ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672
11179 SENATE JUDICIARY

[Code of Federal Regulations]
[Title 16, Volume 1]
[Revised as of January 1, 2003]
From the U.S. Government Printing Office via GPO Access
[CITE: 16CFR310.3]

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TITLE 16--COMMERCIAL PRACTICES

CHAPTER I--FEDERAL TRADE COMMISSION

PART 310--TELEMARKETING SALES RULE--Table of Contents

Sec. 310.3 Deceptive telemarketing acts or practices.

(a) Prohibited deceptive telemarketing acts or practices. It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays \1\ for goods or services offered, failing to disclose, in a clear and conspicuous manner, the following material information:

\1\ When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by Sec. 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment.

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer; \2\

\2\ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR part 226, compliance with the disclosure requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with Sec. 310.3(a)(1)(i) of this Rule.

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion; and the no purchase/no payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate; and

(v) All material costs or conditions to receive or redeem a prize

that is the subject of the prize promotion;

(2) Misrepresenting, directly or by implication, any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability; or

(vii) A seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization;

(3) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(i) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or

(ii) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and the customer's receipt of all of the following information:

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(A) The date of the draft(s);

(B) The amount of the draft(s);

(C) The payor's name;

(D) The number of draft payments (if more than one);

(E) A telephone number for customer inquiry that is answered during normal business hours; and

(F) The date of the customer's oral authorization; or

(iii) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:

(A) All of the information contained in Secs. 310.3(a)(3)(ii)(A)-(F); and

(B) The procedures by which the customer can obtain a refund from the seller or telemarketer in the event the confirmation is inaccurate; and

(4) Making a false or misleading statement to induce any person to pay for goods or services.

(b) Assisting and facilitating. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates Secs. 310.3 (a) or (c), or Sec. 310.4 of this Rule.

(c) Credit card laundering. Except as expressly permitted by the

applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

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CHAPTER I--FEDERAL TRADE COMMISSION

PART 310--TELEMARKETING SALES RULE--Table of Contents

Sec. 310.4 Abusive telemarketing acts or practices.

(a) Abusive conduct generally. It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person, for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney; or

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in

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obtaining or arranging a loan or other extension of credit for a person.

(b) Pattern of calls. (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number; or

(ii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

(2) A seller or telemarketer will not be liable for violating Sec. 310.4(b)(1)(ii) if:

(i) It has established and implemented written procedures to comply with Sec. 310.4(b)(1)(ii);

(ii) It has trained its personnel in the procedures established pursuant to Sec. 310.4(b)(2)(i);

(iii) The seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with Sec. 310.4(b)(1)(ii); and

(iv) Any subsequent call is the result of error.

(c) Calling time restrictions. Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location.

(d) Required oral disclosures. It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call to fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion.

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Sec. 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of $25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services; \3\

\3\ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR part 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with Sec. 310.5(a)(3) of this Rule.

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(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by Sec. 310.5(a) in any form, and in the manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by Sec. 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by

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written agreement, allocate responsibility between themselves for the recordkeeping required by this section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such

agreement exists, the seller shall be responsible for complying with Secs. 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with Sec. 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

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Sec. 310.6 Exemptions.

The following acts or practices are exempt from this Rule:

(a) The sale of pay-per-call services subject to the Commission's ``Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992,'' 16 CFR part 308;

(b) The sale of franchises subject to the Commission's Rule entitled ``Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,'' 16 CFR part 436;

(c) Telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller;

(d) Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer;

(e) Telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations; provided, however, that this exemption does not apply to calls initiated by a customer in response to an advertisement relating to investment opportunities, goods or services described in Secs. 310.4(a) (2) or (3), or advertisements that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit;

(f) Telephone calls initiated by a customer in response to a direct mail solicitation that clearly, conspicuously, and truthfully discloses all material information listed in Sec. 310.3(a)(1) of this Rule for any item offered in the direct mail solicitation; provided, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, goods or services described in Secs. 310.4(a) (2) or (3), or direct mail solicitations that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit; and

(g) Telephone calls between a telemarketer and any business, except calls involving the retail sale of nondurable office or cleaning supplies; provided, however, that Sec. 310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

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Sec. 310.7 Actions by States and private persons.

(a) Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, and shall include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this section shall prohibit any attorney general or

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other authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

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Sec. 310.8 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

HB
23

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4

ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

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

MEMORANDUM

DATE: March 18, 2003

TO: Senator Seekins

FROM: Rep. Bruce Weyhrauch

SUBJECT: HB 23 – Restitution for Volunteer's Damages

Attached are materials in support of HB 23. At this time I respectfully request a hearing before your committee on this very important piece of legislation.

This issue came to my attention last winter, when the Court of Appeals felt they lacked standing in the statutes to allow monetary restitution for the hundreds of hours expended by volunteers of a local folk music organization when faced with reconstructing the crime of embezzlement perpetrated by a trusted volunteer accountant. Since I've been working on this issue, numerous other situations have come to my attention, making HB 23, a simple statement that reaffirms the Legislature's intent to the Judiciary Branch, extremely timely.

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

Thank you for your kind attention to this matter.

Representative _Bruce_Weyhrauch@legis.state.ak.us
www.akrepublicans.org/weyhrauch/

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4

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CS for HB 23 (JUD)

Sponsor Statement

In 1992, the Legislature adopted a statute to allow the court to order a convicted defendant to pay restitution to the victims of their crime. The Legislature also gave the court discretion to require a convicted person to pay restitution as a condition of probation. The Legislature intended that a court would "make full restitution available to all persons who have been injured as a result of criminal behavior to the greatest extent possible."

Flash-Forward…

In December of 2000, the former treasurer for the Alaska State Folk Festival was convicted of embezzling $13,000 over a four-year period and he was ordered to pay restitution. In addition to the actual cash that was robbed, restitution included $5,400, or an approximate value for the 200-hours of accounting costs expended by the six-member volunteer board to reconstruct and audit the books that the defendant had absconded with.

The defendant objected to the restitution award for the volunteer-accountants and appealed. In February, 2002, the Court of Appeals ruled that the victim, a non-profit organization, did not incur any actual damages or loss caused by crimes when its board members volunteered 200 hours of work auditing and reconstructing the organization's records, and thus was not entitled to restitution for that volunteer work. Demers v. State, 42 P.3d. 1 (Alaska App. 2002).

The undesirable implication of the Demers decision is that contrary to legislative intent, the tireless efforts of the volunteers laboring to mitigate damages ends up as a reward the perpetrator. Because the public, private or non-profit organization relied on volunteer labor, they weren't allowed to claim the value during the restitution determination.

HB 23 clarifies the clear intent of the Legislature that a court may order restitution to a non-profit corporation as a part of a sentence or probation if the facts and the record support the restitution. This is an obvious fact considering that the Legislature intended for the court "to make full restitution available to all persons who have been injured as a result of criminal behavior to the greatest extent possible."

In the real world, HB 23 simply enables the court to consider documented volunteer labor as a factor in the process of determining restitution.

Updated: February 28, 2003

Representative_Bruce_Weyhrauch@legis.state.ak.us
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Alaska State Legislature

Representative Bruce Weyhrauch

House District 4

Alaska
State Capitol
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HB 23

Sectional Analysis

Section 1. Expands the type of restitution that a court can order a defendant convicted of an offense can be ordered to make. Specifically, the court would have the power to order restitution equal to the value of volunteer labor incurred to alleviate or mitigate the effects of the crime, when the victim is a private, public non-profit corporation.

Section 2. Expands the type of restitution that a court can order a defendant convicted of an offense can be ordered to make while the defendant is on probation. Specifically, the court would have the power to order restitution equal to the value of volunteer labor incurred to alleviate or mitigate the effects of the crime.

These changes would specifically reverse the view of the Alaska Court of Appeals, expressed in Demers v. State, 42 P.3d 1, (Alaska App. 2002), that Alaska statutes do not specifically allow a court to consider the value of volunteer labor as an element of restitution.

Updated: January 28, 2003

Representative _Bruce_Weyhrauch@legis.state.ak.us
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FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 23(JUD)
(H) Publish Date: 3/3/03

Revision Date/Time (Note if correction):
Title: An Act relating to restitution
Sponsor: Rep. Weyhrauch
Requester: (H) JUD

Dept. Affected: Administration
BRU: Legal and Advocacy Service
Component: Public Defender Agency
Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal: [ ]

POSITIONS

	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Full-time						
Part-time						
Temporary						

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

This bill would amend the criminal statutes to expand restitution orders and restitution as a condition of probation to include compensation for the value of volunteer work.

This bill would have a fiscal impact on the operations of the Agency. The Agency represents indigent defendants in contested restitution hearings, a part of the sentencing process. This bill would authorize a sentencing judge to order a defendant to pay restitution to relatives, friends, co-workers and neighbors of a crime victim who spent time consoling the victim, helped clean up after a crime, or assisted the victim with tasks because the victim was too upset to attend to them. It is likely that more contested restitution hearings would result with the enactment of this proposed legislation. Some of the newly contested issues might be the value of the volunteer labor, whether the volunteer labor was directly related to the defendant's crime, or whether it alleviated or mitigated the effects of the crime. However, the Agency cannot accurately predict the increase in its workload. Therefore, an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director
Division: Public Defender Agency
Phone: (907)-334-4416
Date/Time: 2/14/03 11:16 AM

Approved by: Mike Miller, Commissioner
Agency: Department of Administration
Date: 2/14/2003

(Revised 9/2002 OMB)

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Decision stands not to collect accounting fees from Demers

State's high court decides not to hear appeal for restitution for volunteers' time in folk-festival theft case

Sunday, July 7, 2002

[CORRECTION]
A Juneau man convicted of stealing about $13,000 from the Alaska Folk Festival won't have to reimburse the nonprofit group for time volunteers spent documenting his crime.

The Alaska Supreme Court recently decided not to hear the case of Jim Demers, who was convicted of felony theft and falsifying business records. As a result, the former folk festival treasurer will not be required to pay $5,000 to cover some 200 hours of work volunteers put into reviewing the organization's books after the theft was discovered.

Three of the five Supreme Court justices voted to hear the appeal by state prosecutors, who wanted to overturn a lower appeal court's decision against forcing Demers to reimburse the festival for the volunteer work. Two justices supported hearing the case, arguing it could hurt other legal efforts to force criminals to reimburse their victims.

"It can be expected that many other citizens and organizations will be affected by this ruling," wrote Justice Walter Carpeneti in a dissenting opinion opposing the June 13 Supreme Court order not to take up the case.

Demers was accused in 1999 of embezzling the money while acting as treasurer of the group that puts on the annual, week-long, free music event at Centennial Hall. Prosecutors said $13,000 was taken during more than 40 transactions between 1995 and 1999. Demers admitted taking some money, but claimed it was far less than $13,000.

Juneau Superior Court Judge Patricia Collins sentenced Demers to serve six months in jail and pay up to $24,000 in restitution, including the money he took, interest, accounting fees and volunteer time put into straightening out the group's books.

His lawyer appealed the sentence, and the state Court of Appeals struck down the $5,000 in restitution for the volunteer work. In a 2-1 decision, the court said state law was not written to reimburse unpaid work.

"We conclude that the Legislature did not provide a sentencing court with the power to order restitution to a victim who was injured but who did not sustain actual damages or loss because the injury was cured by volunteer efforts," said the majority ruling written by Judge David Stewart.

Chief Judge Robert Coats, in a dissenting opinion, suggested the festival was penalized for trying to save money by having volunteers do the work.

"Had the folk festival hired accountants to audit the books and reconstruct the records, it would have been far more expensive for the board. By conducting the audit with volunteers, the folk festival saved itself - and Demers if he pays the restitution award - a substantial amount of money" Coats wrote.

Juneau District Attorney Rick Svobodny said his office wants the state Department of Law to try to get the Legislature to change the law so injured parties can be awarded restitution for volunteer work in similar future cases.

An example would be if a vandal broke his car's windshield, he said. If an auto shop did the repairs, a judge would have no problem ordering restitution for the work. But if a friend or relative replaced the window as a favor, the criminal would escape financial responsibility, Svobodny said.

"If I took it to my brother and he fixed it and he didn't charge anything, under the Demers decision, neither one of us would get anything," he said.

Demers' attorney, Philip Pallenberg, said he doubted the court action would impact other cases. He said the Court of Appeals' ruling was narrow, focusing on payment to an organization, not the person who does the work.

"I thought the issue here should be whether the folk festival should be paid for volunteer labor, not whether the people themselves should be paid for that work," he said.

Ed Schoenfeld can be reached at eschoenfeld@juneauempire.com.

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*1 42 P.3d 1

Court of Appeals of Alaska.

James G. DEMERS, Appellant,
v.
STATE of Alaska, Appellee.
No. A-7916.
Feb. 8, 2002.

Defendant pled no contest and was convicted in the Superior Court, First Judicial District, Juneau, Patricia A. Collins, J., of second-degree theft and falsifying business records. Defendant appealed. The Court of Appeals, Stewart, J., held that: (1) victim was entitled to restitution for costs incurred for paying accountants to review its books after defendant's theft was discovered, and (2) victim, a non-profit organization, did not incur any actual damages or loss caused by crimes when its board members volunteered 200 hours of work auditing and reconstructing organization's records, and thus was not entitled to restitution for that volunteer work.

Affirmed in part and vacated in part.

Mannheimer, J., filed a concurring opinion.

Coats, C.J., filed a dissenting opinion.

West Headnotes

[1] Sentencing and Punishment ⊙→2154
350H ----
350HXI Restitution
350HXI(D) Compensable Losses
350Hk2154 Other Particular Matters.
Non-profit organization was entitled to restitution for costs incurred for accounting services due to defendant's theft and falsification of records while organization's treasurer; organization paid accountants for reviewing its books after defendant's theft was discovered. AS 12.55.045(a)(2), 12.55.100(a)(2).

[2] Sentencing and Punishment ⊙→2148
350H ----
350HXI Restitution
350HXI(D) Compensable Losses
350Hk2148 Monetary, Pecuniary, or Economic Loss.
Non-profit organization did not incur any actual damages or loss caused by crimes of second-degree theft and falsifying business records committed by defendant, the former treasurer of organization, when its board members volunteered 200 hours of work auditing and reconstructing organization's records, and thus was not entitled to restitution for that volunteer work, although organization was injured, since organization neither expended any money nor received an invoice for the volunteer effort. AS 12.55.045(a)(2), 12.55.100(a)(2).

