

Alaska Statute

Chapter 13.52. HEALTH CARE DECISIONS ACT

Sec. 13.52.010. Advance health care directives.

(a) Except as provided in AS 13.52.170 (a), an adult may give an individual instruction. Except as provided in AS 13.52.170 (b), the instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(b) An adult may execute a durable power of attorney for health care, which may authorize the agent to make any health care decision the principal could have made while having capacity. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. The power must be in writing, contain the date of its execution, be signed by the principal, and be witnessed by one of the following methods:

(1) signed by at least two individuals who are personally known by the principal, each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgment of the signature of the instrument; or

(2) acknowledged before a notary public at a place in this state.

(c) Unless related to the principal by blood, marriage, or adoption, an agent under a durable power of attorney for health care may not be an owner, operator, or employee of the health care institution at which the principal is receiving care.

(d) A witness for a durable power of attorney for health care may not be

(1) a health care provider employed at the health care institution or health care facility where the principal is receiving health care;

(2) an employee of the health care provider providing health care to the principal, or of the health care institution or health care facility where the principal is receiving health care; or

(3) the agent.

(e) At least one of the individuals used as a witness for a durable power of attorney for health care shall be someone who is not

(1) related to the principal by blood, marriage, or adoption; or

(2) entitled to a portion of the estate of the principal upon the principal's death under a will or codicil of the principal existing at the time of execution of the durable power of attorney for health care or by operation of law then existing.

(f) Unless otherwise specified in the durable power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity and ceases to be effective upon a determination that the principal has recovered capacity.

(g) Unless otherwise specified in a written advance health care directive, a determination that a principal lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, shall be made by

(1) the primary physician, except in the case of mental illness;

(2) a court in the case of mental illness, unless the situation is an emergency; or

(3) the primary physician or another health care provider in the case of mental illness where the situation is an emergency.

(h) An agent shall make a health care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

(i) A health care decision made by an agent for a principal is effective without judicial approval.

(j) A written advance health care directive may include the individual's nomination of a guardian of the individual.

(k) An advance health care directive, including an advance health care directive that is made in compliance with the laws of another state, is valid for purposes of this chapter to the extent that it complies with the laws of this state.

Sec. 13.52.020. Revocation of advance health care directive.

(a) Except in the case of mental illness under (c) of this section, a principal may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(b) Except in the case of mental illness under (c) of this section, a principal may revoke all or part of an advance health care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(c) In the case of mental illness, 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 competent. A revocation is effective when a competent principal with capacity

communicates the revocation to the attending physician or other health care provider. The attending physician or other health care provider shall note the revocation on the principal's medical record. In the case of mental illness, the authority of a named agent and an alternative agent named in the advance health care directive continues in effect as long as the advance health care directive appointing the agent is in effect or until the agent has withdrawn. For the purposes of this subsection, a principal is not considered competent when

- (1) it is the opinion of the court in a guardianship proceeding under AS 13.26, the opinion of two physicians, at least one of whom is a psychiatrist, or the opinion of a physician and a professional mental health clinician, that the principal is not competent; or
 - (2) a court in a hearing under AS 47.30.735 , 47.30.750, or 47.30.770 determines that the principal is gravely disabled; in this paragraph, "gravely disabled" has the meaning given in AS 47.30.915 (7)(B).
- (d) A health care provider, agent, guardian, or surrogate who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising health care provider and to any health care institution at which the patient is receiving care.
- (e) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a durable power of attorney for health care.
- (f) An advance health care directive that conflicts with an earlier advance health care directive revokes the earlier directive to the extent of the conflict.
- Sec. 13.52.025. Rescission of withdrawal by agent.

A person who has withdrawn as an agent may rescind the withdrawal by executing an acceptance after the date of the withdrawal. A person who rescinds a withdrawal shall give notice to the principal if the principal has capacity or to the principal's health care provider if the principal does not have capacity.

Sec. 13.52.030. Surrogates.

- (a) Except in the case of mental health treatment and except as provided by AS 13.52.180 (a) and (b), a surrogate may make a health care decision for a patient who is an adult if an agent or guardian has not been appointed or the agent or guardian is not reasonably available, and if the patient has been determined by the primary physician to lack capacity.
- (b) Subject to AS 13.52.055 (b), a surrogate may make a decision regarding mental health treatment for a patient who is an adult if

(1) an agent or guardian has not been appointed or the agent or guardian is not reasonably available;

(2) the mental health treatment is needed on an emergency basis; and

(3) the patient has been determined to lack capacity by

(A) two physicians, one of whom is a psychiatrist; or

(B) a physician and a professional mental health clinician.

