

HOUSE BILL REPORT

HB 2342

As Reported by House Committee On:

Health Care
Appropriations

Title: An act relating to establishing a health care declarations registry.

Brief Description: Establishing a health care declarations registry.

Sponsors: Representatives Moeller, Appleton, Nixon, Hunt, Curtis and Lantz.

Brief History:

Committee Activity:

Health Care: 1/12/06, 1/20/06 [DPS];

Appropriations: 2/1/06 [DP2S(w/o sub HC)].

Brief Summary of Second Substitute Bill

- Establishes a statewide registry for specified health care declarations that is accessible electronically by individuals, their personal representatives, and health care facilities and providers.

HOUSE COMMITTEE ON HEALTH CARE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Cody, Chair; Morrell, Vice Chair; Hinkle, Ranking Minority Member; Curtis, Assistant Ranking Minority Member; Alexander, Appleton, Bailey, Clibborn, Condotta, Green, Lantz, Moeller, Schual-Berke and Skinner.

Staff: Chris Blake (786-7392).

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 Physician Orders for Life-Sustaining Treatment (POLST) form is a standardized form that is signed by an individual's physician or advanced registered nurse practitioner (ARNP) 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.

In order to be valid, an advance directive or a mental health advance directive must be signed by an individual who is at least 18 years old and not incapacitated, there must be at least two neutral witnesses present, and it must be dated. Advance directives or mental health advance directives may be revoked according to statutorily prescribed procedures.

If a patient has an advance directive or a mental health advance directive, health care facilities must make these documents a part of the patient's medical records. If a health care facility or provider is unable or unwilling to comply with all or any part of an advance directive or a mental health advance directive, the patient, or his or her personal representative, is to be promptly notified.

Summary of Substitute Bill:

The Department of Health (Department) is directed to establish and maintain a statewide registry of health care declarations submitted by Washington residents on a secure web site. The Department may contract with another entity to perform these registry functions. The health care declarations that may be submitted include advance directives, durable powers of attorney for health care, mental health advance directives, and forms establishing physician orders for emergency medical service personnel.

Residents may either send the health care declarations to the Department to place in the registry or they may submit them directly to the registry in a digital format. The Department is not responsible for determining that any of the health care declarations have been properly executed.

Individuals must have access to their health care declarations and the ability to revoke them at all times. Personal representatives, health care facilities, attending physicians, ARNPs, and health care providers acting under the direction of a physician or ARNP must have access to the registry at all times.

A health care declaration that is stored in the registry may be revoked by standard methods or according to a method developed by the Department. Revocation of a health care declaration stored in the registry by means of a standard method is valid even if the Department is not notified of the revocation.

Physicians, ARNPs, health care providers acting under the direction of a physician or ARNP, health care facilities and their employees who, in good faith and without negligence, act in reliance on a declaration in the registry, are immune from civil and criminal liability and professional sanctions in specified circumstances. These circumstances include when they provide, do not provide, withdraw, or withhold treatment and: (1) there was no actual knowledge that there was a declaration in the registry; (2) there was no actual knowledge that the declaration had been revoked; (3) the declaration is subsequently determined to have been invalid; and (4) the procedure is in accordance with the declaration that is stored in the registry.

The Department is immune from civil liability for its administration and operation of the registry except in cases of gross negligence, willful misconduct, or intentional wrongdoing.

The stated intent of the bill is that the electronic registry improve access to advance directives and mental health advance directives, but not supplant the current system of using these documents. The intent is also stated to be that health care providers consult the registry in all situations where there may be a question about the patient's wishes for periods of incapacity and the existence of a document of the patient's intentions.

The Health Care Declarations Registry Account (Account) is created for the purpose of creating and maintaining the registry and educating the public about the registry. The Account is appropriated and is to be funded through donations and appropriations.

Substitute Bill Compared to Original Bill:

The Department of Health must provide information on the registry web site about state and federal requirements related to ascertaining and documenting whether or not an individual has an advance directive.

It is specified that the registry does not create a new or distinct obligation for a provider to determine that a patient has a health care declaration.

The general immunity provision for providers and facilities is replaced with specific instances where immunity applies including when a provider provides, does not provide, withdraws, or withholds treatment and: (1) there was no actual knowledge that there was a declaration in the registry; (2) there was no actual knowledge that the declaration had been revoked; (3) the declaration is subsequently determined to have been invalid; and (4) the procedure is in accordance with the declaration that is stored in the registry.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This registry is a tool for improving access to documents about the wishes of patients in end of life decision-making. This bill has an educational component to it that will facilitate communication among family members. This is another step in setting up a statewide clinical improvement system through electronic mechanisms. This will encourage people to become involved in declaring their intentions. This will help people locate health care documents which is the first step to carrying out an individual's end of life wishes. Other states that use these registries have seen an increase in the execution of advance directives. Many times treatment provided in the last days of life is not what the patient desired and this unwanted care can be costly.

Testimony Against: None.

Persons Testifying: Representative Moeller, prime sponsor; Brian Peyton, Department of Health; Lisa Thatcher, Washington State Hospital Association; Ken Bertrand, Group Health Cooperative; Jonathan Eames, Washington Healthcare Association; Susie Tracy, Washington State Medical Association; and Robb Miller, Compassion and Choices of Washington.

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. Signed by 30 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Bailey, Buri, Chandler, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia, Pearson, Priest, Schual-Berke, P. Sullivan, Talcott and Walsh.

Staff: Amy Hanson (786-7118).

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

The stated intent of the bill that health care providers consult the registry in all situations where there may be a question about the patient's preferences for end-of-life planning or incapacity resulting from mental illness does not apply to situations where consulting the registry might compromise the emergency care of a patient. The Department is directed to provide a report to the House and Senate committees on health care on the operation of the registry by December 1, 2008.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Representative Moeller called together an extensive group of individuals and organizations over the interim to discuss this issue and refine the proposal that you have before you. In addition to putting people's wishes in the registry so that physicians and other health care providers could obtain this information, this bill creates an opportunity for the state to educate people about the importance of making their wishes known, discussing those wishes with their family, and actually putting them in writing.

Testimony Against: None.

Persons Testifying: Susie Tracey, Washington State Medical Association; and Representative Moeller, Prime Sponsor.

Persons Signed In To Testify But Not Testifying: None.