

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 54(HSS)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered: 2/2/18

Referred: Judiciary

Sponsor(s): REPRESENTATIVE DRUMMOND

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act providing an end-of-life option for terminally ill individuals; and providing for**  
2 **an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1.** AS 11.41.115 is amended by adding a new subsection to read:

5 (g) In a prosecution under AS 11.41.100(a)(1) or 11.41.110(a)(1) or (2), it is a  
6 defense that the defendant was performing an action allowed under AS 13.56.

7 **\* Sec. 2.** AS 11.41.120 is amended by adding a new subsection to read:

8 (c) In a prosecution under this section, it is a defense that the defendant was  
9 performing an action allowed under AS 13.56.

10 **\* Sec. 3.** AS 13 is amended by adding a new chapter to read:

11 **Chapter 56. Voluntary Ending of Life.**

12 **Sec. 13.56.010. Individuals allowed to end life.** (a) As provided in this  
13 chapter, a qualified individual may use medicine obtained from the qualified  
14 individual's attending physician to end the qualified individual's life.

1 (b) To be a qualified individual under (a) of this section, an individual must

2 (1) be a resident of this state;

3 (2) be 18 years of age or older;

4 (3) have been determined to be capable;

5 (4) have been determined to be suffering from a terminal disease; and

6 (5) have voluntarily expressed the wish to die.

7 (c) An individual does not qualify under (b) of this section solely because of  
8 the individual's age or disability.

9 **Sec. 13.56.020. Attending physician and pharmacist authority.** If a  
10 qualified individual's attending physician complies with this chapter, the attending  
11 physician may

12 (1) dispense medication directly to the qualified individual, including  
13 ancillary medications intended to facilitate the desired effect or minimize the qualified  
14 individual's discomfort; or

15 (2) write a prescription for the medication for the qualified individual  
16 and in person, by mail, or by electronic transmission deliver the prescription for the  
17 medication to a pharmacist, who may dispense the medication to the qualified  
18 individual, the attending physician, or an expressly identified agent of the qualified  
19 individual.

20 **Sec. 13.56.030. Requests for medication.** (a) To receive medication under this  
21 chapter, a qualified individual shall make an oral request and a written request to the  
22 qualified individual's attending physician. The qualified individual shall repeat the oral  
23 request to the qualified individual's attending physician not sooner than 15 days after  
24 making the initial oral request.

25 (b) Notwithstanding (a) of this section, if a qualified individual is not  
26 physically able to speak, a qualified individual may make an oral request by whatever  
27 means the qualified individual can use to make the request, including electronic  
28 means, as long as the request is made in person.

29 (c) Notwithstanding (a) of this section, if a qualified individual is not  
30 physically able to sign a written request, the qualified individual may direct another  
31 individual to sign for the qualified individual.

1           **Sec. 13.56.040. Right to rescind request.** When a qualified individual makes  
 2 the second oral request under AS 13.56.030, the attending physician shall offer the  
 3 qualified individual an opportunity to rescind the initial oral request and the written  
 4 request. A qualified individual may rescind a request at any time and in any manner  
 5 without regard to the qualified individual's mental state. An attending physician may  
 6 not dispense or prescribe medication under this chapter unless the attending physician  
 7 offers the qualified individual an opportunity to rescind the request.

8           **Sec. 13.56.050. Written request requirements.** (a) A written request for  
 9 medication under this chapter must be in substantially the form described in  
 10 AS 13.56.060, signed and dated by the qualified individual, and witnessed by at least  
 11 two other individuals. The attending physician may not witness the request. The  
 12 witnesses shall, in the presence of the qualified individual, attest that, to the best of  
 13 their knowledge and belief, the qualified individual is capable, acting voluntarily, and  
 14 not under undue influence to sign the request.

