

§ 13.52.010. Advance health care directives

(a)

Except as provided in AS 13.52.173, an adult may give an individual instruction. Except as provided in AS 13.52.177, 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)

Except as provided in AS 13.52.247(a), 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 if it complies with this chapter, regardless of where or when it was executed or communicated.

(l)

Notwithstanding the sample form provided under AS 13.52.300, an individual instruction that would be valid by itself under this chapter is valid even if the individual instruction is contained in a writing that also contains a durable power of attorney for health care and the durable power of attorney does not meet the witnessing or other requirements of this chapter.

Cite as AS 13.52.010

§ 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 and except as provided by AS 13.52.183, 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 a physician or other health care provider. The 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.

Cite as AS 13.52.020

§ 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.

Cite as AS 13.52.025

§ 13.52.030. Surrogates

(a)

Except in the case of mental health treatment and except as provided by AS 13.52.173 and 13.52.193, 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 13.52.173, 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 13.52.173 or 13.52.193, 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 13.52.173 or 13.52.193, 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.

Cite as AS 13.52.030

§ 13.52.040. Decisions by guardian

(a)

Subject to AS 13.52.183, 13.52.193, and 13.52.203, 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.

Cite as AS 13.52.040

§ 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.

Cite as AS 13.52.045

§ 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.

Cite as AS 13.52.050

§ 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.

Cite as AS 13.52.055

§ 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), (f), and (i) of this section and by AS 13.52.253, 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.

(i)

Notwithstanding the exception in (e) of this section for do not resuscitate orders, a health care provider may perform cardiopulmonary resuscitation or other resuscitative measures on a patient even if there is a do not resuscitate order for the patient if the condition requiring cardiopulmonary resuscitation or other resuscitative measures is precipitated by complications arising out of medical services being provided by the health care provider to the patient.

(j)

The provisions of (i) of this section do not apply when a health care provider performs emergency medical services on a patient in the field, unless an online physician orders the health care provider to perform cardiopulmonary resuscitation or other resuscitative measures; in this subsection,

(1)

"health care provider" does not include a physician;

(2)

"in the field" does not include in a health care facility, health care institution, hospital, or mental health facility;

(3)

"online physician" means a physician who is immediately available in person or by radio or telephone, when medically appropriate, for communication of medical direction to health care providers.

Cite as AS 13.52.060

§ 13.52.065. Do not resuscitate protocol and identification requirements

(a)

A 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 patient for whom the order is written and who has capacity requests that the do not resuscitate order be revoked, or the patient for whom the order is written is under 18 years of age and the parent or guardian of the patient requests that the do not resuscitate order be revoked. Any physician of a patient for whom a do not resuscitate order is written may revoke the do not resuscitate order if the person for whom the order is written requests that the physician revoke the do not resuscitate order.

Cite as AS 13.52.065

§ 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.

Cite as AS 13.52.070

§ 13.52.080. Immunities

(a)

A health care provider or health care institution that acts 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 good faith 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 good faith belief that the person then lacked authority;

(4)

complying with an advance health care directive and assuming in good faith 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;

(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

(C)

because the patient is a woman of childbearing age and AS 13.52.055 applies; 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.

(c)

A health care provider, health care institution, or health care facility is not subject to civil or criminal liability, or to discipline for unprofessional conduct, if a do not resuscitate order prevents the health care provider, health care institution, or health care facility from attempting to resuscitate a patient who requires cardiopulmonary resuscitation or other resuscitative measures because of complications arising out of health care being administered to the patient by the health care provider, health care institution, or health care facility. This subsection does not apply if the complications suffered by the patient are caused by gross negligence or reckless or intentional actions on the part of the health care provider, health care institution, or health care facility.

Cite as AS 13.52.080

§ 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.

Cite as AS 13.52.090

§ 13.52.100. Capacity

(a)

This chapter does not affect the right of an individual to make health care decisions while having capacity to make health care decisions.

(b)

An individual is rebuttably presumed to have capacity to make a health care decision, to give or revoke an advance health care directive, and to designate or disqualify a surrogate.

(c)

An individual who is a qualified patient, including an individual for whom a physician has issued a do not resuscitate order, has the right to make a decision regarding the use of cardiopulmonary resuscitation and other life-sustaining procedures as long as the individual is able to make the decision. If an individual who is a qualified patient, including an individual for whom a physician has issued a do not resuscitate order, is not able to make the decision, the protocol adopted under AS 13.52.065 for do not resuscitate orders governs a decision regarding the use of cardiopulmonary resuscitation and other life-sustaining procedures.

Cite as AS 13.52.100

§ 13.52.110. Status of copy

A copy of a written advance health care directive, revocation of an advance health care directive, or designation or disqualification of an agent or a surrogate has the same effect as the original.

Cite as AS 13.52.110

§ 13.52.120. Effect of this chapter

(a)

In the absence of evidence to the contrary of the patient's intent, this chapter establishes a presumption in favor of life, consistent with the best interest of the patient.

(b)

Notwithstanding any other provision of law, death resulting from the withholding or withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures does not, for any purpose, constitute a suicide

or homicide if the withholding or withdrawal is

(1)

consistent with this chapter; and

(2)

from an individual

(A)

for whom a do not resuscitate order has not been issued;

(B)

for whom a do not resuscitate order has been issued under

(i)

the protocol for do not resuscitate orders established under AS 13.52.065; or

(ii)

a do not resuscitate identification found on the individual.

