

**HB**

**442**

Representative Peggy Wilson  
State Capitol, Room 108  
Juneau, AK 99801  
Phone: 907-465-3824  
Toll Free: 800-686-3824  
Fax: 907-465-3175  
Rep.Peggy.Wilson@legis.state.ak.us

**STATE OF ALASKA**

*Representative Peggy Wilson*

**House District 2**

**FAX TRANSMITTAL SHEET**

TO: Leg. Legal Terry Bannister 6650

FAX # 2029 DATE 3/5/06

# of PAGES (total): 11 w/cover

**FROM:**

Representative Peggy Wilson  
 Jean Ellis  
 Becky Rooney  
 Linda Miller - 3759  
 Aaron Danielson

**COMMENTS:**

Please incorporate the attached two amendments into a final  
CS for HB 442. The version adopted is G.

Thanks

Linda

AMENDMENT # 1

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: HB 442

1 Page 3, lines 24 - 26:

2 Delete "or if the physician reasonably believes that the patient does not have a  
3 qualifying condition"

4

5 Page 4, line 25, following "chapter;":

6 Insert "or"

7

8 Page 4, lines 27 - 31:

9 Delete "or

10 (D) because the health care provider or institution has a  
11 good faith belief that the condition requiring cardiopulmonary  
12 resuscitation or other resuscitative measures is not precipitated by a  
13 qualifying condition;"

**AMENDMENT** H 2

OFFERED IN THE HOUSE  
TO: HB 442

BY REPRESENTATIVE GARDNER

1 Page 1, line 4:

2 Delete "of health care providers and institutions"

3 Insert "and discipline of health care providers, institutions, and facilities"

4

5 Page 2, line 25, through page 3, line 10:

6 Delete all material.

7

8 Renumber the following bill sections accordingly.

9

10 Page 4, line 25, following "chapter;":

11 Insert "or"

12

13 Page 4, lines 27 - 31:

14 Delete "or

15

16

17

18

19

20 Page 5, lines 3 - 12:

21 Delete all material and insert:

22 "\*\* Sec. 7. AS 13.52.080 is amended by adding a new subsection to read:

23

(c) A health care provider, health care institution, or health care facility is not

1 subject to civil or criminal liability, or to discipline for unprofessional conduct, if a do  
2 not resuscitate order prevents the health care provider, health care institution, or health  
3 care facility from attempting to resuscitate a patient who requires cardiopulmonary  
4 resuscitation or other r suscitative measures because of complications arising out of  
5 health care being administered to the patient by the health care provider, health care  
6 institution, or health care facility. This subsection does not apply if the complications  
7 suffered by the patient are caused by reckless or intentional actions on the part of the  
8 health care provider, health care institution, or health care facility."  
9

10 Renumber the following bill sections accordingly.

11

12 Page 6, line 4:

13 Delete "sec. 7"

14 Insert "sec. 5"

**Amendment to A M E N D M E N T #2**

OFFERED IN THE HOUSE HEALTH,  
EDUCATION AND SOCIAL  
SERVICES COMMITTEE  
TO: HB 442 Version G

BY Rep.Gardner  
DATE 2/28/06

- 1 Amendment to Amendment #2
- 2 Page 2, line 7,

After "...patient are caused by" insert gross negligence, before "reckless".

• Bill with markings of  
proposed amendment  
by Gardner

24-LS1618\G

HOUSE BILL NO. 442

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE WEYHRAUCH

Introduced: 2/10/06

Referred: Health, Education and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the validity of advance health care directives, individual health care  
2 instructions, and do not resuscitate orders; relating to the revocation of advance health  
3 care directives; relating to do not resuscitate orders; relating to resuscitative measures;  
4 relating to the liability ~~of health care providers and institutions~~ relating to an ~~individual's~~  
5 individual's capacity for making health care decisions; and providing for an effective  
6 date."

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

8 \* Section 1. AS 13.52.010(k) is amended to read:

9 (k) An advance health care directive, including an advance health care  
10 directive that is made in compliance with the laws of another state, is valid for  
11 purposes of this chapter if [TO THE EXTENT THAT] it complies with [THE LAWS  
12 OF] this chapter, regardless of where or when it was executed or communicated  
13 [STATE].