15           (b) Only one witness may be

16                   (1) a relative of the qualified individual by blood, marriage, or  
 17 adoption;

18                   (2) an individual who, at the time the qualified individual signs the  
 19 request, would be entitled to a portion of the estate of the qualified individual at death  
 20 under a will or by operation of law; or

21                   (3) an owner, operator, or employee of a health care facility where the  
 22 qualified individual is receiving medical treatment or is a resident.

23           (c) If the qualified individual is an inpatient in a long-term care facility when  
 24 the qualified individual signs the request, one of the witnesses shall be an individual  
 25 designated by the facility who has the qualifications established by the department by  
 26 regulation. In this subsection, "long-term care facility" includes an assisted living  
 27 home as defined in AS 47.32.900 and a nursing facility as defined in AS 47.32.900.

28           **Sec. 13.56.060. Form for written request.** A request for a medication under  
 29 this chapter must be in substantially the following form:

30                               REQUEST FOR MEDICATION TO END MY LIFE

31           I, \_\_\_\_\_, am an adult of sound mind.

1 I am suffering from \_\_\_\_\_, which my attending physician  
2 has determined is a terminal disease and which has been medically confirmed  
3 by a consulting physician.

4 I have been fully informed of my diagnosis, prognosis, the nature of the  
5 medication to be prescribed and potential associated risks, the expected result,  
6 and the feasible alternatives, including comfort care, hospice care, and pain  
7 control.

8 I request that my attending physician prescribe medication that will end  
9 my life in a humane and dignified manner.

10 INITIAL ONE OF THE FOLLOWING:

11 \_\_\_\_\_ I have informed my family of my decision and taken their  
12 opinions into consideration.

13 \_\_\_\_\_ I have decided not to inform my family of my decision.

14 \_\_\_\_\_ I have no family to inform of my decision.

15 I understand that I have the right to rescind this request at any time.

16 I understand the full import of this request, and I expect to die when I  
17 take the medication to be prescribed. I further understand that, although most  
18 deaths occur within three hours, my death may take longer, and my attending  
19 physician has counseled me about this possibility.

20 I make this request voluntarily and without reservation, and I accept  
21 full moral responsibility for my actions.

22 Signed: \_\_\_\_\_

23 Dated: \_\_\_\_\_

24 DECLARATION OF WITNESSES

25 We declare that the person signing this request

26 (1) is personally known to us or has provided proof of  
27 identity;

28 (2) in our presence signed or directed another person to  
29 sign this request;

30 (3) is not an individual for whom either of us is the  
31 attending physician; and

(4) to the best of our knowledge and belief,

(A) has the ability to make and communicate health care decisions to health care providers; and

(B) is acting voluntarily and not under undue influence.

\_\_\_\_\_ Witness 1 Date: \_\_\_\_\_

\_\_\_\_\_ Witness 2 Date: \_\_\_\_\_

NOTE: One witness may not be a relative (by blood, marriage, or adoption) of the individual signing this request, may not be entitled to a portion of the individual's estate on death, and may not own, operate, or be employed at a health care facility where the person is an individual or resident. If the individual is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility.

**Sec. 13.56.070. Attending physician duties and authority.** (a) The attending physician shall

(1) make the initial determination of whether an individual has a terminal disease, is capable, and has made the request for medication voluntarily;

(2) request that the individual demonstrate that the individual is a resident of this state;

(3) inform the individual of the

(A) individual's medical diagnosis;

(B) individual's prognosis;

(C) potential risks associated with taking the medication;

(D) probable result of taking the medication; and

(E) feasible alternatives, including comfort care, hospice care, and pain control;

(4) refer the individual to a consulting physician for medical confirmation of the diagnosis and for a determination that the individual is capable and acting voluntarily;

(5) refer the individual for counseling if appropriate under AS 13.56.090;

1 (6) recommend that the individual notify the individual's next of kin;

2 (7) counsel the individual about the importance of having another  
3 person present when the individual takes the medication prescribed under this chapter  
4 and of not taking the medication in a public place;

5 (8) inform the individual that the individual has an opportunity to  
6 rescind the request at any time and in any manner and offer the individual an  
7 opportunity to rescind the request at the end of the 15-day waiting period under  
8 AS 13.56.030;