(c)

The issuance of a do not resuscitate order under this chapter, the possession of do not resuscitate identification under this chapter, or the making of a health care directive under this chapter does not affect in any manner the sale, procurement, or issuance of a policy of life insurance, and does not 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 individual or the withholding or withdrawal of cardiopulmonary resuscitation from an individual who possesses do not resuscitate identification or for whom a do not resuscitate order has been issued, notwithstanding any term of the policy to the contrary.

(d)

This chapter does not authorize mercy killing, assisted suicide, or euthanasia.

(e)

This chapter does not authorize or require a health care provider or institution to provide health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(f)

This chapter does not authorize an agent or a surrogate to consent to the admission of an individual to a mental health facility unless the individual's written advance

health care directive expressly so provides, and the period of admission may not exceed 17 days.

(g)

This chapter does not affect other statutes of this state governing treatment for mental illness of an individual involuntarily committed to a mental health facility.

Cite as AS 13.52.120

§ 13.52.130. Prohibited requirements

As a condition of receiving or being insured for health care services, a health care provider, a health care institution, a health care service plan, an insurer issuing health insurance, a self-insured employee welfare benefit plan, or a nonprofit hospital plan may not require an individual to execute a health care directive, obtain a do not resuscitate order from a physician, or possess do not resuscitate identification.

Cite as AS 13.52.130

§ 13.52.135. Discriminatory treatment prohibited

When determining the best interest of a patient under this chapter, health care treatment may not be denied to a patient because the patient has a disability or is expected to have a disability.

Cite as AS 13.52.135

§ 13.52.140. Judicial relief

On petition of a patient, the patient's agent, guardian, or surrogate, or a 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 13.26.090 - 13.26.320.

Cite as AS 13.52.140

§ 13.52.150. Do not resuscitate orders and identification of other jurisdictions

A do not resuscitate order or a do not resuscitate identification executed, issued, or authorized in another state or a territory or possession of the United States is valid for the purposes of this chapter if it complies with the laws of this state. A health care provider or health care institution may presume, in the absence of actual notice to the contrary, that the do not resuscitate order or the do not resuscitate identification complies with the laws of this state, regardless of where or when it was executed, issued, or authorized, and that the patient is a qualified patient.

Cite as AS 13.52.150

§ 13.52.160. Determination of qualifying condition

Whether a patient has a qualifying condition under this chapter shall be determined by the primary physician of the patient and by at least one other physician, when another physician is available. A physician making the determination shall document the grounds for the determination in the patient's medical record. Permanent unconsciousness shall be determined in consultation with a neurologist.

Cite as AS 13.52.160

§ 13.52.170. Repealed

Cite as AS 13.52.170

History. Repealed, Sec. 36 ch 100 SLA 2008

§ 13.52.173. Who may make anatomical gift before donor's death

Subject to AS 13.52.193, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in AS 13.52.177 by

(1)

the donor, if the donor is an adult or if the donor is a minor and is

(A)

emancipated; or

(B)

authorized under state law to apply for a driver's license because the donor is at least 16 years of age;

(2)

an agent of the donor, unless a durable power of attorney for health care or another record prohibits the agent from making an anatomical gift;

(3)

a parent of the donor, if the donor is an unemancipated minor;

(4)

the donor's guardian; or

(5)

a surrogate.

Cite as AS 13.52.173

§ 13.52.177. Manner of making anatomical gift before

donor's death

(a)

A donor may make an anatomical gift

(1)

by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(2)

in a will;

(3)

during a terminal condition of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(4)

as provided in (b) of this section.

(b)

A donor or other person authorized to make an anatomical gift under AS 13.52.173 may make a gift by a donor card or another record signed by the donor or another person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or another person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or the other person and must

(1)

be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2)

state that the record has been signed and witnessed as provided in (1) of this subsection.

(c)

Revocation, suspension, expiration, or cancellation of a driver's license or an identification card on which an anatomical gift is indicated does not invalidate the gift.

(d)

An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

Cite as AS 13.52.177

§ 13.52.180. Repealed

Cite as AS 13.52.180

History. Repealed, Sec. 36 ch 100 SLA 2008

§ 13.52.183. Amending or revoking anatomical gift before donor's death

(a)

Except in the case of mental illness under AS 13.52.020(c), and subject to AS 13.52.193, a donor or another person authorized to make an anatomical gift under AS 13.52.173 may amend or revoke an anatomical gift by

(1)

a record signed by

(A)

the donor;

(B)

the other person; or

(C)

subject to (b) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2)

a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b)

A record signed under (a)(1)(C) of this section must

(1)

be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2)

state that it has been signed and witnessed as provided in (1) of this subsection.

(c)

Subject to AS 13.52.193, a donor or another person authorized to make an anatomical gift under AS 13.52.173 may revoke an anatomical gift by the

destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d)

A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal condition addressed to at least two adults, at least one of whom is a disinterested witness.

(e)

A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in (a) of this section.

Cite as AS 13.52.183

§ 13.52.187. Refusal to make anatomical gift; effect of refusal

(a)

An individual may refuse to make an anatomical gift of the individual's body or part by

(1)

a record signed by

(A)

the individual; or

(B)

subject to (b) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

(2)

the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3)

any form of communication made by the individual during the individual's terminal condition addressed to at least two adults, at least one of whom is a disinterested witness.

