

HOUSE BILL REPORT

HB 2494

As Reported by House Committee On:
Judiciary

Title: An act relating to end-of-life health care directives.

Brief Description: Requiring the department of health to develop a medical treatment preference form and limiting liability for providers who act in accordance with such forms.

Sponsors: Representatives Moeller, Ormsby and Chase.

Brief History:

Committee Activity:

Judiciary: 1/22/08, 2/5/08 [DPS].

Brief Summary of Substitute Bill

- Directs the Department of Health to develop a simple medical order form that documents a person's life-sustaining and emergency treatment preferences.
- Provides civil and criminal immunity to health care providers and emergency medical personnel acting in good faith in accordance with the directions stated on the simple medical order form to provide, withhold, or withdraw life-sustaining treatment, emergency treatment or related treatment for comfort care from a person.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Lantz, Chair; Goodman, Vice Chair; Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern.

Staff: Sarah Silbovitz (786-7119) and Trudes Tango (786-7384).

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 (Department) was directed to develop a medical order form for emergency medical personnel to follow. The Department created the Physician Orders for Life-Sustaining Treatment (POLST) medical form that satisfies emergency medical personnels' need for a physician's order relating to life-sustaining treatment. This medical form, in an easy-to-read format, identifies a person's medical treatment preferences for emergency medical personnel to follow when called to the site of an injury or illness.

Some health care facilities also use this medical order form as a summary of a person's position on life-sustaining treatment until a more in-depth determination of the person's wishes can be made. While health care providers and facilities are immune from legal liability for carrying out advance directives, they do not have the same immunity under the POLST. A POLST is a standardized form that is signed by an individual's physician to direct care treatment and can be signed by a legal surrogate; whereas, an advance directive directs the withholding or withdrawal of life-sustaining treatment, and must be signed by the declarer in the presence of two witnesses.

Summary of Substitute Bill:

The Department is directed to include on the medical order form clear "resuscitate" and "do not resuscitate" orders along with choices for other medical treatment and care. An advanced registered nurse practitioner, osteopathic physician, osteopathic physician assistant, physician, or physician assistant must sign the medical order form along with the person identified on the form or the person's legal representative as identified by statute.

The medical order form may be followed by other providers who are:

- an advanced registered nurse practitioner, naturopath, osteopathic physician, osteopathic physician assistant, physician, or physician assistant;
- a health care provider acting within the provider's licensed scope of practice and under the direction of an advanced registered nurse practitioner, osteopathic physician, osteopathic physician assistant, physician or physician assistant;
- a kidney disease treatment center and its personnel; and
- a health facility (such as hospices, hospitals, psychiatric hospitals, and nursing homes) and its personnel, health care facility (such as hospitals, state hospitals, nursing homes, or a clinic that is part of a community mental health service delivery system) and its personnel, or an adult home and its personnel.

Although the providers may follow the simple medical order form, all other legal requirements applicable to providers remain in place. Providers may not require any person to sign the medical order form. In addition, all providers must follow informed consent requirements as specified by statute.

All providers acting in good faith in accordance with the directions stated on the simple medical order form to provide, withhold or withdraw life-sustaining treatment, emergency treatment, or related comfort care treatment are immune from civil or criminal liability. The immunity does not include immunity from the provider's failure to provide, withhold or

withdraw treatment in accordance with the standard of care as specified by statute, which is to fail to use the type of care expected of such a health professional in Washington or a similar location.

All emergency medical personnel acting in good faith in accordance with the directions stated on the simple medical order form to provide, withhold or withdraw life-sustaining treatment, emergency treatment, or related comfort care treatment are immune from civil or criminal liability, unless the emergency medical personnel fails to act in accordance with the standards of care as required by statute, which is to fail to use the type of care expected of such a health professional in Washington or a similar location.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes:

- narrows the type of treatment the simple medical form covers by removing the word "medical" before the word "treatment" and inserting "life-sustaining and emergency;"
- narrows the type of comfort care to ensure that the type of comfort care is related to life-sustaining or emergency treatment;
- allows the form to be signed by a legal representative, rather than a surrogate;
- adds naturopathic physician among the type of physicians who have the authority to sign the simple medical form;
- removes the requirement that the Department of Health develop an education program;
- requires that all providers follow the informed consent requirements as specified by statute;
- changes the provider liability immunity section so that instead of being liable if otherwise negligent, the provider would be liable if he or she failed to provide, withhold or withdraw treatment in accordance with the standard of care as specified in the statute, which is to fail to use the type of care expected of such a health professional in Washington or similar location; and
- inserts a liability immunity section to specifically address emergency medical personnel. Any emergency medical personnel who acts in good faith in accordance with the medical form to provide, withhold or withdraw life-sustaining treatment, emergency treatment, or related comfort care treatment is immune from civil or criminal liability, unless the emergency medical personnel fails to act in accordance with the standards of care as required by statute, which is to fail to use the type of care expected of such a health professional in Washington or a similar location.

Appropriation: None.

Fiscal Note: Requested on substitute bill on February 6, 2008.

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

Staff Summary of Public Testimony:

(In support) This bill strengthens the commitment to honor end-of-life care wishes. The standard practice is to do everything possible to save a person's life. The POLST identifies end-of-life care that may be counter to this assumption. Although the POLST gives clear instructions, it is important that the Department of Health create an education program to ensure that the form is interpreted correctly. It is important that liability immunity is extended to the facilities that receive patients from emergency medical personnel. The reason why a facility needs this immunity is that by law a plan of care must be identified within 30 days time of an admittance. Therefore, before the facility can identify a plan of care, the staff can use the physicians order form for that in between period of time. This bill does not erode any of the advance directive laws or informed consent statutes.

(Opposed) This bill is not restricted to end-of-life care because the bill refers to medical treatment, which is significantly more than just end-of-life care or emergency treatment. The bill does not require that the patient be incompetent before the legal surrogate can sign the POLST. No time restriction exists for the life-span of the POLST. The bill allows aides to interpret the POLST who may have little training. The bill does not address how to deal with any conflicts of forms (POLST v. advance directive). The concern isn't so much that the hospitals are following the POLST, but rather, not all treatment settings have staff that have the training to correctly interpret the POLST.

Persons Testifying: (In support) Representative Moeller, prime sponsor; Robb Miller, Compassion and Choices of Washington; Deb Murphy, Washington Association of Housing and Services for the Aging; Janet Kash, Department of Health; Jeff Mero, Washington State Hospital Association; and Dr. James Shaw, Washington State Medical Association.

(Opposed) Hilke Faber, Resident Councils of Washington; Jeff Crollard, Long-Term Care Ourbudsmain Program; and Robert Nettleton, Washington State Bar Association Elder Law.

Persons Signed In To Testify But Not Testifying: None.