

HB

442

SENATE COMMITTEE REPORT

DATE: 4/29/06

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 442(JUD) am

HB 442 HEALTH CARE DECISIONS

"An Act relating to the validity of advance health care directives, individual health care instructions, and do not resuscitate orders; relating to the revocation of advance health care directives; relating to do not resuscitate orders; relating to resuscitative measures; relating to the liability and discipline of health care providers, institutions, and facilities; relating to proceedings for financial relief; relating to an individual's capacity for making health care decisions; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

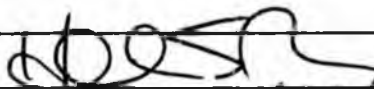
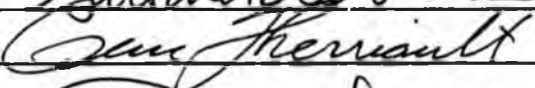
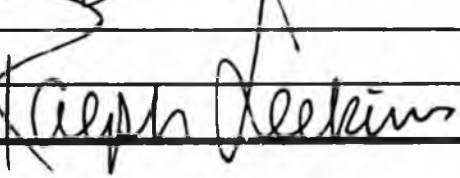
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
				X
Luther B. Green				X
			X	
Sam Theriault			X	
	✓			
CHAIR: Ralph DeBevoise	✓			

ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
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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.

CS FOR HOUSE BILL NO. 442(JUD) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 4/10/06

Offered: 3/29/06

Sponsor(s): REPRESENTATIVES WEYHRAUCH, Dahlstrom

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 and discipline of health care providers, institutions, and facilities;
5 relating to proceedings for judicial relief; relating to an individual's capacity for making
6 health care decisions; and providing for an effective 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 new subsections 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 (j) The provisions of (i) of this section do not apply when a health care
 12 provider performs emergency medical services to a patient in the field, unless an
 13 online physician orders the health care provider to perform cardiopulmonary
 14 resuscitation or other resuscitative measures; in this subsection,

15 (1) "health care provider" does not include a physician;

16 (2) "in the field" does not include in a health care facility, health care
 17 institution, hospital, or mental health facility;

18 (3) "online physician" means a physician who is immediately available
 19 in person or by radio or telephone, when medically appropriate, for communication of
 20 medical direction to health care providers.

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

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

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

26 (f) A do not resuscitate order may not be made ineffective unless a physician
 27 revokes the do not resuscitate order, a patient for whom the order is written and
 28 who has capacity requests that the do not resuscitate order be revoked, or the
 29 patient for whom the order is written is under 18 years of age and the parent or
 30 guardian of the patient requests that the do not resuscitate order be revoked. Any
 31 physician of a patient for whom [A REQUEST TO REVOKE] a do not resuscitate

1 order is written may revoke the do not resuscitate [ONLY BE MADE BY THE
 2 PERSON FOR WHOM THE] order [IS WRITTEN OR,] if the person for whom the
 3 order is written requests that the physician revoke the do not resuscitate order [IS
 4 UNDER 18 YEARS OF AGE, BY THE PARENT OR GUARDIAN OF THE
 5 PERSON].

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

7 (a) A [IF A] health care provider or health care institution that acts [MAKES
 8 REASONABLE EFFORTS, WITH A LEVEL OF DILIGENCE APPROPRIATE TO
 9 THE SERIOUSNESS AND URGENCY OF THE SITUATION, TO ENSURE THE
 10 VALIDITY OF AN ADVANCE HEALTH CARE DIRECTIVE OR A PERSON'S
 11 ASSUMPTION OF AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR A
 12 PATIENT, A HEALTH CARE PROVIDER OR INSTITUTION ACTING] in good
 13 faith and in accordance with generally accepted health care standards applicable to the
 14 health care provider or institution is not subject to civil or criminal liability or to
 15 discipline for unprofessional conduct for

16 (1) providing health care information in good faith under
 17 AS 13.52.070;

18 (2) complying with a health care decision of a person based on a good
 19 faith [REASONABLE] belief that the person has authority to make a health care
 20 decision for a patient, including a decision to withhold or withdraw health care;

21 (3) declining to comply with a health care decision of a person based
 22 on a good faith [REASONABLE] belief that the person then lacked authority;

23 (4) complying with an advance health care directive and
 24 [REASONABLY] assuming in good faith that the directive was valid when made and
 25 has not been revoked or terminated;

26 (5) participating in the withholding or withdrawal of cardiopulmonary
 27 resuscitation under the direction or with the authorization of a physician or upon
 28 discovery of do not resuscitate identification upon an individual;

29 (6) causing or participating in providing cardiopulmonary resuscitation
 30 or other life-sustaining procedures

31 (A) under AS 13.52.065(e) when an individual has made an

1 anatomical gift; [OR]

2 (B) because an individual has made a do not resuscitate order
3 ineffective under AS 13.52.065(f) or another provision of this chapter; or

4 (C) because the patient is a woman of childbearing age and
5 AS 13.52.055 applies; or

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

8 * Sec. 9. AS 13.52.080 is amended by adding a new subsection to read:

9 (c) A health care provider, health care institution, or health care facility is not
10 subject to civil or criminal liability, or to discipline for unprofessional conduct, if a do
11 not resuscitate order prevents the health care provider, health care institution, or health
12 care facility from attempting to resuscitate a patient who requires cardiopulmonary
13 resuscitation or other resuscitative measures because of complications arising out of
14 health care being administered to the patient by the health care provider, health care
15 institution, or health care facility. This subsection does not apply if the complications
16 suffered by the patient are caused by gross negligence or reckless or intentional
17 actions on the part of the health care provider, health care institution, or health care
18 facility.

