovers capacity.

Sec. 13.52.010(g). Stipulations for the determination of capacity. Unless otherwise specified in a written advance health care directive or in the case of mental illness, the primary physician makes the determination of capacity. In the case of mental illness, a court makes the determination of capacity unless the situation is an emergency. Where the situation is a mental illness emergency, a primary physician or another health care provider makes the determination.

Sec. 13.52.010(h). Guidelines for the agent's decision-making. Requires an agent to make health care decisions in accordance with the principal's individual instructions and other wishes to the extent known. Otherwise, directs the agent to make decisions in accordance with the agent's determination of the principal's best interest.

Sec. 13.52.010(i). Establishes that an agent's health care decision does not need judicial approval to be effective.

Sec. 13.52.010(j). Allows a written advance health care directive to nominate a guardian.

Sec. 13.52.010(k). Portability of advance directives. Establishes when an advance health care directive is valid under this chapter. If the directive was executed in another state, and it complies with the laws of that other state where it was executed it is also valid in Alaska. This does not authorize the administering, withholding or withdrawal of health care that is otherwise prohibited in Alaska.

Section 13.52.020. Revocation of advance health care directive.

Sec. 13.52.020(a). Revocation of an agent. Allows an individual to revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider. This provision does not apply to (c) of this section ~ the case of mental illness.

Sec. 13.52.020(b). Revocation of all or part of the directive. Allows a principal to revoke all or part of the advance directive in any manner that communicates the intent to revoke. This doesn't apply to the agent designation noted above in (a). This also does not apply in the case of mental illness, detailed in (c) of this section.

Sec. 13.52.020(c). Revocation issues unique to the case of mental illness. There are two scenarios:

1. an advance health care directive may be revoked in whole or in part at any time by the principal if the principal does not lack capacity and is not incompetent. The revocation is effective when a capable competent principal communicates the revocation to the attending physician or other health care provider;
2. in the case of mental illness, when the principal is incompetent, the authority of the agent continues in effect as long as the advance directive that named the agent remains in effect or until the agent has withdrawn.

The determination that a principal is incompetent is made by: either the court in a guardianship proceeding under AS 13.26; or a physician and a professional mental health clinician.

The determination that a principal is incompetent is made when: they determine that an individual's ability to receive and evaluate information effectively or communicate decisions is impaired to the extent that the individual lacks the capacity to make mental health treatment decision.

Sec. 13.52.020(d). Notice of a revocation must be issued. Once the revocation is made, the health care provider, agent, guardian or surrogate must communicate that information to the supervising health care provider and to the institution where the patient is receiving care.

Sec. 13.52.020(e). Divorce or separation automatically revokes the spouse as an agent. Establishes that a decree of annulment, divorce, dissolution, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or power of attorney.

Sec. 13.52.020(f). Provides that a conflicting advance health care directive revokes an earlier directive to the extent of the conflict.

Section 13.52.025. Rescission of withdrawal by agent.

Sec. 13.52.025. Procedure for an agent to rescind their prior withdrawal. A person who has withdrawn as an agent may reaffirm their agency with written notice to the principal or to the health care provider if the principal is incapable.

Section 13.52.030. Decisions by surrogate.

Sec. 13.52.030(a). When a surrogate may step into the role of decision-maker. Except in the case of mental health treatment this subsection allows a surrogate to make a health care decision for a patient who has been determined to lack capacity if an agent or guardian has not been appointed or is not reasonably available.

Sec. 13.52.030(b). Circumstances when a surrogate makes decisions regarding mental health treatment. A surrogate may make decisions for mental health treatment for a patient if there is not an agent or guardian appointed, or they are not reasonably available, the mental health treatment is needed on an emergency basis and either two physicians or one physician and one mental health clinician has determined that the patient lacks capacity.

Sec. 13.52.030(c). Criteria for surrogacy. Allows an individual to designate an individual as a surrogate by personally informing the supervising health care provider. If there is no designation, or the designation is not reasonably available, establishes the priority of persons who may act as a surrogate. Provides for an exclusion for anatomical gifts in AS 13.52.170(b). In descending order of priority, these people may act as surrogate: (1) the spouse, unless legally separated; (2) an adult child; (3) a parent; (4) an adult sibling.

Sec. 13.52.030(d). Additional surrogacy provisions. Allows an adult who meets certain described criteria to act as a surrogate if no individual who is eligible under (c) is reasonably available to act as a surrogate. The criteria for a surrogate under this section is that the person has exhibited special care and concern for the patient and they are familiar with the patient's personal values.

Sec. 13.52.030(e). Procedure for surrogate to assume authority. Requires a surrogate to communicate the surrogate's assumption of authority as promptly as practicable to the patient's family listed in (c).

Sec. 13.52.030(f). Guidelines for disagreements among surrogates.

- If more than one members of a class under (c)(2)-(4) assumes authority to act as surrogate, and the members of the class do not agree on a health care decision, and the supervising health care provider is informed of the disagreement then the provider shall comply with the majority of the members.
- If the class is evenly divided concerning the health care decision, then that class and all individuals having a lower priority under (c)(2)-(4) are disqualified from making the decision and the primary physician shall make the decision based on the best interest of the patient. Best interest is defined in this chapter at 13.52.390(5).

[Please note that this section must be considered in conjunction with another key component of HB 25: Sec. 13.52.140 – Judicial relief.

“On petition of a patient, the patient's agent, guardian, surrogate, health care provider or institution involved with the patient's care, the superior court may enjoin or direct a health care decision or order other equitable relief. A proceeding under this section is governed by AS 13.26.165-320.”

AS 13.26.165-350 is titled, “Protection of Property of Persons Under Disability and Minor.” within the Guardianship statutes.]

Sec. 13.52.030(g). Establishes guidelines for surrogates when making health care decisions.

- Decisions shall be made in accordance with the patient's individual instruction or advance health care directives, and other wishes to the extent known by the surrogate.
- Otherwise, the surrogate makes the decision in accordance with the surrogate's own determination of the patient's best interest. When determining "best interest," the surrogate shall consider the patient's personal values to the extent known by the surrogate.

Sec. 13.52.030(h). Establishes that a health care decision by a surrogate is effective without judicial approval.

Sec. 13.52.030(i). Procedure for patient's to disqualify a potential surrogate. Allows an individual to disqualify another person from acting as the individual's surrogate by using a signed writing or by personally informing the supervising health care provider.

Sec. 13.52.030(j). Certain individuals prohibited as surrogates. Prohibits, except when related to the patient, a surrogate from being an owner, operator, or employer of the patient's residential long-term health care institution.

Sec. 13.52.030(k). Health care provider may require signed declaration from surrogate. Allows a supervising health care provider to require from an individual claiming to be a surrogate a written declaration to establish the claimed authority.

Section 13.52.040 Decisions by guardian.

Sec. 13.52.040(a). Requires a guardian to comply with the ward's individual instructions, and prohibits a guardian from revoking a ward's advance health care directive executed before incapacity, unless a court authorizes it.

Sec. 13.52.040(b). Establishes that a health care decision of an agent takes precedence over that of a guardian, unless a court orders otherwise.

Sec. 13.52.040(c). Provides that a health care decision made by a guardian for the ward is effective without judicial approval, except as provided in (a).

Section 13.52.045 Pregnancy.

Sec. 13.52.045(a). Consideration for impacts upon a fetus. Requires a health care provider to take reasonable steps to determine if a woman of childbearing age is pregnant if execution of a health care decision would affect a fetus, should one be present.

Sec. 13.52.045(b). Criteria that makes an advance health care directive ineffective. A decision for a patient may not be given effect if:

- The patient is a woman who is pregnant and lacks capacity;
- The directive or decision is to withhold or withdraw health care;
- The withholding or withdrawal of the health care would likely result in the patient's death; and
- It is probable that the fetus could develop to the point of live birth if health care were continued.

Once the fetus is delivered, the health care directive is then given effect.

Sec. 13.52.045(c). Exception. This section does not apply to EMTs or ambulance drivers responding in the field.

Section 13.52.050 Obligations of health care provider.

Sec. 13.52.050(a). Health care provider shall attempt to communicate health care decision with the patient. Requires a supervising health care provider, if possible and before implementing the order, to promptly communicate a health care decision to the patient and identify the person making the decision.

Sec. 13.52.050(b). Health care provider shall obtain & furnish a copy of advance directive for patient's record. Requires supervising health care providers who knows of an advance health care directive, the revocation of a directive, or a surrogate designation or disqualification, to promptly record the item in the patient's record, request a copy if written, and arrange to keep any furnished copy in the patient's record.

Sec. 13.52.050(c). Health care provider shall record that a patient's condition implicates the authority of a personal representative. Except for the routine inquiry of an anatomical gift donation, this section requires a supervising health care provider who makes or is informed of a determination of a patient's condition that affects an individual instruction or an agent's, a guardian's or a surrogate's authority to promptly record the determination in the patient's record and communicate the determination to the patient, if possible, and to any person then authorized to make the health care decisions for the patient.

Sec. 13.52.050(d). Health care provider shall comply with advance directive. Requires, with certain exceptions stated in (e) and (f) of this subsection, that a health care provider or institution comply with qualifying individual instructions, reasonable instruction interpretations, and health care decisions.

Sec. 13.52.050(e). Exceptions for health care provider's compliance to advance directive: conscience. Permits a health care provider to decline, for reasons of conscience, to comply with individual instructions or health care decisions. Permits a health care institution to decline to comply with individual instructions or health care decisions if contrary to a policy of the institution's that is based on reasons of conscience.

Sec. 13.52.050(f). Exceptions for health care provider's compliance to advance directive: ineffective treatment. Permits a health care provider or institution to decline to comply with individual instructions or health care decisions that require medically ineffective health care or care contrary to generally accepted health care standards.

Sec. 13.52.050(g). Duties of non-compliant health care providers. Establishes the steps that a health care provider or institution must take if declining to comply with an individual instruction or health care decision:

- Promptly inform the patient or their decision-maker that the provider has declined to comply;
- Provide continuing care to the patient until transfer is effected
- Unless the patient or decision-maker refuses, the health care provider must take reasonable steps to assist in the transfer to another provider.

Sec. 13.52.050(h). Advance health care directive cannot be leveraged as a condition for providing care. Except in the case of civil commitments under AS 47.30.817, this subsection prohibits health care providers and institutions from requiring or prohibiting the execution or revocation of advance health care directives as a condition for providing care.

Section 13.52.060 Do not resuscitate protocol and identification requirements.

Sec. 13.52.060(a). DNRs issued by attending physician. The attending physician may issue an order to 'do not resuscitate' and the grounds for that shall be documented in the patient's medical file.

Sec. 13.52.060(b). The Department shall adopt protocols for DNR. Directs the Department of Health and Social Services to adopt a do not resuscitate protocol for health care providers and health care institutions. The protocol sets out the standard method of procedure for the withholding of cardiopulmonary resuscitation by health care providers and institutions.

Sec. 13.52.060(c). The Department shall develop standardized forms of DNR identification. This includes necklaces, bracelets to be worn by the individual for whom a physician has issued a do not resuscitate order.

Sec. 13.52.060(d). Health care providers required to comply with the DNR protocol. Health care providers other than the physician shall comply when presented with a DNR identification, an oral DNR order issued directly by a physician if the applicable hospital allows for oral DNR orders.

Sec. 13.52.060(e). Anatomical gift donations must be given time for evaluation before implementing a DNR. Notwithstanding (d) of this subsection, if an individual has made an anatomical gift to occur at death and they are in the hospital when a DNR is to be implemented, the DNR must wait until the subject of the gift can be evaluated to determine the suitability for donation.

Sec. 13.52.060(f). DNR's may not be revoked by anyone except for the person whom they are issued for, exceptions for parents of minor children. A physician may not revoke the DNR unless the person making the revocation request is the person for whom the order was issued. However, if the person with a DNR order is under 18 years of age, and they are not capable of expressing their opinion, latitude is given to the parent or guardian with regard to a DNR revocation.

Section 13.52.070. Health care information.

Sec. 13.52.070. Personal representative has rights to health care information. Provides that, unless otherwise provided in a directive, an authorized person has the same rights as the patient regarding access to and consent to the disclosure of health care information.

Section 13.52.080. Immunities.

Sec. 13.52.080(a). Health care providers acting in good faith to comply with an advance directive is not subject to civil or criminal liability or professional discipline. States that if a health care provider or institution makes reasonable efforts to ensure the validity of an advance health care directive or a person's assumption of authority to make decisions for a patient, the provider acting in good faith and under generally accepted health care standards is not subject to civil or criminal liability or to disciplinary actions for:

- complying with qualified health care decision;
- declining to comply with what appears to be an unauthorized decision;
- complying with a directive and assuming the directive was valid when made and has not been revoked or terminated;
- participating in withholding or withdrawal of CPR or other life-sustaining procedures under direction or authorization of a physician, or upon discovery of a DNR identification; or
- participating in providing CPR or other life-sustaining procedures under AS 13.52.060(e) –when the individual has made an anatomical gift or per AS 13.52.060(f) – when the individual has revoked his or her DNR order; or
- the health care provider has acted in good faith under the terms of this Act or the laws of another state relative to ant

Sec. 13.52.080(b). An individual acting in good faith is not subject to civil or criminal liability. States that agents, guardians, and surrogates are not subject to civil or criminal liability or to discipline for health care decisions made in good faith.

Section 13.52.085. Discriminatory treatment prohibited.

Sec. 13.52.085. Health care treatment may not be denied to a patient because of their disability. When determining the best interest of a patient, health care treatment may not be denied to a patient because the patient has or is expected to have a disability.

Section 13.52.090. Statutory damages.

Sec. 13.52.090(a). Health care provider liable for damages for intentional violation of this chapter. The provider or institution who violates this chapter is liable to the aggrieved for \$10,000, or for actual damages, whichever is greater.

Sec. 13.52.090(b). A person who intentionally falsifies, forges, conceals, defaces or obliterates an individual's advance health care directive or a revocation is liable for damages. Holds a person engaging in certain described acts relating to an existing directive, to the making of a directive, or to the revocation of a directive liable to the individual concerned for damages of \$10,000, or actual damages resulting from the action.

Section 13.52.100 Capacity.

Sec. 13.52.100(a). Individuals with capacity have the right to make decisions. Establishes that this chapter does not affect the right of an individual to make health care decisions while having the capacity to make the decisions.

Sec. 13.52.100(b). Individuals are presumed to have capacity. Establishes a rebuttable presumption that an individual has the capacity to make health care decisions, to give or revoke a directive, and to designate or disqualify a surrogate.

Sec. 13.52.100(c). Qualified patients have the right to make decisions about Do Not Resuscitate orders while having capacity. Once the individual with a DNR order lacks capacity, the protocol adopted under AS 13.52.060 governs that decision.

Section 13.52.110. Status of copy.

Section 13.52.110. Provides that a copy of a directive, revocation of a directive, or a designation or disqualification of a surrogate is as effective as the original.

Section 13.52.120. Effect of this chapter.

Sec. 13.52.120(a). No presumption about the individual's intent is made. States that this chapter does not create a presumption about the intention of an individual who has not made or who has revoked a directive.

Sec. 13.52.120(b). Circumstances resulting from this chapter do not constitute suicide or homicide. Provides that death resulting from the withholding or withdrawal of health care of health care under this chapter who does not constitute a suicide or homicide or impair or invalidate an insurance policy or certain annuities.

Sec. 13.52.120(c). DNRs or health care decisions made under this chapter do not affect insurance policies. A life insurance policy is not legally impaired or invalidated in any manner by the withholding or withdrawal of life sustaining measures from an insured individual. Similarly, DNR orders have no impact on insurance coverage notwithstanding any policy term to the contrary.

Sec. 13.52.120(d). No presumption is made with regard to individuals who have not executed a health care directive or DNR. States that this chapter does not intend for health care providers or others to make decisions rooted in speculation on reasons why the patient did not execute an advance directive or DNR.

Sec. 13.52.120(e). No other decision-making rights are created or impaired. This Act does not increase or decrease the right of an individual to make decisions regarding the use of CPR or other life-sustaining procedures, so long as the individual is able. Likewise, this Act does not impair or supercede any right or responsibility that a person has to effect the withholding or withdrawal of medical care in a lawful manner.

Sec. 13.52.120(f). Assisted suicide. This Act does not authorize mercy killing, assisted suicide, euthanasia, or the provision, withholding, or withdrawal of health care, to the extent prohibited by other statutes of this state.

Sec. 13.52.120(g). Health care providers or institutions not required to violate generally accepted health care standards. This Act does not authorize or require actions that are contrary to generally accepted health care standards applicable to the provider or institution.

Sec. 13.52.120(h). Surrogates or agents not authorized to make decisions regarding mental health treatment. States that this chapter does not authorize an agent or a surrogate to consent to the admission of an individual to a mental health facility unless a written directive expressly allows it and the period of admission may not exceed 17 days.

Sec. 13.52.120(i). The Health Care Decisions Act does not affect statutes that govern treatment for mental illness or involuntary commitment.

Section 13.52.130 Prohibited requirements.

Sec. 13.52.130. A health care provider, institution or insurer issuing health care insurance cannot require an individual to execute an advance health care directive as a condition of receiving services or coverage.

Section 13.52.140 Judicial relief.

Sec. 13.52.140. Individuals listed in 13.52.030(c) may always appeal to superior court for intervention. Allows the superior court, on petition by certain listed persons, to enjoin or direct health care decision or to order other equitable relief. These appeal proceedings are governed under AS 13.26.165-320 under the laws of guardianship. The individuals who may petition:

- the patient;
- the patient's agent;
- the guardian or surrogate;
- a health care provider or institution involved with the patient's care.

Section 13.52.150. Uniformity of application and construction.

Sec. 13.52.150. Directs that this chapter is to be applied and construed to carry out the purpose of making the law uniform among states enacting this law.

Section 13.52.160. Do not resuscitate orders and identification of other jurisdictions.

Sec. 13.52.160. A DNR order or identification issued in another state or jurisdiction of the United States is effective in Alaska.

Section 13.52.170. Making, amending, revoking, and refusing to make anatomical gifts by individual.

Sec. 13.52.170(a) An individual who is at least 18 may make an anatomical gift for the purposes stated in AS 13.52.210(a); the individual may limit the gift to one or more of the purposes listed in 13.52.210(a); or the individual may refuse to make an anatomical gift.

Sec. 13.52.170(b) An anatomical gift may be made only by a document of gift, signed by the donor. If the donor can't sign, then another individual and two witnesses, in the presence of the donor and at their behest, shall sign the document of gift.

Sec. 13.52.170(c) If the document of gift is attached to or imprinted on a donor's motor vehicle driver's license, a later suspension, revocation, expiration or cancellation of the license does not invalidate the anatomical gift.

Sec. 13.52.170(d) The document of gift may designate a physician to carry out the procedure; however, if that physician is unavailable, the donee may authorize another to carry out the procedure.

Sec. 13.52.170(e) An anatomical gift by will takes effect at the death of the testator. If, after death, the will is declared invalid for testamentary purposes, the anatomical gift is unaffected.

Sec. 13.52.170(f) A donor may amend or revoke an anatomical gift, not made by will, by:

- a signed statement;
- an oral statement made in the presence of two individuals;
- any form of communication during a terminal illness or injury addressed to a physician;
- the delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

Sec. 13.52.170(g) A donor of an anatomical gift made by will may be amended or revoked by subsequent actions in the will.

Sec. 13.52.170(h) An anatomical gift that has never been revoked by the donor is irrevocable by any other person after the donor's death.

Sec. 13.52.170(i) An individual may refuse to make an anatomical gift by a writing signed in the same manner as a gift; or by a statement attached to their driver's license; or any other writing. During a terminal illness, an oral statement or communication is an effective refusal.

Section 13.52.180. Making, amending, revoking, and objecting to anatomical gifts by others.

Sec. 13.52.180(a). Persons authorized to make an anatomical gift, in priority order. Any member of the following classes may donate all or part of a decedent's body for an authorized purpose, unless the decedent has revoked or refused to make an anatomical gift:

- the spouse of the decedent
- an adult son or daughter of the decedent;
- either parent of the decedent;
- an adult brother or sister of the decedent;
- a grandparent of the decedent; and
- a guardian of the person of the decedent at the time of death.

Sec. 13.52.180(b). Effects of the priority list. An anatomical gift may not be made by a person listed in (a) if:

- a person in a prior class is available at the time of death to make an anatomical gift;
- the person proposing the gift knows of refusal or contrary indication by the decedent; or
- the person proposing the gift knows of a refusal or contrary indication by a member of the person's class or a prior class.

Sec. 13.52.180(c). Method of making an anatomical gift by authorized person. An anatomical gift made by a person under (a) shall be made by a document of gift signed by the person; or by recorded telephonic or reproduced writing and signed by the recipient.

Sec. 13.52.180(d). Restrictions set on revocation. An anatomical gift by a person authorized in (a) may be revoked by a member of the same or prior class, if before procedures have begun for removal, the physician knows of the revocation.

Sec. 13.52.180(e). Absence of a donation does not indicate intent. Failure to make an anatomical gift under (a) of this section is not an objection to the making of a gift.

Section 13.52.190 Optional form for anatomical gift by next of kin or guardian of the person.

The following form is provided in statute as a suggested format for making an anatomical gift:

ANATOMICAL GIFT BY NEXT OF KIN OR
GUARDIAN OF THE PERSON
Under AS 13.52.170 - 13.52.280, I make this anatomical gift from the body of

(name of decedent)
who died on _____
(date)
at _____
(place) (city)
in _____
(state)

The marks in the appropriate squares and the words filled into the blanks below indicate my relationship to the decedent and my wishes respecting the gift.

I survive the decedent as spouse; adult son or daughter; parent; adult brother or sister; grandparent; guardian of the person.

I hereby give (check boxes applicable):

any needed organs, tissues, or parts;

the following organs, tissues, or parts only:

 the following purposes only:

(date) (signature of survivor)

(address of survivor)

Section 13.52.200. Routine inquiry and required request; search and notification.

Sec. 13.52.200(a). Inquiries at the hospital. On or before admission to the hospital, a designated staff person shall ask each patient, who is 18 years or older, "are you an organ or tissue donor?" If the answer is yes, staff shall request a copy of the document of gift. If the answer is no, and the attending physician consents, the designated staff shall discuss with the patient the option to make or refuse to make an anatomical gift. All the relevant information shall be noted in the patient's record.

Sec. 13.52.200(b). Inquiries at or near the time of death. At that time, if there is not indication of a gift or of a refusal to make a gift, a designated hospital staff member shall discuss the option with the family of the patient. The request must be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable. The commissioner of health and social services shall adopt regulations to implement this subsection.

Sec. 13.52.200(c). Document of gift search. Certain individuals are required under this chapter to make a reasonable search for a document of gift if they come upon an individual who the searcher believes is dead or near death: A law enforcement officer, fire fighter, paramedic or other emergency rescuer, and upon admission, the hospital.

Sec. 13.52.200(d). Required hospital notification. If a document of gift or evidence of refusal is located during this search, the hospital must be notified.

Sec. 13.52.200(e). Required notification of procurement organization. If the hospital knows that an anatomical gift has been made by a person under their care, or by a person en route to the hospital, the hospital shall notify an appropriate procurement organization and cooperated in the implementation of the procurement.

Sec. 13.52.200(f). Failure to discharge duties. Notwithstanding AS 13.52.090, a person who fails to discharge the duties imposed by this section is subject to appropriate administrative sanctions but not civil or criminal fines.

Section 13.52.210. Persons who may become donees; purposes for which anatomical gifts may be made.

Sec. 13.52.210(a) Who can become a donee (receive a gift)? A hospital, physician, or procurement organization for transplantation or therapy, medical or dental education, research, or advancement of science; an accredited medical or dental school, college or university; or a designated individual for transplantation or therapy needed by that individual.

Sec. 13.52.210(b) An anatomical gift may be made to a designated donee or without designating a donee. If the donee is not designated, or the donee is not available, the gift may be accepted by any hospital.

Sec. 13.52.210(c) Effects of refusal or contrary indications. If the donee knows of the decedent's or the a surrogate decision maker's refusal or contrary indications to making a gift, the donee may not accept the gift.

Section 13.52.220. Delivery of document of gift.

Sec. 13.52.220(a) Delivery during the donor's lifetime is not required.

Sec. 13.52.220(b) Safekeeping of document of gift. A copy of the gift delivered to the donee will expedite the appropriate procedures after death; therefore, the document may be deposited at any hospital, procurement organization, or registry office for safekeeping.

Section 13.52.230. Rights and duties at death.

Sec. 13.52.230(a) Rights of a donee. Rights of a donee created by an anatomical gift are superior to rights of others, except in terms of autopsies. A donee may accept or reject an anatomical gift. If the donee accepts the anatomical gift, they must follow prescribed methods.

Sec. 13.52.230(b) Directions for physicians regarding time of death & removal. A physician who attends the donor at death or who certifies the death must determine the time of death. The physician who attends the donor at death or who determines the time of death may not participate in removal procedures unless the document of gift designates a particular physician.

Sec. 13.52.230(c) Eucleators & technicians. After the time of death has been noted, a technician or enucleator may remove any donated parts.

Section 13.52.240. Coordination of procurement and use.

Sec. 13.52.240 Coordination. Each hospital in Alaska shall coordinate with other hospitals and procurement organizations to establish affiliations for coordination of procurement.

Section 13.52.250. Sale or purchase of parts prohibited.

Sec. 13.52.250(a) Prohibited use of donation. A person may not knowingly purchase or sell a part for transplantation if removal of the part is intended to occur after the death of the decedent.

Sec. 13.52.250(b) Exception. Valuable consideration for sale does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.

Section 13.52.260. Examination, autopsy, liability.

Sec. 13.52.260(a) Examination. An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift.

Sec. 13.52.260(b) Autopsy. The autopsy provisions found in AS 13.52.170-280 are subject to the autopsy provisions of AS 12.65.

Sec. 13.52.260(c) Liability. A hospital, physician, coroner, ME, local public health officer, enucleator, technician or other person who acts in good faith under applicable anatomical gift laws of Alaska or another state is not liable for that act in civil or criminal proceedings.

Sec. 13.52.260(d) Liability. An individual who makes an anatomical gift under the gift laws of Alaska or another state is not liable for any injury or damage that may result from making or the use of the anatomical gift.

Section 13.52.270. Applicability provisions.

AS 13.52.170-280 apply to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or the person so authorized.

Section 13.52.280. Uniformity of application and construction.

AS 13.52.170-280 shall be applied and construed to carry out the purpose of uniform law with respect to anatomical gifts among the states.

Section 13.52.300. Optional form.

The following form is a sample and it may be used to create an advance directive. This form may be duplicated or modified to suit the needs of the person, or a completely different form may be used that contains the substance of the following form or otherwise complies with this chapter:

ADVANCE HEALTH CARE DIRECTIVE

Explanation

You have the right to give instructions about your own health care to the extent allowed by law. You also have the right to name someone else to make health care decisions for you to the extent allowed by law. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your health care provider. If you use this form, you may complete or modify all or any part of it. You are free to use a different form if the form contains the substance of this form or otherwise complies with the requirements of AS 13.52.

Part 1 of this form is a durable power of attorney for health care. Part 1 lets you name another individual as an agent to make health care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a health care institution where you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you that you could legally make for yourself. This form has a place for you to limit the authority of your agent. You do not have to limit the authority of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right, to the extent allowed by law, to

(a) consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition, including the administration or discontinuation of psychotropic medication;

(b) select or discharge health care providers and institutions;

(c) approve or disapprove proposed diagnostic tests, surgical procedures, programs of medication, and do not resuscitate orders; and

(d) direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care; and

(e) make an anatomical gift following your death.

Part 2 of this form lets you give specific instructions for your end-of-life health care to the extent allowed by law. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief medication. Space is provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 3 of this form lets you express an intention to make an anatomical gift following your death.

Part 4 of this form lets you make decisions in advance about certain types of mental health treatment.

Part 5 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end and have the form witnessed by one of the two alternative methods listed below. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any health care agents you have named. You should talk to the person you have named as your agent to make sure that the person understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health care directive or replace this form at any time, except that you may not revoke this declaration when you are determined to be incapable by a court, by two physicians, at least one of whom shall be a psychiatrist, or by both a physician and a professional mental health clinician.

**PART 1
DURABLE POWER OF ATTORNEY FOR
HEALTH CARE DECISIONS**

(1) DESIGNATION OF AGENT. I designate the following individual as my agent to make health care decisions for me:

(name of individual you choose as agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, I designate as my first alternate agent

(name of individual you choose as first alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent

(name of individual you choose as second alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

(2) AGENT'S AUTHORITY. My agent is authorized to make all health care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration, and all other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE. Except in the case of mental illness, my agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. In the case of mental illness, unless I mark the following box, my agent's authority becomes effective when a court determines I am unable to make my own decisions, or, in an emergency, if my primary physician or another health care provider determines I am unable to make my own decisions. If I mark this box [], my agent's authority to make health care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION. My agent shall make health care decisions for me in accordance with this durable power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN. If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named under (1) above, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making health care decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want. There is a state protocol that governs the use of do not resuscitate orders by physicians and other health care providers. You may obtain a copy of the protocol from the state Department of Health and Social Services.

(6) END-OF-LIFE DECISIONS. Except to the extent prohibited by law, I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below: (Check only one box.)

(A) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards; OR

(B) Choice Not To Prolong Life

I want comfort care only and I do not want my life to be prolonged with medical treatment if (check all choices that represent your wishes)

(i) I have an incurable and irreversible condition that, in the judgment of my physician, will result in my death within a relatively short period of time despite appropriate medical care;

(ii) the use of life-sustaining procedures would serve only to artificially prolong my dying process without hope of recovery;

(iii) I become unconscious and, to a reasonable degree of medical certainty, I will not ever regain consciousness;

(iv) the likely risks and burdens of treatment would outweigh the expected benefits.

Additional instructions: _____

(C) Artificial Nutrition and Hydration. If I am unable to safely take nutrition, fluids, or nutrition and fluids (check your choices or write your instructions),

I wish to receive artificial nutrition and hydration indefinitely;

I wish to receive artificial nutrition and hydration on a limited trial basis to see if I can improve;

In accordance with my choices in (6)(B) above, I do not wish to receive artificial nutrition and hydration.

Other instructions: _____

(D) Relief from Pain. If I mark this box , I direct that sufficient treatment should be provided to me to alleviate my pain or discomfort.

(7) OTHER WISHES. (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that

Conditions or limitations: _____

(Add additional sheets if needed.)

PART 3
ANATOMICAL GIFT AT DEATH
(OPTIONAL)

If you are satisfied to allow your agent to determine whether to make an anatomical gift at your death, you do not need to fill out this part of the form.

(8) Upon my death: (mark applicable box)

- (A) I give any needed organs, tissues, or other body parts, OR
 (B) I give the following organs, tissues, or other body parts

only _____

(C) My gift is for the following purposes (strike any of the following you do not want):

- (i) transplant;
- (ii) therapy;
- (iii) research;
- (iv) education.

(D) I refuse to make an anatomical gift.

PART 4
MENTAL HEALTH TREATMENT

This part of the declaration allows you to make decisions in advance about mental health treatment. 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.

If you are satisfied to allow your agent to determine what is best for you in making these mental health decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(9) PSYCHOTROPIC MEDICATIONS. If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychotropic medications are as follows:

_____ I consent to the administration of the following medications:

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

Conditions or limitations: _____

(10) ELECTROCONVULSIVE TREATMENT. If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding electroconvulsive treatment are as follows:

_____ I consent to the administration of electroconvulsive treatment.

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

Conditions or limitations: _____

(11) ADMISSION TO AND RETENTION IN FACILITY. If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding admission to and retention in a health care facility for mental health treatment are as follows:

_____ I consent to being admitted to a health care facility for mental health treatment for up to _____ days. (The number of days not to exceed 17.)

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

Conditions or limitations: _____

OTHER WISHES OR INSTRUCTIONS

Conditions or limitations: _____

PART 5
PRIMARY PHYSICIAN
(OPTIONAL)

(12) I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

(13) EFFECT OF COPY. A copy of this form has the same effect as the original.

(14) SIGNATURES. Sign and date the form here:

(date) (sign your name)

(print your name)

(address) (city) (state) (zip code)

(15) WITNESSES. This advance care health directive will not be valid for making health care decisions unless it is

(A) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; or

(B) acknowledged before a notary public in the state.

ALTERNATIVE NO. 1

Witness

I swear under penalty of perjury under AS 11.56.200 that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider or an employee of a health care provider or facility.

(date) (signature of witness)

(printed name of witness)

(address) (city) (state) (zip code)

Witness

I swear under penalty of perjury under AS 11.56.200 that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, or an employee of a health care provider or facility.

(date) (signature of witness)

(printed name of witness)

(address) (city) (state) (zip code)

ALTERNATIVE NO. 2

State of Alaska

Judicial District

On this ____ day of _____, in the year _____, before me,

(insert name of notary public) appeared
_____, personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person whose name is subscribed to this instrument, and
acknowledged that the person executed it.

Notary Seal

(signature of notary public)

Section 13.52.330. Definitions.

Section 4. Makes changes to conform the section to other parts of the bill and removes the references to living wills and former will chapters.

Section 5. Makes changes to conform the section to other parts of the bill and removes the references to living wills.

Section 6. Makes changes to conform the subsection to other parts of the bill and removes the references to living wills.

Section 7. Makes changes to conform the subsection to other parts of the bill and removes the references to living wills and to the former chapter on living wills.

Section 8. Makes changes to conform the subsection to other parts of the bill.

Section 9. Makes changes to conform the subsection to other parts of the bill.

Section 10. Makes changes to conform the section to other parts of the bill.

Section 11. Makes changes to conform the subsection to other parts of the bill and adds advance health care directives to the list of items that may specify when psychotropic drugs may be administered in a non-emergency.

Section 12. Makes changes to conform the subsection to other parts of the bill and adds advance health care directives to the list of items that may specify when psychotropic drugs may be administered without the patient's informed consent.

Section 13. Adds advance health care directives to the list of items that must be documented when providing the court with information under the subsection.

Section 14. Adds advance health care directives to the list of items that an assisted living home is required to maintain in a patient's file.

Section 15. Repeals certain statutes which are then re-implemented into the bill including:

- AS 13.26.332 (L), 13.26.335(1) and 13.26.344(l) – Within Article 5. Powers of Attorney statutes, HB 25 repeals the health care services option where it is currently included with banking, bonds, and chattel among many, many other material concerns.
 - *The Power of Attorney for health care is re enacted in a much expanded form in the bill.*
- AS 13.50.010 through 13.50.090 - Chapter 50. Uniform Anatomical Gift Act is repealed in its entirety.
 - HB 25 repeals the 1984 version of the Uniform Anatomical Gift Act and re enacts the provision with the 1987 Uniform Anatomical Gift Act, excluding only Section 4 of the uniform language.
- AS 18.12.010 – 18.12.100 – Chapter 12. Living Wills and Do Not Resuscitate Orders is repealed in its entirety.
 - HB 25 repeals the existing statute and re enacts the provisions in the bill.
- AS 47.30.950 – 47.30.980 Article 12. Personal Declaration of Preferences for Mental Health Treatment is repealed in its entirety.
 - HB 25 repeals the 1996 Act and re enacts the provisions in the bill.

Section 15. Provides that a power of attorney or a declaration lawfully under Alaska statute repealed by this Act continue to be effective until the power or declaration is revoked.

Section 17. Provides that AS 13.52.120(b) does not apply to certain existing insurance policies and annuities.

Section 18. Directs the Department of Health and Social Services to adopt implementing regulations.

Section 19. Provides that current regulations found at 7 AAC 16, as modified by this Act, continue in effect until the Department of Health and Social Services adopts new regulations.

Section 20. Gives bill Sec. 18 an immediate effective date.

Section 21. Gives the rest of the bill an effective date of January 1, 2005.

Updated: February 19, 2004

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 3, 2004

SUBJECT: Summary of statutes repealed by draft CSHB 25() relating to health care decisions (Work Order No. 23-LS0137U)

TO: Representative Bruce Weyhrauch
Attn: Linda

FROM: Theresa L. Bannister
Legislative Counsel

You have asked for a summary of each statutory provision repealed by the draft bill described above. As a preliminary matter, note that this is a summary of the provisions and should not be considered an authoritative interpretation of the provisions, and each provision is the best statement of its contents. The provisions described below are repealed by sec. 15 of the bill.

1. **Statutory form of power of attorney.** These three provisions relate to the statutory power of attorney form.

AS 13.26.332(L). Category of power that may be given in statutory power of attorney. Category is "health care services."

AS 13.26.335(1). Additional optional provisions that may be included in the statutory form of power of attorney. These provisions may be used if the person gives an agent authority over health care services in the power of attorney. The provisions include whether the person has a declaration under AS 18.12, a living will, or a declaration regarding mental health treatment.

AS 13.26.344(1). In the statutory form power of attorney, this provision indicates what the language conferring general authority with respect to health care services will be construed to mean.

4. **Uniform Anatomical Gift Act.** These provisions make up the contents of the current chapter dealing with anatomical gifts.

AS 13.50.010. Describes who may make an anatomical gift and when they may make the gift. Prohibits a donee from accepting a gift, if the donee has actual notice of contrary indications by the decedent or if the gift is opposed by certain persons. However, provides that an anatomical gift that is not revoked by the donor before death is

Representative Bruce Weyhrauch

March 3, 2004

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irrevocable and does not require the consent or concurrence of any person after the donor's death. States that a gift authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended. States that the rights of the donee are superior to others' rights but are subject to the state's autopsy laws.

AS 13.50.014. Requires hospitals to make a reasonable search for a document of gift or other information relating to gift donation and to request a gift. States that failure to make a reasonable search is not a basis for liability other than administrative sanctions. Requires a hospital to develop procedures related to anatomical gifts. Exempts certain hospitals that lack the means to properly remove, store, or transport gifts.

AS 13.50.016. Requires law enforcement and medical personnel who respond to the scene of a death to make a reasonable search for a document of gift or other information relating to a gift donation and to inform the hospital of a gift. States that failure to make a reasonable search is not a basis for liability other than administrative sanctions. Exempts responding law enforcement or medical personnel if all hospitals within a reasonable distance are exempt under AS 13.50.014.

AS 13.50.020. Lists approved potential donors and purposes.

AS 13.50.030. Indicates how an anatomical gift can be made, including what documents or other means may be used, how it must be executed, and when the gift takes effect. States that a gift may identify a donee, and who may accept the gift. Allows the donee to identify the doctor to handle the procedure. Sets out an optional form for a gift.

AS 13.50.040. States that delivery of the gift document is not necessary for a valid gift. Allows the gift document, or an executed copy, to be deposited in a hospital, bank or storage facility, or registry office to facilitate the procedure after death. Requires the person in possession of the document to produce it upon request after death.

AS 13.50.050. Indicates how a gift, including one made in a declaration under AS 18.12, may be amended or revoked.

AS 13.50.060. States that a donee may accept or reject a gift. Authorizes the donee of an entire body to authorize embalming and the use of the body in funeral services. Requires that a donated part be removed without unnecessary mutilation. Indicates in whom the possession of the body vests after the removal. Addresses liability for the costs of making the gift. States how the time of death is to be determined. Generally prohibits the physician who determines death from participating in the gift procedures. Addresses the liability of persons who act in good faith under the chapter or another state's or country's laws. Makes the provisions of this chapter subject to state autopsy laws.

AS 13.50.065. Requires the adoption of regulations to implement the chapter.

AS 13.50.068. Recognizes gifts executed, issued, or authorized in other states.

AS 13.50.070. Defines the terms for the chapter.

AS 13.50.080. Requires that the chapter be interpreted to make it uniform with other states enacting the same provisions.

AS 13.50.090. Names the chapter the Uniform Anatomical Gift Act.

3. Living wills and do not resuscitate orders. These provisions make up the contents of the chapter on living wills and DNR orders.

AS 18.12.010. Allows a competent person who is 18 years or more old to execute a declaration directing that life-sustaining procedures be withheld or withdrawn. States that the declaration is given operative effect only if the declarant's condition is terminal and the declarant is not able to make treatment decisions. However, makes anatomical gifts in the declaration take effect upon death. Requires that the declaration be signed by the declarant or another person at the declarant's direction. Prohibits a person from charging for preparing a declaration. States that, except regarding certain anatomical gift provisions, it is the declarant's responsibility to provide a copy to the physician. Requires the health care provider receiving the copy to put it in the declarant's medical records.

Provides an optional form for a declaration.

AS 18.12.020. States that, except as provided for anatomical gifts, a declaration may be revoked at any time and in any manner without regard to mental or physical condition. States that a revocation is only effective, with regard to health care providers, when communicated to the provider by the declarant or by another person to whom the revocation was communicated. Requires that the revocation be made a part of the declarant's medical record.

AS 18.12.030. Requires an attending physician who has a declaration and determined the declarant to be in a terminal condition to record that determination and the contents of the declaration in the declarant's medical record.

AS 18.12.035. Authorizes an attending physician to issue a DNR order for a patient of the physician. Directs the Department of Health and Social Services to adopt a DNR protocol. Requires the protocol to be approved by the State Medical Board. Requires health care providers other than a physician to comply with the protocol when presented with DNR identification, an oral DNR order issued directly by a physician, or a written DNR order entered on a department form. Prohibits implementing a DNR order until a donated organ can be evaluated. Prohibits a physician from revoking a DNR order under certain conditions. Prohibits a person from making a DNR order ineffective under certain conditions.

AS 18.12.037. Requires the department to develop standardized designs for DNR identification cards, forms, necklaces, and bracelets to signify that the possessor has executed a declaration, that the declaration contains an anatomical gift, or that the possessor has a DNR order.

AS 18.12.040. States that a terminal patient with a declaration or a patient with a DNR order has the right to make decisions regarding use of cardiopulmonary resuscitation and other life-sustaining procedures as long as the patient can. States that if the patient cannot, the declaration or the DNR protocol governs the decisions, unless the DNR order is revoked or made ineffective. States that the chapter does not prohibit medical procedures considered necessary to provide comfort care or alleviation of pain. States that a declaration may provide that the declarant does not want nutrition or hydration administered intravenously or by gastric tube. Provides that the declaration of a terminal patient with a declaration known to the attending physician to be pregnant is not given effect as long as it is probable that the fetus could develop to the point of live birth with continued application of life-sustaining procedures.

AS 18.12.050. Requires an attending physician who is not willing to comply with the requirements of AS 18.12.030 or with the declaration of a qualified patient under AS 18.12.040 to withdraw as attending physician. However, the withdrawal is effective only when the services of another attending physician have been obtained. Requires facilities that are not able to comply with a declaration or are unwilling to recognize DNR identification to take all reasonable steps to notify the patient or the patient's guardian of the facility's policy and to transfer the patient.

AS 18.12.060. States that certain persons, without actual notice of the revocation of a declaration or DNR order, who act in accordance with the DNR protocol or this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct. States that a physician, a health care professional, or a health care facility is not subject to civil or criminal liability for actions under this chapter that are in accord with reasonable medical standards.

AS 18.12.070. States that an attending physician who fails to comply with a DNR order or a declaration of a terminal patient or to make transfer arrangements under AS 18.12.050 is not entitled to compensation for services provided after the failure. States that the physician may be liable for a civil penalty plus certain actual costs; states that this is the exclusive remedy at law. States that a person who willfully conceals, cancels, defaces, obliterates, or damages DNR identification or a declaration or falsifies or forges a revocation of the DNR identification or declaration may be civilly liable to certain persons.

AS 18.12.080. States that if death results from the withholding or withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures under a DNR order or protocol, under a declaration, or upon discovery of DNR identification and in accordance with this chapter, the death does not constitute a suicide or homicide. States that a DNR

order, DNR identification, or a declaration, does not affect life insurance. Prohibits certain identified persons and entities from requiring a person to execute a declaration, obtain a DNR order, or have DNR identification in order to be insured or receive health care. States that the chapter does not create a presumption about the intention or intended treatment of a person who does not have DNR identification, a declaration, or a DNR order with respect to the use, withholding, or withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures. States that the chapter does not increase or decrease a patient's right to make decisions about cardiopulmonary resuscitation or other life-sustaining procedures as long as the patient is able to do so. Also states that the chapter does not impair or supersede a right or responsibility to effect the withholding or withdrawal of medical care in a lawful manner. States that, in that respect, the provisions of the chapter are cumulative. States that the chapter does not condone, authorize, or approve mercy killing or euthanasia.

AS 18.12.090. States that a declaration, DNR order, and DNR identification from another state that complies with that jurisdiction's laws is effective under this chapter.

AS 18.12.100. Defines terms for the chapter.

4. **Mental health treatment declarations.** These sections makes up the article that deals with personal declarations of preferences for mental health treatment.

AS 47.30.950. Allows an adult of sound mind to make a declaration of preferences or instructions for mental health treatment, including consent to or refusal of mental health treatment. Indicates how long a declaration continues and how long the authority of the named attorney-in-fact is in effect.

AS 47.30.952. States that a declaration may designate a competent adult to act as attorney-in-fact to make decisions about mental health treatment. Provides for an alternative attorney-in-fact. Allows the attorney-in-fact to may make decisions about mental health treatment on behalf of the principal only when the principal is incapable. States that the decisions must be consistent with the declaration. Lists who may not serve as attorney-in-fact. Allows an attorney-in-fact to withdraw and to rescind the withdrawal. Establishes certain notice and procedural requirements. Indicates how the designation of an attorney-in-fact under this section relates to previous or subsequent designations of an attorney-in-fact.

AS 47.30.954. Requires a declaration to be signed by the principal and two competent adult witnesses. Indicates who may not serve as a witness.

AS 47.30.956. States when a declaration becomes operative. Indicates when a provider is to act under the declaration and when the provider is to obtain the principal's informed consent or refusal. Requires a provider to make the declaration a part of the principal's medical record. Requires a provider to comply with a declaration consistent with reasonable medical practice, the availability of treatments requested, and applicable law.

Representative Bruce Weyhrauch

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Indicates what a provider may do and is required to do if unwilling to comply with the declaration.

AS 47.30.958. States that an attorney-in-fact does not have authority to make mental health treatment decisions unless the principal is incapable. States that an attorney-in-fact is not personally liable for the cost of treatment provided to the principal. Describes the attorney-in-fact's right to receive information and to receive, review, and consent to disclosure of medical records. Explains the attorney-in-fact's duty to act consistently with the declaration, or, if the declarant's wishes are unknown, with what the attorney-in-fact in good faith believes to be the best interests of the principal. States that an attorney-in-fact is not subject to criminal prosecution, civil liability, or professional disciplinary action for an action taken in good faith under a declaration.

AS 47.30.960. Prohibits requiring a person to execute or to refrain from executing a declaration to get insurance, mental or physical health services, or a facility discharge.

AS 47.30.962. Allows a provider to subject the principal to mental health treatment contrary to the principal's wishes in a declaration only under two described situations.

AS 47.30.964. States that a declaration does not limit any authority provided in this chapter to take a person into custody or to admit, retain, or treat a person in a health care facility.

AS 47.30.966. States that a declaration may be revoked at any time by a capable principal. Indicates when the revocation becomes effective.

AS 47.30.968. Provides immunity for a provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of a declaration.

AS 47.30.970. Requires the declaration to be in substantially the form provided in the section.

AS 47.30.972. Establishes a class A misdemeanor penalty for certain described activity.

AS 47.30.980. Defines the following terms: "anatomical gift," "attending physician," "cardiopulmonary resuscitation," "declaration," "DNR identification," "do not resuscitate order," "do not resuscitate protocol," "health care provider," "life-sustaining procedure," "physician," "qualified patient," and "terminal condition."

If I may be of further assistance, please advise.

TLB:lmb
04-060.lmb

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 25(HES)
 (H) Publish Date: 3/10/03
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title: HEALTH CARE DECISIONS/DO NOT RESUSCITATE ORDERS/DONATION OF BODY PARTS State Health Services
 Component: Community Health/EMS Services

Sponsor: WEYRAUCH
 Requester: HOUSE (HES) Component No. 2078

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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 (0)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: _____
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Currently, various end-of-life provisions are located in different statutes which are narrowly drafted, create confusion for the public, and make it difficult for people to direct their end-of-life care and treatment. The bill establishes a new chapter called the Health Care Decisions Act. The intent of this bill is to provide a tool for end-of-life planning and recording of health care decisions, in one easy to understand chapter of state statute. The Division of Public Health supports the goals of this act. There will be no fiscal impact to the Division by passage of this bill.

Prepared by: Karen E. Pearson, M.S., Director Phone 465-3090
 Division: Public Health Date/Time 02/13/2003
 Approved by: Joel S. Gilbertson, Commissioner Date 02/13/2003
 Agency: Department of Health and Social Services

Subject: Five wishes legislation

Date: Wed, 16 Apr 2003 04:07:53 -0700 (PDT)

From: mike alter <waltalter7@yahoo.com>

To: linda_sylvester@legis.state.ak.us

To whom it may concern,

Thank you for your recent letter concerning legislation on end of life issues. As an Emergency Physician I am often faced with these issues. I believe very strongly that a person has the right to make decisions about the end of their life. I am often put in difficult situations because people have not been given easy access to a system that lets them make their desires known. I believe a person has the right to die with dignity and without pain and to make clear what he or she wants or doesn't want done. Any legislation which can make it easier for people to convey these wishes and for health providers to have access to these wishes is a worthy cause and has my full support

Thank you for your efforts on this regard, this is the type of legislation that can really make a difference.

Sincerely,

Michael Alter MD
Chairman of Emergency Medicine, Valley Hospital,
Palmer
Chief of Medical Staff, Valley Hospital, Palmer

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BETHANN BOUDAH CHAPMAN

One Sealaska Plaza, Suite 202

Juneau, Alaska 99801

Bchapman@faulknerbanfield.com

March 31, 2003

Via Fax 465-2273

Representative Bruce Weyhrauch

Alaska State Legislature

State Capitol Room 102

Juneau, AK 99801-1182

Re: CSHB 25

Dear Representative Weyhrauch:

I am writing in support of CSHB 25 regarding health care decisions and advance directives. I am an attorney and practice extensively in the area of estate planning and long-term care planning. In my practice, more than 95% of my clients sign durable powers of attorney and living wills. While current Alaska law authorizes an individual to execute a power of attorney and living will, I believe CSHB 25 will clarify the agent's power under a health care power of attorney, will allow an individual more freedom to set forth his or her wishes for health care treatment, and will minimize conflicts regarding an individual's medical treatment.

Under current law, an individual who wishes to appoint an agent to make his or her health care decisions must sign a durable power of attorney. This power of attorney may authorize a person to make both financial and health care decisions. In addition, an individual who wishes to express his or her wishes regarding life-sustaining measures must sign a living will. Signing one document and not the other may lead to confusion. For example, an agent under a durable power of attorney cannot make decisions regarding life-sustaining measures unless the incapacitated person also signed a living will. Conversely, if an individual signs a living will, but not a durable power of attorney, then the individual has not appointed any person to represent his or her interests to assure that the living will is, in fact, implemented, or to make other health care decisions. Merging these equally important documents into one document will assure that individuals consider all issues involved with medical treatment and end-of-life decisions.

Furthermore, proposed Section 13.52.030, regarding health care decisions by a surrogate, is a vast improvement over current law and will allow family members to participate in health care decisions even if the incapacitated individual failed to sign a health care power of attorney. This law will ease the burden on family members when

faced with difficult health care decisions. The family will no longer be required to commence a guardianship proceeding and may actively participate in another family member's health care decisions.

I commend the Legislature for considering changes to Alaska law that will provide Alaskans more freedom in making known their wishes for health care and that will allow family members to participate in health care decisions without the need for a guardianship. By adopting this law, Alaska will be taking a positive step for the benefit all Alaskans.

Thank you for your consideration of my comments.

Sincerely,



BethAnn Boudah Chapman

c: Representative Beth Kerttula (via fax)

3

Life Alaska
Tissue and Organ Donation
P.O. Box 231809
Anchorage, AK 99523-1809
1-907-562-5433 • 1-800-719-5433
Fax 1-907-562-5333



February 27, 2003

The Honorable Bruce Weyhrauch
Alaska State Legislature
Alaska State Capitol
Juneau, AK 99801-1152

Dear Mr. Weyhrauch:

Thank you and your committee for your dedication and interest in simplifying patient directives through HB 25. As the Director of Life Alaska, the agency responsible for donation and transplant in Alaska, I want to share some facts. We work in partnership with LifeCenterNorthWest Organ Donor Network out of Seattle. With 18 organ donors and 207 tissue donors in 2002, Alaska has one of the highest rates of donations in the country. This resulted in 62 organ transplants and 1281 tissue transplants occurring. Of these, 17 Alaskans received an organ transplant and 805 Alaskans received a tissue transplant in 2002.

The success of the Alaska donor program remains strongly tied to wonderful support by hospitals, the Alaska State Medical Examiner, and most important – the community.

The current Uniform Anatomical Gift Act (UAG), Sec. 13.50.10 - .90, along with federal regulations, has been the backbone of our program.

I (briefly) reviewed HB 25 along with the current 13.50 UAG. The attached sheet indicates what sections of the UAG that are no longer needed, and the sections that I believe remain important to a successful donor and transplant program. I respectfully request that section 13.50.10 remains as a statute. Currently, most deaths in Alaska do not involve any type of healthcare proxy. Most donors tend to be healthy individuals who die from a very sudden event. These are the people least likely to have made an advance directive. Section 10 also states very clearly that a first person consent allows such a gift to be irrevocable by other family members.

Section 13.50.16 encourages law enforcement personnel to check for a donor card on fatalities. I request that they be directed to contact a hospital or the state's donor program.



On Our Own Terms:
Moyers on Dying

Produced by Public Affairs Television, Inc.
and presented on PBS by Thirteen/WNET New York



Discussion Guide

How to Talk About End-Of-Life Concerns

by Joanne Lynn, M.D., *Americans for Better Care of the Dying*

It is hard to talk about dying, death, and bereavement. Virtually everyone wants those conversations to have happened, but no one wants to "have that conversation today." Talking about death seems at first to make it more real, more threatening. Afterwards, though, most people find that talking ends up being very helpful and reassuring. Having some strategies may help.

First, push yourself to take the openings that come up. When Dad says, "I think the doctor thinks things are not going well," the family member is prone to say, "Don't talk that way. Everything is going to be fine." Instead, try, "Really? Why do you think that?" or try "What do you think the doctor is trying to say?" (Other sets of openings and responses are in *Handbook for Mortals*, p.11.)

Second, you should talk naturally about a time when the person will no longer be alive, even if at first you talk about some unreasonably long time into the future. "Mom, is there something that you want your granddaughter to have on her wedding day?" Often, a sick person will take the lead gratefully and say something like, "I wish I could see that, but I don't think I'll even see her at Christmas this year. I hope she finds someone half as good as your father. I wonder—if I could find that apron that my grandmother gave me when we married, would you keep it and give it to her then?" Obviously, that opens the gates to all sorts of conversations over the ensuing hours and days.

Third, talk about the patient's current hopes and fears. Ask something like, "Do you think this pain will get worse?" or "What do you think will happen as time goes on?" When you and the patient are not sure what you face, set up a way to find out (like letting the physician know that you want to discuss this at the next visit).

Remember, you need not use blunt or cold terms. Many Biblical phrases, poetry, songs, and metaphors deal with dying. And you need not talk of death most of the time. You can also reminisce, talk about daily life, and talk about plans and hopes.