James E. Curtain, Juneau, for Appellant.

David Brower, Assistant District Attorney, and Bruce M. Botelho, Attorney General, Juneau, for Appellee.

Before COATS, Chief Judge, and MANNHEIMER and STEWART, Judges.

OPINION

STEWART, Judge.

From 1994 until 1999, James G. Demers served as treasurer of the Juneau-based Alaska Folk Festival, a non-profit organization. After Demers resigned his position, the new treasurer discovered discrepancies in the Festival's business records. More than $13,000 was unaccounted for in over forty transactions spanning more than four years. After the police investigated, the State filed an information charging Demers with one count each of second-degree theft and falsifying business records. (FN1)

Demers waived indictment by the grand jury and pleaded no contest to the charges. Superior Court Judge Patricia A. Collins imposed 2 years with 18 months suspended on each count and ran the sentences concurrently. At sentencing, Judge Collins ordered Demers to pay restitution of up to $24,000 (with credit for the $7,743.14 he paid before sentencing) as a condition of probation subject to input from Demers after he had reviewed the Festival's records.

Ultimately, Judge Collins amended the judgment to provide as a condition of probation that Demers pay restitution to the Festival in the total sum of $16,283.17. Included in this sum was $5,400 for the Festival's "accounting costs." In this appeal, Demers challenges only the $5,400 awarded for accounting costs. Those costs included $400 paid to the Festival's accountants for reviewing the Festival's books after the embezzlement *2 was discovered and $5,000 for 200 hours of volunteer work performed by two of the Festival's board members who audited and reconstructed the Festival's business

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records.

For the reasons expressed below, we affirm the award of $400 as reimbursement to the Festival's accountants. However, we vacate the condition of probation that orders $5,000 restitution for the volunteer time expended by the Board members.

Discussion

Title 12 of the Alaska Statutes authorizes courts to award restitution both as a component of the sentence and as a term of probation. Alaska Statute 12.55.045(a)(2) provides that when contemplating an order of restitution, the court should consider the "financial burden placed on the victim ... as a result of the criminal conduct of the defendant." The legislature intended that courts should construe AS 12.55.045(a) broadly by ordering restitution to all persons who were injured as a result of a defendant's conduct. (FN2) Alaska Statute 12.55.100(a)(2) provides, in part, that a court may order a defendant to make restitution or reparation to a victim "for actual damages or loss caused by the crime" as a condition of probation.

[1] Clearly, Demers injured the Festival, and the Festival incurred a loss as a result of Demers's theft and falsification. Judge Collins considered the evidence that, in addition to the stolen funds, the Festival incurred other expenses. For example, the State presented evidence that the Festival incurred a $400 expense for accounting services. This evidence supports the court's probation condition ordering restitution of $400 for the accounting services.

[2] A Festival board member also testified that board members volunteered 200 hours of work auditing and reconstructing Festival records. The member valued the volunteer effort at $25 per hour for purposes of seeking restitution.

Judge Collins ordered $5,000 of restitution for accounting services based on the testimony regarding the volunteer efforts of Festival board members. She reasoned that restitution was appropriate because, if she did not order the restitution, Demers would benefit since the Festival "is too poor to afford the costs of a more expensive, but necessary, audit." Judge Collins recognized this was a close issue but reasoned that this amount of restitution was appropriate because a commercial enterprise would have incurred a monetary cost that, in this case, was met by volunteer efforts.

But the Festival did not expend any money nor receive an invoice for this volunteer effort. Although the Festival was injured as a result of Demers's crimes, it did not incur any monetary damage or loss when the Festival's board members volunteered their time and effort to audit and reconstruct the Festival's business records.

Obviously, the legislature intended to provide the courts with the authority to order defendants to compensate their victims. But AS 12.55.100(a)(2) grants a sentencing court the power to impose restitution as a probation condition when a victim suffers "actual damages or loss."

We conclude that the legislature did not provide a sentencing court with the power to order restitution to a victim who was injured but who did not sustain actual damages or loss because the injury was cured by volunteer efforts. Accordingly, we vacate that portion of the court's probation conditions which ordered $5,000 restitution for the volunteer work performed by the board members.

Conclusion

The judgment of the superior court is AFFIRMED in part and VACATED in part.

*3 MANNHEIMER, J., concurring.

COATS, Chief Judge, dissenting.

MANNHEIMER, Judge, concurring.

Demers embezzled money from the Alaska Folk Festival and, as part of his sentence, he was ordered to pay restitution to the Folk Festival for the money he stole. The question in this case is whether the sentencing court was authorized to order Demers to pay an additional $5000 in restitution to the Folk Festival for the value of labor donated by two of its board members who volunteered their time to reconstruct the Folk Festival's financial records, thus allowing the Folk Festival to ascertain the amount of Demers's embezzlement.

A court's sentencing powers are defined by the legislature. (FN1) The statutes at issue in this case are AS 12.55.045(a) (which authorizes a court to order restitution as a direct component of a sentence) and AS 12.55.100(a)(2) (which authorizes a court to order restitution as a condition of probation). (FN2) The question is whether the Alaska Legislature intended these statutes to authorize a sentencing court

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to order a defendant to reimburse a victim for the value of unpaid labor volunteered by other people who wish to assist the victim in coping with the crime.

The aim of restitution is to restore victims to their financial condition before the crime. The problem in the present case is that the superior court has ordered "restitution" that makes the Folk Festival $5000 richer than it was before. Demers has been ordered (1) to repay the money he stole and (2) to pay $5000 for the labor donated by the two board members--labor that the Folk Festival did not have to pay for. Thus, if Demers satisfies both parts of the superior court's restitution order, the Folk Festival will end up with $5000 more than it possessed before Demers committed his theft.

If the Folk Festival had been insured against embezzlement, and if the insurance company had paid for an audit, no sentencing judge would order the defendant to "reimburse" the Folk Festival for the money spent by the insurance company. Similarly, if the insurance company had sent its own employees to reconstruct the Folk Festival's records to ascertain the amount of the theft, no sentencing judge would order the defendant to "reimburse" the Folk Festival for the labor performed by the insurance company's employees. The Folk Festival did not pay for this labor; it merely received the benefit of this labor. Ordering the defendant to pay "restitution" to the Folk Festival for the hours of work performed by the insurance company employees would result in the unjust enrichment of the Folk Festival.

The facts of the present case offer another example of the same situation. Two Folk Festival board members reconstructed the Folk Festival's records. The two board members were not employees of the Folk Festival, and they did not charge the Folk Festival for their time. The Folk Festival received the benefit of their labor but incurred no expense. Under these circumstances, the Folk Festival received a windfall when the superior court ordered Demers to "reimburse" the Folk Festival for the hours of labor donated by the two board members.

If anyone deserves to be compensated for the board members' labor, it is the board members themselves. Arguably, the superior court might simply amend its judgement and name the two board members as the recipients of the restitution. But I conclude that the legislature has not authorized sentencing courts to impose this type of restitution.

AS 12.55.045(a) declares that a sentencing court may order a defendant to pay restitution to three categories of people: (1) "to the victim", (2) to "[any] other person injured by the offense", and (3) "to a public, private, or private nonprofit organization that has provided or ... will be providing counseling, medical, or shelter services to the victim or *4 [any] other person injured by the offense". The Folk Festival board members are not themselves the victims of Demers's embezzlement, nor are they "a public, private, or private nonprofit organization that has provided or ... will be providing counseling, medical, or shelter services to the victim or [any] other person injured by the offense". So if the board members are to be deemed proper recipients of restitution, they must qualify as "other person[s] injured by the offense".

The only sense in which the two board members were "injured" by Demers's crime is that they felt duty-bound to conserve the limited financial resources of the Folk Festival by devoting their own time and energy to the reconstruction of the Folk Festival's financial records. And, indeed, this is the "injury" that the sentencing judge ordered Demers to reimburse. But I conclude that the legislature did not intend the phrase "injured by the offense" to be interpreted in so broad a fashion.

AS 12.55.045(a) must be interpreted in light of its companion provision, AS 12.55.100(a)(2), the statute which authorizes a sentencing court to impose restitution as a condition of probation. AS 12.55.100(a)(2) declares that a sentencing court can order a probationer to "make restitution or reparation to aggrieved parties *for actual damages or loss* caused by the [probationer's] crime". Because AS 12.55.045(a) and AS 12.55.100(a) appear to be designed to give sentencing courts two different methods of achieving the same goal, they should be construed *in pari materia*. That is, we should presume that the legislature intended the phrase "person[s] injured by the offense" to mean the same thing as the phrase "aggrieved parties [who have suffered] actual damages or loss".

One could argue that volunteers who come to the aid of a victim, and who thereby spare the victim identifiable and measurable financial expense, should be compensated for their time and trouble. Indeed, if I were writing on a clean slate, free to adopt whatever rule I thought best, there is much to commend the position taken by Judge Collins (the sentencing judge) and by my dissenting colleague, Judge Coats. But I conclude that such an

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interpretation of AS 12.55 .045(a) and AS 12.55.100(a) would expand restitution beyond the scope envisioned by the legislature. It would seemingly authorize a sentencing judge to order a defendant to pay restitution at an hourly rate to relatives, friends, and neighbors of a crime victim who spend time consoling the victim, or who help clean up the victim's house after a burglary or an assault, or who do the shopping or cooking for a victim who is too distraught to attend to these tasks.

Based on the wording of AS 12.55.045(a) and AS 12.55.100(a), I conclude that our legislature did not intend to authorize a sentencing court to order a defendant to reimburse people who volunteer their labor to alleviate or mitigate the effects of the defendant's crime. Accordingly, I join Judge Stewart in reversing the award of $5000 restitution for the labor of the two Folk Festival board members.

COATS, Chief Judge, dissenting.

In a detailed order, Judge Collins made several factual findings to support her restitution award, and Demers does not contest these findings. Judge Collins found that the $5,000 restitution award was to reimburse the Folk Festival for the efforts of two of its board members to audit and reconstruct the financial records. The audit was required to reconstruct the books after Demers's theft. The audit would have been unnecessary but for the theft. Had the Folk Festival hired accountants to audit the books and reconstruct the records, it would have been far more expensive for the board. By conducting the audit with volunteers, the Folk Festival saved itself (and Demers if he pays the restitution award) a substantial amount of money. Judge Collins reasoned that if the Folk Festival could recover restitution for money it paid to accountants to conduct an audit, it was reasonable to allow it to recover for the value of the time spent by the volunteers. Judge Collins's reasoning appears to me to be sound.

Alaska Statute 12.55.045 and AS 12.55.100 authorize a sentencing court to make restitution awards, either as part of the defendant's sentence or as a condition of probation. The *5. Alaska legislature clearly intended courts to construe AS 12.55.045 and AS 12.55.100 broadly to allow courts to order restitution to all persons injured by the defendant's conduct. (FN1) Alaska Statute 12.55.045 directs a sentencing court that orders restitution to take into account the "public policy that favors requiring criminals to compensate for damages and injury to their victims." (FN2) One of the purposes of AS 12.55.045(a) is "to make full restitution available to all persons who have been injured as a result of criminal behavior, *to the greatest extent possible.*" (FN3) This expressed legislative intent seems to me to support the conclusion that the legislature favors restitution awards as part of criminal sentences.

Judge Collins's restitution award in this case appears to me to be consistent with this legislative policy. The Folk Festival was clearly injured by Demers's thefts. But for the volunteer efforts of the board of directors, the cost of reconstructing the financial records of the Folk Festival would have been much greater. To say that a victim can recover restitution only when he hires someone else to undo the damage caused by a criminal act appears to violate the policy set by the legislature. Moreover, as a separate policy consideration, if we only allow a victim to recover restitution if he hires a third party to undo the damage, we actually encourage victims to increase the amount of their actual loss.

On the other hand, if the victim of a crime, rather than hiring someone else, spends his own time and effort to fix damages caused by a criminal act and can clearly establish the value of his efforts, I see no reason to preclude a court from awarding restitution. Such a rule seems to me to be consistent with the legislative policy of these statutes and the past interpretations by this court. Accordingly, I would uphold the restitution award. I therefore dissent.

(FN1.) AS 11.46.130(a)(1) & AS 11.46.630, respectively.

(FN2.) In the Alaska Session Laws, Ch. 71, SLA 1992, the legislature announced the purpose of AS 12.55.045(a):

Section 1. PURPOSE. It is the purpose of this Act ... to make full restitution available to all persons who have been injured as a result of criminal behavior, to the greatest extent possible, by

...

(3) allowing courts to order that restitution be made to all persons who have suffered a loss as a result of a defendant's conduct[.]

(FN1.) *See R.I. v. State*, 894 P.2d 683, 685 (Alaska App.1995).

(FN2.) Shortly after Demers committed his crime, the legislature amended AS 12.55.045 so that any

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duty of restitution imposed as a direct component of the defendant's sentence automatically becomes a condition of the defendant's probation. *See* AS 12.55.045(i), enacted in SLA 2000, ch. 103, § 4.

(FN1.) *See Lonis v. State,* 998 P.2d 441, 447 (Alaska App.2000).

(FN2.) AS 12.55.045(a)(1).

(FN3.) Ch. 71, § 1, SLA 1992 (emphasis added).

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P.O. Box 21748, Juneau, Alaska 99802

February 12, 2003

Representative Bruce Weyrauch
Alaska State Capitol
Juneau, AK 99801-1182

Re: HB 23

Representative Weyrauch,

I am writing to you on behalf of the Alaska Folk Festival in support of House Bill 23.

As you know, our organization has experienced first hand the trauma caused by embezzlement. When a former treasurer of the Board of Directors absconded with thousands of dollars over a several year period, it was only due to the tireless efforts of dedicated volunteers that the extent of the damage was determined. These volunteers donated hundreds of hours of their time to rectify a terrible situation. Unfortunately, those hours were not counted towards the restitution the organization was entitled to receive.

The Alaska Folk Festival recovered from the crime committed by the former treasurer because of excellent volunteers who were committed to maintaining the integrity of the organization. We are pleased to know you are working to make it easier for other organizations that may be faced with this unfortunate situation in the future. We support your efforts to clarify the intent of the Legislature, that the courts may consider the time and efforts of volunteers as a factor in the process of determining restitution.