1 \* Sec. 2. AS 13.52.010 is amended by adding a new subsection to read:

2 (I) Notwithstanding the sample form provided under AS 13.52.300, an  
3 individual instruction that would be valid by itself under this chapter is valid even if  
4 the individual instruction is contained in a writing that also contains a durable power  
5 of attorney for health care and the durable power of attorney does not meet the  
6 witnessing or other requirements of this chapter.

7 \* Sec. 3. AS 13.52.020(c) is amended to read:

8 (c) In the case of mental illness, an advance health care directive may be  
9 revoked in whole or in part at any time by the principal if the principal does not lack  
10 capacity and is competent. A revocation is effective when a competent principal with  
11 capacity communicates the revocation to a [THE ATTENDING] physician or other  
12 health care provider. The [ATTENDING] physician or other health care provider shall  
13 note the revocation on the principal's medical record. In the case of mental illness, the  
14 authority of a named agent and an alternative agent named in the advance health care  
15 directive continues in effect as long as the advance health care directive appointing the  
16 agent is in effect or until the agent has withdrawn. For the purposes of this subsection,  
17 a principal is not considered competent when

18 (1) it is the opinion of the court in a guardianship proceeding under  
19 AS 13.26, the opinion of two physicians, at least one of whom is a psychiatrist, or the  
20 opinion of a physician and a professional mental health clinician, that the principal is  
21 not competent; or

22 (2) a court in a hearing under AS 47.30.735, 47.30.750, or 47.30.770  
23 determines that the principal is gravely disabled; in this paragraph, "gravely disabled"  
24 has the meaning given in AS 47.30.915(7)(B).

25 \* Sec. 4. AS 13.52.060(d) is amended to read:

26 (d) Except as provided in (e), (f), and (i) [(e) AND (f)] of this section, a health  
27 care provider, health care institution, or health care facility providing care to a patient  
28 shall comply with

29 (1) an individual instruction of the patient and with a reasonable  
30 interpretation of that instruction made by a person then authorized to make health care  
31 decisions for the patient; and

1 (2) a health care decision for the patient made by a person then  
 2 authorized to make health care decisions for the patient to the same extent as if the  
 3 decision had been made by the patient while having capacity.

4 \* Sec. 5. AS 13.52.060 is amended by adding a new subsection to read:

5 (i) Notwithstanding the exception in (e) of this section for do not resuscitate  
 6 orders, a health care provider may perform cardiopulmonary resuscitation or other  
 7 resuscitative measures on a patient even if there is a do not resuscitate order for the  
 8 patient if the condition requiring cardiopulmonary resuscitation or other resuscitative  
 9 measures is precipitated by complications arising out of medical services being  
 10 provided by the health care provider to the patient.

11 \* Sec. 6. AS 13.52.065(a) is amended to read:

12 (a) A [AN ATTENDING] physician may issue a do not resuscitate order for a  
 13 patient of the physician. The physician shall document the grounds for the order in the  
 14 patient's medical file.

15 \* Sec. 7. AS 13.52.065(f) is amended to read:

16 (f) A do not resuscitate order may not be made ineffective unless a physician  
 17 revokes the do not resuscitate order, a patient for whom the order is written and  
 18 who has capacity requests that the do not resuscitate order be revoked, or the  
 19 patient for whom the order is written is under 18 years of age and the parent or  
 20 guardian of the patient requests that the do not resuscitate order be revoked. Any  
 21 physician of a patient for whom [ A REQUEST TO REVOKE] a do not resuscitate  
 22 order is written may revoke the do not resuscitate [ONLY BE MADE BY THE  
 23 PERSON FOR WHOM THE] order [IS WRITTEN OR,] if the person for whom the  
 24 order is written requests that the physician revoke the do not resuscitate order or  
 25 if the physician reasonably believes that the patient does not have a qualifying  
 26 condition [IS UNDER 18 YEARS OF AGE, BY THE PARENT OR GUARDIAN OF  
 27 THE PERSON].