(c) Except as provided for anatomical gifts in AS 13.52.170 (b), an adult may designate an individual to act as surrogate for that adult by personally informing the supervising health care provider. Except as provided by AS 13.52.180 (a) and (b), in the absence of a designation, or if the designee is not reasonably available, a member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

(1) the spouse, unless legally separated;

(2) an adult child;

(3) a parent; or

(4) an adult sibling.

(d) Except as provided by (1) of this section or AS 13.52.180(a) or (b), if none of the individuals eligible to act as surrogate under (c) of this section is reasonably available, an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available may act as surrogate.

(e) A surrogate shall communicate the surrogate's assumption of authority as promptly as practicable to the health care provider, the health care institution, and the members of the patient's family specified in (c) of this section who can be readily contacted.

(f) If more than one member of a class under (c)(2) - (4) of this section assumes authority to act as surrogate, the members of that class do not agree on a health care decision, and the supervising health care provider is informed of the disagreement, the supervising health care provider shall comply with the decision of a majority of the members of that class who have communicated their views to the provider. If the class is evenly divided concerning the health care decision and the supervising health care provider is informed of the even division, that class and all individuals having a lower priority under (c)(2) - (4) of this section are disqualified from making the decision, and the primary physician, after consulting with all individuals in that evenly divided class who are reasonably available, shall make a decision based on the consultation and the primary physician's own determination of the best interest of the patient.

(g) A surrogate shall make a health care decision in accordance with the patient's individual instructions or other advance health care directives, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

(h) If a patient's primary health care provider observes that a surrogate is not abiding by the wishes, values, and best interest of the patient, the primary health care provider may decline to comply with a decision of the surrogate and shall notify the health care institution where the primary health care provider is providing health care to the patient.

(i) A health care decision made by a surrogate for a patient is effective without judicial approval.

(j) A patient who has capacity may, at any time, disqualify another person, including a member of the patient's family, from acting as the patient's surrogate by a signed writing or by personally informing the supervising health care provider of the disqualification.

(k) Unless related to the patient by blood, marriage, or adoption, a surrogate may not be an owner, operator, or employee of the health care facility where the patient is receiving care.

(l) A supervising health care provider may require an individual claiming the right to act as a surrogate for a patient to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

Sec. 13.52.040. Decisions by guardian.

(a) A guardian shall comply with the ward's individual instructions and may not revoke a ward's advance health care directive executed before the ward's incapacity unless a court expressly authorizes the revocation.

(b) Unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) Except as provided in (a) of this section, a health care decision made by a guardian for the ward is effective without judicial approval.

Sec. 13.52.045. Withholding or withdrawing of life-sustaining procedures.

Notwithstanding any other provision of this chapter, an agent or a surrogate may determine that life-sustaining procedures may be withheld or withdrawn from a patient with a qualifying condition when there is

(1) a durable power of attorney for health care or other writing that clearly expresses the patient's intent that the procedures be withheld or withdrawn; or

(2) no durable power of attorney for health care or other writing that clearly expresses the patient's intent to the contrary, the patient has a qualifying condition as determined under AS 13.52.160 , and withholding or withdrawing the procedures would be consistent with the patient's best interest.

Sec. 13.52.050. Decisions for exceptional procedures.

Unless there is a durable power of attorney for health care or another writing clearly expressing an individual's intent to the contrary, an agent or surrogate may not consent on behalf of a patient to an abortion, sterilization, psychosurgery, or removal of bodily organs except when the abortion, sterilization, psychosurgery, or removal of bodily organs is necessary to preserve the life of the patient or to prevent serious impairment of the health of the patient.

Sec. 13.52.055. Pregnancy.

(a) Before implementing a health care decision for a woman of childbearing age that would affect a fetus if present, the supervising health care provider shall take reasonable steps to determine whether the woman is pregnant.

(b) Notwithstanding any other provision of this chapter to the contrary, an advance health care directive by a patient or a decision by the person then authorized to make health care decisions for a patient may not be given effect if

- (1) the patient is a woman who is pregnant and lacks capacity;
- (2) the directive or decision is to withhold or withdraw life-sustaining procedures;
- (3) the withholding or withdrawal of the life-sustaining procedures would, in reasonable medical judgment, be likely to result in the death of the patient; and
- (4) it is probable that the fetus could develop to the point of live birth if the life-sustaining procedures were provided.