Thank you,

Maridon Boario
Board President, Alaska Folk Festival

cc: Representative Leslie McGuire, Chair House Judiciary Committee

Rep. Weyrauch

Aiding Women in Abuse and Rape Emergencies
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(907) 586-2479 (fax)
(907) 586-1090 (crisis)
1-800-478-1090 (toll free in state)
E-mail: aware@alaska.com

February 27, 2003

Representative Bruce Weyrauch
Alaska State capitol
Juneau, AK 99801-1182

Dear Representative Weyrauch:

I am writing this letter in support of HB 23, which would allow the court to order restitution equal to the value of volunteer labor incurred to alleviate or mitigate the effects of the defendant's crime, including embezzlement.

In 1994, AWARE was a victim of embezzlement, and the effects on our staff and agency were great. We were fortunate to have a strong staff and Board of Directors who worked to correct the situation and our reputation in the community. It seems appropriate that an offender is required to pay restitution for the full effect of the damage they have caused, not only those with a direct financial cost.

Thank you for your work in protecting victims of crime as we work together to end violence in the lives of those impacted by domestic violence and sexual assault.

Sincerely,

Saralyn Tabachnick

Saralyn Tabachnick
Executive Director

Jacque Debbaut
PO Box 73022
Fairbanks, AK 99707
907-451-4637

February 12, 2003

Representative Bruce Weyhrauch
Alaska State Capital
Juneau, AK 99801-1182

RE: HB 23

Dear Representative Weyhrauch;

I am a member of the Board of Directors for the Ester Volunteer Fire Department (EVFD) in Ester, Alaska and have been for approximately 10 years. I am writing this letter as my own personal views and these views may not be the views of the other Board members at EVFD.

A former Fire Chief of EVFD was convicted of theft in the first degree (embezzlement). The investigation started in April, 2000 with an indictment in June, 2000 and a trial that was postponed several times and finally took place in September, 2001. He was found guilty and was sentenced in February, 2002. He was ordered to pay restitution for the amount the Court decided he stole. If it wasn't for the large amount of volunteer hours put into this case, the Troopers and the District Attorney would have had a difficult time obtaining the appropriate documentation and information necessary to convict him.

I understand that HB 23 would provide the Court the means to order restitution to a non-profit corporation as a part of a sentence or probation for documented volunteer hours spent to alleviate or mitigate the effects of the crime.

Our particular case included literally about a two foot deep stack of paperwork. The District Attorney commented that he has never processed a case with as much paperwork as this one. Well, that paperwork had to come from somewhere. I personally spent countless hours researching information the investigators were looking for or specific documents the District Attorney requested. The defendant's attorney subpoenaed five years worth of Board minutes, financial reports, fire chief's reports, annual reports, correspondence, formal audits and tax returns. Due to the fact that we are a volunteer Board and serve an elected two year term, Board members come and go. Most of the

reports were in a central location but there were parts and pieces missing. I spent many, many hours sorting these documents, calling other Board members to see if they had the missing pieces. They in turn spent time looking for the documents. I didn't dare turn over the original documents for fear of not getting them back in the condition they were given so I made copies of everything for both the District Attorney's office and the defendant's attorney.

Once the paperwork was turned in and the investigators and attorneys had time to sift through it all, they had many questions for us. They would call any time they had questions and since it was a very complex case, they called often. We would then have to do more research if we didn't know the answer off the top of our heads. This went on for a year and a half. We also had to take time out of our work day to answer these questions, to be interviewed by the Troopers and District Attorney and to sit at the courthouse awaiting our turn to testify.

The amount of hours put into this case by myself alone is literally countless. I could not even begin to guess how many hours I put into this case. Other Board members and fire fighters spent many hours on the case as well. I personally felt I had a duty to put the time and effort into the case because I was driven to get the information to the appropriate authorities in a timely manner. Sometimes I wondered if it was all worth it but I was determined to see it through and hoped it would all be worth it when the verdict came in, and it was.

I understand that HB 23 would not be retroactive in our case, however the prospect of restitution for volunteer hours may give other volunteers the incentive to put forth the extra effort to see it though to the end to benefit their non-profit organization.

I support HB 23 and hope that by passing it, it will help other volunteers get through a difficult time. Please feel free to contact me at #907-451-4637 if you have any questions regarding my experience.

Sincerely,

Jacque Debbaut
Volunteer

Ester Volunteer Fire Department
3750 Old Nenana Hwy
PO Box 229
Ester, AK 99725-0229

Phone 907-479-6858
Fax 907-479-9883
www.esterfire.org

2/6/03

Representative Bruce Weyhrauch
Alaska State Capital
Juneau, AK 99801-1182

Re: HB 23

Dear Representative Weyhrauch,

I am writing on behalf of the Ester Volunteer Fire Department EVFD to support HB 23. I have witness the devastation that embezzlement can play on a non-profit corporation. Just recently our former Fire Chief was convicted of embezzlement. We were very fortunate to have a strong core of volunteers who worked vigorously to correct the situation. These volunteers put in countless hours to ensure that the former Chief would not pull down the Fire Department with him. We are still licking our wounds from the incident and hope that our fate never falls upon another department or service organization.

Although House Bill 23 would not be able to cure the situation, it would put a light at the end of the tunnel for volunteers who assist with these types of situations. I feel that the burden of the volunteers would be lifted knowing their efforts would result in a positive outcome for their non-profit organization. Please feel free to contact me if I can be of any more assistance to you. I can be contacted at the above number.

Sincerely,

John Debbaut
Fire Chief
Ester Fire Department

Employee theft often hits vulnerable small businesses

■ **FRAUD:** Owners can't be too vigilant against embezzlement by workers.

By GLORIA IRWIN
Knight Ridder Newspapers

About one in four owners of a small business is getting his pockets picked by his most valuable asset — his own employees. A recent survey conducted for Intuit found that 24 percent of the 500 small-business owners surveyed have caught their employees stealing from them.

An embezzling worker loots an average $127,500 from a small business, according to the Association of Certified Fraud Examiners, which contends that companies with fewer than 100 employees are more vulnerable than larger businesses. The association pegs the overall cost of workplace fraud at $400 billion annually. With the billion-dollar accounting scandals at Enron and WorldCom and a tight economy, more and more business owners are paying closer attention to what's going on inside their companies.

Employee theft can undermine a small business, but owners can take steps to safeguard their companies, CPAs advise.

Whether the person dipping into the till is a new hire or a trusted veteran, the business owner may be left questioning his or her judgment.

That was true in the case of Celeste A. Klopfenstein, who appeared Oct. 15 in Summit County (Ohio) Common Pleas Court for sentencing in the theft of $330,000 from the Tallmadge Collision Center.

"Celeste, you broke my heart," company founder Kenneth C. Dixon Jr. said.

Accountants documented 200 incidents in which Klopfenstein stole money — a little at a time — since 1997.

Klopfenstein was almost like family, company vice president Robert L. Black said. He played basketball with her sons and worked out with her husband.

Because she was such a trusted employee, Black said, as a convenience he let her use a stamp bearing his signature when he wasn't around.

"I didn't want to give anybody else the authority to sign, so I just got a stamp and gave it to her," Black recalls with regret.

That in itself is a red flag to Mark

See Page F-4, THEFT

DENNIS BALOGH / Akron [illegible]

HIGHLIGHTS OF THE BUSINESS WEEK AHEAD

TODAY

■ Rick Nerland of the Nerland Agency presents "Brand Building and Television" to the Anchorage Chamber of Commerce at the 4th Avenue Theatre at noon. R.S.V.P. to 272-2401 or www.anchoragechamber.org.

TUESDAY

■ The Mat-Su Borough Small Business Development Center, with Rene Russ of Waddell & Reed, offers "Financial Management" from 9 a.m. to noon at the SBDC's Wasilla office. Pre-registration is required. Call 1-907-373-7232 for more information.

TUESDAY

■ Former Gov. Wally Hickel discusses his proposal for a Community Dividend fund at a Greater Wasilla Chamber of Commerce meeting at the Mat-Su Resort at noon. Call 1-907-376-1299 for more information.

THURSDAY

■ Port director Bill Sheffield speaks on "Thinking Globally, Acting Locally" to the Resource Development Council at 7 a.m. at the Petroleum Club of Anchorage." R.S.V.P. to www.akrdc.org.

THURSDAY

■ "Entrepreneur University," a one-day business conference co-sponsored by Alaska InvestNet and the Alaska Manufacturer's Association, begins at 8 a.m. at Downtown Marriott Hotel, Anchorage. For details: www.eualaska.com, or call the manufacturers association in at 565-5646.

Coming a

Every year thou[...] away from Alas[...] In the migration

1997-98

1999-2000

2001-02

Source: Alaska De[...]

THEFT: *Beware dishonest employees*

Continued from F-1

Bober, a partner at Bober, Markey, Fedorovich & Co., who conducts what are known as forensic fraud investigations. Bober doesn't recommend a signature stamp to begin with, but for owners who insist on a stamp's use, "keep it locked and secured," he advises, or allow only the person whose signature the stamp contains to control it.

That's one of the lessons that Black said he's learned since Klopfenstein's thefts were uncovered. She used the stamp to obtain cash from the company's checking account. Owners who turn over responsibilities to trusted managers still need to keep an eye on what's going on.

"The owners have to play an active role in monitoring the internal controls of their business," said Dave McCarthy of the Rea & Associates certified public accounting firm in Medina, Ohio.

Strong internal controls are the first defense.

That starts with segregation of duties. Don't allow the same person to send out bills and also collect the mail and prepare bank deposits, McCarthy advises. Have the receptionist open the mail, someone else prepare the bills and yet another person reconcile bank statements. If the business is small, the owner can fill one of those roles.

A simple step like requiring every employee to take an annual vacation can help prevent embezzlement, McCarthy said. A substitute filling in for a trusted employee may spot questionable procedures. "It's amazing how many times somebody goes on vacation, and they haven't taken one for five or six years, how many things get caught at that time," McCarthy said.

Raymond Dunkle, a certified fraud examiner at Bober, Markey, Fedorovich, said he's known of cases such as Tallmadge Collision Center's in which a trusted employee has been stealing over a period of years. Employees often justify stealing as a way of making up for a lack of pay.

"They're able to rationalize that they're entitled" to the extra money, Dunkle said.

Padded expense accounts, unauthorized purchases with a company credit card, invoices from fictitious vendors and ghost employees on the payroll are only a few of the ways that employees can get unearned compensation.

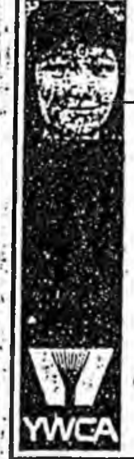
Although owners must be able to trust employees, "you just need to be curious and watchful of what they're doing," McCarthy said. An employee who shrugs off an error may simply have made a mistake, but "just because somebody said it was a mistake, you may need to look further and be a little more curious about any situations that come across your desk."

Dave Haramis, a partner at Haramis & Roe Inc., which has offices in Barberton and Copley, Ohio, recalls a local case in which an employee scammed her company into paying her utility bills. She added her bill to the company's before writing the corporate check. Her employer didn't notice that the company's utility bills were just a bit higher than usual.

Owners should review invoices before signing checks, Haramis suggests. "They don't have to look at every single bill, just spot-check," he said. Knowing that an employer is randomly checking work is the first step in deterring theft, he said. "You have to have something there that lets the person know there's a possibility that they will be caught," he said.

McCarthy cautions owners against merely assessing an employee's integrity and deciding the person won't steal. "It's not necessarily whether someone is ethical," he said. "The goal is not to put them in a position where they can easily do something." Business owners should instead emphasize that there are procedures and policies in place to catch dishonesty, he said.

"You don't want an employee in receivable going into payable and cutting himself a check," said Jeff Haramis, who also recommends that employers make it mandatory that computer users periodically change their passwords.



Financial Issues for Women

WELLS FARGO

5 Feb-Pros & Cons of Bankruptcy

12 Feb-Stop Impulse Shopping!

19 Feb-Prevent Identity Theft

26 Feb-Budget or Die

5 Mar-Negotiate Anything

12 Mar-Net Worth: Balance Sheet

19 Mar-Building Assets When You Don't Have Any

26 Mar-Buying a House as a Single

ALL SESSIONS MEET WEDNESDAY EVENINGS
6:00 - 7:30 PM at the YWCA 324 E 5TH AVE DOWNTOWN ANCHORAGE
YWCA Members $5 per session $40 for series
Non-Members $7 per session $60 for series
644-9612 · dfagan@ywcaak.org

HB

25

ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH
HOUSE DISTRICT 4

ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

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

MEMORANDUM

DATE: April 15, 2004
TO: Senator Seekins
FROM: Rep. Bruce Weyhrauch
SUBJECT: SCS for HB 25 (HESS) - Advanced Healthcare Directives
or The Five Wishes Bill

My staff has worked closely with Senator Dyson and the HESS committee members and we are confident that the committee will pass HB 25 out on Monday. As such, HB 25 enjoys broad support from the stakeholders and from numerous community health activist groups such as The American Cancer Society, Hospice, AARP and Providence Hospital.

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

At your earliest opportunity, I request a hearing before the Judiciary Committee. I'm available to discuss this with you at your convenience.

CS avail Saturday

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4

ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

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

April 22, 2004

Senator Ralph Seekins
Chair, Senate Judiciary Committee
Capitol Building
Room 125
Juneau, Alaska 99801

Regarding: HB 25 Advance Health Care Directives

Dear Senator Seekins:

On Monday, the Senate Judiciary Committee will be taking up HB 25, but before that I wanted to take a moment and offer some introductory words to you regarding this critically important concept. HB 25 ~ Healthcare Directives was inspired by the Five Wishes legislation that has been adopted by 37 states since 1993. HB 25 expands the options for people who want to prepare for the time when they can no longer speak or act on their own behalf.

Additionally, HB 25 takes a more comprehensive approach to advance directives in that it collects all of the existing provisions related to end-of-life healthcare decisions and places them in one chapter under Alaska law. These statutory provisions that are repealed and re-enacted include:

- The organ donation program;
- The Living Will Program;
- The Comfort One Do-Not-Resuscitate program;
- An expanded healthcare durable power of attorney for health care.

Essentially, HB 25 brings all of the health care related provisions into one, easy to access and coordinated site. Something like one stop shopping. In point of fact, the only "new law" introduced by the legislation is the concept of the surrogate for health care decisions found in section 13.52.025.