28 \* Sec. 8. AS 13.52.080(a) is amended to read:

29 (a) A [IF A] health care provider or health care institution that acts [MAKES  
 30 REASONABLE EFFORTS, WITH A LEVEL OF DILIGENCE APPROPRIATE TO  
 31 THE SERIOUSNESS AND URGENCY OF THE SITUATION, TO ENSURE THE

1 VALIDITY OF AN ADVANCE HEALTH CARE DIRECTIVE OR A PERSON'S  
2 ASSUMPTION OF AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR A  
3 PATIENT, A HEALTH CARE PROVIDER OR INSTITUTION ACTING] in good  
4 faith and in accordance with generally accepted health care standards applicable to the  
5 health care provider or institution is not subject to civil or criminal liability or to  
6 discipline for unprofessional 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 good  
10 faith [REASONABLE] belief that the person has authority to make a health care  
11 decision for a 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 good faith [REASONABLE] belief that the person then lacked authority;

14 (4) complying with an advance health care directive and  
15 [REASONABLY] assuming in good faith that the directive was valid when made and  
16 has not been revoked or 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 13.52.065(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 13.52.065(f) or another provision of this chapter; [REDACTED]

26 (C) because the patient is a woman of childbearing age and  
27 AS 13.52.055 applies for

28 (D) because the health care provider or institution has a  
29 good faith belief that the condition requiring cardiopulmonary  
30 resuscitation or other resuscitative measures is not precipitated by a  
31 qualifying condition; or

1 (7) acting in good faith under the terms of this chapter or the law of  
 2 another state relating to anatomical gifts.

3 \* Sec. 9. AS 13.52.100(c) is amended to read:

4 (c) An individual who is a qualified patient, including an individual for whom  
 5 a physician has issued a do not resuscitate order, has the right to make a decision  
 6 regarding the use of cardiopulmonary resuscitation and other life-sustaining  
 7 procedures as long as the individual is able to make the decision. Except as provided  
 8 by AS 13.52.060(l), if [IF] an individual who is a qualified patient, including an  
 9 individual for whom a physician has issued a do not resuscitate order, is not able to  
 10 make the decision, the protocol adopted under AS 13.52.065 for do not resuscitate  
 11 orders governs a decision regarding the use of cardiopulmonary resuscitation and other  
 12 life-sustaining procedures.

13 \* Sec. 10. AS 13.52.150 is amended to read:

14 **Sec. 13.52.150. Do not resuscitate orders and identification of other**  
 15 **jurisdictions.** A do not resuscitate order or a do not resuscitate identification  
 16 executed, issued, or authorized in another state or a territory or possession of the  
 17 United States is valid [IN COMPLIANCE WITH THE LAW OF THAT  
 18 JURISDICTION IS RECOGNIZED] for the purposes of this chapter if it complies  
 19 with the laws of this state. A health care provider or health care institution may  
 20 presume, in the absence of actual notice to the contrary, that [. HOWEVER,] the  
 21 do not resuscitate order or the do not resuscitate identification complies [MAY BE  
 22 IMPLEMENTED ONLY TO THE EXTENT THAT THE IMPLEMENTATION  
 23 DOES NOT CONFLICT] with the laws of this state, regardless of where or when it  
 24 was executed, issued, or authorized, and that the patient is a qualified patient.

25 \* Sec. 11. AS 13.52.390(7) is amended to read:

26 (7) "capacity," except in (9) of this section, means an individual's  
 27 ability to receive and evaluate information effectively and to make and effectively  
 28 [OR] communicate health care decisions [TC THE EXTENT NECESSARY TO  
 29 MAKE MENTAL HEALTH TREATMENT DECISIONS];

30 \* Sec. 12. The uncodified law of the State of Alaska is amended by adding a new section to  
 31 read:

1 CONTINUING EFFECT OF DO NOT RESUSCITATE ORDERS. A do not  
2 resuscitate order made under AS 18.12 before January 1, 2005, continues in effect under  
3 AS 13.52 unless the do not resuscitate order is made ineffective under AS 13.52.065(f),  
4 amended by sec. 7 <sup>sec 5</sup> of this Act, or under another provision of AS 13.52.

5 \* Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to  
6 read:

7 DIRECTIONS TO REGULATIONS ATTORNEY. The regulations attorney in the  
8 Department of Law shall

9 (1) replace in 7 AAC 16.010(d)(5) the reference to "an attending physician's  
10 DNR order" with "a DNR order by a physician of the patient";

11 (2) replace in 7 AAC 16.010(d)(5)(B) the reference to "attending physician"  
12 with "physician of the patient";

13 (3) delete in 7 AAC 16.010(g) "attending."

14 \* Sec. 14. This Act takes effect immediately under AS 01.10.070(c).

# 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 1, 2006

**SUBJECT:** CSHB 442(HES) relating health care matters  
(Work Order No. 24-LS1618\F)

**TO:** Representative Peggy Wilson  
Chair of House Health, Education and Social Services Committee  
Attn: Linda

**FROM:** *TB*  
Theresa Bannister  
Legislative Counsel

This memo accompanies a draft of the bill described above.

