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SECOND SUBSTITUTE HOUSE BILL 2342

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State of Washington

59th Legislature

2006 Regular Session

**By** House Committee on Appropriations (originally sponsored by Representatives Moeller, Appleton, Nixon, Hunt, Curtis, Lantz, Morrell, Springer, Wallace, Fromhold, Kagi, Roberts, Cody, Ericks, Green and Ormsby)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to establishing a health care declarations  
2 registry; amending RCW 70.122.040, 71.32.080, and 70.122.051; adding  
3 new sections to chapter 70.122 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that effective  
6 communication between patients, their families, and their care givers  
7 regarding their wishes if they become incapacitated results in health  
8 care decisions that are more respectful of patients' desires. Whether  
9 the communication is for end-of-life planning or incapacity resulting  
10 from mental illness, the state must respect those wishes and support  
11 efforts to facilitate such communications and to make that information  
12 available when it is needed.

13 It is the intent of the legislature to establish an electronic  
14 registry to improve access to health care decision-making documents.  
15 The registry would support, not supplant, the current systems for  
16 advance directives and mental health advance directives by improving  
17 access to these documents. It is the legislature's intent that the  
18 registry would be consulted by health care providers in every instance  
19 where there may be a question about the patient's wishes for periods of

1 incapacity and the existence of a document that may clarify a patient's  
2 intentions unless the circumstances are such that consulting the  
3 registry would compromise the emergency care of the patient.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.122 RCW  
5 to read as follows:

6 (1) The department of health shall establish and maintain a  
7 statewide health care declarations registry containing the health care  
8 declarations identified in subsection (2) of this section as submitted  
9 by residents of Washington. The department shall digitally reproduce  
10 and store health care declarations in the registry. The department may  
11 establish standards for individuals to submit digitally reproduced  
12 health care declarations directly to the registry, but is not required  
13 to review the health care declarations that it receives to ensure they  
14 comply with the particular statutory requirements applicable to the  
15 document. The department may contract with an organization that meets  
16 the standards identified in this section.

17 (2)(a) An individual may submit any of the following health care  
18 declarations to the department of health to be digitally reproduced and  
19 stored in the registry:

- 20 (i) A directive, as defined by this chapter;
- 21 (ii) A durable power of attorney for health care, as authorized in  
22 chapter 11.94 RCW;
- 23 (iii) A mental health advance directive, as defined by chapter  
24 71.32 RCW; or
- 25 (iv) A form adopted pursuant to the department of health's  
26 authority in RCW 43.70.480.

27 (b) Failure to submit a health care declaration to the department  
28 of health does not affect the validity of the declaration.

29 (c) Failure to notify the department of health of a valid  
30 revocation of a health care declaration does not affect the validity of  
31 the revocation.

32 (d) The entry of a health care directive in the registry under this  
33 section does not:

- 34 (i) Affect the validity of the document;
- 35 (ii) Take the place of any requirements in law necessary to make  
36 the submitted document legal; or
- 37 (iii) Create a presumption regarding the validity of the document.

1 (3) The department of health shall prescribe a procedure for an  
2 individual to revoke a health care declaration contained in the  
3 registry.

4 (4) The registry must:

5 (a) Be maintained in a secure data base that is accessible through  
6 a web site maintained by the department of health;

7 (b) Send annual electronic messages to individuals that have  
8 submitted health care declarations to request that they review the  
9 registry materials to ensure that it is current;

10 (c) Provide individuals who have submitted one or more health care  
11 declarations with access to their documents and the ability to revoke  
12 their documents at all times; and

13 (d) Provide the personal representatives of individuals who have  
14 submitted one or more health care declarations to the registry,  
15 attending physicians, advanced registered nurse practitioners, health  
16 care providers licensed by a disciplining authority identified in RCW  
17 18.130.040 who is acting under the direction of a physician or an  
18 advanced registered nurse practitioner, and health care facilities, as  
19 defined in this chapter or in chapter 71.32 RCW, access to the registry  
20 at all times.

21 (5) In designing the registry and web site, the department of  
22 health shall ensure compliance with state and federal requirements  
23 related to patient confidentiality.

24 (6) The department shall provide information to health care  
25 providers and health care facilities on the registry web site regarding  
26 the different federal and Washington state requirements to ascertain  
27 and document whether a patient has an advance directive.