9 (9) immediately before dispensing or prescribing medication under this  
10 chapter, verify that the individual is making an informed decision;

11 (10) fulfill the requirements of AS 13.56.130 for medical record  
12 documentation;

13 (11) ensure that all appropriate steps are carried out under this chapter  
14 before dispensing or prescribing medication to enable a qualified individual to end the  
15 qualified individual's life under this chapter; and

16 (12) if the attending physician has a current federal Drug Enforcement  
17 Administration registration number and complies with applicable regulations, dispense  
18 medication directly, including ancillary medications intended to facilitate the desired  
19 effect or minimize the qualified individual's discomfort, or, with the qualified  
20 individual's consent,

21 (A) contact a pharmacist and inform the pharmacist of a  
22 prescription for the medication; and

23 (B) deliver the written prescription in person, by mail, or by  
24 electronic transmission to the pharmacist who will dispense the medication to  
25 the qualified individual, the attending physician, or an agent of the qualified  
26 individual who is expressly identified as an agent by the qualified individual.

27 (b) Notwithstanding any other provision of law to the contrary, the attending  
28 physician may sign the qualified individual's death certificate.

29 **Sec. 13.56.080. Confirmation by consulting physician.** Before an individual  
30 becomes a qualified individual under this chapter, a consulting physician shall  
31 examine the individual and the individual's relevant medical records, confirm in

1 writing the attending physician's diagnosis that the individual is suffering from a  
 2 terminal disease, and verify that the individual is capable, is acting voluntarily, and  
 3 has made an informed decision.

4 **Sec. 13.56.090. Counseling referral.** If the attending physician or the  
 5 consulting physician determines that an individual may be suffering from a psychiatric  
 6 or psychological disorder or depression causing impaired judgment, either physician  
 7 shall refer the individual for counseling, and the attending physician may not dispense  
 8 or prescribe medication until the person performing the counseling determines that the  
 9 individual is not suffering from depression or a psychiatric or psychological disorder  
 10 causing impaired judgment.

11 **Sec. 13.56.100. Informed decision.** An attending physician may not dispense  
 12 or prescribe medication unless the qualified individual has made an informed decision.  
 13 Immediately before dispensing or prescribing medication under this chapter, the  
 14 attending physician shall verify that the qualified individual is making an informed  
 15 decision.

16 **Sec. 13.56.110. Family notification.** The attending physician may not deny a  
 17 qualified individual's request for medication if the qualified individual declines or is  
 18 unable to notify the qualified individual's next of kin.

19 **Sec. 13.56.120. Waiting periods.** An attending physician may not dispense  
 20 medication or write a prescription for medication for a qualified individual unless at  
 21 least 15 days have elapsed between the qualified individual's initial oral request and  
 22 the writing of the prescription and more than 48 hours have elapsed between the  
 23 qualified individual's written request and the writing of the prescription.

24 **Sec. 13.56.130. Medical record documentation requirements.** Before a  
 25 qualified individual receives medication under this chapter, the medical record of the  
 26 qualified individual must contain

- 27 (1) a record of all oral requests by a qualified individual for medication  
 28 under this chapter;  
 29 (2) all written requests by a qualified individual for medication under  
 30 this chapter;  
 31 (3) the attending physician's diagnosis, prognosis, and determination

1 that the individual is capable, is acting voluntarily, and has made an informed  
2 decision;

3 (4) the consulting physician's diagnosis, prognosis, and verification  
4 that the individual is capable, is acting voluntarily, and has made an informed  
5 decision;

6 (5) if counseling is performed, a report of the determinations made  
7 during counseling and the outcome;

8 (6) a record of the attending physician's offer to the qualified  
9 individual to rescind the qualified individual's request at the time of the qualified  
10 individual's second oral request under AS 13.56.030;

11 (7) a note by the attending physician indicating that all requirements  
12 under this chapter have been met and indicating the steps taken to carry out the  
13 request, including a statement describing the medication prescribed.