Amendment of AS 13.52.100(c). The amendments removed former sec. 9 from the bill. That section amended AS 13.52.100(c) to accommodate the proposed AS 13.52.060(i). Please consider whether sec. 9 needs to be reinserted to avoid a conflict with AS 13.52.060(i)

If I may be of further assistance, please advise.

TLB:med  
06-181.med

Enclosure



# ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA  
STATE CAPITOL  
JUNEAU, ALASKA  
99801-1182

(907) 465-3744  
FAX (907) 465-2273

## Sponsor Statement for House Bill 442

Passage of the Health Care Decisions Act ("Alaska Act") in 2004, was an important step forward in modernizing and improving Alaska's health care laws for the terminally ill, their families, and loved ones. House Bill 442 makes minor changes to the Alaska Act in order to provide clearer direction to those implementing health care decisions.

Current law imposes a duty of investigation upon doctors when carrying out the health care directives of their patients. House Bill 442 amends the current statute to conform the language in the Alaska Act to Uniform Act language, thus requiring a doctor to act in "good faith" when time is often critical for their patients. The bill also substitutes the word "physician" for "attending physician", to clarify the intent that all physicians treating a patient adhere to the patient's advanced health care directives. Finally, House Bill 442 clarifies when CPR may be used, addresses the validity of orders from other jurisdictions, and indicates under what circumstances a Do Not Resuscitate order may be revoked.

The Health Care Decisions Act has been beneficial and important for all Alaskans in letting terminally ill patients have their wishes heard. House Bill 442 helps caregivers carry out those wishes.

# LEGAL SERVICES

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

## MEMORANDUM

February 13, 2006

**SUBJECT:** HB 442 relating to health care decisions  
(Work Order No. 24-LS1618\G)

**TO:** Representative Bruce Weyhrauch  
Attn: Jacqueline

**FROM:** *TB*  
Theresa Bannister  
Legislative Counsel

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

**Section 1.** Amends AS 13.52.010(k) to state that an advance health care directive is valid under AS 13.52 if it complies with AS 13.52, no matter where or when it was signed or communicated.

**Section 2.** Adds a new subsection to AS 13.52.010. The new subsection states that an individual instruction that is valid under AS 13.52 is still valid even if it is contained in a writing with a noncomplying durable power of attorney for health care.

**Section 3.** Amends AS 13.52.020(c) to substitute "physician" for "attending physician" with regard to whom an individual may communicate a revocation of an advance health care directive.

**Section 4.** Amends AS 13.52.060(d) to add a new exception to the subsection's requirement that a health care provider, health care institution, or health care facility comply with individual instructions and certain health care decisions made by persons other than the patient. The new exception is found at bill sec. 5.

**Section 5.** Adds a new subsection to AS 13.52.060. The new subsection allows a health care provider to perform resuscitative measures, even if there is a DNR order, if the condition is caused by complications from medical services being provided by the provider.

**Section 6.** Amends AS 13.52.065(a) to remove the limitation that the physician who may issue a DNR order be the attending physician.

**Section 7.** Rewrites AS 13.52.065(f) to indicate under what circumstance a DNR order may be revoked.

**Section 8.** Amends AS 13.52.080(a) to impose a good faith requirement to the test for when a health care provider or a health care institution is not subject to liability or discipline for engaging in certain acts. Also, requires a good faith belief rather than reasonable belief in three of the identified acts. Adds two situations where the provider will not be liable under the main test in the subsection for causing or providing life-sustaining procedures.

**Section 9.** Amends AS 13.52.100(c) to add the exception established by AS 13.52.060(i) in bill section 5 to the subsection's direction as to when the DNR protocol will govern regarding the use of life-sustaining procedures.

**Section 10.** Amends AS 13.52.150 to change the conditions for when a DNR order or identification from another U.S. state, a territory, or a possession is considered valid and to establish a presumption of compliance.

**Section 11.** Amends the definition of "capacity" in AS 13.52.390(7) to include the ability to make and effectively communicate health care decisions.

**Section 12.** Provides that a DNR order made under former AS 18.12 continues to be effective under AS 13.52 unless it is made ineffective (for example, revoked) under AS 13.52.

**Section 13.** Directs the regulations attorney to make certain specified changes to the regulations relating to DNR protocol and identification.

**Section 14.** Gives this Act an immediate effective date.

If I may be of further assistance, please advise.