From the beginning, my office has worked very closely with my colleagues in every committee, especially with members of the HESS committee, as well as a number of stakeholders to ensure that the final product is as faultless as possible. As you join in the review of HB 25 in the Judiciary committee, I wanted you to know whom these individuals are, and I invite you to contact any one of them if you have a particular

Representative_Bruce_Weyhrauch@legis.state.ak.us
www.akrepublicans.org/weyhrauch/

question or concern. Of course, you can also discuss any aspect of HB 25 with myself, or my staff.

Panel of Advisors

Subject	Advisor
Surrogates, DNRs, Living Wills, optional form, practical aspects & typical scenarios of health care issues that HB 25 touches	**Dr. Maria Wallington, MD** Medical Ethicist Providence Hospital 907 261-6077
Advance directives for mental health treatment & issues related to disability	**Edie Zukauskas** Attorney Disability Law Center 907 565-1002
DNRs, the state's Comfort One Program & issues related to emergency health care out side of the hospital	**Shelley Owens** **Mark Johnson** Dept. of Health & Social Services 907 465-3028
Anatomical gifts	**Bruce Zalneraitis** Life Alaska (Alaska's organ procurement organization) 907-562-5333
Pain treatment	**Carole Edwards, RN** Oncology Nurses Society 907-789-3345

Once again, I want to thank you for your thoughtful work on HB 25 and I look forward to working with you and your staff in committee.

Sincerely,

Bruce

Representative Bruce Weyhrauch

Alaska State Legislature

Representative Bruce Weyhrauch

Alaska
State Capitol
Juneau, Alaska
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(907) 465-3744
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HB 25

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

My Wish for:

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

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

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

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

Last updated: January 19, 2003

ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH

ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
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SCS FOR HB 25 (HESS)

I was asked to sponsor this piece of legislation by people whom I respect and who have long proved worthy of representing good causes. This cause I find very civilized and humanitarian, and as we all age or worse ~ when we encounter health catastrophes, advanced directives become emphatically nothing less short of *critical*.

HB 25 ~ Healthcare Directives was inspired by the Five Wishes legislation that has been adopted by 37 states since 1993. HB 25 expands the options for people who want to prepare for the time when they can no longer speak or act on their own behalf. HB 25 takes all of the current provisions related to end-of-life healthcare decisions and places them in one chapter under Alaska law. These provisions include:

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

Essentially, HB 25 brings all of the healthcare related provisions into one, easy to access and coordinated site. Something like one stop shopping. It is simple in that the directives speak simply to the patient's wishes (the legislation is known nationally as the Five-Wishes) namely: my wish for the person I want to make my health care decisions for me when I can't; the kind of medical treatment I want or don't want; how comfortable I want to be; how I want other people to treat me and what I want my loved ones to know.

Last updated: April 15, 2004

Testimony to be presented by Dr. Maria Wallington, MD to the House HESS committee on February 13, 2003 at 3:00PM concerning HB 25 HEALTH CARE SERVICES DIRECTIVES:

I am a physician who practiced Pediatric Cardiology and Pediatric Intensive Care here in Anchorage for 20 years. Three years ago I completed a Masters in Ethics and began working for the Providence

Health System in Alaska as their medical ethicist. One of my duties is to help patients, families, and health care providers who are faced with challenging decisions at the end of life. In this capacity I have encountered families and physicians whose efforts to do the right thing for patients has been complicated by lack of clear, unambiguous, supportive laws.

I would like to point out to you that Alaska, along with three other states, received the lowest possible grade on this part of a national report evaluating states on the care provided to residents near the end of life. Last November, Last Acts, a coalition of more than 1000 organizations such as the AMA and the American Hospital Association, issued a report card for all 50 states on how end of life care is encouraged in each state. Alaska received the lowest possible grade on "State Advance Directive Policies". They found, as many of my colleagues and I have, that Alaska's current laws do not support good advance care planning. Of the 6 criteria that were evaluated, Alaska's current laws only provides for one. (That is the out of hospital Do-Not-Resuscitate order protocol of Comfort One). The passage of HB 25 will provide for top marks in all of the criteria.

Those criteria, which follow the recommendations for state policies contained in the federal Uniform Health Care Decisions Act, are:

1. To recommend a single, comprehensive advance directive, which reduces confusion. (Currently the Power of Attorney and Living Will laws are not connected in any way.)
2. Avoid mandatory forms or language for medical powers of attorney or combined living wills/medical powers of attorney, giving residents the freedom to express their wishes in their own way. (Current POA forms are complex and difficult.)
3. Give precedence to the agent's authority or most recent directive over the living will, recognizing that an agent has the advantage of being able to weigh all the facts and medical opinions in light of the patient's wishes at the time a decision needs to be made.
4. Authorize default surrogates (typically next of kin) to make health care decisions, including decisions about life support if the patient has not named someone. (No current support in Alaska Law for surrogates)
5. Include "close friend" in the list of permissible default surrogates, recognizing that family in today's world often extends beyond the nuclear family. (Currently no clear status for decision-making.)

6. Have a statewide (non-hospital) DNR order protocol for emergency medical service personnel to ensure that EMS personnel can follow the wishes of terminally ill patients out in the community. (This is handled through the Comfort One protocol.)

The current Alaska Statutes covering Living Will and Power of Attorney are limited and confusing, and can, in fact, discourage people from making a living will. This means patients' wishes are often not documented for those who would be called upon to make decision for them. I was delighted last year when I discovered this bill making its way through the legislature. It would have handled so many of the issues that were troubling me. I was very disappointed time ran out so it only made it through the House and did not get acted on in the Senate. It solves several of the troubling issues involving end of life decision making that have been causing problems for families and health care providers.

Specifically, I particularly like the example Advance Health Care Directive provided in the bill. It encourages individuals to think though some of the difficult decision that might need to be made and to provide guidance on how to make those decision on their behalf. The current Living Will law only addresses whether or not to prolong one's dying process. Often direction is needed for patient's unable to communicate desires but the patient is not dying. This directive will help make those preferences known.

Secondly, it ties the appointment of an agent for health care decision making to the patient's wishes for how those decisions should be made. It also expressly tells the agent what criteria should be used for making decisions. (Page 3 line 12 (h) and Page 15 line 25 (4) Agent's Obligation). The agent's obligation is to decide on the behalf of the patient as the patient would have decided for himself, to the extent known. This form of the Advance Directive encourages the individual to make those wishes known. Sometimes we have decision-makers requesting what they want instead of what they know the patient would have wanted.

The other major problem that as health care providers we have struggled with which this legislation will solve, is the problem of surrogate decision makers for patients without a legal guardian or a Power of Attorney. Most of our unconscious patients fall into this category. Currently there is no statute to support the common practice of using a relative or, sometimes a good friend, to give consent for treatment.

This legislation corrects that shortage by legalizing the use of surrogates and delineating how they are identified and how they may act on a patient's behalf. This act will give surrogates legal support for doing this very difficult job.

One of the most challenging duties anyone can ever be called on to undertake is to make difficult medical decisions for another person. One of the best gifts we can give those who shoulder this burden on our
behalf is having in place a good, informative Advance Health Care Directive. HB 25 will allow individuals to do this job of preparing for these end of life challenges better and will help health care providers
better serve patients and their families when these challenges occur.

In conclusion, as a medical professional who daily experience the reality of life and death, as an Ethicist, and as a representative of Providence Health System in Alaska I urge that you help all Alaskans who
will someday face difficult health care decisions by supporting HB 25. Thank you for your attention.

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MEMORANDUM April 23, 2004

SUBJECT: SCS CSHB 25(HES) relating to health care decisions (Work Order No. 23-LS0137\Z)

TO: Representative Jack Coghill
Attn: Rynnieva

FROM: Theresa L. Bannister
Legislative Counsel

You have asked whether the following amendment makes the withholding or withdrawing of nutrition and/or hydration a criminal offense:

> Withholding or withdrawing of nutrition and hydration. (a) It shall be presumed that every person legally incapable of making health care decisions has directed his or her health care provider (agent or surrogate) to provide him or her with nutrition and hydration to a degree that is sufficient to sustain life.
>
> (b) No guardian, surrogate, public or private agency, court, agent, or any other person shall have the authority to make a decision on behalf of a person legally incapable of making health care decisions to withhold or withdraw hydration or nutrition from such a person except in the following circumstances and conditions to the extent that, in reasonable medical judgment:
>
> (1) provision of nutrition and hydration is not medically possible,
> (2) provision of nutrition and hydration,[1] or
> (3) because of the medical condition of the person legally incapable of making health care decisions, that person would be incapable of digesting or absorbing the nutrition and hydration so that its provision would not contribute to sustaining the person's life.
>
> (c) Nutrition and/or hydration may be withheld or withdrawn if the person executed a written advance health care directive, durable power of attorney or other writing that clearly expresses the patient's intent, the patient has a qualifying condition as determined under AS 13.52.160, and

[1] The amendment appears to be missing some language here.

withholding or withdrawing the hydration and/or nutrition would be consistent with the patient's best interest.

The amendment does not make the withholding or withdrawing of nutrition and/or hydration a criminal offense. The amendment does not state that the withholding or withdrawing of nutrition and/or hydration is a criminal offense, a felony, or a misdemeanor. It does not authorize a sentence of imprisonment for the withholding or withdrawal. In AS 11.81.900 (definitions for the criminal law title), "crime" is defined as "an offense for which a sentence of imprisonment is authorized; a crime is either a felony or a misdemeanor." Although this definition does not apply directly to this amendment, it indicates what is considered to be a criminal offense.

If I may be of further assistance, please advise.

TLB:mdr
04-186.mdr

Enclosure

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 25(HES)
(H) Publish Date: 3/10/03

Revision Date/Time (Note if correction):

Dept. Affected: Health & Social Services

Title: HEALTH CARE DECISIONS/DO NOT RESUSCITATE ORDERS/DONATION OF BODY PARTS

BRU: State Health Services

Component: Community Health/EMS Services

Sponsor: WEYRAUCH

Requester: HOUSE (HES)

Component No. 2078

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: ________

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

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

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

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

(Revised 9/2002 OMB)

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SCS CSHB 25(HES)
(S) Publish Date: 4/20/04

Revision Date/Time (Note if correction): 1/20/2004
Dept. Affected: Health & Social Services

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

Sponsor: WEYRAUCH
Requester:
Component No. 2078

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost:

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

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

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

Prepared by: Doug A. Bruce — Phone 465-3090
Division: Public Health — Date/Time 01/20/2004
Approved by: Joel S. Gilbertson, Commissioner — Date 01/21/2004
Agency: Department of Health and Social Services

// LEGAL SERVICES

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MEMORANDUM March 3, 2004

SUBJECT: Summary of statutes repealed by draft CSHB 25( ) relating to health care decisions (Work Order No. 23-LS0137\U)

TO: Representative Bruce Weyhrauch
Attn: Linda

FROM: Theresa L. Bannister
Legislative Counsel

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

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

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

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

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

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

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

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

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

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

AS 13.50.020. Lists approved potential donors and purposes.

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

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

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

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

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

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

AS 13.50.070. Defines the terms for the chapter.

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

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

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

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

Provides an optional form for a declaration.

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

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

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

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

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

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

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

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

'8.12.080. States that if death results from the withholding or withdrawal of ılmonary resuscitation or other life-sustaining procedures under a DNR order or under a declaration, or upon discovery of DNR identification and in accordance hapter, the death does not constitute a suicide or homicide. States that a DNR

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

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

AS 18.12.100. Defines terms for the chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If I may be of further assistance, please advise.

TLB:lmb
04-060.lmb

ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH

ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

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

HOUSE DISTRICT 4

*** For Immediate Release ***

While nation's attention is riveted by the Terri Schiavo drama taking place in Clearwater, Florida, the unfortunate situation is also focusing attention on a problem Alaskans face. The case strikes a chord because it forces us to consider what circumstances will befall us at the end of our life. Most people want to die at home with family members and friends, but according to Aging with Dignity, a national organization that advocates for the elderly, the typical scenario is that people end up in a hospital or nursing home cared for by strangers.

Who will make decisions for you and how do you want to be cared for as death looms? These intense concerns require compassionate treatment by families, healthcare institutions, and particularly government recognition of these things.

"Unfortunately, Alaska is one of 14 states were narrow laws often derail efforts by people to spell out their last wishes," said Juneau Rep. Bruce Weyhrauch.

Recently a national organization gave Alaska a failing grade on its treatment of the dying. The group known as Last Acts, is a coalition of organizations such as the American Medical Association and AARP and is funded by the Robert Wood Johnson Foundation.

During the past Legislative session, Rep. Weyhrauch introduced House Bill 25, to addresses Last Acts' concerns, that Alaska law actually thwarts good care planning. Known as the "Five Wishes Bill," HB 25 provides a comprehensive approach to making healthcare directives. The Five Wishes approach includes whom you want to make medical decisions for you, the type of medical treatment you want, or don't want and how comfortable you want to be in terms of pain medication among others. Most importantly, HB 25 stipulates guidelines for named surrogates such as spouses, siblings, or adult children. "For the first time in Alaska, the authority of a surrogate will be supported in law."

"People in America treat dying like a medical moment. The discussion is all about feeding tubes and respirators. It leaves family members guessing and feeling guilty. It also leaves open the possibility that some sorry person will be without an advocate who can make decisions for them, such as Terri Schiavo," Weyhrauch said. "We should address that."

HB 25, passed the Alaska House of Representatives in May 2003, and is currently in the Senate Health and Social Services Committee. For more information on HB 25, contact Rep. Bruce Weyhrauch at 465-3744.

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March 31, 2003

Via Fax 465-2273

Representative Bruce Weyhrauch
Alaska State Legislature
State Capitol Room 102
Juneau, AK 99801-1182

Re: CSHB 25

Dear Representative Weyhrauch:

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

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

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

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

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

Thank you for your consideration of my comments.

Sincerely,

BethAnn Boudah Chapman

c: Representative Beth Kerttula (via fax)

Honorable Peggy Wilson, Chair
House Health, Education and Social Services Committee
Alaska Capitol, Room 104
Juneau, AK 99801-1182

RE: HB 25 (Weyhrauch) – Support

Dear Chair Wilson:

On behalf of the members of AARP in Alaska, we urge you and your colleagues on the House Health, Education and Social Services Committee to support HB 25, authored by Representative Bruce Weyhrauch.