14 **Sec. 13.56.140. Effect on construction of wills and contracts.** A provision in  
15 a will or a contract, whether written or oral, is not valid to the extent that the provision  
16 requires, prohibits, imposes a condition on, or otherwise addresses whether an  
17 individual may make or rescind a request for medication under this chapter.

18 **Sec. 13.56.150. Immunity; effect of action on status of individuals.** (a) A  
19 person is not subject to civil or criminal liability or professional disciplinary action,  
20 including disciplinary action by a licensing authority, for participating or otherwise  
21 acting in good faith compliance with this chapter, including being present when a  
22 qualified individual takes the prescribed medication to end the qualified individual's  
23 life under this chapter.

24 (b) A professional organization or association or health care provider may not  
25 subject a person to censure, discipline, suspension, loss of license, loss of privileges,  
26 loss of membership, or other penalty for participating in or refusing to participate in  
27 good faith compliance with this chapter.

28 (c) A request by an individual for, or provision by an attending physician of,  
29 medication in good faith compliance with this chapter does not provide the sole basis  
30 for the appointment of a guardian or conservator of the individual.

31 **Sec. 13.56.160. No duty to participate.** A health care provider is not under a



1 duty, whether by contract, statute, or other legal requirement, to dispense medication,  
 2 prescribe medication, or otherwise participate in the provision of medication to a  
 3 qualified individual under this chapter. If a health care provider is unable or unwilling  
 4 to carry out a qualified individual's request under AS 13.56.030 and the qualified  
 5 individual transfers the qualified individual's care to another health care provider, the  
 6 transferring health care provider shall provide to the other health care provider, at the  
 7 qualified individual's request, a copy of the qualified individual's relevant medical  
 8 records.

9 **Sec. 13.56.170. Prohibitions.** Notwithstanding another provision of law to the  
 10 contrary, a health care provider may not prohibit another health care provider,  
 11 including an employee, contractor, or lessee of the prohibiting health care provider,  
 12 from participating in this chapter. However, a health care provider may prohibit  
 13 another health care provider, including an employee, contractor, or lessee of the  
 14 prohibiting health care provider, from allowing a patient of the prohibited health care  
 15 provider to administer medication on the premises of the prohibiting health care  
 16 provider if the medication was obtained under this chapter.

17 **Sec. 13.56.180. Prohibition notice.** To prohibit another health care provider  
 18 from allowing a patient to administer medication on the premises of the prohibiting  
 19 health care provider, the prohibiting health care provider shall notify the prohibited  
 20 health care provider in writing about the prohibition.

21 **Sec. 13.56.190. Sanctions.** (a) Notwithstanding AS 13.56.150 and 13.56.160,  
 22 if a health care provider violates a prohibition allowed under AS 13.56.170 after  
 23 receiving a written notice under AS 13.56.180, the prohibiting health care provider  
 24 may impose the following sanctions on the prohibited health care provider:

25 (1) loss of privileges, loss of membership, or other sanction provided  
 26 under the bylaws, policies, or procedures of the prohibiting health care provider if the  
 27 prohibited health care provider is a member of the prohibiting health care provider's  
 28 medical staff;

29 (2) termination of a lease or another contract between the prohibiting  
 30 health care provider and the prohibited health care provider, or an imposition of  
 31 nonmonetary remedies provided by the lease or other contract; in this paragraph,

1 "remedies" does not include the loss or restriction of medical staff privileges or  
2 exclusion from a medical care provider panel.

3 (b) A prohibiting health care provider who imposes sanctions under (a) of this  
4 section shall follow all procedures that are provided under an applicable contract, the  
5 applicable terms of employment, or law for imposing the sanctions.

6 (c) Suspension or termination of staff membership or privileges under (a) of  
7 this section is not reportable under AS 08.64.336.