19 * Sec. 10. AS 13.52.140 is amended to read:

20 **Sec. 13.52.140. Judicial relief.** On petition of a patient, the patient's agent,
21 guardian, or surrogate, or a health care provider or institution involved with the
22 patient's care, the superior court may enjoin or direct a health care decision or order
23 other equitable relief. A proceeding under this section is governed by AS 13.26.090 -
24 13.26.320 [AS 13.26.165 - 13.26.320].

25 * Sec. 11. AS 13.52.150 is amended to read:

26 **Sec. 13.52.150. Do not resuscitate orders and identification of other**
27 **jurisdictions.** A do not resuscitate order or a do not resuscitate identification
28 executed, issued, or authorized in another state or a territory or possession of the
29 United States is valid [IN COMPLIANCE WITH THE LAW OF THAT
30 JURISDICTION IS RECOGNIZED] for the purposes of this chapter if it complies
31 with the laws of this state. A health care provider or health care institution may

1 presume, in the absence of actual notice to the contrary, that [HOWEVER,] the
 2 do not resuscitate order or the do not resuscitate identification complies [MAY BE
 3 IMPLEMENTED ONLY TO THE EXTENT THAT THE IMPLEMENTATION
 4 DOES NOT CONFLICT] with the laws of this state, regardless of where or when it
 5 was executed, issued, or authorized, and that the patient is a qualified patient.

6 * Sec. 12. AS 13.52.390(7) is amended to read:

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

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

13 CONTINUING EFFECT OF DO NOT RESUSCITATE ORDERS. A do not
 14 resuscitate order made under AS 18.12 before January 1, 2005, continues in effect under
 15 AS 13.52 unless the do not resuscitate order is made ineffective under AS 13.52.065(f),
 16 amended by sec. 7 of this Act, or under another provision of AS 13.52.

17 * Sec. 14. The uncodified law of the State of Alaska is amended by adding a new section to
 18 read:

19 DIRECTIONS TO REGULATIONS ATTORNEY. The regulations attorney in the
 20 Department of Law shall

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

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

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

26 * Sec. 15. The uncodified law of the State of Alaska is amended by adding a new section to
 27 read:

28 RETROACTIVITY. Sections 1 - 13 of this Act are retroactive to January 1, 2005.

29 * Sec. 16. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 442(HES)
 (H) Publish Date: 3/3/06
 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 2008	FY 2010	FY 2011	FY 2012
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						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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.

Division: Public Health

Phone 465-3092

Date/Time 02/17/2006

Approved by: Karleen Jackson, Commissioner

Date 02/17/2006

Agency: Department of Health and Social Services

LEGAL SERVICES

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

MEMORANDUM

April 13, 2006

SUBJECT: CSHB 442(JUD) am - relating to health care decisions
(Work Order No. 24-LS1618\Y.A)

TO: Representative Bruce Weyhrauch
Attn: Ginny

FROM:  Theresa Bannister
Legislative Counsel

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

Section 1. 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 new subsections to AS 13.52.060. New subsection (i) 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. New subsection (j) establishes an exception to (i) for emergency services in the field.

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.

Representative Bruce Weyhrauch

April 13, 2006

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Section 7. Rewrites AS 13.52.065(f) to indicate under what circumstance a DNR order may be made ineffective and 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 a situation 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 13.52.080 to add a provision regarding when providers are not subject to civil or criminal liability or discipline when a DNR order prevents the use of life-sustaining procedures.

Section 10. Amends the spanned reference in AS 13.52.140 to include the statutes that govern guardians.

Section 11. 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 12. Amends the definition of "capacity" in AS 13.52.390(7) to include the ability to make and effectively communicate health care decisions.

Section 13. 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 14. Directs the regulations attorney to make certain specified changes to the regulations relating to DNR protocol and identification.

Section 15. Makes bill sections 1 - 13 retroactive.

Section 16. Gives this Act an immediate effective date.

If I may be of further assistance, please advise.

TLB:med

06-307.med

AARP Alaska

April 30, 2006

Honorable Ralph Seekins, Chair
Senate Judiciary Committee
Alaska State Capitol, Room 125
Juneau, Alaska 99801-1182

RE: HB 442— (Weyhrauch)—Support

Dear Chair Seekins:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the Senate Judiciary Committee to support HB 442, authored by Representative Bruce Weyhrauch and co-sponsored by Representative Nancy Dahlstrom.

In 2004, Representative Weyhrauch authored HB 25 which was a comprehensive effort to allow Alaskans to use more "consumer-friendly" documents for living wills and advance directives. HB 442 builds upon those statutes for some language clarification, when CPR may be used, health directives from other states and specifies circumstances when a DNR order may be revoked.

HB 442 builds logically on work that has already been done by the Legislature and will be of assistance to all Alaskans as they clarify what their health care wishes are.

AARP recommends an "AYE" vote on HB 442.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Vice-Chair Charlie Huggins
Senator Gene Therriault
Representative Bruce Weyhrauch

Senator Hollis French
Senator Gretchen Guess