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

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

AARP recommends an "AYE" vote on HB 25.

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

Thank you for your consideration.

Sincerely,

Marguerite Stetson
Executive Council Member for Advocacy

Vice-Chair Carl Gatto
Representative Cheryll Heinze
Representative Paul Seaton
Representative Kelly Wolf
Representative Sharon Cissna
Representative Mary Kapsner

Representative Bruce Weyhrauch

Marie Darlin, AARP Capitol City Task Force
Pat Luby, AARP Legislative Representative

Health Issue Priorities for 2003 Session

AARP Alaska has over 71,000 members

In a 2002 research survey, AARP members in Alaska list health care as their top legislative concern:

- ✓ In 2001, pharmaceutical prices in Alaska rose over 25%, the highest increase in the nation.
- ✓ Alaska health care routinely costs 20% more than similar care in Seattle, Washington.
- ✓ 1 out of 5 Alaskans aged 50 – 64 has no health insurance.

For 2003, We Advocate the Following:

- ➢ A prescription drug assistance program for older persons without insurance. Drug regimen reviews to determine if a prescription is necessary and/or is there a less expensive therapeutic substitute available
- ➢ Provide an insurance pool for small businesses and non-profit agencies so they will have access to less expensive coverage for their employees.
- ➢ Provide comprehensive regulations and oversight for adult day care centers.
- ➢ Provide funding for Pioneer and Veterans' Homes so they can be fully staffed and empty b[illegible]s can be filled from existing waiting lists.
- ➢ Consolidate existing law on advanced directives and health care decision – making and create easy to use tools for Alaska citizens to communicate how they wish to be treated at the end of their lives.

Proof of Enrollment

Comfort One Identification Form

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

Comfort One Wallet Card

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

Comfort One Bracelet

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

Confirming the Patient's Identity

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

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

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

Do Not Resuscitate Protocols

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

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

Palliative Care

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

The Alaska Comfort One Program

Information for Health Care Providers

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

Chapter Four

Advance Directives:

Living Wills, Durable Power of Attorney and Surrogate Consent

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

Introduction

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

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

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

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

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

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

Question One

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

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

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

Does your state recognize advance directives?

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

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

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

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

- ☐ States with legislation that authorizes living wills, durable power of attorney and surrogate consent (AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MS, MT, NV, NM, NC, ND, OH, OR, SC, SD, TX, UT, VA, WA, WV, WY)
- ☐ States with legislation that authorizes living wills and the appointment of a health care agent, but not surrogate consent (AK, CA, HI, KS, MN, MO, NE, NH, NJ, OK, PA, RI, TN, VT, WI)
- ■ States with legislation that authorizes only the appointment of a health care agent, but not living wills or surrogate consent (MA, MI, NY (NY has Surrogate Consent but for DNR only))

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

Are the existing advance directive laws effective?

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

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

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

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

Figure 13.
States with Combined Advance Directive Statutes

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

*Does not include surrogate consent.

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

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

Thirteen states have merged their statutes into a combined advance directive law (see figure 13) that covers at least living wills and durable power of attorney and, in most cases, surrogate consent in the absence of an advance directive. Of the 13, four—Alabama, Delaware, Maine and New Mexico—use the Uniform Health Care Decisions Act as a model.

The act—a revised model act created in 1993 by the National Conference of Commissioners on Uniform State Laws to rectify the conflicts among the different state statutes—combines living wills, durable power of attorney and surrogate consent in the absence of an advance directive; allows for instructions to be either written or oral; and does not require that the document be witnessed. It also includes an optional form for the advance directive. It is significantly simpler and more comprehensive than most state statutes and therefore serves as a good model.

Figure 14.
States that Allow Close Friends as Surrogates

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

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

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

of priority. About a fourth of state surrogate consent laws include a "close friend" in the list of permissible surrogates (see figure 14) and Arizona now includes a "patient's domestic partner."

2. Ensure flexibility to allow patients to modify their living wills to become more specific as conditions worsen.

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

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

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

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

Figure 15.
Examples of Values Questions

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

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

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

4. **Recognize other states' advance directives.**

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

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

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

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

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

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

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

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

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

THIS STORY HAS BEEN FORMATTED FOR EASY PRINTING

Too little respect seen for the dying

The Boston Globe

Bereaved kin fault care in US study

By Alice Dembner, Globe Staff, 1/7/2004

Nursing homes and hospitals, where most Americans spend their final days, regularly fail to treat dying patients with respect or provide needed emotional support, according to the most definitive national survey yet of surviving f amily members. Bereaved relatives also faulted the medical care provided to their loved ones.

Nearly one-quarter of those dying at nursing homes didn't get relief for labored breathing, nearly one-third didn't get enough care for pain, and nearly 20 percent suffered because of the staff's incomplete knowledge of the patient's medical history, the survey found. Patients in hospitals fared only slightly better.

In contrast, families reported much greater satisfaction with hospice care provided to patients at home.

"We're moving toward factory medicine -- get 'em in, get 'em out," said Dr. Joan Teno, a geriatrician and professor at Brown University Medical School, who is the lead author of the paper published today in the Journal of the American Medical Association. "Many family members feel they must be constantly present to ensure quality care of their loved ones. Before the Baby Boomers hit in full force, we have to figure out how to provide adquate care to the dying."

Teno said the survey of relatives or close friends of 1,578 people who died in 2000 was designed to be extrapolated to all 1.9 million people who died of nontraumatic causes that year. While other studies have identified some of the same shortcomings, particularly with medical and pain treatment, this is the most comprehensive survey and the first to compare care in different settings.

"This is really the first high-quality, well-designed study to address what happens to patients and families in the last months of life in the United States. And it is an indictment of the quality of care in most institutional settings," said Dr. Diane E. Meier, director of the Center to Advance Palliative Care, who was not involved with the study.

Hospital and nursing home officials said the study identified problems they are already working on, but they acknowledged they need to do better. At nursing homes, the study authors said, federal gaps in reimbursement and resulting staff shortages have contributed to care problems.

Dr. Susan Block, director of the division of palliative care at Dana-Farber Cancer Institute and Brigham and Women's Hospital, said the study comes after six years of "very vigorous efforts nationwide to improve care" of the dying, including the addition of palliative care programs at about 20 percent of hospitals. "In that context," she said, "the study results are even more dismal."

Teno and her colleagues suggested that more hospitals need to adopt palliative care, which focuses on pain relief and other comfort measures, and that nursing homes need to ensure that their patients have access to hospice care.

But the study also found problems with hospice, which provides care for terminally ill patients who have stopped aggressive treatment. Care is typically provided in hospitals, nursing homes, or the patient's home.

One-third of hospice patients' relatives said it didn't provide enough emotional support, while

more than half of family members of patients who died in hospitals and nursing homes said the patients didn't get enough emotional support, which can include care-givers listening to patients' concerns and expressing sympathy.

About a third of those in nursing homes and 20 percent of those in hospitals weren't always treated with respect, their relatives said.

Among the relatives researchers interviewed was Foxborough resident Janet Roxborough. A nurse-practitioner, she is still seared by her parents' deaths less than a year apart in Boston-area hospitals.

"Up until the few hours prior to death, the care was not kind and not thoughtful," said Roxborough, who said she was routinely ignored when she went to the nurses' station to ask for help with her parents' care. "There was sloppy care and callous indifference."

One day, she said, she was sitting at the bedside of her 89-year-old father and got up to go to the bathroom, leaving the bed rail down.

"A nurse accosted me and said, 'You left the side rail down. He could have fallen out of bed and badly hurt himself.' She said that to a person who was losing the most important person in her life. Rather than just putting the rail up, she had to make me feel bad."

The study contained one bit of good news: 71 percent of those dying had completed living wills or health care proxies to spell out what kind of care they wanted at the end. That's up from the 20 percent suggested by earlier studies since 1995. Earlier research also found that these documents were widely ignored by health professionals. Teno said she asked family members about this issue, but she declined to release those results until later publication.

"On advanced directives, we're heading in the right direction," Teno said. "Now, we have to get people to follow them." Extrapolating the study figures to the nation, the researchers said 38 percent of people in 2000 died in hospitals, 31 percent in nursing homes, and 16 percent at home with hospice services. Another 11 percent died at home with no services and 4 percent at home with nursing services.

While the study findings are based on family members' recall of what happened, Meier said they probably underestimate the problems because of people's tendency to try to put the worst behind them and mute their criticism. "What's very striking," she said, "is what they say makes for high-quality care. They're talking about being seen as a human being, being heard, being listened to."

Teno suggests that doctors and other clinicians need to spend more time just talking or sitting with patients and family members. In addition, she and her colleagues call for expanded access to hospice care, and removal of some federal financial restrictions that limit access to hospice. She also said society has to provide more money for nursing home care, which she calls "the frailest part of our health care system" because the facilities are underfunded given the demands placed on them.

"It's not going to be a quick fix," Teno warns. "The most expensive thing in our health care system is staffing, and that's what we're missing."

In Massachusetts, about 18 percent of dying patients in all settings used hospice last year, according to the state hospice federation. Nursing home officials said they have been encouraging patients to use hospice care and welcoming hospice workers. But they said their own staff can't afford to spend as much time as they'd like providing emotional support.

"We probably have gotten much better at the medical side of care, perhaps at the expense of the social side. We've got some work to do," said Scott Plumb, senior vice president of the Massachusetts Extended Care Federation, the state's largest nursing home association.

Alice Dembner can be reached at Dembner@globe.com.

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Joan M. Teno, MD, MS; Brian R. Clarridge, PhD; Virginia Casey, PhD, MPH; Lisa C. Welch, MA; Terrie Wetle, PhD; Renee Shield, PhD; Vincent Mor, PhD

JAMA. 2004;291:88-93.

Context Over the past century, nursing homes and hospitals increasingly have become the site of death, yet no national studies have examined the adequacy or quality of end-of-life care in institutional settings compared with deaths at home.

Objective To evaluate the US dying experience at home and in institutional settings.

Design, Setting, and Participants Mortality follow-back survey of family members or other knowledgeable informants representing 1578 decedents, with a 2-stage probability sample used to estimate end-of-life care outcomes for 1.97 million deaths from chronic illness in the United States in 2000. Informants were asked via telephone about the patient's experience at the last place of care at which the patient spent more than 48 hours.

Main Outcome Measures Patient- and family-centered end-of-life care outcomes, including wl health care workers (1) provided the desired physical comfort and emotional support to the dyin (2) supported shared decision making, (3) treated the dying person with respect, (4) attended t emotional needs of the family, and (5) provided coordinated care.

Results For 1059 of 1578 decedents (67.1%), the last place of care was an institution. Of 519 patients dying at home represented by this sample, 198 (38.2%) did not receive nursing service (12.5%) had home nursing services, and 256 (49.3%) had home hospice services. About one qu patients with pain or dyspnea did not receive adequate treatment, and one quarter reported con physician communication. More than one third of respondents cared for by a home health agenc home, or hospital reported insufficient emotional support for the patient and/or 1 or more conce family emotional support, compared with about one fifth of those receiving home hospice service home residents were less likely than those cared for in a hospital or by home hospice services to have been treated with respect at the end of life (68.2% vs 79.6% and 96.2%, respectively). Fa members of patients receiving hospice services were more satisfied with overall quality of care: rated care as "excellent" compared with less than 50% of those dying in an institutional setting home health services ($P<.001$).

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March 2000

State Statutes Governing Living Wills and Appointment of Health Care Agents

Jurisdictions with legislation that authorizes both living wills and the appointment of a health care agent (**the District of Columbia and 46 states: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming**).

State with legislation that authorizes only living wills (**1 state: Alaska**).

States with legislation that authorizes only the appointment of a health care agent (**3 states: Massachusetts, Michigan and New York**).

Note: The specifics of living will and health care agent legislation vary greatly from state to state. In addition, many states also have court-made law that affects residents' rights. For information about specific state laws, please contact Partnership for Caring.

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HEALTH CARE SURROGATE DECISION-MAKING LEGISLATION

July 1, 2001

LIVING WILL STATUTES

48 STATES

Alabama
† Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
† D.C.
Florida
Georgia
† Hawaii
† Idaho
† Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
† Maryland
...
...
† Minnesota
Mississippi
Missouri
† Montana
Nebraska
Nevada
New Hamp.
New Jersey
New Mexico
...
† North Carolina
North Dakota
Ohio
† Oklahoma
† Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
† Tennessee
† Texas
† Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
† Wyoming

PROXY STATUTES

51 STATES

Alabama
† Alaska
Arizona
* Arkansas
California
Colorado
Connecticut
Delaware
D.C.
Florida
Georgia
† Hawaii
† Idaho
† Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
† Maryland
Massachusetts
Michigan
† Minnesota
Mississippi
Missouri
†*Montana
Nebraska
Nevada
New Hamp.
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
† Oklahoma
† Oregon
* Pennsylvania
Rhode Island
South Carolina
South Dakota
† Tennessee
† Texas
† Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
† Wyoming

DEFAULT SURROGATE CONSENT STATUTES

37 STATES

Alabama
...
Arizona
Arkansas
(California – Limited)
Colorado
Connecticut
Delaware
D.C.
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
...
Kentucky
Louisiana
Maine
Maryland
...
...
...
Mississippi
...
Montana
...
Nevada
...
New Mexico
(New York - Limited)
North Carolina
North Dakota
Ohio
(Oklahoma – Limited)
Oregon
...
...
South Carolina
South Dakota
...
Texas
Utah
...
Virginia
Washington
West Virginia
...
Wyoming

EMS-DNR STATUTES (NON-HOSPITAL DNR ORDERS)

34 STATES

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

Code:

Underlined states have a combined advance directive statute merging Health Care Proxies, Living Wills, and (if Surrogate column is underlined) surrogate provisions applicable in the absence of an advance directive.

* Health care proxy is contained only within living will statute. Thus, proxy authority may be limited to terminal illness or PVS.

† State has special mental health advance directive statute.

ABA Commission on Legal Problems of the Elderly, Washington, D.C. (2000).

