

## HB 25

### Health Care Decisions Act

#### Sectional Analysis

##### Section 1

###### Intent Language

###### **Uncodified law of the State of Alaska.**

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

##### Section 2

###### Unclaimed bodies:

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

##### Section 3

#### CHAPTER 52. HEALTH CARE DECISIONS ACT.

###### Section 13.52.010 Advance health care directives.

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

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

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

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

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

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

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

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

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

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

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

**Section 13.52.020. Revocation of advance health care directive.**

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

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

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

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

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

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

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

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

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

**Section 13.52.025. Rescission of withdrawal by agent.**

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

**Section 13.52.030. Decisions by surrogate.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 13.52.040 Decisions by guardian.**

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

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

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

**Section 13.52.045 Pregnancy.**

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

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

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

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

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

**Section 13.52.050 Obligations of health care provider.**

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

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

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

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

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

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

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

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

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

***Section 13.52.060 Do not resuscitate protocol and identification requirements.***

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

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

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

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

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

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

**Section 13.52.070. Health care information.**

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

**Section 13.52.080. Immunities.**

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

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

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

**Section 13.52.085. Discriminatory treatment prohibited.**

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

**Section 13.52.090. Statutory damages.**

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

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

**Section 13.52.100 Capacity.**

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

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

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

**Section 13.52.110. Status of copy.**

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

**Section 13.52.120. Effect of this chapter.**

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

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

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

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

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

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

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

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

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

***Section 13.52.130 Prohibited requirements.***

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

***Section 13.52.140 Judicial relief.***

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

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

***Section 13.52.150. Uniformity of application and construction.***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I hereby give (check boxes applicable):

any needed organs, tissues, or parts;

the following organs, tissues, or parts only:

\_\_\_\_\_;

the following purposes only:

\_\_\_\_\_.

\_\_\_\_\_ (date) (signature of survivor)

\_\_\_\_\_ (address of survivor)

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

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

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

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

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

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

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

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

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

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

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

**Section 13.52.220. Delivery of document of gift.**

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

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

**Section 13.52.230. Rights and duties at death.**

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

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

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

**Section 13.52.240. Coordination of procurement and use.**

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

**Section 13.52.250. Sale or purchase of parts prohibited.**

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

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

**Section 13.52.260. Examination, autopsy, liability.**

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

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

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

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

**Section 13.52.270. Applicability provisions.**

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

**Section 13.52.280. Uniformity of application and construction.**

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

**Section 13.52.300. Optional form.**

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

ADVANCE HEALTH CARE DIRECTIVE

Explanation

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

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

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

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

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

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

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

(e) make an anatomical gift following your death.

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

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

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

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

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

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

PART 1  
DURABLE POWER OF ATTORNEY FOR  
HEALTH CARE DECISIONS

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

\_\_\_\_\_  
(name of individual you choose as agent)

\_\_\_\_\_  
(address) (city) (state) (zip code)

\_\_\_\_\_  
(home phone) (work phone)

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

\_\_\_\_\_  
(name of individual you choose as first alternate agent)

\_\_\_\_\_  
(address) (city) (state) (zip code)

\_\_\_\_\_  
(home phone) (work phone)

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

\_\_\_\_\_  
(name of individual you choose as second alternate agent)

\_\_\_\_\_  
(address) (city) (state) (zip code)

\_\_\_\_\_  
(home phone) (work phone)

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional sheets if needed.)

(Add additional sheets if needed.)

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

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

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

PART 2

INSTRUCTIONS FOR HEALTH CARE

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

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

(A) Choice To Prolong Life

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

(B) Choice Not To Prolong Life

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

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

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

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

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

Additional instructions: \_\_\_\_\_

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

I wish to receive artificial nutrition and hydration indefinitely;

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

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

Other instructions: \_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_

Conditions or limitations: \_\_\_\_\_

\_\_\_\_\_  
(Add additional sheets if needed.)

PART 3  
ANATOMICAL GIFT AT DEATH  
(OPTIONAL)

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

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

(A) I give any needed organs, tissues, or other body parts, OR

(B) I give the following organs, tissues, or other body parts

only \_\_\_\_\_

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

(i) transplant;

(ii) therapy;

(iii) research;

(iv) education.

(D) I refuse to make an anatomical gift.

PART 4  
MENTAL HEALTH TREATMENT

This part of the declaration allows you to make decisions in advance about mental health treatment. The instructions that you include in this declaration will be followed only if a court, two physicians that include a psychiatrist, or a physician and a professional mental health clinician believe that you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments.

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

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

\_\_\_\_\_ I consent to the administration of the following medications:

\_\_\_\_\_ I do not consent to the administration of the following medications: \_\_\_\_\_

Conditions or limitations: \_\_\_\_\_

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

\_\_\_\_\_ I consent to the administration of electroconvulsive treatment.

\_\_\_\_\_ I do not consent to the administration of electroconvulsive treatment.

Conditions or limitations: \_\_\_\_\_

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

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

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

Conditions or limitations: \_\_\_\_\_

OTHER WISHES OR INSTRUCTIONS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Conditions or limitations: \_\_\_\_\_  
\_\_\_\_\_

PART 5  
PRIMARY PHYSICIAN  
(OPTIONAL)

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

\_\_\_\_\_  
(name of physician)

\_\_\_\_\_  
(address) (city) (state) (zip code)

\_\_\_\_\_  
(phone)

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

\_\_\_\_\_  
(name of physician)

\_\_\_\_\_  
(address) (city) (state) (zip code)

\_\_\_\_\_  
(phone)

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

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

\_\_\_\_\_  
(date) (sign your name)

\_\_\_\_\_  
(print your name)

\_\_\_\_\_  
(address) (city) (state) (zip code)

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

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

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

ALTERNATIVE NO. 1

Witness

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

\_\_\_\_\_  
(date) (signature of witness)

\_\_\_\_\_  
(printed name of witness)

\_\_\_\_\_  
(address) (city) (state) (zip code)

Witness

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

(date) (signature of witness)

\_\_\_\_\_  
(printed name of witness)

\_\_\_\_\_  
(address) (city) (state) (zip code)

ALTERNATIVE NO. 2

State of Alaska

\_\_\_\_\_  
Judicial District

On this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me,

\_\_\_\_\_  
(insert name of notary public) appeared

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

Notary Seal

\_\_\_\_\_  
(signature of notary public)

**Section 13.52.390. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

**Section 15.** Repeals certain statutes.

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

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

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

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

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

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

*Updated: February 19, 2004*