How can you start? First, recognize that you or your loved one is still living and has a past, a present, and a future. Talk some about the past—share stories about what is important or what shaped this particular person or family. Talk some about the present—what is going well and what is going badly for patient and family. And, even though it may seem awkward, talk about the future—what hopes and dreams lie there, what practical problems, and how long the patient may live. In addition, you might find it useful to consider a list of important issues that are usually appropriate to consider.

(see "Talking About the Future" on page 15)

What to Talk About...

There are specific issues that should be decided in advance. Without advance planning, emergency responses to sudden changes in the patient's condition can be inappropriate. Virtually every seriously ill patient and his or her family should have decided the following issues.

1. **Proxy**—Someone needs to have the authority to speak on the patient's behalf when he or she is too sick to do so. Any hospital, nursing home, hospice, or home care agency can help with a form called a "healthcare proxy" or "durable power of attorney" that allows the patient to name someone as their proxy or surrogate in a legally binding way.

2. **Resuscitation**—Ambulance technicians and hospital personnel will immediately try to resuscitate anyone who collapses and is near death. However, resuscitation may not be desired if the collapsed person has been quite sick with an illness that is expected to worsen and lead to death. In order to keep anyone from trying resuscitation, the patient should ask his or her physician to write an order "not to attempt resuscitation" (often called "DNR" for "Do Not Resuscitate"). This order does not affect whether the patient can get hospital care or other treatments. Most states now provide a way to have an order against resuscitation put into effect when the patient is at home or anywhere else.

3. **Hospitalization**—Many seriously ill people come to the point where they cannot imagine a surgery or test that they would still want to have. At that point, they should ask their physician's advice on avoiding hospitalization, except to relieve suffering (e.g., to set a broken bone or relieve shortness of breath).

4. **Specific Treatments**—Many patients fear specific treatments such as breathing by machine, having a kidney machine, or having artificial nutrition or hydration ("tube feedings"). The merits of these should be discussed in advance. If the patient wants to forgo these treatments, he or she can write that down. If the patient is unclear about their merits, he or she can opt for a "trial of treatment." For a limited time, the treatment would be carried out. That trial allows the patient, family, and care team time to make a final decision. The treatment can then be stopped or continued based on how the patient responds to treatment.

The DNR ("do-not-resuscitate") MedicAlert® bracelet is imprinted with the MedicAlert® emblem on one side and DNR wording on the other. It is backed by a fully staffed 24-hour Emergency Call Center and recognized as a valid pre-hospital DNR order by emergency medical services in eight states: Arkansas, California, Indiana, Kansas, Maryland, Nevada, New Mexico, and Wisconsin. "DNR-EMS ON FILE" or similar wording is engraved for residents of other states.

For more information about DNR and advance directives repository services contact MedicAlert® Foundation at 1-800-432-5378 or on the Web at www.medicalert.org.

photo © Geraldine Rubio



5. Financial Issues—All patients need to consider the effects of treatment costs on their surviving family, the bequests that the patient wants, and how to deal with other costs. Often, a financial planner, lawyer, or social worker really helps. Your professional caregivers, local hospice programs, local aging services (Agencies on Aging, for example), and your friends will often have suggestions of people who are knowledgeable, affordable, and helpful. While some people consider these issues impolite to mention, a little planning can prevent financial chaos for the bereaved family.

6. Events Near Death—As patients and families converse about the upcoming death, they may find they have strong ideas of how things should proceed. It can be helpful to plan who will be with the patient at the time of death or shortly thereafter, who will be notified, how the memorial services will proceed, and so on—in as much detail as possible.

Writing It Down Advance Directives

- Think about what you really want to happen, given your medical condition and your family situation.
- Talk about your choices with those who matter to you and who will be around you when problems arise or death comes close.
- Have your doctor or nurse help you write down your wishes in ways that laws reinforce. In general, state laws allow for two kinds of written advance directives — naming a decision-maker (or "proxy" or "surrogate"), and giving specific instructions about treatment. Naming a surrogate is especially important if you live in certain states or if your family situation is confusing as to who would be "next of kin."
- Write down at least your spokesperson and your most important choices, using the formats accepted in your state's advance-directive statutes (see www.choices.org) —living will, durable powers of attorney, and health care proxy laws.
- For a "checklist" form, go to Five Wishes on the Web at www.agingwithdignity.org.

Talking About the Future

Pointers on conversations about the future between seriously ill patients and those who love them:

- Use language that everyone is comfortable in using.
- Take your time. Pauses and shared quiet time can communicate too.
- Encourage the patient to talk in his or her own way.
- Check what one another understands and feels.
- Talk of the time near death and just after in a natural way.
- Talk of practical matters and also of emotions and spiritual issues.

Issues for Further Consideration

1. If you were to become terminally ill, would you want to choose your time of death? How much input would you want a doctor or other healthcare provider to have if you could no longer speak for yourself? Have you shared your thoughts with your family?
2. A doctor's oath is to "do no harm." How can a doctor best abide by this oath in the final stages of terminal illness?
3. What issues are raised for you when you consider terminal sedation, physician-assisted suicide, and dying assisted only by palliative care?
4. What choices about death do terminally ill people, their loved ones, and doctors have in your community? Do you feel they are sufficient or insufficient? Why?
5. Why might disabled, poor, and mentally ill people oppose physician-assisted suicide? Is legalizing physician-assisted suicide good public policy?



Projects News 5 Wishes™ Get Involved Resources Links

Five Wishes

Five Wishes is a document that helps you express how you want to be treated if you are seriously ill and unable to speak for yourself. It is unique among all other living will and health agent forms because it looks to all of a person's needs: medical, personal, emotional and spiritual. Five Wishes also encourages discussing your wishes with your family and physician.

Five Wishes lets your family and doctors know:

1. Which person you want to make health care decisions for you when you can't make them.
2. The kind of medical treatment you want or don't want.
3. How comfortable you want to be.
4. How you want people to treat you.
5. What you want your loved ones to know.

Five Wishes is changing the way America talks about and plans for care at the end of life. More than 1.5 MILLION copies of the document are circulating throughout the nation, and more than 3,500 organizations are distributing this revolutionary document, including churches, synagogues, hospices, hospitals, doctor and law offices, and social service agencies. Many employers are providing the document to their employees, to help them plan for themselves and have those delicate discussions with their aging parents.

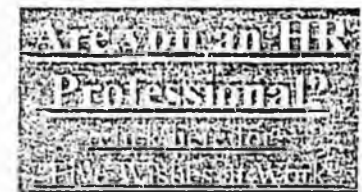
Five Wishes speaks to people in their own language, not in "doctor speak" or "lawyer talk." It can be used in the living room instead of the emergency room. And it helps families talk with their physician about a subject that before was too hard to face.

The 15 states that Five Wishes is not legally valid in, either require a specific state form or that the person completing an advance directive be read a mandatory notice or "warning." Residents of these states can still use Five Wishes to put their wishes in writing and communicate their wishes with their family and physician. Most health care professionals understand they

Five Wishes

The popular document that helps you get the care you want - when you need it.

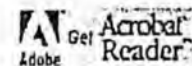
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Preview Five Wishes

View a non-printable example of Five Wishes.

This requires Adobe Acrobat Reader, which is provided for free from their website (click button below).



Five Wishes At Work

This innovative work-life educational program helps employees plan ahead for a serious illness - both for themselves and their aging family members. Learn more.

Five Wishes Video

have a duty to listen to the wishes of their patients no matter how they are expressed.

Five Wishes is available thanks to a generous grant by The Robert Wood Johnson Foundation, the nation's largest philanthropy devoted exclusively to health and health care.

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1-888-5-WISHES e-mail: fivewishes@agingwithdignity.org

888-594-74

America's most popular living will is now available on video! Those who complete Five Wishes, and groups that distribute the document, should have this important tool.

Five Wishes Q&A

Answers to the most commonly asked questions about Five Wishes.

Five Wishes States

The complete listing of states that Five Wishes is legally valid in.



Five Wishes Feedback

Let us know how you feel about Five Wishes and hear what others have said.



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Five Wishes States



Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Dakota, Tennessee, Virginia, Washington, West Virginia, Wyoming

1-888-5-WISHES e-mail: fivewishes@agingwithdignity.org

Alaska IS NOT a Five Wishes State
— — =

Five Wishes

What is Five Wishes?

Five Wishes is an easy-to-use legal document that lets you plan in advance for how you want to be cared for in case you become seriously ill. Some people refer to it as an "advance directive" because when you complete Five Wishes you give direction to your doctor and family, in advance, on how you want to be treated. There are five wishes in this document:

Wish One lets you choose the person you want to make decisions for you when you can't make them for yourself. Lawyers call it a "durable power of attorney for health care."

Wish Two is a living will. It lets you put in writing the kind of medical treatment you want or don't want if you become seriously ill and can't communicate to anyone.

Wishes Three and Four let you describe in detail how you want to be treated so that your dignity can be maintained.

Wish Five gives you a chance to tell others how you want to be remembered, and express other things that might be in your heart, like forgiveness.

Why should I fill out Five Wishes?

Without an advance directive like Five Wishes, you may have no control over important medical care decisions that will be made if you ever get seriously ill - such as whether to give you life-support treatment or aggressively treat your pain. You may think your wishes are similar to those of other people and that your loved ones and doctors will automatically know what you want when you are very ill. That's not true. In reality, everyone has different wishes and yours won't be followed unless you make them clear. For example, your dying process could be artificially prolonged even though you may have wanted a natural death. Not expressing your wishes can put your family, friends and doctor in the difficult position of guessing what kind of treatment you want, which could lead to disagreements. Completing Five Wishes gives you control over your care and peace of mind for you and your loved ones.

When do I need to use Five Wishes?

The best time to fill out Five Wishes is before you face a health crisis. The best place to fill out Five Wishes is at home - not a hospital. You never know when you are going to need Five Wishes, and many people put it off until it's too late. If you are over age 18, you should complete Five Wishes now. If you are married, both you and your spouse need to fill out your own Five Wishes.

When does Five Wishes take effect?

You will always make your own health care decisions if you are able to talk with your doctor and understand what is being said. Five Wishes only takes effect when you are too ill to communicate. So if you have a stroke and can't speak, or are in a coma, then your Five Wishes, and the person you chose to be your health care agent, can help direct your care with your doctor.

Is Five Wishes a legal document?

Yes. It was written with the help of the American Bar Association's Commission on the Legal Problems of the Elderly. It is legally valid under the advance directive statutes in most states (see list on page 3 of the Five Wishes document). Just follow the directions when you sign it.

What if I don't live in a Five Wishes state?

There are some states that require you to use their own legal forms to express your wishes and so you should use their forms and sign those forms. But you should also fill out Five Wishes because it can help make clear to your family, friends and doctor what you want.

How do I use Five Wishes?

Take the following steps to use Five Wishes:

- Review the document
 - Fill it out
- Follow directions for signing it
- Discuss it with your health care agent and doctor and give each of them a copy
- Make sure a copy of your Five Wishes is placed in your medical file by your doctor
 - Discuss Five Wishes with your family and friends and give them a copy

Does filling out Five Wishes guarantee that my wishes will be followed?

Your doctor is required to follow your wishes according to the laws of your state. Each state has its own rules and conditions that a doctor must observe, and so your doctor has the final word on when your living will takes effect. To do all you can to have your wishes followed, make sure you do three things:

1. Pick a health care agent (Wish One), tell him or her about your wishes and confirm they will speak for you if you ever get sick
2. Tell this person that hospitals, hospices and nursing homes have ethics committees that can help settle any disagreements with doctors or family members.
3. Discuss your wishes with your doctor, family and friends before you get sick

Which is better to have: a living will or a health care agent?

The health care agent and the living will go hand-in-hand, and you are usually better off with both. You need to have a health care agent there to speak for you when you can't speak for yourself, and you need a living will that expresses in writing your wishes. When you are sick, your medical condition can be very complicated and can change suddenly. The law generally requires your agent to make decisions that he or she feels you would have made if you could talk. The more information your agent has, the better.

What if I fill out Five Wishes and later change my mind?

You can change your wishes any time you want. It is a good idea to review and update your Five Wishes at least once a year. You may want to do that more often if your health changes or you change your mind. When you make changes, be sure to inform your health care agent, family, friends and doctor. Destroy all out-of-date copies of the document and distribute copies of your new Five Wishes.

If I am seriously ill, what can I do to make sure that I won't be in pain?

Most people who are very sick want to be kept comfortable and alert, and surrounded by friends. Great progress has been made in our health care system to treat illnesses, but unfortunately there can be more attention paid to your treatment than your comfort. So make it very clear to you doctor, health care agent and family that you don't want to be in pain.

Do I have to have my Five Wishes notarized?

Not unless you live in one of the few states that is listed in the notarization section of Five Wishes. Simply follow the directions on the signature page and you'll be safe.

What if I travel a lot? Will my Five Wishes be honored wherever I go?

If you travel a lot, take a copy of Five Wishes with you in case you become seriously ill. Your document will be legally valid in any of the states listed on page 3 of Five Wishes. If you travel to a state that is not listed, then you still may be protected by your Five Wishes document. Most states have laws that are designed to honor your wishes no matter how you express them. But to be safe, if you are going to be staying for an extended period of time in a non-Five Wishes state, then it's a good idea to fill out that state's required forms.

Who developed Five Wishes?

Five Wishes was created by the non-profit Aging with Dignity, a leading advocate for the needs of elders and those who care for them. Aging with Dignity founder Jim Towey created Five Wishes with the help of doctors, nurses, lawyers and other experts in end-of-life care to help people of all ages get the treatment they want if they get seriously ill. Jim is an attorney who worked twelve years for Mother Teresa of Calcutta and worked one year in her home for the dying in Washington, D.C. His experiences with Mother Teresa and her home are why Five Wishes looks at the personal, emotional, and spiritual needs of a person - and not just the medical ones. This is important because people are most concerned about maintaining comfort and dignity when they are very sick.

What if I have more questions?

You may talk with a lawyer or health care professional for advice. If you want more information, visit our web site at:

<http://www.agingwithdignity.org/5wishes.pdf>

or

<http://www.agingwithdignity.org/order.html>

National group criticizes Alaska for poor end-of-life care

By ANN POTEMPA
Anchorage Daily News

Last year, for the first time, the national organization Last Acts rated the states on their treatment of dying patients and gave Alaska a failing grade in several areas.

Last Acts is a coalition of organizations, including the American Medical Association and American Association of Retired Persons, now called AARP, funded by the Robert Wood Johnson Foundation. Last Acts' goal is to improve care for people nearing the end of life.

The coalition's report card for Alaska cited several areas for improvement.

- A low percentage of Alaskans 65 and older died with the help of hospice programs. Hospice emphasizes comfort care for people with terminal illness.
- The state lacks physicians and nurses trained in palliative care, which controls pain and other symptoms and improves quality of life for dying patients.
- The state's hospitals don't have enough pain and palliative care services.
- Alaska laws don't support good care planning, such as living wills and powers of attorney. A medical power of attorney makes health care decisions for patients when they

can no longer communicate for themselves.

Local Hospice directors say the grade from Last Acts doesn't tell the whole story.

"Part of me feels like yeah, I agree, we have a long way to go," said Julia Thorsness, executive director for Hospice of Anchorage. "There's so much to be done."

Even so, Thorsness said the grading system didn't acknowledge the good work being done in Alaska by nontraditional programs. For example, Thorsness said Last Acts focused on hospice programs certified by the Medicare program. In Alaska, only the hospice program in the Mat-Su Borough has such certification, allowing it to bill Medicare for health care services.

But volunteer programs from Juneau to Kenai to Anchorage to Fairbanks offer similar end-of-life care, Thorsness said. In recent years, a group worked with the Bristol Bay Area Health Corp. to start Helping Hands, a unique program that helps terminally ill Bush residents return to their home villages to die.

And now Alaska has Karen Gilley, a nurse trained to offer harp music for people facing death.

"It's a wonderful resource

for the community to have," Thorsness said.

"There are a variety of ways of offering that comfort and support. Sometimes it's massage. Sometimes it's music. Sometimes it's pets," she said. "We really strongly support everyone who's willing to offer whatever their gifts are."

Local hospice directors addressed some of Last Acts' concerns. The national coalition cited a lack of participation in hospice programs. In 2001, Hospice of Anchorage served 144 patients, most of whom had cancer, Thorsness said. During the same time period, the hospice in Mat-Su worked with 66 patients, said Babetta Daddino, the program's manager.

Hospice programs also are certifying more caregivers in hospice and palliative care.

Daddino said Hospice of Mat-Su didn't have any certified nurses before last fall; now it has five. Thorsness said two nurses working with the Anchorage program are certified for hospice care.

State legislators are addressing Last Acts' concern that Alaska's laws don't support good care planning. Rep. Bruce Weyhrauch, a Republican from Juneau, is sponsoring House Bill 25 this session. The bill attempts to create a comprehensive approach to making health care directives, such as picking powers of attorney.

Thorsness and Daddino stressed the importance of continuing education for professionals providing end-of-life care and for the community so residents understand what options they have. In May, Dr. Ira

Byock, author of "Dying Well: The Prospect for Growth at the End of Life," will spend two days in Alaska visiting hospitals and consulting with Providence Alaska Medical Center about its palliative care team. Byock also will speak at a free public session in Providence's auditorium on May 8.

"I think it's such a new field," Thorsness said. "I think we're in a big group of states that are trying to figure out what's the best way to meet this need, especially with the aging population. There's going to be more people wanting more services."

Anch. Daily News
2-23-03



adn.com

Anchorage Daily News

Alaskans want more of a say over their final days

Legislation in House would change state's law to allow simpler approach

By Lisa Demer

Anchorage Daily News

(Published: January 25, 2002)

If you knew you were going to die soon, what would your last wishes be?

Maybe you'd like your old dog by your side. Or ice cream for lunch every day. Or your children to know you're sorry for a long-ago wrong.

If you're like most people, you want to die at home with family members and friends. But people usually end up in a hospital or nursing home cared for by strangers, according to Aging with Dignity, a national organization that advocates for the elderly.

Alaska is among 15 states where narrow laws crimp efforts by people to spell out their last wishes, said Jim Towey, the Washington, D.C., based-president and founder of Aging with Dignity.

That would change under a bill before the Legislature. House Bill 197, sponsored by Rep. Bill Hudson, R-Juneau, would retool Alaska law on health care decision-making and other matters that arise at the end of life.

The idea is to help people spell out their wishes now so that later, if they can't walk to the fridge or even speak, their family, friends and medical providers know what they want.

Alaska already has laws for setting up living wills and appointing someone to make health care decisions through a power of attorney. When the bill was aired last year, some legislators questioned whether Alaska needs a new law.

Advocates say it does. Existing laws include legal forms that people feel bound to use even when there are good alternatives, including an approach known as Five Wishes, which is gaining popularity.

"People are concerned if they go beyond the statutory form, it would cause problems if there was any dispute," said Beth Chapman, a Juneau attorney who works in estate planning. "They want to be more detailed about their wishes."

Under the legislation, people could more easily write their own tailored last wishes, advocates said. Their wishes would, in effect, get a state stamp of validity whether a lawyer wrote the document or the person scrawled something himself or herself on the back of a paper bag, Towey said.

In Alaska, hospice organizations, AARP, the Juneau End of Life Task Force, the state Commission on Aging, and the statewide Senior Advocacy Coalition have supported changing the law to allow the Five Wishes approach. That trademark system, designed by Aging with Dignity, uses simple language and covers emotional and spiritual needs as well as health care.

"People in America treat dying like a medical moment. The discussion is all about feeding tubes and respirators. It leaves family members guessing and feeling guilty," said Towey, who once worked in a Mother Teresa home for the dying and was her lawyer for a dozen years.

An American Bar Association analysis found that Five Wishes is valid in 35 states. But the rest, including Alaska, either direct people to use specific forms or require that someone preparing a health care directive

be read a warning first.

Besides living wills, people should delegate a trusted health care agent to make decisions, said Charles Sabatino of Washington, D.C., assistant director of the American Bar Association Commission on Legal Problems of the Elderly. There are too many medical scenarios to anticipate them all, he said.

But Alaska law governing how to do that through a health care power of attorney is rigid, he said.

The latest version of the Alaska bill doesn't mention Five Wishes specifically but would allow it under an "other wishes" section for people who write their own instructions from scratch or just want to add a few extra thoughts, said Melanie Lesh, a legislative aide to Hudson.

States that allow Five Wishes typically don't name it. Their laws let people choose what form to use or write their own if they want, Sabatino said.

"Five Wishes is a great form. It ought to be clearly valid in every state. It isn't the end all and be all for everybody," Sabatino said.

The Five Wishes approach includes:

Whom you want to make medical decisions for you.

The type of medical treatment you want, or don't want, through a living will.

How comfortable you want to be in terms of pain medicine, bathing and comfort measures like oil massages.

How you want people to treat you, including who should be around.

Your last thoughts for your family and friends.

Sabatino said he found Five Wishes valuable in unexpected ways when his mother died about six months ago. At her eulogy, he read aloud her fifth wish, in which she asked for forgiveness and said she forgave the hurts against her.

"It's kind of a closure wish and a blessing on her friends," he said.

The effort to change Alaska law began after a Bill Moyers public television series on dying that aired in fall 2000. Afterward, some Juneau residents formed an End of Life Task Force that decided to push for Five Wishes in Alaska, said Sioux Plummer, its chairwoman. She was a former aide to Hudson, and he agreed to carry the bill.

"They can be pretty much in control of their lives at the end," if the details are spelled out ahead of time, said Plummer, whose husband died of lung cancer three years ago.

Some Alaska advocates have been using Five Wishes for years, even though they are unsure whether it would hold up if tested.

Brenda Brown, a retired nurse who volunteers with families through an interfaith program, stumbled on the approach in Florida when her father-in-law became ill with a brain tumor in 1998. She used it to help him talk about whom he wanted to visit him at the end.

She takes a copy or two of Five Wishes when she gives workshops on living wills.

"The desire, I have heard from man after man after man, is I got to die at home because I've got a dog there, my big old dog," Brown said.

Others say they want "spiritual privacy." They may be religious but still not want their priest or pastor or rabbi to come by.

One woman wanted to die on her sofa, where she had a view of her hanging baskets, Brown said.

The conversations are so moving, she said, they should be taped to preserve as special treasures.

Reporter Lisa Demer can be reached at ldemer@adn.com and 907 257-4390.

Brenda Brown, A Retired Nurse, Helps People Address End-of-life Issues And Plan Living Wills. She Advocates For Legislation Allowing More Detailed Documents.

Close Window

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Alaska Commission on Aging

Resolution 2003-04

In support of HB25 – An Act relating to directives for personal health care services and for medical treatment.

Whereas HB 25 will assist Alaskans to thoughtfully state their intent regarding the kind of medical, personal, emotional, and spiritual care they wish to receive in the last stages of their lives if they are no longer able to express their wishes, and

Whereas HB 25 provides a clear and helpful format to guide an individual in defining their wishes in this regard, and sharing that information with their loved ones, and

Whereas HB 25 draws upon the experience of thirty-six other states that have adopted this format, and it is strictly a voluntary program,

Now, therefore, the Alaska Commission on Aging urges the 23rd Alaska Legislature to pass HB 25.

Adopted this 21st day of February, 2003.

A handwritten signature in cursive script that reads "Marjorie J. Hays".

Marjorie J. Hays, Chair



Honorable Fred Dyson, Chair
Senate Health, Education and Social Services Committee
Alaska Capitol, Room 121
Juneau, AK 99801-1182

March 6, 2004

RE: HB 25 (Weyhrauch) – Support

Dear Chair Dyson:

On behalf of the members of AARP in Alaska, we urge you and your colleagues on the Senate Health, Education and Social Services Committee to support HB 25, authored by Representative Bruce Weyhrauch, and co-sponsored by eight of his colleagues in the House (four Republicans and four Democrats).

AARP believes that states should provide a comprehensive approach to health care decision making, such as that contained in the Uniform Health Care Decisions Act designed by the National Conference of Commissioners on Uniformed State Laws. Competent adults should be allowed and encouraged to communicate their medical treatment wishes and/or appoint a surrogate to make the treatment decisions for them in the event of their incapacity.

Representative Weyhrauch's HB 25 will enable Alaskans to take advantage of the user-friendly "Five Wishes" document to communicate their desires.

AARP recommends an "AYE" vote on HB 25.

Should you have any questions about our position, please feel free to contact Marie Darlin (586-3637), Coordinator of the AARP Capital City Task Force; Patrick Luby (907-762-3314), AARP Legislative Representative; or me (907-245-5259).

Thank you for your consideration.

A handwritten signature in cursive script that reads "Marguerite Stetson".

Marguerite Stetson
AARP State Coordinator for Advocacy

CC: Vice-Chair Lyda Green
Senator Gary Wilken
Senator Bettye Davis

Senator Gretchen Guess
Representative Bruce Weyhrauch
Marie Darlin
Patrick Luby

Subject: HB 25

Date: Thu, 13 Feb 2003 14:27:41 -0900

From: Richard Block <akcompub@sinbad.net>

Organization: Committee on Publication

To: "linda_sylvester@legis.state.ak.us" <linda_sylvester@legis.state.ak.us>

Representative Weyhrauch and
Linda Sylvester

This office is pleased to see that you are continuing the effort of Representative Hudson from last Legislature to adopt in Alaska the Model Advance Health Care Directive Act.

We support the adoption of the model bill, which HB 25 currently follows.

It is our view that it is good public policy to give individuals the freedom to make their own choices concerning their health care and to be able to have the confidence that their wishes will be followed even when they may be unable to express those wishes. HB 25 confirms that individual freedom whether it is based on making choices among medical alternatives, conscientiously seeking to rely on non-meical modalities or to rely exclusively on prayer, as with those for whom I speak.

We will be watching your progress with this bill with great interest and hope that you will call upon me if you have questions about our interest in this bill or if we can be helpful in obtaining its adoption.

Dick Block

Richard L. Block

Christian Science Committee on Publication
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HB 25

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Publication of Older Persons Action Group, Inc. 325 E. Third Ave., Suite 300, Anchorage, Alaska 99501

Vol. 25 No.12 December, 2002

State flunks on end-of-life care

National group gives system low marks

By DAVID WASHBURN
Senior Voice

A national survey gives the country low marks for its care of people who are dying, and gives Alaska a particularly bad report.

Last Acts, a national coalition advocating for better end-of-life care, issued a state-by-state "report card" in November and graded Alaska "poor" in most categories. The state received the lowest possible grade in some key areas such as management of pain, numbers of health care professionals trained in end-of-life care, and state policies governing pain management and advance care planning.

Last Acts is made up of more than 1,000 different organizations, including the American Medical Association, the American Hospital Association, AARP and NAACP. The report card,

It means to a Better End: "A Report on Dying in America Today," was developed mainly through analysis of what end-of-life-care services are available in each state and how they are used, according to a Nov. 18 press statement released by Last Acts. Experts, funded by a grant through the Robert Wood Johnson Foundation, spent a year putting together the report, according to the statement.

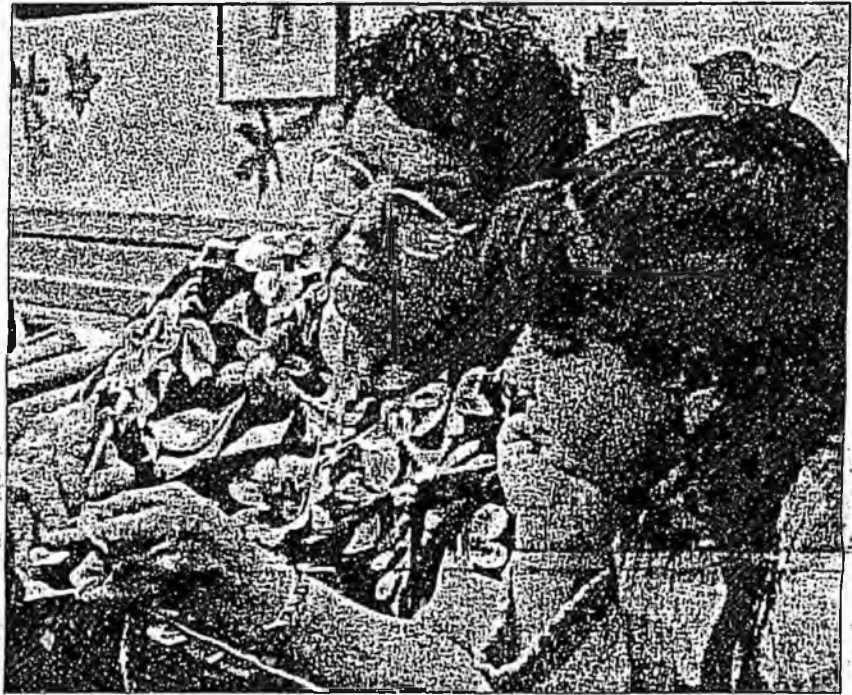
Care providers in Alaska said they were not surprised by the report's general message, but took issue with some of the findings.

"I figured we would score low," said Paula McCarron, who coordinates end-of-life care services for Providence Hospital's Interfaith Caregiver Program in Anchorage. "Alaska is still such a young state. Where other states have been dealing with health care issues for years and are in the realm of more sophisticated systems, Alaska's not there."

However, McCarron argued that some of the report's findings are misleading because they fail to take into account the many volunteer-run programs that the state relies on heavily.

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Threading together generations



Amy Hartley/Senior Voice

Patsy "Grandma" Bascom demonstrates a crochet technique to Gladys Wood Elementary School student Alisha Graham, 10. Fifth and sixth graders from the school's student council visited the Anchorage Senior Center in November for some hands-on crochet instruction. The students plan to crochet scarves to donate to Covenant Home, a local charity.

Anchorage Senior Center ready to grow by 9,000 square feet

Big expansion project was years in the making

By AMY HARTLEY
Senior Voice

After securing financial backing and nearly a decade of planning, the first stage of the Anchorage Senior Center's expansion is complete. The new wing is an aesthetic addition to the building, but the extra room also boosts the probability of more activities for area seniors.

The construction of the new wing adds 9,000 square feet to the already-sizeable building, located off East 19th Avenue in Anchorage. Billie Lewis, the senior center's executive director, says this is the first expansion the center has seen since it opened in 1982.

"Now we're going to have a new fitness area, a new art room, a new craft room, a 12-person computer lab, a new three-room library, and lots and lots of storage," Lewis said.

The Anchorage Senior Center's new wing has widened hall ways to make access easier for those with disabilities and for heavy traffic when the center is operating at peak hours. The newly constructed education rooms are spacious, providing plenty of room for large groups to make arts and crafts. Celeste Benson, program coordinator at the center, says the staff is eager to utilize the additional classrooms and she foresees an expanded activities roster.

"I can see a lot of educational experiences to take place in that wing, which is very exciting for the seniors," Benson said.

One of the center's most anticipated additions is the computer lab. Administrators say this new space will eliminate the crunch for computer use and may spur a heightened interest in computer activities.

"Our new computer area, it can hold 12 computers. (Before), we had a hall with seven computers in it for people to use," Benson said. "It was like"

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Report card: End-of-life care gets poor scores . . .

continued from page 1

Lowest possible grade

In its report card, Last Acts gave the state the lowest possible grade for each of the following areas:

• **Palliative care and certified nurses.** "Very few primary care physicians and registered nurses are certified to provide palliative care, considered the 'gold standard' in end-of-life care," the report stated. "Palliative care controls pain and symptoms while also offering emotional and spiritual support for patients and families, respecting their cultural traditions."

• **Hospice use.** "Only 5 percent of people over 65 who died in Alaska used Hospice in the last year of life," the report stated. "Hospice is the most widely-available form of palliative care. This means that too few patients and families were able to benefit from this approach, which emphasizes caring over curing in the face of terminal illness."

• **State pain policies.** Researchers concluded Alaska statutes and laws "may create barriers to good pain management."

• **State advance directive policies.** "Alaska's laws do not support good advance care planning in the form of living wills and medical powers of attorney, which designate a health care decision-maker, should the patient become unable to communicate," the report stated. Such legal documents that explain the extent to which a patient wants life-sustaining treatments "are considered critical to end-of-life care," the report said.

• **Hospital end-of-life care services.** The report found that the level of pain and palliative care services provided by hospitals is too low. Just 38 percent of hospitals reported offering pain management programs, and only 19 percent reported offering palliative care programs, according to the report. An even lower number, 6 percent, of hospitals reported that they offered Hospice programs, the report stated.

A better picture

McCarron agreed with several of the conclusions, but

said the grading system used for the report was somewhat stacked against Alaska.

For instance, in tallying programs, researchers didn't take into account those not certified by Medicare or Medicaid — which make up the bulk of the state's programs, McCarron said.

"The kinds of programs we have for care are very informal, they work out of hospitals, churches or senior centers. They're very often volunteered and they may not be a sustained program. They may be very active and then dissolve, but then start back up in four months," McCarron said.

She continued, "Our Hospice programs, I don't even know if they showed up on the map because so many of the programs are volunteer-based and not Medicare certified."

Hospice of Anchorage Executive Director Julia Thorsness agreed.

"(The researchers) didn't include organizations like mine, or the Hospice in Fairbanks. There's only one Medicare-certified Hospice in the state, and that's in Mat-Su."

The report also seemed to focus on Hospice programs that operated out of hospitals, which is common in the Lower-48, but not in Alaska. Maria Wallington, medical ethicist for Providence Hospital in Anchorage, said she was familiar with the content of the report. She has led forums on end-of-life issues and is preparing an educational course on palliative care for the hospital's nurses.

"I think the report card will be great because it will stimulate discussion and support people trying to do a better job with palliative care by raising questions and increasing consciousness of the issue," Wallington said.

The poor grade the report gave the state's policies on advance care directives, for instance, will hopefully lead to action, she said. Last year, a lot of work went into a bill that would have addressed many of the problems, but the bill stalled in the legislature, she said. "If it would have passed, we would have gotten a much better score."

Wallington said she was not surprised that the report researchers found such an extremely low number of Alaskan doctors and nurses with special certifications for palliative care. "Most of the people who have been doing the geriatrics work here got into it because of the need."

McCarron agreed. "Part of the reason that we don't have a lot of palliative care-certified nurses and physicians is that the practice of that is still fairly new, and the percentage of people in the state who require that sort of care is small."

Room for improvement

Despite their questions about the report, all of the commentators agreed the state has a long way to go, and not just in end-of-life care.

"We come up pretty crummy across the board," McCarron said. "Look at the hospital in Seward—they don't even deliver babies there." The areas on the report card where Alaska scored well don't even necessarily make a good impression,

McCarron said. The report card gave the state a "C" grade for its relatively high percentage of residents who died at home, rather than in an institution.

"More than one third of state residents died at home, where most Americans say they prefer to be, in comfortable surroundings with their loved ones," the report stated.

McCarron argued that the percentage is more likely a result of the lack of access to hospitals in rural areas.

Hospice of Anchorage's Thorsness agreed. "I think it's a reflection of us being more rural, and the lack of road systems and access to hospitals."

However, she said she does believe it's a positive thing for families to take care of relatives in their homes.

One of the biggest problems in the current system, Thorsness said, is the recent changes to Medicaid regulations involving pain medication. "They made a change in the last six months about when a prescription can be refilled." Under the new rules, people can't get a refill until their medi-

cine is 95 percent used up. This doesn't leave enough time for seniors dealing with limited transportation or other problems, so they run out of their medicine, Thorsness said.

The FDA also has cut back on the amount of pain medication that can be provided to patients under Medicare, Wallington said. "Sometimes people just need more than the absolute numbers that these people are telling them they can use. So people are going without adequate medical care."

Judith R. Peres, Last Acts deputy director and the leader of the report's research team, said in the November statement that "dying patients and their families today suffer more than they should. We still have a long way to go to improve health care and policy for this segment of the American population."

More information on the Last Acts report card is available on the Robert Wood Johnson Foundation Website at: www.rwjf.org/special/betterend.



Scott Janssen
Gen. Manager



Debbie Janssen
Adm. Ass't



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Chapter Four

Advance Directives:

Living Wills, Durable Power of Attorney and Surrogate Consent

Imma Jones—an 88-year-old woman with lymphoma and diabetes—had undergone a difficult course of surgery and radiation that left her unable to swallow. Because she was still quite delirious, she could not communicate except for spontaneous moans in response to discomfort with her tubes. Ms. Jones had filled out a boilerplate advance directive form, but the form's vague language left her doctor wondering about her true wishes. Because the one-page form did not include naming a health care proxy, Ms. Jones also had authorized no one to make treatment decisions on her behalf. Given that and the poor prognosis for recovery, her doctor felt he should be the one to determine the course of her treatment. The scenario might have been different had advance care planning been an integral part of Ms. Jones' experience.

Introduction

As the powers of health care technology have advanced, so has the average age of death for Americans. More people are dying of slow, chronic illnesses, which often lead to a loss of competence and the ability to make decisions. Completing an *advance directive*—a statement, usually in writing, that delineates an individual's preferences and values for end-of-life care in advance of the time when he or she is no longer able to communicate such preferences—can help to ensure that end-of-life care wishes are followed, even when the individual can no longer directly participate in treatment decisions. (In theory, decisions about medical treatment generally should follow patient choice, as long as the patient remains competent and able to express preferences.)

The term advance directive also covers oral statements made to family or doctors regarding treatment decisions. Although all such communication is valuable, spoken statements usually will not carry the same legal force as written statements, and can be left open to interpretation.

Generally, advance directives take one of two forms. The first, called a *living will* or health care directive, is a written statement that typically includes a conditional statement about dying and expresses a person's general willingness to accept life-sustaining treatments or, conversely, to die without use of artificial intervention. The second, known as a *proxy designation*, involves delegation of decision-making authority to another individual. (Terminology can vary from state to state. For example, Florida uses the term, "surrogate," and Michigan uses "patient advocate.") Naming as one's health care agent a trusted family member or friend with whom one has discussed end-of-life issues and values is an important step in ensuring that treatment preferences will be followed. The designation is also referred to as a *durable power of attorney*—durable in that the authority of the agent continues, even after the principal becomes incompetent. Ideally, living will-style treatment instructions and designation of a proxy both are included in a written advance directive.

Even in the absence of advance directives, health care providers often involve families and friends in decisions affecting the treatment of a patient who is unable to make them independently. Some states have statutory provisions outlining a hierarchy of decision-makers, or *surrogates* (e.g., spouse, adult child, parent), in the event a patient becomes incapacitated and has not indicated a preference for a proxy.

Families and friends may disagree about the most appropriate course of treatment for the patient, or may be reluctant to speak up in defense of the patient's stated desire to avoid or continue heroic treatment, thereby leaving the decisions to physicians by

default. In other cases, a judge may appoint a guardian to authorize someone (who may or may not be a family member) to intervene in the process. Thus, the naming of a health care proxy helps to ensure that a patient's wishes are followed and helps to avoid disagreement and costly legal proceedings. Also, if an individual who completes a living will fails to share that information with his or her family and physician, or if the document is not readily accessible at the time important treatment decisions are being made, it may not have the opportunity to 'speak' on his or her behalf.

Question One

Are living wills enforceable without designation of a health care proxy?

Yes, although the appointment of a proxy usually is more effective than the exclusive reliance on a living will. The real question when discussing cessation of life-prolonging treatment is not *whether* but *when* treatment should stop. That question is not addressed adequately in most living wills, leaving family, friends and physicians to sort out what the dying person would have wanted.

The standard forms used by most states do not encompass the wide range of possible scenarios in which a patient can be involved; nor would it be realistic to try to do so. Appointment of a health care agent can help to address such deficiencies, especially when it is unclear who will act as the patient's proxy, should that become necessary. If, for example, a person is divorced with several adult children or, perhaps, has no family still living, appointment of a proxy can reduce confusion and arguments at a later date. It remains crucial, however, that the individual and the designated proxy discuss preferences and values as they relate to health care before a medical crisis arrives.

Question Two

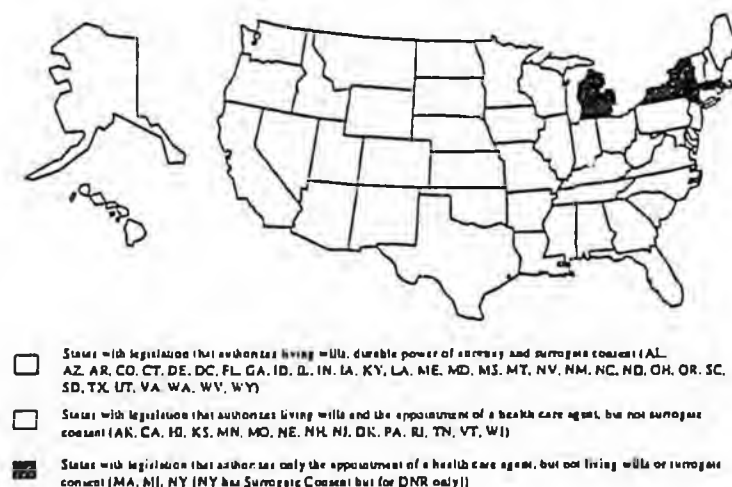
Does your state recognize advance directives?

Yes. All states recognize living wills and proxies, although the provisions of the various laws differ significantly. There are two accessible sources to obtain information about these state laws. First, state Medicaid offices have written descriptions of their own state's laws regarding advance directives as mandated by the federal Patient Self-Determination Act (Omnibus Budget Reconciliation Act of 1990, P.L. 101-508, §§ 4206 and 4751). Second, the nonprofit organization, Choice in Dying, maintains a database on its web site of advance directives from each state.

More specifically, all but three states—Massachusetts, Michigan and New York—have laws authorizing living wills (see figure 12), although laws in those three jurisdictions allow for instructions to be included within the appointments of health care agents. As with living will instructions, all states have durable power of attorney statutes, although Alaska does not allow the agent to authorize termination of life-sustaining procedures.

In addition, most states have family consent or surrogate consent laws to address who makes health care decisions in the absence of an advance directive. Thirty-four states have statutes governing family consent or surrogate consent. In New York, the law pertains only to do-not-resuscitate orders.

Figure 12.
States with Living Wills, Appointment of Health Care Agents and Surrogate Consent
Laws



Source: ABA Commission on Legal Problems of the Elderly, 1997.

Question Three

Are the existing advance directive laws effective?

An advance directive is most helpful to assist individuals to begin thinking about alternatives for treatment at the end of life. It makes them consider important religious, familial and financial considerations that inevitably will affect treatment and care decisions. And, given that all states recognize the documents, completing one is an important step in ensuring that a patient's preferences for treatment are followed.

However, there are several deficiencies surrounding advance directives. First, only one of five adults has completed a living will at the time of death. Second, many states use living will forms that contain vague language—"heroic measures," for example, and "terminally ill," neither of which can be defined with any precision and both of which require a subjective determination. Third, most states have separate laws for living wills, durable power of attorney and surrogate consent. That piecemeal process has led to different definitions of witnessing requirements and terminal illness, as well as different reciprocity requirements between states. Such disparities have caused confusion among the public. Fourth, controversy persists about whether special conditions should be required for the discontinuation of artificially supplied nutrition and hydration. Finally, some states do not address reciprocity of patient advance directives across state lines. For example, if an elderly patient moves to another state to be cared for by an adult child, the living will might not be legally valid if the new state does not recognize documents drafted elsewhere.

**Question
Four**

How could legislators improve existing deficiencies and ensure that patients' treatment preferences are carried out?

1. Reduce inefficiency by combining various right-to-die statutes into one comprehensive act.

Figure 13.
States with Combined Advance Directive Statutes

Alabama	Maryland
Arizona	New Jersey*
Connecticut	New Mexico
Delaware	Oklahoma*
Florida	Oregon
Kentucky	Virginia
Maine	

*Does not include surrogate consent.

Source: ABA Commission on Legal Problems of the Elderly, 1997.

Living wills seem likely to be more effective if they include designation of a proxy. Thus, all state advance directive forms should be modified to provide for both proxy designation and treatment preferences. Having two separate forms—one for treatment preferences and one for appointment of a health care proxy—seems inefficient. States could make standard a single form that acts as both a living will and a health care proxy designation (although any patient can choose to complete only one or the other).

Thirteen states have merged their statutes into a combined advance directive law (see figure 13) that covers

at least living wills and durable power of attorney and, in most cases, surrogate consent in the absence of an advance directive. Of the 13, four—Alabama, Delaware, Maine and New Mexico—use the Uniform Health Care Decisions Act as a model.

The act—a revised model act created in 1993 by the National Conference of Commissioners on Uniform State Laws to rectify the conflicts among the different state statutes—

Figure 14.
States that Allow Close Friends as Surrogates

Arizona	Maryland
Colorado	New Mexico
Delaware	New York
Florida	North Dakota
Illinois	Oregon
Maine	West Virginia

Source: ABA Commission on Legal Problems of the Elderly, 1998.

combines living wills, durable power of attorney and surrogate consent in the absence of an advance directive; allows for instructions to be either written or oral; and does not require that the document be witnessed. It also includes an optional form for the advance directive. It is significantly simpler and more comprehensive than most state statutes and therefore serves as a good model.

States that have more recently enacted comprehensive laws have addressed the issues of family consent and nontraditional family and guardian consent. The laws all create a list of permissible surrogates, in order

- of priority. About a fourth of state surrogate consent laws include a "close friend" in the list of permissible surrogates (see figure 14) and Arizona now includes a "patient's domestic partner."
- 2. Ensure flexibility to allow patients to modify their living wills to become more specific as conditions worsen.

The standard forms used by many states do not include any reference for specific treatment preferences in various contexts. Rather, the language used by the boilerplate forms is often vague and inapplicable to many medical problems. Ideally, advance directives should be modified to allow for flexibility as a patient's needs change. Written preferences should address new issues and become more specific as a disease progresses and worsens.

- 3. Emphasize the importance of patients' rights and understanding.

Ideally, advance directive forms should be part of a larger process known as "advance care planning," in which a patient's values and wishes are updated repeatedly over time. Additionally, patients must understand what the forms actually entail. It is not enough for a lawyer or physician simply to ask a patient to check a box and sign on the dotted line.

The focus needs to be on the communication and dialogue surrounding the act of filling out a state-based form. Use of a values questionnaire, with questions such as the ones in Figure 15, can facilitate that process.

The Florida Commission on Aging with Dignity created another model to help individuals make decisions about end-of-life care. Specifically, the Commission developed a form entitled *Five Wishes* which lists five questions to facilitate end-of-life discussions and decision-making. The questions address: 1) the kind of medical treatment you want or do not want; 2) how comfortable you want to be; 3) how you want people to treat you; 4) what you want loved ones to know; and 5) which person you want to make health care decisions for you when you can not make them.

Legislators could allow these types of questions to be appended to the state's form, thereby reducing the possibility that advance directives will substitute for discussion within families and between health care professionals and patients. Perhaps including advance care planning as a part of health professional education curricula also would help to emphasize its importance.

Figure 15.
Examples of Values Questions

1. *What do you value most about your life?*
2. *Do you think life should be preserved for as long as possible? Why or why not?*
3. *Can you think of any possible scenarios in which you might feel differently about the above question?*
4. *Do your religious beliefs affect the way you feel about death?*
5. *Should financial considerations be important when making decisions about medical care?*
6. *Have you talked with friends and family about these issues?*

4. Recognize other states' advance directives.

Advance directives written in one state often are of uncertain force in others, which means that, if a person lives in one state and receives medical care in another, portability can be a problem. Advance directive laws should allow for use of other state and nationally recognized forms, thereby assuring a higher likelihood that a person's preferences will be followed. States can be too restrictive by requiring that certain forms be used, thus creating a problem with reciprocity.

5. Address do-not-resuscitate orders for emergency medical services.

Figure 16.
States with Emergency Medical Service Do-Not-Resuscitate Laws

Alaska	Kansas	Pennsylvania
Arizona	Kentucky	Rhode Island
Arkansas	Maryland	South Carolina
California	Michigan	Tennessee
Colorado	Montana	Texas
Connecticut	Nevada	Utah
Florida	New Hampshire	Virginia
Georgia	New Jersey	Washington
Hawaii	New Mexico	West Virginia
Idaho	New York	Wisconsin
Illinois	Oklahoma	Wyoming

Source: ABA Commission on Legal Problems of the Elderly, January 1998.

A state law on advance directives cannot be considered complete without guidelines for emergency medical service (EMS) technicians. Keeping advance directive forms in patients' medical records is effective for clinical settings. But what of patients who receive home health care? How can they let their preferences be known should they need emergency treatment? It is customary medical practice to perform cardiopulmonary resuscitation (CPR) on anyone found to be in cardiac arrest—even though that action may not coincide with the wishes of all patients.

Thirty-three states have responded to the dilemma (see figure 16) by developing protocols to assist EMS technicians in withholding CPR in appropriate cases, thereby expanding the practical application of advance directives as a whole. Some states issue bracelets indicating a person's wish not to be resuscitated should he or she be found unconscious by EMS personnel. Others recommend to patients that they place the do-not-resuscitate form in a prominent place, so it will be obvious to anyone entering the home. States with laws addressing a variety of situations give their residents the greatest chance that their wishes will be followed.

6. Experiment with different strategies to make advance directives more accessible.

To inform the public of advance directives, some states are beginning to test varied approaches. For example, a handful of states—Alaska, Illinois, Minnesota, Missouri, South Dakota and Texas—allow for display of advance directives on drivers' licenses and identification cards. A few, such as California and Ohio, have even established state repositories and registries for advance directives.

We all have *wishes*.



We also have *choices*.

My Choices

An Advance
Directive for
Health Care
Choices

My Choices, an advance directive

My Choices can help you if you are ever too sick or injured to make your own medical decisions. This advance directive contains both a living will and a power of attorney for health care. As long as you are well enough, you make medical decisions for yourself. If you are ever unable to do so, *My Choices* legally transfers medical decision-making authority from you to your designated Representative and states your end-of-life care wishes. You do not need a lawyer to complete this form, though you may wish to consult one. It is important to note that your *My Choices* form is not set in stone. You can change your mind by simply completing a new *My Choices* form.

My Choices was created for Montana adults according to Montana law by a task force of citizens, doctors, nurses, lawyers, faith leaders, and advocates. It is designed to make advance care planning easier to complete and easier for health care providers to follow. *My Choices*

has become the standard in several hospitals and other health care facilities around Western Montana.

An advance directive can be much more than a legal document that ensures medical decisions honor your wishes. This booklet is designed to help you discuss medical treatment and end-of-life choices with your loved ones and health care providers. If you need help completing the *My Choices* form, contact your doctor or one of the organizations listed on page 6.

“I did this as

TERMS TO KNOW

Advance care planning: Decision-making process about care you would want to receive if you were unable to communicate or make decisions for yourself. Based on understanding your values, personal reflection, and discussion with loved ones, health care providers, and others.

Advance directive: A legal document that provides directions for your health care if you are not able to speak for yourself or make decisions. Can include both power of attorney for health care and living will.



Two men are in separate hospital rooms on the same floor. Each is dying. Both are unconscious. Both are surrounded by family. In one room, the family is arguing over their loved one's medical treatment.

"What should we do? What would he have wanted?" In the other room, the family is sharing memories of their loved one. They are telling stories. They are grieving. But they are at peace because they know what his wishes are and that they are being honored. Now imagine one of these men is your father. Which situation would you choose?

much for my family as for myself."

Living will: Your directions to health care providers for the end-of-life treatment you do and do not want if you are terminally ill, cannot speak or make decisions for yourself and are near death.

Power of attorney: A document appointing another person to make financial or business decisions. A power of attorney can be specially prepared so that it is valid if you ever become incapacitated. Also known as a "durable power of attorney."

Power of attorney for health care: A document appointing another person you choose as your

Representative to make all health care decisions for you at any point in your life if you cannot speak or make your own decisions. Also known as a "durable power of attorney for health care."

Representative: A person appointed in a power of attorney for health care to make health care decisions for you only if you cannot communicate or make decisions for yourself. Also called an agent, surrogate, or proxy.

Will: A document that states how you wish your possessions to be disposed of after your death.

“You don’t have to be old to get sick. You don’t have to be old to get injured.”

A woman, age 23, is climbing in the Mission Mountains when she falls 60 feet to a ledge below. Her injuries are life threatening. She is rescued from the ledge and flown to the hospital.



She is unconscious. You are her husband. The doctors tell you she is not likely to ever regain consciousness, though with machines she could be kept alive for quite some time. Would you know what she would have wanted?

Why complete a My Choices advance directive?

An advance directive allows you to maintain control over your own medical care even if you cannot speak for yourself or make your own decisions (temporarily or permanently).

The *My Choices* booklet is also designed to help you create an advance directive that reflects your ideals, beliefs, and choices. As important as it is to put your wishes on paper, *My Choices* isn't meant to be kept to yourself.

It is imperative you share a copy of your completed advance directive with your family,

your health care Representative, primary care physician, and others who are important to you. Sharing the directive helps ensure your wishes will be honored. But there are other reasons to discuss *My Choices* with your family, friends, and caregivers.

Studies show that the stress of making health care decisions for a loved one—when that individual is incapable of doing so—is more than double the stress of losing that person. However, the stress is greatly reduced if the decision maker knows that he or she is following the patient's wishes.

In other words, an advance directive isn't only something you do to ensure your wishes are followed; it's also something you do for the people you care about.

Please remove the form and continue reading.

My Choices

Advance Directive for Health Care

Print your full name,

Date of birth, and

Social Security number.

These directions apply only in situations when I am not able to make or communicate my health care choices directly. [Put an X through any sections you are not completing at this time.]

I. Health Care Representative (Power of Attorney for Health Care)

My Representative may make ALL health care decisions for me as authorized in this document and shall be given access to all my medical records. This appointment applies whether I am expected to recover or not.

I wish to appoint a Representative: Yes No [Go to Part II.]

A. Primary Representative

I appoint _____ as my Representative.
Print Representative's Full Name

Representative's Address _____

City _____ State _____ Zip _____

Home Phone _____ Work Phone _____

My Representative's authority is effective when I cannot make health care decisions or communicate my wishes. I may revoke this authority at any time I regain these abilities (unless my attending physician and any necessary experts determine I am not capable of making decisions in my own best interest).

If, for any reason, I should need a guardian of my person designated by a court, I nominate my Representative, or Alternate Representative(s), named below.

B. Alternate Representatives

- If: 1) I revoke my Representative's authority; or
2) My Representative becomes unwilling or unable to act for me; or
3) My Representative is my spouse and I become legally separated or divorced,

I name the following person(s) as alternates to my Representative in the order listed.

1. _____ 2. _____
Print Alternate Representative's Full Name *Print Alternate Representative's Full Name*

Address _____ Address _____

City _____ City _____

State _____ Zip _____ State _____ Zip _____

Home Ph _____ Work _____ Home Ph _____ Work _____

II. Terminal Conditions (Living Will)

I provide these directions in accordance with the Montana Rights of the Terminally Ill Act. These are my wishes for the kind of treatment I want if I cannot communicate or make my own decisions. These directions are only valid if BOTH of the following two conditions exist. IF:

1) I have a terminal condition;

AND

2) In the opinion of my attending physician, I will die in a relatively short time without life sustaining treatment which only prolongs the dying process.

I authorize my Representative, if I have appointed one, to make the decision to provide, withhold, or withdraw any health care treatment.

General Treatment Directions *[Check the boxes that express your wishes.]*

- I provide no directions at this time.
- I direct my attending physician to withdraw or withhold treatment that merely prolongs the dying process.