(b)

A record signed under (a)(1)(B) of this section must

(1)

be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request

of the individual; and

(2)

state that it has been signed and witnessed as provided in (1) of this subsection.

(c)

An individual who has made a refusal may amend or revoke the refusal

(1)

in the manner provided in (a) of this section for making a refusal;

(2)

by subsequently making an anatomical gift under AS 13.52.177 that is inconsistent with the refusal; or

(3)

by destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d)

Except as otherwise provided in AS 13.52.193(h), in the absence of an express, contrary indication by the individual set out in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

Cite as AS 13.52.187

§ 13.52.190. Repealed

Cite as AS 13.52.190

History. Repealed, Sec. 36 ch 100 SLA 2008

§ 13.52.193. Preclusive effect of anatomical gift, amendment, or revocation

(a)

Except as otherwise provided in (g) of this section and subject to (f) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under AS 13.52.177 or an amendment to an anatomical gift of the donor's body or part under AS 13.52.183.

(b)

A donor's revocation of an anatomical gift of the donor's body or part under AS 13.52.183 is not a refusal and does

not bar another person specified in AS 13.52.173 or 13.52.197 from making an anatomical gift of the donor's body or part under AS 13.52.177 or 13.52.203.

(c)

If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under AS 13.52.177 or an amendment to an anatomical gift of the donor's body or part under AS 13.52.183, another person may not make, amend, or revoke the gift of the donor's body or part under AS 13.52.203.

(d)

A revocation of an anatomical gift of a donor's body or part under AS 13.52.183 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under AS 13.52.177 or 13.52.203.

(e)

In the absence of an express, contrary indication by the donor or another person authorized to make an anatomical gift under AS 13.52.173, an anatomical gift of a part is not a refusal to give another part or a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f)

In the absence of an express, contrary indication by the donor or another person authorized to make an anatomical gift under AS 13.52.173, an anatomical gift of a part for one or more of the purposes set out in AS 13.52.173 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under AS 13.52.177 or 13.52.203.

(g)

If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h)

If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

Cite as AS 13.52.193

§ 13.52.197. Who may make anatomical gift of decedent's body or part

(a)

Subject to (b) and (c) of this section and unless barred by AS 13.52.187 or 13.52.193, an anatomical gift of a decedent's body or part for the purpose of transplantation,

therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1)

an agent of the decedent at the time of death who could have made an anatomical gift under AS 13.52.173(2) immediately before the decedent's death;

(2)

the spouse of the decedent;

(3)

adult children of the decedent;

(4)

parents of the decedent;

(5)

adult siblings of the decedent;

(6)

adult grandchildren of the decedent;

(7)

grandparents of the decedent;

(8)

an adult who exhibited special care and concern for the decedent;

(9)

the persons who were acting as the guardians of the person of the decedent at the time of death; and

(10)

any other person having the authority to dispose of the decedent's body.

(b)

If there is more than one member of a class listed in (a)(1), (3), (4), (5), (6), (7), or (9) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to whom the gift may pass under AS 13.52.207 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c)

A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under (a) of this section is reasonably available to make or to object to the making of an anatomical gift.

Cite as AS 13.52.197

§ 13.52.200. Repealed

Cite as AS 13.52.200

History. Repealed, Sec. 36 ch 100 SLA 2008

§ 13.52.203. Manner of making, amending, or revoking anatomical gift of decedent's body or part

(a)

Notwithstanding AS 13.52.020, a person authorized to make an anatomical gift under AS 13.52.197 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b)

Subject to (c) of this section, an anatomical gift by a person authorized under AS 13.52.197 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under AS 13.52.197 may be

(1)

amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2)

revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c)

Notwithstanding AS 13.52.020, a revocation under (b) of this section is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

Cite as AS 13.52.203

§ 13.52.207. Persons who may receive anatomical gift; purpose of anatomical gift

(a)

An anatomical gift may be made to the following persons named in the document of gift:

(1)

a hospital, an accredited medical school, a dental school, a college, a university, an organ procurement organization, or another appropriate person, for research or education;

(2)

subject to (b) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part;

(3)

an eye bank or a tissue bank.

(b)

If an anatomical gift to an individual under (a)(2) of this section cannot be transplanted into the individual, the part passes under (g) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(c)

If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in (a) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1)

if the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank;

(2)

if the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank;

(3)

if the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ;

(4)

if the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(d)

For the purpose of (c) of this section, if there is more than one purpose of an anatomical gift set out in the document of gift but the purposes are not set out in any priority, the gift shall be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e)

If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in (a) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes under (g) of this section.

(f)

If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes under (g) of this section.

(g)

For purposes of (b), (e), and (f) of this section, the following rules apply:

(1)

if the part is an eye, the gift passes to the appropriate eye bank;

(2)

if the part is tissue, the gift passes to the appropriate tissue bank;

(3)

if the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h)

An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under (a)(2) of this section, passes to the organ procurement organization as custodian of the organ.

(i)

If an anatomical gift does not pass under (a) - (h) of this section or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j)

A person may not accept an anatomical gift if the person knows that the gift was not effectively made under AS 13.52.177 or 13.52.203 or if the person knows that the decedent made a refusal under AS 13.52.187 that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is considered to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k)

Except as otherwise provided in (a)(2) of this section, nothing in AS 13.52.173 - 13.52.268 affects the allocation of organs for transplantation or therapy.