(c) This section does not apply to emergency services in the field.

Sec. 13.52.060. Obligations of health care providers, institutions, and facilities.

(a) Before implementing a health care decision made for a patient, a supervising health care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

(b) A supervising health care provider who knows of the existence of an advance health care directive, a revocation of an advance health care directive, or a designation or disqualification of a surrogate shall promptly record its existence in the patient's health care record, shall request a copy if it is in writing, and shall arrange for its maintenance in the health care record if a copy is furnished.

(c) A supervising health care provider who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, a guardian, or a surrogate, shall promptly record the determination in the patient's health care record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

(d) Except as provided in (e) and (f) of this section, a health care provider, health care institution, or health care facility providing care to a patient shall comply with

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

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

(e) A health care provider may decline to comply with an individual instruction or a health care decision for reasons of conscience, except for a do not resuscitate order. A health care institution or health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision is contrary to a policy of the institution or facility that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

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

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

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

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

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

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

Sec. 13.52.065. Do not resuscitate protocol and identification requirements.

(a) An attending physician may issue a do not resuscitate order for a patient of the physician. The physician shall document the grounds for the order in the patient's medical file.

(b) The department shall by regulation adopt a protocol, subject to the approval of the State Medical Board, for do not resuscitate orders that sets out a standardized method of procedure for the withholding of cardiopulmonary resuscitation by health care providers and health care institutions.

(c) The department shall develop standardized designs and symbols for do not resuscitate identification cards, forms, necklaces, and bracelets that signify, when carried or worn, that the carrier or wearer is an individual for whom a physician has issued a do not resuscitate order.

(d) A health care provider other than a physician shall comply with the protocol adopted under (b) of this section for do not resuscitate orders when the health care provider is presented with a do not resuscitate identification, an oral do not resuscitate order issued directly by a physician if the applicable hospital allows oral do not resuscitate orders, or a written do not resuscitate order entered on and as required by a form prescribed by the department.

(e) Notwithstanding (d) of this section, if an individual has made an anatomical gift to occur at death and is in a hospital when a do not resuscitate order or an order to withdraw life-sustaining procedures is to be implemented for the individual, the order may not be implemented until the subject of the anatomical gift can be evaluated to determine if it is suitable for donation.

(f) A do not resuscitate order may not be made ineffective unless a physician revokes the do not resuscitate order. A request to revoke a do not resuscitate order may only be made

by the person for whom the order is written or, if the person for whom the order is written is under 18 years of age, by the parent or guardian of the person.

Sec. 13.52.070. Health care information.

(a) Unless otherwise specified in an advance health care directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or other health care information.

(b) Notwithstanding (a) of this section, if there is a question about the principal's capacity, an agent or a surrogate of the principal may immediately access the personal health care information necessary to determine the principal's capacity, even if the agency or surrogacy does not become effective until the principal lacks capacity.

Sec. 13.52.080. Immunities.

(a) If a health care provider or health care institution makes reasonable efforts, with a level of diligence appropriate to the seriousness and urgency of the situation, to ensure the validity of an advance health care directive or a person's assumption of authority to make health care decisions for a patient, a health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for

- (1) providing health care information in good faith under AS 13.52.070;
- (2) complying with a health care decision of a person based on a reasonable belief that the person has authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;
- (3) declining to comply with a health care decision of a person based on a reasonable belief that the person then lacked authority;
- (4) complying with an advance health care directive and reasonably assuming that the directive was valid when made and has not been revoked or terminated;
- (5) participating in the withholding or withdrawal of cardiopulmonary resuscitation under the direction or with the authorization of a physician or upon discovery of do not resuscitate identification upon an individual;
- (6) causing or participating in providing cardiopulmonary resuscitation or other life-sustaining procedures

(A) under AS 13.52.065 (e) when an individual has made an anatomical gift; or

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

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

(b) An individual acting as an agent, a guardian, or a surrogate under this chapter is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

Sec. 13.52.090. Statutory damages.

(a) A health care provider or institution that intentionally violates this chapter is liable to the aggrieved individual or the individual's estate for damages of \$10,000 or actual damages resulting from the violation, whichever is greater, plus attorney fees as provided by court rule.

(b) A person who intentionally falsifies, forges, conceals, defaces, or obliterates an individual's advance health care directive or a revocation of an advance health care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give an advance health care directive, is liable to that individual for damages of \$10,000 or actual damages resulting from the action, whichever is greater, plus attorney fees as provided by court rule.