28 (7) The department of health may accept donations, grants, gifts,  
29 or other forms of voluntary contributions to support activities related  
30 to the creation and maintenance of the health care declarations  
31 registry and statewide public education campaigns related to the  
32 existence of the registry. All funds received shall be transferred to  
33 the health care declarations registry account, created in section 3 of  
34 this act.

35 (8) The department of health may adopt rules as necessary to  
36 implement this act.

37 (9) By December 1, 2008, the department shall report to the house  
38 and senate committees on health care the following information:

- 1 (a) Number of participants in the registry;
- 2 (b) Number of health care declarations submitted by type of  
3 declaration as defined in this section;
- 4 (c) Number of health care declarations revoked and the method of  
5 revocation;
- 6 (d) Number of providers and facilities, by type, that have been  
7 provided access to the registry;
- 8 (e) Actual costs of operation of the registry;
- 9 (f) Donations received by the department for deposit into the  
10 health care declarations registry account, created in section 3 of this  
11 act by type of donor.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.122 RCW  
13 to read as follows:

14 The health care declarations registry account is created in the  
15 state treasury. All receipts from donations made under section 2 of  
16 this act, and other contributions and appropriations specifically made  
17 for the purposes of creating and maintaining the registry established  
18 by section 2 of this act and statewide public education campaigns  
19 related to the existence of the registry, shall be deposited into the  
20 account. Moneys in the account may be spent only after appropriation.  
21 Expenditures from the account may be used only for purposes of the  
22 health care declarations registry.

23 **Sec. 4.** RCW 70.122.040 and 1979 c 112 s 5 are each amended to read  
24 as follows:

25 (1) A directive may be revoked at any time by the declarer, without  
26 regard to the declarer's mental state or competency, by any of the  
27 following methods:

28 (a) By being canceled, defaced, obliterated, burned, torn, or  
29 otherwise destroyed by the declarer or by some person in the declarer's  
30 presence and by the declarer's direction.

31 (b) By a written revocation of the declarer expressing  
32 (~~declarer's~~) his or her intent to revoke, signed, and dated by the  
33 declarer. Such revocation shall become effective only upon  
34 communication to the attending physician by the declarer or by a person  
35 acting on behalf of the declarer. The attending physician shall record

1 in the patient's medical record the time and date when (~~said~~) the  
2 physician received notification of the written revocation.

3 (c) By a verbal expression by the declarer of (~~declarer's~~) his or  
4 her intent to revoke the directive. Such revocation shall become  
5 effective only upon communication to the attending physician by the  
6 declarer or by a person acting on behalf of the declarer. The  
7 attending physician shall record in the patient's medical record the  
8 time, date, and place of the revocation and the time, date, and place,  
9 if different, of when (~~said~~) the physician received notification of  
10 the revocation.

11 (d) In the case of a directive that is stored in the health care  
12 declarations registry under section 2 of this act, by an online method  
13 established by the department of health. Failure to use this method of  
14 revocation for a directive that is stored in the registry does not  
15 invalidate a revocation that is made by another method described under  
16 this section.

17 (2) There shall be no criminal or civil liability on the part of  
18 any person for failure to act upon a revocation made pursuant to this  
19 section unless that person has actual or constructive knowledge of the  
20 revocation except as provided in RCW 70.122.051(4).

21 (3) If the declarer becomes comatose or is rendered incapable of  
22 communicating with the attending physician, the directive shall remain  
23 in effect for the duration of the comatose condition or until such time  
24 as the declarer's condition renders the declarer able to communicate  
25 with the attending physician.

26 **Sec. 5.** RCW 71.32.080 and 2003 c 283 s 8 are each amended to read  
27 as follows:

28 (1)(a) A principal with capacity may, by written statement by the  
29 principal or at the principal's direction in the principal's presence,  
30 revoke a directive in whole or in part.

31 (b) An incapacitated principal may revoke a directive only if he or  
32 she elected at the time of executing the directive to be able to revoke  
33 when incapacitated.

34 (2) The revocation need not follow any specific form so long as it  
35 is written and the intent of the principal can be discerned. In the  
36 case of a directive that is stored in the health care declarations  
37 registry created by section 2 of this act, the revocation may be by an

1 online method established by the department of health. Failure to use  
2 the online method of revocation for a directive that is stored in the  
3 registry does not invalidate a revocation that is made by another  
4 method described under this section.