Cite as AS 13.52.207

§ 13.52.210. Repealed

Cite as AS 13.52.210

History. Repealed, Sec. 36 ch 100 SLA 2008

§ 13.52.213. Search and notification

(a)

The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1)

a law enforcement officer, a firefighter, a paramedic, or another emergency rescuer finding the individual; and

(2)

if another source of the information is not immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b)

If a document of gift or a refusal to make an anatomical gift is located by the search required by (a)(1) of this section and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c)

Except as provided by AS 13.52.080 and 13.52.090, a person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

Cite as AS 13.52.213

§ 13.52.217. Delivery of document of gift not required; right to examine

(a)

A document of gift need not be delivered during the donor's lifetime to be effective.

(b)

On or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to whom the gift could pass under AS 13.52.207.

Cite as AS 13.52.217

§ 13.52.220. Repealed

Cite as AS 13.52.220

History. Repealed, Sec. 36 ch 100 SLA 2008

§ 13.52.223. Rights and duties of procurement organization and others

(a)

When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the department and a donor registry.

(b)

A procurement organization shall be allowed reasonable access to information in the records of the department to ascertain whether an individual at or near death is a donor.

(c)

Except as provided by AS 13.52.253, when a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. Except as provided by AS 13.52.055 or 13.52.253, during the examination period, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn, unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d)

Unless prohibited by law other than AS 13.52.173 - 13.52.268, at any time after a donor's death, the person to whom a part passes under AS 13.52.207 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e)

Unless prohibited by law other than AS 13.52.173 - 13.52.268, an examination under (c) or (d) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(f)

Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g)

Upon referral by a hospital under (a) of this section, a procurement organization shall make a reasonable search for any person listed in AS 13.52.197 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h)

Subject to AS 13.52.207(i) and 13.52.257, the rights of the person to whom a part passes under AS 13.52.207 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and AS 13.52.173 - 13.52.268, a person who accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to whom the part passes under AS 13.52.207, on the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i)

The physician who attends the decedent at death and the physician who determines the time of the decedent's death may not participate in the procedures for removing or transplanting a part from the decedent.

(j)

A physician or technician may remove a donated part

from the body of a donor that the physician or technician is qualified to remove.

Cite as AS 13.52.223

§ 13.52.227. Coordination of procurement and use

A hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

Cite as AS 13.52.227

§ 13.52.230. Repealed

Cite as AS 13.52.230

History. Repealed, Sec. 36 ch 100 SLA 2008

§ 13.52.233. Sale or purchase of parts prohibited; charges allowed

(a)

Except as otherwise provided in (b) of this section, a person who, for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits a class C felony.

(b)

A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

Cite as AS 13.52.233

§ 13.52.240. Repealed

Cite as AS 13.52.240

History. Repealed, Sec. 36 ch 100 SLA 2008

§ 13.52.243. Immunity

(a)

Except as provided by AS 13.52.080 and 13.52.090, a person who acts under AS 13.52.173 - 13.52.268 or with the applicable anatomical gift law of another state, or attempts in good faith to act under AS 13.52.173 - 13.52.268 or with the applicable anatomical gift law of another state, is not liable for the act in a civil action, a criminal prosecution, or an administrative proceeding.

(b)

Except as provided by AS 13.52.080 and 13.52.090, a person making an anatomical gift and the donor's estate are not liable for any injury or damage that results from the making or use of the gift.

(c)

In determining whether an anatomical gift has been made, amended, or revoked under AS 13.52.173 - 13.52.268, a person may rely on representations of an individual listed in AS 13.52.197(a)(2) - (8) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

Cite as AS 13.52.243

§ 13.52.247. Law governing validity; choice of law as to execution of document of gift; presumption of validity

(a)

Notwithstanding AS 13.52.010(k), a document of gift is valid if executed under

(1)

AS 13.52.173 - 13.52.268;

(2)

the laws of the state or country where it was executed; or

(3)

the laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b)

If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c)

A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

Cite as AS 13.52.247

§ 13.52.250. Repealed

Cite as AS 13.52.250

History. Repealed, Sec. 36 ch 100 SLA 2008

§ 13.52.253. Effect of anatomical gift on advance health care directive

Except as provided by AS 13.52.055, if a prospective donor has an advance health care directive, and the terms of the directive and the express terms of a potential

anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than AS 13.52.173 - 13.52.268 to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict shall be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under AS 13.52.173 - 13.52.268. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor unless withholding or withdrawing the measures conflicts with appropriate end-of-life care.

Cite as AS 13.52.253

§ 13.52.255. Cooperation between coroner, state medical examiner, and procurement organization

(a)

A coroner and a state medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(b)

If a coroner or a state medical examiner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the coroner or state medical examiner and a postmortem examination is going to be performed, unless the coroner or state medical examiner denies recovery under AS 13.52.257, the coroner, the state medical examiner, or a designee shall conduct a postmortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift.

(c)

A part may not be removed from the body of a decedent under the jurisdiction of a coroner or a state medical examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the coroner or state medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner or the state medical examiner from

performing the medicolegal investigation on the body or parts of a decedent under the jurisdiction of the coroner or state medical examiner.

