

HOUSE BILL REPORT

HB 2166

As Reported by House Committee On:

Health Care & Wellness
Appropriations

Title: An act relating to increasing access to portable orders for life-sustaining treatment.

Brief Description: Increasing access to portable orders for life-sustaining treatment.

Sponsors: Representatives Paul and Shavers.

Brief History:

Committee Activity:

Health Care & Wellness: 1/16/24, 1/26/24 [DPS];

Appropriations: 2/2/24, 2/5/24 [DP2S(w/o sub HCW)].

Brief Summary of Second Substitute Bill

- Requires the Department of Health (DOH) to establish guidelines and protocols for emergency medical personnel to recognize alternative evidence that a person has executed a Portable Order for Life Sustaining Treatment (POLST) form and that the person does not wish to have resuscitation efforts.
- Requires the DOH to establish and maintain a statewide registry containing POLST forms submitted by health care providers, Washington residents, and their agents.
- Requires the DOH to establish best practices on the submission of POLST forms.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.
Signed by 16 members: Representatives Riccelli, Chair; Bateman, Vice Chair; Schmick,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Ranking Minority Member; Hutchins, Assistant Ranking Minority Member; Bronoske, Caldier, Davis, Graham, Harris, Macri, Maycumber, Mosbrucker, Orwall, Stonier, Thai and Tharinger.

Staff: Kim Weidenaar (786-7120).

Background:

There are several types of documents that individuals may use to declare their preferences for health care and mental health decisions in the event that they become incapacitated:

- An advance directive is a document that expresses an individual's preferences regarding the withholding or withdrawal of life-sustaining treatment if he or she is in a terminal condition or permanent unconscious state.
- A mental health advance directive is a document that either provides instructions or declares an individual's preferences regarding his or her mental health treatment in the event of incapacitation. These documents may also appoint another person to make decisions regarding mental health treatment on the individual's behalf in the event of incapacitation.
- A durable power of attorney for health care is a document that appoints an agent to provide informed consent for health care decisions on behalf of another individual.
- The Portable Orders for Life Sustaining Treatment (POLST) form is a standardized form that is signed by an individual's physician, physician assistant, or advanced registered nurse practitioner to instruct emergency medical personnel or staff in residential care settings on the type of care that an individual wishes to have in end-of-life situations.

The Department of Health (DOH) and the Washington State Medical Association implemented a POLST form, which is designed for seriously ill individuals and those who are in poor health. The POLST form allows individuals through their health care provider to indicate whether they would like to receive cardiopulmonary resuscitation (CPR), if necessary, as well as the level of medical interventions they would like to receive. The DOH adopted guidelines and protocols for how emergency medical personnel must respond when tending to a person who has signed a written directive or durable power of attorney requesting that he or she not receive certain emergency medical treatment.

In 2006 the DOH was directed to establish and maintain a statewide registry of health care declarations submitted by Washington residents on a secure website, which included advance directives, durable powers of attorney for health care, mental health advance directives, and POLST forms. Funding for the registry was eliminated in 2011.

Summary of Substitute Bill:

The DOH must establish guidelines and protocols for emergency medical personnel to

recognize types of alternative evidence that a person has executed the POLST form and that the person does not wish to have resuscitation efforts. Types of alternative evidence may include a standardized necklace or bracelet, physical card, or electronic application-based form.

The DOH must adopt standards for the endorsement of types of alternative evidence, which must require that the alternative evidence only be issued after the entity producing the alternative evidence is presented with a properly executed POLST form. The standards must require that the alternative evidence include the person's name, date of birth, and "WA DNR" or "WA Do Not Resuscitate." The DOH must maintain a registry of entities that have received an endorsement for their types of alternative evidence. The DOH must inform the public of the types of endorsed alternate evidence through its website and informational materials, which must include entities that are registered as producers of endorsed types of alternative evidence and the producers' contact information.

The DOH, or a DOH contracted entity, must establish and maintain a statewide registry containing the POLST forms submitted by health care providers and Washington residents, which must be designed to comply with state and federal requirements related to patient confidentiality. The DOH must digitally reproduce and store POLST forms in the registry. The DOH must establish standards for physicians, physician assistants, advanced registered nurse practitioners, and individuals to submit digitally reproduced POLST forms directly to the registry. The DOH must review the POLST forms it receives to determine if they comply with all requirements.

The POLST form must include an option for the patient to opt out of their provider submitting their form to the registry. The physician, physician assistant, or advanced registered nurse practitioner that signed a completed POLST form must submit the form to the DOH or registry consistent with the standards adopted by the DOH on the individual's behalf, unless the individual has opted out of submitting the form to the registry. An individual may submit a POLST form to the DOH to be digitally reproduced and stored in the registry. Failure to submit a POLST form to DOH does not affect the validity of the form. Failure to notify the DOH of a valid revocation of a POLST form does not affect the validity of the revocation. The entry of a POLST form in the registry does not affect the validity of the POLST form, take the place of any existing requirements necessary to make the form legal, or create a presumption regarding the validity of the form. The DOH must prescribe a procedure for an individual to revoke POLST forms contained in the registry.

