

SENATE BILL REPORT

HB 1640

As Reported by Senate Committee On:
Law & Justice, February 7, 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: Passed House: 2/27/17, 96-0; 1/18/18, 96-0.

Committee Activity: Law & Justice: 2/01/18, 2/07/18 [DP, DNP].

Brief Summary of Bill

- Authorizes a Health Care Directive to be signed and acknowledged before a notary public or other individual authorized by law to take acknowledgments as an alternative to signing in the presence of witnesses.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

Minority Report: Do not pass.

Signed by Senator Padden, Ranking Member.

Staff: Shani Bauer (786-7468)

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

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.

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.

The directive must be signed by the declarer in the presence of two witnesses. The following persons are not allowed to be witnesses:

- any person related to the declarer by blood or marriage;
- 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;
- the attending physician;
- an employee of the attending physician or a health facility in which the declarer is a patient; or
- 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.

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: A Health Care Directive may be signed and acknowledged before a notary public or other individual authorized by law to take acknowledgments as an alternative to signing in the presence of witnesses.

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

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This bill is concerning an end of life decision that most of us do not want to think about. Physicians must defer to the provisions of an advance directive. There are opportunities for fraud and the protection is that the directive must be signed in front of two unrelated witnesses. It can be hard for people to find unrelated persons to sign as witnesses and therefore cause people not to have a health directive. This bill is just making it easier for people to execute a directive so it is in place for when it is needed. This is also consistent with a 2016 change to the durable power of attorney.

Persons Testifying: PRO: Representative Paul Graves, Prime Sponsor; Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying: No one.