

HOUSE BILL REPORT

HB 1640

As Passed House:
January 18, 2018

Title: An act relating to allowing notaries and proof of identity for advance directives.

Brief Description: Allowing notaries and proof of identity for advance directives.

Sponsors: Representatives Graves, Jinkins and Tharinger.

Brief History:

Committee Activity:

Judiciary: 2/14/17, 2/16/17 [DP].

Floor Activity:

Passed House: 2/27/17, 96-0.

Floor Activity:

Passed House: 1/18/18, 96-0.

Brief Summary of Bill

- Provides the option for a person to execute a Health Care Directive under the Natural Death Act by signing and acknowledging the directive before a notary public or other individual authorized by law to take acknowledgements.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Frame, Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall and Shea.

Staff: Audrey Frey (786-7289).

Background:

Health Care Directives under the Natural Death Act.

Under the Natural Death Act, any adult person may execute a Health Care Directive that authorizes the withholding or withdrawing of life-sustaining treatment under circumstances where the treatment would serve only to prolong the process of dying after he or she has been

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diagnosed in writing with: (1) a terminal condition by the attending physician; or (2) a permanent unconscious condition by two physicians.

"Terminal condition" means an incurable and irreversible condition caused by injury, disease, or illness that in reasonable medical judgment would cause death within a reasonable period of time in accordance with accepted medical standards.

"Permanent unconscious condition" means an incurable and irreversible condition in which the person is medically assessed, in reasonable medical judgment, as having no reasonable probability of recovery from an irreversible coma or a persistent vegetative state.

"Life-sustaining treatment" means any medical or surgical intervention that uses mechanical or other artificial means, including artificially provided nutrition and hydration, to sustain, restore, or replace a vital function, and does not include the administration of medication or the performance of any medical or surgical intervention deemed necessary solely to alleviate pain.

Witness Requirements. The directive must be signed by the declarer in the presence of two witnesses. The following persons are not allowed to be witnesses: (1) any person related to the declarer by blood or marriage; (2) any person entitled, at the time of the execution of the directive, to any portion of the estate of the declarer under any will, codicil, or law; (3) the attending physician; (4) an employee of the attending physician or a health facility in which the declarer is a patient; or (5) any person who, at the time of the execution of the directive, has a claim against any portion of the declarer's estate upon the declarer's death.

A suggested form for the Health Care Directive is provided in statute, but a Health Care Directive may include other specific directions beyond those provided in the form.

Notary Public.

A notary public is a person authorized to perform notarial acts in this state. Notarial acts include taking an acknowledgment. An "acknowledgement" means a statement by a person that the person has executed an instrument as the person's free and voluntary act for the uses and purposes stated therein.

In taking an acknowledgment, a notary public must determine and certify, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary public and making the acknowledgment is the person whose true signature is on the document. A notary public has satisfactory evidence that a person is the person described in a document if that person: (a) is personally known to the notary public; (b) is identified upon the oath or affirmation of a credible witness personally known to the notary public; or (c) is identified on the basis of identification documents.

Summary of Bill:

Any adult person may execute a Health Care Directive under the Natural Death Act by: (1) signing and acknowledging the directive before a notary public or other individual authorized by law to take acknowledgements; or (2) by signing the directive in the presence of two qualified witnesses.

The directive may include a notarial certificate for an acknowledgement in an individual capacity in short form.

The witness statement and signature section of the suggested form for the Health Care Directive provided in statute is modified to state: "The declarer has been personally known to me *or has provided proof of identity* and I believe him or her to be capable of making health care decisions."

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) This bill is fairly straightforward. Right now, to sign and make an advance directive effective, a person is required to have the signature of two witnesses who can't be relatives or other people who are closely related to that person. This bill simply adds the additional option for a person to sign an advance directive in front of a notary public, with all the safeguards that come with signing it before a notary public, including verification of a person's identity, the date, and other safeguards.

The goal of the bill is to align the advance directive law with the changes that were made to the durable power of attorney law last year, and give folks options on how to get these documents signed. For background, there are two ways that most people can express their wishes for end of life. The durable power of attorney for health care allows someone to appoint an agent to make health care decisions if the principal can't. The other option is an advance directive, which contains more detail about the care a person does or does not want at the end of their life. A health care provider can rely on an advance directive to make sure they are giving a person the care that they want at the end of their life.

Last year, the bill about durable power of attorney added the requirement that durable power of attorney either be executed with two witnesses or a notary, but the advance directive law was not changed. The advance directive law still only has the option of two witnesses, and doesn't have a notary option. A lot of people will execute these two documents together: they appoint an agent, and they explicitly say what they do or don't want at the end of their life.

The real goal of this bill is to add the notary option to the advance directive, and add the option that the two witnesses to the advance directive can verify somebody's identity by looking at an identity document. This bill will allow patients more options to get these documents signed so they can express their wishes at the end of their life.

(Opposed) None.

Persons Testifying: Representative Graves, prime sponsor; and Zosia Stanley, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying: None.