

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: ALASKA

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS
FOR MEDICAL ASSISTANCE

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

Sec. 18.12.010. Declaration relating to use of life-sustaining procedures.
(a) A competent person who is at least 18 years old may execute a declaration at any time directing that life-sustaining procedures be withheld or withdrawn from that person; but the declaration is given operative effect only if the declarant's condition is determined to be terminal and the declarant is not able to make treatment decisions. The declaration shall be signed by the declarant, or another at the declarant's directions, and in either case shall be witnessed by two persons or a person qualified to take acknowledgements under AS 09.63.010. The witnesses must be at least 18 years old and may not be related to the declarant by blood or marriage. A person may not charge a fee for preparing a declaration.

(b) It is the responsibility of the declarant to provide a copy of the declaration to the declarant's physician. A physician or other health care provider who is provided a copy of the declaration shall make it a part of the declarant's medical records.

(c) A declaration may, but need not, be in the following form:

(d) A physician or health care provider may present me, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid. (1 ch 144 SLA 1986)

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Sec. 18.12.020. Revocation of declaration. (a) A declaration may be revoked at any time and in any manner by which the declarant is able to communicate an intent to revoke; without regard to mental or physical condition. A revocation is only effective as to the attending physician or any health care provider acting under the guidance of that physician upon communication to the physician or health care provider by the declarant or by another to whom the revocation was communicated.

(b) The attending physician or health care provider shall make the revocation a part of the declarant's medical record. (1 ch 144 SLA 1986)

Sec. 18.12.030. Recording determination of terminal condition and contents of declaration. When an attending physician who has been provided a copy of a declaration determines that the declarant is in terminal condition, the physician shall record that determination and the contents of the declaration in the declarant's medical record. (1 ch 144 SLA 1986)

Sec. 18.12.040. Treatment of qualified patients. (a) A qualified patient has the right to make decisions regarding use of life-sustaining procedures as long as the patient is able to do so. If a qualified patient is not able to make these decisions, the declaration governs decisions regarding use of life-sustaining procedures.

(b) This chapter does not prohibit the application of any medical procedure or intervention, including the provision of nutrition and hydration, considered necessary to provide comfort care or alleviation of pain. The declaration may provide that the declarant does not want nutrition or hydration administered intravenously or by gastric tube.

(c) The declaration of a qualified patient known to the attending physician to be pregnant is given no 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. (1 ch 144 SLA 1986)

Sec. 18.12.050. Transfer of patients. (a) An attending physician who is unwilling to comply with the requirements of AS 18.12.030 or who is unwilling to comply with the declaration of a qualified patient under AS 18.12.040 shall withdraw as attending physician but the withdrawal is effective only when the services of another attending physician have been obtained.

(b) If the policies of a health care facility preclude compliance with the declaration of a qualified patient under this chapter, that facility shall take all reasonable steps to notify the patient or, if the patient is not able to make treatment decisions, the patient's guardian, of the facility's policy and shall take all reasonable steps to effect the transfer of the patient to the patient's home or to a facility where the provisions of this chapter can be carried out. (§ 1 ch 144 SLA 1986)

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Sec. 18.12.060. Immunities. (a) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

(1) a physician who causes the withholding or withdrawal of life sustaining procedures from a qualified patient;

(2) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician;

(3) the health care facility in which the withholding or withdrawal occurs.

(b) 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. (§ 1 ch 144 SLA 1986)

(c) A physician, health care facility, or other health care provider, and a health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan, may not require a person to execute a declaration as a condition for being insured for, or receiving, health care services.

(d) This chapter creates no presumption concerning the intention of an individual who has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining procedures in the event of a terminal condition.

(e) Nothing in this chapter increases or decreases the right of a patient to make decisions regarding use of life-sustaining procedures as long as the patient is able to do so, or impairs or supersedes any right or responsibility that a person has to effect the withholding or withdrawal of medical care in a lawful manner. In that respect, the provisions of this chapter are cumulative.