I further direct that: *[Check all boxes that apply.]*

- Treatment be given to maintain my dignity, keep me comfortable, and relieve pain even if it shortens my life.
 - If I cannot drink, I do not want to receive fluids through a needle or catheter placed in my body unless for comfort.
 - If I cannot eat, I do not want a tube inserted in my nose, mouth, or surgically placed in my stomach to give me food.
 - If I have a serious infection, I do not want antibiotics to prolong my life. Antibiotics may be used to treat a painful infection.
-
- I have attached additional directions regarding medical treatment to this form.
 - I have not attached additional directions to this form at this time.

III. I Have a Chronic Illness or Serious Disability *(Optional)*

My chronic illness or disability can complicate an acute illness, but should not be misinterpreted as a terminal condition.

A. Diagnosis: _____

B. Consult my physician. *[Name, phone]* _____

C. Special directions. *[Use additional pages if necessary.]* _____

IV. Signing, Witnessing This Advance Directive

A. Your Signature *[Ask two people to watch you sign and have them sign below. If you can, it's best to sign this document in front of a Notary Public.]*

1. I revoke any prior health care advance directive or directions.
2. This document is intended to be valid in any jurisdiction in which it is presented.
3. A copy of this document is intended to have the same effect as the original.
4. Those who act as I have directed in this document shall be free from legal liability for having followed my directions.
5. If my attending physician is unwilling or unable to comply with my wishes as stated in this document, I direct my care be transferred to a physician who will.

I sign this document on the _____ day of _____, 20_____.

Signature *Print Full Name*

Address _____

City _____ State _____ Zip _____

Home Phone _____ Work Phone _____

B. Ask Your Witnesses to Read and Sign

I declare that the person who signed this document is personally known to me, and has signed these health care advance directives in my presence, and appears to be of sound mind and under no duress, fraud, or undue influence.

As a witness, I am NOT:

- The person appointed as Representative by this document;
- Financially responsible for this person's health care;
- Related to this person by blood, marriage, or adoption; and
- To the best of my knowledge, entitled to inherit any part of this person's estate under a will now existing or by operation of law.

1. _____ 2. _____
Signature *Date* *Signature* *Date*

Name _____ Name _____

Address _____ Address _____

City _____ City _____

State _____ Zip _____ State _____ Zip _____

C. Notarizing This Document *(Optional, but recommended)*

STATE OF _____ COUNTY OF _____

On this _____ day of _____, 20_____, the said known to me (or satisfactorily proven) to be the person named in the foregoing instrument, personally appeared before me, a Notary Public within and for the State and County aforesaid, and acknowledged that he or she freely and voluntarily executed the same for the purposes stated therein.

Notary Public for the State of _____
Residing at _____
My commission expires: _____

V. Special Directions

A. Spiritual Preferences

My religion: _____ My faith community: _____

Contact person: _____ I would like spiritual support. Yes No

B. Where I would like to be when I die: My home Hospital Nursing home
 Other: _____

C. Donation of Organs at My Death

I do **not** wish to donate any of my body, organs, or tissue.

I wish to donate my entire body.

I wish to donate only the following: *[Check all that apply]*

Any organs, tissues, or body parts Heart Kidneys Lungs

Bone marrow Eyes Skin Liver Other(s)

D. After Death Care: *[Care of my body, burial, cremation, funeral home preference]*

E. Additional Directions: *[Use additional pages if necessary.]* _____

Signature _____ Date _____

F. Distributing This Document

I plan to send copies of this document to the following people or locations:

Representative: _____ Family Member: Relationship _____

Name _____ Name _____

Address _____ Address _____

City _____ State _____ Zip _____ City _____ State _____ Zip _____

Home Ph _____ Work _____ Home Ph _____ Work _____

Physician: _____ Hospital: _____

Name _____ Name _____

Address _____ Address _____

City _____ State _____ Zip _____ City _____ State _____ Zip _____

Home Ph _____ Work _____ Home Ph _____ Work _____

Clergy: _____ Other: _____

Name _____ Name _____

Address _____ Address _____

City _____ State _____ Zip _____ City _____ State _____ Zip _____

Home Ph _____ Work _____ Home Ph _____ Work _____

My Choices was created by the Advance Care Planning Task Force of the Missoula Demonstration Project (406/728-1613). Members of this task force represent Missoula hospitals, home care agencies, hospice, long-term care facilities, Missoula Aging Services, Coalition of Montanans Concerned with Disabilities, AARP, public health, physicians, nurses, physician assistants, social workers, emergency medical technicians, attorneys, and clergy. Version 3.0. A printable version of *My Choices* can be downloaded at www.missoulademonstration.org.

Who should have a *My Choices* advance directive?

Everyone over the age of 18 can benefit from completing *My Choices*. Serious injury, sudden illness, and the onset of disease are not always tied to age. Still, there are points in life when people are more likely to consider or have the opportunity to complete a *My Choices* advance directive: prior to a hospital stay, after the death of a loved one, when creating or revising a will, after retirement, or when entering a long-term care facility.

Because life goals and values often evolve as we age, *My Choices* is meant to be a changeable, evolving document. People who complete advance directives often review and alter them as their wishes, health, and lives change. Even if there are no dramatic

changes in your life or health, we suggest reviewing your advance directive annually to make sure it continues to reflect your wishes.

Is *My Choices* all I need to ensure my wishes are honored?

You can help ensure your wishes will be honored by doing three things. First, complete the *My Choices* form and sign it in front of two witnesses or a Notary Public. Second, talk about it and your wishes with your Representative, close family members and friends, your doctor, and anyone else who is important to you. And, third, give each person a copy of your *My Choices* form and bring a copy to your local hospitals for your medical records.

To ensure your advance directive is honored:

- **Notarize your advance directive.** While most states will accept your advance directive, notarizing helps prove the document's authenticity and can help avoid confusion.
- **Check states you travel to frequently.** Since it is a legal document valid in Montana, the *My Choices* form should be honored when you travel in all states. However, if you live part of the year in another state, visit www.partnershipforcaring.org or call (800) 989-9455 for state-specific forms.
- **Discuss your choices with several people.** Obviously, it is imperative to discuss the contents of your advance directive with your Representative. It is also important to discuss them with your doctor, family, and others who are important to you. The more people who know your wishes, the more likely it is these wishes can be honored.
- **Distribute multiple copies.** In addition to discussing your advance directive, distribute copies to your Representative, family, doctor, and hospital medical file. Keep the original in a safe but accessible place at home (not a safe deposit box).
- **Review your advance directive annually.** It is possible your directive may become outdated if it is not reviewed periodically. For example, your Representative or Alternate Representatives may have new addresses or phone numbers. Even if you don't change anything, it is best to review your directive annually, or more frequently if you have significant life or health changes.

For another copy of *My Choices*, go to www.missoulademonstration.org.

Advance health care planning, a three-step process.

1. Determine your goals for medical treatment.

While it is impossible to anticipate all of the different medical decisions that may come up, you can make your preferences clear by stating your goals for medical treatment.

What do you want treatment to accomplish? Do you want it to prolong your life whatever the quality? If life-sustaining treatment could not restore consciousness or your ability to communicate, would you prefer to be kept comfortable rather than receive life-prolonging treatment?

In forming your treatment goals, it is often helpful to consider your wishes about different end-of-life treatments. With these goals in mind, would you want to be kept alive with a feeding tube, intravenous fluids, or antibiotics? The answers to these kinds of questions will reflect important values that you hold and will help you shape your goals of treatment.

Knowing your goals for treatment will make it easier for your family and physicians to make medical decisions on your behalf, should you ever become unable to make your own decisions. If a given treatment would help achieve your goals, it would likely be provided. If not, the treatment most likely would not be provided.

The following questions may help in determining your values and goals.

How do you feel about your current health?

How important are independence and self-sufficiency in your life?

How do you imagine handling illness, disability, dying, and death?

How might your personal relationships affect medical decision making, especially near the end of life?

What role should doctors and other health professionals play in such decisions?

What kind of living environment would be acceptable to you if you became seriously ill or disabled? Would you want to live in a nursing home or assisted living facility? Receive in-home care?

How much should the cost to your family be a part of the decision-making process?

What role do religious or spiritual beliefs play in decisions about your health care?

What are your thoughts about living life's final stages? What are your hopes and fears?

2. Choose your Representative.

Choosing your Representative is the most important part of this process. He or she will have great power over your health and personal care if you cannot make your own decisions.

When choosing a Representative, think about these questions:

- A. *Is this person willing to be your Representative?*
- B. *Have you discussed your life values and health care wishes with this person?*
- C. *Is he or she willing to and capable of following your directions?*
- D. *Can this person make difficult decisions when under stress?*

Choose one person to serve as your Representative to avoid disagreements. If you appoint two or more Representatives to serve together and they disagree, your health care providers will have no clear direction. If possible, appoint at least one Alternate Representative in case your Representative is not available.

Take the time to have heart-to-heart conversations with your Representative and each alternate. Let other close family members know whom you have chosen and why.

If you can think of no one you trust to carry out this responsibility, then do not name a Representative. Make sure, however, that you provide instructions that will guide your doctor or a court-appointed decision maker.

3. Complete the My Choices form.

An advance directive does not have to give directions or guidelines to your Representative. However, if you have specific wishes or

preferences, you should spell them out in the document itself. You may add additional pages to the form if necessary.

No matter how much direction you provide, your Representative will still need considerable discretion and flexibility. Write instructions carefully so they do not restrict the authority of your Representative in ways you do not intend.

Getting More Assistance

To learn more about completing an advance directive, contact any of the following.

- **Missoula Aging Services**
227 W. Front St., Missoula, MT 59802
(406) 728-7682 or (800) 551-3191
Provides basic consultation, materials, attorney referrals, and a free notary service.
- **Community Medical Center**
2827 Fort Missoula Rd., Missoula, MT 59804
(406) 327-4063, 327-4064 or 327-4059
Provides *My Choices* advance directive forms, information, and advice.
- **St. Patrick Hospital and Health Sciences Center**
500 West Broadway
P.O. Box 4587, Missoula, MT 59806
(406) 329-5802, 329-5789 or 329-2675
Provides *My Choices* advance directive forms, information, and advice.
- **State Bar of Montana**
Lawyer Referral Service
(406) 449-6577
Provides names of local lawyers who can advise you.
- **Missoula Demonstration Project**
320 E. Main St., Missoula, MT 59802
(406) 728-1613
www.missoulademonstration.org
Provides resources, referrals, and a free lending library.
- **Partnership for Caring:**
America's Voices for the Dying
1620 Eye Street NW, Suite 202, Washington, DC 20007
(202) 296-8071, Hotline: (800) 989-9455
www.partnershipforcaring.org
Provides information and state-specific forms on its Web site.

My Choices was created by the Advance Care Planning Task Force of the Missoula Demonstration Project to offer a standard advance directive form for use throughout Montana.

Current and Former Advance Care Planning Task Force Members:

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Task Force Member Organizations:

AARP – Montana
Blue Mountain Clinic
Coalition of Montanans Concerned with Disabilities
Community Medical Center
Evergreen at Missoula
First Christian Church
Hillside Manor
Missoula Aging Services
Missoula City-County Health Department
Missoula Demonstration Project
Missoula Emergency Services
Nightingale Nursing and Caregiving Services
Palliative Care Services
Parish Nursing Program
Partners in Home Care, Inc.
Retirees
Riverside Health Care Center
Rural Institute on Disabilities
St. Patrick Hospital and Health Sciences Center
Senior Advocates
Village Health Care Center
Western Montana Clinic

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Hand-out from Dartmouth Hospital
to routine in-patients & ambulatory
clients

If you wish to change an Advance Directive while you are in the hospital, you should notify your physician. Even without a change in writing, your wishes will be honored as long as you can communicate them to your care providers.

What if I execute an Advance Directive in one State and am hospitalized in another?

The laws in most States are similar to one another. Your Advance directives may be honored in another State. If you spend a great deal of time in a State other than the one where your Advance Directives were executed, you may wish to make sure that your documents adhere to the laws of both States.

Who should I ask if I have questions?

Questions about Advance Directives can be discussed with your physician, your pastor, your attorney, and/or members of your family. If you have questions while you are in the hospital, the staff of the Social Work Services Department is available to assist in answering those questions.

Sample forms

The sample forms provided are taken directly from the Alaska law. If you wish to make changes to these documents, please consult an attorney to ensure that your documents adhere to State law.

Advance Directives—

Putting your health care choices in writing

Make your own decisions about your health care.

On December 1, 1991 new federal legislation went into effect requiring hospitals, nursing homes, and home health agencies to ask all adults (at the time of admission) if they have completed any "Advance Directives" and to tell them that they have the right to do so if they have not. Advance Directives are documents such as a Durable Power of Attorney, Living Will, or an Anatomical Gift Declaration. The Living Will and Anatomical Gift Declaration can be combined into a document known as "Alaska Living Will Declaration".

What kinds of decisions need to be considered?

National headlines and court cases have focused on difficult decisions families face when a loved one hasn't given Advance Directives. These decisions may include your preferences about withholding or removing life sustaining equipment and nutrition, or donating organs or tissue. Although we often think that these choices don't apply to young people, the Patient Self-Determination Act applies to all adults.

What is a Living Will?

A Living Will is an Advance Directive which states the type of medical care you want (or do not want) if you become unable to make your own decisions. It is called a "Living Will" because it takes effect while you are still living. The Living Will goes into effect if you are unable to participate in decision making and your condition is considered to be incurable or irreversible and terminal within a "relatively short time".

What is a Durable Power of Attorney for Health Care?

A Durable Attorney for Health Care is an Advance Directive which gives someone you trust the authority to make health care decisions on your behalf should you become unable to make them for yourself. It is called durable because it continues in effect if you should become unable to act in your own behalf. It is very important that the person you designate as your agent understand the health care decisions you would like to have made for you.

What is an Anatomical Gift Declaration?

An Anatomical Gift Declaration allows a person to donate tissue or organs at the time of their death. It also allows a physician to carry out the appropriate procedures for removing and/or transplanting the designated organs or tissue. If a person has both a Living Will and an Anatomical Gift Declaration, the Anatomical Gift Declaration takes precedence until the donated organ(s) can be evaluated.

Do I need to have all three of these documents?

The Living Will, Durable Power of Attorney, and Anatomical Gift Declaration are three distinctly different documents. Each person must decide which of these documents (described above) will assure that their specific wishes will be carried out.

What is the hospital's policy regarding Advance Directives?

It is the hospital's policy to honor properly executed Advance Directives. If a patient's attending physician cannot carry out the patient's wishes, it is the responsibility of that physician to assist the patient and/or family in obtaining the services of another physician who can.

The hospital will not discriminate against any patient because of the content of their properly executed Advance directive or their lack of any of these documents.

What should I do with my Advance Directives after completing them?

Keep the original documents in a safe place where a family member or your agent can easily retrieve them if necessary. Give copies to your agent, physician, attorney, family members, clergy member or anyone you want to know the decisions you have made for yourself.

Who may serve as a witness to my Advance Directives?

Living Wills and Anatomical Gift Declarations can either be signed by two witnesses or by a notary. A Durable Power of Attorney must be notarized. These witnesses must be at least 18 years of age and cannot be related to you by blood or marriage. By hospital policy ~~or~~ hospital employee or attending physician can witness or notarize these documents.

Can I change my mind after I have executed an Advance Directive?

You may change or cancel these documents at any time. Any change should be written, signed, and dated and copies should be given to your physician and to others who received your original documents.

Bartlett Regional Hospital
Patient's Advance Directives Inquiry

1. Have you executed an Advance Directive such as a Living Will or a Durable Power of Attorney for Health Care?

- | | |
|--|---|
| <input type="checkbox"/> Living Will | <input type="checkbox"/> Organ Donation |
| <input type="checkbox"/> Durable Power of Attorney | <input type="checkbox"/> None |

2. Are you registered with the US Living Will Registry? Yes No

3. Do you have a current copy of any Advance Directive to include in your medical records for this hospitalization? Yes No

If I have executed an Advance Directive I understand that it is my responsibility to notify my physician of such a directive.

Bartlett Regional Hospital has provided me with information concerning my right to execute Advance Directives, as required by the Patient Self-Determination Act of 1990, and about hospital policy relating to the implementation of Advance Directives.

Patient's Signature Date

_____ is unable to comprehend and/or sign this document. I am aware of this person's status regarding Advance Directives execution, have responded to these questions for the patient, and have received the information regarding the patient's right to execute Advanced Directives.

Signature Date

Relationship to Patient

COMMENTS (when no signature is obtained): _____

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Section 1. DESIGNATION OF AGENT

I _____ (Principal), residing

at _____

Street Address

City

State

Zip

hereby appoint: _____

Name

Street Address

City

State

Zip

Work Phone

Home Phone

as my agent with the powers set out below.

If the agent named above is unable or unwilling to serve or continue to serve, then I appoint the following agent(s) to serve with the same powers:

First Alternate:

Name

Street Address

City

State

Work Phone

Home Phone

Second Alternate:

Name

Street Address

City

State

Work Phone

Home Phone

Section 2. STATEMENT OF POWERS

I hereby grant to my Agent named above full power and authority to make health care decisions on my behalf when I have been determined to be incapable of making an informed decision on my own behalf. My Agent is to have the same authority to make health care decisions for me as I would have had if I had the capacity to make them. My Agent's authority is effective as long as I am incapable of making an informed decision.

The powers of my Agent shall include, but not be limited to, the following:

"ALASKA LIVING WILL DECLARATION"

I, _____
(Name of Declarant)

of _____
(Address of Declarant)

declare that if I should have an incurable or irreversible condition that will cause my death within a relatively short time, it is my desire that my life not be prolonged by administration of life-sustaining procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw procedures that merely prolong the dying process and are not necessary to my comfort or to alleviate pain.

I desire to include the following options.

(Please place your initials in the blank opposite the category desired.)

_____ I do desire that nutrition or hydration (food and water) be provided by gastric tube or intravenously if necessary.

_____ I do not desire that nutrition or hydration (food and water) be provided by gastric tube or intravenously if necessary.

_____ Other directives:

ORGAN DONATION (OPTIONAL)

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

Tissue:

_____ Eyes

_____ Bone and connective tissue

_____ Skin

_____ Heart

_____ Other: _____

Limitations: _____

Organ:

_____ Heart

_____ Kidney(s)

_____ Liver

_____ Lung(s)

_____ Pancreas

_____ Other: _____

Signed this _____ day of _____, _____.

(Signature)

(Address)

(Date of Birth)

(Social Security Number)

PATIENT'S RIGHTS BARTLETT REGIONAL HOSPITAL

Bartlett Regional Hospital will abide by the following Patient's rights (as set forth in 7 AAC 12.890, 42 CFR Part 482; AS 18.05.040; AS 18.20.10)

While you are a patient at Bartlett Regional Hospital, we will do our best to respect your personal rights. You or your representative may expect:

1. Considerate and respectful care, that recognizes your dignity and individuality.
2. Protection of your right to privacy and confidentiality of information related to your medical care; including access to a telephone to make and receive confidential calls; and the ability to send or receive unopened correspondence.
3. Clear explanations of your condition, proposed treatments or procedures, the benefits or drawbacks of the proposed treatment, expected recuperation and the likelihood of success of treatments or procedures.
4. Willingness to let you and your family take the lead in decision making regarding your care and treatment.
5. A safe and secure setting free from abuse/ harassment.
6. Compliance with your request to refuse treatment or to have medically necessary and appropriate treatment provided.
7. Our compliance with your advance directives, per Alaska Law.
8. Freedom from any type of discrimination on the basis of age, race, color, sex, creed, national origin, marital status, sexual orientation or disability.
9. Access to protective services, from counseling to guardianship, to help you reach your maximum level of independence.
10. Access to an interpreter, your own of the hospitals.
11. Services of the hospital chaplain when you request them.
12. Assistance in obtaining financial aid or counseling, if needed.
13. Attentive, courteous response to any concerns or complaints you and your family may have.
14. Freedom from seclusion or restraints that are not medically necessary.
15. Access to the information contained in your medical record within a reasonable timeframe.
16. Upon request, information regarding services that are available in the hospital and their cost, including any costs for services or personal care items not covered by the facility's basic per diem rate or not covered under title XVII or Title XIX of the Social Security Act.
17. To have the rights of minors assured by prompt and consistent interpretation of patient rights to a patient or legal guardian.

PATIENT AND FAMILY GRIEVANCE

Patients and their families have the right to file a grievance regarding events occurring during their stay at BRH when a complaint is not mutually resolved. The Patient and Family Grievance Policy will be followed in the event of a grievance. In addition, you have the right to lodge a complaint with the Office of Health Facilities Licensing & Certification, Department of Health and Social Services, 4730 Business Park Blvd, Suite 18, Anchorage, Alaska 99503-7137, 907 561-8081. Your presentation of a complaint will not impact the future availability of care or services at BRH.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB0025CS(JUD)-DHSS-DPH-01-21-04
() Publish Date: _____

Revision Date/Time (Note if correction): 1/20/2004

Dept. Affected: Health & Social Services

Title: HEALTH CARE DECISIONS/DO NOT RESUSCITATE ORDERS/DONATION OF BODY PARTS RDU Public Health

Component: Community Health/EMS Services

Sponsor: WEYRAUCH

Requester: _____ Component No. 2078

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 (0)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Currently, various end-of-life provisions are located in different statutes which are narrowly drafted, create confusion for the public, and make it difficult for people to direct their end-of-life care and treatment. The bill establishes a new chapter called the Health Care Decisions Act. The intent of this bill is to provide a tool for end-of-life planning and recording of health care decisions, in one easy to understand chapter of state statute. The Division of Public Health supports the goals of this act. There will be no fiscal impact to the Division by passage of this bill.

Prepared by: Doug A. Bruce
Division: Public Health
Approved by: Joel S. Gilbertson, Commissioner
Agency: Department of Health and Social Services

Phone 465-3090
Date/Time 01/20/2004
Date 01/21/2004

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4

ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

March 3, 2004

Senator Fred Dyson
Capitol Building
Room 121
Juneau, Alaska 99801

Regarding: HB 25 Advance Health Care Directives

Dear Senator Dyson:

On Monday, the Senate Health & Social Services Committee will be taking up HB 25, but before that I wanted to take a moment and offer some introductory words to you regarding this critically important concept. HB 25 ~ Healthcare Directives was inspired by the Five Wishes legislation that has been adopted by 37 states since 1993. HB 25 expands the options for people who want to prepare for the time when they can no longer speak or act on their own behalf.

Additionally, HB 25 takes a more comprehensive approach to advance directives in that it collects all of the existing provisions related to end-of-life healthcare decisions and places them in one chapter under Alaska law. These statutory provisions that are repealed and re-enacted include:

- The organ donation program;
- The Living Will Program;
- The Comfort One Do-Not-Resuscitate program;
- An expanded healthcare durable power of attorney for health care.

Essentially, HB 25 brings all of the health care related provisions into one, easy to access and coordinated site. Something like one stop shopping. In point of fact, the only "new law" introduced by the legislation is the concept of the surrogate for health care decisions found in section 13.52.025.

From the beginning, my office has worked very closely with my colleagues in committee as well as a number of stakeholders to ensure that the final product is as faultless as possible. As you join in the review of HB 25 in the HESS committee, I wanted you to know whom these individuals are, and I invite you to contact any one of them if you have a particular question or concern. Of course, you can also discuss any aspect of HB 25 with myself, or my staff.

Panel of Advisors

<u>Subject</u>	<u>Advisor</u>
Surrogates, DNRs, Living Wills, optional form, practical aspects & typical scenarios of health care issues that HB 25 touches	Dr. Maria Wallington, MD Medical Ethicist Providence Hospital 907 261-6077
Advance directives for mental health treatment & issues related to disability	Edie Zukauskas Attorney Disability Law Center 907 565-1002
DNRs, the state's Comfort One Program & issues related to emergency health care out side of the hospital	Shelley Owens Mark Johnson Dept. of Health & Social Services 907 465-3028
Anatomical gifts	Bruce Zalneraitis Life Alaska (Alaska's organ procurement organization) 907-562-5333
Pain treatment	Carole Edwards, RN Oncology Nurses Society 907-789-3345

Once again, I want to thank you for your thoughtful work on HB 25 and I look forward to working with you and your staff in committee.

Sincerely,

Representative Bruce Weyhrauch

Hawaii

[§327E-5] Health-care decisions; surrogates. (a) A patient may designate or disqualify any individual to act as a surrogate by personally informing the supervising health-care provider. In the absence of such a designation, or if the designee is not reasonably available, a surrogate may be appointed to make a health-care decision for the patient.

(b) A surrogate may make a health-care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian has been appointed or the agent or guardian is not reasonably available. Upon a determination that a patient lacks decisional capacity to provide informed consent to or refusal of medical treatment, the primary physician or the physician's designee shall make reasonable efforts to notify the patient of the patient's lack of capacity. The primary physician, or the physician's designee, shall make reasonable efforts to locate as many interested persons as practicable, and the primary physician may rely on such individuals to notify other family members or interested persons.

(c) Upon locating interested persons, the primary physician, or the physician's designee, shall inform such persons of the patient's lack of decisional capacity and that a surrogate decision-maker should be selected for the patient.

(d) Interested persons shall make reasonable efforts to reach a consensus as to who among them shall make health-care decisions on behalf of the patient. The person selected to act as the patient's surrogate should be the person who has a close relationship with the patient and who is the most likely to be currently informed of the patient's wishes regarding health-care decisions. If any of the interested persons disagrees with the selection or the decision of the surrogate, or, if after reasonable efforts the interested persons are unable to reach a consensus as to who should act as the surrogate decision-maker, then any of the interested persons may seek guardianship of the patient by initiating guardianship proceedings pursuant to chapter 551. Only interested persons involved in the discussions to choose a surrogate may initiate such proceedings with regard to the patient.

(e) If any interested person, the guardian, or primary physician believes the patient has regained decisional capacity, the primary physician shall reexamine the patient and determine whether or not the patient has regained decisional capacity and shall enter a decision and the basis for such decision into the patient's medical record and shall notify the patient, the surrogate decision-maker, and the person who initiated the redetermination of decisional capacity.

(f) A surrogate who has been designated by the patient may make

health-care decisions for the patient that the patient could make on the patient's own behalf.

(g) A surrogate who has not been designated by the patient may make all health-care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the primary physician and a second independent physician certify in the patient's medical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future.

The surrogate who has not been designated by the patient shall make health-care decisions for the patient based on the wishes of the patient, or, if the wishes of the patient are unknown or unclear, on the patient's best interest.

The decision of a surrogate who has not been designated by the patient regarding whether life-sustaining procedures should be provided, withheld, or withdrawn shall not be based, in whole or in part, on either a patient's preexisting, long-term mental or physical disability, or a patient's economic status. A surrogate who has not been designated by the patient shall inform the patient, to the extent possible, of the proposed procedure and the fact that someone else is authorized to make a decision regarding that procedure.

(h) A health-care decision made by a surrogate for a patient is effective without judicial approval.

(i) A supervising health-care provider shall require a surrogate to provide a written declaration under the penalty of false swearing stating facts and circumstances reasonably sufficient to establish the claimed authority. [L 1999, c 169, pt of §1]

[Previous](#)

[Next](#)

Delaware Advance Health-Care Directive

EXPLANATION

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding anatomical gifts and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions. You may also name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, an agent may not have a controlling interest in or be an operator or employee of a residential long-term health-care institution at which you are receiving care.

If you do not have a qualifying condition (terminal illness/injury or permanent unconsciousness), your agent may make all health-care decisions for you except for decisions providing, withholding or withdrawing of a life sustaining procedure. Unless you limit the agent's authority, your agent will have the right to:

(a) Consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition unless it's a life-sustaining procedure or otherwise required by law.

(b) Select or discharge health-care providers and health-care institutions;
If you have a qualifying condition, your agent may make all health-care decisions for you, including, but not limited to:

(c) The decisions listed in (a) and (b).

(d) Consent or refuse consent to life sustaining procedures, such as, but not limited to, cardiopulmonary resuscitation and orders not to resuscitate.

(e) Direct the providing, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care.

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional instructions for other than end of life decisions.

Part 3 of this form lets you express an intention to donate your bodily organs and tissues following your death.

Part 4 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. It is required that 2 other

individuals sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care and to any health-care agents you have named. You should talk to the person you have named as agent to make sure that the person understands your wishes and is willing to take the responsibility. You have the right to revoke this advance health-care directive or replace this form at any time.

PART 1: POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

(name of individual you choose as agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

(name of individual you choose as first alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

_____ (name
of individual you choose as second alternate agent)

(address) (city) (state) (zip code)

Surrogate
options

Delaware

(home phone)

(work phone)

(2) AGENT'S AUTHORITY: If I am not in a qualifying condition my agent is authorized to make all health-care decisions for me, except decisions about life-sustaining procedures and as I state here; and if I am in a qualifying condition, my agent is authorized to make all health-care decisions for me, except as I state here:

(Add additional sheets if necessary.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines I lack the capacity to make my own health-care decisions. As to decisions concerning the providing, withholding and withdrawal of life-sustaining procedures my agent's authority becomes effective when my primary physician determines I lack the capacity to make my own health-care decisions and my primary physician and another physician determine I am in a terminal condition or permanently unconscious.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, (please check one):

I nominate the agent(s) whom I named in this form in the order designated to act as guardian.

I nominate the following to be guardian in the order designated:

I do not nominate anyone to be guardian.

PART 2: INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: If I am in a qualifying condition, I direct that my health-care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

Choice Not To Prolong Life

I do not want my life to be prolonged if: (please check all that apply)

_____ (i) I have a terminal condition (an incurable condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, makes death imminent and from which, despite the application of life-sustaining procedures, there can be no recovery) and regarding artificial nutrition and hydration, I make the following specific directions:

	I want used	I don't want used
Artificial nutrition by a conduit	_____	_____
Hydration through a conduit	_____	_____

_____ (ii) I become permanently unconscious (a medical condition that has been diagnosed in accordance with currently accepted medical standards that has lasted at least 4 weeks and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma) and regarding artificial nutrition and hydration, I make the following specific directions:

	I want used	I don't want used
Artificial nutrition by a conduit	_____	_____
Hydration through a conduit	_____	_____

Choice To Prolong Life

_____ I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

RELIEF FROM PAIN: Except as I state in the following space, I direct treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

(7) OTHER MEDICAL INSTRUCTIONS: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you

have given above, you may do so here.) I direct that:

(Add additional sheets if necessary.)

PART 3: ANATOMICAL GIFTS AT DEATH

(OPTIONAL)

(8) I am mentally competent and 18 years or more of age.

I hereby make this anatomical gift to take effect upon my death. The marks in the appropriate squares and words filled into the blanks below indicate my desires.

I give: my body; any needed organs or parts; the following organs or parts: _____.

To the following person or institutions the physician in attendance at my death; the hospital in which I die; the following named physician, hospital, storage bank or other medical institution; the following individual for treatment; for the following purposes: any purpose authorized by law; transplantation; therapy; research; medical education.

PART 4: PRIMARY PHYSICIAN

(OPTIONAL)

(9) I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

OPTIONAL: If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

Primary Physician shall mean a physician designated by an individual or the individual's agent or guardian, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

(10) EFFECT OF COPY: A copy of this form has the same effect as the original.

(11) SIGNATURE: Sign and date the form here: I understand the purpose and effect of this document.

(date)

(sign your name)

(address)

(print your name)

(city)

(state)

(zip code)

(12) SIGNATURES OF WITNESSES:

Statement Of Witnesses

SIGNED AND DECLARED by the above-named declarant as and for his/her written declaration under 16 Del.C. §§ 2502 and 2503, in our presence, who in his/her presence, at his/her request, and in the presence of each other, have hereunto subscribed our names as witnesses, and state:

- A. That the Declarant is mentally competent.
- B. That neither of them:
 1. Is related to the declarant by blood, marriage or adoption;
 2. Is entitled to any portion of the estate of the declarant under any will of the declarant or codicil thereto then existing nor, at the time of the executing of the advance health care directive, is so entitled by operation of law then existing;
 3. Has, at the time of the execution of the advance health-care directive, a present or inchoate claim against any portion of the estate of the declarant;
 4. Has a direct financial responsibility for the declarant's medical care;
 5. Has a controlling interest in or is an operator or an employee of a residential long-term health-care institution in which the declarant is a resident; or
 6. Is under eighteen years of age.

C. That if the declarant is a resident of a sanitarium, rest home, nursing home, boarding home or related institution, one of the witnesses, _____, is at the time of the execution of the advance health-care directive, a patient advocate or ombudsman designated by the Division of Services for Aging and Adults with Physical Disabilities or the Public Guardian.

First witness

I am not prohibited by § 2503 of Title 16 of the Delaware Code from being a witness.

(print name)

(address)

(city, state, zip code)

(signature of witness)

(date)

Second witness

I am not prohibited by § 2503 of Title 16 of the Delaware Code from being a witness.

(print name)

(address)

(city, state, zip code)

(signature of witness)

(date)

23-LS0137U
Bannister
2/11/04

CS FOR HOUSE BILL NO. 25()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

**Sponsor(s): REPRESENTATIVES WEYHRAUCH, Ogg, Kookesh, Seaton, Crawford, Joule, Gara, Masek,
Morgan**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to health care decisions, including do not resuscitate orders,
2 anatomical gifts, and mental health treatment decisions, and to powers of attorney
3 relating to health care, including anatomical gifts and mental health treatment
4 decisions; and providing for an effective date."

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

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 **PURPOSE AND INTENT.** (a) A principal purpose of this Act is to provide a
9 comprehensive coordinated approach to the making of health care decisions, including
10 anatomical gifts. To achieve this purpose, this Act repeals the current statutory devices that
11 cover health care decisions and consolidates the subject into one chapter.

12 (b) It is the intent of this Act to

13 (1) establish the right of a patient to control the patient's own health care
14 decisions; and

1 (2) create, in the absence of evidence to the contrary, a presumption that the
2 patient intends to be kept alive, including by use of life-sustaining procedures, until given the
3 opportunity to make health care decisions directly or through an agent, a surrogate, or a
4 guardian.

5 * **Sec. 2.** AS 12.65.100 is amended to read:

6 **Sec. 12.65.100. Unclaimed bodies.** When a person dies and no person
7 appears to claim the body for burial, and no provision is made for the body under
8 AS 13.52 [AS 13.50], the Department of Health and Social Services, upon
9 notification, shall request a court order authorizing the body to be plainly and decently
10 buried or cremated and the remains decently interred. A judicial officer shall issue the
11 requested order upon the sworn testimony or statement of a representative of the
12 Department of Health and Social Services that a person has not appeared to claim the
13 body for burial and provision is not made for the body under AS 13.52 [AS 13.50].

14 * **Sec. 3.** AS 13 is amended by adding a new chapter to read:

15 **Chapter 52. Health Care Decisions Act.**

16 **Sec. 13.52.010. Advance health care directives.** (a) Except as provided in
17 AS 13.52.170(a), an adult or emancipated minor may give an individual instruction.
18 Except as provided in AS 13.52.170(b), the instruction may be oral or written. The
19 instruction may be limited to take effect only if a specified condition arises.

20 (b) An adult or emancipated minor may execute a durable power of attorney
21 for health care, which may authorize the agent to make any health care decision the
22 principal could have made while having capacity. The power remains in effect
23 notwithstanding the principal's later incapacity and may include individual
24 instructions. The power must be in writing, contain the date of its execution, be
25 signed by the principal, and be witnessed by one of the following methods:

26 (1) signed by at least two individuals, each of whom witnessed either
27 the signing of the instrument by the principal or the principal's acknowledgment of the
28 signature of the instrument; or

29 (2) acknowledged before a notary public at a place in this state.

30 (c) Unless related to the principal by blood, marriage, or adoption, an agent
31 under a durable power of attorney for health care may not be an owner, operator, or

1 employee of the health care institution at which the principal is receiving care.

2 (d) A witness for a durable power of attorney for health care may not be

3 (1) a health care provider;

4 (2) an employee of a health care provider or facility; or

5 (3) the agent.

6 (e) At least one of the individuals used as a witness for a durable power of
7 attorney for health care shall be someone who is not

8 (1) related to the principal by blood, marriage, or adoption; or

9 (2) entitled to a portion of the estate of the principal upon the
10 principal's death under a will or codicil of the principal existing at the time of
11 execution of the durable power of attorney for health care or by operation of law then
12 existing.

13 (f) Unless otherwise specified in the durable power of attorney for health care,
14 the authority of an agent becomes effective only upon a determination that the
15 principal lacks capacity and ceases to be effective upon a determination that the
16 principal has recovered capacity.

17 (g) Unless otherwise specified in a written advance health care directive, a
18 determination that an individual lacks or has recovered capacity, or that another
19 condition exists that affects an individual instruction or the authority of an agent, shall
20 be made by

21 (1) the primary physician, except in the case of mental illness;

22 (2) a court in the case of mental illness, unless the situation is an
23 emergency; or

24 (3) the primary physician or another health care provider in the case of
25 mental illness where the situation is an emergency.

26 (h) An agent shall make a health care decision in accordance with the
27 principal's individual instructions, if any, and other wishes to the extent known to the
28 agent. Otherwise, the agent shall make the decision in accordance with the agent's
29 determination of the principal's best interest. In determining the principal's best
30 interest, the agent shall consider the principal's personal values to the extent known to
31 the agent.

1 (i) A health care decision made by an agent for a principal is effective without
2 judicial approval.

3 (j) A written advance health care directive may include the individual's
4 nomination of a guardian of the individual.

5 (k) An advance health care directive is valid for purposes of this chapter if it
6 complies with this chapter or if it was executed in compliance with the laws of the
7 state where it was executed, but this subsection does not authorize the administration,
8 withholding, or withdrawal of health care otherwise prohibited by the laws of this
9 state.

10 **Sec. 13.52.020. Revocation of advance health care directive.** (a) Except in
11 the case of mental illness under (c) of this section, a principal may revoke the
12 designation of an agent only by a signed writing or by personally informing the
13 supervising health care provider.

14 (b) Except in the case of mental illness under (c) of this section, a principal
15 may revoke all or part of an advance health care directive, other than the designation
16 of an agent, at any time and in any manner that communicates an intent to revoke.

17 (c) In the case of mental illness, an advance health care directive may be
18 revoked in whole or in part at any time by the principal if the principal does not lack
19 capacity and is not incompetent, a revocation is effective when a capable, competent
20 principal communicates the revocation to the attending physician or other health care
21 provider, and the attending physician or other health care provider shall note the
22 revocation on the principal's medical record. In the case of mental illness, the
23 authority of a named agent and an alternative agent named in the advance health care
24 directive continues in effect as long as the advance health care directive appointing the
25 agent is in effect or until the agent has withdrawn. For the purposes of this subsection,
26 a principal is considered incompetent when it is the opinion of the court in a
27 guardianship proceeding under AS 13.26, the opinion of two physicians, at least one
28 of whom is a psychiatrist, or the opinion of a physician and a professional mental
29 health clinician, that an individual's ability to receive and evaluate information
30 effectively or communicate decisions is impaired to the extent that the individual lacks
31 the capacity to make mental health treatment decisions.

1 (d) A health care provider, agent, guardian, or surrogate who is informed of a
2 revocation shall promptly communicate the fact of the revocation to the supervising
3 health care provider and to any health care institution at which the patient is receiving
4 care.

5 (e) A decree of annulment, divorce, dissolution of marriage, or legal
6 separation revokes a previous designation of a spouse as agent unless otherwise
7 specified in the decree or in a durable power of attorney for health care.

8 (f) An advance health care directive that conflicts with an earlier advance
9 health care directive revokes the earlier directive to the extent of the conflict.

10 **Sec. 13.52.025. Rescission of withdrawal by agent.** A person who has
11 withdrawn as an agent may rescind the withdrawal by executing an acceptance after
12 the date of the withdrawal. A person who rescinds a withdrawal shall give notice to
13 the principal if the principal is capable or to the principal's health care provider if the
14 principal is incapable.

15 **Sec. 13.52.030. Decisions by surrogate.** (a) Except in the case of mental
16 health treatment and except as provided by AS 13.52.180(a) and (b), a surrogate may
17 make a health care decision for a patient who is an adult or emancipated minor if an
18 agent or guardian has not been appointed or the agent or guardian is not reasonably
19 available, and if the patient has been determined by the primary physician to lack
20 capacity.

21 (b) A surrogate may make a decision regarding mental health treatment for a
22 patient who is an adult or emancipated minor if

23 (1) an agent or guardian has not been appointed or the agent or
24 guardian is not reasonably available;

25 (2) the mental health treatment is needed on an emergency basis; and

26 (3) the patient has been determined to lack capacity by

27 (A) two physicians, one of whom is a psychiatrist; or

28 (B) a physician and a professional mental health clinician.

29 (c) Except as provided for anatomical gifts in AS 13.52.170(b), an adult or
30 emancipated minor may designate an individual to act as surrogate by personally
31 informing the supervising health care provider. Except as provided by AS

1 13.52.180(a) and (b), in the absence of a designation, or if the designee is not
2 reasonably available, a member of the following classes of the patient's family who is
3 reasonably available, in descending order of priority, may act as surrogate:

4 (1) the spouse, unless legally separated;

5 (2) an adult child;

6 (3) a parent; or

7 (4) an adult sibling.

8 (d) Except as provided by AS 13.52.180(a) and (b), if none of the individuals
9 eligible to act as surrogate under (c) of this section is reasonably available, an adult
10 who has exhibited special care and concern for the patient, who is familiar with the
11 patient's personal values, and who is reasonably available may act as surrogate.

12 (e) A surrogate shall communicate the surrogate's assumption of authority as
13 promptly as practicable to the members of the patient's family specified in (c) of this
14 section who can be readily contacted.

15 (f) If more than one member of a class under (c)(2) - (4) of this section
16 assumes authority to act as surrogate, the members of that class do not agree on a
17 health care decision, and the supervising health care provider is informed of the
18 disagreement, the supervising health care provider shall comply with the decision of a
19 majority of the members of that class who have communicated their views to the
20 provider. If the class is evenly divided concerning the health care decision and the
21 supervising health care provider is informed of the even division, that class and all
22 individuals having a lower priority under (c)(2) - (4) of this section are disqualified
23 from making the decision, and the primary physician shall make the decision based on
24 the best interest of the patient.

25 (g) A surrogate shall make a health care decision in accordance with the
26 patient's individual instructions or other advance health care directives, if any, and
27 other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make
28 the decision in accordance with the surrogate's determination of the patient's best
29 interest. In determining the patient's best interest, the surrogate shall consider the
30 patient's personal values to the extent known to the surrogate.

31 (h) A health care decision made by a surrogate for a patient is effective

1 without judicial approval.

2 (i) A patient may, at any time, disqualify another person, including a member
3 of the patient's family, from acting as the patient's surrogate by a signed writing or by
4 personally informing the supervising health care provider of the disqualification.

5 (j) Unless related to the patient by blood, marriage, or adoption, a surrogate
6 may not be an owner, operator, or employee of a residential long-term health care
7 institution at which the patient is receiving care.

8 (k) A supervising health care provider may require an individual claiming the
9 right to act as a surrogate for a patient to provide a written declaration under penalty of
10 perjury stating facts and circumstances reasonably sufficient to establish the claimed
11 authority.

12 **Sec. 13.52.040. Decisions by guardian.** (a) A guardian shall comply with
13 the ward's individual instructions and may not revoke a ward's advance health care
14 directive executed before the ward's incapacity.

15 (b) Unless there is a court order to the contrary, a health care decision of an
16 agent takes precedence over that of a guardian.

17 (c) Except as provided in (a) of this section, a health care decision made by a
18 guardian for the ward is effective without judicial approval.

19 **Sec. 13.52.045. Pregnancy.** (a) Before implementing a health care decision
20 for a woman of childbearing age that would affect a fetus if present, the supervising
21 health care provider shall take reasonable steps to determine whether the woman is
22 pregnant.

23 (b) Notwithstanding another provision of this chapter to the contrary, an
24 advance health care directive by a patient or a decision by the person then authorized
25 to make health care decisions for a patient may not be given effect if

26 (1) the patient is a woman who is pregnant and lacks capacity;

27 (2) the directive or decision is to withhold or withdraw health care;

28 (3) the withholding or withdrawal of the health care would, in
29 reasonable medical judgment, be likely to result in the death of the patient; and

30 (4) it is probable that the fetus could develop to the point of live birth
31 if the health care were provided.

1 (c) This section does not apply to emergency medical technicians or
2 ambulance drivers when providing emergency services in the field.

3 **Sec. 13.52.050. Obligations of health care provider.** (a) Before
4 implementing a health care decision made for a patient, a supervising health care
5 provider, if possible, shall promptly communicate to the patient the decision made and
6 the identity of the person making the decision.

7 (b) Except as provided in AS 13.52.200, a supervising health care provider
8 who knows of the existence of an advance health care directive, a revocation of an
9 advance health care directive, or a designation or disqualification of a surrogate shall
10 promptly record its existence in the patient's health care record, shall request a copy if
11 it is in writing, and shall arrange for its maintenance in the health care record if a copy
12 is furnished.

13 (c) A supervising health care provider who makes or is informed of a
14 determination that a patient lacks or has recovered capacity, or that another condition
15 exists that affects an individual instruction or the authority of an agent, a guardian, or a
16 surrogate, shall promptly record the determination in the patient's health care record
17 and communicate the determination to the patient, if possible, and to any person then
18 authorized to make health care decisions for the patient.

19 (d) Except as provided in (e) and (f) of this section, a health care provider or
20 institution providing care to a patient shall comply with

21 (1) an individual instruction of the patient and with a reasonable
22 interpretation of that instruction made by a person then authorized to make health care
23 decisions for the patient; and

24 (2) a health care decision for the patient made by a person then
25 authorized to make health care decisions for the patient to the same extent as if the
26 decision had been made by the patient while having capacity.

27 (e) A health care provider may decline to comply with an individual
28 instruction or a health care decision for reasons of conscience, except for a do not
29 resuscitate order. A health care institution may decline to comply with an individual
30 instruction or health care decision if the instruction or decision is contrary to a policy
31 of the institution that is expressly based on reasons of conscience and if the policy was

1 timely communicated to the patient or to a person then authorized to make health care
2 decisions for the patient.

3 (f) A health care provider or institution may decline to comply with an
4 individual instruction or a health care decision that requires medically ineffective
5 health care or health care contrary to generally accepted health care standards
6 applicable to the health care provider or institution. In this subsection, "medically
7 ineffective health care" means health care that according to reasonable medical
8 judgment cannot cure the patient's illness, cannot diminish its progressive course, and
9 cannot effectively alleviate severe discomfort and distress.

10 (g) A health care provider or institution that declines to comply with an
11 individual instruction or a health care decision shall

12 (1) promptly inform the patient, if possible, and any person then
13 authorized to make health care decisions for the patient that the provider or institution
14 has declined to comply with the instruction or decision;

15 (2) provide continuing care to the patient until a transfer is effected;
16 and

17 (3) unless the patient or person then authorized to make health care
18 decisions for the patient refuses assistance, immediately make all reasonable efforts to
19 assist in the transfer of the patient to another health care provider or institution that is
20 willing to comply with the instruction or decision.

21 (h) Except as provided for civil commitments under AS 47.30.817, a health
22 care provider or institution may not require or prohibit the execution or revocation of
23 an advance health care directive as a condition for providing health care.

24 **Sec. 13.52.060. Do not resuscitate protocol and identification**
25 **requirements.** (a) An attending physician may issue a do not resuscitate order for a
26 patient of the physician. The physician shall document the grounds for the order in the
27 patient's medical file.

28 (b) The department shall by regulation adopt a protocol, subject to the
29 approval of the State Medical Board, for do not resuscitate orders that set out a
30 standardized method of procedure for the withholding of cardiopulmonary
31 resuscitation by health care providers and health care institutions.

1 (c) The department shall develop standardized designs and symbols for do not
2 resuscitate identification cards, forms, necklaces, and bracelets that signify, when
3 carried or worn, that the carrier or wearer is an individual for whom a physician has
4 issued a do not resuscitate order.

5 (d) A health care provider other than a physician shall comply with the
6 protocol adopted under (b) of this section for do not resuscitate orders when the health
7 care provider is presented with a do not resuscitate identification, an oral do not
8 resuscitate order issued directly by a physician if the applicable hospital allows oral do
9 not resuscitate orders, or a written do not resuscitate order entered on and as required
10 by a form prescribed by the department.

11 (e) Notwithstanding (d) of this section, if an individual has made an
12 anatomical gift to occur at death and is in a hospital when a do not resuscitate order is
13 to be implemented for the individual, the do not resuscitate order may not be
14 implemented until the subject of the anatomical gift can be evaluated to determine if it
15 is suitable for donation.

16 (f) A physician may not revoke a do not resuscitate order at the request of a
17 person, and a person may not make a do not resuscitate order ineffective, unless the
18 person making the request or proposing to make the order ineffective is the person
19 who requested the physician to issue the order. However, if the person for whom the
20 order has been issued is not capable of expressing an opinion on the subject, the
21 request or proposal may be made by the parent or guardian of the person for whom the
22 order has been issued if the person for whom the order has been issued is under 18
23 years of age.

24 **Sec. 13.52.070. Health care information.** Unless otherwise specified in an
25 advance health care directive, a person then authorized to make health care decisions
26 for a patient has the same rights as the patient to request, receive, examine, copy, and
27 consent to the disclosure of medical or other health care information.

28 **Sec. 13.52.080. Immunities.** (a) If a health care provider or health care
29 institution makes reasonable efforts, with a level of diligence appropriate to the
30 seriousness and urgency of the situation, to ensure the validity of an advance health
31 care directive or a person's assumption of authority to make health care decisions for a

1 patient, a health care provider or institution acting in good faith and in accordance
2 with generally accepted health care standards applicable to the health care provider or
3 institution is not subject to civil or criminal liability or to discipline for unprofessional
4 conduct for

5 (1) complying with a health care decision of a person apparently
6 having authority to make a health care decision for a patient, including a decision to
7 withhold or withdraw health care;

8 (2) declining to comply with a health care decision of a person based
9 on a reasonable belief that the person then lacked authority;

10 (3) complying with an advance health care directive and reasonably
11 assuming that the directive was valid when made and has not been revoked or
12 terminated;

13 (4) participating in the withholding or withdrawal of cardiopulmonary
14 resuscitation or other life-sustaining procedures under the direction or with the
15 authorization of a physician or upon discovery of do not resuscitate identification upon
16 an individual;

17 (5) causing or participating in providing cardiopulmonary resuscitation
18 or other life-sustaining procedures

19 (A) under AS 13.52.060(e) when an individual has made an
20 anatomical gift; or

21 (B) because an individual has made a do not resuscitate order
22 ineffective under AS 13.52.060(f) or another provision of this chapter; or

23 (6) acting in good faith under the terms of this chapter or the law of
24 another state relating to anatomical gifts.

25 (b) An individual acting as an agent, a guardian, or a surrogate under this
26 chapter is not subject to civil or criminal liability or to discipline for unprofessional
27 conduct for health care decisions made in good faith.

28 **Sec. 13.52.085. Discriminatory treatment prohibited.** When determining
29 the best interest of a patient under this chapter, health care treatment may not be
30 denied to a patient because the patient has a disability or is expected to have a
31 disability.

1 **Sec. 13.52.090. Statutory damages.** (a) A health care provider or institution
2 that intentionally violates this chapter is liable to the aggrieved individual or the
3 individual's estate for damages of \$10,000 or actual damages resulting from the
4 violation, whichever is greater, plus attorney fees as provided by court rule.

5 (b) A person who intentionally falsifies, forges, conceals, defaces, or
6 obliterates an individual's advance health care directive or a revocation of an advance
7 health care directive without the individual's consent, or who coerces or fraudulently
8 induces an individual to give, revoke, or not to give an advance health care directive,
9 is liable to that individual for damages of \$10,000 or actual damages resulting from
10 the action, whichever is greater, plus attorney fees as provided by court rule.

11 **Sec. 13.52.100. Capacity.** (a) This chapter does not affect the right of an
12 individual to make health care decisions while having capacity to make health care
13 decisions.

14 (b) An individual is rebuttably presumed to have capacity to make a health
15 care decision, to give or revoke an advance health care directive, and to designate or
16 disqualify a surrogate.

17 (c) An individual who is a qualified patient, including an individual for whom
18 a physician has issued a do not resuscitate order, has the right to make a decision
19 regarding the use of cardiopulmonary resuscitation and other life-sustaining
20 procedures as long as the individual is able to make the decision. If an individual who
21 is a qualified patient, including an individual for whom a physician has issued a do not
22 resuscitate order, is not able to make the decision, the protocol adopted under
23 AS 13.52.060 for do not resuscitate orders governs a decision regarding the use of
24 cardiopulmonary resuscitation and other life-sustaining procedures.

25 **Sec. 13.52.110. Status of copy.** A copy of a written advance health care
26 directive, revocation of an advance health care directive, or designation or
27 disqualification of a surrogate has the same effect as the original.

28 **Sec. 13.52.120. Effect of this chapter.** (a) This chapter does not create a
29 presumption concerning the intention of an individual who has not made or who has
30 revoked an advance health care directive.

31 (b) Notwithstanding any other provision of law, if the withholding or

1 withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures is
2 consistent with this chapter, death resulting from the withholding or withdrawal of
3 cardiopulmonary resuscitation or other life-sustaining procedures under a do not
4 resuscitate order, under the protocol for do not resuscitate orders established under
5 AS 13.52.060, or under a do not resuscitate identification found on an individual does
6 not, for any purpose, constitute a suicide or homicide.

7 (c) The issuance of a do not resuscitate order under this chapter, the
8 possession of do not resuscitate identification under this chapter, or the making of a
9 health care directive under this chapter does not affect in any manner the sale,
10 procurement, or issuance of a policy of life insurance, and does not modify the terms
11 of an existing policy of life insurance. A policy of life insurance is not legally
12 impaired or invalidated in any manner by the withholding or withdrawal of life-
13 sustaining procedures from an insured individual or the withholding or withdrawal of
14 cardiopulmonary resuscitation from an individual who possesses do not resuscitate
15 identification or for whom a do not resuscitate order has been issued, notwithstanding
16 any term of the policy to the contrary.

17 (d) This chapter does not create a presumption concerning the intention or
18 intended treatment of an individual who does not have do not resuscitate
19 identification, has not executed a health care directive, or for whom a do not
20 resuscitate order has not been issued with respect to the use, withholding, or
21 withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures.

22 (e) This chapter does not increase or decrease the right of an individual to
23 make decisions regarding the use of cardiopulmonary resuscitation or other life-
24 sustaining procedures as long as the individual is able to do so, and does not impair or
25 supersede any right or responsibility that a person has to effect the withholding or
26 withdrawal of medical care in a lawful manner.

27 (f) This chapter does not authorize mercy killing, assisted suicide, euthanasia,
28 or the provision, withholding, or withdrawal of health care, to the extent prohibited by
29 other statutes of this state.

30 (g) This chapter does not authorize or require a health care provider or
31 institution to provide health care contrary to generally accepted health care standards

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applicable to the health care provider or institution.

(h) This chapter does not authorize an agent or a surrogate to consent to the admission of an individual to a mental health facility unless the individual's written advance health care directive expressly so provides, and the period of admission may not exceed 17 days.

(i) This chapter does not affect other statutes of this state governing treatment for mental illness of an individual involuntarily committed to a mental health facility.