Health-Care Decisions Statutes Citations

July1, 2001

Living Will Statutes

Ala. Code §§ 22-8A-1 to -10 (1997) combined health decisions act, enacted in 1997 (amends earlier statute);
Alaska Stat. §§ 18.12.010 to -.100 (Supp. 1990);
Ariz. Rev. Stat. Ann. §§ 36-3201 to -3262 (1992), combined health decisions act, enacted in 1992 (replaces '86 law);
Ark. Code Ann. §§ 20-17-201 to -218 (Supp. 1989);
Cal. Probate Code §§ 4600 to 4948 (West 1999), combined health decisions act, enacted 1999;
Colo. Rev. Stat. §§ 15-18-101 to -113 (1987 & Supp. 1990);
Conn. Gen Stat. §§ 19a-570 to -575 (1992), as amended by 1993 Conn. Acts 93-407 (H.B. 7244) (Reg. Sess.);
Del. Code Ann. tit. 16, §§ 2501-2517 (substantially revised 1996);
D.C. Code Ann. §§ 6-2421 to 2430 (1989);
Fla. Stat. Ann. §§ 765.101 to .404 (West 1999), combined health decisions act enacted in 1992;
Ga. Code Ann §§ 31-32-1 to 12 (1985 & Supp. 1989);
Hawaii Rev. Stat §§ 327E-1 to –16 (West 1999), combined health decisions act, enacted 1999, replacing more limited statute.
Idaho Code §§ 39-4501 to -4509 (1985 & Supp. 1989);
Illinois -- 755 ILCS 35/1 to 35/10 (formerly Ill. Ann. Stat. ch. 110 1/2 para. §701-710);
Ind. Code Ann.§§ 16-36-4-1 to -21 (West 1994);
Iowa Code Ann §§ 144A.1 to -11 (West Supp. 1989);
Kan. Stat. Ann §§ 65-28,101 to -28,109 (1985);
Ky. Rev. Stat. §§ 311.621 to .643 (Supp. 1994), combined health decisions act enacted in 1994 (replaces 1990 law);
La. Rev. Stat. Ann. §§ 40:1299.58.1 to -10 (West Supp. 1987);
Me. Rev. Stat. Ann. tit. 18-A, §§ 5-801 to -817 (Supp. 1996), enacted in 1995; combined health decisions act;
Md. Health-Gen. Code Ann. §§ 5-601 to -608 (1993), combined health decisions statute, enacted 1993;
Minn. Stat. §§ 145C.01 to -.16 (Supp. 1998), combined health decisions act enacted 1998, replacing former living will and durable power acts; see also mental health advance directive at §253B.03, Subd. 6b.;
Miss. Code Ann. §§41-41-201 to -229 (Supp. 1998),enacted in 1998; combined health decisions act;
Mo. Ann. Stat. §§ 459.010 to -055 (Vernon Supp. 1990);
Mont. Code Ann. §§ 50-9-101 to -111, -201 to -206 (1992);
Neb. Rev. Stat. §§ 20-401 to -416 (1993), enacted 1992;
Nev. Rev. Stat. §§ 449.535 to .690 (1991);
N.H. Rev. Stat. Ann. §§ 137-H:1 to -H:16 (Supp. 1988);
N.J. Stat. Ann. §§ 26:2H-53 to -78 (West 1993), combined advance directive act, enacted 1991;
N.M. Laws Ch. 182 (H.B. 483), combined health decisions act, enacted 1995;
N.C. Gen. Stat. Ann. §§ 90-320 to -322 (1991);
N.D. Cent. Code §§ 23-06.4-01 to -14 (Supp. 1993);
Ohio Rev. Code Ann. §§ 2133.01 to -15 (Anderson Supp. 1991);
Okla. Stat. Ann. tit. 63, §§ 3101.1 to .16 (West 1993), combined advance directive act, enacted 1993; see also mental health advance directive act at Okla. Sess. Law Serv. Ch. 251 (H.B. 1353), enacted 1995;
Or. Rev. Stat. §§ 127.505 to 127.660, and 127.995 (West 1996), combined health decisions act, enacted 1993;
Pa. Stat. Ann. tit. 20, §§ 5401 to 5416 (Purdon 1993), enacted 1992;
R.I. Gen Laws §§ 23-4.11-1 to -14 (1992);
S.C. Code Ann. §§ 44-77-10 to -160 (Law. Co-op Supp. 1988);
S.D. Codified Laws Ann. §§ 34-12D-1 to -17 (1991);
Tenn. Code Ann. §§ 32-11-101 to -110 (Supp. 1988);
Tex. Health & Safety Code Ann. §§ 166.031 to .051 (Vernon Supp. 1990);
Utah Code Ann. §§ 75-2-1101 to 1119 (Supp. 1993);
Vt. Stat. Ann. tit. 18, §§ 5251-5262 and tit. 13, §1801 (Supp. 1987);
Va. Code §§ 54.1-2981 to -2993 (Supp. 1992), combined health decisions act, enacted 1992;
Wash. Rev. Code Ann. §§ 70.122.010 to -.905 (Supp. 1989);
W. Va. Code §§ 16-30-1 to -10 (1985);
Wisc. Stat. Ann. §§ 154.01 to -.15 (West 1989);
Wyo. Stat §§ 35-22-101 to -109 (Supp. 1990).

Health Care Power of Attorney Statutes

Ala. Code §§ 22-8A-1 to -10 (1997) combined health decisions act, enacted in 1997 (amends earlier statute that did not contain power of attorney provisions); must be read in combination with Durable Power of Attorney Act, §26-1-2, revised 1997.
Alaska Stat. §§13.26.332 to -.356 (Supp. 1990), particularly § 13.26.344(l), health care agent authority enacted 1988;
Ariz. Rev. Stat. Ann. §§ 36-3201 to -3262 (1992), combined health decisions act, enacted in 1992;
1999 Arkansas Laws Act 1448 (H.B. 1331), enacted 4/15/99. See also proxy authorization in Living Will statute, Ark. Code Ann. §§ 20-17-201 to -218 (Supp. 1989);
Cal. Probate Code §§ 4600 to 4948 (West 1999), combined health decisions act, enacted 1999;
Colo. Rev. Stat., §§ 15-14-501 to -509 (1992), enacted 1992;

Conn. Gen. Stat. § 1-43 (1991) re durable powers of attorney, and Conn. Gen. Stat. §§ 19a-570 to -575 (1992), re health care agents, both amended by 1993 Conn. Acts 93-407 (H.B.7244) (Reg. Sess.);
Del. Code Ann. tit. 16, § 2501-2509 (1983);
D.C. Code Ann., §§ 21-2201 to -2213 (1989), enacted 1989;
Fla. Stat. Ann. §§ 765.101 to .404 (West 1999), combined health decisions act enacted in 1992;
Ga. Code Ann., §§ 31-36-1 to -13 (1990), enacted 1990;
Hawaii Rev. Stat §§ 327E-1 to –16 (West 1999), combined health decisions act, enacted 1999, replacing more limited statute.
Idaho Code, §§ 39-4501 to -4509, specifically § 39-4505 (Supp. 1990), enacted 1988;
Illinois -- 755 ILCS 45/4-1 to 4-12 (formerly Ill. Ann. Stat. Ann. ch. 110 1/2,, para. 804-1 to -12, enacted 1987);
Ind. Code Ann., §§ 30-5-1 to 30-5-10 (West 1991), particularly 30-5-5-17 re health care agent authority, enacted in 1991, and see also § 16-36-1-1 to -14 (West 1994) re health care consent;
Iowa Code Ann. §§ 144B.1 to .12 (West Supp. 1991), enacted 1991;
Kan. Stat. Ann. §§ 58-625 to -632 (Supp. 1989), enacted in 1989;
Ky. Rev. Stat. §§ 311.621 to 311.643 (Supp. 1994), enacted in 1994 (replaces a 1990 law);
La. Civ. Code Ann. Art. 2997 (West 1990);
Me. Rev. Stat. Ann. tit. 18A, §§ 5-801 to -817 (Supp. 1996), enacted in 1995, replacing more limited statute;
Md. Health-Gen. Code Ann. §§ 5-601 to -608 (1993), combined health decisions statute enacted 1993;
Mass. Gen. Laws Ann. ch. 201D (West Supp. 1991), enacted 1990;
Mich. Comp. Laws Ann. §§ 333.5651 (West 2001), enacted 1996, and §§700.5501 to.-5520 (West 2001), enacted 1998, effective 4/1/00.
Minn. Stat. §§ 145C.01 to -.16 (Supp. 1998), combined health decisions act enacted 1998, replacing former living will and durable power acts; see also mental health advance directive at §253B.03, Subd. 6b.;
Miss. Code Ann. §§41-41-201 to -229 (Supp. 1998),enacted in 1998, replacing 1990 act; combined health decisions act;
Mo. Ann. Stat. §§ 404.700 to .735 (West 1991), health care agent authority enacted 1991;
Mont. Code Ann. §§ 50-9-101 to -111, and 50-9-201 to -206 (1992), enacted 1985 with proxy added 1991;
Neb. Rev. Stat. §§ 30-3401 to -3432 (1993), enacted 1992;
Nev. Rev. Stat., §§ 449.800 to .860 (Supp. 1991) enacted 1987;
N.H. Rev. Stat. Ann. §§ 137-J:1 to -J:16 (1993), enacted 1991;
N.J. Stat. Ann. §§ 26:2H-53 to -78 (West 1993), combined advance directive act, enacted 1991;
N.M. Laws Ch. 182 (H.B. 483), combined health decisions act, enacted 1995; see also durable power of attorney for health care act at N.M. Stat. Ann. §§ 45-5-501 and -502 (1989);
N.Y. Pub. Health Law §§ 2980 to 2994 (McKinney Supp. 1991), enacted 1990;
N.C. Gen. Stat. §§ 32A-15 to -26 (1991), enacted 1991;
N.D. Cent. Code §§ 23-06.5-01 to -18 (Supp. 1993), enacted April 18, 1991;
Ohio Rev. Code, §§ 1337.11 to .17 (Anderson Supp. 1991), enacted 1989;
Okla. Stat. Ann. tit. 63, §§ 3101.1 to .16 (West 1993), combined advance directive act, enacted 1992;
Or. Rev. Stat. §§ 127.505 to .660, and 127.995 (West 1996), combined health decisions act created 1993;
20 Pa. Cons. Stat. Ann. §§ 5601-5607 (Purdon's Supp. 1990), enacted in 1982, and see Pa. Stat. Ann. tit. 20, §§ 5401 to 5416 (1993), enacted 1992;
R.I. Gen. Laws §§ 23-4.10-1 to -2 (Supp. 1993), enacted 1986;
S.C. Code §§ 62-5-504, enacted April 8, 1992 (S.B. 541) (See also § 62-5-501 re durable power of attorney);
S.D. Codified Laws Ann. §§ 34-12C-1 to -8, and §§ 59-7-2.1 to -2.8 (Supp. 1992), health care agent authority enacted 1990;
Tenn. Code Ann. §§ 34-6-201 to -214 (Supp. 1991), enacted 1990;
Tex. Health & Safety Code Ann. §§ 166.151 to .166 (West 1993), enacted 1989;
Utah Code Ann. §§ 75-2-1101 to -1119 (Supp. 1993), enacted 1985;
Vt. Stat. Ann. tit. 14, §§ 3451 to 3467 (1989), enacted 1988;
Va. Code §§ 54.1-2981 to -2993 (Supp. 1992), combined health decisions act, enacted 1992, replacing a 1989 act;
Wash. Rev. Code Ann. §§ 11.94.010 to .900 (Supp. 1990) (health care agent authority enacted 1989);
W. Va. Code §§ 16-30A-1 to -20 (Supp. 1990), enacted in 1990;
Wis. Stat. Ann. §§ 155.01 to .80, and 11.243.07(6m) (West 1990), enacted 1990;
Wyo. Stat. §§ 3-5-201 to -214 (Supp. 1993).

Special Mental Health Advance Directives

1996 Alaska Laws Ch. 63 (S.B. 159), enacted 6/17/96, effective 9/15/96, and codified at Alaska Stat. §47.30.950 to .980 (1996);
1999 Arizona Laws Ch. 83, § 17, effective August 6, 1999, codified at Ariz. Rev. Stat. Ann. §§ 36- 3281 to 36-3287.
Idaho, 1998 Idaho Laws Ch. 81 (S.B. 1358), enacted 3/18/98 and effective 7/1/99, codified at Idaho Code §§66-601 to 66-613
Illinois. 755 ILCS 43/1 to 43/115 enacted Dec. 15, 1995, effective June 1, 1996.
Haw. Rev. Stat. §327F (Michie 1995). enacted 1992;
Md. Laws Ch. 189 (H.B. 127), approved April 20, 2001.
Minn. Stat. Ann. §253B.03 (West 1995), enacted 1991;
2001 Montana Laws Ch. 533 (H.B. 583), approved May 1, 2001.
N.C. Session Laws 1997-442, effective January 1, 1998, codified at N.C. Gen. Stat. §§122C-71 to –77.
Okla. Stat. Ann. tit. 43A §§11-101 to 11-113, enacted 1995;
Or. Rev. Stat. §§127.700 to 127.735 and 127.995 (West 1996), enacted 1993.
2000 Tenn. Laws Pub. Ch. 947 (H.B. 3004). Eff. June 23, 2000.

Vernon's Texas Code Ann., Civil Practice & Remedies Code § 137.001 to -.011, enacted 1997.
Utah Code Ann. 1953 § 62A-12-501 to -504, enacted 1996.
1999 Wyoming Laws Ch. 167 (H.B. 26), approved 3/3/99.