Cite as AS 13.52.255

§ 13.52.257. Facilitation of anatomical gift from decedent whose body is under jurisdiction of coroner or state medical examiner

(a)

On request of a procurement organization, a coroner or the state medical examiner may release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the coroner or state medical examiner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the coroner or state medical examiner shall release postmortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the postmortem examination results or other information received from the coroner or state medical examiner only if relevant to transplantation or therapy.

(b)

The coroner or state medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the coroner or state medical examiner that the coroner or state medical examiner determines may be relevant to the investigation.

(c)

A person who has any information requested by a coroner or the state medical examiner under (b) of this section shall provide that information as expeditiously as possible to allow the coroner or state medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

(d)

If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the coroner or state medical examiner and a postmortem examination is not required, or the coroner or state medical examiner determines that a postmortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the coroner or state medical examiner and the procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy,

research, or education.

(e)

If an anatomical gift of a part from the decedent under the jurisdiction of the coroner or state medical examiner has been or might be made, but the coroner or state medical examiner initially believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death, the coroner or state medical examiner may consult with the procurement organization, or the physician or technician designated by the procurement organization, about the proposed recovery. After consultation, the coroner or state medical examiner may allow the recovery.

(f)

If the coroner, the state medical examiner, or a designee denies recovery of a part, the coroner, state medical examiner, or designee shall

(1)

explain in a record the specific reasons for not allowing recovery of the part;

(2)

include the specific reasons in the records of the coroner or state medical examiner; and

(3)

provide a record with the specific reasons to the procurement organization.

(g)

If the coroner, the state medical examiner, or a designee allows recovery of a part under (d) or (e) of this section, the procurement organization, on request, shall cause the physician or technician who removes the part to provide the coroner or state medical examiner with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the postmortem examination.

(h)

If a coroner, state medical examiner, or designee elects to be present at a removal procedure, on request, the procurement organization requesting the recovery of the part shall reimburse the coroner, state medical examiner, or designee for the additional costs incurred in complying with this section.

Cite as AS 13.52.257

§ 13.52.260. Repealed

Cite as AS 13.52.260

History. Repealed, Sec. 36 ch 100 SLA 2008

§ 13.52.263. Relation to Electronic Signatures in Global and National Commerce Act

AS 13.52.173 - 13.52.267 modify, limit, and supersede 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and National Commerce Act), except that AS 13.52.173 - 13.52.267 do not modify, limit or supersede 15 U.S.C. 7001, or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).

Cite as AS 13.52.263

§ 13.52.265. Repealed

Cite as AS 13.52.265

History. Repealed, Sec. 36 ch 100 SLA 2008

§ 13.52.267. Uniformity of application and construction

In applying and construing AS 13.52.173 - 13.52.263, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Cite as AS 13.52.267

§ 13.52.268. Definitions for AS 13.52.173 - 13.52.268

Notwithstanding AS 13.52.390, in AS 13.52.173 - 13.52.268,

(1)

"adult" means an individual who is at least 18 years of age;

(2)

"decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift; the term includes a stillborn infant and, subject to restrictions imposed by law other than AS 13.52.173 - 13.52.268, a fetus;

(3)

"department" means the Department of Administration;

(4)

"disinterested witness" means a witness who is not

(A)

the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes,

amends, revokes, or refuses to make an anatomical gift;

(B)

an adult who exhibited special care and concern for the individual; or

(C)

a person to whom an anatomical gift could pass under AS 13.52.207;

(5)

"document of gift" means a donor card or other record used to make an anatomical gift, and includes a statement or symbol on a driver's license, an identification card, or a donor registry;

(6)

"donor" means an individual whose body or part is the subject of an anatomical gift;

(7)

"donor registry" means the donor registry created under AS 13.50.110;

(8)

"driver's license" means a license or permit issued by the department under AS 28.15 to operate a vehicle, whether or not conditions are attached to the license or permit;

(9)

"eye bank" means a person who is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes;

(10)

"guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual; the term does not include a guardian ad litem;

(11)

"hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state;

(12)

"identification card" means an identification card issued by the Department of Administration under AS 18.65.310;

(13)

"know" means to have actual knowledge;

(14)

"minor" means an individual who is under 18 years of age;

(15)

"organ procurement organization" means a person designated by the United States Secretary of Health and Human Services as an organ procurement organization;

(16)

"parent" means a parent whose parental rights have not been terminated;

(17)

"person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(18)

"physician" means an individual authorized to practice medicine or osteopathy under the law of any state;

(19)

"procurement organization" means an eye bank, an organ procurement organization, or a tissue bank;

(20)

"prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education; the term does not include an individual who has made a refusal;

(21)

"reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift;

(22)

"recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted;

(23)

"record" means information that is inscribed on a tangible medium or that is stored in an electronic or

another medium and is retrievable in perceivable form;

(24)

"refusal" means a record created under AS 13.52.187 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part;

(25)

"sign" means, with the present intent to authenticate or adopt a record,

(A)

to execute or adopt a tangible symbol; or

(B)

to attach to or logically associate with the record an electronic symbol, sound, or process;

(26)

"state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(27)

"state medical examiner" means the state medical examiner appointed under AS 12.65.015(a);

(28)

"technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law; the term includes an enucleator;

(29)

"tissue" means a portion of the human body other than an organ or an eye; the term does not include blood unless the blood is donated for the purpose of research or education;

(30)

"tissue bank" means a person who is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue;

(31)

"transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

Cite as AS 13.52.268

§ 13.52.270. Repealed

Cite as AS 13.52.270

History. Repealed, Sec. 36 ch 100 SLA 2008

§ 13.52.275. Construction where mental illness

In the case of mental illness, nothing in this chapter may be construed to override or undermine the validity of a properly executed durable power of attorney for health care.