Sec. 13.52.130. Prohibited requirements. As a condition of receiving or being insured for health care services, a health care provider, a health care institution, a health care service plan, an insurer issuing health insurance, a self-insured employee welfare benefit plan, or a nonprofit hospital plan may not require an individual to execute a health care directive, obtain a do not resuscitate order from a physician, or possess do not resuscitate identification.

Sec. 13.52.140. Judicial relief. On petition of a patient, the patient's agent, guardian, or surrogate, or a health care provider or institution involved with the patient's care, the superior court may enjoin or direct a health care decision or order other equitable relief. A proceeding under this section is governed by AS 13.26.165 - 13.26.320.

Sec. 13.52.150. Uniformity of application and construction. This chapter shall be applied and construed to carry out its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Sec. 13.52.160. Do not resuscitate orders and identification of other jurisdictions. A do not resuscitate order or a do not resuscitate identification executed, issued, or authorized in another state or a territory or possession of the United States in compliance with the law of that jurisdiction is effective for the purposes of this chapter.

Sec. 13.52.170. Making, amending, revoking, and refusing to make anatomical gifts by individual. (a) An individual who is at least 18 years of age may

(1) make an anatomical gift for any of the purposes stated in AS 13.52.210(a);

- 1 (2) limit an anatomical gift to one or more of those purposes; or
2 (3) refuse to make an anatomical gift.

3 (b) An anatomical gift may be made only by a document of gift signed by the
4 donor. If the donor cannot sign, the document of gift shall be signed by another
5 individual and by two witnesses, all of whom have signed at the direction and in the
6 presence of the donor and of each other, and state that it has been signed at the
7 direction and in the presence of the donor and of each other.

8 (c) If a document of gift is attached to or imprinted on a donor's motor vehicle
9 driver's license, revocation, suspension, expiration, or cancellation of the license does
10 not invalidate the anatomical gift.

11 (d) A document of gift may designate a particular physician or surgeon to
12 carry out the appropriate procedures. In the absence of a designation or if the designee
13 is not available, the donee or other person authorized to accept the anatomical gift may
14 employ or authorize any physician, surgeon, technician, or enucleator to carry out the
15 appropriate procedures.

16 (e) An anatomical gift by will takes effect upon death of the testator, whether
17 or not the will is probated. If, after death, the will is declared invalid for testamentary
18 purposes, the validity of the anatomical gift is unaffected.

19 (f) Notwithstanding AS 13.52.020, a donor may amend or revoke an
20 anatomical gift, not made by will, only by

- 21 (1) a signed statement;
22 (2) an oral statement made in the presence of two individuals;
23 (3) any form of communication during a terminal illness or injury
24 addressed to a physician or surgeon; or
25 (4) the delivery of a signed statement to a specified donee to whom a
26 document of gift had been delivered.

27 (g) Notwithstanding AS 13.52.020, the donor of an anatomical gift made by
28 will may amend or revoke the gift in the manner provided for amendment or
29 revocation of wills, or as provided in (f) of this section.

30 (h) An anatomical gift that is not revoked by the donor before death is
31 irrevocable and does not require the consent or concurrence of any person after the

1 donor's death.

2 (i) An individual may refuse to make an anatomical gift of the individual's
3 body or part by

4 (1) a writing signed in the same manner as a document of gift;

5 (2) a statement attached to or imprinted on a donor's motor vehicle
6 operator's or chauffeur's license;

7 (3) any other writing used to identify the individual as refusing to
8 make an anatomical gift;

9 (4) during a terminal illness or injury, an oral statement or other form
10 of communication.

11 (j) In the absence of contrary indications by the donor, an anatomical gift of a
12 part is not a refusal to give other parts or a limitation on an anatomical gift under
13 AS 13.52.180.

14 (k) In the absence of contrary indications by the donor, a revocation or
15 amendment of an anatomical gift is not a refusal to make another anatomical gift. If
16 the donor intends a revocation to be a refusal to make an anatomical gift, the donor
17 shall make the refusal under (i) of this section.

18 **Sec. 13.52.180. Making, revoking, and objecting to anatomical gifts by**
19 **others.** (a) Any member of the following classes of persons, in the order of priority
20 listed, may make an anatomical gift of all or a part of the decedent's body for an
21 authorized purpose, unless the decedent, at the time of death, has made an unrevoked
22 refusal to make that anatomical gift:

23 (1) the spouse of the decedent;

24 (2) an adult son or daughter of the decedent;

25 (3) either parent of the decedent;

26 (4) an adult brother or sister of the decedent;

27 (5) a grandparent of the decedent; and

28 (6) a guardian of the person of the decedent at the time of death.

29 (b) An anatomical gift may not be made by a person listed in (a) of this section
30 if

31 (1) a person in a prior class is available at the time of death to make an

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anatomical gift;

(2) the person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(3) the person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(c) An anatomical gift by a person authorized under (a) of this section shall be made by

(1) a document of gift signed by the person; or

(2) the person's telegraphic, recorded telephonic, or other recorded message, or another form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(d) An anatomical gift by a person authorized under (a) of this section may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(e) A failure to make an anatomical gift under (a) of this section is not an objection to the making of an anatomical gift.

Sec. 13.52.190. Optional form for anatomical gift by next of kin or guardian of the person.

**ANATOMICAL GIFT BY NEXT OF KIN OR
GUARDIAN OF THE PERSON**

Under AS 13.52.170 - 13.52.280, I make this anatomical gift from the body of

(name of decedent)
who died on

(date)

at

1 (place) (city)

2 in

3 _____.

4 (state)

5 The marks in the appropriate squares and the words filled into
6 the blanks below indicate my relationship to the decedent and my
7 wishes respecting the gift.

8 I survive the decedent as spouse; adult son or daughter;
9 parent; adult brother or sister; grandparent; guardian of
10 the person.

11 I hereby give (check boxes applicable):

12 any needed organs, tissues, or parts;

13 the following organs, tissues, or parts only:

14 _____;

15 the following purposes only:

16 _____.

17 _____

18 (date) (signature of survivor)

19 _____

20 (address of survivor)

21 **Sec. 13.52.200. Routine inquiry and required request; search and**
22 **notification.** (a) On or before admission to a hospital, or as soon as possible after
23 admission, a person designated by the hospital shall ask each patient who is at least 18
24 years of age: "Are you an organ or tissue donor?" If the answer is affirmative, the
25 person shall request a copy of the document of gift. If the answer is negative or there
26 is no answer and the attending physician consents, the person designated shall discuss
27 with the patient the option to make or refuse to make an anatomical gift. The answer
28 to the question, an available copy of any document of gift or refusal to make an
29 anatomical gift, and any other relevant information, shall be placed in the patient's
30 medical record.

31 (b) If, at or near the time of death of a patient, there is no medical record that

1 the patient has made or refused to make an anatomical gift, the hospital administrator
2 or a representative designated by the administrator shall discuss the option to make or
3 refuse to make an anatomical gift with the family of the patient and request the making
4 of an anatomical gift under AS 13.52.180(a). The request must be made with
5 reasonable discretion and sensitivity to the circumstances of the family. A request is
6 not required if the gift is not suitable, based upon accepted medical standards, for a
7 purpose specified in AS 13.52.210. An entry shall be made in the medical record of
8 the patient, stating the name and affiliation of the individual making the request, and
9 of the name, response, and relationship to the patient of the person to whom the
10 request was made. The commissioner of health and social services shall adopt
11 regulations to implement this subsection.

12 (c) The following persons shall make a reasonable search for a document of
13 gift or other information identifying the bearer as a donor or as an individual who has
14 refused to make an anatomical gift:

15 (1) a law enforcement officer, fire fighter, paramedic, or other
16 emergency rescuer finding an individual who the searcher believes is dead or near
17 death; and

18 (2) a hospital, upon the admission of an individual at or near the time
19 of death, if there is not immediately available any other source of that information.

20 (d) If a document of gift or evidence of refusal to make an anatomical gift is
21 located by the search required by (c)(1) of this section, and the individual or body to
22 whom it relates is taken to a hospital, the hospital must be notified of the contents, and
23 the document or other evidence must be sent to the hospital.

24 (e) If, at or near the time of death of a patient, a hospital knows that an
25 anatomical gift has been made under AS 13.52.170 or 13.52.180(a), or that a patient or
26 an individual identified as in transit to the hospital is a donee, the hospital shall notify
27 the donee if one is named and known to the hospital; if not, the hospital shall notify an
28 appropriate procurement organization. The hospital shall cooperate in the
29 implementation of the anatomical gift or release and removal of a part.

30 (f) Notwithstanding AS 13.52.090, a person who fails to discharge the duties
31 imposed by this section is not subject to criminal or civil liability but is subject to

1 appropriate administrative sanctions.

2 **Sec. 13.52.210. Persons who may become donees; purposes for which**
3 **anatomical gifts may be made.** (a) The following persons may become donees of
4 anatomical gifts for the purposes stated:

5 (1) a hospital, physician, surgeon, or procurement organization for
6 transplantation, therapy, medical or dental education, research, or advancement of
7 medical or dental science;

8 (2) an accredited medical or dental school, college, or university for
9 education, research, or advancement of medical or dental science; or

10 (3) a designated individual for transplantation or therapy needed by
11 that individual.

12 (b) An anatomical gift may be made to a designated donee or without
13 designating a donee. If a donee is not designated or if the donee is not available or
14 rejects the anatomical gift, the anatomical gift may be accepted by any hospital.

15 (c) If the donee knows of the decedent's refusal or contrary indications to
16 make an anatomical gift or that an anatomical gift by a member of a class having
17 priority to act is opposed by a member of the same class or a prior class under
18 AS 13.52.180(a), the donee may not accept the anatomical gift.

19 **Sec. 13.52.220. Delivery of document of gift.** (a) Delivery of a document of
20 gift during the donor's lifetime is not required for the validity of an anatomical gift.

21 (b) If an anatomical gift is made to a designated donee, the document of gift,
22 or a copy, may be delivered to the donee to expedite the appropriate procedures after
23 death. The document of gift, or a copy, may be deposited in any hospital, procurement
24 organization, or registry office that accepts it for safekeeping or for facilitation of
25 procedures after death. On request of an interested person, upon or after the donor's
26 death, the person in possession shall allow the interested person to examine or copy
27 the document of gift.

28 **Sec. 13.52.230. Rights and duties at death.** (a) Rights of a donee created by
29 an anatomical gift are superior to rights of others except with respect to autopsies
30 under AS 13.52.260(b). A donee may accept or reject an anatomical gift. If a donee
31 accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift,

1 may allow embalming and use of the body in funeral services. If the gift is of a part of
2 a body, the donee, upon the death of the donor and before embalming, shall cause the
3 part to be removed without unnecessary mutilation. After removal of the part, custody
4 of the remainder of the body vests in the person under obligation to dispose of the
5 body.

6 (b) The time of death of a donor must be determined by a physician or surgeon
7 who attends the donor at death or, if none, the physician or surgeon who certifies the
8 death. Neither the physician or surgeon who attends the donor at death nor the
9 physician or surgeon who determines the time of death may participate in the
10 procedures for removing or transplanting a part unless the document of gift designates
11 a particular physician or surgeon under AS 13.52.170(d).

12 (c) If there has been an anatomical gift, a technician may remove any donated
13 parts and an enucleator may remove any donated eyes or parts of eyes, after
14 determination of death by a physician or surgeon.

15 **Sec. 13.52.240. Coordination of procurement and use.** Each hospital in this
16 state, after consultation with other hospitals and procurement organizations, shall
17 establish agreements or affiliations for coordination of procurement and use of human
18 bodies and parts.

19 **Sec. 13.52.250. Sale or purchase of parts prohibited.** (a) A person may not
20 knowingly, for valuable consideration, purchase or sell a part for transplantation or
21 therapy if removal of the part is intended to occur after the death of the decedent.

22 (b) Valuable consideration does not include reasonable payment for the
23 removal, processing, disposal, preservation, quality control, storage, transportation, or
24 implantation of a part.

25 (c) A person who violates this section is guilty of a class C felony.

26 **Sec. 13.52.260. Examination, autopsy, liability.** (a) An anatomical gift
27 authorizes any reasonable examination necessary to assure medical acceptability of the
28 gift for the purposes intended.

29 (b) The provisions of AS 13.52.170 - 13.52.280 are subject to the autopsy
30 provisions of AS 12.65.

31 (c) A hospital, physician, surgeon, coroner, medical examiner, local public

1 health officer, enucleator, technician, or other person who acts in accordance with
 2 AS 13.52.170 - 13.52.280 or with the applicable anatomical gift law of another state or
 3 attempts in good faith to act in accordance with AS 13.52.170 - 13.52.280 or with the
 4 applicable anatomical gift law of another state is not liable for that act in a civil action
 5 or criminal proceeding.

6 (d) An individual who makes an anatomical gift under AS 13.52.170 or
 7 13.52.180 and the individual's estate are not liable for any injury or damage that may
 8 result from the making or the use of the anatomical gift.

9 **Sec. 13.52.270. Applicability provisions.** AS 13.52.170 - 13.52.280 apply to
 10 a document of gift, revocation, or refusal to make an anatomical gift signed by the
 11 donor or a person authorized to make or object to making an anatomical gift before,
 12 on, or after the effective date of this bill section.

13 **Sec. 13.52.280. Uniformity of application and construction.** AS 13.52.170
 14 - 13.52.280 shall be applied and construed to carry out their general purpose to make
 15 uniform the law with respect to the subject of AS 13.52.170 - 13.52.280 among states
 16 enacting these provisions.

17 **Sec. 13.52.300. Optional form.** The following sample form may be used to
 18 create an advance health care directive. The other sections of this chapter govern the
 19 effect of this or any other writing used to create an advance health care directive. This
 20 form may be duplicated. This form may be modified to suit the needs of the person, or
 21 a completely different form may be used that contains the substance of the following
 22 form or otherwise complies with this chapter:

23 **ADVANCE HEALTH CARE DIRECTIVE**

24 **Explanation**

25 You have the right to give instructions about your own health
 26 care to the extent allowed by law. You also have the right to name
 27 someone else to make health care decisions for you to the extent
 28 allowed by law. This form lets you do either or both of these things. It
 29 also lets you express your wishes regarding the designation of your
 30 health care provider. If you use this form, you may complete or modify
 31 all or any part of it. You are free to use a different form if the form

1 contains the substance of this form or otherwise complies with the
2 requirements of AS 13.52.

3 Part 1 of this form is a durable power of attorney for health
4 care. Part 1 lets you name another individual as an agent to make
5 health care decisions for you if you become incapable of making your
6 own decisions or if you want someone else to make those decisions for
7 you now even though you are still capable. You may name an alternate
8 agent to act for you if your first choice is not willing, able, or
9 reasonably available to make decisions for you. Unless related to you,
10 your agent may not be an owner, operator, or employee of a health care
11 institution where you are receiving care.

12 Unless the form you sign limits the authority of your agent,
13 your agent may make all health care decisions for you that you could
14 legally make for yourself. This form has a place for you to limit the
15 authority of your agent. You do not have to limit the authority of your
16 agent if you wish to rely on your agent for all health care decisions that
17 may have to be made. If you choose not to limit the authority of your
18 agent, your agent will have the right, to the extent allowed by law, to

19 (a) consent or refuse consent to any care, treatment, service, or
20 procedure to maintain, diagnose, or otherwise affect a physical or
21 mental condition, including the administration or discontinuation of
22 psychotropic medication;

23 (b) select or discharge health care providers and institutions;

24 (c) approve or disapprove proposed diagnostic tests, surgical
25 procedures, programs of medication, and do not resuscitate orders; and

26 (d) direct the provision, withholding, or withdrawal of artificial
27 nutrition and hydration and all other forms of health care; and

28 (e) make an anatomical gift following your death.

29 Part 2 of this form lets you give specific instructions for your
30 end-of-life health care to the extent allowed by law. Choices are
31 provided for you to express your wishes regarding the provision,

1 withholding, or withdrawal of treatment to keep you alive, including
 2 the provision of artificial nutrition and hydration, as well as the
 3 provision of pain relief medication. Space is provided for you to add to
 4 the choices you have made or for you to write out any additional
 5 wishes.

6 Part 3 of this form lets you express an intention to make an
 7 anatomical gift following your death.

8 Part 4 of this form lets you make decisions in advance about
 9 certain types of mental health treatment.

10 Part 5 of this form lets you designate a physician to have
 11 primary responsibility for your health care.

12 After completing this form, sign and date the form at the end
 13 and have the form witnessed by one of the two alternative methods
 14 listed below. Give a copy of the signed and completed form to your
 15 physician, to any other health care providers you may have, to any
 16 health care institution at which you are receiving care, and to any health
 17 care agents you have named. You should talk to the person you have
 18 named as your agent to make sure that the person understands your
 19 wishes and is willing to take the responsibility.

20 You have the right to revoke this advance health care directive
 21 or replace this form at any time, except that you may not revoke this
 22 declaration when you are determined to be incapable by a court, by two
 23 physicians, at least one of whom shall be a psychiatrist, or by both a
 24 physician and a professional mental health clinician.

25 PART 1

26 DURABLE POWER OF ATTORNEY FOR
 27 HEALTH CARE DECISIONS

28 (1) DESIGNATION OF AGENT. I designate the
 29 following individual as my agent to make health care decisions for me:

30 _____

31 (name of individual you choose as agent)

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(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, I designate as my first alternate agent

(name of individual you choose as first alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent

(name of individual you choose as second alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

(2) AGENT'S AUTHORITY. My agent is authorized to make all health care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration, and all other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

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(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE. Except in the case of mental illness, my agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. In the case of mental illness, unless I mark the following box, my agent's authority becomes effective when a court determines I am unable to make my own decisions, or, in an emergency, if my primary physician or another health care provider determines I am unable to make my own decisions. If I mark this box [], my agent's authority to make health care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION. My agent shall make health care decisions for me in accordance with this durable power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN. If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named under (1) above, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making health care decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want. There is a state protocol that governs the use of do not resuscitate orders by physicians and other health care

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providers. You may obtain a copy of the protocol from the state Department of Health and Social Services.

(6) END-OF-LIFE DECISIONS. Except to the extent prohibited by law, I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below: (Check only one box.)

(A) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards; OR

(B) Choice Not To Prolong Life

I want comfort care only and I do not want my life to be prolonged with medical treatment if (check all choices that represent your wishes)

(i) I have an incurable and irreversible condition that, in the judgment of my physician, will result in my death within a relatively short period of time despite appropriate medical care;

(ii) the use of life-sustaining procedures would serve only to artificially prolong my dying process without hope of recovery;

(iii) I become unconscious and, to a reasonable degree of medical certainty, I will not ever regain consciousness;

(iv) the likely risks and burdens of treatment would outweigh the expected benefits.

Additional instructions: _____

(C) Artificial Nutrition and Hydration. If I am unable to safely take nutrition, fluids, or nutrition and fluids

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(check your choices or write your instructions),

I wish to receive artificial nutrition and hydration indefinitely;

I wish to receive artificial nutrition and hydration on a limited trial basis to see if I can improve;

In accordance with my choices in (6)(B) above, I do not wish to receive artificial nutrition and hydration.

Other instructions: _____

(D) Relief from Pain. If I mark this box , I direct that sufficient treatment should be provided to me to alleviate my pain or discomfort.

(7) OTHER WISHES. (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that

Conditions or limitations: _____

(Add additional sheets if needed.)

PART 3

ANATOMICAL GIFT AT DEATH

(OPTIONAL)

If you are satisfied to allow your agent to determine whether to make an anatomical gift at your death, you do not need to fill out this part of the form.

(8) Upon my death: (mark applicable box)

(A) I give any needed organs, tissues, or other body parts, OR

(B) I give the following organs, tissues, or

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other body parts only _____

(C) My gift is for the following purposes
(strike any of the following you do not want):

- (i) transplant;
- (ii) therapy;
- (iii) research;
- (iv) education.

(D) I refuse to make an anatomical gift.

PART 4

MENTAL HEALTH TREATMENT

This part of the declaration allows you to make decisions in advance about mental health treatment. 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.

If you are satisfied to allow your agent to determine what is best for you in making these mental health decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(9) PSYCHOTROPIC MEDICATIONS. If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychotropic medications are as follows:

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

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

Conditions or limitations: _____

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(10) ELECTROCONVULSIVE TREATMENT. If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding electroconvulsive treatment are as follows:

_____ I consent to the administration of electroconvulsive treatment.

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

Conditions or limitations: _____

(11) ADMISSION TO AND RETENTION IN FACILITY. If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding admission to and retention in a health care facility for mental health treatment are as follows:

_____ I consent to being admitted to a health care facility for mental health treatment for up to _____ days. (The number of days not to exceed 17.)

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

Conditions or limitations: _____

OTHER WISHES OR INSTRUCTIONS

Conditions or limitations: _____

PART 5
PRIMARY PHYSICIAN

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(OPTIGNAL)

(12) I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

(13) EFFECT OF COPY. A copy of this form has the same effect as the original.

(14) SIGNATURES. Sign and date the form here:

(date) (sign your name)

(print your name)

(address) (city) (state) (zip code)

(15) WITNESSES. This advance care health directive will not be valid for making health care decisions unless it is

(A) signed by two qualified adult witnesses who are personally known to you and who are present when you sign

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or acknowledge your signature; or
(B) acknowledged before a notary public in the
state.

ALTERNATIVE NO. 1

Witness

I swear under penalty of perjury under AS 11.56.200 that the
principal is personally known to me, that the principal signed or
acknowledged this durable power of attorney in my presence, that the
principal appears to be of sound mind and under no duress, fraud, or
undue influence, that I am not the person appointed as agent by this
document, and that I am not a health care provider or an employee of a
health care provider or facility.

(date) (signature of witness)

(printed name of witness)

(address) (city) (state) (zip code)

Witness

I swear under penalty of perjury under AS 11.56.200 that the
principal is personally known to me, that the principal signed or
acknowledged this durable power of attorney in my presence, that the
principal appears to be of sound mind and under no duress, fraud, or
undue influence, that I am not the person appointed as agent by this
document, and that I am not a health care provider, or an employee of a
health care provider or facility.

(date) (signature of witness)

(printed name of witness)

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(address) (city) (state) (zip code)

ALTERNATIVE NO. 2

State of Alaska

_____ Judicial District

On this ____ day of _____, in the year _____, before me, _____

(insert name of notary public) appeared

_____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that the person executed it.

Notary Seal

(signature of notary public)

Sec. 13.52.390. Definitions. In this chapter, unless the context otherwise requires,

(1) "advance health care directive" means an individual instruction or a durable power of attorney for health care;

(2) "agent" means an individual designated in a durable power of attorney for health care to make a health care decision for the individual granting the power;

(3) "anatomical gift" means an individual instruction that makes a donation of all or a part of an individual's body to take effect upon or after death;

(4) "artificial nutrition and hydration" means medically appropriate nutrition and hydration delivered

(A) through an intravenous needle placed directly in a vein;

(B) by a tube that is inserted into a functioning gastrointestinal tract; or

(C) through a catheter inserted in a large vein where there is greater blood flow to dissolve the nutrients;

(5) "best interest" means that the benefits to the individual resulting

1 from a treatment outweigh the burdens to the individual resulting from that treatment
2 and includes

3 (A) the effect of the treatment on the physical, emotional, and
4 cognitive functions of the patient;

5 (B) the degree of physical pain or discomfort caused to the
6 individual by the treatment or the withholding or withdrawal of the treatment;

7 (C) the degree to which the individual's medical condition, the
8 treatment, or the withholding or withdrawal of treatment, results in a severe
9 and continuing impairment;

10 (D) the effect of the treatment on the life expectancy of the
11 patient;

12 (E) the prognosis of the patient for recovery, with and without
13 the treatment;

14 (F) the risks, side effects, and benefits of the treatment or the
15 withholding of treatment; and

16 (G) the religious beliefs and basic values of the individual
17 receiving treatment, to the extent that these may assist in determining benefits
18 and burdens;

19 (6) "capacity" means an individual's ability to understand the
20 significant benefits, risks, and alternatives to proposed health care and to make and
21 communicate a health care decision;

22 (7) "cardiopulmonary resuscitation" means cardiopulmonary
23 resuscitation or a component of cardiopulmonary resuscitation;

24 (8) "decedent" means a deceased individual, including a stillborn
25 infant, or dead fetus;

26 (9) "department" means the Department of Health and Social Services;

27 (10) "document of gift" means a card, a statement attached to or
28 imprinted on a driver's license, a will, an advance health care directive under
29 AS 13.52.300, or another writing used to make an anatomical gift;

30 (11) "donor" means an individual who makes an anatomical gift;

31 (12) "do not resuscitate identification" means an identification card,

1 form, necklace, or bracelet that carries the standardized design or symbol developed
2 by the department under AS 13.52.060 to signify, when carried or worn, that the
3 carrier or wearer is an individual for whom a physician has issued a do not resuscitate
4 order;

5 (13) "do not resuscitate order" means a directive from a licensed
6 physician that emergency cardiopulmonary resuscitation should not be administered to
7 a qualified patient;

8 (14) "emancipated minor" means a minor whose disabilities have been
9 removed under AS 09.55.590 or who has arrived at the age of majority as determined
10 under AS 25.20.020;

11 (15) "enucleator" means an individual who is licensed or certified by
12 the State Medical Board, by another state agency, by a professional peer group
13 organization, by a procurement organization, or by a hospital to remove or process
14 eyes or parts of eyes;

15 (16) "generally accepted health care standards" includes the protocol
16 for do not resuscitate orders that is adopted under AS 13.52.060;

17 (17) "guardian" means a judicially appointed person having authority
18 to make a health care decision for an individual;

19 (18) "health care" means any care, treatment, service, or procedure to
20 maintain, diagnose, or otherwise affect an individual's physical or mental condition;

21 (19) "health care decision" means a decision made by an individual or
22 the individual's agent, guardian, or surrogate regarding the individual's health care,
23 including

24 (A) selection and discharge of health care providers and
25 institutions;

26 (B) approval or disapproval of proposed diagnostic tests,
27 surgical procedures, programs of medication, and do not resuscitate orders;

28 (C) direction to provide, withhold, or withdraw artificial
29 nutrition and hydration if withholding or withdrawing artificial nutrition,
30 artificial hydration, or artificial nutrition and hydration is in accord with
31 generally accepted health care standards applicable to health care providers or

1 institutions; and

2 (D) the administration or withdrawal of psychotropic
3 medications, the use of electroconvulsive treatment, and the admission to a
4 mental health facility;

5 (E) making an anatomical gift at death;

6 (20) "health care institution" means an institution, facility, or agency
7 licensed, certified, or otherwise authorized or permitted by law to provide health care
8 in the ordinary course of business;

9 (21) "health care provider" means an individual licensed, certified, or
10 otherwise authorized or permitted by law to provide health care in the ordinary course
11 of business or practice of a profession;

12 (22) "hospital" means

13 (A) a facility licensed, accredited, or approved as a hospital
14 under the laws of a state; or

15 (B) a facility operated as a hospital by the United States
16 government, a state, or a subdivision of a state;

17 (23) "individual instruction" means an individual's direction
18 concerning a health care decision for the individual;

19 (24) "life-sustaining procedures" means medical procedures or
20 interventions that, when administered to a qualified patient, will serve only to prolong
21 the dying process;

22 (25) "mental health facility" has the meaning given to "designated
23 treatment facility" in AS 47.30.915;

24 (26) "mental health treatment" means electroconvulsive treatment,
25 treatment with psychotropic medication, or admission to and retention in a health care
26 facility for mental health treatment;

27 (27) "part" means an organ, tissue, an eye, a bone, an artery, blood,
28 fluid, or another portion of a human body;

29 (28) "person" means an individual, corporation, business trust, estate,
30 trust, partnership, joint venture, association, government, governmental subdivision,
31 governmental agency, or another legal or commercial entity;

1 (29) "physician" or "surgeon" means an individual licensed or
2 otherwise authorized to practice medicine and surgery or osteopathy and surgery under
3 the laws of any state;

4 (30) "power of attorney for health care" means the designation of an
5 agent to make health care decisions for the individual granting the power;

6 (31) "primary physician" means a physician designated by an
7 individual, or by the individual's agent, guardian, or surrogate, to have primary
8 responsibility for the individual's health care or, in the absence of a designation or if
9 the designated physician is not reasonably available, a physician who undertakes the
10 responsibility;

11 (32) "procurement organization" means a person licensed, accredited,
12 or approved under the laws of a state for procurement, distribution, or storage of
13 human bodies or parts;

14 (33) "qualified patient" means a patient who has been determined by
15 the attending physician to be in a terminal condition; in this paragraph, "terminal
16 condition" means a progressive incurable or irreversible condition that, without the
17 administration of life-sustaining procedures, will, in the opinion of two physicians,
18 when available, who have personally examined the patient, one of whom must be the
19 attending physician, result in death within a relatively short time;

20 (34) "reasonably available" means able to be contacted with a level of
21 diligence appropriate to the seriousness and urgency of a patient's health care needs,
22 and willing and able to act in a timely manner considering the urgency of the patient's
23 health care needs;

24 (35) "state" means a state, territory, or possession of the United States,
25 the District of Columbia, or the Commonwealth of Puerto Rico;

26 (36) "supervising health care provider" means the primary physician or
27 the physician's designee, or the health care provider or the provider's designee who has
28 undertaken primary responsibility for an individual's health care;

29 (37) "surrogate" means an individual, other than a patient's agent or
30 guardian, authorized under this chapter to make a health care decision for the patient;

31 (38) "technician" means an individual who is licensed or certified by

1 the State Medical Board to remove or process a part.

2 **Sec. 13.52.395. Short title.** This chapter may be cited as the Health Care
3 Decisions Act.

4 * **Sec. 4.** AS 18.65.311 is amended to read:

5 **Sec. 18.65.311. Anatomical gift [OR LIVING WILL DOCUMENT].** (a)
6 The department shall provide, at the time that an identification card is issued, a form
7 for a document by which the card holder may make an anatomical gift under AS 13.52
8 [AS 13.50 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER
9 AS 18.12 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)]. The
10 document (1) may not be larger than an identification card, (2) must contain sufficient
11 space for the signature of two witnesses [OR A PERSON WHO IS QUALIFIED TO
12 TAKE ACKNOWLEDGMENTS UNDER AS 09.63.010], and (3) [MUST USE THE
13 FORMS AND DESIGNS DEVELOPED UNDER AS 18.12.037, AND (4)] must
14 provide a means by which the card holder may cancel the gift [OR THE LIVING
15 WILL]. If the document is executed by the applicant, it shall be sealed in plastic and
16 attached to the identification card. [A SYMBOL DEVELOPED UNDER
17 AS 18.12.037 INDICATING THE EXISTENCE OF THE ANATOMICAL GIFT OR
18 LIVING WILL DOCUMENT MUST BE DISPLAYED IN THE LOWER RIGHT-
19 HAND CORNER ON THE FACE OF THE IDENTIFICATION CARD.]

20 (b) An employee of the department who processes an identification card
21 application, other than an application received by mail, shall ask the applicant orally
22 whether the applicant wishes to execute an anatomical gift [OR A LIVING WILL].
23 The department shall, by placement of posters and brochures in the office where the
24 application is taken, and by oral advice, if requested, make known to the applicant the
25 procedure necessary to execute an anatomical [A] gift under AS 13.52 [AS 13.50 OR
26 A LIVING WILL UNDER AS 18.12].

27 * **Sec. 5.** AS 28.10.021(c) is amended to read:

28 (c) An employee of the department who processes an application for
29 registration or renewal of registration, other than an application received by mail or an
30 application for registration under AS 28.10.152, shall ask the applicant orally whether
31 the applicant wishes to execute an anatomical gift [OR A LIVING WILL]. The

1 department shall make known to all applicants the procedure for executing an
2 anatomical [A] gift under AS 13.52 (Health Care Decisions Act) [AS 13.50
3 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER AS 18.12
4 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)] by displaying posters
5 in the offices in which applications are taken, by providing a brochure or other written
6 information to each person who applies in person or by mail, and, if requested, by
7 providing oral advice.

8 * Sec. 6. AS 28.15.061(d) is amended to read:

9 (d) An employee of the department who processes a driver's license
10 application, other than an application received by mail, shall ask the applicant orally
11 whether the applicant wishes to execute an anatomical gift [OR A LIVING WILL].
12 The department shall make known to all applicants the procedure for executing an
13 anatomical [A] gift under AS 13.52 (Health Care Decisions Act) [AS 13.50
14 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER AS 18.12
15 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)] by displaying posters
16 in the offices in which applications are taken, by providing a brochure or other written
17 information to each person who applies in person or by mail, and, if requested, by
18 providing oral advice.

19 * Sec. 7. AS 28.15.111(b) is amended to read:

20 (b) The department shall provide, at the time that an operator's license is
21 issued, a form for a document by which the owner of a license may make an
22 anatomical gift under AS 13.52 [AS 13.50 OR A LIVING WILL UNDER AS 18.12].
23 The document (1) may not be larger than an operator's license, (2) must contain
24 sufficient space for the signature of two witnesses [OR A PERSON WHO IS
25 QUALIFIED TO TAKE ACKNOWLEDGMENTS UNDER AS 09.63.010], and (3)
26 [MUST USE THE FORMS AND DESIGNS DEVELOPED UNDER AS 18.12.037,
27 AND (4)] must provide a means by which the owner may cancel the anatomical gift
28 [OR THE LIVING WILL]. If the document is executed by the applicant, it shall be
29 sealed in plastic and attached to the license. [A SYMBOL DEVELOPED UNDER
30 AS 18.12.037 INDICATING THE EXISTENCE OF THE ANATOMICAL GIFT OR
31 LIVING WILL DOCUMENT MUST BE DISPLAYED IN THE LOWER RIGHT-

1 HAND CORNER ON THE FACE OF THE DRIVER'S LICENSE.]

2 * **Sec. 8.** AS 47.30 is amended by adding a new section to article 9 to read:

3 **Sec. 47.30.817. Advance health care directives.** A health care provider or a
4 health care institution may not require or prohibit the execution or revocation of an
5 advance health care directive as a condition for admission, discharge, or providing
6 health care. In this section, "advance health care directive," "health care institution,"
7 and "health care provider" have the meanings given in AS 13.52.390.

8 * **Sec. 9.** AS 47.30.825(b) is amended to read:

9 (b) The patient and the following persons, at the request of the patient, are
10 entitled to participate in formulating the patient's individualized treatment plan and to
11 participate in the evaluation process as much as possible, at minimum to the extent of
12 requesting specific forms of therapy, inquiring why specific therapies are or are not
13 included in the treatment program, and being informed as to the patient's present
14 medical and psychological condition and prognosis: (1) the patient's counsel, (2) the
15 patient's guardian, (3) a mental health professional previously engaged in the patient's
16 care outside of the evaluation facility or designated treatment facility, (4) a
17 representative of the patient's choice, (5) a person designated as the patient's agent or
18 surrogate [ATTORNEY-IN-FACT] with regard to mental health treatment decisions
19 under AS 13.52 [AS 13.26.332 - 13.26.358, AS 47.30.950 - 47.30.980, OR OTHER
20 POWER-OF-ATTORNEY], and (6) the adult designated under AS 47.30.725. The
21 mental health care professionals may not withhold any of the information described in
22 this subsection from the patient or from others if the patient has signed a waiver of
23 confidentiality or has designated the person who would receive the information as an
24 agent or surrogate under AS 13.52 [ATTORNEY-IN-FACT] with regard to mental
25 health treatment.

26 * **Sec. 10.** AS 47.30.825(f) is amended to read:

27 (f) A patient capable of giving informed consent has the absolute right to
28 accept or refuse electroconvulsive therapy or aversive conditioning. A patient who
29 lacks substantial capacity to make this decision may not be given this therapy or
30 conditioning without a court order unless the patient expressly authorized that
31 particular form of treatment in an advance health care directive [A

1 DECLARATION] properly executed under AS 13.52 [AS 47.30.950 - 47.30.980] or
2 has authorized an agent or surrogate under AS 13.52 [ATTORNEY-IN-FACT] to
3 make this decision and the agent or surrogate [ATTORNEY-IN-FACT] consents to
4 the treatment on behalf of the patient.

5 * **Sec. 11.** AS 47.30.836 is amended to read:

6 **Sec. 47.30.836. Psychotropic medication in nonemergency.** An evaluation
7 facility or designated treatment facility may not administer psychotropic medication to
8 a patient in a situation that does not involve a crisis under AS 47.30.838(a)(1) unless
9 the patient

10 (1) has the capacity to give informed consent to the medication, as
11 described in AS 47.30.837, and gives that consent; the facility shall document the
12 consent in the patient's medical chart;

13 (2) authorized the use of psychotropic medication in an advance
14 health care directive [A DECLARATION] properly executed under AS 13.52
15 [AS 47.30.950 - 47.30.980] or authorized an agent or surrogate under AS 13.52
16 [ATTORNEY-IN-FACT] to consent to the use of psychotropic medication for the
17 patient and the agent or surrogate [ATTORNEY-IN-FACT] does consent; or

18 (3) is determined by a court to lack the capacity to give informed
19 consent to the medication and the court approves use of the medication under
20 AS 47.30.839.

21 * **Sec. 12.** AS 47.30.838(d) is amended to read:

22 (d) An evaluation facility or designated treatment facility may administer
23 psychotropic medication to a patient without the patient's informed consent if the
24 patient is unable to give informed consent but has authorized the use of psychotropic
25 medication in an advance health care directive [A DECLARATION] properly
26 executed under AS 13.52 [AS 47.30.950 - 47.30.980] or has authorized an agent or
27 surrogate under AS 13.52 [ATTORNEY-IN-FACT] to consent to this form of
28 treatment for the patient and the agent or surrogate [ATTORNEY-IN-FACT] does
29 consent.

30 * **Sec. 13.** AS 47.30.839(d) is amended to read:

31 (d) Upon the filing of a petition under (b) of this section, the court shall direct

1 the office of public advocacy to provide a visitor to assist the court in investigating the
2 issue of whether the patient has the capacity to give or withhold informed consent to
3 the administration of psychotropic medication. The visitor shall gather pertinent
4 information and present it to the court in written or oral form at the hearing. The
5 information must include documentation of the following:

6 (1) the patient's responses to a capacity assessment instrument
7 administered at the request of the visitor;

8 (2) any expressed wishes of the patient regarding medication,
9 including wishes that may have been expressed in a power of attorney, a living will,
10 an advance health care directive under AS 13.52, or oral statements of the patient,
11 including conversations with relatives and friends that are significant persons in the
12 patient's life as those conversations are remembered by the relatives and friends; oral
13 statements of the patient should be accompanied by a description of the circumstances
14 under which the patient made the statements, when possible.

15 * **Sec. 14.** AS 47.33.070(a) is amended to read:

16 (a) An assisted living home shall maintain, for each resident of the home, a
17 file that includes

18 (1) the name and birth date, and, if provided by the resident, the social
19 security number of the resident;

20 (2) the name, address, and telephone number of the resident's closest
21 relative, service coordinator, if any, and representative, if any;

22 (3) a statement of what actions, if any, the resident's representative is
23 authorized to take on the resident's behalf;

24 (4) a copy of the resident's assisted living plan;

25 (5) a copy of the residential services contract between the home and
26 the resident;

27 (6) a notice, as required under AS 47.33.030, regarding the depository
28 in which the resident's advance payment money is being held;

29 (7) written acknowledgment [ACKNOWLEDGEMENT] by the
30 resident or the resident's representative that the resident has received a copy of and has
31 read, or has been read the

- 1 (A) resident's rights under AS 47.33.300;
- 2 (B) resident's right to pursue a grievance under AS 47.33.340;
- 3 (C) resident's right to protection from retaliation under
- 4 AS 47.33.350;
- 5 (D) provisions of AS 47.33.510, regarding immunity; and
- 6 (E) home's house rules;
- 7 (8) an acknowledgment [ACKNOWLEDGEMENT] and agreement
- 8 relating to home safekeeping and management of the resident's money, as required by
- 9 AS 47.33.040;
- 10 (9) a copy of the resident's living will, if any, or an advance health
- 11 care directive made under AS 13.52, if any; and
- 12 (10) a copy of a power of attorney or other written designation,
- 13 including an advance health care directive made under AS 13.52, of an agent,
- 14 representative, or surrogate by the resident.

15 * **Sec. 15.** AS 13.26.332(L), 13.26.335(1), 13.26.344(I); AS 13.50.010, 13.50.014,

16 13.50.016, 13.50.020, 13.50.030, 13.50.040, 13.50.050, 13.50.060, 13.50.065, 13.50.068,

17 13.50.070, 13.50.080, 13.50.090; AS 18.12.010, 18.12.020, 18.12.030, 18.12.035, 18.12.037,

18 18.12.040, 18.12.050, 18.12.060, 18.12.070, 18.12.080, 18.12.090, 18.12.100; AS 47.30.950,

19 47.30.952, 47.30.954, 47.30.956, 47.30.958, 47.30.960, 47.30.962, 47.30.964, 47.30.966,

20 47.30.968, 47.30.970, 47.30.972, and 47.30.980 are repealed.

21 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to

22 read:

23 CONTINUING EFFECT OF EXISTING DOCUMENTS. (a) An anatomical gift

24 made under AS 13.50 or AS 18.12, repealed by sec. 15 of this Act, before the effective date of

25 secs. 1 - 15 of this Act continues in effect under AS 13.50 or AS 18.12, as those chapters exist

26 before the effective date of secs. 1 - 15 of this Act, until the donation is revoked.

27 (b) A power of attorney that is made under AS 13.26.332(L), 13.26.335(1), or

28 13.26.344(I), repealed by sec. 15 of this Act, before the effective date of secs. 1 - 15 of this

29 Act and that contains authority for health care services under AS 13.26.332(L),

30 AS 13.26.335(1), or 13.26.344(I), repealed by sec. 15 of this Act, continues in effect under

31 AS 13.26.332(L), 13.26.335(1), and 13.26.344(I), as those provisions exist before the

1 effective date of secs. 1 - 15 of this Act, until the power of attorney is revoked.

2 (c) A declaration made under AS 18.12, repealed by sec. 15 of this Act, before the
3 effective date of secs. 1 - 15 of this Act continues in effect under AS 18.12, as that chapter
4 exists before the effective date of secs. 1 - 15 of this Act, until the declaration is revoked.

5 (d) A declaration made under AS 47.30.950 - 47.30.980, repealed by sec. 15 of this
6 Act, before the effective date of secs. 1 - 15 of this Act continues in effect under
7 AS 47.30.950 - 47.30.980, as those sections exist before the effective date of secs. 1 - 15 of
8 this Act, until the declaration is revoked.

9 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 EFFECT ON EXISTING INSURANCE POLICIES AND ANNUITIES.
12 AS 13.52.120(c), added by sec. 3 of this Act, does not apply to a policy of insurance or an
13 annuity that was entered into before the effective date of secs. 1 - 15 of this Act.

14 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 TRANSITION: REGULATIONS. The Department of Health and Social Services
17 may proceed to adopt regulations necessary to implement the changes made by secs. 1 - 15 of
18 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
19 before January 1, 2005.

20 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 CONTINUING EFFECT OF CURRENT REGULATIONS. (a) The regulations
23 found at 7 AAC 16, as modified by (b) of this section, continue in effect on and after
24 January 1, 2005, until the Department of Health and Social Services adopts the regulations
25 authorized under sec. 18 of this Act.

26 (b) The regulations attorney in the Department of Law shall

27 (1) in 7 AAC 16.010(a), replace the reference to "AS 18.12.035(b)" with
28 "AS 13.52.060(b)";

29 (2) in 7 AAC 16.010(d)(4), replace the reference to "AS 18.12.090" with
30 "AS 13.52.160";

31 (3) in 7 AAC 16.010(f), replace the reference to "AS 18.12" with "AS 13.52";

1 (4) in 7 AAC 16.090(1), replace the reference to "AS 18.12.100" with
2 "AS 13.52.390";

3 (5) in 7 AAC 16.090(3), replace ""do-not-resuscitate order" in AS 18.12.100"
4 with ""do not resuscitate order" in AS 13.52.390."

5 * Sec. 20. Section 18 of this Act takes effect immediately under AS 01.10.070(c).

6 * Sec. 21. Except as provided in sec. 20 of this Act, this Act takes effect January 1, 2005.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: F 30025CS(JUD)-DHSS-DPH-01-21-04
() Publish Date: _____

Revision Date/Time (Note if correction): 1/20/2004 Dept. Affected: Health & Social Services

Title: HEALTH CARE DECISIONS/DO NOT RESUSCITATE ORDERS/DONATION OF BODY PARTS Public Health

Component: Community Health/EMS Services

Sponsor: WEYRAUCH

Requester: _____ Component No. 2078

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 (0)						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Currently, various end-of-life provisions are located in different statutes which are narrowly drafted, create confusion for the public, and make it difficult for people to direct their end-of-life care and treatment. The bill establishes a new chapter called the Health Care Decisions Act. The intent of this bill is to provide a tool for end-of-life planning and recording of health care decisions, in one easy to understand chapter of state statute. The Division of Public Health supports the goals of this act. There will be no fiscal impact to the Division by passage of this bill.

Prepared by: Doug A. Bruce
Division: Public Health
Approved by: Joel S. Gilbertson, Commissioner
Agency: Department of Health and Social Services

Phone 465-3090
Date/Time 01/20/2004
Date 01/21/2004

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 7, 2004

SUBJECT: Amendments to SCS CSHB 25() (draft version "W") relating to health care decisions (Work Order No. 23-LS0137\W.1 - W.9)

TO: Representative Bruce Weyhrauch
Attn: Linda

FROM: Theresa L. Bannister
Legislative Counsel

This memo accompanies a draft of the amendments described above.

1. Language in definition. One of the amendments inserts language prohibiting discriminatory treatment due to disability in the definition of "best interest." However, I recommend not proposing this amendment. Under the legislature's drafting style, substantive requirements like that are not placed in definitions. One of the reasons for this approach is that the prohibition or requirement can become hidden or easily overlooked when placed in a definition. In addition, in this bill, the requirement already exists in sec. 13.52.135, so it is not needed in the definition. It might be best to move the entire definition of "best interest" into a substantive section on the determination of "best interests."

2. Correction needed. In sec. 19(b)(3) of the bill, the "7 AAC 16.010(f)" needs to be replaced with "7 AAC 16.010(f) and (g)." This will cover the additional reference to AS 18.12 in 7 AAC 16.010(g).

If I may be of further assistance, please advise.

TLB:med
04-375.med

Enclosure

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 25(), Draft Version "W"

1 Page 2, following line 4:

2 Insert a new subsection to read:

3 "(c) This Act is not intended to condone, authorize, or approve mercy killing,
4 assisted suicide, or euthanasia."

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 25(), Draft Version "W"

- 1 Page 4, line 14:
- 2 Delete "if it complies with this chapter"
- 3 Insert "to the extent that it complies with the laws of this state"

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 25(), Draft Version "W"

- 1 Page 8, line 15:
- 2 Delete "physical"

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 25(), Draft Version "W"

1 Page 8, line 24:

2 Delete "health care"

3 Insert "life-sustaining procedures"

4

5 Page 8, line 25:

6 Delete "health care"

7 Insert "life-sustaining procedures"

8

9 Page 8, line 28:

10 Delete "health care"

11 Insert "life-sustaining procedures"

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 25(), Draft Version "W"

1 Page 10, lines 26 - 27:

2 Delete "The physician shall document the grounds for the order in the patient's
3 medical file."

4 Insert "The physician shall indicate in the patient's medical file that the physician has
5 issued the order and shall document in the file the grounds for the order."

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 25(), Draft Version "W"

- 1 Page 23, lines 21 - 22:
- 2 Delete "Although Alaska law does not authorize mercy killing or assisted suicide,
- 3 you!"
- 4 Insert "You"

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 25(), Draft Version "W"

- 1 Page 27, line 11, following "assessing":
- 2 Insert "the following factors, except that treatment may not be discriminatorily denied
- 3 to you on the basis of a disability or expected disability:"

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 25(), Draft Version "W"

- 1 Page 37, line 23, following "assessing":
- 2 Insert "the following factors, except that treatment may not be discriminatorily denied
- 3 on the basis of an individual's disability or expected disability:"

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 25(), Draft Version "W"

- 1 Page 16, line 14:
- 2 Delete "technician, or enucleator"
- 3 Insert "or technician"
- 4
- 5 Page 18, line 10:
- 6 Delete "technician, or enucleator"
- 7 Insert "or technician"
- 8
- 9 Page 21, line 31:
- 10 Delete "and an enucleator may remove any donated eyes or parts of eyes,"
- 11
- 12 Page 22, line 18:
- 13 Delete "enucleator,"
- 14
- 15 Page 39, lines 8 - 11:
- 16 Delete all material.
- 17
- 18 Renumber the following paragraphs accordingly.

HB 25

My name is JoAnne Cottle and I represent the local Chapter 2088 of the National Association for Retired Federal Employees.

Our local chapter and the Alaska Federation have supported this legislation since ^{its} ~~it's~~ first proposal over 4 years ago. Our members are concerned with the end of life issues and the proper requirements to take care of these ^{concerns,} ~~issues,~~ not only for themselves but many times for their parents or relatives that they may be caring for.

We urge your support for this most needed legislation.

Thank you for your time.

Jo - Anne Cottle
415 W. Douglas Ave., Apt. 515
Juneau, Alaska
586-4334

(Conceptual) Amendment No. 1

13.52.000 To the uncodified law

Page 2, Lines 1 - 4
DELETE all.

Page 2, Line 1
INSERT:

(2) create, in the absence of evidence to the contrary, a presumption in favor of life, consistent with the best interest of the patient.

(3) this Act is not intended to condone, authorize, or approve mercy killing, assisted suicide, or euthanasia.

Amendment No. 2

13.52.010 Advance health care directives

Page 4, line 14

Delete: "if it complies with chapter."

INSERT: "to the extent that it complies with Alaska law."

Amendment No. 3

New Section Withholding or withdrawing of life-sustaining procedures.

Page 4, Lines 4-7
Delete all.

Page 7, Lines 10-13
Delete all.

Page 8, following Line 8

INSERT: Withholding or withdrawing of life-sustaining procedures.

(a) Notwithstanding any other provision of this chapter, an agent or surrogate may determine that life-sustaining procedures may be withheld or withdrawn from a patient with a qualifying condition when there is:

- (1) a durable power of attorney or other writing that clearly expresses the patient's intent that the procedures be withheld or withdrawn;
or
- (2) no durable power of attorney or other writing that clearly expresses the patient's intent to the contrary, the patient has a qualifying condition as determined under AS 13.52.160, and withholding or withdrawing the procedures would be consistent with the patient's best interest.

Amendment No. 4

13.52.045 Decisions for exceptional procedures

Page 8, line 15

Delete: "physical"

Amendment No. 5

13.52.050 Pregnancy

Page 8, line 24

Delete: "health care"
INSERT: "life-sustaining procedures"

Page 8, line 25

Delete: "the health care"
INSERT: "life-sustaining procedures"

Page 8, line 28

Delete: "the health care"
INSERT: "life-sustaining procedures"



Amendment No. 6

New section: Construction where mental illness.

Insert a new section to read:

In the case of mental illness, nothing in this chapter may be construed to override or undermine the validity of a properly executed durable power of attorney.



Amendment No. 7a

13.52.300 Optional form

Page 30 Line 26

Delete all.

INSERT: I direct that adequate treatment be provided at all times for the sole purpose of the alleviation of pain or discomfort;

Amendment No. 7b

13.52.300 Optional form

Page 30, following line 30,

INSERT: "Should I become unconscious and I am pregnant, I direct that _____"

Amendment No. 8

Definition section.

(35) "qualifying condition" means a terminal condition or permanent unconsciousness in a patient.

Terminal condition: a new definition is added to the Definition section:

() Terminal condition means an incurable or irreversible illness or injury that without administration of life sustaining procedures will result in death in a short period of time; for which there is no reasonable prospect of cure or recovery; that imposes severe pain or otherwise imposes an inhumane burden on the patient; and for which initiating or continuing life-sustaining procedures in light of the patient's medical condition, provides only minimal medical benefit.

Life-sustaining procedures is amended by adding a new phrase (underlined in body of the definition).

(27) Life-sustaining procedures means any medical treatment, procedure, or intervention that, in the judgment of the primary physician, when applied to a patient with a qualifying condition, would not be effective to remove the qualifying condition, would serve only to prolong the dying process, or, when administered to a patient with a condition of permanent unconsciousness, may keep the patient alive but is not expected to restore consciousness; in this paragraph, "medical treatment, procedure or intervention" includes assisted ventilation, renal dialysis, surgical procedures, blood transfusions, and the administration of drugs, including antibiotics, or artificial hydration and nutrition."

-
-
- Page 3, line 21
Delete: "individual"
Insert: "principal"
 - Page 10, line 17
After "facility,"
Add: "patient's home, "
 - Page 14, line 1
Delete: "euthanasia"
 - Page 15, line 13-14
Delete: "when the agent, guardian, surrogate, health care provider, health care provider, or health care institution is acting in good faith and in the interest of the patient,"
 - Page 15, line 25
Note to drafter: 2 physicians don't need to sign the determination in the patient's record. Two physicians diagnose and it must be noted in the record. Follow current living will language in AS 18.12.

- Page 23, line 15-16 and Page 23, line 27
Delete: "contains the substance of the following form or otherwise"

- Page 25, line 25
Delete: " the patient's"
Insert: "your"

- Page 28, line 27
Delete: "state"
Insert: "Alaska"

- Page 38, line 14
Delete: " the patient's"
Insert: "his or her"

23-LS0137/C
Bannister
4/16/04

SENATE CS FOR CS FOR HOUSE BILL NO. 25(HES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

Sponsor(s): **REPRESENTATIVES WEYHRAUCH, Ogg, Kookesh, Seaton, Crawford, Joule, Gara, Masek, Morgan**

SENATORS Wilken, Dyson, Bunde

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to health care decisions, including do not resuscitate orders,
2 anatomical gifts, and mental health treatment decisions, and to powers of attorney
3 relating to health care, including anatomical gifts and mental health treatment
4 decisions; and providing for an effective date."

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

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 **PURPOSE AND INTENT.** (a) A principal purpose of this Act is to provide a
9 comprehensive coordinated approach to the making of health care decisions, including
10 anatomical gifts. To achieve this purpose, this Act repeals the current statutory devices that
11 cover health care decisions and consolidates the subject into one chapter.

12 (b) It is the intent of this Act to

13 (1) establish the right of a patient to control the patient's own health care
14 decisions; and

1 (2) create, in the absence of evidence to the contrary, a presumption, in favor
2 of life consistent with the best interest of the patient.

3 (c) This Act is not intended to condone, authorize, or approve mercy killing, assisted
4 suicide, or euthanasia.

5 * **Sec. 2.** AS 12.65.100 is amended to read:

6 **Sec. 12.65.100. Unclaimed bodies.** When a person dies and no person
7 appears to claim the body for burial, and no provision is made for the body under
8 AS 13.52 [AS 13.50], the Department of Health and Social Services, upon
9 notification, shall request a court order authorizing the body to be plainly and decently
10 buried or cremated and the remains decently interred. A judicial officer shall issue the
11 requested order upon the sworn testimony or statement of a representative of the
12 Department of Health and Social Services that a person has not appeared to claim the
13 body for burial and provision is not made for the body under AS 13.52 [AS 13.50].