5 (3) The principal shall provide a copy of his or her written  
6 statement of revocation to his or her agent, if any, and to each health  
7 care provider, professional person, or health care facility that  
8 received a copy of the directive from the principal.

9 (4) The written statement of revocation is effective:

10 (a) As to a health care provider, professional person, or health  
11 care facility, upon receipt. The professional person, health care  
12 provider, or health care facility, or persons acting under their  
13 direction shall make the statement of revocation part of the  
14 principal's medical record; and

15 (b) As to the principal's agent, upon receipt. The principal's  
16 agent shall notify the principal's health care provider, professional  
17 person, or health care facility of the revocation and provide them with  
18 a copy of the written statement of revocation.

19 (5) A directive also may:

20 (a) Be revoked, in whole or in part, expressly or to the extent of  
21 any inconsistency, by a subsequent directive; or

22 (b) Be superseded or revoked by a court order, including any order  
23 entered in a criminal matter. A directive may be superseded by a court  
24 order regardless of whether the order contains an explicit reference to  
25 the directive. To the extent a directive is not in conflict with a  
26 court order, the directive remains effective, subject to the provisions  
27 of RCW 71.32.150. A directive shall not be interpreted in a manner  
28 that interferes with: (i) Incarceration or detention by the department  
29 of corrections, in a city or county jail, or by the department of  
30 social and health services; or (ii) treatment of a principal who is  
31 subject to involuntary treatment pursuant to chapter 10.77, 70.96A,  
32 71.05, 71.09, or 71.34 RCW.

33 (6) A directive that would have otherwise expired but is effective  
34 because the principal is incapacitated remains effective until the  
35 principal is no longer incapacitated unless the principal has elected  
36 to be able to revoke while incapacitated and has revoked the directive.

37 (7) When a principal with capacity consents to treatment that  
38 differs from, or refuses treatment consented to in, the provisions of

1 his or her directive, the consent or refusal constitutes a waiver of  
2 that provision and does not constitute a revocation of the provision or  
3 directive unless the principal also revokes the directive or provision.

4 **Sec. 6.** RCW 70.122.051 and 1992 c 98 s 5 are each amended to read  
5 as follows:

6 (1) For the purposes of this section, "provider" means a physician,  
7 advanced registered nurse practitioner, health care provider acting  
8 under the direction of a physician or an advanced registered nurse  
9 practitioner, or health care facility, as defined in this chapter or in  
10 chapter 71.32 RCW, and its personnel.

11 (2) Any ((physician, health care provider acting under the  
12 direction of a physician, or health facility and its personnel))  
13 provider who participates in good faith in the withholding or  
14 withdrawal of life-sustaining treatment from a qualified patient in  
15 accordance with the requirements of this chapter, shall be immune from  
16 legal liability, including civil, criminal, or professional conduct  
17 sanctions, unless otherwise negligent.

18 (3) The establishment of a health care declarations registry does  
19 not create any new or distinct obligation for a provider to determine  
20 whether a patient has a health care declaration.

21 (4) A provider is not subject to civil or criminal liability or  
22 sanctions for unprofessional conduct under the uniform disciplinary  
23 act, chapter 18.130 RCW, when in good faith and without negligence:

24 (a) The provider provides, does not provide, withdraws, or  
25 withholds treatment to a patient in the absence of actual knowledge of  
26 the existence of a health care declaration stored in the health care  
27 declarations registry established in section 2 of this act;

28 (b) The provider provides, does not provide, withdraws, or  
29 withholds treatment pursuant to a health care declaration stored in the  
30 health care declarations registry established in section 2 of this act  
31 in the absence of actual knowledge of the revocation of the  
32 declaration;

33 (c) The provider provides, does not provide, withdraws, or  
34 withholds treatment according to a health care declaration stored in  
35 the health care declarations registry established in section 2 of this  
36 act in good faith reliance upon the validity of the health care  
37 declaration and the declaration is subsequently found to be invalid; or

1       (d) The provider provides, does not provide, withdraws, or  
2 withholds treatment according to the patient's health care declaration  
3 stored in the health care declarations registry established in section  
4 2 of this act.

5       (5) Except for acts of gross negligence, willful misconduct, or  
6 intentional wrongdoing, the department of health is not subject to  
7 civil liability for any claims or demands arising out of the  
8 administration or operation of the health care declarations registry  
9 established in section 2 of this act.

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