Cite as AS 13.52.275

§ 13.52.280. Repealed

Cite as AS 13.52.280

History. Repealed, Sec. 36 ch 100 SLA 2008

§ 13.52.290. Severability

If a provision of this chapter, or the application of this chapter to a person or circumstance is held invalid, including being held unconstitutional, the invalidity does not affect the other provisions or applications of this chapter that can be given effect without the invalid provision or application.

Cite as AS 13.52.290

§ 13.52.300. Optional form

The following sample form may be used to create an advance health care directive. The other sections of this chapter govern the effect of this or any other writing used to create an advance health care directive. This form may be duplicated. This form may be modified to suit the needs of the person, or a different form that complies with this chapter may be used, including the mandatory witnessing requirements:

ADVANCE HEALTH CARE DIRECTIVE

Explanation

You have the right to give instructions about your own health care to the extent allowed by law. You also have the right to name someone else to make health care decisions for you to the extent allowed by law. This form lets you do either or both of these things.

It also lets you express your wishes regarding the designation of your health care provider. If you use this form, you may complete or modify all or any part of it. You are free to use a different form if the form complies with the requirements of AS 13.52.

Part 1 of this form is a durable power of attorney for health care. A 'durable power of attorney for health care'

means the designation of an agent to make health care decisions for you. Part 1 lets you name another individual as an agent to make health care

decisions for you if you do not have the capacity to make your own decisions or if you want someone else to make those decisions for you now even though you still have the capacity to make those decisions.

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, and programs of medication;

(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 any aspect of your health care to the extent allowed by law, except you may not authorize mercy killing, assisted suicide, or euthanasia. 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 not to be competent 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. In this advance health care directive, 'competent' means that you have the capacity

(1)

to assimilate relevant facts and to appreciate and understand your situation with regard to those facts; and

(2)

to participate in treatment decisions by means of a rational thought process.

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 telephone) (work telephone)

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 telephone) (work telephone)

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 telephone) (work telephone)

(2)

AGENT'S AUTHORITY. My agent is authorized and directed to follow my individual instructions and my other wishes to the extent known to the agent in making all health care decisions for me. If these are not known, my agent is authorized to make these decisions in accordance with my best interest, including decisions to provide, withhold, or withdraw artificial hydration and nutrition and other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

Under this authority, 'best interest' means that the benefits to you resulting from a treatment outweigh the burdens to you resulting from that treatment after assessing

(A)

the effect of the treatment on your physical, emotional, and cognitive functions;

(B)

the degree of physical pain or discomfort caused to you by the treatment or the withholding or withdrawal of the treatment;

(C)

the degree to which your medical condition, the treatment, or the withholding or withdrawal of treatment, results in a severe and continuing impairment;

(D)

the effect of the treatment on your life expectancy;

(E)

your prognosis for recovery, with and without the treatment;

(F)

the risks, side effects, and benefits of the treatment or the

withholding of treatment; and

(G)

your religious beliefs and basic values, to the extent that these may assist in determining benefits and burdens.

(3)

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

(4)

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

(5)

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

PART 2

INSTRUCTIONS FOR HEALTH CARE If you are satisfied to allow your agent to determine what is best for you in making health care decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want. There is a state protocol that governs the use of do not resuscitate orders by physicians and other health care providers. You may obtain a copy of the protocol from the Alaska Department of Health and Social Services. A 'do not resuscitate order' means a directive from a licensed physician that emergency cardiopulmonary resuscitation should not be administered to you.

(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, in the judgment of my physician, I have (check all choices that represent your wishes)

(i)

a condition of permanent unconsciousness: a condition that, to a high degree of medical certainty, will last permanently without improvement; in which, to a high degree of medical certainty, thought, sensation, purposeful action, social interaction, and awareness of myself and the environment are absent; and for which, to a high degree of medical certainty, initiating or continuing life-sustaining procedures for me, in light of my medical outcome, will provide only minimal medical benefit for me; or

(ii)

a terminal condition: an incurable or irreversible illness or injury that without the administration of life-sustaining procedures will result in my death in a short period of time, for which there is no reasonable prospect of cure or recovery, that imposes severe pain or otherwise imposes an inhumane burden on me, and for which, in light of my medical condition, initiating or continuing life-sustaining procedures will provide only minimal medical benefit;

Additional instructions:

(C)

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

I wish to receive artificial nutrition and hydration

indefinitely;

I wish to receive artificial nutrition and hydration indefinitely, unless it clearly increases my suffering and is no longer in my best interest;

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

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

Other instructions:

(D)

Relief from Pain.

I direct that adequate treatment be provided at all times for the sole purpose of the alleviation of pain or discomfort; or

I give these instructions:

(E)

Should I become unconscious and I am pregnant, I direct that

(7)

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

Conditions or limitations:

_____.

(Add additional sheets if needed.)

PART 3

ANATOMICAL GIFT AT DEATH

(OPTIONAL)

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

(8)

Upon my death: (mark applicable box)

(A)

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

(B)

I give the following organs, tissues, or other body parts only

(C)

My gift is for the following purposes (mark any of the following you want):

(i)

transplant;

(ii)

therapy;

(iii)

research;

(iv)

education.

