

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11139 SENATE HEALTH, EDUCATION & SOCIAL SERVICES

LEGAL SERVICES

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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 ~~it's~~^{its} 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 ~~issues~~^{concerns}, 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.

JoAnne 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."

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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-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

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decision is contrary to a policy of the institution or facility that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

(f) A health care provider, health care institution, or health care facility may decline to comply with an individual instruction or a health care decision that requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the provider, institution, or facility. In this subsection, "medically ineffective health care" means health care that according to reasonable medical judgment cannot cure the patient's illness, cannot diminish its progressive course, and cannot effectively alleviate severe discomfort and distress.

(g) A health care provider, health care institution, or health care facility that declines to comply with an individual instruction or a health care decision shall

(1) promptly inform the patient, if possible, and any person then authorized to make health care decisions for the patient that the provider, institution, or facility has declined to comply with the instruction or decision;

(2) provide continuing care to the patient until a transfer is effected; and

(3) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately cooperate and comply with a decision by the patient or a person then authorized to make health care decisions for the patient to transfer the patient to another health care institution, to another health care facility, to the patient's home, or to another location chosen by the patient or by the person then authorized to make health care decisions for the patient.

(h) Except as provided for civil commitments under AS 47.30.817, a health care provider, health care institution, or health care facility may not require or prohibit the execution or revocation of an advance health care directive as a condition for providing health care.

Sec. 13.52.065. Do not resuscitate protocol and identification requirements. (a) An attending physician may issue a do not resuscitate order for a patient of the physician. The physician shall document the grounds for the order in the 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:

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