
HOUSE BILL 1299

State of Washington

57th Legislature

2001 Regular Session

By Representatives Keiser, Ballasiotes, Cody, Kenney, Ruderman,
Cairnes, Darneille and Rockefeller

Read first time 01/23/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to advance health care directives; and adding a
2 new section to chapter 11.94 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 11.94
5 RCW to read as follows:

6 (1) For the purposes of this section:

7 (a) "Act in good faith" means to act consistently with a
8 legally sufficient psychiatric advance directive of the principal
9 or information otherwise made known by the principal, unless the
10 actor has actual knowledge of the modification or revocation of
11 the information expressed. If these sources of information do not
12 provide adequate guidance to the actor, "act in good faith" means
13 acting in the best interests of the principal, considering the
14 principal's overall general health condition and prognosis and the
15 principal's personal values to the extent known.

16 (b) "Decision-making capacity" or "capacity" means the ability
17 to understand the significant benefits, risks, and alternatives to

1 proposed health care and to make and communicate a health care
2 decision.

3 (c) "Health care" means any care, treatment, service, or
4 procedure to maintain, diagnose, or otherwise affect a person's
5 physical or mental condition.

6 (d) "Health care agent" or "agent" means an individual age
7 eighteen or older who is appointed by a principal in a psychiatric
8 advance directive or health care power of attorney to make health
9 care decisions on behalf of the principal.

10 (e) "Health care decision" means the consent, refusal of
11 consent, or withdrawal of consent to health care.

12 (f) "Health care facility" means a hospital or other entity
13 licensed under the laws of this state.

14 (g) "Health care instruction" means a written statement of the
15 principal's values, preferences, guidelines, or directions
16 regarding health care.

17 (h) "Health care power of attorney" means an instrument
18 appointing one or more health care agents to make health care
19 decisions for the principal.

20 (i) "Health care provider" means a person, health care
21 facility, organization, or corporation licensed, certified, or
22 otherwise authorized or permitted by the laws of this state to
23 administer health care directly or through an arrangement with
24 other health care providers, including health maintenance
25 organizations.

26 (j) "Principal" means an individual age eighteen or older who
27 has executed a psychiatric advance directive.

28 (k) "Psychiatric advance directive" means a written instrument
29 that complies with this section and includes one or more health
30 care instructions, a health care power of attorney, or both.

31 (2) A principal with the decision-making capacity to do so may
32 execute a psychiatric advance directive. A psychiatric advance
33 directive may include one or more health care instructions to
34 direct health care providers, others assisting with health care,
35 family members, and a health care agent. A psychiatric advance
36 directive may include a health care power of attorney to appoint a
37 health care agent to make health care decisions for the principal

1 when the principal, in the judgment of the principal's attending
2 physician, lacks decision-making capacity, unless otherwise
3 specified in the psychiatric advance directive.

4 (3) To be legally sufficient in this state, a psychiatric
5 advance directive must:

6 (a) Be in writing;

7 (b) Be dated;

8 (c) State the principal's name;

9 (d) Be executed by a principal with capacity to do so with the
10 signature of the principal or with the signature of another person
11 authorized by the principal to sign on behalf of the principal;

12 (e) Contain verification of the principal's signature or the
13 signature of the person authorized by the principal to sign on
14 behalf of the principal, either by a notary public or by witnesses
15 as provided under this section; and

16 (f) Include a health care instruction, a health care power of
17 attorney, or both.

18 (4) An individual appointed by the principal under subsection
19 (2) of this section to make the determination of the principal's
20 decision-making capacity is not eligible to act as the health care
21 agent.

22 (5) The following individuals are not eligible to act as the
23 health care agent, unless the individual appointed is related to
24 the principal by blood, marriage, registered domestic partnership,
25 or adoption, or unless the principal has otherwise specified in
26 the psychiatric advance directive:

27 (a) A health care provider attending the principal on the date
28 of execution of the psychiatric advance directive or on the date
29 the health care agent must make decisions for the principal; or

30 (b) An employee of a health care provider attending the
31 principal on the date of execution of the psychiatric advance
32 directive or on the date the health care agent must make decisions
33 for the principal.

34 (6) A health care agent or alternate health care agent
35 appointed in a health care power of attorney may not act as a
36 witness or notary public for the execution of the psychiatric
37 advance directive that includes the health care power of attorney.

38 (7) At least one witness to the execution of the psychiatric

1 advance directive must not be a health care provider providing
2 direct care to the principal or an employee of a health care
3 provider providing direct care to the principal on the date of
4 execution. A person notarizing a psychiatric advance directive may
5 be an employee of a health care provider providing direct care to
6 the principal.

7 (8) A health care agent acting pursuant to a psychiatric
8 advance directive has the same right as the principal to receive,
9 review, and obtain copies of medical records of the principal, and
10 to consent to the disclosure of medical records of the principal,
11 unless the principal has otherwise specified in the psychiatric
12 advance directive.

13 (9) A principal with the capacity to do so may revoke a
14 psychiatric advance directive in whole or in part at any time by
15 doing any of the following:

16 (a) Canceling, defacing, obliterating, burning, tearing, or
17 otherwise destroying the psychiatric advance directive instrument
18 or directing another in the presence of the principal to destroy
19 the psychiatric advance directive instrument, with the intent to
20 revoke the psychiatric advance directive in whole or in part;

21 (b) Executing a statement, in writing and dated, expressing the
22 principal's intent to revoke the psychiatric advance directive in
23 whole or in part;

24 (c) Verbally expressing the principal's intent to revoke the
25 psychiatric advance directive in whole or in part in the presence
26 of two witnesses who do not have to be present at the same time;
27 or

28 (d) Executing a subsequent psychiatric advance directive, to
29 the extent the subsequent instrument is inconsistent with any
30 prior instrument.

31 (10) Unless the principal has otherwise specified in the
32 psychiatric advance directive, the appointment by the principal of
33 the principal's spouse or registered domestic partner as health
34 care agent under a health care power of attorney is revoked by the
35 commencement of proceedings for dissolution, annulment, or
36 termination of the principal's marriage or commencement of
37 proceedings for termination of the principal's registered domestic
38 partnership.

1 (11) The principal is presumed to have the capacity to execute
2 a psychiatric advance directive and to revoke a psychiatric
3 advance directive, absent clear and convincing evidence to the
4 contrary.

5 (12) A health care provider or health care agent may presume
6 that a psychiatric advance directive is legally sufficient absent
7 actual knowledge to the contrary. A psychiatric advance directive
8 is presumed to be properly executed, absent clear and convincing
9 evidence to the contrary.

10 (13) A health care agent, and a health care provider acting
11 pursuant to the direction of a health care agent, are presumed to
12 be acting in good faith, absent clear and convincing evidence to
13 the contrary.

14 (14) A psychiatric advance directive is presumed to remain in
15 effect until the principal modifies or revokes it, absent clear
16 and convincing evidence to the contrary.

17 (15) This section does not create a presumption concerning the
18 intention of an individual who has not executed a psychiatric
19 advance directive and, except as otherwise provided by this
20 section, does not impair or supersede any right or responsibility
21 of an individual to consent, refuse to consent, or withdraw
22 consent to health care on behalf of another in the absence of a
23 psychiatric advance directive.

24 (16) A copy of a psychiatric advance directive is presumed to
25 be a true and accurate copy of the executed original, absent clear
26 and convincing evidence to the contrary, and must be given the
27 same effect as an original.

--- END ---