8 **Sec. 13.56.200. Criminal penalties.** (a) A person commits the crime of abuse  
9 of life-ending process if the person, with the intent to cause the individual's death or  
10 knowing that the death of the individual is substantially certain to result,

11 (1) without the authorization of the individual, falsely makes,  
12 completes, or alters a request for medication or conceals or destroys a rescission of the  
13 individual's request; or

14 (2) exerts undue influence on an individual to request medication for  
15 the purpose of ending the individual's life or to destroy a rescission of the individual's  
16 request; in this paragraph, "undue influence" means the control of an individual by a  
17 person who stands in a position of trust or confidence to exploit wrongfully the trust,  
18 dependency, or fear of the individual to gain control over the decision making of the  
19 individual.

20 (b) Abuse of life-ending process is a class A felony and may be punished as  
21 provided in AS 12.55.

22 (c) This chapter does not prevent the imposition of criminal penalties that  
23 apply under another law for conduct that is inconsistent with this chapter.

24 **Sec. 13.56.210. Civil penalties.** This chapter does not limit liability for civil  
25 damages resulting from a person's negligent conduct or intentional misconduct.

26 **Sec. 13.56.220. Claims for costs incurred.** A governmental entity that incurs  
27 expenses that result from a qualified individual's ending the qualified individual's life  
28 under this chapter in a public place may file a claim against the estate of the individual  
29 to recover the costs and attorney fees related to enforcing the claim.

30 **Sec. 13.56.230. Duties of department.** (a) The department shall annually  
31 review a sample of records maintained under this chapter.

1 (b) After dispensing medication under this chapter, a health care provider shall  
2 file with the department a copy of the record of dispensing the medication.

3 (c) The department shall adopt regulations under AS 44.62 (Administrative  
4 Procedure Act) to facilitate the collection of information about compliance with this  
5 chapter. The information collected is not a public record under AS 40.25.110, and the  
6 department may not make the information available for inspection by the public.

7 (d) The department shall generate and make available to the public an annual  
8 statistical report of the information collected under (c) of this section. The statistical  
9 report may not disclose information that is confidential under (c) of this section, but  
10 shall present the information in a manner that prevents the identification of particular  
11 persons.

12 (e) In this section, "department" means the Department of Health and Social  
13 Services.

14 **Sec. 13.56.240. Attending physician qualifications.** (a) To qualify as an  
15 attending physician under this chapter, a physician must

16 (1) have primary responsibility for the patient's health care;

17 (2) have primary responsibility for the treatment of the patient's  
18 terminal illness; and

19 (3) routinely provide medical care to patients with advanced and  
20 terminal illnesses in the normal course of the physician's practice.

21 (b) Notwithstanding (a)(3) of this section, an attending physician's practice  
22 may not be primarily or solely made up of individuals requesting medication under  
23 this chapter.

24 **Sec. 13.56.250. Construction of chapter.** (a) This chapter may not be  
25 construed to authorize or require a health care provider to provide health care contrary  
26 to generally accepted health care standards applicable to the health care provider.

27 (b) This chapter may not be construed to authorize a physician or another  
28 person to end an individual's life by lethal injection, mercy killing, or active  
29 euthanasia. An action allowed by this chapter is an affirmative defense to a criminal  
30 charge of homicide, murder, manslaughter, criminally negligent homicide, suicide,  
31 assisted suicide, mercy killing, or euthanasia under the law of this state.

1           **Sec. 13.56.260. Insurance or annuity policies; contracts.** Notwithstanding  
 2 AS 21.45.250 or another provision of law to the contrary, a person may not condition  
 3 the sale, procurement, issuance, rate, delivery, issuance for delivery, or other aspect of  
 4 a life insurance policy, health insurance policy, accident insurance policy, or annuity  
 5 policy, or another contract on the making or rescission of a request by a qualified  
 6 individual for medication under this chapter.

7           **Sec. 13.56.270. Coordination with other law.** A request for medication under  
 8 this chapter is not an advance health care directive under AS 13.52, and AS 13.52 does  
 9 not apply to an activity allowed by this chapter.