14 * **Sec. 3.** AS 13 is amended by adding a new chapter to read:

15 **Chapter 52. Health Care Decisions Act.**

16 **Sec. 13.52.010. Advance health care directives.** (a) Except as provided in
17 AS 13.52.170(a), an adult may give an individual instruction. Except as provided in
18 AS 13.52.170(b), the instruction may be oral or written. The instruction may be
19 limited to take effect only if a specified condition arises.

20 (b) An adult may execute a durable power of attorney for health care, which
21 may authorize the agent to make any health care decision the principal could have
22 made while having capacity. The power remains in effect notwithstanding the
23 principal's later incapacity and may include individual instructions. The power must
24 be in writing, contain the date of its execution, be signed by the principal, and be
25 witnessed by one of the following methods:

26 (1) signed by at least two individuals who are personally known by the
27 principal, each of whom witnessed either the signing of the instrument by the principal
28 or the principal's acknowledgment of the signature of the instrument; or

29 (2) acknowledged before a notary public at a place in this state.

30 (c) Unless related to the principal by blood, marriage, or adoption, an agent
31 under a durable power of attorney for health care may not be an owner, operator, or

1 employee of the health care institution at which the principal is receiving care.

2 (d) A witness for a durable power of attorney for health care may not be

3 (1) a health care provider employed at the health care institution or
4 health care facility where the principal is receiving health care;

5 (2) an employee of the health care provider providing health care to the
6 principal, or of the health care institution or health care facility where the principal is
7 receiving health care; or

8 (3) the agent.

9 (e) At least one of the individuals used as a witness for a durable power of
10 attorney for health care shall be someone who is not

11 (1) related to the principal by blood, marriage, or adoption; or

12 (2) entitled to a portion of the estate of the principal upon the
13 principal's death under a will or codicil of the principal existing at the time of
14 execution of the durable power of attorney for health care or by operation of law then
15 existing.

16 (f) Unless otherwise specified in the durable power of attorney for health care,
17 the authority of an agent becomes effective only upon a determination that the
18 principal lacks capacity and ceases to be effective upon a determination that the
19 principal has recovered capacity.

20 (g) Unless otherwise specified in a written advance health care directive, a
21 determination that a principal lacks or has recovered capacity, or that another
22 condition exists that affects an individual instruction or the authority of an agent, shall
23 be made by

24 (1) the primary physician, except in the case of mental illness;

25 (2) a court in the case of mental illness, unless the situation is an
26 emergency; or

27 (3) the primary physician or another health care provider in the case of
28 mental illness where the situation is an emergency.

29 (h) An agent shall make a health care decision in accordance with the
30 principal's individual instructions, if any, and other wishes to the extent known to the
31 agent. Otherwise, the agent shall make the decision in accordance with the agent's

1 determination of the principal's best interest. In determining the principal's best
2 interest, the agent shall consider the principal's personal values to the extent known to
3 the agent.

4 (i) A health care decision made by an agent for a principal is effective without
5 judicial approval.

6 (j) A written advance health care directive may include the individual's
7 nomination of a guardian of the individual.

8 (k) An advance health care directive, including an advance health care
9 directive that is made in compliance with the laws of another state, is valid for
10 purposes of this chapter to the extent that it complies with the laws of this state.

11 **Sec. 13.52.020. Revocation of advance health care directive.** (a) Except in
12 the case of mental illness under (c) of this section, a principal may revoke the
13 designation of an agent only by a signed writing or by personally informing the
14 supervising health care provider.

15 (b) Except in the case of mental illness under (c) of this section, a principal
16 may revoke all or part of an advance health care directive, other than the designation
17 of an agent, at any time and in any manner that communicates an intent to revoke.

18 (c) In the case of mental illness, an advance health care directive may be
19 revoked in whole or in part at any time by the principal if the principal does not lack
20 capacity and is competent. A revocation is effective when a competent principal with
21 capacity communicates the revocation to the attending physician or other health care
22 provider. The attending physician or other health care provider shall note the
23 revocation on the principal's medical record. In the case of mental illness, the
24 authority of a named agent and an alternative agent named in the advance health care
25 directive continues in effect as long as the advance health care directive appointing the
26 agent is in effect or until the agent has withdrawn. For the purposes of this subsection,
27 a principal is not considered competent when

28 (1) it is the opinion of the court in a guardianship proceeding under
29 AS 13.26, the opinion of two physicians, at least one of whom is a psychiatrist, or the
30 opinion of a physician and a professional mental health clinician, that the principal is
31 not competent; or

1 (2) a court in a hearing under AS 47.30.735, 47.30.750, or 47.30.770
2 determines that the principal is gravely disabled; in this paragraph, "gravely disabled"
3 has the meaning given in AS 47.30.915(7)(B).

4 (d) A health care provider, agent, guardian, or surrogate who is informed of a
5 revocation shall promptly communicate the fact of the revocation to the supervising
6 health care provider and to any health care institution at which the patient is receiving
7 care.

8 (e) A decree of annulment, divorce, dissolution of marriage, or legal
9 separation revokes a previous designation of a spouse as agent unless otherwise
10 specified in the decree or in a durable power of attorney for health care.

11 (f) An advance health care directive that conflicts with an earlier advance
12 health care directive revokes the earlier directive to the extent of the conflict.

13 **Sec. 13.52.025. Rescission of withdrawal by agent.** A person who has
14 withdrawn as an agent may rescind the withdrawal by executing an acceptance after
15 the date of the withdrawal. A person who rescinds a withdrawal shall give notice to
16 the principal if the principal has capacity or to the principal's health care provider if
17 the principal does not have capacity.

18 **Sec. 13.52.030. Surrogates.** (a) Except in the case of mental health treatment
19 and except as provided by AS 13.52.180(a) and (b), a surrogate may make a health
20 care decision for a patient who is an adult if an agent or guardian has not been
21 appointed or the agent or guardian is not reasonably available, and if the patient has
22 been determined by the primary physician to lack capacity.

23 (b) Subject to AS 13.52.055(b), a surrogate may make a decision regarding
24 mental health treatment for a patient who is an adult if

25 (1) an agent or guardian has not been appointed or the agent or
26 guardian is not reasonably available;

27 (2) the mental health treatment is needed on an emergency basis; and

28 (3) the patient has been determined to lack capacity by

29 (A) two physicians, one of whom is a psychiatrist; or

30 (B) a physician and a professional mental health clinician.

31 (c) Except as provided for anatomical gifts in AS 13.52.170(b), an adult may

1 designate an individual to act as surrogate for that adult by personally informing the
2 supervising health care provider. Except as provided by AS 13.52.180(a) and (b), in
3 the absence of a designation, or if the designee is not reasonably available, a member
4 of the following classes of the patient's family who is reasonably available, in
5 descending order of priority, may act as surrogate:

- 6 (1) the spouse, unless legally separated;
- 7 (2) an adult child;
- 8 (3) a parent; or
- 9 (4) an adult sibling.

10 (d) Except as provided by (f) of this section or AS 13.52.180(a) or (b), if none
11 of the individuals eligible to act as surrogate under (c) of this section is reasonably
12 available, an adult who has exhibited special care and concern for the patient, who is
13 familiar with the patient's personal values, and who is reasonably available may act as
14 surrogate.

15 (e) A surrogate shall communicate the surrogate's assumption of authority as
16 promptly as practicable to the health care provider, the health care institution, and the
17 members of the patient's family specified in (c) of this section who can be readily
18 contacted.

19 (f) If more than one member of a class under (c)(2) - (4) of this section
20 assumes authority to act as surrogate, the members of that class do not agree on a
21 health care decision, and the supervising health care provider is informed of the
22 disagreement, the supervising health care provider shall comply with the decision of a
23 majority of the members of that class who have communicated their views to the
24 provider. If the class is evenly divided concerning the health care decision and the
25 supervising health care provider is informed of the even division, that class and all
26 individuals having a lower priority under (c)(2) - (4) of this section are disqualified
27 from making the decision, and the primary physician, after consulting with all
28 individuals in that evenly divided class who are reasonably available, shall make a
29 decision based on the consultation and the primary physician's own determination of
30 the best interest of the patient.

31 (g) A surrogate shall make a health care decision in accordance with the

1 patient's individual instructions or other advance health care directives, if any, and
 2 other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make
 3 the decision in accordance with the surrogate's determination of the patient's best
 4 interest. In determining the patient's best interest, the surrogate shall consider the
 5 patient's personal values to the extent known to the surrogate.

6 (h) If a patient's primary health care provider observes that a surrogate is not
 7 abiding by the wishes, values, and best interest of the patient, the primary health care
 8 provider may decline to comply with a decision of the surrogate and shall notify the
 9 health care institution where the primary health care provider is providing health care
 10 to the patient.

11 (i) A health care decision made by a surrogate for a patient is effective without
 12 judicial approval.

13 (j) A patient who has capacity may, at any time, disqualify another person,
 14 including a member of the patient's family, from acting as the patient's surrogate by a
 15 signed writing or by personally informing the supervising health care provider of the
 16 disqualification.

17 (k) Unless related to the patient by blood, marriage, or adoption, a surrogate
 18 may not be an owner, operator, or employee of the health care facility where the
 19 patient is receiving care.

20 (l) A supervising health care provider may require an individual claiming the
 21 right to act as a surrogate for a patient to provide a written declaration under penalty of
 22 perjury stating facts and circumstances reasonably sufficient to establish the claimed
 23 authority.

24 **Sec. 13.52.040. Decisions by guardian.** (a) A guardian shall comply with
 25 the ward's individual instructions and may not revoke a ward's advance health care
 26 directive executed before the ward's incapacity unless a court expressly authorizes the
 27 revocation.

28 (b) Unless there is a court order to the contrary, a health care decision of an
 29 agent takes precedence over that of a guardian.

30 (c) Except as provided in (a) of this section, a health care decision made by a
 31 guardian for the ward is effective without judicial approval.

1 **Sec. 13.52.045. Withholding or withdrawing of life-sustaining procedures.**

2 Notwithstanding any other provision of this chapter, an agent or a surrogate may
3 determine that life-sustaining procedures may be withheld or withdrawn from a patient
4 with a qualifying condition when there is

5 (1) a durable power of attorney for health care or other writing that
6 clearly expresses the patient's intent that the procedures be withheld or withdrawn; or

7 (2) no durable power of attorney for health care or other writing that
8 clearly expresses the patient's intent to the contrary, the patient has a qualifying
9 condition as determined under AS 13.52.160, and withholding or withdrawing the
10 procedures would be consistent with the patient's best interest.

11 **Sec. 13.52.050. Decisions for exceptional procedures.** Unless there is a
12 durable power of attorney for health care or another writing clearly expressing an
13 individual's intent to the contrary, an agent or surrogate may not consent on behalf of a
14 patient to an abortion, sterilization, psychosurgery, or removal of bodily organs except
15 when the abortion, sterilization, psychosurgery, or removal of bodily organs is
16 necessary to preserve the life of the patient or to prevent serious impairment of the
17 health of the patient.

18 **Sec. 13.52.055. Pregnancy.** (a) Before implementing a health care decision
19 for a woman of childbearing age that would affect a fetus if present, the supervising
20 health care provider shall take reasonable steps to determine whether the woman is
21 pregnant.

22 (b) Notwithstanding any other provision of this chapter to the contrary, an
23 advance health care directive by a patient or a decision by the person then authorized
24 to make health care decisions for a patient may not be given effect if

25 (1) the patient is a woman who is pregnant and lacks capacity;

26 (2) the directive or decision is to withhold or withdraw life-sustaining
27 procedures;

28 (3) the withholding or withdrawal of the life-sustaining procedures
29 would, in reasonable medical judgment, be likely to result in the death of the patient;
30 and

31 (4) it is probable that the fetus could develop to the point of live birth

1 if the life-sustaining procedures were provided.

2 (c) This section does not apply to emergency services in the field.

3 **Sec. 13.52.060. Obligations of health care providers, institutions, and**
4 **facilities.** (a) Before implementing a health care decision made for a patient, a
5 supervising health care provider, if possible, shall promptly communicate to the
6 patient the decision made and the identity of the person making the decision.

7 (b) Except as provided in AS 13.52.200, a supervising health care provider
8 who knows of the existence of an advance health care directive, a revocation of an
9 advance health care directive, or a designation or disqualification of a surrogate shall
10 promptly record its existence in the patient's health care record, shall request a copy if
11 it is in writing, and shall arrange for its maintenance in the health care record if a copy
12 is furnished.

13 (c) A supervising health care provider who makes or is informed of a
14 determination that a patient lacks or has recovered capacity, or that another condition
15 exists that affects an individual instruction or the authority of an agent, a guardian, or a
16 surrogate, shall promptly record the determination in the patient's health care record
17 and communicate the determination to the patient, if possible, and to any person then
18 authorized to make health care decisions for the patient.

19 (d) Except as provided in (e) and (f) of this section, a health care provider,
20 health care institution, or health care facility providing care to a patient shall comply
21 with

22 (1) an individual instruction of the patient and with a reasonable
23 interpretation of that instruction made by a person then authorized to make health care
24 decisions for the patient; and

25 (2) a health care decision for the patient made by a person then
26 authorized to make health care decisions for the patient to the same extent as if the
27 decision had been made by the patient while having capacity.

28 (e) A health care provider may decline to comply with an individual
29 instruction or a health care decision for reasons of conscience, except for a do not
30 resuscitate order. A health care institution or health care facility may decline to
31 comply with an individual instruction or health care decision if the instruction or

1 decision is contrary to a policy of the institution or facility that is expressly based on
2 reasons of conscience and if the policy was timely communicated to the patient or to a
3 person then authorized to make health care decisions for the patient.

4 (f) A health care provider, health care institution, or health care facility may
5 decline to comply with an individual instruction or a health care decision that requires
6 medically ineffective health care or health care contrary to generally accepted health
7 care standards applicable to the provider, institution, or facility. In this subsection,
8 "medically ineffective health care" means health care that according to reasonable
9 medical judgment cannot cure the patient's illness, cannot diminish its progressive
10 course, and cannot effectively alleviate severe discomfort and distress.

11 (g) A health care provider, health care institution, or health care facility that
12 declines to comply with an individual instruction or a health care decision shall

13 (1) promptly inform the patient, if possible, and any person then
14 authorized to make health care decisions for the patient that the provider, institution,
15 or facility has declined to comply with the instruction or decision;

16 (2) provide continuing care to the patient until a transfer is effected;
17 and

18 (3) unless the patient or person then authorized to make health care
19 decisions for the patient refuses assistance, immediately cooperate and comply with a
20 decision by the patient or a person then authorized to make health care decisions for
21 the patient to transfer the patient to another health care institution, to another health
22 care facility, to the patient's home, or to another location chosen by the patient or by
23 the person then authorized to make health care decisions for the patient.

24 (h) Except as provided for civil commitments under AS 47.30.817, a health
25 care provider, health care institution, or health care facility may not require or prohibit
26 the execution or revocation of an advance health care directive as a condition for
27 providing health care.

28 **Sec. 13.52.065. Do not resuscitate protocol and identification**
29 **requirements.** (a) An attending physician may issue a do not resuscitate order for a
30 patient of the physician. The physician shall document the grounds for the order in the
31 patient's medical file.

1 (b) The department shall by regulation adopt a protocol, subject to the
2 approval of the State Medical Board, for do not resuscitate orders that set out a
3 standardized method of procedure for the withholding of cardiopulmonary
4 resuscitation by health care providers and health care institutions.

5 (c) The department shall develop standardized designs and symbols for do not
6 resuscitate identification cards, forms, necklaces, and bracelets that signify, when
7 carried or worn, that the carrier or wearer is an individual for whom a physician has
8 issued a do not resuscitate order.

9 (d) A health care provider other than a physician shall comply with the
10 protocol adopted under (b) of this section for do not resuscitate orders when the health
11 care provider is presented with a do not resuscitate identification, an oral do not
12 resuscitate order issued directly by a physician if the applicable hospital allows oral do
13 not resuscitate orders, or a written do not resuscitate order entered on and as required
14 by a form prescribed by the department.

15 (e) Notwithstanding (d) of this section, if an individual has made an
16 anatomical gift to occur at death and is in a hospital when a do not resuscitate order or
17 an order to withdraw life-sustaining procedures is to be implemented for the
18 individual, the order may not be implemented until the subject of the anatomical gift
19 can be evaluated to determine if it is suitable for donation.

20 (f) A do not resuscitate order may not be made ineffective unless a physician
21 revokes the do not resuscitate order. A request to revoke a do not resuscitate order
22 may only be made by the person for whom the order is written or, if the person for
23 whom the order is written is under 18 years of age, by the parent or guardian of the
24 person.

25 **Sec. 13.52.070. Health care information.** (a) Unless otherwise specified in
26 an advance health care directive, a person then authorized to make health care
27 decisions for a patient has the same rights as the patient to request, receive, examine,
28 copy, and consent to the disclosure of medical or other health care information.

29 (b) Notwithstanding (a) of this section, if there is a question about the
30 principal's capacity, an agent or a surrogate of the principal may immediately access
31 the personal health care information necessary to determine the principal's capacity,

1 even if the agency or surrogacy does not become effective until the principal lacks
2 capacity.

3 **Sec. 13.52.080. Immunities.** (a) If a health care provider or health care
4 institution makes reasonable efforts, with a level of diligence appropriate to the
5 seriousness and urgency of the situation, to ensure the validity of an advance health
6 care directive or a person's assumption of authority to make health care decisions for a
7 patient, a health care provider or institution acting in good faith and in accordance
8 with generally accepted health care standards applicable to the health care provider or
9 institution is not subject to civil or criminal liability or to discipline for unprofessional
10 conduct for

11 (1) providing health care information in good faith under
12 AS 13.52.070;

13 (2) complying with a health care decision of a person based on a
14 reasonable belief that the person has authority to make a health care decision for a
15 patient, including a decision to withhold or withdraw health care;

16 (3) declining to comply with a health care decision of a person based
17 on a reasonable belief that the person then lacked authority;

18 (4) complying with an advance health care directive and reasonably
19 assuming that the directive was valid when made and has not been revoked or
20 terminated;

21 (5) participating in the withholding or withdrawal of cardiopulmonary
22 resuscitation under the direction or with the authorization of a physician or upon
23 discovery of do not resuscitate identification upon an individual;

24 (6) causing or participating in providing cardiopulmonary resuscitation
25 or other life-sustaining procedures

26 (A) under AS 13.52.065(e) when an individual has made an
27 anatomical gift; or

28 (B) because an individual has made a do not resuscitate order
29 ineffective under AS 13.52.065(f) or another provision of this chapter; or

30 (7) acting in good faith under the terms of this chapter or the law of
31 another state relating to anatomical gifts.

1 (b) An individual acting as an agent, a guardian, or a surrogate under this
2 chapter is not subject to civil or criminal liability or to discipline for unprofessional
3 conduct for health care decisions made in good faith.

4 **Sec. 13.52.090. Statutory damages.** (a) A health care provider or institution
5 that intentionally violates this chapter is liable to the aggrieved individual or the
6 individual's estate for damages of \$10,000 or actual damages resulting from the
7 violation, whichever is greater, plus attorney fees as provided by court rule.

8 (b) A person who intentionally falsifies, forges, conceals, defaces, or
9 obliterates an individual's advance health care directive or a revocation of an advance
10 health care directive without the individual's consent, or who coerces or fraudulently
11 induces an individual to give, revoke, or not to give an advance health care directive,
12 is liable to that individual for damages of \$10,000 or actual damages resulting from
13 the action, whichever is greater, plus attorney fees as provided by court rule.

14 **Sec. 13.52.100. Capacity.** (a) This chapter does not affect the right of an
15 individual to make health care decisions while having capacity to make health care
16 decisions.

17 (b) An individual is rebuttably presumed to have capacity to make a health
18 care decision, to give or revoke an advance health care directive, and to designate or
19 disqualify a surrogate.

20 (c) An individual who is a qualified patient, including an individual for whom
21 a physician has issued a do not resuscitate order, has the right to make a decision
22 regarding the use of cardiopulmonary resuscitation and other life-sustaining
23 procedures as long as the individual is able to make the decision. If an individual who
24 is a qualified patient, including an individual for whom a physician has issued a do not
25 resuscitate order, is not able to make the decision, the protocol adopted under
26 AS 13.52.065 for do not resuscitate orders governs a decision regarding the use of
27 cardiopulmonary resuscitation and other life-sustaining procedures.

28 **Sec. 13.52.110. Status of copy.** A copy of a written advance health care
29 directive, revocation of an advance health care directive, or designation or
30 disqualification of an agent or a surrogate has the same effect as the original.

31 **Sec. 13.52.120. Effect of this chapter.** (a) In the absence of evidence to the

1 contrary of the patient's intent, this chapter establishes a presumption in favor of life,
2 consistent with the best interest of the patient.

3 (b) Notwithstanding any other provision of law, death resulting from the
4 withholding or withdrawal of cardiopulmonary resuscitation or other life-sustaining
5 procedures does not, for any purpose, constitute a suicide or homicide if the
6 withholding or withdrawal is

7 (1) consistent with this chapter; and

8 (2) from an individual

9 (A) for whom a do not resuscitate order has not been issued;

10 (B) for whom a do not resuscitate order has been issued under

11 (i) the protocol for do not resuscitate orders established
12 under AS 13.52.065; or

13 (ii) a do not resuscitate identification found on the
14 individual.

15 (c) The issuance of a do not resuscitate order under this chapter, the
16 possession of do not resuscitate identification under this chapter, or the making of a
17 health care directive under this chapter does not affect in any manner the sale,
18 procurement, or issuance of a policy of life insurance, and does not modify the terms
19 of an existing policy of life insurance. A policy of life insurance is not legally
20 impaired or invalidated in any manner by the withholding or withdrawal of life-
21 sustaining procedures from an insured individual or the withholding or withdrawal of
22 cardiopulmonary resuscitation from an individual who possesses do not resuscitate
23 identification or for whom a do not resuscitate order has been issued, notwithstanding
24 any term of the policy to the contrary.

25 (d) This chapter does not authorize mercy killing, assisted suicide, or
26 euthanasia.

27 (e) This chapter does not authorize or require a health care provider or
28 institution to provide health care contrary to generally accepted health care standards
29 applicable to the health care provider or institution.

30 (f) This chapter does not authorize an agent or a surrogate to consent to the
31 admission of an individual to a mental health facility unless the individual's written

1 advance health care directive expressly so provides, and the period of admission may
2 not exceed 17 days.

3 (g) This chapter does not affect other statutes of this state governing treatment
4 for mental illness of an individual involuntarily committed to a mental health facility.

5 **Sec. 13.52.130. Prohibited requirements.** As a condition of receiving or
6 being insured for health care services, a health care provider, a health care institution,
7 a health care service plan, an insurer issuing health insurance, a self-insured employee
8 welfare benefit plan, or a nonprofit hospital plan may not require an individual to
9 execute a health care directive, obtain a do not resuscitate order from a physician, or
10 possess do not resuscitate identification.

11 **Sec. 13.52.135. Discriminatory treatment prohibited.** When determining
12 the best interest of a patient under this chapter, health care treatment may not be
13 denied to a patient because the patient has a disability or is expected to have a
14 disability.

15 **Sec. 13.52.140. Judicial relief.** On petition of a patient, the patient's agent,
16 guardian, or surrogate, or a health care provider or institution involved with the
17 patient's care, the superior court may enjoin or direct a health care decision or order
18 other equitable relief. A proceeding under this section is governed by AS 13.26.165 -
19 13.26.320.

20 **Sec. 13.52.150. Do not resuscitate orders and identification of other**
21 **jurisdictions.** A do not resuscitate order or a do not resuscitate identification
22 executed, issued, or authorized in another state or a territory or possession of the
23 United States in compliance with the law of that jurisdiction is effective for the
24 purposes of this chapter to the extent it complies with the law of this state.

25 **Sec. 13.52.160. Determination of qualifying condition.** Whether a patient
26 has a qualifying condition under this chapter shall be determined by the primary
27 physician of the patient and by at least one other physician, when another physician is
28 available. A physician making the determination shall document the grounds for the
29 determination in the patient's medical record.

30 **Sec. 13.52.170. Making, amending, revoking, and refusing to make**
31 **anatomical gifts by individual.** (a) An individual who is at least 18 years of age

1 may

2 (1) make an anatomical gift for any of the purposes stated in
3 AS 13.52.210(a);

4 (2) limit an anatomical gift to one or more of those purposes; or

5 (3) refuse to make an anatomical gift.

6 (b) An anatomical gift may be made only by a document of gift signed by the
7 donor. If the donor cannot sign, the document of gift shall be signed by another
8 individual and by two witnesses, all of whom have signed at the direction and in the
9 presence of the donor and of each other, and state that it has been signed at the
10 direction and in the presence of the donor and of each other.

11 (c) If a document of gift is attached to or imprinted on a donor's motor vehicle
12 driver's license, revocation, suspension, expiration, or cancellation of the license does
13 not invalidate the anatomical gift.

14 (d) A document of gift may designate a particular physician or surgeon to
15 carry out the appropriate procedures. In the absence of a designation or if the designee
16 is not available, the donee or other person authorized to accept the anatomical gift may
17 employ or authorize any physician, surgeon, or technician to carry out the appropriate
18 procedures.

19 (e) An anatomical gift by will takes effect upon death of the testator, whether
20 or not the will is probated. If, after death, the will is declared invalid for testamentary
21 purposes, the validity of the anatomical gift is unaffected.

22 (f) Notwithstanding AS 13.52.020, a donor may amend or revoke an
23 anatomical gift, not made by will, only by

24 (1) a signed statement;

25 (2) an oral statement made in the presence of two individuals;

26 (3) any form of communication during a terminal illness or injury
27 addressed to a physician or surgeon; or

28 (4) the delivery of a signed statement to a specified donee to whom a
29 document of gift had been delivered.

30 (g) Notwithstanding AS 13.52.020, the donor of an anatomical gift made by
31 will may amend or revoke the gift in the manner provided for amendment or

1 revocation of wills, or as provided in (f) of this section.

2 (h) An anatomical gift that is not revoked by the donor before death is
3 irrevocable and does not require the consent or concurrence of any person after the
4 donor's death.

5 (i) An individual may refuse to make an anatomical gift of the individual's
6 body or part by

7 (1) a writing signed in the same manner as a document of gift;

8 (2) a statement attached to or imprinted on a donor's motor vehicle
9 operator's or chauffeur's license;

10 (3) any other writing used to identify the individual as refusing to
11 make an anatomical gift;

12 (4) during a terminal illness or injury, an oral statement or other form
13 of communication.

14 **Sec. 13.52.180. Making, revoking, and objecting to anatomical gifts by**
15 **others.** (a) Any member of the following classes of persons, in the order of priority
16 listed, may make an anatomical gift of all or a part of the decedent's body for an
17 authorized purpose, unless the decedent, at the time of death, has made an unrevoked
18 refusal to make that anatomical gift:

19 (1) the spouse of the decedent;

20 (2) an adult son or daughter of the decedent;

21 (3) either parent of the decedent;

22 (4) an adult brother or sister of the decedent;

23 (5) a grandparent of the decedent; and

24 (6) an agent or a surrogate of the decedent at the time of death.

25 (b) An anatomical gift may not be made by a person listed in (a) of this section
26 if

27 (1) a person in a prior class is available at the time of death to make an
28 anatomical gift;

29 (2) the person proposing to make an anatomical gift knows of a refusal
30 or contrary indications by the decedent; or

31 (3) the person proposing to make an anatomical gift knows of an

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objection to making an anatomical gift by a member of the person's class or a prior class.

(c) An anatomical gift by a person authorized under (a) of this section shall be made by

(1) a document of gift signed by the person;

(2) the person's telegraphic, recorded telephonic, or other recorded message, or another form of communication from the person that is contemporaneously reduced to writing and signed by the recipient; or

(3) the person's agent or surrogate.

(d) An anatomical gift by a person authorized under (a) of this section may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, or technician removing the part knows of the revocation.

Sec. 13.52.190. Optional form for anatomical gift by another person.

**ANATOMICAL GIFT BY NEXT OF KIN,
GUARDIAN, AGENT, OR SURROGATE**

Under AS 13.52.170 - 13.52.280, I make this anatomical gift from the body of

(name of decedent)

who died on

(date)

at

(place) (city)

in

(state)

The marks in the appropriate squares and the words filled into the blanks below indicate my relationship to the decedent and my

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wishes respecting the gift.

I survive the decedent as spouse; adult son or daughter;
 parent; adult brother or sister; grandparent; or I am the
decedent's agent under AS 13.52 or surrogate under AS 13.52.

I hereby give (check boxes applicable):

- any needed organs, tissues, or parts;
- the following organs, tissues, or parts only:

_____;

the following purposes only:

(date) (signature of survivor)

(address of survivor)

Sec. 13.52.200. Routine inquiry and required request; search and notification. (a) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a designee of the hospital shall contact an organ procurement organization so that the organ procurement organization may discuss the potential to make a gift with the family, agent, or surrogate of the patient. The organ procurement organization shall discuss the potential gift with reasonable discretion and sensitivity to the circumstances of the family.

(b) Notwithstanding (a) of this section, a hospital administrator or other designee of the hospital is not required to contact an organ procurement organization if the gift is not suitable, based on accepted medical standards, for a purpose specified in AS 13.52.210.

(c) An entry shall be made in the medical record of the patient, stating the name and affiliation of the individual from the organ procurement organization who discusses the potential gift with the family, agent, or surrogate under (a) of this section, and the relationship to the patient of the family member, agent, or surrogate with whom the potential gift was discussed.

1 (d) The following persons shall make a reasonable search for a document of
2 gift or other information identifying the bearer as a donor or as an individual who has
3 refused to make an anatomical gift:

4 (1) a law enforcement officer, fire fighter, paramedic, or other
5 emergency rescuer finding an individual who the searcher believes is dead or near
6 death; and

7 (2) a hospital or an organ procurement organization, upon the
8 admission of an individual at or near the time of death, if there is not immediately
9 available any other source of that information.

10 (e) If a document of gift or evidence of refusal to make an anatomical gift is
11 located by the search required by (d)(1) of this section, and the individual or body to
12 whom it relates is taken to a hospital, the hospital must be notified of the contents, and
13 the document or other evidence must be sent to the hospital.

14 (f) If, at or near the time of death of a patient, a hospital knows that an
15 anatomical gift has been made under AS 13.52.170 or 13.52.180(a), or that a patient or
16 an individual identified as in transit to the hospital is a donor, the hospital shall notify
17 an organ procurement organization. The hospital shall cooperate in the
18 implementation of the anatomical gift or release and removal of a part.

19 (g) Notwithstanding AS 13.52.090, a person who fails to discharge the duties
20 imposed by this section is not subject to criminal or civil liability but is subject to
21 appropriate administrative sanctions.

22 (h) The commissioner of health and social services shall adopt regulations to
23 implement (a) - (c) of this section.

24 **Sec. 13.52.210. Persons who may become donees; purposes for which**
25 **anatomical gifts may be made.** (a) The following persons may become donees of
26 anatomical gifts for the purposes stated:

27 (1) a hospital, physician, surgeon, or procurement organization for
28 transplantation, therapy, medical or dental education, research, or advancement of
29 medical or dental science;

30 (2) an accredited medical or dental school, college, or university for
31 education, research, or advancement of medical or dental science; or

1 (3) a designated individual for transplantation or therapy needed by
2 that individual.

3 (b) An anatomical gift may be made to a designated donee or without
4 designating a donee. If a donee is not designated or if the donee is not available or
5 rejects the anatomical gift, the anatomical gift may be accepted by any hospital.

6 (c) If the donee knows of the decedent's refusal or contrary indications to
7 make an anatomical gift or that an anatomical gift by a member of a class having
8 priority to act is opposed by a member of the same class or a prior class under
9 AS 13.52.180(a), the donee may not accept the anatomical gift.

10 **Sec. 13.52.220. Delivery of document of gift.** (a) Delivery of a document of
11 gift during the donor's lifetime is not required for the validity of an anatomical gift.

12 (b) If an anatomical gift is made to a designated donee, the document of gift,
13 or a copy, may be delivered to the donee to expedite the appropriate procedures after
14 death. The document of gift, or a copy, may be deposited in any hospital, procurement
15 organization, or registry office that accepts it for safekeeping or for facilitation of
16 procedures after death. On request of an interested person, upon or after the donor's
17 death, the person in possession shall allow the interested person to examine or copy
18 the document of gift.

19 **Sec. 13.52.230. Rights and duties at death.** (a) Rights of a donee created by
20 an anatomical gift are superior to rights of others except with respect to autopsies
21 under AS 13.52.260(b). A donee may accept or reject an anatomical gift. If a donee
22 accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift,
23 may allow embalming and use of the body in funeral services. If the gift is of a part of
24 a body, the donee, upon the death of the donor and before embalming, shall cause the
25 part to be removed without unnecessary mutilation. After removal of the part, custody
26 of the remainder of the body vests in the person under obligation to dispose of the
27 body.

28 (b) The time of death of a donor shall be determined by a physician or nurse
29 under AS 09.68.120. A physician who attends the donor at death and a physician who
30 determines the time of death may not participate in the procedures for removing or
31 transplanting a part unless the document of gift designates a particular physician under

1 AS 13.52.170(d).

2 (c) If there has been an anatomical gift, a technician may remove any donated
3 parts after determination of death by a physician or nurse.

4 **Sec. 13.52.240. Coordination of procurement and use.** Each hospital in this
5 state, after consultation with other hospitals and procurement organizations, shall
6 establish agreements or affiliations for coordination of procurement and use of human
7 bodies and parts.

8 **Sec. 13.52.250. Sale or purchase of parts prohibited.** (a) A person may not
9 knowingly, for valuable consideration, sell or purchase a part for any purpose.

10 (b) In (a) of this section, "valuable consideration" does not include reasonable
11 payment for the removal, processing, disposal, preservation, quality control, storage,
12 transportation, or implantation of the part or entire body.

13 (c) A person who violates this section is guilty of a class C felony.

14 **Sec. 13.52.260. Examination, autopsy, liability.** (a) An anatomical gift
15 authorizes any reasonable examination necessary to assure medical acceptability of the
16 gift for the purposes intended.

17 (b) The provisions of AS 13.52.170 - 13.52.280 are subject to the autopsy
18 provisions of AS 12.65.

19 (c) A hospital, physician, surgeon, coroner, medical examiner, local public
20 health officer, technician, or other person who acts in accordance with AS 13.52.170 -
21 13.52.280 or with the applicable anatomical gift law of another state or attempts in
22 good faith to act in accordance with AS 13.52.170 - 13.52.280 or with the applicable
23 anatomical gift law of another state is not liable for that act in a civil action or criminal
24 proceeding.

25 (d) An individual who makes an anatomical gift under AS 13.52.170 or
26 13.52.180 and the individual's estate are not liable for any injury or damage that may
27 result from the making or the use of the anatomical gift.

28 **Sec. 13.52.265. Prohibition against authorization by coroner, state
29 medical examiner, or local public health official.** The coroner, the state medical
30 examiner, or a local public health official may not release or permit the removal of a
31 part from a body within that official's custody based on the fact that the official does

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not know of

- (1) a refusal to make a gift;
- (2) an indication by the decedent that is contrary to making a gift; or
- (3) an objection to a gift by a person having priority to act under AS 13.52.180(a).

Sec. 13.52.270. Applicability provisions. AS 13.52.170 - 13.52.280 apply to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after the effective date of this bill section.

Sec. 13.52.275. Construction where mental illness. In the case of mental illness, nothing in this chapter may be construed to override or undermine the validity of a properly executed durable power of attorney for health care.

Sec. 13.52.280. Uniformity of application and construction. AS 13.52.170 - 13.52.280 shall be applied and construed to carry out their general purpose to make uniform the law with respect to the subject of AS 13.52.170 - 13.52.280 among states enacting these provisions.

Sec. 13.52.300. Optional form. The following sample form may be used to create an advance health care directive. The other sections of this chapter govern the effect of this or any other writing used to create an advance health care directive. This form may be duplicated. This form may be modified to suit the needs of the person, or a different form that complies with this chapter may be used, including the mandatory witnessing requirements:

ADVANCE HEALTH CARE DIRECTIVE

Explanation

You have the right to give instructions about your own health care to the extent allowed by law. You also have the right to name someone else to make health care decisions for you to the extent allowed by law. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your health care provider. If you use this form, you may complete or modify all or any part of it. You are free to use a different form if the form

1 complies with the requirements of AS 13.52.

2 Part 1 of this form is a durable power of attorney for health
3 care. A "durable power of attorney for health care" means the
4 designation of an agent to make health care decisions for you. Part 1
5 lets you name another individual as an agent to make health care
6 decisions for you if you do not have the capacity to make your own
7 decisions or if you want someone else to make those decisions for you
8 now even though you still have the capacity to make those decisions.
9 You may name an alternate agent to act for you if your first choice is
10 not willing, able, or reasonably available to make decisions for you.
11 Unless related to you, your agent may not be an owner, operator, or
12 employee of a health care institution where you are receiving care.

13 Unless the form you sign limits the authority of your agent,
14 your agent may make all health care decisions for you that you could
15 legally make for yourself. This form has a place for you to limit the
16 authority of your agent. You do not have to limit the authority of your
17 agent if you wish to rely on your agent for all health care decisions that
18 may have to be made. If you choose not to limit the authority of your
19 agent, your agent will have the right, to the extent allowed by law, to

20 (a) consent or refuse consent to any care, treatment, service, or
21 procedure to maintain, diagnose, or otherwise affect a physical or
22 mental condition, including the administration or discontinuation of
23 psychotropic medication;

24 (b) select or discharge health care providers and institutions;

25 (c) approve or disapprove proposed diagnostic tests, surgical
26 procedures, and programs of medication; and

27 (d) direct the provision, withholding, or withdrawal of artificial
28 nutrition and hydration and all other forms of health care; and

29 (e) make an anatomical gift following your death.

30 Part 2 of this form lets you give specific instructions for any
31 aspect of your health care to the extent allowed by law, except you may

1 not authorize mercy killing, assisted suicide, or euthanasia. Choices are
2 provided for you to express your wishes regarding the provision,
3 withholding, or withdrawal of treatment to keep you alive, including
4 the provision of artificial nutrition and hydration, as well as the
5 provision of pain relief medication. Space is provided for you to add to
6 the choices you have made or for you to write out any additional
7 wishes.

8 Part 3 of this form lets you express an intention to make an
9 anatomical gift following your death.

10 Part 4 of this form lets you make decisions in advance about
11 certain types of mental health treatment.

12 Part 5 of this form lets you designate a physician to have
13 primary responsibility for your health care.

14 After completing this form, sign and date the form at the end
15 and have the form witnessed by one of the two alternative methods
16 listed below. Give a copy of the signed and completed form to your
17 physician, to any other health care providers you may have, to any
18 health care institution at which you are receiving care, and to any health
19 care agents you have named. You should talk to the person you have
20 named as your agent to make sure that the person understands your
21 wishes and is willing to take the responsibility.

22 You have the right to revoke this advance health care directive
23 or replace this form at any time, except that you may not revoke this
24 declaration when you are determined not to be competent by a court, by
25 two physicians, at least one of whom shall be a psychiatrist, or by both
26 a physician and a professional mental health clinician. In this advance
27 health care directive, "competent" means that you have the capacity

28 (1) to assimilate relevant facts and to appreciate and
29 understand your situation with regard to those facts; and

30 (2) to participate in treatment decisions by means of a
31 rational thought process.

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PART 1
DURABLE POWER OF ATTORNEY FOR
HEALTH CARE DECISIONS

(1) DESIGNATION OF AGENT. I designate the following individual as my agent to make health care decisions for me:

(name of individual you choose as agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, I designate as my first alternate agent

(name of individual you choose as first alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent

(name of individual you choose as second alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

(2) AGENT'S AUTHORITY. My agent is authorized

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and directed to follow my individual instructions and my other wishes to the extent known to the agent in making all health care decisions for me. If these are not known, my agent is authorized to make these decisions in accordance with my best interest, including decisions to provide, withhold, or withdraw artificial hydration and nutrition and other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

Under this authority, "best interest" means that the benefits to you resulting from a treatment outweigh the burdens to you resulting from that treatment after assessing

- (A) the effect of the treatment on your physical, emotional, and cognitive functions;
- (B) the degree of physical pain or discomfort caused to you by the treatment or the withholding or withdrawal of the treatment;
- (C) the degree to which your medical condition, the treatment, or the withholding or withdrawal of treatment, results in a severe and continuing impairment;
- (D) the effect of the treatment on your life expectancy;
- (E) your prognosis for recovery, with and without the treatment;
- (F) the risks, side effects, and benefits of the treatment or the withholding of treatment; and
- (G) your religious beliefs and basic values, to the extent that these may assist in determining benefits and burdens.

(3) WHEN AGENT'S AUTHORITY BECOMES

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EFFECTIVE. Except in the case of mental illness, my agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. In the case of mental illness, unless I mark the following box, my agent's authority becomes effective when a court determines I am unable to make my own decisions, or, in an emergency, if my primary physician or another health care provider determines I am unable to make my own decisions. If I mark this box [], my agent's authority to make health care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION. My agent shall make health care decisions for me in accordance with this durable power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN. If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named under (1) above, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making health care decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want. There is a state protocol that governs the use of do not resuscitate orders by physicians and other health care providers. You may obtain a copy of the protocol from the Alaska

1 Department of Health and Social Services. A "do not resuscitate order"
2 means a directive from a licensed physician that emergency
3 cardiopulmonary resuscitation should not be administered to you.

4 (6) END-OF-LIFE DECISIONS. Except to the extent
5 prohibited by law, I direct that my health care providers and others
6 involved in my care provide, withhold, or withdraw treatment in
7 accordance with the choice I have marked below: (Check only one
8 box.)

9 (A) Choice To Prolong Life

10 I want my life to be prolonged as long as
11 possible within the limits of generally accepted health care
12 standards; OR

13 (B) Choice Not To Prolong Life

14 I want comfort care only and I do not want my
15 life to be prolonged with medical treatment if, in the judgment
16 of my physician, I have (check all choices that represent your
17 wishes)

18 (i) a condition of permanent
19 unconsciousness: a condition that, to a high degree of
20 medical certainty, will last permanently without
21 improvement; in which, to a high degree of medical
22 certainty, thought, sensation, purposeful action, social
23 interaction, and awareness of myself and the
24 environment are absent; and for which, to a high degree
25 of medical certainty, initiating or continuing life-
26 sustaining procedures for me, in light of my medical
27 outcome, will provide only minimal medical benefit for
28 me; or

29 (ii) a terminal condition: an
30 incurable or irreversible illness or injury that without the
31 administration of life-sustaining procedures will result in

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my death in a short period of time, for which there is no reasonable prospect of cure or recovery, that imposes severe pain or otherwise imposes an inhumane burden on me, and for which, in light of my medical condition, initiating or continuing life-sustaining procedures will provide only minimal medical benefit;

Additional instructions: _____

(C) Artificial Nutrition and Hydration. If I am unable to safely take nutrition, fluids, or nutrition and fluids (check your choices or write your instructions),

I wish to receive artificial nutrition and hydration indefinitely;

I wish to receive artificial nutrition and hydration indefinitely, unless it clearly increases my suffering and is no longer in my best interest;

I wish to receive artificial nutrition and hydration on a limited trial basis to see if I can improve;

In accordance with my choices in (6)(B) above, I do not wish to receive artificial nutrition and hydration.

Other instructions: _____

(D) Relief from Pain.

I direct that adequate treatment be provided at all times for the sole purpose of the alleviation of pain or discomfort; or

I give these instructions:

(E) Should I become unconscious and I am pregnant, I direct that _____

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(7) OTHER WISHES. (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that

Conditions or limitations: _____

(Add additional sheets if needed.)

PART 3
ANATOMICAL GIFT AT DEATH
(OPTIONAL)

If you are satisfied to allow your agent to determine whether to make an anatomical gift at your death, you do not need to fill out this part of the form.

(8) Upon my death: (mark applicable box)

(A) I give any needed organs, tissues, or other body parts, OR

(B) I give the following organs, tissues, or other body parts only _____

(C) My gift is for the following purposes (mark any of the following you want):

(i) transplant;

(ii) therapy;

(iii) research;

(iv) education.

(D) I refuse to make an anatomical gift.

PART 4

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MENTAL HEALTH TREATMENT

This part of the declaration allows you to make decisions in advance about mental health treatment. 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 not competent and cannot make treatment decisions. Otherwise, you will be considered to be competent and to have the capacity to give or withhold consent for the treatments.

If you are satisfied to allow your agent to determine what is best for you in making these mental health decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(9) PSYCHOTROPIC MEDICATIONS. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding psychotropic medications are as follows:

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

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

Conditions or limitations: _____

(10) ELECTROCONVULSIVE TREATMENT. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding electroconvulsive treatment are as follows:

_____ I consent to the administration of electroconvulsive treatment.

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

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Conditions or limitations: _____

(11) ADMISSION TO AND RETENTION IN FACILITY. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding admission to and retention in a mental health facility for mental health treatment are as follows:

_____ I consent to being admitted to a mental health facility for mental health treatment for up to _____ days. (The number of days not to exceed 17.)

_____ I do not consent to being admitted to a mental health facility for mental health treatment.

Conditions or limitations: _____

OTHER WISHES OR INSTRUCTIONS

Conditions or limitations: _____

PART 5

PRIMARY PHYSICIAN

(OPTIONAL)

(12) I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

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OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

(13) EFFECT OF COPY. A copy of this form has the same effect as the original.

(14) SIGNATURES. Sign and date the form here:

(date) (sign your name)

(print your name)

(address) (city) (state) (zip code)

(15) WITNESSES. This advance care health directive will not be valid for making health care decisions unless it is

(A) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; the witnesses may not be a health care provider employed at the health care institution or health care facility where you are receiving health care, an employee of the health care provider who is providing health care to you, an employee of the health care institution or health care facility where you are receiving health care, or the person appointed as your agent by this document; at least one of the two witnesses may not be related to you by blood, marriage, or adoption or entitled to a portion of your estate upon your death

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under your will or codicil; or

(B) acknowledged before a notary public in the state.

ALTERNATIVE NO. 1

Witness Who is Not Related to or a Devisee of the Principal

I swear under penalty of perjury under AS 11.56.200 that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney for health care in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not

(1) a health care provider employed at the health care institution or health care facility where the principal is receiving health care;

(2) an employee of the health care provider providing health care to the principal;

(3) an employee of the health care institution or health care facility where the principal is receiving health care;

(4) the person appointed as agent by this document;

(5) related to the principal by blood, marriage, or adoption; or

(6) entitled to a portion of the principal's estate upon the principal's death under a will or codicil.

(date) (signature of witness)

(printed name of witness)

(address) (city) (state) (zip code)

Witness Who May be Related to or a Devisee of the Principal

I swear under penalty of perjury under AS 11.56.200

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that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney for health care in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not

(1) a health care provider employed at the health care institution or health care facility where the principal is receiving health care;

(2) an employee of the health care provider who is providing health care to the principal;

(3) an employee of the health care institution or health care facility where the principal is receiving health care; or

(4) the person appointed as agent by this document.

(date) (signature of witness)

(printed name of witness)

(address) (city) (state) (zip code)

ALTERNATIVE NO. 2

State of Alaska

_____ Judicial District

On this ____ day of _____, in the year _____, before me, _____

(insert name of notary public) appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that the person executed it.

Notary Seal

(signature of notary public)

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Sec. 13.52.390. Definitions. In this chapter, unless the context otherwise requires,

(1) "advance health care directive" means an individual instruction or a durable power of attorney for health care;

(2) "agent" means an individual designated in a durable power of attorney for health care to make a health care decision for the individual granting the power;

(3) "anatomical gift" means an individual instruction that makes a donation of all or a part of an individual's body to take effect upon or after death;

(4) "artificial nutrition and hydration" means medically appropriate nutrition and hydration delivered

(A) through an intravenous needle placed directly in a vein; or

(B) by a tube that is inserted into a functioning gastrointestinal tract;

(5) "available" means, when referring to a person, that the

(A) person's existence is known;

(B) person can be contacted;

(C) person does not lack capacity;

(D) person does not refuse to accept the position; and

(E) person is willing to make a health care decision;

(6) "best interest" means that the benefits to the individual resulting from a treatment outweigh the burdens to the individual resulting from that treatment after assessing

(A) the effect of the treatment on the physical, emotional, and cognitive functions of the patient;

(B) the degree of physical pain or discomfort caused to the individual by the treatment or the withholding or withdrawal of the treatment;

(C) the degree to which the individual's medical condition, the treatment, or the withholding or withdrawal of treatment, results in a severe and continuing impairment;

(D) the effect of the treatment on the life expectancy of the

1 patient;

2 (E) the prognosis of the patient for recovery, with and without
3 the treatment;

4 (F) the risks, side effects, and benefits of the treatment or the
5 withholding of treatment; and

6 (G) the religious beliefs and basic values of the individual
7 receiving treatment, to the extent that these may assist the decision-maker to
8 determine benefits and burdens;

9 (7) "capacity," except in (9) of this section, means an individual's
10 ability to receive and evaluate information effectively or communicate decisions to the
11 extent necessary to make mental health treatment decisions;

12 (8) "cardiopulmonary resuscitation" means an attempt to restore
13 spontaneous circulation;

14 (9) "competent" means that an individual has the capacity

15 (A) to assimilate relevant facts and to appreciate and
16 understand the individual's situation with regard to those facts; and

17 (B) to participate in treatment decisions by means of a rational
18 thought process;

19 (10) "decedent" means a deceased individual or infant, but does not
20 include a dead or stillborn fetus;

21 (11) "department" means the Department of Health and Social
22 Services;

23 (12) "document of gift" means a card, a statement attached to or
24 imprinted on a driver's license, a will, an advance health care directive under
25 AS 13.52.300, or another writing used to make an anatomical gift;

26 (13) "donor" means an individual who makes an anatomical gift;

27 (14) "do not resuscitate identification" means an identification card,
28 form, necklace, or bracelet that carries the standardized design or symbol developed
29 by the department under AS 13.52.065 to signify, when carried or worn, that the
30 carrier or wearer is an individual for whom a physician has issued a do not resuscitate
31 order;

1 (15) "do not resuscitate order" means a directive from a licensed
2 physician that emergency cardiopulmonary resuscitation should not be administered to
3 a qualified patient;

4 (16) "durable power of attorney for health care" means a power of
5 attorney that remains in effect when the principal lacks capacity; in this paragraph,
6 "power of attorney" means the designation of an agent to make health care decisions
7 for the individual granting the power;

8 (17) "generally accepted health care standards" includes the protocol
9 for do not resuscitate orders that is adopted under AS 13.52.065;

10 (18) "guardian" means a judicially appointed person having authority
11 to make a health care decision for an individual;

12 (19) "health care" means any care, treatment, service, or procedure to
13 maintain, diagnose, or otherwise affect an individual's physical or mental condition;

14 (20) "health care decision" means a decision made by an individual or
15 the individual's agent, guardian, or surrogate regarding the individual's health care,
16 including

17 (A) selection and discharge of health care providers and
18 institutions;

19 (B) approval or disapproval of proposed diagnostic tests,
20 surgical procedures, and programs of medication;

21 (C) direction to provide, withhold, or withdraw artificial
22 nutrition and hydration if providing, withholding, or withdrawing artificial
23 nutrition, artificial hydration, or artificial nutrition and hydration is in accord
24 with generally accepted health care standards applicable to health care
25 providers or institutions;

26 (D) the administration or withdrawal of psychotropic
27 medications, the use of electroconvulsive treatment, and the admission to a
28 mental health facility; and

29 (E) making an anatomical gift at death;

30 (21) "health care facility" means a nursing home, a rehabilitation
31 center, a long-term care facility, and any other health care institution that administers

1 health care and that provides overnight stays in the ordinary course of the facility's
2 business;

3 (22) "health care institution" means an institution, facility, or agency
4 licensed, certified, or otherwise authorized or permitted by law to provide health care
5 in the ordinary course of business;

6 (23) "health care provider" means an individual licensed, certified, or
7 otherwise authorized or permitted by law to provide health care in the ordinary course
8 of business or practice of a profession;

9 (24) "hospital" means

10 (A) a facility licensed, accredited, or approved as a hospital
11 under the laws of this state; or

12 (B) a facility operated as a hospital by the United States
13 government, this state, or a subdivision of this state;

14 (25) "individual instruction" means an individual's direction
15 concerning a health care decision for the individual;

16 (26) "life-sustaining procedures" means any medical treatment,
17 procedure, or intervention that, in the judgment of the primary physician, when
18 applied to a patient with a qualifying condition, would not be effective to remove the
19 qualifying condition, would serve only to prolong the dying process, or, when
20 administered to a patient with a condition of permanent unconsciousness, may keep
21 the patient alive but is not expected to restore consciousness; in this paragraph,
22 "medical treatment, procedure, or intervention" includes assisted ventilation, renal
23 dialysis, surgical procedures, blood transfusions, and the administration of drugs,
24 including antibiotics, or artificial nutrition and hydration;

25 (27) "mental health facility" has the meaning given to "designated
26 treatment facility" in AS 47.30.915;

27 (28) "mental health treatment" means electroconvulsive treatment,
28 treatment with psychotropic medication, or admission to and retention in a health care
29 institution for mental health treatment;

30 (29) "organ procurement organization" means an organization that has
31 been designated by the United States Department of Health and Human Services to

1 coordinate activities for the procurement of body parts for any portion of this state;

2 (30) "part" means an organ, tissue, an eye, a bone, an artery, blood,
3 fluid, or another portion of a human body, except fetal tissue;

4 (31) "permanent unconsciousness" means a condition

5 (A) that, to a high degree of medical certainty, will last
6 permanently without improvement;

7 (B) in which, to a high degree of medical certainty, thought,
8 sensation, purposeful action, social interaction, and awareness of self and the
9 environment are absent; and

10 (C) for which, to a high degree of medical certainty, initiating
11 or continuing life-sustaining procedures, in light of the patient's medical
12 outcome, provides only minimal medical benefit;

13 (32) "person" means an individual, corporation, business trust, estate,
14 trust, partnership, joint venture, association, government, governmental subdivision,
15 governmental agency, or another legal or commercial entity;

16 (33) "physician" or "surgeon" means an individual licensed or
17 otherwise authorized to practice medicine and surgery or osteopathy and surgery under
18 the laws of any state;

19 (34) "primary physician" means a physician designated by an
20 individual, or by the individual's agent, guardian, or surrogate, to have primary
21 responsibility for the individual's health care or, in the absence of a designation or if
22 the designated physician is not reasonably available, a physician who undertakes the
23 responsibility;

24 (35) "qualified patient" means a patient with a qualifying condition
25 who is eligible for do not resuscitate identification;

26 (36) "qualifying condition" means a terminal condition or permanent
27 unconsciousness in a patient;

28 (37) "reasonably available" means available using a level of diligence
29 appropriate to the seriousness and urgency of an individual's health care needs;

30 (38) "state" means a state, territory, or possession of the United States,
31 the District of Columbia, or the Commonwealth of Puerto Rico;

1 (39) "supervising health care provider" means the primary physician or
2 the physician's designee, or the health care provider or the provider's designee who has
3 undertaken primary responsibility for an individual's health care;

4 (40) "surrogate" means an individual, other than a patient's agent or
5 guardian, authorized under this chapter to make a health care decision for the patient;

6 (41) "technician" means an individual who is licensed or certified by
7 the State Medical Board to remove or process a part.