(D)

I refuse to make an anatomical gift.

PART 4

MENTAL HEALTH TREATMENT

This part of the declaration allows you to make decisions in advance about mental health treatment. The instructions that you include in this declaration will be followed only if a court, two physicians that include a psychiatrist, or a physician and a professional mental health clinician believe that you are not competent and cannot make treatment decisions. Otherwise, you will be considered to be competent and to have the capacity to give or withhold consent for the treatments.

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

(9)

PSYCHOTROPIC MEDICATIONS. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding psychotropic medications are as follows:

_____ I consent to the administration of the following medications:

_____ I do not consent to the administration of the following medications:

Conditions or limitations:

_____.

(10)

ELECTROCONVULSIVE TREATMENT. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding electroconvulsive treatment are as follows:

_____ I consent to the administration of electroconvulsive treatment.

_____ I do not consent to the administration of electroconvulsive treatment.

Conditions or limitations:

_____.

(11)

ADMISSION TO AND RETENTION IN FACILITY. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding admission to and retention in a mental health facility for mental health treatment are as follows:

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

_____ I do not consent to being admitted to a mental health facility for mental health treatment.

Conditions or limitations:

_____.

OTHER WISHES OR INSTRUCTIONS

_____.

Conditions or limitations:

_____.

PART 5

PRIMARY PHYSICIAN

(OPTIONAL)

(12)

I designate the following physician as my primary physician:

(name of physician)

(address)

(city)

(state) (zip code)

(telephone)

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)

(telephone)

(13)

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

(14)

SIGNATURES. Sign and date the form here:

(date) (sign your name)

(print your name)

(address)

(city)

(state) (zip code)

(15)

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

(A)

signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; the witnesses may not be a health care provider employed at the health care institution or health care facility where you are receiving health care, an employee of the health care provider who is providing health care to you, an employee of the health care institution or health care facility where you are receiving health care, or the person appointed as your agent by this document; at least one of the two witnesses may not be related to you by blood, marriage, or adoption or entitled to a portion of your estate upon your death under your will or codicil; or

(B)

acknowledged before a notary public in the state.

ALTERNATIVE NO. 1

Witness Who is Not Related to or a Devisee of the Principal

I swear under penalty of perjury under AS 11.56.200 that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney for health care in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, and that I am not

(1)

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

(2)

an employee of the health care provider providing health care to the principal;

(3)

an employee of the health care institution or health care facility where the principal is receiving health care;

(4)

the person appointed as agent by this document;

(5)

related to the principal by blood, marriage, or adoption;
or

(6)

entitled to a portion of the principal's estate upon the
principal's death under a will or codicil.

(date) (signature of witness)

(printed name of witness)

(address)

(city)

(state) (zip code) 30

Witness Who May be Related to or a Devisee of the
Principal

I swear under penalty of perjury under AS 11.56.200 that
the principal is personally known to me, that the principal
signed or acknowledged this durable power of attorney
for health care in my presence, that the principal appears
to be of sound mind and under no duress, fraud, or undue
influence, and that I am not

(1)

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

(2)

an employee of the health care provider who is providing
health care to the principal;

(3)

an employee of the health care institution or health care
facility where the principal is receiving health care; or

(4)

the person appointed as agent by this document.

(date) (signature of witness)

(printed name of witness)

(address)

(city)

(state) (zip code)

ALTERNATIVE NO. 2

State of Alaska

_____ Judicial District

On this _____ day of _____, in the year
_____, before me, _____ (insert name of notary
public) appeared _____,
personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person whose name is
subscribed to this instrument, and acknowledged that the
person executed it.

Notary Seal

(signature of notary public)

Cite as AS 13.52.300

§ 13.52.390. Definitions

In this chapter, unless the context otherwise requires,

(1)

"advance health care directive" means an individual
instruction or a durable power of attorney for health care;

(2)

"agent" means an individual designated in a durable
power of attorney for health care to make a health care
decision for the individual granting the power;

(3)

"anatomical gift" means a donation of all or a part of a
human body to take effect after the donor's death for the

purpose of transplantation, therapy, research, or education;

(4)

"artificial nutrition and hydration" means medically appropriate nutrition and hydration delivered

(A)

through an intravenous needle placed directly in a vein; or

(B)

by a tube that is inserted into a functioning gastrointestinal tract;

(5)

"available" means, when referring to a person, that the

(A)

person's existence is known;

(B)

person can be contacted;

(C)

person does not lack capacity;

(D)

person does not refuse to accept the position; and

(E)

person is willing to make a health care decision;

(6)

"best interest" means that the benefits to the individual resulting from a treatment outweigh the burdens to the individual resulting from that treatment after assessing

(A)

the effect of the treatment on the physical, emotional, and cognitive functions of the patient;

(B)

the degree of physical pain or discomfort caused to the individual by the treatment or the withholding or withdrawal of the treatment;

(C)

the degree to which the individual's medical condition, the treatment, or the withholding or withdrawal of

treatment results in a severe and continuing impairment;

(D)

the effect of the treatment on the life expectancy of the patient;

(E)

the prognosis of the patient for recovery, with and without the treatment;

(F)

the risks, side effects, and benefits of the treatment or the withholding of treatment; and