Surrogate Consent Statutes

Ala. Code §§ 22-8A-1 to -10 (1997), specifically §22-8A-10, combined health decisions act, enacted in 1997 (amends earlier statute that did not contain surrogate provisions);
Ariz. Rev. Stat. Ann. § 36-3231 (1992). enacted in 1992 as part of combined health decisions act;
Ark. Stat. Ann. § 20-17-214 (1991) and § 20-9-602 (1987), addresses consent generally:
Cal. Probate Code §§ 4711 to 4727 (West 1999), enacted 1999 as part of combined health decisions act; see also Cal. Health & Safety Code §1418.8 (1996) re: medical interventions affecting nursing facility residents.
Colo. Rev. Stat. §§ 15-18.5-101 to -104 (1992);
Conn. Gen Stat. §§ 19a-570 to -571 (Supp. 1991);
Del. Code Ann. tit. 16, §2507 (1996)
D.C. Code Ann. § 21-2210 (1989);
Fla. Stat. Ann. §§ 765.401 to .404 (West 1999), enacted as part of combined health decisions act;
Ga. Code Ann § 31-9-2 (1991), addresses consent generally; *see also* Ga. Code Ann. §31-36A-1 to A-7, enacted 1999, which applies to facility admission, discharge, and transfer decisions.
Hawaii Rev. Stat §§ 327E-1 to -16 (West 1999), combined health decisions act, enacted 1999, replacing more limited statute.
Idaho Code § 39-4303 (1985), addresses consent generally;
Illinois -- 755 ILCS 40/1 to 40/55 (1997);
Ind. Code Ann § 16-8-12-4 (1988);
Iowa Code Ann. § 144A.7 (West 1991);
Ky. Rev. Stat. § 311.631(Supp. 1994), enacted in 1994 as part of combined health decisions act;
La. Rev. Stat Ann. § 40:1299.53 (1975);
Me. Rev. Stat. Ann. tit. 18a, §§ 5-801 to 5-817 (1996) (see especially § 5-805); and tit. 24, §2905 (1988), addresses consent generally;
Md. Health-Gen. Code Ann. § 5-605 (1993), enacted 1993 as part of combined health decisions act;
Miss. Code Ann. §41-41-211 (Supp. 1998),enacted in 1998 and §41-41-215, enacted 1999; part of combined health decisions act;
Mont. Code Ann. § 50-9-106 (1992);
Nev. Rev. Stat. §§ 449.535 to .690 (1991), specifically § 449.626;
N.M. Laws Ch. 182 (H.B. '83), combined health decisions act, enacted 1995; see also living will act at N.M. Stat. Ann. § 24-7-8.1 (1984);
N.Y. Pub. Health Law § 2965 (McKinney Supp. 1991), restricted to do-not-resuscitate decisions;
N.C. Gen. Stat. § 90-322 (1991);
N.D. Cent. Code §§ 23-12-13 (1991), addresses consent generally;
Ohio Rev. Code Ann. § 2133.08(B) (Anderson Supp. 1992);
Okla. Stat. Ann. Tit. 63, §3102A, enacted April 16, 1997, effective Nov. 1, 1997, establishes limited surrogate consent, applicable only to experimental treatments, tests or drugs.
Or. Rev. Stat. § 127.635 (1993), part of combined health decisions act created 1993;
S.C. Code Ann. §§ 44-66-10 to -80 (1990);
S. D. Codified Laws §§ 34-12C-3 (1991), addresses consent generally;
Tex. [Health & Safety] Code Ann. §§ 166.035 and 166.039 (Vernon 1989) and Tex. [Health & Safety] Code §§313.001 to -007 (Vernon 1993);
Utah Code Ann. § 75-2-1105(2), and § 78-14-5(4) (1991), addresses consent generally;
Va. Code § 54.1-2986 (Supp. 1992);
Wash. Rev. code Ann. § 7.70.065 (West 1991), addresses consent generally;
W. Va. Code §§ 16-30B-1 to -16 (1992), enacted 1992, replacing a more limited provision; revised 1997.
Wyo. Stat. §§ 3-5-201 and -209, and §§ 35-22-101 and -105 (1992).

EMS DNR Statutes

Alaska Stat. §§18.12.010 to .100 (Michie 1998);
Ariz. Rev. Stat. Ann. §§36-3251 (West 1999);
Ark. Code Ann. §§20-13-901 to -911 (1997);
Cal. Probate Code §4753 (West 1999);
Colo. Rev. Stat. Ann. §§15-18.6-101 to -108 (West 1999);
Conn. Gen Stat. §§ 19a-580d (1998);
Fla. Stat. Ann. §401.45(3)(West 1999), but see §§395.1041(3); 400.142(3); 400.4255(3); 400.487(7); 400.6095(8); and 400.621(3) for its application to various health care providers;
Ga. Code Ann. §§31-39-1 to-9 (1999);
Hawaii Rev. Stat. §321-222 and §321-229.5 (Michie 1998);

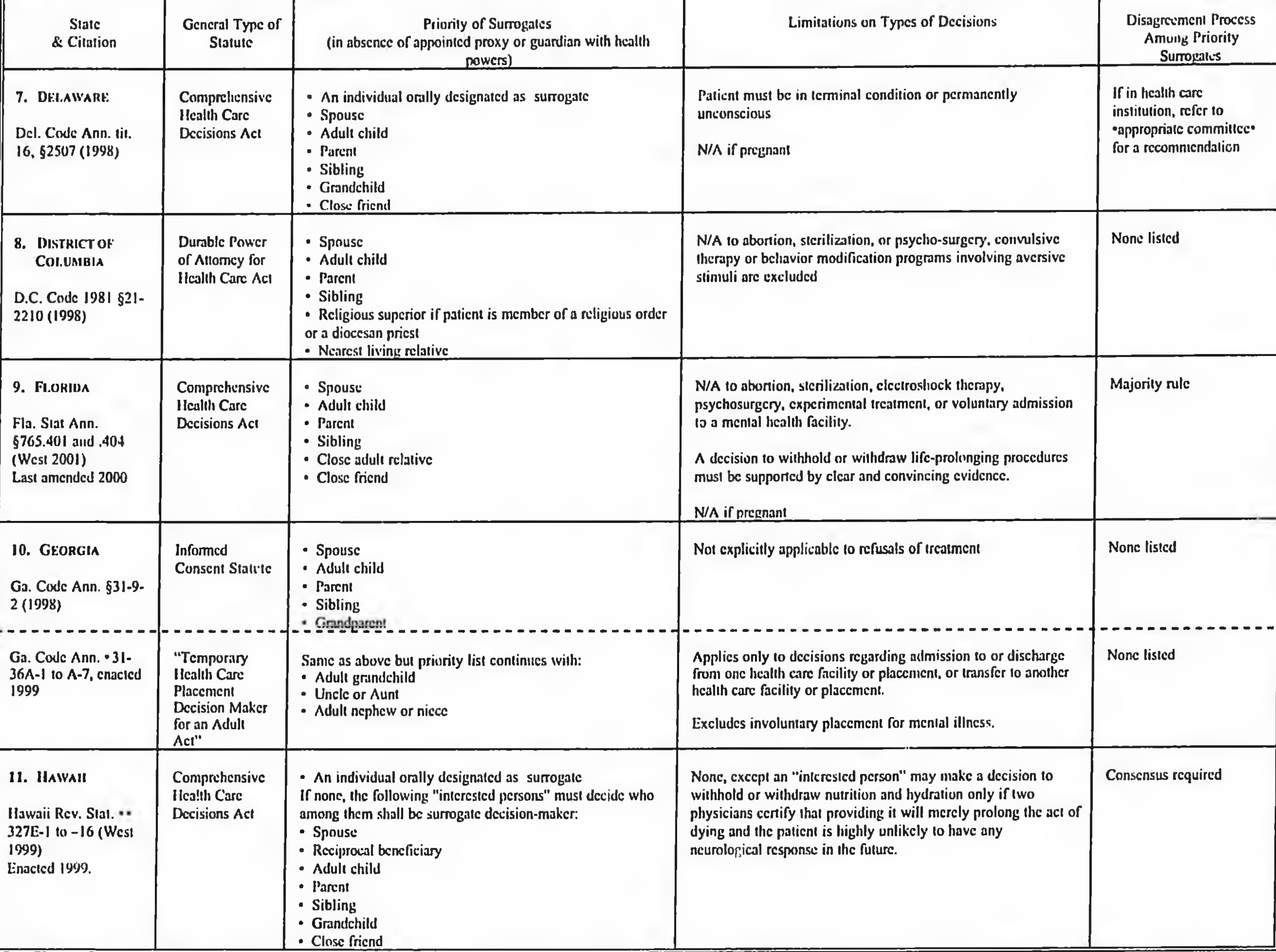
Idaho Code Ann. §§39-150 to -165 (1998);
210 ILCS 50/3.30(a)(7), implemented by 77 Ill. Admin. Code §515.380 *et seq.;*
Ind. Code Ann. §16-36-5-1 to –24 (West 199);
Kan. Stat. Ann. §§65-4941 to -4949 (1997);
Ky. Rev. Stat. §311.623(3) (Banks-Baldwin 1999);
La. Rev. Stat. Ann. §§40:1299.58.1 to -.10 (West 1999);
Md. Health-General Code Ann. §§5-601, 5-608 and 5-617 (1998);
Mich. Comp. Laws Ann. §§333.1051 to .1067 (West 1998);
Mont. Code Ann. §§50-10-101 to -106 (1997);
Nev. Rev. Stat. §§450B.400 to -.490 (1997);
N.H. Rev. Stat. Ann. §151-B:18 (1998);
N.M. Sta. Ann. §24-10B-4(J) (1998);
N.Y. Pub. Health Law §§2960-2978 (McKinney 1999);
N.C. Gen. Stat. §§32A-15 to -26 and §§90-320 to –322 (applicable to DNR orders according to health an Attorney General Advisory Opinion 1997 WL 858260 (N.C.A.G.) (December 22, 1997)
Ohio Rev. Code §§2133.01 to -.26 (Banks-Baldwin 1999);
Okla. Stat. Ann. tit. 63, §3131.1 to .14 (West 1999);
R.I. Gen Laws §23-4.11-1 to .14 ((1998):
S.C. Code Ann. §§44-78-10 to -65 (Law. Coop. 1998);
Tenn. Code Ann. §§68-140-601 to -604, and 68-11-224 (1998);
Texas Health & Safety Code §§166.081 to -.101(West 1999);
Utah Code Ann. §§75-2-1105.5 (1998);
Va. Code §§54.1-2987.1, -2988, -2989, and –2982 (Lexis 1999);
Wash. Rev.Code §43.70.480 (199West 1998);
W. VA. Code §§16-30C-1 to -16 (1998);
Wis. Stat. §§154.19 to -.29 (West 1999);
Wyo. Stat. Ann. §§35-22-201 to -208 (Michie 1998).

Prepared by the ABA Commission on Legal Problems of the Elderly (2000)

Surrogate Consent in the Absence of an Advance Directive

January 1, 2002

State & Citation	General Type of Statute	Priority of Surrogates (in absence of appointed proxy or guardian with health powers)	Limitations on Types of Decisions	Disagreement Process Among Priority Surrogates
1. **Alabama** Ala. Code 1975 §22-8A-11 and -6 (1997), enacted 1997	Comprehensive Health Care Decisions Act	• Spouse • Adult child • Parent • Sibling • Nearest relative • Attending physician & ethics committee	Patient must be in terminal condition or permanently unconscious	Consensus required
2. **Arizona** Ariz. Rev. Stat. Ann. §36-3231 (West 1998), enacted 1992	Comprehensive Health Care Decisions Act	• Spouse • Adult child • Parent • Domestic partner • Sibling • Close friend • Attending physician in consult with ethics committee or, if none, 2nd physician	N/A to decisions to withdraw nutrition or hydration	Majority rule
3. **Arkansas** Ark. Code Ann. §20-17-214 (1997)	Living Will Statute	• Parents of unmarried minor • Spouse • Adult child • Parents • Sibling • Persons in loco parentis • Adult heirs	Patient must be in terminal condition or permanently unconscious N/A if pregnant	Majority rule
4. **California** Cal. Probate Code §4711 – 4727 (West 1999)	Comprehensive Health Care Decisions Act	An individual *orally* designated as surrogate. No others.	Effective "only during the course of treatment or illness or during the stay in the health care institution when the designation is made." N/A to civil commitment, electro-convulsive therapy, psychosurgery, sterilization, and abortion.	None listed
5. **Colorado** Colo. Rev. Stat. Ann. §15-18.5-103 (West 1999)	Separate Surrogate Consent Act	The following "interested persons" must decide who among them shall be surrogate decision-maker: • Spouse • Either parent • Adult child • Sibling • Grandchild • Close friend	N/A to withholding or withdrawal of artificial nourishment and hydration unless specified conditions are met	Consensus required
6. **Connecticut** Conn. Gen. Stat. Ann. §19a-571 (West 1998)	Comprehensive Health Care Decisions Act	Physician authorized in consultation with next of kin	Limited to the removal or withholding of life support systems, and patient is in terminal condition or permanently unconscious N/A if pregnant	None listed



State & Citation	General Type of Statute	Priority of Surrogates (in absence of appointed proxy or guardian with health powers)	Limitations on Types of Decisions	Disagreement Process Among Priority Surrogates
7. **Delaware** Del. Code Ann. tit. 16, §2507 (1998)	Comprehensive Health Care Decisions Act	• An individual orally designated as surrogate • Spouse • Adult child • Parent • Sibling • Grandchild • Close friend	Patient must be in terminal condition or permanently unconscious N/A if pregnant	If in health care institution, refer to •appropriate committee• for a recommendation
8. **District of Columbia** D.C. Code 1981 §21-2210 (1998)	Durable Power of Attorney for Health Care Act	• Spouse • Adult child • Parent • Sibling • Religious superior if patient is member of a religious order or a diocesan priest • Nearest living relative	N/A to abortion, sterilization, or psycho-surgery, convulsive therapy or behavior modification programs involving aversive stimuli are excluded	None listed
9. **Florida** Fla. Stat Ann. §765.401 and .404 (West 2001) Last amended 2000	Comprehensive Health Care Decisions Act	• Spouse • Adult child • Parent • Sibling • Close adult relative • Close friend	N/A to abortion, sterilization, electroshock therapy, psychosurgery, experimental treatment, or voluntary admission to a mental health facility. A decision to withhold or withdraw life-prolonging procedures must be supported by clear and convincing evidence. N/A if pregnant	Majority rule
10. **Georgia** Ga. Code Ann. §31-9-2 (1998)	Informed Consent Statute	• Spouse • Adult child • Parent • Sibling • Grandparent	Not explicitly applicable to refusals of treatment	None listed
Ga. Code Ann. §31-36A-1 to A-7, enacted 1999	"Temporary Health Care Placement Decision Maker for an Adult Act"	Same as above but priority list continues with: • Adult grandchild • Uncle or Aunt • Adult nephew or niece	Applies only to decisions regarding admission to or discharge from one health care facility or placement, or transfer to another health care facility or placement. Excludes involuntary placement for mental illness.	None listed
11. **Hawaii** Hawaii Rev. Stat. §§ 327E-1 to -16 (West 1999) Enacted 1999.	Comprehensive Health Care Decisions Act	• An individual orally designated as surrogate If none, the following "interested persons" must decide who among them shall be surrogate decision-maker: • Spouse • Reciprocal beneficiary • Adult child • Parent • Sibling • Grandchild • Close friend	None, except an "interested person" may make a decision to withhold or withdraw nutrition and hydration only if two physicians certify that providing it will merely prolong the act of dying and the patient is highly unlikely to have any neurological response in the future.	Consensus required

