

Judiciary Committee

HB 1640

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.

<p>Brief Summary of Bill</p> <ul style="list-style-type: none"> • 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.

Hearing Date: 2/14/17

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 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.

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.

"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 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 acknowledgment 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.