TLB:ljw  
06-076.ljw

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB442-DHSS-DPH-02-17-06  
 ( ) Publish Date: \_\_\_\_\_  
 Dept. Affected: Health & Social Services  
 RDU: Public Health  
 Component: Community Health/EMS Services

Revision Date/Time (Note if correction): \_\_\_\_\_  
 Title: RELATING TO HEALTH CARE DIRECTIVES

Sponsor: WEYHRAUCH  
 Requester: HOUSE (HES)

Component No. 2078

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (0)</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2006) cost: \_\_\_\_\_  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill follows up on a comprehensive advance directives measure passed by the Legislature and signed into law in 2004. HB442 amends current law in several areas, including the validity of health care directives from other states, clarifying which physicians can issue or revoke health care directives on behalf of a patient, and revising provisions regarding do not resuscitate orders.

Though EMTs and other first responders in Alaska will have to be aware of changes enacted in this bill, there is no additional fiscal impact on the Department of Health and Social Services.

Prepared by: Richard Mandsager, M.D. Phone 465-3092  
 Division: Public Health Date/Time 02/17/2006  
 Approved by: Karleen Jackson, Commissioner Date 02/17/2006  
 Agency: Department of Health and Social Services

Testimony on House Bill 24-LS1618(G)  
"Health Care Decisions Act"

Thank you for the opportunity to provide testimony on the proposed refinements to AS 13.52.010 (k). We are indebted to Representative Weyhrauch and his colleagues in the legislature for taking the time to consider these proposed improvements to this law. I am the practice administrator for a medical group of twenty-four anesthesiologists and a fellow in the American College of Healthcare Executives. I have served in healthcare administration for thirty-two years.

The medical group for which I work provides a minimum of five to seventeen physicians on call twenty four hours per day, seven days per week to serve the patients at Providence Alaska Medical Center. Responses to airway emergencies, "codes", cardiovascular emergencies, and other life threatening situations are frequent circumstances as we care for patients in operating rooms, cath labs, Labor and Delivery suites and operating rooms, intensive care units, emergency rooms, and many other areas of the medical center every day.

We do not pick our patients. We care for the patients regardless of means, clinical condition, origin, faith, race, gender, or ethical values. If patients wish to have 'do not resuscitate orders' or health care decisions to guide their care, we respect those wishes. The changes proposed to this law help physicians to honor the decisions of patients and ethically respond to their clinical needs. It reduces the legal burden associated with the care of our patients by removing the requirement that we have knowledge of the laws of 49 other states prior to responding to our patients. It allows us to practice to a standard of "good faith" as we care for our patients. It allows us to respond to the wishes of our patients as they change their decisions during the course of their care. It helps us to match a patient with DNR wishes with a physician that can ethically honor those wishes. For example, a patient electing surgery with anesthesia may, by the nature of the anesthesia, have their heart stop functioning or they may have a machine breathe for them in lieu of their own respiratory system's function. If the patient "codes" and their vital life support systems stop functioning, we are left with the dilemma of deciding if the problem is a byproduct of anesthesia, their physical problems, or the result of the surgery. This may leave us with the options of rescuing the patient, honoring a DNR order, or letting them die. If we let them die, we face the risk of heirs complaining of medical malpractice for the death. If we rescue the patient as we have been trained to do, we face fines and penalties for violating local laws and those of other states. In the vast majority of cases, the patients waive DNR orders during the peri-operative process. We need the clear capacity to have this dialogue with our patients and honor their desires waive a DNR and to survive surgery. If they chose to die in the peri-operative process, this needs to be clear so that we can honor those wishes absent risks of litigation and / or fines for doing so. They need a clear path to re-impose the DNR per their wishes after surgery. The changes to this law help us to achieve those goals.

Our patient care interactions are not always in a structured operating room environment.

Responses to emergencies are measured in very short periods of time with little time to decipher unique health care decisions versus clinical needs. Any changes to the law that make these processes more clear benefit the patients dependent upon the medical staff's responses and actions.

The proposed revisions to this law help us to care for our patients and reduce the diversion of physicians' attention to matters of law when they should be focused on the acute needs of patients. If decisions to rescue patients are to be affected by the law, it must have clear language and clear definitions. The proposed revisions to this law improve the language and definitions. They enhance our capacity to care for patients.

Sincerely,

James H Brooks, FACHA  
Executive Director, PAAMG