8 (42) "terminal condition" means an incurable or irreversible illness or
9 injury

10 (A) that without administration of life-sustaining procedures
11 will result in death in a short period of time;

12 (B) for which there is no reasonable prospect of cure or
13 recovery;

14 (C) that imposes severe pain or otherwise imposes an inhumane
15 burden on the patient; and

16 (D) for which, in light of the patient's medical condition,
17 initiating or continuing life-sustaining procedures will provide only minimal
18 medical benefit.

19 **Sec. 13.52.395. Short title.** This chapter may be cited as the Health Care
20 Decisions Act.

21 * **Sec. 4.** AS 18.65.311 is amended to read:

22 **Sec. 18.65.311. Anatomical gift [OR LIVING WILL DOCUMENT].** (a)
23 The department shall provide, at the time that an identification card is issued, a form
24 for a document by which the card holder may make an anatomical gift under AS 13.52
25 [AS 13.50 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER
26 AS 18.12 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)]. The
27 document (1) may not be larger than an identification card, (2) must contain sufficient
28 space for the signature of two witnesses [OR A PERSON WHO IS QUALIFIED TO
29 TAKE ACKNOWLEDGMENTS UNDER AS 09.63.010], and (3) [MUST USE THE
30 FORMS AND DESIGNS DEVELOPED UNDER AS 18.12.037, AND (4)] must
31 provide a means by which the card holder may cancel the gift [OR THE LIVING

1 WILL]. If the document is executed by the applicant, it shall be sealed in plastic and
2 attached to the identification card. [A SYMBOL DEVELOPED UNDER
3 AS 18.12.037 INDICATING THE EXISTENCE OF THE ANATOMICAL GIFT OR
4 LIVING WILL DOCUMENT MUST BE DISPLAYED IN THE LOWER RIGHT-
5 HAND CORNER ON THE FACE OF THE IDENTIFICATION CARD.]

6 (b) An employee of the department who processes an identification card
7 application, other than an application received by mail, shall ask the applicant orally
8 whether the applicant wishes to execute an anatomical gift [OR A LIVING WILL].
9 The department shall, by placement of posters and brochures in the office where the
10 application is taken, and by oral advice, if requested, make known to the applicant the
11 procedure necessary to execute an anatomical [A] gift under AS 13.52 [AS 13.50 OR
12 A LIVING WILL UNDER AS 18.12].

13 * **Sec. 5.** AS 28.10.021(c) is amended to read:

14 (c) An employee of the department who processes an application for
15 registration or renewal of registration, other than an application received by mail or an
16 application for registration under AS 28.10.152, shall ask the applicant orally whether
17 the applicant wishes to execute an anatomical gift [OR A LIVING WILL]. The
18 department shall make known to all applicants the procedure for executing an
19 anatomical [A] gift under AS 13.52 (Health Care Decisions Act) [AS 13.50
20 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER AS 18.12
21 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)] by displaying posters
22 in the offices in which applications are taken, by providing a brochure or other written
23 information to each person who applies in person or by mail, and, if requested, by
24 providing oral advice.

25 * **Sec. 6.** AS 28.15.061(d) is amended to read:

26 (d) An employee of the department who processes a driver's license
27 application, other than an application received by mail, shall ask the applicant orally
28 whether the applicant wishes to execute an anatomical gift [OR A LIVING WILL].
29 The department shall make known to all applicants the procedure for executing an
30 anatomical [A] gift under AS 13.52 (Health Care Decisions Act) [AS 13.50
31 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER AS 18.12

1 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)] by displaying posters
2 in the offices in which applications are taken, by providing a brochure or other written
3 information to each person who applies in person or by mail, and, if requested, by
4 providing oral advice.

5 * **Sec. 7.** AS 28.15.111(b) is amended to read:

6 (b) The department shall provide, at the time that an operator's license is
7 issued, a form for a document by which the owner of a license may make an
8 anatomical gift under AS 13.52 [AS 13.50 OR A LIVING WILL UNDER AS 18.12].
9 The document (1) may not be larger than an operator's license, (2) must contain
10 sufficient space for the signature of two witnesses [OR A PERSON WHO IS
11 QUALIFIED TO TAKE ACKNOWLEDGMENTS UNDER AS 09.63.010], **and** (3)
12 [MUST USE THE FORMS AND DESIGNS DEVELOPED UNDER AS 18.12.037,
13 AND (4)] must provide a means by which the owner may cancel the **anatomical** gift
14 [OR THE LIVING WILL]. If the document is executed by the applicant, it shall be
15 sealed in plastic and attached to the license. [A SYMBOL DEVELOPED UNDER
16 AS 18.12.037 INDICATING THE EXISTENCE OF THE ANATOMICAL GIFT OR
17 LIVING WILL DOCUMENT MUST BE DISPLAYED IN THE LOWER RIGHT-
18 HAND CORNER ON THE FACE OF THE DRIVER'S LICENSE.]

19 * **Sec. 8.** AS 47.30 is amended by adding a new section to article 9 to read:

20 **Sec. 47.30.817. Advance health care directives.** A health care provider or a
21 health care institution may not require or prohibit the execution or revocation of an
22 advance health care directive as a condition for admission, discharge, or providing
23 health care. In this section, "advance health care directive," "health care institution,"
24 and "health care provider" have the meanings given in AS 13.52.390.

25 * **Sec. 9.** AS 47.30.825(b) is amended to read:

26 (b) The patient and the following persons, at the request of the patient, are
27 entitled to participate in formulating the patient's individualized treatment plan and to
28 participate in the evaluation process as much as possible, at minimum to the extent of
29 requesting specific forms of therapy, inquiring why specific therapies are or are not
30 included in the treatment program, and being informed as to the patient's present
31 medical and psychological condition and prognosis: (1) the patient's counsel, (2) the

1 patient's guardian, (3) a mental health professional previously engaged in the patient's
2 care outside of the evaluation facility or designated treatment facility, (4) a
3 representative of the patient's choice, (5) a person designated as the patient's agent or
4 surrogate [ATTORNEY-IN-FACT] with regard to mental health treatment decisions
5 under AS 13.52 [AS 13.26.332 - 13.26.358, AS 47.30.950 - 47.30.980, OR OTHER
6 POWER-OF-ATTORNEY], and (6) the adult designated under AS 47.30.725. The
7 mental health care professionals may not withhold any of the information described in
8 this subsection from the patient or from others if the patient has signed a waiver of
9 confidentiality or has designated the person who would receive the information as an
10 agent or surrogate under AS 13.52 [ATTORNEY-IN-FACT] with regard to mental
11 health treatment.

12 * **Sec. 10.** AS 47.30.825(f) is amended to read:

13 (f) A patient capable of giving informed consent has the absolute right to
14 accept or refuse electroconvulsive therapy or aversive conditioning. A patient who
15 lacks substantial capacity to make this decision may not be given this therapy or
16 conditioning without a court order unless the patient expressly authorized that
17 particular form of treatment in an advance health care directive [A
18 DECLARATION] properly executed under AS 13.52 [AS 47.30.950 - 47.30.980] or
19 has authorized an agent or surrogate under AS 13.52 [ATTORNEY-IN-FACT] to
20 make this decision and the agent or surrogate [ATTORNEY-IN-FACT] consents to
21 the treatment on behalf of the patient.

22 * **Sec. 11.** AS 47.30.836 is amended to read:

23 **Sec. 47.30.836. Psychotropic medication in nonemergency.** An evaluation
24 facility or designated treatment facility may not administer psychotropic medication to
25 a patient in a situation that does not involve a crisis under AS 47.30.838(a)(1) unless
26 the patient

27 (1) has the capacity to give informed consent to the medication, as
28 described in AS 47.30.837, and gives that consent; the facility shall document the
29 consent in the patient's medical chart;

30 (2) authorized the use of psychotropic medication in an advance
31 health care directive [A DECLARATION] properly executed under AS 13.52

1 [AS 47.30.950 - 47.30.980] or authorized an agent or surrogate under AS 13.52
2 [ATTORNEY-IN-FACT] to consent to the use of psychotropic medication for the
3 patient and the agent or surrogate [ATTORNEY-IN-FACT] does consent; or

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

7 * Sec. 12. AS 47.30.838(d) is amended to read:

8 (d) An evaluation facility or designated treatment facility may administer
9 psychotropic medication to a patient without the patient's informed consent if the
10 patient is unable to give informed consent but has authorized the use of psychotropic
11 medication in an advance health care directive [A DECLARATION] properly
12 executed under AS 13.52 [AS 47.30.950 - 47.30.980] or has authorized an agent or
13 surrogate under AS 13.52 [ATTORNEY-IN-FACT] to consent to this form of
14 treatment for the patient and the agent or surrogate [ATTORNEY-IN-FACT] does
15 consent.

16 * Sec. 13. AS 47.30.839(d) is amended to read:

17 (d) Upon the filing of a petition under (b) of this section, the court shall direct
18 the office of public advocacy to provide a visitor to assist the court in investigating the
19 issue of whether the patient has the capacity to give or withhold informed consent to
20 the administration of psychotropic medication. The visitor shall gather pertinent
21 information and present it to the court in written or oral form at the hearing. The
22 information must include documentation of the following:

23 (1) the patient's responses to a capacity assessment instrument
24 administered at the request of the visitor;

25 (2) any expressed wishes of the patient regarding medication,
26 including wishes that may have been expressed in a power of attorney, a living will,
27 an advance health care directive under AS 13.52, or oral statements of the patient,
28 including conversations with relatives and friends that are significant persons in the
29 patient's life as those conversations are remembered by the relatives and friends; oral
30 statements of the patient should be accompanied by a description of the circumstances
31 under which the patient made the statements, when possible.

1 * **Sec. 14.** AS 47.33.070(a) is amended to read:

2 (a) An assisted living home shall maintain, for each resident of the home, a
3 file that includes

4 (1) the name and birth date, and, if provided by the resident, the social
5 security number of the resident;

6 (2) the name, address, and telephone number of the resident's closest
7 relative, service coordinator, if any, and representative, if any;

8 (3) a statement of what actions, if any, the resident's representative is
9 authorized to take on the resident's behalf;

10 (4) a copy of the resident's assisted living plan;

11 (5) a copy of the residential services contract between the home and
12 the resident;

13 (6) a notice, as required under AS 47.33.030, regarding the depository
14 in which the resident's advance payment money is being held;

15 (7) written acknowledgment [ACKNOWLEDGEMENT] by the
16 resident or the resident's representative that the resident has received a copy of and has
17 read, or has been read the

18 (A) resident's rights under AS 47.33.300;

19 (B) resident's right to pursue a grievance under AS 47.33.340;

20 (C) resident's right to protection from retaliation under
21 AS 47.33.350;

22 (D) provisions of AS 47.33.510, regarding immunity; and

23 (E) home's house rules;

24 (8) an acknowledgment [ACKNOWLEDGEMENT] and agreement
25 relating to home safekeeping and management of the resident's money, as required by
26 AS 47.33.040;

27 (9) a copy of the resident's living will, if any, or an advance health
28 care directive made under AS 13.52, if any; and

29 (10) a copy of a power of attorney or other written designation,
30 including an advance health care directive made under AS 13.52, of an agent,
31 representative, or surrogate by the resident.

1 * **Sec. 15.** AS 13.26.332(L), 13.26.335(1), 13.26.344(I); AS 13.50.010, 13.50.014,
2 13.50.016, 13.50.020, 13.50.030, 13.50.040, 13.50.050, 13.50.060, 13.50.065, 13.50.068,
3 13.50.070, 13.50.080, 13.50.090; AS 18.12.010, 18.12.020, 18.12.030, 18.12.035, 18.12.037,
4 18.12.040, 18.12.050, 18.12.060, 18.12.070, 18.12.080, 18.12.090, 18.12.100; AS 47.30.950,
5 47.30.952, 47.30.954, 47.30.956, 47.30.958, 47.30.960, 47.30.962, 47.30.964, 47.30.966,
6 47.30.968, 47.30.970, 47.30.972, and 47.30.980 are repealed.

7 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 CONTINUING EFFECT OF EXISTING DOCUMENTS. (a) An anatomical gift
10 made under AS 13.50 or AS 18.12, repealed by sec. 15 of this Act, before the effective date of
11 secs. 1 - 15 of this Act continues in effect under AS 13.50 or AS 18.12, as those chapters exist
12 before the effective date of secs. 1 - 15 of this Act, until the donation is revoked.

13 (b) A power of attorney that is made under AS 13.26.332(L), 13.26.335(1), or
14 13.26.344(I), repealed by sec. 15 of this Act, before the effective date of secs. 1 - 15 of this
15 Act and that contains authority for health care services under AS 13.26.332(L),
16 AS 13.26.335(1), or 13.26.344(I), repealed by sec. 15 of this Act, continues in effect under
17 AS 13.26.332(L), 13.26.335(1), and 13.26.344(I), as those provisions exist before the
18 effective date of secs. 1 - 15 of this Act, until the power of attorney is revoked.

19 (c) A declaration made under AS 18.12, repealed by sec. 15 of this Act, before the
20 effective date of secs. 1 - 15 of this Act continues in effect under AS 18.12, as that chapter
21 exists before the effective date of secs. 1 - 15 of this Act, until the declaration is revoked.

22 (d) A declaration made under AS 47.30.950 - 47.30.980, repealed by sec. 15 of this
23 Act, before the effective date of secs. 1 - 15 of this Act continues in effect under
24 AS 47.30.950 - 47.30.980, as those sections exist before the effective date of secs. 1 - 15 of
25 this Act, until the declaration is revoked.

26 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 EFFECT ON EXISTING INSURANCE POLICIES AND ANNUITIES.
29 AS 13.52.120(c), added by sec. 3 of this Act, does not apply to a policy of insurance or an
30 annuity that was entered into before the effective date of secs. 1 - 15 of this Act.

31 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION: REGULATIONS. The Department of Health and Social Services
3 may proceed to adopt regulations necessary to implement the changes made by secs. 1 - 15 of
4 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
5 before January 1, 2005.

6 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 CONTINUING EFFECT OF CURRENT REGULATIONS. (a) The regulations
9 found at 7 AAC 16, as modified by (b) of this section, continue in effect on and after
10 January 1, 2005, until the Department of Health and Social Services adopts the regulations
11 authorized under sec. 18 of this Act.

12 (b) The regulations attorney in the Department of Law shall

13 (1) in 7 AAC 16.010(a), replace the reference to "AS 18.12.035(b)" with
14 "AS 13.52.065(b)";

15 (2) in 7 AAC 16.010(d)(4), replace the reference to "AS 18.12.090" with
16 "AS 13.52.150";

17 (3) in 7 AAC 16.010(f) and (g), replace the reference to "AS 18.12" with
18 "AS 13.52";

19 (4) in 7 AAC 16.090(1), replace the reference to "AS 18.12.100" with
20 "AS 13.52.390";

21 (5) in 7 AAC 16.090(3), replace ""do-not-resuscitate order" in AS 18.12.100"
22 with ""do not resuscitate order" in AS 13.52.390."

23 * **Sec. 20.** Section 18 of this Act takes effect immediately under AS 01.10.070(c).

24 * **Sec. 21.** Except as provided in sec. 20 of this Act, this Act takes effect January 1, 2005.

23-LS0137B
Bannister
4/6/04

SENATE CS FOR CS FOR HOUSE BILL NO. 25()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES WEYHRAUCH, Ogg, Kookesh, Seaton, Crawford, Joule, Garri, Masek,
Morgan

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to health care decisions, including do not resuscitate orders,
2 anatomical gifts, and mental health treatment decisions, and to powers of attorney
3 relating to health care, including anatomical gifts and mental health treatment
4 decisions; and providing for an effective date."

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

6 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 PURPOSE AND INTENT. (a) A principal purpose of this Act is to provide a
9 comprehensive coordinated approach to the making of health care decisions, including
10 anatomical gifts. To achieve this purpose, this Act repeals the current statutory devices that
11 cover health care decisions and consolidates the subject into one chapter.

12 (b) It is the intent of this Act to

13 (1) establish the right of a patient to control the patient's own health care
14 decisions; and

1 (2) create, in the absence of evidence to the contrary, a presumption that the
2 patient intends to be kept alive, including by use of life-sustaining procedures, until given the
3 opportunity to make health care decisions directly or through an agent, a surrogate, or a
4 guardian.

5 * **Sec. 2.** AS 12.65.100 is amended to read:

6 **Sec. 12.65.100. Unclaimed bodies.** When a person dies and no person
7 appears to claim the body for burial, and no provision is made for the body under
8 AS 13.52 [AS 13.50], the Department of Health and Social Services, upon
9 notification, shall request a court order authorizing the body to be plainly and decently
10 buried or cremated and the remains decently interred. A judicial officer shall issue the
11 requested order upon the sworn testimony or statement of a representative of the
12 Department of Health and Social Services that a person has not appeared to claim the
13 body for burial and provision is not made for the body under AS 13.52 [AS 13.50].

14 * **Sec. 3.** AS 13 is amended by adding a new chapter to read:

15 **Chapter 52. Health Care Decisions Act.**

16 **Sec. 13.52.010. Advance health care directives.** (a) Except as provided in
17 AS 13.52.170(a), an adult may give an individual instruction. Except as provided in
18 AS 13.52.170(b), the instruction may be oral or written. The instruction may be
19 limited to take effect only if a specified condition arises.

20 (b) An adult may execute a durable power of attorney for health care, which
21 may authorize the agent to make any health care decision the principal could have
22 made while having capacity. The power remains in effect notwithstanding the
23 principal's later incapacity and may include individual instructions. The power must
24 be in writing, contain the date of its execution, be signed by the principal, and be
25 witnessed by one of the following methods:

26 (1) signed by at least two individuals who are personally known by the
27 principal, each of whom witnessed either the signing of the instrument by the principal
28 or the principal's acknowledgment of the signature of the instrument; or

29 (2) acknowledged before a notary public at a place in this state.

30 (c) Unless related to the principal by blood, marriage, or adoption, an agent
31 under a durable power of attorney for health care may not be an owner, operator, or

1 employee of the health care institution at which the principal is receiving care.

2 (d) A witness for a durable power of attorney for health care may not be

3 (1) a health care provider employed at the health care institution or
4 health care facility where the principal is receiving health care;

5 (2) an employee of the health care provider providing health care to the
6 principal, or of the health care institution or health care facility where the principal is
7 receiving health care; or

8 (3) the agent.

9 (e) At least one of the individuals used as a witness for a durable power of
10 attorney for health care shall be someone who is not

11 (1) related to the principal by blood, marriage, or adoption; or

12 (2) entitled to a portion of the estate of the principal upon the
13 principal's death under a will or codicil of the principal existing at the time of
14 execution of the durable power of attorney for health care or by operation of law then
15 existing.

16 (f) Unless otherwise specified in the durable power of attorney for health care,
17 the authority of an agent becomes effective only upon a determination that the
18 principal lacks capacity and ceases to be effective upon a determination that the
19 principal has recovered capacity.

20 (g) Unless otherwise specified in a written advance health care directive, a
21 determination that an individual lacks or has recovered capacity, or that another
22 condition exists that affects an individual instruction or the authority of an agent, shall
23 be made by

24 (1) the primary physician, except in the case of mental illness;

25 (2) a court in the case of mental illness, unless the situation is an
26 emergency; or

27 (3) the primary physician or another health care provider in the case of
28 mental illness where the situation is an emergency.

29 (h) An agent shall make a health care decision in accordance with the
30 principal's individual instructions, if any, and other wishes to the extent known to the
31 agent. Otherwise, the agent shall make the decision in accordance with the agent's

1 determination of the principal's best interest. In determining the principal's best
2 interest, the agent shall consider the principal's personal values to the extent known to
3 the agent.

4 (i) Notwithstanding the other provisions of this section, an agent may not
5 make decisions concerning the providing, withholding, and withdrawal of life-
6 sustaining procedures unless the principal lacks capacity and has a qualifying
7 condition.

8 (j) A health care decision made by an agent for a principal is effective without
9 judicial approval.

10 (k) A written advance health care directive may include the individual's
11 nomination of a guardian of the individual.

12 (l) An advance health care directive, including an advance health care
13 directive that is made in compliance with the laws of another state, is valid for
14 purposes of this chapter if it complies with this chapter.

15 **Sec. 13.52.020. Revocation of advance health care directive.** (a) Except in
16 the case of mental illness under (c) of this section, a principal may revoke the
17 designation of an agent only by a signed writing or by personally informing the
18 supervising health care provider.

19 (b) Except in the case of mental illness under (c) of this section, a principal
20 may revoke all or part of an advance health care directive, other than the designation
21 of an agent, at any time and in any manner that communicates an intent to revoke.

22 (c) In the case of mental illness, an advance health care directive may be
23 revoked in whole or in part at any time by the principal if the principal does not lack
24 capacity and is competent. A revocation is effective when a competent principal with
25 capacity communicates the revocation to the attending physician or other health care
26 provider. The attending physician or other health care provider shall note the
27 revocation on the principal's medical record. In the case of mental illness, the
28 authority of a named agent and an alternative agent named in the advance health care
29 directive continues in effect as long as the advance health care directive appointing the
30 agent is in effect or until the agent has withdrawn. For the purposes of this subsection,
31 a principal is not considered competent when

1 (1) it is the opinion of the court in a guardianship proceeding under
2 AS 13.26, the opinion of two physicians, at least one of whom is a psychiatrist, or the
3 opinion of a physician and a professional mental health clinician, that the principal is
4 not competent; or

5 (2) a court in a hearing under AS 47.30.735, 47.30.750, or 47.30.770
6 determines that the principal is gravely disabled; in this paragraph, "gravely disabled"
7 has the meaning given in AS 47.30.915(7)(B).

8 (d) A health care provider, agent, guardian, or surrogate who is informed of a
9 revocation shall promptly communicate the fact of the revocation to the supervising
10 health care provider and to any health care institution at which the patient is receiving
11 care.

12 (e) A decree of annulment, divorce, dissolution of marriage, or legal
13 separation revokes a previous designation of a spouse as agent unless otherwise
14 specified in the decree or in a durable power of attorney for health care.

15 (f) An advance health care directive that conflicts with an earlier advance
16 health care directive revokes the earlier directive to the extent of the conflict.

17 **Sec. 13.52.025. Rescission of withdrawal by agent.** A person who has
18 withdrawn as an agent may rescind the withdrawal by executing an acceptance after
19 the date of the withdrawal. A person who rescinds a withdrawal shall give notice to
20 the principal if the principal has capacity or to the principal's health care provider if
21 the principal does not have capacity.

22 **Sec. 13.52.030. Surrogates.** (a) Except in the case of mental health treatment
23 and except as provided by AS 13.52.180(a) and (b), a surrogate may make a health
24 care decision for a patient who is an adult if an agent or guardian has not been
25 appointed or the agent or guardian is not reasonably available, and if the patient has
26 been determined by the primary physician to lack capacity.

27 (b) Subject to AS 13.52.050(b), a surrogate may make a decision regarding
28 mental health treatment for a patient who is an adult if

29 (1) an agent or guardian has not been appointed or the agent or
30 guardian is not reasonably available;

31 (2) the mental health treatment is needed on an emergency basis; and

1 (3) the patient has been determined to lack capacity by

2 (A) two physicians, one of whom is a psychiatrist; or

3 (B) a physician and a professional mental health clinician.

4 (c) Except as provided for anatomical gifts in AS 13.52.170(b), an adult may
5 designate an individual to act as surrogate for that adult by personally informing the
6 supervising health care provider. Except as provided by AS 13.52.180(a) and (b), in
7 the absence of a designation, or if the designee is not reasonably available, a member
8 of the following classes of the patient's family who is reasonably available, in
9 descending order of priority, may act as surrogate:

10 (1) the spouse, unless legally separated;

11 (2) an adult child;

12 (3) a parent; or

13 (4) an adult sibling.

14 (d) Except as provided by (f) of this section or AS 13.52.180(a) or (b), if none
15 of the individuals eligible to act as surrogate under (c) of this section is reasonably
16 available, an adult who has exhibited special care and concern for the patient, who is
17 familiar with the patient's personal values, and who is reasonably available may act as
18 surrogate.

19 (e) A surrogate shall communicate the surrogate's assumption of authority as
20 promptly as practicable to the health care provider, the health care institution, and the
21 members of the patient's family specified in (c) of this section who can be readily
22 contacted.

23 (f) If more than one member of a class under (c)(2) - (4) of this section
24 assumes authority to act as surrogate, the members of that class do not agree on a
25 health care decision, and the supervising health care provider is informed of the
26 disagreement, the supervising health care provider shall comply with the decision of a
27 majority of the members of that class who have communicated their views to the
28 provider. If the class is evenly divided concerning the health care decision and the
29 supervising health care provider is informed of the even division, that class and all
30 individuals having a lower priority under (c)(2) - (4) of this section are disqualified
31 from making the decision, and the primary physician, after consulting with all

1 individuals in that evenly divided class who are reasonably available, shall make a
2 decision based on the consultation and the primary physician's own determination of
3 the best interest of the patient.

4 (g) A surrogate shall make a health care decision in accordance with the
5 patient's individual instructions or other advance health care directives, if any, and
6 other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make
7 the decision in accordance with the surrogate's determination of the patient's best
8 interest. In determining the patient's best interest, the surrogate shall consider the
9 patient's personal values to the extent known to the surrogate.

10 (h) Notwithstanding the other provisions of this section, a surrogate may
11 determine that life-sustaining procedures are to be withheld or withdrawn from a
12 patient for whom the surrogate is acting as surrogate if the patient has a qualifying
13 condition and lacks capacity.

14 (i) If a patient's primary health care provider observes that a surrogate is not
15 abiding by the wishes, values, and best interest of the patient, the primary health care
16 provider may decline to comply with a decision of the surrogate and shall notify the
17 health care institution where the primary health care provider is providing health care
18 to the patient.

19 (j) A health care decision made by a surrogate for a patient is effective without
20 judicial approval.

21 (k) A patient who has capacity may, at any time, disqualify another person,
22 including a member of the patient's family, from acting as the patient's surrogate by a
23 signed writing or by personally informing the supervising health care provider of the
24 disqualification.

25 (l) Unless related to the patient by blood, marriage, or adoption, a surrogate
26 may not be an owner, operator, or employee of the health care facility where the
27 patient is receiving care.

28 (m) A supervising health care provider may require an individual claiming the
29 right to act as a surrogate for a patient to provide a written declaration under penalty of
30 perjury stating facts and circumstances reasonably sufficient to establish the claimed
31 authority.

1 **Sec. 13.52.040. Decisions by guardian.** (a) A guardian shall comply with
2 the ward's individual instructions and may not revoke a ward's advance health care
3 directive executed before the ward's incapacity unless a court expressly authorizes the
4 revocation.

5 (b) Unless there is a court order to the contrary, a health care decision of an
6 agent takes precedence over that of a guardian.

7 (c) Except as provided in (a) of this section, a health care decision made by a
8 guardian for the ward is effective without judicial approval.

9 **Sec. 13.52.045. Decisions for exceptional procedures.** Unless there is a
10 durable power of attorney for health care or another writing clearly expressing an
11 individual's intent to the contrary, an agent or surrogate may not consent on behalf of a
12 patient to an abortion, sterilization, psychosurgery, or removal of bodily organs except
13 when the abortion, sterilization, psychosurgery, or removal of bodily organs is
14 necessary to preserve the life of the patient or to prevent serious impairment of the
15 physical health of the patient.

16 **Sec. 13.52.050. Pregnancy.** (a) Before implementing a health care decision
17 for a woman of childbearing age that would affect a fetus if present, the supervising
18 health care provider shall take reasonable steps to determine whether the woman is
19 pregnant.

20 (b) Notwithstanding any other provision of this chapter to the contrary, an
21 advance health care directive by a patient or a decision by the person then authorized
22 to make health care decisions for a patient may not be given effect if

- 23 (1) the patient is a woman who is pregnant and lacks capacity;
24 (2) the directive or decision is to withhold or withdraw health care;
25 (3) the withholding or withdrawal of the health care would, in
26 reasonable medical judgment, be likely to result in the death of the patient; and
27 (4) it is probable that the fetus could develop to the point of live birth
28 if the health care were provided.

29 (c) This section does not apply to emergency services in the field.

30 **Sec. 13.52.055. Obligations of health care providers, institutions, and**
31 **facilities.** (a) Before implementing a health care decision made for a patient, a

1 supervising health care provider, if possible, shall promptly communicate to the
2 patient the decision made and the identity of the person making the decision.

3 (b) Except as provided in AS 13.52.200, a supervising health care provider
4 who knows of the existence of an advance health care directive, a revocation of an
5 advance health care directive, or a designation or disqualification of a surrogate shall
6 promptly record its existence in the patient's health care record, shall request a copy if
7 it is in writing, and shall arrange for its maintenance in the health care record if a copy
8 is furnished.

9 (c) A supervising health care provider who makes or is informed of a
10 determination that a patient lacks or has recovered capacity, or that another condition
11 exists that affects an individual instruction or the authority of an agent, a guardian, or a
12 surrogate, shall promptly record the determination in the patient's health care record
13 and communicate the determination to the patient, if possible, and to any person then
14 authorized to make health care decisions for the patient.

15 (d) Except as provided in (e) and (f) of this section, a health care provider,
16 health care institution, or health care facility providing care to a patient shall comply
17 with

18 (1) an individual instruction of the patient and with a reasonable
19 interpretation of that instruction made by a person then authorized to make health care
20 decisions for the patient; and

21 (2) a health care decision for the patient made by a person then
22 authorized to make health care decisions for the patient to the same extent as if the
23 decision had been made by the patient while having capacity.

24 (e) A health care provider may decline to comply with an individual
25 instruction or a health care decision for reasons of conscience, except for a do not
26 resuscitate order. A health care institution or health care facility may decline to
27 comply with an individual instruction or health care decision if the instruction or
28 decision is contrary to a policy of the institution or facility that is expressly based on
29 reasons of conscience and if the policy was timely communicated to the patient or to a
30 person then authorized to make health care decisions for the patient.

31 (f) A health care provider, health care institution, or health care facility may

1 decline to comply with an individual instruction or a health care decision that requires
2 medically ineffective health care or health care contrary to generally accepted health
3 care standards applicable to the provider, institution, or facility. In this subsection,
4 "medically ineffective health care" means health care that according to reasonable
5 medical judgment cannot cure the patient's illness, cannot diminish its progressive
6 course, and cannot effectively alleviate severe discomfort and distress.

7 (g) A health care provider, health care institution, or health care facility that
8 declines to comply with an individual instruction or a health care decision shall

9 (1) promptly inform the patient, if possible, and any person then
10 authorized to make health care decisions for the patient that the provider, institution,
11 or facility has declined to comply with the instruction or decision;

12 (2) provide continuing care to the patient until a transfer is effected;
13 and

14 (3) unless the patient or person then authorized to make health care
15 decisions for the patient refuses assistance, immediately cooperate and comply with a
16 decision by the patient or a person then authorized to make health care decisions for
17 the patient to transfer the patient to another health care institution, health care facility,
18 or location chosen by the patient or by the person then authorized to make health care
19 decisions for the patient.

20 (h) Except as provided for civil commitments under AS 47.30.817, a health
21 care provider, health care institution, or health care facility may not require or prohibit
22 the execution or revocation of an advance health care directive as a condition for
23 providing health care.

24 **Sec. 13.52.060. Do not resuscitate protocol and identification**
25 **requirements.** (a) An attending physician may issue a do not resuscitate order for a
26 patient of the physician. The physician shall document the grounds for the order in the
27 patient's medical file.

28 (b) The department shall by regulation adopt a protocol, subject to the
29 approval of the State Medical Board, for do not resuscitate orders that set out a
30 standardized method of procedure for the withholding of cardiopulmonary
31 resuscitation by health care providers and health care institutions.

1 (c) The department shall develop standardized designs and symbols for do not
2 resuscitate identification cards, forms, necklaces, and bracelets that signify, when
3 carried or worn, that the carrier or wearer is an individual for whom a physician has
4 issued a do not resuscitate order.

5 (d) A health care provider other than a physician shall comply with the
6 protocol adopted under (b) of this section for do not resuscitate orders when the health
7 care provider is presented with a do not resuscitate identification, an oral do not
8 resuscitate order issued directly by a physician if the applicable hospital allows oral do
9 not resuscitate orders, or a written do not resuscitate order entered on and as required
10 by a form prescribed by the department.

11 (e) Notwithstanding (d) of this section, if an individual has made an
12 anatomical gift to occur at death and is in a hospital when a do not resuscitate order or
13 an order to withdraw life-sustaining procedures is to be implemented for the
14 individual, the order may not be implemented until the subject of the anatomical gift
15 can be evaluated to determine if it is suitable for donation.

16 (f) A do not resuscitate order may not be made ineffective unless a physician
17 revokes the do not resuscitate order. A request to revoke a do not resuscitate order
18 may only be made by the person for whom the order is written or, if the person for
19 whom the order is written is under 18 years of age, by the parent or guardian of the
20 person.

21 **Sec. 13.52.070. Health care information.** (a) Unless otherwise specified in
22 an advance health care directive, a person then authorized to make health care
23 decisions for a patient has the same rights as the patient to request, receive, examine,
24 copy, and consent to the disclosure of medical or other health care information.

25 (b) Notwithstanding (a) of this section, if there is a question about the
26 principal's capacity, an agent or a surrogate of the principal may immediately access
27 the personal health care information necessary to determine the principal's capacity,
28 even if the agency or surrogacy does not become effective until the principal lacks
29 capacity.

30 **Sec. 13.52.080. Immunities.** (a) If a health care provider or health care
31 institution makes reasonable efforts, with a level of diligence appropriate to the

1 seriousness and urgency of the situation, to ensure the validity of an advance health
2 care directive or a person's assumption of authority to make health care decisions for a
3 patient, a health care provider or institution acting in good faith and in accordance
4 with generally accepted health care standards applicable to the health care provider or
5 institution is not subject to civil or criminal liability or to discipline for unprofessional
6 conduct for

7 (1) providing health care information in good faith under
8 AS 13.52.070;

9 (2) complying with a health care decision of a person based on a
10 reasonable belief that the person has authority to make a health care decision for a
11 patient, including a decision to withhold or withdraw health care;

12 (3) declining to comply with a health care decision of a person based
13 on a reasonable belief that the person then lacked authority;

14 (4) complying with an advance health care directive and reasonably
15 assuming that the directive was valid when made and has not been revoked or
16 terminated;

17 (5) participating in the withholding or withdrawal of cardiopulmonary
18 resuscitation under the direction or with the authorization of a physician or upon
19 discovery of do not resuscitate identification upon an individual;

20 (6) causing or participating in providing cardiopulmonary resuscitation
21 or other life-sustaining procedures

22 (A) under AS 13.52.060(e) when an individual has made an
23 anatomical gift; or

24 (B) because an individual has made a do not resuscitate order
25 ineffective under AS 13.52.060(f) or another provision of this chapter; or

26 (7) acting in good faith under the terms of this chapter or the law of
27 another state relating to anatomical gifts.

28 (b) An individual acting as an agent, a guardian, or a surrogate under this
29 chapter is not subject to civil or criminal liability or to discipline for unprofessional
30 conduct for health care decisions made in good faith.

31 **Sec. 13.52.090. Statutory damages.** (a) A health care provider or institution

1 that intentionally violates this chapter is liable to the aggrieved individual or the
2 individual's estate for damages of \$10,000 or actual damages resulting from the
3 violation, whichever is greater, plus attorney fees as provided by court rule.

4 (b) A person who intentionally falsifies, forges, conceals, defaces, or
5 obliterates an individual's advance health care directive or a revocation of an advance
6 health care directive without the individual's consent, or who coerces or fraudulently
7 induces an individual to give, revoke, or not to give an advance health care directive,
8 is liable to that individual for damages of \$10,000 or actual damages resulting from
9 the action, whichever is greater, plus attorney fees as provided by court rule.

10 **Sec. 13.52.100. Capacity.** (a) This chapter does not affect the right of an
11 individual to make health care decisions while having capacity to make health care
12 decisions.

13 (b) An individual is rebuttably presumed to have capacity to make a health
14 care decision, to give or revoke an advance health care directive, and to designate or
15 disqualify a surrogate.

16 (c) An individual who is a qualified patient, including an individual for whom
17 a physician has issued a do not resuscitate order, has the right to make a decision
18 regarding the use of cardiopulmonary resuscitation and other life-sustaining
19 procedures as long as the individual is able to make the decision. If an individual who
20 is a qualified patient, including an individual for whom a physician has issued a do not
21 resuscitate order, is not able to make the decision, the protocol adopted under
22 AS 13.52.060 for do not resuscitate orders governs a decision regarding the use of
23 cardiopulmonary resuscitation and other life-sustaining procedures.

24 **Sec. 13.52.110. Status of copy.** A copy of a written advance health care
25 directive, revocation of an advance health care directive, or designation or
26 disqualification of an agent or a surrogate has the same effect as the original.

27 **Sec. 13.52.120. Effect of this chapter.** (a) In the absence of evidence to the
28 contrary of the patient's intent, this chapter establishes a presumption in favor of life,
29 consistent with the best interest of the patient.

30 (b) Notwithstanding any other provision of law, death resulting from the
31 withholding or withdrawal of cardiopulmonary resuscitation or other life-sustaining

1 procedures does not, for any purpose, constitute a suicide, homicide, or euthanasia if
2 the withholding or withdrawal is

3 (1) consistent with this chapter; and

4 (2) from an individual

5 (A) for whom a do not resuscitate order has not been issued;

6 (B) for whom a do not resuscitate order has been issued under

7 (i) the protocol for do not resuscitate orders established
8 under AS 13.52.060; or

9 (ii) a do not resuscitate identification found on the
10 individual.

11 (c) The issuance of a do not resuscitate order under this chapter, the
12 possession of do not resuscitate identification under this chapter, or the making of a
13 health care directive under this chapter does not affect in any manner the sale,
14 procurement, or issuance of a policy of life insurance, and does not modify the terms
15 of an existing policy of life insurance. A policy of life insurance is not legally
16 impaired or invalidated in any manner by the withholding or withdrawal of life-
17 sustaining procedures from an insured individual or the withholding or withdrawal of
18 cardiopulmonary resuscitation from an individual who possesses do not resuscitate
19 identification or for whom a do not resuscitate order has been issued, notwithstanding
20 any term of the policy to the contrary.

21 (d) This chapter does not authorize mercy killing, assisted suicide, or
22 euthanasia.

23 (e) This chapter does not authorize or require a health care provider or
24 institution to provide health care contrary to generally accepted health care standards
25 applicable to the health care provider or institution.

26 (i) This chapter does not authorize an agent or a surrogate to consent to the
27 admission of an individual to a mental health facility unless the individual's written
28 advance health care directive expressly so provides, and the period of admission may
29 not exceed 17 days.

30 (g) This chapter does not affect other statutes of this state governing treatment
31 for mental illness of an individual involuntarily committed to a mental health facility.

1 **Sec. 13.52.130. Prohibited requirements.** As a condition of receiving or
2 being insured for health care services, a health care provider, a health care institution,
3 a health care service plan, an insurer issuing health insurance, a self-insured employee
4 welfare benefit plan, or a nonprofit hospital plan may not require an individual to
5 execute a health care directive, obtain a do not resuscitate order from a physician, or
6 possess do not resuscitate identification.

7 **Sec. 13.52.135. Discriminatory treatment prohibited.** When determining
8 the best interest of a patient under this chapter, health care treatment may not be
9 denied to a patient because the patient has a disability or is expected to have a
10 disability.

11 **Sec. 13.52.140. Judicial relief.** On petition of a patient, the patient's agent,
12 guardian, or surrogate, or a health care provider or institution involved with the
13 patient's care, when the agent, guardian, surrogate, health care provider, or health care
14 institution is acting in good faith and in the interest of the patient, the superior court
15 may enjoin or direct a health care decision or order other equitable relief. A
16 proceeding under this section is governed by AS 13.26.165 - 13.26.320.

17 **Sec. 13.52.150. Do not resuscitate orders and identification of other**
18 **jurisdictions.** A do not resuscitate order or a do not resuscitate identification
19 executed, issued, or authorized in another state or a territory or possession of the
20 United States in compliance with the law of that jurisdiction is effective for the
21 purposes of this chapter to the extent it complies with the law of this state.

22 **Sec. 13.52.160. Determination of qualifying condition.** Whether a patient
23 has a qualifying condition under this chapter shall be determined by the primary
24 physician of the patient and by at least one other physician, when another physician is
25 available. The primary physician and, when available, the other physician shall place
26 this determination in the patient's medical record.

27 **Sec. 13.52.170. Making, amending, revoking, and refusing to make**
28 **anatomical gifts by individual.** (a) An individual who is at least 18 years of age
29 may

30 (1) make an anatomical gift for any of the purposes stated in
31 AS 13.52.210(a);

- 1 (2) limit an anatomical gift to one or more of those purposes; or
2 (3) refuse to make an anatomical gift.

3 (b) An anatomical gift may be made only by a document of gift signed by the
4 donor. If the donor cannot sign, the document of gift shall be signed by another
5 individual and by two witnesses, all of whom have signed at the direction and in the
6 presence of the donor and of each other, and state that it has been signed at the
7 direction and in the presence of the donor and of each other.

8 (c) If a document of gift is attached to or imprinted on a donor's motor vehicle
9 driver's license, revocation, suspension, expiration, or cancellation of the license does
10 not invalidate the anatomical gift.

11 (d) A document of gift may designate a particular physician or surgeon to
12 carry out the appropriate procedures. In the absence of a designation or if the designee
13 is not available, the donee or other person authorized to accept the anatomical gift may
14 employ or authorize any physician, surgeon, or technician to carry out the appropriate
15 procedures.

16 (e) An anatomical gift by will takes effect upon death of the testator, whether
17 or not the will is probated. If, after death, the will is declared invalid for testamentary
18 purposes, the validity of the anatomical gift is unaffected.

19 (f) Notwithstanding AS 13.52.020, a donor may amend or revoke an
20 anatomical gift, not made by will, only by

- 21 (1) a signed statement;
22 (2) an oral statement made in the presence of two individuals;
23 (3) any form of communication during a terminal illness or injury
24 addressed to a physician or surgeon; or
25 (4) the delivery of a signed statement to a specified donee to whom a
26 document of gift had been delivered.

27 (g) Notwithstanding AS 13.52.020, the donor of an anatomical gift made by
28 will may amend or revoke the gift in the manner provided for amendment or
29 revocation of wills, or as provided in (f) of this section.

30 (h) An anatomical gift that is not revoked by the donor before death is
31 irrevocable and does not require the consent or concurrence of any person after the

1 donor's death.

2 (i) An individual may refuse to make an anatomical gift of the individual's
3 body or part by

4 (1) a writing signed in the same manner as a document of gift;

5 (2) a statement attached to or imprinted on a donor's motor vehicle
6 operator's or chauffeur's license;

7 (3) any other writing used to identify the individual as refusing to
8 make an anatomical gift;

9 (4) during a terminal illness or injury, an oral statement or other form
10 of communication.

11 **Sec. 13.52.180. Making, revoking, and objecting to anatomical gifts by**
12 **others.** (a) Any member of the following classes of persons, in the order of priority
13 listed, may make an anatomical gift of all or a part of the decedent's body for an
14 authorized purpose, unless the decedent, at the time of death, has made an unrevoked
15 refusal to make that anatomical gift:

16 (1) the spouse of the decedent;

17 (2) an adult son or daughter of the decedent;

18 (3) either parent of the decedent;

19 (4) an adult brother or sister of the decedent;

20 (5) a grandparent of the decedent; and

21 (6) an agent or a surrogate of the decedent at the time of death.

22 (b) An anatomical gift may not be made by a person listed in (a) of this section
23 if

24 (1) a person in a prior class is available at the time of death to make an
25 anatomical gift;

26 (2) the person proposing to make an anatomical gift knows of a refusal
27 or contrary indications by the decedent; or

28 (3) the person proposing to make an anatomical gift knows of an
29 objection to making an anatomical gift by a member of the person's class or a prior
30 class.

31 (c) An anatomical gift by a person authorized under (a) of this section shall be

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made by

(1) a document of gift signed by the person;

(2) the person's telegraphic, recorded telephonic, or other recorded message, or another form of communication from the person that is contemporaneously reduced to writing and signed by the recipient; or

(3) the person's agent or surrogate.

(d) An anatomical gift by a person authorized under (a) of this section may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, or technician removing the part knows of the revocation.

Sec. 13.52.190. Optional form for anatomical gift by another person.

**ANATOMICAL GIFT BY NEXT OF KIN,
GUARDIAN, AGENT, OR SURROGATE**

Under AS 13.52.170 - 13.52.280, I make this anatomical gift from the body of

(name of decedent)

who died on

(date)

at

(place) (city)

in

(state)

The marks in the appropriate squares and the words filled into the blanks below indicate my relationship to the decedent and my wishes respecting the gift.

I survive the decedent as [] spouse; [] adult son or daughter; [] parent; [] adult brother or sister; [] grandparent; or I am the

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decedent's agent under AS 13.52 or surrogate under AS 13.52.

I hereby give (check boxes applicable):

any needed organs, tissues, or parts;

the following organs, tissues, or parts only:

_____;

the following purposes only:

_____.

_____.

(date) (signature of survivor)

(address of survivor)

Sec. 13.52.200. Routine inquiry and required request; search and notification. (a) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a designee of the hospital shall contact an organ procurement organization so that the organ procurement organization may discuss the potential to make a gift with the family, agent, or surrogate of the patient. The organ procurement organization shall discuss the potential gift with reasonable discretion and sensitivity to the circumstances of the family.

(b) Notwithstanding (a) of this section, a hospital administrator or other designee of the hospital is not required to contact an organ procurement organization if the gift is not suitable, based on accepted medical standards, for a purpose specified in AS 13.52.210.

(c) An entry shall be made in the medical record of the patient, stating the name and affiliation of the individual from the organ procurement organization who discusses the potential gift with the family, agent, or surrogate under (a) of this section, and the relationship to the patient of the family member, agent, or surrogate with whom the potential gift was discussed.

(d) The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

1 (1) a law enforcement officer, fire fighter, paramedic, or other
2 emergency rescuer finding an individual who the searcher believes is dead or near
3 death; and

4 (2) a hospital or an organ procurement organization, upon the
5 admission of an individual at or near the time of death, if there is not immediately
6 available any other source of that information.

7 (e) If a document of gift or evidence of refusal to make an anatomical gift is
8 located by the search required by (d)(1) of this section, and the individual or body to
9 whom it relates is taken to a hospital, the hospital must be notified of the contents, and
10 the document or other evidence must be sent to the hospital.

11 (f) If, at or near the time of death of a patient, a hospital knows that an
12 anatomical gift has been made under AS 13.52.170 or 13.52.180(a), or that a patient or
13 an individual identified as in transit to the hospital is a donor, the hospital shall notify
14 an organ procurement organization. The hospital shall cooperate in the
15 implementation of the anatomical gift or release and removal of a part.

16 (g) Notwithstanding AS 13.52.090, a person who fails to discharge the duties
17 imposed by this section is not subject to criminal or civil liability but is subject to
18 appropriate administrative sanctions.

19 (h) The commissioner of health and social services shall adopt regulations to
20 implement (a) - (c) of this section.

21 **Sec. 13.52.210. Persons who may become donees; purposes for which**
22 **anatomical gifts may be made.** (a) The following persons may become donees of
23 anatomical gifts for the purposes stated:

24 (1) a hospital, physician, surgeon, or procurement organization for
25 transplantation, therapy, medical or dental education, research, or advancement of
26 medical or dental science;

27 (2) an accredited medical or dental school, college, or university for
28 education, research, or advancement of medical or dental science; or

29 (3) a designated individual for transplantation or therapy needed by
30 that individual.

31 (b) An anatomical gift may be made to a designated donee or without

1 designating a donee. If a donee is not designated or if the donee is not available or
2 rejects the anatomical gift, the anatomical gift may be accepted by any hospital.

3 (c) If the donee knows of the decedent's refusal or contrary indications to
4 make an anatomical gift or that an anatomical gift by a member of a class having
5 priority to act is opposed by a member of the same class or a prior class under
6 AS 13.52.180(a), the donee may not accept the anatomical gift.

7 **Sec. 13.52.220. Delivery of document of gift.** (a) Delivery of a document of
8 gift during the donor's lifetime is not required for the validity of an anatomical gift.

9 (b) If an anatomical gift is made to a designated donee, the document of gift,
10 or a copy, may be delivered to the donee to expedite the appropriate procedures after
11 death. The document of gift, or a copy, may be deposited in any hospital, procurement
12 organization, or registry office that accepts it for safekeeping or for facilitation of
13 procedures after death. On request of an interested person, upon or after the donor's
14 death, the person in possession shall allow the interested person to examine or copy
15 the document of gift.

16 **Sec. 13.52.230. Rights and duties at death.** (a) Rights of a donee created by
17 an anatomical gift are superior to rights of others except with respect to autopsies
18 under AS 13.52.260(b). A donee may accept or reject an anatomical gift. If a donee
19 accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift,
20 may allow embalming and use of the body in funeral services. If the gift is of a part of
21 a body, the donee, upon the death of the donor and before embalming, shall cause the
22 part to be removed without unnecessary mutilation. After removal of the part, custody
23 of the remainder of the body vests in the person under obligation to dispose of the
24 body.

25 (b) The time of death of a donor shall be determined by a physician or nurse
26 under AS 09.68.120. A physician who attends the donor at death and a physician who
27 determines the time of death may not participate in the procedures for removing or
28 transplanting a part unless the document of gift designates a particular physician under
29 AS 13.52.170(d).

30 (c) If there has been an anatomical gift, a technician may remove any donated
31 parts after determination of death by a physician or nurse.

1 **Sec. 13.52.240. Coordination of procurement and use.** Each hospital in this
2 state, after consultation with other hospitals and procurement organizations, shall
3 establish agreements or affiliations for coordination of procurement and use of human
4 bodies and parts.

5 **Sec. 13.52.250. Sale or purchase of parts prohibited.** (a) A person may not
6 knowingly, for valuable consideration, sell or purchase a part for any purpose.

7 (b) In (a) of this section, "valuable consideration" does not include reasonable
8 payment for the removal, processing, disposal, preservation, quality control, storage,
9 transportation, or implantation of the part or entire body.

10 (c) A person who violates this section is guilty of a class C felony.

11 **Sec. 13.52.260. Examination, autopsy, liability.** (a) An anatomical gift
12 authorizes any reasonable examination necessary to assure medical acceptability of the
13 gift for the purposes intended.

14 (b) The provisions of AS 13.52.170 - 13.52.280 are subject to the autopsy
15 provisions of AS 12.65.

16 (c) A hospital, physician, surgeon, coroner, medical examiner, local public
17 health officer, technician, or other person who acts in accordance with AS 13.52.170 -
18 13.52.280 or with the applicable anatomical gift law of another state or attempts in
19 good faith to act in accordance with AS 13.52.170 - 13.52.280 or with the applicable
20 anatomical gift law of another state is not liable for that act in a civil action or criminal
21 proceeding.

22 (d) An individual who makes an anatomical gift under AS 13.52.170 or
23 13.52.180 and the individual's estate are not liable for any injury or damage that may
24 result from the making or the use of the anatomical gift.

25 **Sec. 13.52.265. Prohibition against authorization by coroner, state**
26 **medical examiner, or local public health official.** The coroner, the state medical
27 examiner, or a local public health official may not release or permit the removal of a
28 part from a body within that official's custody based on the fact that the official does
29 not know of

30 (1) a refusal to make a gift;

31 (2) an indication by the decedent that is contrary to making a gift; or

1 (3) an objection to a gift by a person having priority to act under
2 AS 13.52.180(a).

3 **Sec. 13.52.270. Applicability provisions.** AS 13.52.170 - 13.52.280 apply to
4 a document of gift, revocation, or refusal to make an anatomical gift signed by the
5 donor or a person authorized to make or object to making an anatomical gift before,
6 on, or after the effective date of this bill section.

7 **Sec. 13.52.280. Uniformity of application and construction.** AS 13.52.170
8 - 13.52.280 shall be applied and construed to carry out their general purpose to make
9 uniform the law with respect to the subject of AS 13.52.170 - 13.52.280 among states
10 enacting these provisions.

11 **Sec. 13.52.300. Optional form.** The following sample form may be used to
12 create an advance health care directive. The other sections of this chapter govern the
13 effect of this or any other writing used to create an advance health care directive. This
14 form may be duplicated. This form may be modified to suit the needs of the person, or
15 a different form may be used that contains the substance of the following form or
16 otherwise complies with this chapter, including the mandatory witnessing
17 requirements:

18 ADVANCE HEALTH CARE DIRECTIVE

19 Explanation

20 You have the right to give instructions about your own health
21 care to the extent allowed by law. You also have the right to name
22 someone else to make health care decisions for you to the extent
23 allowed by law. This form lets you do either or both of these things. It
24 also lets you express your wishes regarding the designation of your
25 health care provider. If you use this form, you may complete or modify
26 all or any part of it. You are free to use a different form if the form
27 contains the substance of this form or otherwise complies with the
28 requirements of AS 13.52.

29 Part 1 of this form is a durable power of attorney for health
30 care. A "durable power of attorney for health care" means the
31 designation of an agent to make health care decisions for you. Part 1

1 lets you name another individual as an agent to make health care
2 decisions for you if you do not have the capacity to make your own
3 decisions or if you want someone else to make those decisions for you
4 now even though you still have the capacity to make those decisions.
5 You may name an alternate agent to act for you if your first choice is
6 not willing, able, or reasonably available to make decisions for you.
7 Unless related to you, your agent may not be an owner, operator, or
8 employee of a health care institution where you are receiving care.

9 Unless the form you sign limits the authority of your agent,
10 your agent may make all health care decisions for you that you could
11 legally make for yourself. This form has a place for you to limit the
12 authority of your agent. You do not have to limit the authority of your
13 agent if you wish to rely on your agent for all health care decisions that
14 may have to be made. If you choose not to limit the authority of your
15 agent, your agent will have the right, to the extent allowed by law, to

16 (a) consent or refuse consent to any care, treatment, service, or
17 procedure to maintain, diagnose, or otherwise affect a physical or
18 mental condition, including the administration or discontinuation of
19 psychotropic medication;

20 (b) select or discharge health care providers and institutions;

21 (c) approve or disapprove proposed diagnostic tests, surgical
22 procedures, and programs of medication; and

23 (d) direct the provision, withholding, or withdrawal of artificial
24 nutrition and hydration and all other forms of health care; and

25 (e) make an anatomical gift following your death.

26 Part 2 of this form lets you give specific instructions for any
27 aspect of your health care to the extent allowed by law, except you may
28 not authorize mercy killing, assisted suicide, or euthanasia. Choices are
29 provided for you to express your wishes regarding the provision,
30 withholding, or withdrawal of treatment to keep you alive, including
31 the provision of artificial nutrition and hydration, as well as the

1 provision of pain relief medication. Space is provided for you to add to
2 the choices you have made or for you to write out any additional
3 wishes.

4 Part 3 of this form lets you express an intention to make an
5 anatomical gift following your death.

6 Part 4 of this form lets you make decisions in advance about
7 certain types of mental health treatment.

8 Part 5 of this form lets you designate a physician to have
9 primary responsibility for your health care.

10 After completing this form, sign and date the form at the end
11 and have the form witnessed by one of the two alternative methods
12 listed below. Give a copy of the signed and completed form to your
13 physician, to any other health care providers you may have, to any
14 health care institution at which you are receiving care, and to any health
15 care agents you have named. You should talk to the person you have
16 named as your agent to make sure that the person understands your
17 wishes and is willing to take the responsibility.