(f) This chapter does not condone, authorize, or approve mercy killing or euthanasia. (§ 1 ch 144 SLA 1986)

Sec. 18.12.070. Penalties. (a) An attending physician who fails to comply with the declaration of a qualified patient or to make the necessary arrangements to effect a transfer under AS 18.12.050 has no right to compensation for medical services provided to a qualified patient after withdrawal should have been effective or after transfer should have occurred and may be liable to the qualified patient and to the heirs of the qualified patient for a civil penalty not to exceed \$1000.00 plus the actual costs associated with the failure to comply with the declaration, and this shall be the exclusive remedy at law for damages.

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(b) A person who wilfully conceals, cancels, defaces, obliterates, or damages the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another may be civilly liable to the qualified patient and to the heirs of the qualified patient. (§ 1 ch 144 SLA 1986)

Sec. 18.12.080. General provisions. (a) Death resulting from the withholding or withdrawal of life-sustaining procedures under a declaration and in accordance with this chapter does not, for any purpose, constitute a suicide or homicide.

(b) The making of a declaration under AS 18.12.010 does not affect in any manner the sale, procurement, or issuance of a policy of life insurance, nor does it modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

Sec. 18.12.090 Recognition of declarations executed in other states. A declaration executed in another state or a territory or possession of the United States in compliance with the law of that jurisdiction is effective for purposes of this chapter. (1 ch 144 SLA 1986)

Sec. 18.12.100. Definitions In this chapter (1) "attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient;

(2) "declaration" means a document executed in accordance with the requirements of AS 18.12.010;

(3) "health care provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession;

(4) "life-sustaining procedure" means a medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process;

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(5) "physician" means a person licensed to practice medicine in this state or an officer in the regular medical service of the armed forces of the United States or the United States Public Health Service while in the discharge of their official duties, or while volunteering services without pay or other remuneration to a hospital, clinic, medical office, or other medical facility in the state;

(6) "qualified patient" means a patient who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition;

(7) "terminal condition" means a progressive incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of two physicians, when available, who have personally examined the patient, one of whom must be the attending physician, result in death within a relatively short time.
(§ 1 ch 144 SLA 1986)

Sec. 13.26.338. Completion of statutory form power of attorney. (a) In the instrument set out in AS 13.26.332 - 13.26.335, the principal must draw a line through the text of any category for which the principal does not desire to give the agent authority.

(b) special provisions and limitations may be imposed on the statutory form power of attorney only if they conform to the requirements of AS 13.26.347.
(§ 1 ch 109 SLA 1988)

Sec. 13.26.341. Applicability of provisions of statutory form power of attorney. In the instrument set out in AS 13.26.332 - 13.26.335,

(1) if the principal has appointed more than one person to act as attorney-in-fact or agent and failed to check whether the agents may act "jointly" or "severally," the agents are required to act jointly;

(2) if the principal has failed to indicate when the instrument shall become effective, the instrument shall become effective upon the date of the principal's signature;

(3) if the principal has indicated that the instrument shall become effective upon the date of the principal's signature or has failed to indicate when the instrument shall become effective and has failed to indicate the effect of the principal's subsequent disability on the instrument, the instrument shall be revoked by the subsequent disability of the principal;

(4) if the principal has failed to indicate a specific term for the instrument, the instrument shall continue in effect until revoked. (§ 1 ch 109 SLA 1988)

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Sec. 13.25.344 Interpretation of provisions in statutory form power of attorney.

(1) In the statutory form power of attorney, the language conferring general authority with respect to health care services, shall be construed to mean that, as to health care of the principal, whether to be provided in the state or elsewhere, the principal authorizes the agent to:

(1) have access to and disclose to others medical and related information and records;

(2) consent or refuse to consent to medical care or relief for the principal from pain, but the agent may not authorize the termination of life-sustaining procedures;

(3) take all steps necessary to enforce a properly executed declaration under AS 18.12;

(4) consent or refuse to consent to the principal's psychiatric care, but the consent does not authorize a voluntary commitment or placement in a mental health treatment facility, conclusive or electricshock therapy, psychosurgery, sterilization, or an abortion;

(5) arrange for care or lodging of the principal in a hospital, nursing home, or hospice;

(6) grant releases to health care professionals or health care institutions;

(7) hire, discharge, or compensate an attorney, accountant, expert witnesses, or assistant when the agent considers the action to be desirable for the proper execution of the powers described in this subsection; and

(8) do any other act or acts, that the principal can do through an agent, and that the agent considers desirable or necessary to provide for the principal's physical or mental well being.