(G)

the religious beliefs and basic values of the individual receiving treatment, to the extent that these may assist the decision-maker to determine benefits and burdens;

(7)

"capacity," except in (9) of this section, means an individual's ability to receive and evaluate information effectively and to make and effectively communicate health care decisions;

(8)

"cardiopulmonary resuscitation" means an attempt to restore spontaneous circulation;

(9)

"competent" means that an individual has the capacity

(A)

to assimilate relevant facts and to appreciate and understand the individual's situation with regard to those facts; and

(B)

to participate in treatment decisions by means of a rational thought process;

(10)

"department" means the Department of Health and Social Services;

(11)

"do not resuscitate identification" means an identification card, form, necklace, or bracelet that carries the standardized design or symbol developed by the department under AS 13.52.065 to signify, when carried or worn, that the carrier or wearer is an individual for

whom a physician has issued a do not resuscitate order;

(12)

"do not resuscitate order" means a directive from a licensed physician that emergency cardiopulmonary resuscitation should not be administered to a qualified patient;

(13)

"durable power of attorney for health care" means a power of attorney that remains in effect when the principal lacks capacity; in this paragraph, "power of attorney" means the designation of an agent to make health care decisions for the individual granting the power;

(14)

"generally accepted health care standards" includes the protocol for do not resuscitate orders that is adopted under AS 13.52.065;

(15)

"guardian" means a judicially appointed person having authority to make a health care decision for an individual;

(16)

"health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual's physical or mental condition;

(17)

"health care decision" means a decision made by an individual or the individual's agent, guardian, or surrogate regarding the individual's health care, including

(A)

selection and discharge of health care providers and institutions;

(B)

approval or disapproval of proposed diagnostic tests, surgical procedures, and programs of medication;

(C)

direction to provide, withhold, or withdraw artificial nutrition and hydration if providing, withholding, or withdrawing artificial nutrition, artificial hydration, or artificial nutrition and hydration is in accord with generally accepted health care standards applicable to health care providers or institutions;

(D)

the administration or withdrawal of psychotropic

medications, the use of electroconvulsive treatment, and the admission to a mental health facility; and

(E)

making an anatomical gift at death;

(18)

"health care facility" means a nursing home, a rehabilitation center, a long-term care facility, and any other health care institution that administers health care and that provides overnight stays in the ordinary course of the facility's business;

(19)

"health care institution" means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business;

(20)

"health care provider" means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession;

(21)

"hospital" means a facility

(A)

licensed, accredited, or approved as a hospital under the laws of this state; or

(B)

operated as a hospital by the United States government, this state, or a subdivision of this state;

(22)

"individual instruction" means an individual's direction concerning a health care decision for the individual;

(23)

"life-sustaining procedures" means any medical treatment, procedure, or intervention that, in the judgment of the primary physician, when applied to a patient with a qualifying condition, would not be effective to remove the qualifying condition, would serve only to prolong the dying process, or, when administered to a patient with a condition of permanent unconsciousness, may keep the patient alive but is not expected to restore consciousness; in this paragraph, "medical treatment, procedure, or intervention" includes assisted ventilation, renal dialysis, surgical procedures, blood transfusions, and the administration of drugs, including antibiotics, or artificial

nutrition and hydration;

(24)

"mental health facility" has the meaning given to "designated treatment facility" in AS 47.30.915;

(25)

"mental health treatment" means electroconvulsive treatment, treatment with psychotropic medication, or admission to and retention in a health care institution for mental health treatment;

(26)

"part" means an organ, tissue, or an eye of a human being, except fetal tissue; the term does not include the whole body;

(27)

"permanent unconsciousness" means a condition

(A)

that, to a high degree of medical certainty, will last permanently without improvement;

(B)

in which, to a high degree of medical certainty, thought, sensation, purposeful action, social interaction, and awareness of self and the environment are absent; and

(C)

for which, to a high degree of medical certainty, initiating or continuing life-sustaining procedures, in light of the patient's medical outcome, provides only minimal medical benefit;

(28)

"person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, government, governmental subdivision, governmental agency, or another legal or commercial entity;

(29)

"physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state;

(30)

"primary physician" means a physician designated by an individual, or by the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available,

a physician who undertakes the responsibility;

(31)

"qualified patient" means a patient with a qualifying condition who is eligible for do not resuscitate identification;

(32)

"qualifying condition" means a terminal condition or permanent unconsciousness in a patient;

(33)

"reasonably available" means available using a level of diligence appropriate to the seriousness and urgency of an individual's health care needs;

(34)

"state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

(35)

"supervising health care provider" means the primary physician or the physician's designee, or the health care provider or the provider's designee who has undertaken primary responsibility for an individual's health care;

(36)

"surrogate" means an individual, other than a patient's agent or guardian, authorized under this chapter to make a health care decision for the patient;

(37)

"terminal condition" means an incurable or irreversible illness or injury

(A)

that without administration of life-sustaining procedures will result in death in a short period of time;

(B)

for which there is no reasonable prospect of cure or recovery;

(C)

that imposes severe pain or otherwise imposes an inhumane burden on the patient; and

(D)

for which, in light of the patient's medical condition, initiating or continuing life-sustaining procedures will

provide only minimal medical benefit.

Cite as AS 13.52.390

§ 13.52.395. Short title

This chapter may be cited as the Health Care Decisions Act.

Cite as AS 13.52.395