

HOUSE BILL REPORT

ESHB 1000

As Passed House:
March 11, 2013

Title: An act relating to immunity for health care providers following directions contained in a form developed pursuant to RCW 43.70.480

Brief Description: Providing immunity for health care providers following directions contained in a form developed pursuant to RCW 43.70.480.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Moeller, Morrell, Wylie, McCoy, Ryu, Reykdal, Seaquist, Moscoso, Appleton, Green, Cody, Ormsby and Jinkins).

Brief History:

Committee Activity:

Judiciary: 1/16/13, 1/29/13 [DPS].

Floor Activity:

Passed House: 3/11/13, 59-36.

Brief Summary of Engrossed Substitute Bill

- Provides immunity for health care providers and facilities following end-of-life planning orders.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey and Orwall.

Minority Report: Do not pass. Signed by 1 member: Representative Shea.

Staff: Omeara Harrington (786-7136).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Department of Health has implemented a Physician Orders for Life-Sustaining Treatment (POLST) form. This standardized form allows individuals to summarize their wishes regarding end-of-life treatment and communicate those wishes to emergency medical personnel or staff in hospitals or residential care settings. The form is intended for use by any individual with an advanced life-limiting illness.

Instructions on the POLST form require the form to be signed by a patient's physician or advanced registered nurse practitioner after discussion with the patient or the patient's surrogate decision-maker regarding patient preferences. These preferences include whether or not to attempt resuscitation, what medical interventions are permitted when a person has a pulse or is breathing, and whether and how administration of antibiotics and artificial administration of nutrition should occur.

A POLST differs from an advance directive, which is another kind of document that expresses an individual's preferences regarding the withholding or withdrawal of life-sustaining treatment in the event that he or she is in a terminal condition or permanent unconscious state. Advance directives have additional formal requirements including signing in the presence of two neutral witnesses and may be created far in advance of onset of a life-limiting condition. Although an advance directive is not necessary to implement a POLST for a patient, the POLST may function as a summary of an individual's advance directive choices.

Emergency medical personnel are immune for acts and omissions that occur in good faith while rendering emergency care, including following physician's orders contained in a POLST. In addition to emergency medical personnel, some health care providers and facilities also use POLST forms. While these providers and facilities are statutorily immune from legal liability for carrying out advance directives, equivalent immunity language does not exist in the POLST statute.

Summary of Engrossed Substitute Bill:

Health care providers and health care facilities that participate in the provision of medical care or in the withholding or withdrawal of life-sustaining treatment in accordance with a POLST form are immune from legal liability, including civil, criminal, and professional conduct sanctions, as long as the participation has been conducted in good faith, within the scope of his or her credentials or employment, and is not found to be negligent. The immunity only extends to specifically listed providers and facilities.

It is specified that the POLST form is a medical order.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Of the 14 states that use POLST-type forms, Washington is the only state without provider immunity. Provider immunity is a critical factor in being able to assure people who are dying that they will get the care they desire, because it protects providers from liability for carrying out patient wishes. People facing the end of life have tremendous dignity and are often afraid of how they are going to die. Providers should not be forced to disregard patient wishes due to fear of liability, which has happened in practice.

The POLST instructions are context-based whereas advance directives are often created in the course of estate planning outside of the context of an immediate medical condition. Advance directives are not always included in the patient's chart, and, even if they are, the predicate conditions that trigger the activation of the advance directive have not always been confirmed for the care team in time to make emergency care decisions accordingly.

There is an ethics protocol to follow with regard to making decisions about patient care. Surrogate decision-makers are required to act in good faith and in accordance with the patient's wishes, if known. A surrogate can only substitute judgment when the patient's wishes are not known. The POLST forms are typically very indicative of what the patient wants. When in doubt, providers err in favor of providing more care.

Podiatric physicians and surgeons should be included on the list of providers who qualify for immunity.

(With concerns) The language providing immunity "unless otherwise negligent" is insufficient to trigger the standard of care, so clarifying language is needed. There are concerns associated with allowing surrogates to act on behalf of an incapacitated person, although the obligation to act in good faith may meet that concern.

(Opposed) None.

Persons Testifying: (In support) Representative Moeller, prime sponsor; Sean Atteridge, AARP; Greg Vandekeift, Providence Hospital; Laird Pisto, Washington State Hospital Association; Lisa Botler, Washington State Hospice and Palliative Care Organization; and Melanie Stewart, Washington Podiatric Medical Association.

(With concerns) Larry Shannon, Washington State Association of Justice.

Persons Signed In To Testify But Not Testifying: None.