

# HOUSE BILL REPORT

## ESHB 1608

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### As Passed Legislature

**Title:** An act relating to protecting patient care.

**Brief Description:** Protecting patient care.

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Macri, Dolan, Slatter, Stonier, Robinson, Kilduff, Riccelli, Senn, Goodman, Tharinger, Jinkins, Davis, Cody, Appleton, Kloba, Ortiz-Self, Valdez, Frame, Pollet, Stanford, Tarleton and Leavitt).

### Brief History:

#### Committee Activity:

Health Care & Wellness: 2/12/19, 2/22/19 [DPS].

#### Floor Activity:

Passed House: 2/17/20, 65-33.

Passed Senate: 3/4/20, 39-7.

Passed Legislature.

### Brief Summary of Engrossed Substitute Bill

- Prohibits a health care entity from limiting a health care provider's provision of accurate and comprehensive information to patients about the patient's health status, treatment options, and information regarding the Death with Dignity Act, if the provider is acting in good faith, within the provider's scope of practice, education, and training, and within the accepted standard of care.
- Requires the Department of Health (DOH) to create and make available online materials to inform health care providers and staff of the authority to act under these provisions, which health care entities must provide to privileged or employed health care providers and staff.
- Requires the DOH to create materials for providers and patient's about the Death with Dignity Act.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

*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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cody, Chair; Macri, Vice Chair; Davis, Jinkins, Riccelli, Robinson, Stonier, Thai and Tharinger.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers, DeBolt and Maycumber.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Harris.

**Staff:** Kim Weidenaar (786-7120).

### **Background:**

#### Scope of Practice.

Scope of practice is the procedures, actions, and processes that a health care provider is permitted to undertake in keeping with the terms of the provider's professional license. These may include diagnosis, treatment, surgical procedures, and authority to prescribe drugs to treat a patient's condition. Scope of practice is limited to that which the law allows for specific education and experience, and specific demonstrated competency. Health care facilities may grant privileges to a health care provider to admit patients and to provide services to patients in that facility. In medical staff bylaws, a health care facility must state the duties and scope of privileges each category of provider may be granted. The scope may be narrower than the scope of practice for that category of provider and can be modified for a specific provider's abilities.

#### Death with Dignity.

The Washington Death with Dignity Act (Act) was enacted by initiative in 2009. The Act permits a patient to request medication that he or she may self-administer to end his or her life if: the patient is a competent adult and a resident of Washington; the attending physician and a consulting physician have determined that the patient suffers from a terminal disease and the patient has voluntarily expressed the wish to die; the patient has made a request for medication on a form provided in statute; and the form is signed and dated by the patient and at least two witnesses who attest to their belief that the patient is competent, acting voluntarily, and not being coerced to sign the request.

#### Emergency Medical Treatment and Active Labor Act.

Under the federal Emergency Medical Treatment and Active Labor Act, which was passed by Congress in 1986, a hospital may not turn away a patient who comes to the emergency department with an emergency medical condition. The hospital must screen and evaluate the patient and provide treatment necessary to stabilize him or her.

### **Summary of Engrossed Substitute Bill:**

If a health care provider is acting in good faith, within the provider's scope of practice, education, training, and experience, and within the accepted standard of care, a health care entity may not limit the health care provider's:

- provision of medically accurate and comprehensive information and counseling to a patient regarding the patient's health status, including diagnosis, prognosis, recommended treatment, treatment alternatives, information, and any potential risks to the patient's health or life;
- provision of information about available services and about what relevant resources are available in the community and how to access those resources for obtaining the care of the patient's choice; and
- provision of information about Washington's Death with Dignity Act, about what relevant resources are available in the community, and how to access those resources for obtaining the care of the patient's choice.

A health care entity may not discharge, denote, suspend, discipline, or otherwise discriminate against a health care provider for providing information in compliance with the provisions.

The Department of Health (DOH) must design, prepare, and make available online materials to inform health care providers and staff of the authority to act under these provisions. Health care entities must provide this information and information about obligations under the federal Emergency Medical Treatment and Labor Act at the time of hiring, contracting with, or privileging health care providers and staff, and on a yearly basis. The DOH must also create and make available online, written materials to provide information to providers and patients about Washington's Death with Dignity Act.

If any provision is found to be in conflict with federal requirements prescribed as a condition to receive federal funds, the conflicting provision is inoperative to the extent of the conflict for agencies directly affected.

"Health care" entity is defined as an entity that supervises, controls, grants privileges to, directs the practice of, or directly or indirectly restricts the practice of, a health care provider. "Medically accurate" means information that is verified or supported by research in compliance with scientific methods, is published in peer-reviewed journals, where appropriate, and is recognized as accurate and objective by professional organizations and agencies with expertise in relevant fields.

**Appropriation:** None.

**Fiscal Note:** Available.

**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) The stakeholders have been working on this bill since last year to get to agreement. They are not quite there, but heroic efforts have been made to try and find common ground and those efforts are appreciated. This is a really important bill for patients, but unfortunately not many could make it to testify today.

(Opposed) The proposed substitute is a good compromise that came about through a lot of work and many conversations. The original bill is too broad and does not take into account the importance of hospital privileging. It also creates a different Emergency Medical Treatment and Active Labor Act standard, which hospitals would not know how to comply with. Hospitals are committed to supporting their health care providers provide care to their patients through shared decision making between the provider and patient. Hospitals do not interfere with this sacred relationship.

(Other) Patients need access to full and complete information so they can make informed decisions. Many patients have talked about how they cannot get access to information regarding death with dignity. The original bill supports patients, but the substitute bill is insufficient. Health care entities are prohibiting providers from providing necessary care. There continue to be stories of patients being denied care or having care delayed when they are bleeding, cramping, and miscarrying. The substitute bill removes the provisions related to protecting the provision of care, so it does not address these issues.

**Persons Testifying:** (In support) Representative Macri, prime sponsor.

(Opposed) Chris Bandoli, Washington State Hospital Association; and Kristen Federici, Providence Saint Joseph's Health.

(Other) Nancy Sapiro, End of Life Washington; and Eric Gonzalez Alfaro, American Civil Liberties Union of Washington.

**Persons Signed In To Testify But Not Testifying:** None.