18 You have the right to revoke this advance health care directive
19 or replace this form at any time, except that you may not revoke this
20 declaration when you are determined not to be competent by a court, by
21 two physicians, at least one of whom shall be a psychiatrist, or by both
22 a physician and a professional mental health clinician. In this advance
23 health care directive, "competent" means that you have the capacity

24 (1) to assimilate relevant facts and to appreciate and
25 understand the patient's situation with regard to those facts; and

26 (2) to participate in treatment decisions by means of a
27 rational thought process.

28 PART I

29 DURABLE POWER OF ATTORNEY FOR
30 HEALTH CARE DECISIONS

31 (1) DESIGNATION OF AGENT. I designate the

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following individual as my agent to make health care decisions for me:

(name of individual you choose as agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, I designate as my first alternate agent

(name of individual you choose as first alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent

(name of individual you choose as second alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

(2) AGENT'S AUTHORITY. My agent is authorized and directed to follow my individual instructions and my other wishes to the extent known to the agent in making all health care decisions for me. If these are not known, my agent is authorized to make these decisions in accordance with my best interest, including decisions to

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provide, withhold, or withdraw artificial hydration and nutrition and other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

Under this authority, "best interest" means that the benefits to you resulting from a treatment outweigh the burdens to you resulting from that treatment after assessing

(A) the effect of the treatment on your physical, emotional, and cognitive functions;

(B) the degree of physical pain or discomfort caused to you by the treatment or the withholding or withdrawal of the treatment;

(C) the degree to which your medical condition, the treatment, or the withholding or withdrawal of treatment, results in a severe and continuing impairment;

(D) the effect of the treatment on your life expectancy;

(E) your prognosis for recovery, with and without the treatment;

(F) the risks, side effects, and benefits of the treatment or the withholding of treatment; and

(G) your religious beliefs and basic values, to the extent that these may assist in determining benefits and burdens.

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE. Except in the case of mental illness, my agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. In the case of mental illness, unless I mark the

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following box, my agent's authority becomes effective when a court determines I am unable to make my own decisions, or, in an emergency, if my primary physician or another health care provider determines I am unable to make my own decisions. If I mark this box [], my agent's authority to make health care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION. My agent shall make health care decisions for me in accordance with this durable power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN. If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named under (1) above, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making health care decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want. There is a state protocol that governs the use of do not resuscitate orders by physicians and other health care providers. You may obtain a copy of the protocol from the state Department of Health and Social Services. A "do not resuscitate order" means a directive from a licensed physician that emergency cardiopulmonary resuscitation should not be administered to you.

(6) END-OF-LIFE DECISIONS. Except to the extent

1 prohibited by law, I direct that my health care providers and others
2 involved in my care provide, withhold, or withdraw treatment in
3 accordance with the choice I have marked below: (Check only one
4 box.)

5 (A) Choice To Prolong Life

6 I want my life to be prolonged as long as
7 possible within the limits of generally accepted health care
8 standards; OR

9 (B) Choice Not To Prolong Life

10 I want comfort care only and I do not want my
11 life to be prolonged with medical treatment if, in the judgment
12 of my physician, I have (check all choices that represent your
13 wishes)

14 (i) an incurable or irreversible
15 condition: an illness or injury for which there is no
16 reasonable prospect of cure or recovery; that ultimately
17 will cause my death even if life-sustaining procedures
18 are initiated or continued; that imposes severe pain or
19 otherwise imposes an inhumane burden on me; and for
20 which initiating or continuing life-sustaining procedures
21 for me, in light of my medical condition, will provide
22 only minimal medical benefit for me;

23 (ii) a condition of permanent
24 unconsciousness: a condition that, to a high degree of
25 medical certainty, will last permanently without
26 improvement; in which, to a high degree of medical
27 certainty, thought, sensation, purposeful action, social
28 interaction, and awareness of myself and the
29 environment are absent; and for which, to a high degree
30 of medical certainty, initiating or continuing life-
31 sustaining procedures for me, in light of my medical

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outcome, will provide only minimal medical benefit for me; or

(iii) a terminal condition: a progressive incurable or irreversible illness or injury for which there is no reasonable prospect of cure or recovery and that, without the administration of life-sustaining procedures, will result in my death within a relatively short time;

Additional instructions: _____

(C) Artificial Nutrition and Hydration. If I am unable to safely take nutrition, fluids, or nutrition and fluids (check your choices or write your instructions),

I wish to receive artificial nutrition and hydration indefinitely;

I wish to receive artificial nutrition and hydration indefinitely, unless it clearly increases my suffering and is no longer in my best interest;

I wish to receive artificial nutrition and hydration on a limited trial basis to see if I can improve;

In accordance with my choices in (6)(B) above, I do not wish to receive artificial nutrition and hydration.

Other instructions: _____

(D) Relief from Pain.

I direct that treatment for the alleviation of pain or discomfort be provided at all times; or

I give these instructions:

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(7) OTHER WISHES. (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that

Conditions or limitations: _____

(Add additional sheets if needed.)

PART 3

ANATOMICAL GIFT AT DEATH

(OPTIONAL)

If you are satisfied to allow your agent to determine whether to make an anatomical gift at your death, you do not need to fill out this part of the form.

(8) Upon my death: (mark applicable box)

(A) I give any needed organs, tissues, or other body parts, OR

(B) I give the following organs, tissues, or other body parts only _____

(C) My gift is for the following purposes (mark any of the following you want):

(i) transplant;

(ii) therapy;

(iii) research;

(iv) education.

(D) I refuse to make an anatomical gift.

PART 4

MENTAL HEALTH TREATMENT

This part of the declaration allows you to make decisions in

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advance about mental health treatment. 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 not competent and cannot make treatment decisions. Otherwise, you will be considered to be competent and to have the capacity to give or withhold consent for the treatments.

If you are satisfied to allow your agent to determine what is best for you in making these mental health decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(9) PSYCHOTROPIC MEDICATIONS. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding psychotropic medications are as follows:

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

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

Conditions or limitations: _____

(10) ELECTROCONVULSIVE TREATMENT. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding electroconvulsive treatment are as follows:

_____ I consent to the administration of electroconvulsive treatment.

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

Conditions or limitations: _____

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(11) ADMISSION TO AND RETENTION IN FACILITY. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding admission to and retention in a mental health facility for mental health treatment are as follows:

_____ I consent to being admitted to a mental health facility for mental health treatment for up to _____ days. (The number of days not to exceed 17.)

_____ I do not consent to being admitted to a mental health facility for mental health treatment.

Conditions or limitations: _____

OTHER WISHES OR INSTRUCTIONS

Conditions or limitations: _____

PART 5

PRIMARY PHYSICIAN

(OPTIONAL)

(12) I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary

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physician, I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

(13) EFFECT OF COPY. A copy of this form has the same effect as the original.

(14) SIGNATURES. Sign and date the form here:

(date) (sign your name)

(print your name)

(address) (city) (state) (zip code)

(15) WITNESSES. This advance care health directive will not be valid for making health care decisions unless it is

(A) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; the witnesses may not be a health care provider employed at the health care institution or health care facility where you are receiving health care, an employee of the health care provider who is providing health care to you, an employee of the health care institution or health care facility where you are receiving health care, or the person appointed as your agent by this document; at least one of the two witnesses may not be related to you by blood, marriage, or adoption or entitled to a portion of your estate upon your death under your will or codicil; or

(B) acknowledged before a notary public in the

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state.

ALTERNATIVE NO. 1

Witness Who is Not Related to or a Devisee of the Principal

I swear under penalty of perjury under AS 11.56.200 that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence. that I am not

(1) a health care provider employed at the health care institution or health care facility where the principal is receiving health care;

(2) an employee of the health care provider providing health care to the principal;

(3) an employee of the health care institution or health care facility where the principal is receiving health care;

(4) the person appointed as agent by this document;

(5) related to the principal by blood, marriage, or adoption; or

(6) entitled to a portion of the principal's estate upon the principal's death under a will or codicil.

(date) (signature of witness)

(printed name of witness)

(address) (city) (state) (zip code)

Witness Who May be Related to or a Devisee of the Principal

I swear under penalty of perjury under AS 11.56.200 that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney in my presence, that the

1 principal appears to be of sound mind and under no duress, fraud, or
2 undue influence, that I am not

3 (1) a health care provider employed at the health care
4 institution or health care facility where the principal is receiving health
5 care;

6 (2) an employee of the health care provider who is
7 providing health care to the principal;

8 (3) an employee of the health care institution or health
9 care facility where the principal is receiving health care; or

10 (4) the person appointed as agent by this document.

11 _____
12 (date) (signature of witness)

13 _____
14 (printed name of witness)

15 _____
16 (address) (city) (state) (zip code)

17 ALTERNATIVE NO. 2

18 State of Alaska
19 _____ Judicial District

20 On this ____ day of _____, in the year
21 _____, before me, _____

22 (insert name of notary public) appeared

23 _____, personally known to me (or
24 proved to me on the basis of satisfactory evidence) to be the person
25 whose name is subscribed to this instrument, and acknowledged that
26 the person executed it.

27 Notary Seal
28 _____
29 (signature of notary public)

30 Sec. 13.52.390. Definitions. In this chapter, unless the context otherwise
31 requires,

1 (1) "advance health care directive" means an individual instruction or a
2 durable power of attorney for health care;

3 (2) "agent" means an individual designated in a durable power of
4 attorney for health care to make a health care decision for the individual granting the
5 power;

6 (3) "anatomical gift" means an individual instruction that makes a
7 donation of all or a part of an individual's body to take effect upon or after death;

8 (4) "artificial nutrition and hydration" means medically appropriate
9 nutrition and hydration delivered

10 (A) through an intravenous needle placed directly in a vein; or

11 (B) by a tube that is inserted into a functioning gastrointestinal
12 tract;

13 (5) "available" means, when referring to a person, that the

14 (A) person's existence is known;

15 (B) person can be contacted;

16 (C) person does not lack capacity;

17 (D) person does not refuse to accept the position; and

18 (E) person is willing to make a health care decision;

19 (6) "best interest" means that the benefits to the individual resulting
20 from a treatment outweigh the burdens to the individual resulting from that treatment
21 after assessing

22 (A) the effect of the treatment on the physical, emotional, and
23 cognitive functions of the patient;

24 (B) the degree of physical pain or discomfort caused to the
25 individual by the treatment or the withholding or withdrawal of the treatment;

26 (C) the degree to which the individual's medical condition, the
27 treatment, or the withholding or withdrawal of treatment, results in a severe
28 and continuing impairment;

29 (D) the effect of the treatment on the life expectancy of the
30 patient;

31 (E) the prognosis of the patient for recovery, with and without

1 the treatment;

2 (F) the risks, side effects, and benefits of the treatment or the
3 withholding of treatment; and

4 (G) the religious beliefs and basic values of the individual
5 receiving treatment, to the extent that these may assist the decision-maker to
6 determine benefits and burdens;

7 (7) "capacity," except in (9) of this section, means an individual's
8 ability to receive and evaluate information effectively or communicate decisions to the
9 extent necessary to make mental health treatment decisions;

10 (8) "cardiopulmonary resuscitation" means an attempt to restore
11 spontaneous circulation;

12 (9) "competent" means that an individual has the capacity

13 (A) to assimilate relevant facts and to appreciate and
14 understand the patient's situation with regard to those facts; and

15 (B) to participate in treatment decisions by means of a rational
16 thought process;

17 (10) "decedent" means a deceased individual or infant, but does not
18 include a dead or stillborn fetus;

19 (11) "department" means the Department of Health and Social
20 Services;

21 (12) "document of gift" means a card, a statement attached to or
22 imprinted on a driver's license, a will, an advance health care directive under
23 AS 13.52.300, or another writing used to make an anatomical gift;

24 (13) "donor" means an individual who makes an anatomical gift;

25 (14) "do not resuscitate identification" means an identification card,
26 form, necklace, or bracelet that carries the standardized design or symbol developed
27 by the department under AS 13.52.060 to signify, when carried or worn, that the
28 carrier or wearer is an individual for whom a physician has issued a do not resuscitate
29 order;

30 (15) "do not resuscitate order" means a directive from a licensed
31 physician that emergency cardiopulmonary resuscitation should not be administered to

1 a qualified patient;

2 (16) "durable power of attorney for health care" means a power of
3 attorney that remains in effect when the principal lacks capacity; in this paragraph,
4 "power of attorney" means the designation of an agent to make health care decisions
5 for the individual granting the power;

6 (17) "generally accepted health care standards" includes the protocol
7 for do not resuscitate orders that is adopted under AS 13.52.060;

8 (18) "guardian" means a judicially appointed person having authority
9 to make a health care decision for an individual;

10 (19) "health care" means any care, treatment, service, or procedure to
11 maintain, diagnose, or otherwise affect an individual's physical or mental condition;

12 (20) "health care decision" means a decision made by an individual or
13 the individual's agent, guardian, or surrogate regarding the individual's health care,
14 including

15 (A) selection and discharge of health care providers and
16 institutions;

17 (B) approval or disapproval of proposed diagnostic tests,
18 surgical procedures, and programs of medication;

19 (C) direction to provide, withhold, or withdraw artificial
20 nutrition and hydration if providing, withholding, or withdrawing artificial
21 nutrition, artificial hydration, or artificial nutrition and hydration is in accord
22 with generally accepted health care standards applicable to health care
23 providers or institutions;

24 (D) the administration or withdrawal of psychotropic
25 medications, the use of electroconvulsive treatment, and the admission to a
26 mental health facility; and

27 (E) making an anatomical gift at death;

28 (21) "health care facility" means a nursing home, a rehabilitation
29 center, a long-term care facility, and any other health care institution that administers
30 health care and that provides overnight stays in the ordinary course of the facility's
31 business;

1 (22) "health care institution" means an institution, facility, or agency
2 licensed, certified, or otherwise authorized or permitted by law to provide health care
3 in the ordinary course of business;

4 (23) "health care provider" means an individual licensed, certified, or
5 otherwise authorized or permitted by law to provide health care in the ordinary course
6 of business or practice of a profession;

7 (24) "hospital" means

8 (A) a facility licensed, accredited, or approved as a hospital
9 under the laws of this state; or

10 (B) a facility operated as a hospital by the United States
11 government, this state, or a subdivision of this state;

12 (25) "individual instruction" means an individual's direction
13 concerning a health care decision for the individual;

14 (26) "life-sustaining procedures" means any medical treatment,
15 procedure, or intervention that, in the judgment of the primary physician, when
16 applied to a patient with a qualifying condition, would not be effective to remove the
17 qualifying condition or would serve only to prolong the dying process; in this
18 paragraph, "medical treatment, procedure, or intervention" includes assisted
19 ventilation, renal dialysis, surgical procedures, blood transfusions, and the
20 administration of drugs, including antibiotics, or artificial nutrition and hydration;

21 (27) "mental health facility" has the meaning given to "designated
22 treatment facility" in AS 47.30.915;

23 (28) "mental health treatment" means electroconvulsive treatment,
24 treatment with psychotropic medication, or admission to and retention in a health care
25 institution for mental health treatment;

26 (29) "organ procurement organization" means an organization that has
27 been designated by the United States Department of Health and Human Services to
28 coordinate activities for the procurement of body parts for any portion of this state;

29 (30) "part" means an organ, tissue, an eye, a bone, an artery, blood,
30 fluid, or another portion of a human body, except fetal tissue;

31 (31) "person" means an individual, corporation, business trust, estate,

1 trust, partnership, joint venture, association, government, governmental subdivision,
2 governmental agency, or another legal or commercial entity;

3 (32) "physician" or "surgeon" means an individual licensed or
4 otherwise authorized to practice medicine and surgery or osteopathy and surgery under
5 the laws of any state;

6 (33) "primary physician" means a physician designated by an
7 individual, or by the individual's agent, guardian, or surrogate, to have primary
8 responsibility for the individual's health care or, in the absence of a designation or if
9 the designated physician is not reasonably available, a physician who undertakes the
10 responsibility;

11 (34) "qualified patient" means a patient with a qualifying condition
12 who is eligible for do not resuscitate identification;

13 (35) "qualifying condition" means a terminal condition, permanent
14 unconsciousness, or an incurable or irreversible condition in a patient; in this
15 paragraph,

16 (A) "incurable or irreversible condition" means an illness or
17 injury

18 (i) for which there is no reasonable prospect of cure or
19 recovery;

20 (ii) that ultimately will cause the patient's death even if
21 life-sustaining procedures are initiated or continued;

22 (iii) that imposes severe pain or otherwise imposes an
23 inhumane burden on the patient; and

24 (iv) for which initiating or continuing life-sustaining
25 procedures, in light of the patient's medical condition, provides only
26 minimal medical benefit;

27 (B) "permanent unconsciousness" means a condition

28 (i) that, to a high degree of medical certainty, will last
29 permanently without improvement;

30 (ii) in which, to a high degree of medical certainty,
31 thought, sensation, purposeful action, social interaction, and awareness

1 of self and the environment are absent; and

2 (iii) for which, to a high degree of medical certainty,
3 initiating or continuing life-sustaining procedures, in light of the
4 patient's medical outcome, provides only minimal medical benefit;

5 (C) "terminal condition" means a progressive incurable or
6 irreversible illness or injury for which there is no reasonable prospect of cure
7 or recovery and that, without the administration of life-sustaining procedures,
8 will result in death within a relatively short time;

9 (36) "reasonably available" means available using a level of diligence
10 appropriate to the seriousness and urgency of an individual's health care needs;

11 (37) "state" means a state, territory, or possession of the United States,
12 the District of Columbia, or the Commonwealth of Puerto Rico;

13 (38) "supervising health care provider" means the primary physician or
14 the physician's designee, or the health care provider or the provider's designee who has
15 undertaken primary responsibility for an individual's health care;

16 (39) "surrogate" means an individual, other than a patient's agent or
17 guardian, authorized under this chapter to make a health care decision for the patient;

18 (40) "technician" means an individual who is licensed or certified by
19 the State Medical Board to remove or process a part.

20 **Sec. 13.52.395. Short title.** This chapter may be cited as the Health Care
21 Decisions Act.

22 * **Sec. 4.** AS 18.65.311 is amended to read:

23 **Sec. 18.65.311. Anatomical gift [OR LIVING WILL DOCUMENT].** (a)
24 The department shall provide, at the time that an identification card is issued, a form
25 for a document by which the card holder may make an anatomical gift under AS 13.52
26 [AS 13.50 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER
27 AS 18.12 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)]. The
28 document (1) may not be larger than an identification card, (2) must contain sufficient
29 space for the signature of two witnesses [OR A PERSON WHO IS QUALIFIED TO
30 TAKE ACKNOWLEDGMENTS UNDER AS 09.63.010], and (3) [MUST USE THE
31 FORMS AND DESIGNS DEVELOPED UNDER AS 18.12.037, AND (4)] must

1 provide a means by which the card holder may cancel the gift [OR THE LIVING
2 WILL]. If the document is executed by the applicant, it shall be sealed in plastic and
3 attached to the identification card. [A SYMBOL DEVELOPED UNDER
4 AS 18.12.037 INDICATING THE EXISTENCE OF THE ANATOMICAL GIFT OR
5 LIVING WILL DOCUMENT MUST BE DISPLAYED IN THE LOWER RIGHT-
6 HAND CORNER ON THE FACE OF THE IDENTIFICATION CARD.]

7 (b) An employee of the department who processes an identification card
8 application, other than an application received by mail, shall ask the applicant orally
9 whether the applicant wishes to execute an anatomical gift [OR A LIVING WILL].
10 The department shall, by placement of posters and brochures in the office where the
11 application is taken, and by oral advice, if request, make known to the applicant the
12 procedure necessary to execute an anatomical [A] gift under AS 13.52 [AS 13.50 OR
13 A LIVING WILL UNDER AS 18.12].

14 * Sec. 5. AS 28.10.021(c) is amended to read:

15 (c) An employee of the department who processes an application for
16 registration or renewal of registration, other than an application received by mail or an
17 application for registration under AS 28.10.152, shall ask the applicant orally whether
18 the applicant wishes to execute an anatomical gift [OR A LIVING WILL]. The
19 department shall make known to all applicants the procedure for executing an
20 anatomical [A] gift under AS 13.52 (Health Care Decisions Act) [AS 13.50
21 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER AS 18.12
22 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)] by displaying posters
23 in the offices in which applications are taken, by providing a brochure or other written
24 information to each person who applies in person or by mail, and, if requested, by
25 providing oral advice.

26 * Sec. 6. AS 28.15.061(d) is amended to read:

27 (d) An employee of the department who processes a driver's license
28 application, other than an application received by mail, shall ask the applicant orally
29 whether the applicant wishes to execute an anatomical gift [OR A LIVING WILL].
30 The department shall make known to all applicants the procedure for executing an
31 anatomical [A] gift under AS 13.52 (Health Care Decisions Act) [AS 13.50

1 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER AS 18.12
2 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)] by displaying posters
3 in the offices in which applications are taken, by providing a brochure or other written
4 information to each person who applies in person or by mail, and, if requested, by
5 providing oral advice.

6 * Sec. 7. AS 28.15.111(b) is amended to read:

7 (b) The department shall provide, at the time that an operator's license is
8 issued, a form for a document by which the owner of a license may make an
9 anatomical gift under AS 13.52 [AS 13.50 OR A LIVING WILL UNDER AS 18.12].
10 The document (1) may not be larger than an operator's license, (2) must contain
11 sufficient space for the signature of two witnesses [OR A PERSON WHO IS
12 QUALIFIED TO TAKE ACKNOWLEDGMENTS UNDER AS 09.63.010], and (3)
13 [MUST USE THE FORMS AND DESIGNS DEVELOPED UNDER AS 18.12.037,
14 AND (4)] must provide a means by which the owner may cancel the anatomical gift
15 [OR THE LIVING WILL]. If the document is executed by the applicant, it shall be
16 sealed in plastic and attached to the license. [A SYMBOL DEVELOPED UNDER
17 AS 18.12.037 INDICATING THE EXISTENCE OF THE ANATOMICAL GIFT OR
18 LIVING WILL DOCUMENT MUST BE DISPLAYED IN THE LOWER RIGHT-
19 HAND CORNER ON THE FACE OF THE DRIVER'S LICENSE.]

20 * Sec. 8. AS 47.30 is amended by adding a new section to article 9 to read:

21 **Sec. 47.30.817. Advance health care directives.** A health care provider or a
22 health care institution may not require or prohibit the execution or revocation of an
23 advance health care directive as a condition for admission, discharge, or providing
24 health care. In this section, "advance health care directive," "health care institution,"
25 and "health care provider" have the meanings given in AS 13.52.390.

26 * Sec. 9. AS 47.30.825(b) is amended to read:

27 (b) The patient and the following persons, at the request of the patient, are
28 entitled to participate in formulating the patient's individualized treatment plan and to
29 participate in the evaluation process as much as possible, at minimum to the extent of
30 requesting specific forms of therapy, inquiring why specific therapies are or are not
31 included in the treatment program, and being informed as to the patient's present

1 medical and psychological condition and prognosis: (1) the patient's counsel, (2) the
2 patient's guardian, (3) a mental health professional previously engaged in the patient's
3 care outside of the evaluation facility or designated treatment facility, (4) a
4 representative of the patient's choice, (5) a person designated as the patient's agent or
5 surrogate [ATTORNEY-IN-FACT] with regard to mental health treatment decisions
6 under AS 13.52 [AS 13.26.332 - 13.26.358, AS 47.30.950 - 47.30.980, OR OTHER
7 POWER-OF-ATTORNEY], and (6) the adult designated under AS 47.30.725. The
8 mental health care professionals may not withhold any of the information described in
9 this subsection from the patient or from others if the patient has signed a waiver of
10 confidentiality or has designated the person who would receive the information as an
11 agent or surrogate under AS 13.52 [ATTORNEY-IN-FACT] with regard to mental
12 health treatment.

13 * Sec. 10. AS 47.30.825(f) is amended to read:

14 (f) A patient capable of giving informed consent has the absolute right to
15 accept or refuse electroconvulsive therapy or aversive conditioning. A patient who
16 lacks substantial capacity to make this decision may not be given this therapy or
17 conditioning without a court order unless the patient expressly authorized that
18 particular form of treatment in an advance health care directive [A
19 DECLARATION] properly executed under AS 13.52 [AS 47.30.950 - 47.30.980] or
20 has authorized an agent or surrogate under AS 13.52 [ATTORNEY-IN-FACT] to
21 make this decision and the agent or surrogate [ATTORNEY-IN-FACT] consents to
22 the treatment on behalf of the patient.

23 * Sec. 11. AS 47.30.836 is amended to read:

24 **Sec. 47.30.836. Psychotropic medication in nonemergency.** An evaluation
25 facility or designated treatment facility may not administer psychotropic medication to
26 a patient in a situation that does not involve a crisis under AS 47.30.838(a)(1) unless
27 the patient

28 (1) has the capacity to give informed consent to the medication, as
29 described in AS 47.30.837, and gives that consent; the facility shall document the
30 consent in the patient's medical chart;

31 (2) authorized the use of psychotropic medication in an advance

1 health care directive [A DECLARATION] properly executed under AS 13.52
2 [AS 47.30.950 - 47.30.980] or authorized an agent or surrogate under AS 13.52
3 [ATTORNEY-IN-FACT] to consent to the use of psychotropic medication for the
4 patient and the agent or surrogate [ATTORNEY-IN-FACT] does consent; or

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

8 * Sec. 12. AS 47.30.838(d) is amended to read:

9 (d) An evaluation facility or designated treatment facility may administer
10 psychotropic medication to a patient without the patient's informed consent if the
11 patient is unable to give informed consent but has authorized the use of psychotropic
12 medication in an advance health care directive [A DECLARATION] properly
13 executed under AS 13.52 [AS 47.30.950 - 47.30.980] or has authorized an agent or
14 surrogate under AS 13.52 [ATTORNEY-IN-FACT] to consent to this form of
15 treatment for the patient and the agent or surrogate [ATTORNEY-IN-FACT] does
16 consent.

17 * Sec. 13. AS 47.30.839(d) is amended to read:

18 (d) Upon the filing of a petition under (b) of this section, the court shall direct
19 the office of public advocacy to provide a visitor to assist the court in investigating the
20 issue of whether the patient has the capacity to give or withhold informed consent to
21 the administration of psychotropic medication. The visitor shall gather pertinent
22 information and present it to the court in written or oral form at the hearing. The
23 information must include documentation of the following:

24 (1) the patient's responses to a capacity assessment instrument
25 administered at the request of the visitor;

26 (2) any expressed wishes of the patient regarding medication,
27 including wishes that may have been expressed in a power of attorney, a living will,
28 an advance health care directive under AS 13.52, or oral statements of the patient,
29 including conversations with relatives and friends that are significant persons in the
30 patient's life as those conversations are remembered by the relatives and friends; oral
31 statements of the patient should be accompanied by a description of the circumstances

1 under which the patient made the statements, when possible.

2 * Sec. 14. AS 47.33.070(a) is amended to read:

3 (a) An assisted living home shall maintain, for each resident of the home, a
4 file that includes

5 (1) the name and birth date, and, if provided by the resident, the social
6 security number of the resident;

7 (2) the name, address, and telephone number of the resident's closest
8 relative, service coordinator, if any, and representative, if any;

9 (3) a statement of what actions, if any, the resident's representative is
10 authorized to take on the resident's behalf;

11 (4) a copy of the resident's assisted living plan;

12 (5) a copy of the residential services contract between the home and
13 the resident;

14 (6) a notice, as required under AS 47.33.030, regarding the depository
15 in which the resident's advance payment money is being held;

16 (7) written acknowledgment [ACKNOWLEDGEMENT] by the
17 resident or the resident's representative that the resident has received a copy of and has
18 read, or has been read the

19 (A) resident's rights under AS 47.33.300;

20 (B) resident's right to pursue a grievance under AS 47.33.340;

21 (C) resident's right to protection from retaliation under
22 AS 47.33.350;

23 (D) provisions of AS 47.33.510, regarding immunity; and

24 (E) home's house rules;

25 (8) an acknowledgment [ACKNOWLEDGEMENT] and agreement
26 relating to home safekeeping and management of the resident's money, as required by
27 AS 47.33.040;

28 (9) a copy of the resident's living will, if any, or an advance health
29 care directive made under AS 13.52, if any; and

30 (10) a copy of a power of attorney or other written designation,
31 including an advance health care directive made under AS 13.52, of an agent,

1 representative, or surrogate by the resident.

2 * Sec. 15. AS 13.26.332(L), 13.26.335(1), 13.26.344(I); AS 13.50.010, 13.50.014,
3 13.50.016, 13.50.020, 13.50.030, 13.50.040, 13.50.050, 13.50.060, 13.50.065, 13.50.068,
4 13.50.070, 13.50.080, 13.50.090; AS 18.12.010, 18.12.020, 18.12.030, 18.12.035, 18.12.037,
5 18.12.040, 18.12.050, 18.12.060, 18.12.070, 18.12.080, 18.12.090, 18.12.100; AS 47.30.950,
6 47.30.952, 47.30.954, 47.30.956, 47.30.958, 47.30.960, 47.30.962, 47.30.964, 47.30.966,
7 47.30.968, 47.30.970, 47.30.972, and 47.30.980 are repealed.

8 * Sec. 16. The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 CONTINUING EFFECT OF EXISTING DOCUMENTS. (a) An anatomical gift
11 made under AS 13.50 or AS 18.12, repealed by sec. 15 of this Act, before the effective date of
12 secs. 1 - 15 of this Act continues in effect under AS 13.50 or AS 18.12, as those chapters exist
13 before the effective date of secs. 1 - 15 of this Act, until the donation is revoked.

14 (b) A power of attorney that is made under AS 13.26.332(L), 13.26.335(1), or
15 13.26.344(I), repealed by sec. 15 of this Act, before the effective date of secs. 1 - 15 of this
16 Act and that contains authority for health care services under AS 13.26.332(L),
17 AS 13.26.335(1), or 13.26.344(I), repealed by sec. 15 of this Act, continues in effect under
18 AS 13.26.332(L), 13.26.335(1), and 13.26.344(I), as those provisions exist before the
19 effective date of secs. 1 - 15 of this Act, until the power of attorney is revoked.

20 (c) A declaration made under AS 18.12, repealed by sec. 15 of this Act, before the
21 effective date of secs. 1 - 15 of this Act continues in effect under AS 18.12, as that chapter
22 exists before the effective date of secs. 1 - 15 of this Act, until the declaration is revoked.

23 (d) A declaration made under AS 47.30.950 - 47.30.980, repealed by sec. 15 of this
24 Act, before the effective date of secs. 1 - 15 of this Act continues in effect under
25 AS 47.30.950 - 47.30.980, as those sections exist before the effective date of secs. 1 - 15 of
26 this Act, until the declaration is revoked.

27 * Sec. 17. The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 EFFECT ON EXISTING INSURANCE POLICIES AND ANNUITIES.
30 AS 13.52.120(c), added by sec. 3 of this Act, does not apply to a policy of insurance or an
31 annuity that was entered into before the effective date of secs. 1 - 15 of this Act.

1 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 **TRANSITION: REGULATIONS.** The Department of Health and Social Services
4 may proceed to adopt regulations necessary to implement the changes made by secs. 1 - 15 of
5 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
6 before January 1, 2005.

7 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 **CONTINUING EFFECT OF CURRENT REGULATIONS.** (a) The regulations
10 found at 7 AAC 16, as modified by (b) of this section, continue in effect on and after
11 January 1, 2005, until the Department of Health and Social Services adopts the regulations
12 authorized under sec. 18 of this Act.

13 (b) The regulations attorney in the Department of Law shall

14 (1) in 7 AAC 16.010(a), replace the reference to "AS 18.12.035(b)" with
15 "AS 13.52.060(b)";

16 (2) in 7 AAC 16.010(d)(4), replace the reference to "AS 18.12.090" with
17 "AS 13.52.150";

18 (3) in 7 AAC 16.010(f) and (g), replace the reference to "AS 18.12" with
19 "AS 13.52";

20 (4) in 7 AAC 16.090(1), replace the reference to "AS 18.12.100" with
21 "AS 13.52.390";

22 (5) in 7 AAC 16.090(3), replace ""do-not-resuscitate order" in AS 18.12.100"
23 with ""do not resuscitate order" in AS 13.52.390."

24 * **Sec. 20.** Section 18 of this Act takes effect immediately under AS 01.10.070(c).

25 * **Sec. 21.** Except as provided in sec. 20 of this Act, this Act takes effect January 1, 2005.

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR GUESS

TO: SCS CSHB 25(HES), Draft Version "C"

1 Page 23, following line 16:

2 Insert new material to read:

3 "Sec. 13.52.290. Severability. If a provision of this chapter, or the
4 application of this chapter to a person or circumstance is held invalid, including being
5 held unconstitutional, the invalidity does not affect the other provisions or applications
6 of this chapter that can be given effect without the invalid provision or application."

(Conceptual) Amendment No. 1

13.52.000 To the uncodified law

Page 2, Lines 1 - 4
DELETE all.

Page 2, Line 1

INSERT:

(2) create, in the absence of evidence to the contrary, a presumption in favor of life, consistent with the best interest of the patient.

(3) this Act is not intended to condone, authorize, or approve mercy killing, assisted suicide, or euthanasia.

Amendment No. 2

13.52.010 Advance health care directives

Page 4, line 14

Delete: "if it complies with chapter."

INSERT: "to the extent that it complies with Alaska law."

Amendment No. 3

New Section Withholding or withdrawing of life-sustaining procedures.

Page 4, Lines 4-7

Delete all.

Page 7, Lines 10-13
Delete all.

Page 8, following Line 8

INSERT: Withholding or withdrawing of life-sustaining procedures.

(a) Notwithstanding any other provision of this chapter, an agent or surrogate may determine that life-sustaining procedures may be withheld or withdrawn from a patient with a qualifying condition when there is:

- (1) a durable power of attorney or other writing that clearly expresses the patient's intent that the procedures be withheld or withdrawn;
or
- (2) no durable power of attorney or other writing that clearly expresses the patient's intent to the contrary, the patient has a qualifying condition as determined under AS 13.52.160, and withholding or withdrawing the procedures would be consistent with the patient's best interest.

Amendment No. 4

13.52.045 Decisions for exceptional procedures

Page 8, line 15

Delete: "physical"

Amendment No. 5

13.52.050 Pregnancy

Page 8, line 24

Delete: "health care"
INSERT: "life-sustaining procedures"

Page 8, line 25

Delete: "the health care"
INSERT: "life-sustaining procedures"

Page 8, line 28

Delete: "the health care"
INSERT: "life-sustaining procedures"

Amendment No. 6

New section: Construction where mental illness.

Insert a new section to read:

In the case of mental illness, nothing in this chapter may be construed to override or undermine the validity of a properly executed durable power of attorney.

Amendment No. 7a

13.52.300 Optional form

Page 30 Line 26

Delete all.

INSERT: I direct that adequate treatment be provided at all times for the sole purpose of the alleviation of pain or discomfort;

Amendment No. 7b

13.52.300 Optional form

Page 30, following line 30,

INSERT: "Should I become unconscious and I am pregnant, I direct that _____"

Amendment No. 8

Definition section.

(35) "qualifying condition" means a terminal condition or permanent unconsciousness in a patient.

Terminal condition: a new definition is added to the Definition section:

() Terminal condition means an incurable or irreversible illness or injury that without administration of life sustaining procedures will result in death in a short period of time; for which there is no reasonable prospect of cure or recovery; that imposes severe pain or otherwise imposes an inhumane burden on the patient; and for which initiating or continuing life-sustaining procedures in light of the patient's medical condition, provides only minimal medical benefit.

Life-sustaining procedures is amended by adding a new phrase (underlined in body of the definition).

(27) Life-sustaining procedures means any medical treatment, procedure, or intervention that, in the judgment of the primary physician, when applied to a patient with a qualifying condition, would not be effective to remove the qualifying condition, would serve only to prolong the dying process, or, when administered to a patient with a condition of permanent unconsciousness, may keep the patient alive but is not expected to restore consciousness; in this paragraph, "medical treatment, procedure or intervention" includes assisted ventilation, renal dialysis, surgical procedures, blood transfusions, and the administration of drugs, including antibiotics, or artificial hydration and nutrition."

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- Page 3, line 21
Delete: "individual"
Insert: "principal"
 - Page 10, line 17
After "facility,"
Add: "patient's home, "
 - Page 14, line 1
Delete: "euthanasia"
 - Page 15, line 13-14
Delete: "when the agent, guardian, surrogate, health care provider, health care provider, or health care institution is acting in good faith and in the interest of the patient,"
 - Page 15, line 25
Note to drafter: 2 physicians don't need to sign the determination in the patient's record. Two physicians diagnose and it must be noted in the record. Follow current living will language in AS 18.12.

- Page 23, line 15-16 and Page 23, line 27
Delete: "contains the substance of the following form or otherwise"

- Page 25, line 25
Delete: " the patient's"
Insert: "your"

- Page 28, line 27
Delete: "state"
Insert: "Alaska"

- Page 38, line 14
Delete: " the patient's"
Insert: "his or her"

23-LS0137C

Bannister

4/16/04

SENATE CS FOR CS FOR HOUSE BILL NO. 25(HES)**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-THIRD LEGISLATURE - SECOND SESSION****BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE****Offered:****Referred:****Sponsor(s): REPRESENTATIVES WEYHRAUCH, Ogg, Kookesh, Seaton, Crawford, Joule, Gara, Masek, Morgan****SENATORS Wilken, Dyson, Bunde****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to health care decisions, including do not resuscitate orders,
2 anatomical gifts, and mental health treatment decisions, and to powers of attorney
3 relating to health care, including anatomical gifts and mental health treatment
4 decisions; and providing for an effective date."

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

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 **PURPOSE AND INTENT.** (a) A principal purpose of this Act is to provide a
9 comprehensive coordinated approach to the making of health care decisions, including
10 anatomical gifts. To achieve this purpose, this Act repeals the current statutory devices that
11 cover health care decisions and consolidates the subject into one chapter.

12 (b) It is the intent of this Act to

13 (1) establish the right of a patient to control the patient's own health care
14 decisions; and

1 (2) create, in the absence of evidence to the contrary, a presumption, in favor
2 of life consistent with the best interest of the patient.

3 (c) This Act is not intended to condone, authorize, or approve mercy killing, assisted
4 suicide, or euthanasia.

5 * **Sec. 2.** AS 12.65.100 is amended to read:

6 **Sec. 12.65.100. Unclaimed bodies.** When a person dies and no person
7 appears to claim the body for burial, and no provision is made for the body under
8 AS 13.52 [AS 13.50], the Department of Health and Social Services, upon
9 notification, shall request a court order authorizing the body to be plainly and decently
10 buried or cremated and the remains decently interred. A judicial officer shall issue the
11 requested order upon the sworn testimony or statement of a representative of the
12 Department of Health and Social Services that a person has not appeared to claim the
13 body for burial and provision is not made for the body under AS 13.52 [AS 13.50].

14 * **Sec. 3.** AS 13 is amended by adding a new chapter to read:

15 **Chapter 52. Health Care Decisions Act.**

16 **Sec. 13.52.010. Advance health care directives.** (a) Except as provided in
17 AS 13.52.170(a), an adult may give an individual instruction. Except as provided in
18 AS 13.52.170(b), the instruction may be oral or written. The instruction may be
19 limited to take effect only if a specified condition arises.

20 (b) An adult may execute a durable power of attorney for health care, which
21 may authorize the agent to make any health care decision the principal could have
22 made while having capacity. The power remains in effect notwithstanding the
23 principal's later incapacity and may include individual instructions. The power must
24 be in writing, contain the date of its execution, be signed by the principal, and be
25 witnessed by one of the following methods:

26 (1) signed by at least two individuals who are personally known by the
27 principal, each of whom witnessed either the signing of the instrument by the principal
28 or the principal's acknowledgment of the signature of the instrument; or

29 (2) acknowledged before a notary public at a place in this state.

30 (c) Unless related to the principal by blood, marriage, or adoption, an agent
31 under a durable power of attorney for health care may not be an owner, operator, or

1 employee of the health care institution at which the principal is receiving care.

2 (d) A witness for a durable power of attorney for health care may not be

3 (1) a health care provider employed at the health care institution or
4 health care facility where the principal is receiving health care;

5 (2) an employee of the health care provider providing health care to the
6 principal, or of the health care institution or health care facility where the principal is
7 receiving health care; or

8 (3) the agent.

9 (e) At least one of the individuals used as a witness for a durable power of
10 attorney for health care shall be someone who is not

11 (1) related to the principal by blood, marriage, or adoption; or

12 (2) entitled to a portion of the estate of the principal upon the
13 principal's death under a will or codicil of the principal existing at the time of
14 execution of the durable power of attorney for health care or by operation of law then
15 existing.

16 (f) Unless otherwise specified in the durable power of attorney for health care,
17 the authority of an agent becomes effective only upon a determination that the
18 principal lacks capacity and ceases to be effective upon a determination that the
19 principal has recovered capacity.

20 (g) Unless otherwise specified in a written advance health care directive, a
21 determination that a principal lacks or has recovered capacity, or that another
22 condition exists that affects an individual instruction or the authority of an agent, shall
23 be made by

24 (1) the primary physician, except in the case of mental illness;

25 (2) a court in the case of mental illness, unless the situation is an
26 emergency; or

27 (3) the primary physician or another health care provider in the case of
28 mental illness where the situation is an emergency.

29 (h) An agent shall make a health care decision in accordance with the
30 principal's individual instructions, if any, and other wishes to the extent known to the
31 agent. Otherwise, the agent shall make the decision in accordance with the agent's

1 determination of the principal's best interest. In determining the principal's best
2 interest, the agent shall consider the principal's personal values to the extent known to
3 the agent.

4 (i) A health care decision made by an agent for a principal is effective without
5 judicial approval.

6 (j) A written advance health care directive may include the individual's
7 nomination of a guardian of the individual.

8 (k) An advance health care directive, including an advance health care
9 directive that is made in compliance with the laws of another state, is valid for
10 purposes of this chapter to the extent that it complies with the laws of this state.

11 **Sec. 13.52.020. Revocation of advance health care directive.** (a) Except in
12 the case of mental illness under (c) of this section, a principal may revoke the
13 designation of an agent only by a signed writing or by personally informing the
14 supervising health care provider.

15 (b) Except in the case of mental illness under (c) of this section, a principal
16 may revoke all or part of an advance health care directive, other than the designation
17 of an agent, at any time and in any manner that communicates an intent to revoke.

18 (c) In the case of mental illness, an advance health care directive may be
19 revoked in whole or in part at any time by the principal if the principal does not lack
20 capacity and is competent. A revocation is effective when a competent principal with
21 capacity communicates the revocation to the attending physician or other health care
22 provider. The attending physician or other health care provider shall note the
23 revocation on the principal's medical record. In the case of mental illness, the
24 authority of a named agent and an alternative agent named in the advance health care
25 directive continues in effect as long as the advance health care directive appointing the
26 agent is in effect or until the agent has withdrawn. For the purposes of this subsection,
27 a principal is not considered competent when

28 (1) it is the opinion of the court in a guardianship proceeding under
29 AS 13.26, the opinion of two physicians, at least one of whom is a psychiatrist, or the
30 opinion of a physician and a professional mental health clinician, that the principal is
31 not competent; or

1 (2) a court in a hearing under AS 47.30.735, 47.30.750, or 47.30.770
2 determines that the principal is gravely disabled; in this paragraph, "gravely disabled"
3 has the meaning given in AS 47.30.915(7)(B).

4 (d) A health care provider, agent, guardian, or surrogate who is informed of a
5 revocation shall promptly communicate the fact of the revocation to the supervising
6 health care provider and to any health care institution at which the patient is receiving
7 care.

8 (e) A decree of annulment, divorce, dissolution of marriage, or legal
9 separation revokes a previous designation of a spouse as agent unless otherwise
10 specified in the decree or in a durable power of attorney for health care.

11 (f) An advance health care directive that conflicts with an earlier advance
12 health care directive revokes the earlier directive to the extent of the conflict.

13 **Sec. 13.52.025. Rescission of withdrawal by agent.** A person who has
14 withdrawn as an agent may rescind the withdrawal by executing an acceptance after
15 the date of the withdrawal. A person who rescinds a withdrawal shall give notice to
16 the principal if the principal has capacity or to the principal's health care provider if
17 the principal does not have capacity.

18 **Sec. 13.52.030. Surrogates.** (a) Except in the case of mental health treatment
19 and except as provided by AS 13.52.180(a) and (b), a surrogate may make a health
20 care decision for a patient who is an adult if an agent or guardian has not been
21 appointed or the agent or guardian is not reasonably available, and if the patient has
22 been determined by the primary physician to lack capacity.

23 (b) Subject to AS 13.52.055(b), a surrogate may make a decision regarding
24 mental health treatment for a patient who is an adult if

25 (1) an agent or guardian has not been appointed or the agent or
26 guardian is not reasonably available;

27 (2) the mental health treatment is needed on an emergency basis; and

28 (3) the patient has been determined to lack capacity by

29 (A) two physicians, one of whom is a psychiatrist; or

30 (B) a physician and a professional mental health clinician.

31 (c) Except as provided for anatomical gifts in AS 13.52.170(b), an adult may

1 designate an individual to act as surrogate for that adult by personally informing the
2 supervising health care provider. Except as provided by AS 13.52.180(a) and (b), in
3 the absence of a designation, or if the designee is not reasonably available, a member
4 of the following classes of the patient's family who is reasonably available, in
5 descending order of priority, may act as surrogate:

6 (1) the spouse, unless legally separated;

7 (2) an adult child;

8 (3) a parent; or

9 (4) an adult sibling.

10 (d) Except as provided by (l) of this section or AS 13.52.180(a) or (b), if none
11 of the individuals eligible to act as surrogate under (c) of this section is reasonably
12 available, an adult who has exhibited special care and concern for the patient, who is
13 familiar with the patient's personal values, and who is reasonably available may act as
14 surrogate.

15 (e) A surrogate shall communicate the surrogate's assumption of authority as
16 promptly as practicable to the health care provider, the health care institution, and the
17 members of the patient's family specified in (c) of this section who can be readily
18 contacted.

19 (f) If more than one member of a class under (c)(2) - (4) of this section
20 assumes authority to act as surrogate, the members of that class do not agree on a
21 health care decision, and the supervising health care provider is informed of the
22 disagreement, the supervising health care provider shall comply with the decision of a
23 majority of the members of that class who have communicated their views to the
24 provider. If the class is evenly divided concerning the health care decision and the
25 supervising health care provider is informed of the even division, that class and all
26 individuals having a lower priority under (c)(2) - (4) of this section are disqualified
27 from making the decision, and the primary physician, after consulting with all
28 individuals in that evenly divided class who are reasonably available, shall make a
29 decision based on the consultation and the primary physician's own determination of
30 the best interest of the patient.

31 (g) A surrogate shall make a health care decision in accordance with the

1 patient's individual instructions or other advance health care directives, if any, and
2 other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make
3 the decision in accordance with the surrogate's determination of the patient's best
4 interest. In determining the patient's best interest, the surrogate shall consider the
5 patient's personal values to the extent known to the surrogate.

6 (h) If a patient's primary health care provider observes that a surrogate is not
7 abiding by the wishes, values, and best interest of the patient, the primary health care
8 provider may decline to comply with a decision of the surrogate and shall notify the
9 health care institution where the primary health care provider is providing health care
10 to the patient.

11 (i) A health care decision made by a surrogate for a patient is effective without
12 judicial approval.

13 (j) A patient who has capacity may, at any time, disqualify another person,
14 including a member of the patient's family, from acting as the patient's surrogate by a
15 signed writing or by personally informing the supervising health care provider of the
16 disqualification.

17 (k) Unless related to the patient by blood, marriage, or adoption, a surrogate
18 may not be an owner, operator, or employee of the health care facility where the
19 patient is receiving care.

20 (l) A supervising health care provider may require an individual claiming the
21 right to act as a surrogate for a patient to provide a written declaration under penalty of
22 perjury stating facts and circumstances reasonably sufficient to establish the claimed
23 authority.

24 **Sec. 13.52.040. Decisions by guardian.** (a) A guardian shall comply with
25 the ward's individual instructions and may not revoke a ward's advance health care
26 directive executed before the ward's incapacity unless a court expressly authorizes the
27 revocation.

28 (b) Unless there is a court order to the contrary, a health care decision of an
29 agent takes precedence over that of a guardian.

30 (c) Except as provided in (a) of this section, a health care decision made by a
31 guardian for the ward is effective without judicial approval.

1 **Sec. 13.52.045. Withholding or withdrawing of life-sustaining procedures.**

2 Notwithstanding any other provision of this chapter, an agent or a surrogate may
3 determine that life-sustaining procedures may be withheld or withdrawn from a patient
4 with a qualifying condition when there is

5 (1) a durable power of attorney for health care or other writing that
6 clearly expresses the patient's intent that the procedures be withheld or withdrawn; or

7 (2) no durable power of attorney for health care or other writing that
8 clearly expresses the patient's intent to the contrary, the patient has a qualifying
9 condition as determined under AS 13.52.160, and withholding or withdrawing the
10 procedures would be consistent with the patient's best interest.

11 **Sec. 13.52.050. Decisions for exceptional procedures.** Unless there is a
12 durable power of attorney for health care or another writing clearly expressing an
13 individual's intent to the contrary, an agent or surrogate may not consent on behalf of a
14 patient to an abortion, sterilization, psychosurgery, or removal of bodily organs except
15 when the abortion, sterilization, psychosurgery, or removal of bodily organs is
16 necessary to preserve the life of the patient or to prevent serious impairment of the
17 health of the patient.

18 **Sec. 13.52.055. Pregnancy.** (a) Before implementing a health care decision
19 for a woman of childbearing age that would affect a fetus if present, the supervising
20 health care provider shall take reasonable steps to determine whether the woman is
21 pregnant.

22 (b) Notwithstanding any other provision of this chapter to the contrary, an
23 advance health care directive by a patient or a decision by the person then authorized
24 to make health care decisions for a patient may not be given effect if

25 (1) the patient is a woman who is pregnant and lacks capacity;

26 (2) the directive or decision is to withhold or withdraw life-sustaining
27 procedures;

28 (3) the withholding or withdrawal of the life-sustaining procedures
29 would, in reasonable medical judgment, be likely to result in the death of the patient;
30 and

31 (4) it is probable that the fetus could develop to the point of live birth

1 if the life-sustaining procedures were provided.

2 (c) This section does not apply to emergency services in the field.

3 **Sec. 13.52.060. Obligations of health care providers, institutions, and**
4 **facilities.** (a) Before implementing a health care decision made for a patient, a
5 supervising health care provider, if possible, shall promptly communicate to the
6 patient the decision made and the identity of the person making the decision.

7 (b) Except as provided in AS 13.52.200, a supervising health care provider
8 who knows of the existence of an advance health care directive, a revocation of an
9 advance health care directive, or a designation or disqualification of a surrogate shall
10 promptly record its existence in the patient's health care record, shall request a copy if
11 it is in writing, and shall arrange for its maintenance in the health care record if a copy
12 is furnished.

13 (c) A supervising health care provider who makes or is informed of a
14 determination that a patient lacks or has recovered capacity, or that another condition
15 exists that affects an individual instruction or the authority of an agent, a guardian, or a
16 surrogate, shall promptly record the determination in the patient's health care record
17 and communicate the determination to the patient, if possible, and to any person then
18 authorized to make health care decisions for the patient.

19 (d) Except as provided in (e) and (f) of this section, a health care provider,
20 health care institution, or health care facility providing care to a patient shall comply
21 with

22 (1) an individual instruction of the patient and with a reasonable
23 interpretation of that instruction made by a person then authorized to make health care
24 decisions for the patient; and

25 (2) a health care decision for the patient made by a person then
26 authorized to make health care decisions for the patient to the same extent as if the
27 decision had been made by the patient while having capacity.

28 (e) A health care provider may decline to comply with an individual
29 instruction or a health care decision for reasons of conscience, except for a do not
30 resuscitate order. A health care institution or health care facility may decline to
31 comply with an individual instruction or health care decision if the instruction or

1 decision is contrary to a policy of the institution or facility that is expressly based on
2 reasons of conscience and if the policy was timely communicated to the patient or to a
3 person then authorized to make health care decisions for the patient.

4 (f) A health care provider, health care institution, or health care facility may
5 decline to comply with an individual instruction or a health care decision that requires
6 medically ineffective health care or health care contrary to generally accepted health
7 care standards applicable to the provider, institution, or facility. In this subsection,
8 "medically ineffective health care" means health care that according to reasonable
9 medical judgment cannot cure the patient's illness, cannot diminish its progressive
10 course, and cannot effectively alleviate severe discomfort and distress.

11 (g) A health care provider, health care institution, or health care facility that
12 declines to comply with an individual instruction or a health care decision shall

13 (1) promptly inform the patient, if possible, and any person then
14 authorized to make health care decisions for the patient that the provider, institution,
15 or facility has declined to comply with the instruction or decision;

16 (2) provide continuing care to the patient until a transfer is effected;
17 and

18 (3) unless the patient or person then authorized to make health care
19 decisions for the patient refuses assistance, immediately cooperate and comply with a
20 decision by the patient or a person then authorized to make health care decisions for
21 the patient to transfer the patient to another health care institution, to another health
22 care facility, to the patient's home, or to another location chosen by the patient or by
23 the person then authorized to make health care decisions for the patient.

24 (h) Except as provided for civil commitments under AS 47.30.817, a health
25 care provider, health care institution, or health care facility may not require or prohibit
26 the execution or revocation of an advance health care directive as a condition for
27 providing health care.

28 **Sec. 13.52.065. Do not resuscitate protocol and identification**
29 **requirements.** (a) An attending physician may issue a do not resuscitate order for a
30 patient of the physician. The physician shall document the grounds for the order in the
31 patient's medical file.

1 (b) The department shall by regulation adopt a protocol, subject to the
2 approval of the State Medical Board, for do not resuscitate orders that set out a
3 standardized method of procedure for the withholding of cardiopulmonary
4 resuscitation by health care providers and health care institutions.

5 (c) The department shall develop standardized designs and symbols for do not
6 resuscitate identification cards, forms, necklaces, and bracelets that signify, when
7 carried or worn, that the carrier or wearer is an individual for whom a physician has
8 issued a do not resuscitate order.

9 (d) A health care provider other than a physician shall comply with the
10 protocol adopted under (b) of this section for do not resuscitate orders when the health
11 care provider is presented with a do not resuscitate identification, an oral do not
12 resuscitate order issued directly by a physician if the applicable hospital allows oral do
13 not resuscitate orders, or a written do not resuscitate order entered on and as required
14 by a form prescribed by the department.

15 (e) Notwithstanding (d) of this section, if an individual has made an
16 anatomical gift to occur at death and is in a hospital when a do not resuscitate order or
17 an order to withdraw life-sustaining procedures is to be implemented for the
18 individual, the order may not be implemented until the subject of the anatomical gift
19 can be evaluated to determine if it is suitable for donation.