State & Citation	General Type of Statute	Priority of Surrogates (in absence of appointed proxy or guardian with health powers)	Limitations on Types of Decisions	Disagreement Process Among Priority Surrogates
12. Idaho Idaho Code §39-4303 (Lexis 1998)	Informed Consent Statute	Either: • Parent • Spouse If none, then any relative or ... any other person representing himself or herself responsible for the health care of such person	None listed	None listed
13. Illinois 755 ILCS 40/25 (Smith-Hurd 1998)	Separate Surrogate Consent Act	• Spouse • Adult child • Either parent • Sibling • Adult grandchild • Close friend • Guardian of the estate	N/A to admission to mental health facility, psychotropic medication or electo-convulsive therapy (see 405 ILCS 5/1-121.5; 5/2-102; 5/3-601.2, amended 1997) If decision concerns forgoing life-sustaining treatment, patient must be in terminal condition, permanently unconscious, or incurable or irreversible condition	Majority rule
14. Indiana Ind. Code Ann. §16-36-1-1 to -14 (West 1998)	Health Care Agency and Surrogate Consent Act	Any of the following: • Spouse • Parent • Adult child • Sibling • Religious superior if the individual is a member of a religious order	None listed	None listed
15. Iowa Iowa Code Ann. §144A.7 (West 1998)	Living Will Statute	• Spouse • Adult child • Parent or both parents, if reasonably available • Adult sibling	Limited to the withholding or withdrawal of life-sustaining procedures, and patient is in terminal condition or comatose N/A if pregnant	Majority rule
16. Kentucky Ky. Rev. Stat. §311.631 (Baldwin 1999)	Living Will Statute	• Spouse • Adult child • Parents • Nearest relative	N/A to withholding or withdrawal artificial nutrition and hydration unless specified conditions are met	Majority rule
17. Louisiana La. Rev. Stat. Ann. §40:1299.58.1 to .10 (West 1999)	Living Will Statute	• Spouse • Adult child • Parents • Sibling • Other relatives	Limited to patient in terminal and irreversible condition and comatose	Consensus required
18. Maine Me. Rev. Stat. Ann tit. 18-A, §5-801 to §5-817 (West 1999)	Comprehensive Health Care Decisions Act	• Spouse • Adult in spouse-like relationship • Adult child • Parent • Sibling • Adult grandchild • Adult niece or nephew • Adult relative familiar with patient's values • Close friend	If decision pertains to withdrawal or withholding of life-sustaining treatment , patient must be in terminal condition or persistent vegetative state N/A to denial of surgery, procedures, or other interventions that are deemed medically necessary.	Majority rule, although referral to dispute resolution assistance is mentioned as option

State & Citation	General Type of Statute	Priority of Surrogates (in absence of appointed proxy or guardian with health powers)	Limitations on Types of Decisions	Disagreement Process Among Priority Surrogates
19. MARYLAND Md. Health-Gen. Code Ann., §5-605 (Lexis 1998)	Comprehensive Health Care Decisions Act	• Spouse • Adult child • Parent • Sibling • Friend or relative who has maintained regular contact with the patient	N/A to sterilization or treatment for mental disorder Applicable to life-sustaining procedure only if the patient as been certified to be in a terminal condition, persistent vegetative state, or end-stage condition Applicable to DNR order only under certain conditions	If in hospital or nursing home, refer to ethics committee If elsewhere, consensus required
21. MISSISSIPPI Miss. Code 1972 Ann. §41-41-211, •41-41-215(9) (1998)	Comprehensive Health Care Decisions Act	• Individual orally designated by patient • Spouse • Adult child • Parent • Sibling • Close friend • Owner, operator, or employee of residential long-tenn care institution (but see limitations)	If surrogate is owner, operator, or employee of residential long-term care institution, then the authority does not extend to decisions to withhold or discontinue life support, nutrition, hydration, or other treatment, care, or support.	Majority rule.
22. MONTANA Mont. Code Ann. §50-9-106 (1997)	Living Will Statute	• Spouse • Adult child • Parents • Sibling • Nearest adult relative	Limited to withholding or withdrawal of life-sustaining treatment , and patient is in terminal condition N/A if pregnant	Majority rule
23. NEVADA Nev. Rev. Stat. §449.626 (1997)	Living Will Statute	• Spouse • Adult child • Parents • Sibling • Nearest adult relative	Limited to withholding or withdrawal of life-sustaining treatment, and patient is in terminal condition N/A if pregnant	Majority rule
24. NEW MEXICO N.M. Stat. Ann. 1978 •24-7A-5 (1998)	Comprehensive Health Care Decisions Act	• An individual designated as surrogate • Spouse • Individual in long-term spouse-like relationship • Adult child • Parent • Sibling • Grandparent • Close friend	None listed	Majority rule
25. NEW YORK N.Y. Pub. Health Law §2965 (McKinney 1999)	Specialized Surrogate Consent Statute (applicable only to DNR orders)	• Spouse • Adult child • Parent • Sibling • Close friend	Limited to consent to a DNR order, and patient is in terminal condition, or permanently unconscious, or where resuscitation is futile or extraordinarily burdensome	Refer to dispute mediation system
26. NORTH CAROLINA N.C. Gen. Stat. §90-322 (Michie 1997)	Living Will Statute	• Spouse • Majority of relatives of the first degree • Attending physician	Limited to the withholding or discontinuance of extraordinary means or artificial nutrition or hydration, and patient is in terminal condition, or persistent vegetative state, and meets other conditions	Majority rule

State & Citation	General Type of Statute	Priority of Surrogates (in absence of appointed proxy or guardian with health powers)	Limitations on Types of Decisions	Disagreement Process Among Priority Surrogates
27. NORTH DAKOTA N.D. Cent. Code §23-12-13 (Michie 1997)	Informed Consent Statute	• Spouse • Adult children • Parents • Siblings • Grandparents • Adult grandchildren • Close adult relative or friend	Not explicitly applicable to refusals of treatment N/A to sterilization, abortion, psychosurgery, and some admissions to a state mental facility	None listed
28. OHIO Ohio Rev. Code Ann. §2133.08 (Baldwin 1999)	Living Will Statute	• Spouse • Adult child • Parents • Sibling • Nearest adult relative	Limited to consent for withdrawal or withholding of life-sustaining treatment, and patient is in terminal condition or permanently unconscious Nutrition and hydration may be withheld only upon the issuance of an order of the probate court N/A if pregnant	Majority rule
29. OKLAHOMA Okla. Stat. Ann. tit. 63 §3102A (West 1999)	Specialized provision (applicable only to experimental treatments)	• Spouse • Adult child • Parent • Sibling • Relative	Limited to experimental treatment, test or drug approved by a local institutional revew board.	None listed
30. OREGON Or. Rev. Stat. §127.635 (1998)	Comprehensive Health Care Decisions Act	• Spouse • Adult designated by others on this list, without objection by anyone on list • Majority of adult children • Either parent • Majority of siblings • Adult relative or adult friend • Attending physician	Limited to withdrawal or withholding of life-sustaining procedures, and patient is in terminal condition, or permanently unconscious, or meets other conditions	Majority rule
31. SOUTH CAROLINA S.C. Code 1976 Ann. §44-66-30 (1998)	Separate Surrogate Consent Act	• Person given priority to make health-care decisions for the patient by another statute • Spouse • Parent or adult child • Sibling, grandparent, or adult grandchild • Other close relative • Person given authority to make health-care decisions for the patient by another statutory provision	N/A if patient's inability to consent is temporary and delay of treatment will not result in significant detriment to the patient's health	None listed
32. SOUTH DAKOTA S.D. Codified Laws Ann. §34-12C-1 to -8 (1998)	Separate Surrogate Consent Act	• Spouse • Adult child • Parent • Sibling • Grandparent or adult grandchild • Aunt or uncle or adult niece or nephew	None listed	None listed
33. TEXAS Tex. [Health & Safety] Code Ann. §166.039 (West (1997)	Advance Directive Act	• Spouse • Reasonably available adult children • Parents • Nearest relative	N/A if pregnant	None listed

State & Citation	General Type of Statute	Priority of Surrogates (in absence of appointed proxy or guardian with health powers)	Limitations on Types of Decisions	Disagreement Process Among Priority Surrogates
Tex. [Health & Safety] Code Ann. •166.081 to .101, specifically §166.088(b) (West (1997)	Specialized provision (applicable to DNR orders)	(Same as above. Incorporates the terms of §672.009)	(Same as above)	(Same as above)
34. Utah Utah Code Ann. 1953 §75-2-1105, -1105.5, -1107 (Lexis 1998)	Comprehensive Health Care Decisions Act	• Spouse • Parents or surviving parent • Adult child • Nearest reasonably available relative When patient is terminal or in a permanent vegetative state: • Spouse • Parent • Adult children	N/A if pregnant	Majority rule
35. Virginia Va. Code 1950 §54.1-2986 (Michie 1997)	Comprehensive Health Care Decisions Act	• Spouse • Adult child • Parent • Sibling • Other relative in the descending order or blood relationship	N/A to non-therapeutic sterilization, abortion, psychosurgery, or admission to a mental retardation facility or psychiatric hospital	Majority rule
36. Washington Wash. Rev. Code Ann. §7.70.065 (West 1998)	Informed Consent Statute	• Spouse • Adult children • Parents • Siblings	Not explicitly applicable to refusals of treatment	Consensus required
37. West Virginia W. Va. Code 1966 §16-30-8 and -9 (2000) Last amended 2000	Comprehensive Health Care Decisions Act	• Spouse • Adult child • Parent • Sibling • Adult grandchild • Close friend • Any other person or entity according to DHHR rules If there are multiple surrogates at the same priority level, the attending physician must choose one who appears best qualified according to statutory criteria. May also choose lower level surrogate if deemed best qualified.	None listed	Conflict among multiple surrogates pre-empted by physician's authority to select one surrogate. Other permissible surrogates have a 72-hour window to seek court challenge of a decision made by selected surrogate.
38. Wyoming Wyo. Stat. 1997 §3-5-209 and §35-22-105(b) (1998)	Durable Power of Attorney Statute and Living Will Statute (Identical provisions)	• All family members who can be contacted through reasonable diligence	Limited to withholding or withdrawal of life-sustaining procedures, and patient is in terminal condition or irreversible coma	Consensus required

State & Citation	General Type of Statute	Priority of Surrogates (in absence of appointed proxy or guardian with health powers)	Limitations on Types of Decisions	Disagreement Process Among Priority Surrogates
UNIFORM HEALTH-CARE DECISIONS ACT	Comprehensive Health Care Decisions Act	• Individual orally designated by patient • Spouse • Adult child • Parent • Sibling • Close friend	None listed	Majority rule

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The American Bar Association acknowledges The West Group for providing access to on-line legal research.

Bartlett Regional Hospital

Patient's Advance Directives Inquiry

1. Have you executed an Advance Directive such as a Living Will or a Durable Power of Attorney for Health Care?
   - ☐ Living Will
   - ☐ Organ Donation
   - ☐ Durable Power of Attorney
   - ☐ None

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

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

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

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

_______________________________ _______________________________
Patient's Signature Date

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

_______________________________ _______________________________
Signature Date

____
Relationship to Patient

COMMENTS (when no signature is obtained): _______________________________

____

____

____

BRH 280 Rev. 8/00

Printing Trade Company

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Section 1. DESIGNATION OF AGENT

I ____ (Principal), residing

at ____
Street Address City State Zip

hereby appoint: ____
Name

____
Street Address City State Zip

Work Phone Home Phone

as my agent with the powers set out below.

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

First Alternate:

____
Name

____
Street Address City State

____
Work Phone Home Phone

Second Alternate:

____
Name

____
Street Address City State

____
Work Phone Home Phone

Section 2. STATEMENT OF POWERS

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

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

PATIENT'S RIGHTS
BARTLETT REGIONAL HOSPITAL

Bartlett Regional Hospital will abide by the following Patient's rights (as set forth in 7 AAC 12.890, 42 CFR Part 482; AS 18.05.040; AS 18.20.10)

While you are a patient at Bartlett Regional Hospital, we will do our best to respect your personal rights. You or your representative may expect:

1. Considerate and respectful care, that recognizes your dignity and individuality.
2. Protection of your right to privacy and confidentiality of information related to your medical care; including access to a telephone to make and receive confidential calls; and the ability to send or receive unopened correspondence.
3. Clear explanations of your condition, proposed treatments or procedures, the benefits or drawbacks of the proposed treatment, expected recuperation and the likelihood of success of treatments or procedures.
4. Willingness to let you and your family take the lead in decision making regarding your care and treatment.
5. A safe and secure setting free from abuse/ harassment.
6. Compliance with your request to refuse treatment or to have medically necessary and appropriate treatment provided.
7. Our compliance with your advance directives, per Alaska Law.
8. Freedom from any type of discrimination on the basis of age, race, color, sex, creed, national origin, martial status, sexual orientation or disability.
9. Access to protective services, from counseling to guardianship, to help you reach your maximum level of independence.
10. Access to an interpreter, your own of the hospitals.
11. Services of the hospital chaplain when you request them.
12. Assistance in obtaining financial aid or counseling, if needed.
13. Attentive, courteous response to any concerns or complaints you and your family may have.
14. Freedom from seclusion or restraints that are not medically necessary.
15. Access to the information contained in your medical record within a reasonable timeframe.
16. Upon request, information regarding services that are available in the hospital and their cost, including any costs for services or personal care items not covered by the facility's basic per diem rate or not covered under title XVII or Title XIX of the Social Security Act.
17. To have the rights of minors assured by prompt and consistent interpretation of patient rights to a patient or legal guardian.

PATIENT AND FAMILY GRIEVANCE

Patients and their families have the right to file a grievance regarding events occurring during their stay at BRH when a complaint is not mutually resolved. The Patient and Family Grievance Policy will be followed in the event of a grievance. In addition, you have the right to lodge a compliant with the Office of Health Facilities Licensing & Certification, Department of Health and Social Services, 4730 Business Park Blvd, Suite 18, Anchorage, Alaska 99503-7137, 907 561-8081. Your presentation of a complaint will not impact the future availability of care or services at BRH.

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