The registry must:

- be maintained in a secure database accessible through a website maintained by the DOH or its contractor;
- provide each individual that has a POLST form submitted to the registry with a registration number;
- send annual notices by mail or electronic messages to individuals that have a POLST form in the registry to request that they review the registry materials to ensure they

- are current;
- provide individuals that have a POLST form in the registry with access to their forms and the ability to revoke the form at all times; and
- provide the following persons and entities with access to the registry at all times: the personal representatives of individuals who have a POLST form in the registry; attending physicians, physician assistants, and advanced registered nurse practitioners; health care facilities; and health care providers acting under the direction of a physician, physician assistant, or an advanced registered nurse practitioner, including an emergency medical technician or paramedic.

The DOH may accept donations, grants, gifts, or other forms of voluntary contributions to support activities related to the creation and maintenance of the registry and public education campaigns. All receipts from donations made, and other contributions and appropriations for creating and maintaining the registry and statewide public education campaigns must be deposited into the General Fund. These moneys may be spent only after appropriation. The DOH may adopt rules as necessary to implement these provisions.

Portable Orders for Life-Sustaining Treatment forms are removed from the types of health care declarations that an individual may submit to the existing, unfunded registry.

Substitute Bill Compared to Original Bill:

The substitute bill:

- requires the POLST form to include an option for the patient to opt out of their provider submitting their form to the registry;
- requires health care providers that signed a completed POLST form, to submit the form to the registry on the individual's behalf, unless the individual has opted out of submitting their form;
- requires the registry to provide each individual that has a POLST form submitted to the registry with a registration number;
- adds physician assistants to the types of health care providers that must have access to the registry;
- requires the DOH to review POLST forms it receives to ensure they comply with applicable statutory and regulatory requirements; and
- modifies the requirement for the registry to send annual notices to individuals with POLST forms in the registry to include notices by mail in addition to electronic messages.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 26, 2024.

Effective Date of Substitute Bill: 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 was brought forward by a retired medical doctor. Many Washingtonians wish to not be resuscitated and our current system allows these individuals to put a colored form on the refrigerator to notify emergency medical services (EMS) of the individual's wishes. However, if the individual is not at home when something happens, it is difficult for EMS to know what to do. Other states have addressed this by having some portable way to notify EMS of the person's wishes. This bill establishes the use of medical jewelry to notify EMS that this person does not want to be resuscitated. This bill also revives an old registry for POLST forms. Over 500 people have signed-in in support of this bill.

Portable Orders for Life-Sustaining Treatment forms are used by seriously ill patients to define their treatment wishes, including what treatments they want to receive and what treatments they do not want to receive. When someone is dying, aggressive treatments may cause more harm than good. A POLST form allows these patients to identify their wishes with their health care provider. However, there is a problem because our health care system is fragmented. If patients are sent to other hospitals, that hospital may not know that the patient has an executed POLST form and may not receive care in accordance with their wishes. If there was a registry this would allow other health care facilities and providers to access this information.

The POLST Program (Program) has been in use in Washington since 2000. A POLST is distinct from an advance directive and is an actionable medical order that is signed by the health care provider and patient. It is the only document EMS personnel are allowed to follow. The paper POLST form may not always be on hand, and so allowing EMS personnel to follow orders contained on certified jewelry can be very timely. The bill includes necessary safeguards to ensure people are not printing their own jewelry and the registry is a separate, but necessary process. The registry is critical to improve the functionality of the Program and many other states use one. The POLST task force is strongly in favor of this bill.

The advent of the POLST form was game-changing in terms of providing clarity and notifying providers up front that a patient does not want resuscitation. A registry is very important and was instituted in Oregon where they have a robust registry. In Oregon, the provider submits the form to the registry. Leaving submission of the form to an elderly person may mean that forms are not included in the registry. There also needs to be a way when the form is unavailable to notify that a person does not want to be resuscitated.

(Opposed) None.

Persons Testifying: Representative Dave Paul, prime sponsor; Wendy McGoodwin; Bruce

Smith, Washinton Portable Orders for Life Sustaining Treatment Advisory Committee; and James deMaine, Kaiser Permanente.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Health Care & Wellness. Signed by 30 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Berg, Callan, Chopp, Davis, Dye, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Stokesbary, Stonier, Tharinger and Wilcox.

Staff: Lily Smith (786-7175).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Health Care & Wellness:

The second substitute bill:

- removes the requirement that health care providers that sign POLST forms must submit the form to the registry unless the individual opts out;
- authorizes physicians, physicians assistants, advanced registered nurse practitioners, their agents and employees, and an individual's personal representative to submit POLST forms to the registry on an individual's behalf;
- requires the DOH to collaborate with health care providers and individuals to establish best practices for health care providers that sign POLST forms to discuss with individuals if the form should be submitted to the registry and how the form will be submitted;
- makes a technical language change; and
- adds a null and void clause, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.