

SENATE BILL REPORT

ESHB 1000

As of March 28, 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: Passed House: 3/11/13, 59-36.

Committee Activity: Law & Justice: 3/27/13.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: The Department of Health 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 the individual 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

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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 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 is conducted in good faith, within the scope of the individual's credentials or employment, and 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.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Patients should have their care directions followed. Professional caregivers who honor the patient's POLST instructions should be protected from the fear of litigation. In its essence, the POLST is a medical order done in light of the patient's current serious medical condition. The current immunity provided for using a POLST only applies to emergency medical personnel and does not carry over to other health care providers in the care team that have constant contact with the patients. Without this immunity, some patients end up getting treatment that they do not want. Withdrawing care is much more difficult than properly following a POLST.

OTHER: The bill needs to have language dealing with sequential POLST forms. Some of these workers have no definition of their scope of employment, so it would be up to the individual facilities to define it. More guidance and clarity is needed. Immunity should not be provided without adequate accountability. Clarification of the bill's provisions could help assure that the person's wishes are truly followed.

Persons Testifying: PRO: Representative Moeller, prime sponsor; Father John Tuohey, Providence Health and Services; Laird Pisto, WA State Hospital Assn.; Sharmon Figenshaw, James Shaw, WA State POLST Task Force.

OTHER: Jeff Crollard, Patricia Hunter, WA Long Term Care Ombudsman.