10          **Sec. 13.56.290. Definitions.** In this chapter, unless the context indicates  
 11 otherwise,

12                   (1) "attending physician" means a physician who qualifies under  
 13 AS 13.56.240 as an attending physician;

14                   (2) "capable" means that an individual has the ability to make and  
 15 communicate health care decisions to health care providers; in this paragraph,  
 16 "communicate" includes communication through a person familiar with the  
 17 individual's manner of communicating if the person is available;

18                   (3) "consulting physician" means a physician who is qualified by  
 19 specialty or experience to make a professional diagnosis and prognosis about the  
 20 individual's disease;

21                   (4) "counseling" means consultation as necessary between a  
 22 psychiatrist or psychologist and an individual to determine whether the individual is  
 23 capable and not suffering from a psychiatric or psychological disorder or depression  
 24 causing impaired judgment;

25                   (5) "health care provider" means a person or health care facility  
 26 licensed, certified, or otherwise authorized or permitted by the law of this state to  
 27 administer health care or dispense medication in the ordinary course of business or  
 28 practice of a profession; in this paragraph, "health care facility" means a private,  
 29 municipal, or state hospital; independent diagnostic testing facility; primary care  
 30 outpatient facility; skilled nursing facility; kidney disease treatment center, including  
 31 freestanding hemodialysis units; intermediate care facility; ambulatory surgical

1 facility; Alaska Pioneers' Home or Alaska Veterans' Home administered by the  
 2 department under AS 47.55; state correctional facility as defined in AS 33.30.901;  
 3 private, municipal, or state facility employing one or more public health nurses; and  
 4 long-term care facility;

5 (6) "informed decision" means a decision that is based on an  
 6 appreciation of the relevant facts and that is made after the attending physician fully  
 7 informs an individual of the

8 (A) individual's medical diagnosis;

9 (B) individual's prognosis;

10 (C) potential risks associated with taking the medication to be  
 11 prescribed;

12 (D) probable result of taking the medication to be prescribed;

13 and

14 (E) feasible alternatives, including comfort care, hospice care,  
 15 and pain control;

16 (7) "medication" means medication to end a qualified individual's life  
 17 under this chapter;

18 (8) "physician" means a doctor of medicine or osteopathy who is  
 19 licensed under AS 08.64 to practice medicine or osteopathy;

20 (9) "prescription" means a prescription for medication to end a  
 21 qualified individual's life under this chapter;

22 (10) "prohibited health care provider" means a health care provider  
 23 that is prohibited by another health care provider under AS 13.56.170;

24 (11) "prohibiting health care provider" means a health care provider  
 25 that prohibits another health care provider under AS 13.56.170;

26 (12) "qualified individual" means an individual who is qualified under  
 27 AS 13.56.010(b);

28 (13) "request" means a request under AS 13.56.030;

29 (14) "terminal disease" means an incurable and irreversible disease  
 30 that has been medically confirmed and that will, within reasonable medical judgment,  
 31 produce death within six months; in this paragraph, "medically confirmed" means that

1 a consulting physician who has examined the individual's relevant medical records has  
2 confirmed the medical opinion of the attending physician.

3 \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 APPLICABILITY. AS 13.56, enacted by sec. 3 of this Act, applies to a contract, will,  
6 or life, health, or accident insurance or annuity policy if the contract, will, or policy is  
7 delivered or issued for delivery on or after the effective date of sec. 3 of this Act.

8 \* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to  
9 read:

10 TRANSITION: REGULATIONS. The Department of Health and Social Services may  
11 adopt regulations authorized by AS 13.56, enacted by sec. 3 of this Act. The regulations take  
12 effect under AS 44.62 (Administrative Procedure Act), but not before January 1, 2019.

13 \* **Sec. 6.** Section 5 of this Act takes effect immediately under AS 01.10.070(c).

14 \* **Sec. 7.** Except as provided in sec. 6 of this Act, this Act takes effect January 1, 2019.