20 (f) A do not resuscitate order may not be made ineffective unless a physician
21 revokes the do not resuscitate order. A request to revoke a do not resuscitate order
22 may only be made by the person for whom the order is written or, if the person for
23 whom the order is written is under 18 years of age, by the parent or guardian of the
24 person.

25 **Sec. 13.52.070. Health care information.** (a) Unless otherwise specified in
26 an advance health care directive, a person then authorized to make health care
27 decisions for a patient has the same rights as the patient to request, receive, examine,
28 copy, and consent to the disclosure of medical or other health care information.

29 (b) Notwithstanding (a) of this section, if there is a question about the
30 principal's capacity, an agent or a surrogate of the principal may immediately access
31 the personal health care information necessary to determine the principal's capacity,

1 even if the agency or surrogacy does not become effective until the principal lacks
2 capacity.

3 **Sec. 13.52.080. Immunities.** (a) If a health care provider or health care
4 institution makes reasonable efforts, with a level of diligence appropriate to the
5 seriousness and urgency of the situation, to ensure the validity of an advance health
6 care directive or a person's assumption of authority to make health care decisions for a
7 patient, a health care provider or institution acting in good faith and in accordance
8 with generally accepted health care standards applicable to the health care provider or
9 institution is not subject to civil or criminal liability or to discipline for unprofessional
10 conduct for

11 (1) providing health care information in good faith under
12 AS 13.52.070;

13 (2) complying with a health care decision of a person based on a
14 reasonable belief that the person has authority to make a health care decision for a
15 patient, including a decision to withhold or withdraw health care;

16 (3) declining to comply with a health care decision of a person based
17 on a reasonable belief that the person then lacked authority;

18 (4) complying with an advance health care directive and reasonably
19 assuming that the directive was valid when made and has not been revoked or
20 terminated;

21 (5) participating in the withholding or withdrawal of cardiopulmonary
22 resuscitation under the direction or with the authorization of a physician or upon
23 discovery of do not resuscitate identification upon an individual;

24 (6) causing or participating in providing cardiopulmonary resuscitation
25 or other life-sustaining procedures

26 (A) under AS 13.52.065(e) when an individual has made an
27 anatomical gift; or

28 (B) because an individual has made a do not resuscitate order
29 ineffective under AS 13.52.065(f) or another provision of this chapter; or

30 (7) acting in good faith under the terms of this chapter or the law of
31 another state relating to anatomical gifts.

1 (b) An individual acting as an agent, a guardian, or a surrogate under this
2 chapter is not subject to civil or criminal liability or to discipline for unprofessional
3 conduct for health care decisions made in good faith.

4 **Sec. 13.52.090. Statutory damages.** (a) A health care provider or institution
5 that intentionally violates this chapter is liable to the aggrieved individual or the
6 individual's estate for damages of \$10,000 or actual damages resulting from the
7 violation, whichever is greater, plus attorney fees as provided by court rule.

8 (b) A person who intentionally falsifies, forges, conceals, defaces, or
9 obliterates an individual's advance health care directive or a revocation of an advance
10 health care directive without the individual's consent, or who coerces or fraudulently
11 induces an individual to give, revoke, or not to give an advance health care directive,
12 is liable to that individual for damages of \$10,000 or actual damages resulting from
13 the action, whichever is greater, plus attorney fees as provided by court rule.

14 **Sec. 13.52.100. Capacity.** (a) This chapter does not affect the right of an
15 individual to make health care decisions while having capacity to make health care
16 decisions.

17 (b) An individual is rebuttably presumed to have capacity to make a health
18 care decision, to give or revoke an advance health care directive, and to designate or
19 disqualify a surrogate.

20 (c) An individual who is a qualified patient, including an individual for whom
21 a physician has issued a do not resuscitate order, has the right to make a decision
22 regarding the use of cardiopulmonary resuscitation and other life-sustaining
23 procedures as long as the individual is able to make the decision. If an individual who
24 is a qualified patient, including an individual for whom a physician has issued a do not
25 resuscitate order, is not able to make the decision, the protocol adopted under
26 AS 13.52.065 for do not resuscitate orders governs a decision regarding the use of
27 cardiopulmonary resuscitation and other life-sustaining procedures.

28 **Sec. 13.52.110. Status of copy.** A copy of a written advance health care
29 directive, revocation of an advance health care directive, or designation or
30 disqualification of an agent or a surrogate has the same effect as the original.

31 **Sec. 13.52.120. Effect of this chapter.** (a) In the absence of evidence to the

1 contrary of the patient's intent, this chapter establishes a presumption in favor of life,
2 consistent with the best interest of the patient.

3 (b) Notwithstanding any other provision of law, death resulting from the
4 withholding or withdrawal of cardiopulmonary resuscitation or other life-sustaining
5 procedures does not, for any purpose, constitute a suicide or homicide if the
6 withholding or withdrawal is

7 (1) consistent with this chapter; and

8 (2) from an individual

9 (A) for whom a do not resuscitate order has not been issued;

10 (B) for whom a do not resuscitate order has been issued under

11 (i) the protocol for do not resuscitate orders established
12 under AS 13.52.065; or

13 (ii) a do not resuscitate identification found on the
14 individual.

15 (c) The issuance of a do not resuscitate order under this chapter, the
16 possession of do not resuscitate identification under this chapter, or the making of a
17 health care directive under this chapter does not affect in any manner the sale,
18 procurement, or issuance of a policy of life insurance, and does not modify the terms
19 of an existing policy of life insurance. A policy of life insurance is not legally
20 impaired or invalidated in any manner by the withholding or withdrawal of life-
21 sustaining procedures from an insured individual or the withholding or withdrawal of
22 cardiopulmonary resuscitation from an individual who possesses do not resuscitate
23 identification or for whom a do not resuscitate order has been issued, notwithstanding
24 any term of the policy to the contrary.

25 (d) This chapter does not authorize mercy killing, assisted suicide, or
26 euthanasia.

27 (e) This chapter does not authorize or require a health care provider or
28 institution to provide health care contrary to generally accepted health care standards
29 applicable to the health care provider or institution.

30 (f) This chapter does not authorize an agent or a surrogate to consent to the
31 admission of an individual to a mental health facility unless the individual's written

1 advance health care directive expressly so provides, and the period of admission may
2 not exceed 17 days.

3 (g) This chapter does not affect other statutes of this state governing treatment
4 for mental illness of an individual involuntarily committed to a mental health facility.

5 **Sec. 13.52.130. Prohibited requirements.** As a condition of receiving or
6 being insured for health care services, a health care provider, a health care institution,
7 a health care service plan, an insurer issuing health insurance, a self-insured employee
8 welfare benefit plan, or a nonprofit hospital plan may not require an individual to
9 execute a health care directive, obtain a do not resuscitate order from a physician, or
10 possess do not resuscitate identification.

11 **Sec. 13.52.135. Discriminatory treatment prohibited.** When determining
12 the best interest of a patient under this chapter, health care treatment may not be
13 denied to a patient because the patient has a disability or is expected to have a
14 disability.

15 **Sec. 13.52.140. Judicial relief.** On petition of a patient, the patient's agent,
16 guardian, or surrogate, or a health care provider or institution involved with the
17 patient's care, the superior court may enjoin or direct a health care decision or order
18 other equitable relief. A proceeding under this section is governed by AS 13.26.165 -
19 13.26.320.

20 **Sec. 13.52.150. Do not resuscitate orders and identification of other**
21 **jurisdictions.** A do not resuscitate order or a do not resuscitate identification
22 executed, issued, or authorized in another state or a territory or possession of the
23 United States in compliance with the law of that jurisdiction is effective for the
24 purposes of this chapter to the extent it complies with the law of this state.

25 **Sec. 13.52.160. Determination of qualifying condition.** Whether a patient
26 has a qualifying condition under this chapter shall be determined by the primary
27 physician of the patient and by at least one other physician, when another physician is
28 available. A physician making the determination shall document the grounds for the
29 determination in the patient's medical record.

30 **Sec. 13.52.170. Making, amending, revoking, and refusing to make**
31 **anatomical gifts by individual.** (a) An individual who is at least 18 years of age

1 may

2 (1) make an anatomical gift for any of the purposes stated in
3 AS 13.52.210(a);

4 (2) limit an anatomical gift to one or more of those purposes; or

5 (3) refuse to make an anatomical gift.

6 (b) An anatomical gift may be made only by a document of gift signed by the
7 donor. If the donor cannot sign, the document of gift shall be signed by another
8 individual and by two witnesses, all of whom have signed at the direction and in the
9 presence of the donor and of each other, and state that it has been signed at the
10 direction and in the presence of the donor and of each other.

11 (c) If a document of gift is attached to or imprinted on a donor's motor vehicle
12 driver's license, revocation, suspension, expiration, or cancellation of the license does
13 not invalidate the anatomical gift.

14 (d) A document of gift may designate a particular physician or surgeon to
15 carry out the appropriate procedures. In the absence of a designation or if the designee
16 is not available, the donee or other person authorized to accept the anatomical gift may
17 employ or authorize any physician, surgeon, or technician to carry out the appropriate
18 procedures.

19 (e) An anatomical gift by will takes effect upon death of the testator, whether
20 or not the will is probated. If, after death, the will is declared invalid for testamentary
21 purposes, the validity of the anatomical gift is unaffected.

22 (f) Notwithstanding AS 13.52.020, a donor may amend or revoke an
23 anatomical gift, not made by will, only by

24 (1) a signed statement;

25 (2) an oral statement made in the presence of two individuals;

26 (3) any form of communication during a terminal illness or injury
27 addressed to a physician or surgeon; or

28 (4) the delivery of a signed statement to a specified donee to whom a
29 document of gift had been delivered.

30 (g) Notwithstanding AS 13.52.020, the donor of an anatomical gift made by
31 will may amend or revoke the gift in the manner provided for amendment or

1 revocation of wills, or as provided in (f) of this section.

2 (h) An anatomical gift that is not revoked by the donor before death is
3 irrevocable and does not require the consent or concurrence of any person after the
4 donor's death.

5 (i) An individual may refuse to make an anatomical gift of the individual's
6 body or part by

7 (1) a writing signed in the same manner as a document of gift;

8 (2) a statement attached to or imprinted on a donor's motor vehicle
9 operator's or chauffeur's license;

10 (3) any other writing used to identify the individual as refusing to
11 make an anatomical gift;

12 (4) during a terminal illness or injury, an oral statement or other form
13 of communication.

14 **Sec. 13.52.180. Making, revoking, and objecting to anatomical gifts by**
15 **others.** (a) Any member of the following classes of persons, in the order of priority
16 listed, may make an anatomical gift of all or a part of the decedent's body for an
17 authorized purpose, unless the decedent, at the time of death, has made an unrevoked
18 refusal to make that anatomical gift:

19 (1) the spouse of the decedent;

20 (2) an adult son or daughter of the decedent;

21 (3) either parent of the decedent;

22 (4) an adult brother or sister of the decedent;

23 (5) a grandparent of the decedent; and

24 (6) an agent or a surrogate of the decedent at the time of death.

25 (b) An anatomical gift may not be made by a person listed in (a) of this section
26 if

27 (1) a person in a prior class is available at the time of death to make an
28 anatomical gift;

29 (2) the person proposing to make an anatomical gift knows of a refusal
30 or contrary indications by the decedent; or

31 (3) the person proposing to make an anatomical gift knows of an

objection to making an anatomical gift by a member of the person's class or a prior class.

(c) An anatomical gift by a person authorized under (a) of this section shall be made by

(1) a document of gift signed by the person;

(2) the person's telegraphic, recorded telephonic, or other recorded message, or another form of communication from the person that is contemporaneously reduced to writing and signed by the recipient; or

(3) the person's agent or surrogate.

(d) An anatomical gift by a person authorized under (a) of this section may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, or technician removing the part knows of the revocation.

Sec. 13.52.190. Optional form for anatomical gift by another person.

**ANATOMICAL GIFT BY NEXT OF KIN,
GUARDIAN, AGENT, OR SURROGATE**

Under AS 13.52.170 - 13.52.280, I make this anatomical gift from the body of

_____ (name of decedent)

who died on

_____ (date)

at

_____ (place) (city)

in

_____ (state)

The marks in the appropriate squares and the words filled into the blanks below indicate my relationship to the decedent and my

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wishes respecting the gift.

I survive the decedent as spouse; adult son or daughter;
 parent; adult brother or sister; grandparent; or I am the
decedent's agent under AS 13.52 or surrogate under AS 13.52.

I hereby give (check boxes applicable):

any needed organs, tissues, or parts;

the following organs, tissues, or parts only:

_____;

the following purposes only:

_____.

_____.

(date) (signature of survivor)

(address of survivor)

Sec. 13.52.200. Routine inquiry and required request; search and notification. (a) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a designee of the hospital shall contact an organ procurement organization so that the organ procurement organization may discuss the potential to make a gift with the family, agent, or surrogate of the patient. The organ procurement organization shall discuss the potential gift with reasonable discretion and sensitivity to the circumstances of the family.

(b) Notwithstanding (a) of this section, a hospital administrator or other designee of the hospital is not required to contact an organ procurement organization if the gift is not suitable, based on accepted medical standards, for a purpose specified in AS 13.52.210.

(c) An entry shall be made in the medical record of the patient, stating the name and affiliation of the individual from the organ procurement organization who discusses the potential gift with the family, agent, or surrogate under (a) of this section, and the relationship to the patient of the family member, agent, or surrogate with whom the potential gift was discussed.

1 (d) The following persons shall make a reasonable search for a document of
2 gift or other information identifying the bearer as a donor or as an individual who has
3 refused to make an anatomical gift:

4 (1) a law enforcement officer, fire fighter, paramedic, or other
5 emergency rescuer finding an individual who the searcher believes is dead or near
6 death; and

7 (2) a hospital or an organ procurement organization, upon the
8 admission of an individual at or near the time of death, if there is not immediately
9 available any other source of that information.

10 (e) If a document of gift or evidence of refusal to make an anatomical gift is
11 located by the search required by (d)(1) of this section, and the individual or body to
12 whom it relates is taken to a hospital, the hospital must be notified of the contents, and
13 the document or other evidence must be sent to the hospital.

14 (f) If, at or near the time of death of a patient, a hospital knows that an
15 anatomical gift has been made under AS 13.52.170 or 13.52.180(a), or that a patient or
16 an individual identified as in transit to the hospital is a donor, the hospital shall notify
17 an organ procurement organization. The hospital shall cooperate in the
18 implementation of the anatomical gift or release and removal of a part.

19 (g) Notwithstanding AS 13.52.090, a person who fails to discharge the duties
20 imposed by this section is not subject to criminal or civil liability but is subject to
21 appropriate administrative sanctions.

22 (h) The commissioner of health and social services shall adopt regulations to
23 implement (a) - (c) of this section.

24 **Sec. 13.52.210. Persons who may become donees; purposes for which**
25 **anatomical gifts may be made.** (a) The following persons may become donees of
26 anatomical gifts for the purposes stated:

27 (1) a hospital, physician, surgeon, or procurement organization for
28 transplantation, therapy, medical or dental education, research, or advancement of
29 medical or dental science;

30 (2) an accredited medical or dental school, college, or university for
31 education, research, or advancement of medical or dental science; or

1 (3) a designated individual for transplantation or therapy needed by
2 that individual.

3 (b) An anatomical gift may be made to a designated donee or without
4 designating a donee. If a donee is not designated or if the donee is not available or
5 rejects the anatomical gift, the anatomical gift may be accepted by any hospital.

6 (c) If the donee knows of the decedent's refusal or contrary indications to
7 make an anatomical gift or that an anatomical gift by a member of a class having
8 priority to act is opposed by a member of the same class or a prior class under
9 AS 13.52.180(a), the donee may not accept the anatomical gift.

10 **Sec. 13.52.220. Delivery of document of gift.** (a) Delivery of a document of
11 gift during the donor's lifetime is not required for the validity of an anatomical gift.

12 (b) If an anatomical gift is made to a designated donee, the document of gift,
13 or a copy, may be delivered to the donee to expedite the appropriate procedures after
14 death. The document of gift, or a copy, may be deposited in any hospital, procurement
15 organization, or registry office that accepts it for safekeeping or for facilitation of
16 procedures after death. On request of an interested person, upon or after the donor's
17 death, the person in possession shall allow the interested person to examine or copy
18 the document of gift.

19 **Sec. 13.52.230. Rights and duties at death.** (a) Rights of a donee created by
20 an anatomical gift are superior to rights of others except with respect to autopsies
21 under AS 13.52.260(b). A donee may accept or reject an anatomical gift. If a donee
22 accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift,
23 may allow embalming and use of the body in funeral services. If the gift is of a part of
24 a body, the donee, upon the death of the donor and before embalming, shall cause the
25 part to be removed without unnecessary mutilation. After removal of the part, custody
26 of the remainder of the body vests in the person under obligation to dispose of the
27 body.

28 (b) The time of death of a donor shall be determined by a physician or nurse
29 under AS 09.68.120. A physician who attends the donor at death and a physician who
30 determines the time of death may not participate in the procedures for removing or
31 transplanting a part unless the document of gift designates a particular physician under

1 AS 13.52.170(d).

2 (c) If there has been an anatomical gift, a technician may remove any donated
3 parts after determination of death by a physician or nurse.

4 **Sec. 13.52.240. Coordination of procurement and use.** Each hospital in this
5 state, after consultation with other hospitals and procurement organizations, shall
6 establish agreements or affiliations for coordination of procurement and use of human
7 bodies and parts.

8 **Sec. 13.52.250. Sale or purchase of parts prohibited.** (a) A person may not
9 knowingly, for valuable consideration, sell or purchase a part for any purpose.

10 (b) In (a) of this section, "valuable consideration" does not include reasonable
11 payment for the removal, processing, disposal, preservation, quality control, storage,
12 transportation, or implantation of the part or entire body.

13 (c) A person who violates this section is guilty of a class C felony.

14 **Sec. 13.52.260. Examination, autopsy, liability.** (a) An anatomical gift
15 authorizes any reasonable examination necessary to assure medical acceptability of the
16 gift for the purposes intended.

17 (b) The provisions of AS 13.52.170 - 13.52.280 are subject to the autopsy
18 provisions of AS 12.65.

19 (c) A hospital, physician, surgeon, coroner, medical examiner, local public
20 health officer, technician, or other person who acts in accordance with AS 13.52.170 -
21 13.52.280 or with the applicable anatomical gift law of another state or attempts in
22 good faith to act in accordance with AS 13.52.170 - 13.52.280 or with the applicable
23 anatomical gift law of another state is not liable for that act in a civil action or criminal
24 proceeding.

25 (d) An individual who makes an anatomical gift under AS 13.52.170 or
26 13.52.180 and the individual's estate are not liable for any injury or damage that may
27 result from the making or the use of the anatomical gift.

28 **Sec. 13.52.265. Prohibition against authorization by coroner, state
29 medical examiner, or local public health official.** The coroner, the state medical
30 examiner, or a local public health official may not release or permit the removal of a
31 part from a body within that official's custody based on the fact that the official does

1 not know of

2 (1) a refusal to make a gift;

3 (2) an indication by the decedent that is contrary to making a gift; or

4 (3) an objection to a gift by a person having priority to act under

5 AS 13.52.180(a).

6 **Sec. 13.52.270. Applicability provisions.** AS 13.52.170 - 13.52.280 apply to
7 a document of gift, revocation, or refusal to make an anatomical gift signed by the
8 donor or a person authorized to make or object to making an anatomical gift before,
9 on, or after the effective date of this bill section.

10 **Sec. 13.52.275. Construction where mental illness.** In the case of mental
11 illness, nothing in this chapter may be construed to override or undermine the validity
12 of a properly executed durable power of attorney for health care.

13 **Sec. 13.52.280. Uniformity of application and construction.** AS 13.52.170
14 - 13.52.280 shall be applied and construed to carry out their general purpose to make
15 uniform the law with respect to the subject of AS 13.52.170 - 13.52.280 among states
16 enacting these provisions.

17 **Sec. 13.52.300. Optional form.** The following sample form may be used to
18 create an advance health care directive. The other sections of this chapter govern the
19 effect of this or any other writing used to create an advance health care directive. This
20 form may be duplicated. This form may be modified to suit the needs of the person, or
21 a different form that complies with this chapter may be used, including the mandatory
22 witnessing requirements:

23 **ADVANCE HEALTH CARE DIRECTIVE**

24 **Explanation**

25 You have the right to give instructions about your own health
26 care to the extent allowed by law. You also have the right to name
27 someone else to make health care decisions for you to the extent
28 allowed by law. This form lets you do either or both of these things. It
29 also lets you express your wishes regarding the designation of your
30 health care provider. If you use this form, you may complete or modify
31 all or any part of it. You are free to use a different form if the form

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complies with the requirements of AS 13.52.

Part 1 of this form is a durable power of attorney for health care. A "durable power of attorney for health care" means the designation of an agent to make health care decisions for you. Part 1 lets you name another individual as an agent to make health care decisions for you if you do not have the capacity to make your own decisions or if you want someone else to make those decisions for you now even though you still have the capacity to make those decisions. You may name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a health care institution where you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you that you could legally make for yourself. This form has a place for you to limit the authority of your agent. You do not have to limit the authority of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right, to the extent allowed by law, to

- (a) consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition, including the administration or discontinuation of psychotropic medication;
- (b) select or discharge health care providers and institutions;
- (c) approve or disapprove proposed diagnostic tests, surgical procedures, and programs of medication; and
- (d) direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care; and
- (e) make an anatomical gift following your death.

Part 2 of this form lets you give specific instructions for any aspect of your health care to the extent allowed by law, except you may

1 not authorize mercy killing, assisted suicide, or euthanasia. Choices are
2 provided for you to express your wishes regarding the provision,
3 withholding, or withdrawal of treatment to keep you alive, including
4 the provision of artificial nutrition and hydration, as well as the
5 provision of pain relief medication. Space is provided for you to add to
6 the choices you have made or for you to write out any additional
7 wishes.

8 Part 3 of this form lets you express an intention to make an
9 anatomical gift following your death.

10 Part 4 of this form lets you make decisions in advance about
11 certain types of mental health treatment.

12 Part 5 of this form lets you designate a physician to have
13 primary responsibility for your health care.

14 After completing this form, sign and date the form at the end
15 and have the form witnessed by one of the two alternative methods
16 listed below. Give a copy of the signed and completed form to your
17 physician, to any other health care providers you may have, to any
18 health care institution at which you are receiving care, and to any health
19 care agents you have named. You should talk to the person you have
20 named as your agent to make sure that the person understands your
21 wishes and is willing to take the responsibility.

22 You have the right to revoke this advance health care directive
23 or replace this form at any time, except that you may not revoke this
24 declaration when you are determined not to be competent by a court, by
25 two physicians, at least one of whom shall be a psychiatrist, or by both
26 a physician and a professional mental health clinician. In this advance
27 health care directive, "competent" means that you have the capacity

28 (1) to assimilate relevant facts and to appreciate and
29 understand your situation with regard to those facts; and

30 (2) to participate in treatment decisions by means of a
31 rational thought process.

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PART I
DURABLE POWER OF ATTORNEY FOR
HEALTH CARE DECISIONS

(1) DESIGNATION OF AGENT. I designate the following individual as my agent to make health care decisions for me:

(name of individual you choose as agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, I designate as my first alternate agent

(name of individual you choose as first alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent

(name of individual you choose as second alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

(2) AGENT'S AUTHORITY. My agent is authorized

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and directed to follow my individual instructions and my other wishes to the extent known to the agent in making all health care decisions for me. If these are not known, my agent is authorized to make these decisions in accordance with my best interest, including decisions to provide, withhold, or withdraw artificial hydration and nutrition and other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

Under this authority, "best interest" means that the benefits to you resulting from a treatment outweigh the burdens to you resulting from that treatment after assessing

(A) the effect of the treatment on your physical, emotional, and cognitive functions;

(B) the degree of physical pain or discomfort caused to you by the treatment or the withholding or withdrawal of the treatment;

(C) the degree to which your medical condition, the treatment, or the withholding or withdrawal of treatment, results in a severe and continuing impairment;

(D) the effect of the treatment on your life expectancy;

(E) your prognosis for recovery, with and without the treatment;

(F) the risks, side effects, and benefits of the treatment or the withholding of treatment; and

(G) your religious beliefs and basic values, to the extent that these may assist in determining benefits and burdens.

(3) WHEN AGENT'S AUTHORITY BECOMES

1 EFFECTIVE. Except in the case of mental illness, my agent's authority
2 becomes effective when my primary physician determines that I am
3 unable to make my own health care decisions unless I mark the
4 following box. In the case of mental illness, unless I mark the
5 following box, my agent's authority becomes effective when a court
6 determines I am unable to make my own decisions, or, in an
7 emergency, if my primary physician or another health care provider
8 determines I am unable to make my own decisions. If I mark this box
9 [], my agent's authority to make health care decisions for me takes
10 effect immediately.

11 (4) AGENT'S OBLIGATION. My agent shall make
12 health care decisions for me in accordance with this durable power of
13 attorney for health care, any instructions I give in Part 2 of this form,
14 and my other wishes to the extent known to my agent. To the extent
15 my wishes are unknown, my agent shall make health care decisions for
16 me in accordance with what my agent determines to be in my best
17 interest. In determining my best interest, my agent shall consider my
18 personal values to the extent known to my agent.

19 (5) NOMINATION OF GUARDIAN. If a guardian of
20 my person needs to be appointed for me by a court, I nominate the
21 agent designated in this form. If that agent is not willing, able, or
22 reasonably available to act as guardian, I nominate the alternate agents
23 whom I have named under (1) above, in the order designated.

24 PART 2

25 INSTRUCTIONS FOR HEALTH CARE

26 If you are satisfied to allow your agent to determine what is best
27 for you in making health care decisions, you do not need to fill out this
28 part of the form. If you do fill out this part of the form, you may strike
29 any wording you do not want. There is a state protocol that governs the
30 use of do not resuscitate orders by physicians and other health care
31 providers. You may obtain a copy of the protocol from the Alaska

1 Department of Health and Social Services. A "do not resuscitate order"
2 means a directive from a licensed physician that emergency
3 cardiopulmonary resuscitation should not be administered to you.

4 (6) END-OF-LIFE DECISIONS. Except to the extent
5 prohibited by law, I direct that my health care providers and others
6 involved in my care provide, withhold, or withdraw treatment in
7 accordance with the choice I have marked below: (Check only one
8 box.)

9 (A) Choice To Prolong Life

10 I want my life to be prolonged as long as
11 possible within the limits of generally accepted health care
12 standards; OR

13 (B) Choice Not To Prolong Life

14 I want comfort care only and I do not want my
15 life to be prolonged with medical treatment if, in the judgment
16 of my physician, I have (check all choices that represent your
17 wishes)

18 (i) a condition of permanent
19 unconsciousness: a condition that, to a high degree of
20 medical certainty, will last permanently without
21 improvement; in which, to a high degree of medical
22 certainty, thought, sensation, purposeful action, social
23 interaction, and awareness of myself and the
24 environment are absent; and for which, to a high degree
25 of medical certainty, initiating or continuing life-
26 sustaining procedures for me, in light of my medical
27 outcome, will provide only minimal medical benefit for
28 me; or

29 (ii) a terminal condition: an
30 incurable or irreversible illness or injury that without the
31 administration of life-sustaining procedures will result in

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my death in a short period of time, for which there is no reasonable prospect of cure or recovery, that imposes severe pain or otherwise imposes an inhumane burden on me, and for which, in light of my medical condition, initiating or continuing life-sustaining procedures will provide only minimal medical benefit;

Additional instructions: _____

(C) Artificial Nutrition and Hydration. If I am unable to safely take nutrition, fluids, or nutrition and fluids (check your choices or write your instructions),

I wish to receive artificial nutrition and hydration indefinitely;

I wish to receive artificial nutrition and hydration indefinitely, unless it clearly increases my suffering and is no longer in my best interest;

I wish to receive artificial nutrition and hydration on a limited trial basis to see if I can improve;

In accordance with my choices in (6)(B) above, I do not wish to receive artificial nutrition and hydration.

Other instructions: _____

(D) Relief from Pain.

I direct that adequate treatment be provided at all times for the sole purpose of the alleviation of pain or discomfort; or

I give these instructions:

(E) Should I become unconscious and I am pregnant, I direct that _____

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(7) OTHER WISHES. (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that

Conditions or limitations: _____

(Add additional sheets if needed.)

PART 3
ANATOMICAL GIFT AT DEATH
(OPTIONAL)

If you are satisfied to allow your agent to determine whether to make an anatomical gift at your death, you do not need to fill out this part of the form.

(8) Upon my death: (mark applicable box)

(A) I give any needed organs, tissues, or other body parts, OR

(B) I give the following organs, tissues, or other body parts only _____

(C) My gift is for the following purposes (mark any of the following you want):

(i) transplant;

(ii) therapy;

(iii) research;

(iv) education.

(D) I refuse to make an anatomical gift.

PART 4

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MENTAL HEALTH TREATMENT

This part of the declaration allows you to make decisions in advance about mental health treatment. 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 not competent and cannot make treatment decisions. Otherwise, you will be considered to be competent and to have the capacity to give or withhold consent for the treatments.

If you are satisfied to allow your agent to determine what is best for you in making these mental health decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(9) PSYCHOTROPIC MEDICATIONS. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding psychotropic medications are as follows:

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

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

Conditions or limitations: _____

(10) ELECTROCONVULSIVE TREATMENT. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding electroconvulsive treatment are as follows:

_____ I consent to the administration of electroconvulsive treatment.

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

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Conditions or limitations: _____

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(11) ADMISSION TO AND RETENTION IN FACILITY. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding admission to and retention in a mental health facility for mental health treatment are as follows:

_____ I consent to being admitted to a mental health facility for mental health treatment for up to _____ days. (The number of days not to exceed 17.)

_____ I do not consent to being admitted to a mental health facility for mental health treatment.

Conditions or limitations: _____

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OTHER WISHES OR INSTRUCTIONS

Conditions or limitations: _____

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PART 5

PRIMARY PHYSICIAN

(OPTIONAL)

(12) I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

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OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

(13) EFFECT OF COPY. A copy of this form has the same effect as the original.

(14) SIGNATURES. Sign and date the form here:

(date) (sign your name)

(print your name)

(address) (city) (state) (zip code)

(15) WITNESSES. This advance care health directive will not be valid for making health care decisions unless it is

(A) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; the witnesses may not be a health care provider employed at the health care institution or health care facility where you are receiving health care, an employee of the health care provider who is providing health care to you, an employee of the health care institution or health care facility where you are receiving health care, or the person appointed as your agent by this document; at least one of the two witnesses may not be related to you by blood, marriage, or adoption or entitled to a portion of your estate upon your death

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under your will or codicil; or
(B) acknowledged before a notary public in the
state.

ALTERNATIVE NO. 1

Witness Who is Not Related to or a Devisee of the Principal

I swear under penalty of perjury under
AS 11.56.200 that the principal is personally known to me, that
the principal signed or acknowledged this durable power of
attorney for health care in my presence, that the principal
appears to be of sound mind and under no duress, fraud, or
undue influence, that I am not

(1) a health care provider employed at the health care
institution or health care facility where the principal is receiving health
care;

(2) an employee of the health care provider providing
health care to the principal;

(3) an employee of the health care institution or health
care facility where the principal is receiving health care;

(4) the person appointed as agent by this document;

(5) related to the principal by blood, marriage, or
adoption; or

(6) entitled to a portion of the principal's estate upon the
principal's death under a will or codicil.

(date) (signature of witness)

(printed name of witness)

(address) (city) (state) (zip code)

Witness Who May be Related to or a Devisee of the Principal

I swear under penalty of perjury under AS 11.56.200

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that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney for health care in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not

(1) a health care provider employed at the health care institution or health care facility where the principal is receiving health care;

(2) an employee of the health care provider who is providing health care to the principal;

(3) an employee of the health care institution or health care facility where the principal is receiving health care; or

(4) the person appointed as agent by this document.

(date) (signature of witness)

(printed name of witness)

(address) (city) (state) (zip code)

ALTERNATIVE NO. 2

State of Alaska

_____ Judicial District

On this ____ day of _____, in the year _____, before me, _____

(insert name of notary public) appeared

_____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that the person executed it.

Notary Seal

(signature of notary public)

1 **Sec. 13.52.390. Definitions.** In this chapter, unless the context otherwise
2 requires,

3 (1) "advance health care directive" means an individual instruction or a
4 durable power of attorney for health care;

5 (2) "agent" means an individual designated in a durable power of
6 attorney for health care to make a health care decision for the individual granting the
7 power;

8 (3) "anatomical gift" means an individual instruction that makes a
9 donation of all or a part of an individual's body to take effect upon or after death;

10 (4) "artificial nutrition and hydration" means medically appropriate
11 nutrition and hydration delivered

12 (A) through an intravenous needle placed directly in a vein; or

13 (B) by a tube that is inserted into a functioning gastrointestinal
14 tract;

15 (5) "available" means, when referring to a person, that the

16 (A) person's existence is known;

17 (B) person can be contacted;

18 (C) person does not lack capacity;

19 (D) person does not refuse to accept the position; and

20 (E) person is willing to make a health care decision;

21 (6) "best interest" means that the benefits to the individual resulting
22 from a treatment outweigh the burdens to the individual resulting from that treatment
23 after assessing

24 (A) the effect of the treatment on the physical, emotional, and
25 cognitive functions of the patient;

26 (B) the degree of physical pain or discomfort caused to the
27 individual by the treatment or the withholding or withdrawal of the treatment;

28 (C) the degree to which the individual's medical condition, the
29 treatment, or the withholding or withdrawal of treatment, results in a severe
30 and continuing impairment;

31 (D) the effect of the treatment on the life expectancy of the

1 patient;

2 (E) the prognosis of the patient for recovery, with and without
3 the treatment;

4 (F) the risks, side effects, and benefits of the treatment or the
5 withholding of treatment; and

6 (G) the religious beliefs and basic values of the individual
7 receiving treatment, to the extent that these may assist the decision-maker to
8 determine benefits and burdens;

9 (7) "capacity," except in (9) of this section, means an individual's
10 ability to receive and evaluate information effectively or communicate decisions to the
11 extent necessary to make mental health treatment decisions;

12 (8) "cardiopulmonary resuscitation" means an attempt to restore
13 spontaneous circulation;

14 (9) "competent" means that an individual has the capacity

15 (A) to assimilate relevant facts and to appreciate and
16 understand the individual's situation with regard to those facts; and

17 (B) to participate in treatment decisions by means of a rational
18 thought process;

19 (10) "decedent" means a deceased individual or infant, but does not
20 include a dead or stillborn fetus;

21 (11) "department" means the Department of Health and Social
22 Services;

23 (12) "document of gift" means a card, a statement attached to or
24 imprinted on a driver's license, a will, an advance health care directive under
25 AS 13.52.300, or another writing used to make an anatomical gift;

26 (13) "donor" means an individual who makes an anatomical gift;

27 (14) "do not resuscitate identification" means an identification card,
28 form, necklace, or bracelet that carries the standardized design or symbol developed
29 by the department under AS 13.52.065 to signify, when carried or worn, that the
30 carrier or wearer is an individual for whom a physician has issued a do not resuscitate
31 order;

1 (15) "do not resuscitate order" means a directive from a licensed
2 physician that emergency cardiopulmonary resuscitation should not be administered to
3 a qualified patient;

4 (16) "durable power of attorney for health care" means a power of
5 attorney that remains in effect when the principal lacks capacity; in this paragraph,
6 "power of attorney" means the designation of an agent to make health care decisions
7 for the individual granting the power;

8 (17) "generally accepted health care standards" includes the protocol
9 for do not resuscitate orders that is adopted under AS 13.52.065;

10 (18) "guardian" means a judicially appointed person having authority
11 to make a health care decision for an individual;

12 (19) "health care" means any care, treatment, service, or procedure to
13 maintain, diagnose, or otherwise affect an individual's physical or mental condition;

14 (20) "health care decision" means a decision made by an individual or
15 the individual's agent, guardian, or surrogate regarding the individual's health care,
16 including

17 (A) selection and discharge of health care providers and
18 institutions;

19 (B) approval or disapproval of proposed diagnostic tests,
20 surgical procedures, and programs of medication;

21 (C) direction to provide, withhold, or withdraw artificial
22 nutrition and hydration if providing, withholding, or withdrawing artificial
23 nutrition, artificial hydration, or artificial nutrition and hydration is in accord
24 with generally accepted health care standards applicable to health care
25 providers or institutions;

26 (D) the administration or withdrawal of psychotropic
27 medications, the use of electroconvulsive treatment, and the admission to a
28 mental health facility; and

29 (E) making an anatomical gift at death;

30 (21) "health care facility" means a nursing home, a rehabilitation
31 center, a long-term care facility, and any other health care institution that administers

1 health care and that provides overnight stays in the ordinary course of the facility's
2 business;

3 (22) "health care institution" means an institution, facility, or agency
4 licensed, certified, or otherwise authorized or permitted by law to provide health care
5 in the ordinary course of business;

6 (23) "health care provider" means an individual licensed, certified, or
7 otherwise authorized or permitted by law to provide health care in the ordinary course
8 of business or practice of a profession;

9 (24) "hospital" means

10 (A) a facility licensed, accredited, or approved as a hospital
11 under the laws of this state; or

12 (B) a facility operated as a hospital by the United States
13 government, this state, or a subdivision of this state;

14 (25) "individual instruction" means an individual's direction
15 concerning a health care decision for the individual;

16 (26) "life-sustaining procedures" means any medical treatment,
17 procedure, or intervention that, in the judgment of the primary physician, when
18 applied to a patient with a qualifying condition, would not be effective to remove the
19 qualifying condition, would serve only to prolong the dying process, or, when
20 administered to a patient with a condition of permanent unconsciousness, may keep
21 the patient alive but is not expected to restore consciousness; in this paragraph,
22 "medical treatment, procedure, or intervention" includes assisted ventilation, renal
23 dialysis, surgical procedures, blood transfusions, and the administration of drugs,
24 including antibiotics, or artificial nutrition and hydration;

25 (27) "mental health facility" has the meaning given to "designated
26 treatment facility" in AS 47.30.915;

27 (28) "mental health treatment" means electroconvulsive treatment,
28 treatment with psychotropic medication, or admission to and retention in a health care
29 institution for mental health treatment;

30 (29) "organ procurement organization" means an organization that has
31 been designated by the United States Department of Health and Human Services to

1 coordinate activities for the procurement of body parts for any portion of this state;

2 (30) "part" means an organ, tissue, an eye, a bone, an artery, blood,
3 fluid, or another portion of a human body, except fetal tissue;

4 (31) "permanent unconsciousness" means a condition

5 (A) that, to a high degree of medical certainty, will last
6 permanently without improvement;

7 (B) in which, to a high degree of medical certainty, thought,
8 sensation, purposeful action, social interaction, and awareness of self and the
9 environment are absent; and

10 (C) for which, to a high degree of medical certainty, initiating
11 or continuing life-sustaining procedures, in light of the patient's medical
12 outcome, provides only minimal medical benefit;

13 (32) "person" means an individual, corporation, business trust, estate,
14 trust, partnership, joint venture, association, government, governmental subdivision,
15 governmental agency, or another legal or commercial entity;

16 (33) "physician" or "surgeon" means an individual licensed or
17 otherwise authorized to practice medicine and surgery or osteopathy and surgery under
18 the laws of any state;

19 (34) "primary physician" means a physician designated by an
20 individual, or by the individual's agent, guardian, or surrogate, to have primary
21 responsibility for the individual's health care or, in the absence of a designation or if
22 the designated physician is not reasonably available, a physician who undertakes the
23 responsibility;

24 (35) "qualified patient" means a patient with a qualifying condition
25 who is eligible for do not resuscitate identification;

26 (36) "qualifying condition" means a terminal condition or permanent
27 unconsciousness in a patient;

28 (37) "reasonably available" means available using a level of diligence
29 appropriate to the seriousness and urgency of an individual's health care needs;

30 (38) "state" means a state, territory, or possession of the United States,
31 the District of Columbia, or the Commonwealth of Puerto Rico;

1 (39) "supervising health care provider" means the primary physician or
2 the physician's designee, or the health care provider or the provider's designee who has
3 undertaken primary responsibility for an individual's health care;

4 (40) "surrogate" means an individual, other than a patient's agent or
5 guardian, authorized under this chapter to make a health care decision for the patient;

6 (41) "technician" means an individual who is licensed or certified by
7 the State Medical Board to remove or process a part.

8 (42) "terminal condition" means an incurable or irreversible illness or
9 injury

10 (A) that without administration of life-sustaining procedures
11 will result in death in a short period of time;

12 (B) for which there is no reasonable prospect of cure or
13 recovery;

14 (C) that imposes severe pain or otherwise imposes an inhumane
15 burden on the patient; and

16 (D) for which, in light of the patient's medical condition,
17 initiating or continuing life-sustaining procedures will provide only minimal
18 medical benefit.

19 **Sec. 13.52.395. Short title.** This chapter may be cited as the Health Care
20 Decisions Act.

21 * **Sec. 4.** AS 18.65.311 is amended to read:

22 **Sec. 18.65.311. Anatomical gift [OR LIVING WILL DOCUMENT].** (a)
23 The department shall provide, at the time that an identification card is issued, a form
24 for a document by which the card holder may make an anatomical gift under AS 13.52
25 [AS 13.50 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER
26 AS 18.12 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)]. The
27 document (1) may not be larger than an identification card, (2) must contain sufficient
28 space for the signature of two witnesses [OR A PERSON WHO IS QUALIFIED TO
29 TAKE ACKNOWLEDGMENTS UNDER AS 09.63.010], and (3) [MUST USE THE
30 FORMS AND DESIGNS DEVELOPED UNDER AS 18.12.037, AND (4)] must
31 provide a means by which the card holder may cancel the gift [OR THE LIVING

1 WILL]. If the document is executed by the applicant, it shall be sealed in plastic and
2 attached to the identification card. [A SYMBOL DEVELOPED UNDER
3 AS 18.12.037 INDICATING THE EXISTENCE OF THE ANATOMICAL GIFT OR
4 LIVING WILL DOCUMENT MUST BE DISPLAYED IN THE LOWER RIGHT-
5 HAND CORNER ON THE FACE OF THE IDENTIFICATION CARD.]

6 (b) An employee of the department who processes an identification card
7 application, other than an application received by mail, shall ask the applicant orally
8 whether the applicant wishes to execute an anatomical gift [OR A LIVING WILL].
9 The department shall, by placement of posters and brochures in the office where the
10 application is taken, and by oral advice, if requested, make known to the applicant the
11 procedure necessary to execute an anatomical [A] gift under AS 13.52 [AS 13.50 OR
12 A LIVING WILL UNDER AS 18.12].

13 * Sec. 5. AS 28.10.021(c) is amended to read:

14 (c) An employee of the department who processes an application for
15 registration or renewal of registration, other than an application received by mail or an
16 application for registration under AS 28.10.152, shall ask the applicant orally whether
17 the applicant wishes to execute an anatomical gift [OR A LIVING WILL]. The
18 department shall make known to all applicants the procedure for executing an
19 anatomical [A] gift under AS 13.52 (Health Care Decisions Act) [AS 13.50
20 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER AS 18.12
21 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)] by displaying posters
22 in the offices in which applications are taken, by providing a brochure or other written
23 information to each person who applies in person or by mail, and, if requested, by
24 providing oral advice.

25 * Sec. 6. AS 28.15.061(d) is amended to read:

26 (d) An employee of the department who processes a driver's license
27 application, other than an application received by mail, shall ask the applicant orally
28 whether the applicant wishes to execute an anatomical gift [OR A LIVING WILL].
29 The department shall make known to all applicants the procedure for executing an
30 anatomical [A] gift under AS 13.52 (Health Care Decisions Act) [AS 13.50
31 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER AS 18.12

1 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)] by displaying posters
2 in the offices in which applications are taken, by providing a brochure or other written
3 information to each person who applies in person or by mail, and, if requested, by
4 providing oral advice.

5 * Sec. 7. AS 28.15.111(b) is amended to read:

6 (b) The department shall provide, at the time that an operator's license is
7 issued, a form for a document by which the owner of a license may make an
8 anatomical gift under AS 13.52 [AS 13.50 OR A LIVING WILL UNDER AS 18.12].
9 The document (1) may not be larger than an operator's license, (2) must contain
10 sufficient space for the signature of two witnesses [OR A PERSON WHO IS
11 QUALIFIED TO TAKE ACKNOWLEDGMENTS UNDER AS 09.63.010], and (3)
12 [MUST USE THE FORMS AND DESIGNS DEVELOPED UNDER AS 18.12.037,
13 AND (4)] must provide a means by which the owner may cancel the anatomical gift
14 [OR THE LIVING WILL]. If the document is executed by the applicant, it shall be
15 sealed in plastic and attached to the license. [A SYMBOL DEVELOPED UNDER
16 AS 18.12.037 INDICATING THE EXISTENCE OF THE ANATOMICAL GIFT OR
17 LIVING WILL DOCUMENT MUST BE DISPLAYED IN THE LOWER RIGHT-
18 HAND CORNER ON THE FACE OF THE DRIVER'S LICENSE.]

19 * Sec. 8. AS 47.30 is amended by adding a new section to article 9 to read:

20 **Sec. 47.30.817. Advance health care directives.** A health care provider or a
21 health care institution may not require or prohibit the execution or revocation of an
22 advance health care directive as a condition for admission, discharge, or providing
23 health care. In this section, "advance health care directive," "health care institution,"
24 and "health care provider" have the meanings given in AS 13.52.390.

25 * Sec. 9. AS 47.30.825(b) is amended to read:

26 (b) The patient and the following persons, at the request of the patient, are
27 entitled to participate in formulating the patient's individualized treatment plan and to
28 participate in the evaluation process as much as possible, at minimum to the extent of
29 requesting specific forms of therapy, inquiring why specific therapies are or are not
30 included in the treatment program, and being informed as to the patient's present
31 medical and psychological condition and prognosis: (1) the patient's counsel, (2) the

1 patient's guardian, (3) a mental health professional previously engaged in the patient's
2 care outside of the evaluation facility or designated treatment facility, (4) a
3 representative of the patient's choice, (5) a person designated as the patient's agent or
4 surrogate [ATTORNEY-IN-FACT] with regard to mental health treatment decisions
5 under AS 13.52 [AS 13.26.332 - 13.26.358, AS 47.30.950 - 47.30.980, OR OTHER
6 POWER-OF-ATTORNEY], and (6) the adult designated under AS 47.30.725. The
7 mental health care professionals may not withhold any of the information described in
8 this subsection from the patient or from others if the patient has signed a waiver of
9 confidentiality or has designated the person who would receive the information as an
10 agent or surrogate under AS 13.52 [ATTORNEY-IN-FACT] with regard to mental
11 health treatment.

12 * **Sec. 10.** AS 47.30.825(f) is amended to read:

13 (f) A patient capable of giving informed consent has the absolute right to
14 accept or refuse electroconvulsive therapy or aversive conditioning. A patient who
15 lacks substantial capacity to make this decision may not be given this therapy or
16 conditioning without a court order unless the patient expressly authorized that
17 particular form of treatment in an advance health care directive [A
18 DECLARATION] properly executed under AS 13.52 [AS 47.30.950 - 47.30.980] or
19 has authorized an agent or surrogate under AS 13.52 [ATTORNEY-IN-FACT] to
20 make this decision and the agent or surrogate [ATTORNEY-IN-FACT] consents to
21 the treatment on behalf of the patient.

22 * **Sec. 11.** AS 47.30.836 is amended to read:

23 **Sec. 47.30.836. Psychotropic medication in nonemergency.** An evaluation
24 facility or designated treatment facility may not administer psychotropic medication to
25 a patient in a situation that does not involve a crisis under AS 47.30.838(a)(1) unless
26 the patient

27 (1) has the capacity to give informed consent to the medication, as
28 described in AS 47.30.837, and gives that consent; the facility shall document the
29 consent in the patient's medical chart;

30 (2) authorized the use of psychotropic medication in an advance
31 health care directive [A DECLARATION] properly executed under AS 13.52

1 [AS 47.30.950 - 47.30.980] or authorized an agent or surrogate under AS 13.52
2 [ATTORNEY-IN-FACT] to consent to the use of psychotropic medication for the
3 patient and the agent or surrogate [ATTORNEY-IN-FACT] does consent; or

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

7 * Sec. 12. AS 47.30.838(d) is amended to read:

8 (d) An evaluation facility or designated treatment facility may administer
9 psychotropic medication to a patient without the patient's informed consent if the
10 patient is unable to give informed consent but has authorized the use of psychotropic
11 medication in an advance health care directive [A DECLARATION] properly
12 executed under AS 13.52 [AS 47.30.950 - 47.30.980] or has authorized an agent or
13 surrogate under AS 13.52 [ATTORNEY-IN-FACT] to consent to this form of
14 treatment for the patient and the agent or surrogate [ATTORNEY-IN-FACT] does
15 consent.

16 * Sec. 13. AS 47.30.839(d) is amended to read:

17 (d) Upon the filing of a petition under (b) of this section, the court shall direct
18 the office of public advocacy to provide a visitor to assist the court in investigating the
19 issue of whether the patient has the capacity to give or withhold informed consent to
20 the administration of psychotropic medication. The visitor shall gather pertinent
21 information and present it to the court in written or oral form at the hearing. The
22 information must include documentation of the following:

23 (1) the patient's responses to a capacity assessment instrument
24 administered at the request of the visitor;

25 (2) any expressed wishes of the patient regarding medication,
26 including wishes that may have been expressed in a power of attorney, a living will,
27 an advance health care directive under AS 13.52, or oral statements of the patient,
28 including conversations with relatives and friends that are significant persons in the
29 patient's life as those conversations are remembered by the relatives and friends; oral
30 statements of the patient should be accompanied by a description of the circumstances
31 under which the patient made the statements, when possible.

1 * Sec. 14. AS 47.33.070(a) is amended to read:

2 (a) An assisted living home shall maintain, for each resident of the home, a
3 file that includes

4 (1) the name and birth date, and, if provided by the resident, the social
5 security number of the resident;

6 (2) the name, address, and telephone number of the resident's closest
7 relative, service coordinator, if any, and representative, if any;

8 (3) a statement of what actions, if any, the resident's representative is
9 authorized to take on the resident's behalf;

10 (4) a copy of the resident's assisted living plan;

11 (5) a copy of the residential services contract between the home and
12 the resident;

13 (6) a notice, as required under AS 47.33.030, regarding the depository
14 in which the resident's advance payment money is being held;

15 (7) written acknowledgment [ACKNOWLEDGEMENT] by the
16 resident or the resident's representative that the resident has received a copy of and has
17 read, or has been read the

18 (A) resident's rights under AS 47.33.300;

19 (B) resident's right to pursue a grievance under AS 47.33.340;

20 (C) resident's right to protection from retaliation under
21 AS 47.33.350;

22 (D) provisions of AS 47.33.510, regarding immunity; and

23 (E) home's house rules;

24 (8) an acknowledgment [ACKNOWLEDGEMENT] and agreement
25 relating to home safekeeping and management of the resident's money, as required by
26 AS 47.33.040;

27 (9) a copy of the resident's living will, if any, or an advance health
28 care directive made under AS 13.52, if any; and

29 (10) a copy of a power of attorney or other written designation,
30 including an advance health care directive made under AS 13.52, of an agent,
31 representative, or surrogate by the resident.

1 * **Sec. 15.** AS 13.26.332(L), 13.26.335(1), 13.26.344(I); AS 13.50.010, 13.50.014,
2 13.50.016, 13.50.020, 13.50.030, 13.50.040, 13.50.050, 13.50.060, 13.50.065, 13.50.068,
3 13.50.070, 13.50.080, 13.50.090; AS 18.12.010, 18.12.020, 18.12.030, 18.12.035, 18.12.037,
4 18.12.040, 18.12.050, 18.12.060, 18.12.070, 18.12.080, 18.12.090, 18.12.100; AS 47.30.950,
5 47.30.952, 47.30.954, 47.30.956, 47.30.958, 47.30.960, 47.30.962, 47.30.964, 47.30.966,
6 47.30.968, 47.30.970, 47.30.972, and 47.30.980 are repealed.

7 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 CONTINUING EFFECT OF EXISTING DOCUMENTS. (a) An anatomical gift
10 made under AS 13.50 or AS 18.12, repealed by sec. 15 of this Act, before the effective date of
11 secs. 1 - 15 of this Act continues in effect under AS 13.50 or AS 18.12, as those chapters exist
12 before the effective date of secs. 1 - 15 of this Act, until the donation is revoked.

13 (b) A power of attorney that is made under AS 13.26.332(L), 13.26.335(1), or
14 13.26.344(I), repealed by sec. 15 of this Act, before the effective date of secs. 1 - 15 of this
15 Act and that contains authority for health care services under AS 13.26.332(L),
16 AS 13.26.335(1), or 13.26.344(I), repealed by sec. 15 of this Act, continues in effect under
17 AS 13.26.332(L), 13.26.335(1), and 13.26.344(I), as those provisions exist before the
18 effective date of secs. 1 - 15 of this Act, until the power of attorney is revoked.

19 (c) A declaration made under AS 18.12, repealed by sec. 15 of this Act, before the
20 effective date of secs. 1 - 15 of this Act continues in effect under AS 18.12, as that chapter
21 exists before the effective date of secs. 1 - 15 of this Act, until the declaration is revoked.

22 (d) A declaration made under AS 47.30.950 - 47.30.980, repealed by sec. 15 of this
23 Act, before the effective date of secs. 1 - 15 of this Act continues in effect under
24 AS 47.30.950 - 47.30.980, as those sections exist before the effective date of secs. 1 - 15 of
25 this Act, until the declaration is revoked.

26 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 EFFECT ON EXISTING INSURANCE POLICIES AND ANNUITIES.
29 AS 13.52.120(c), added by sec. 3 of this Act, does not apply to a policy of insurance or an
30 annuity that was entered into before the effective date of secs. 1 - 15 of this Act.

31 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION: REGULATIONS. The Department of Health and Social Services
3 may proceed to adopt regulations necessary to implement the changes made by secs. 1 - 15 of
4 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
5 before January 1, 2005.

6 * Sec. 19. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 CONTINUING EFFECT OF CURRENT REGULATIONS. (a) The regulations
9 found at 7 AAC 16, as modified by (b) of this section, continue in effect on and after
10 January 1, 2005, until the Department of Health and Social Services adopts the regulations
11 authorized under sec. 18 of this Act.

12 (b) The regulations attorney in the Department of Law shall

13 (1) in 7 AAC 16.010(a), replace the reference to "AS 18.12.035(b)" with
14 "AS 13.52.065(b)";

15 (2) in 7 AAC 16.010(d)(4), replace the reference to "AS 18.12.090" with
16 "AS 13.52.150";

17 (3) in 7 AAC 16.010(f) and (g), replace the reference to "AS 18.12" with
18 "AS 13.52";

19 (4) in 7 AAC 16.090(1), replace the reference to "AS 18.12.100" with
20 "AS 13.52.390";

21 (5) in 7 AAC 16.090(3), replace "'do-not-resuscitate order" in AS 18.12.100"
22 with "'do not resuscitate order" in AS 13.52.390."

23 * Sec. 20. Section 18 of this Act takes effect immediately under AS 01.10.070(c).

24 * Sec. 21. Except as provided in sec. 20 of this Act, this Act takes effect January 1, 2005.