

SENATE BILL REPORT

2SHB 2342

As Reported By Senate Committee On:
Health & Long-Term Care, February 20, 2006
Ways & Means, February 27, 2006

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

Brief Description: Establishing a health care declarations registry.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Moeller, Appleton, Nixon, Hunt, Curtis, Lantz, Morrell, Springer, Wallace, Fromhold, Kagi, Roberts, Cody, Ericks, Green and Ormsby).

Brief History: Passed House: 2/08/06, 97-1.

Committee Activity: Health & Long-Term Care: 2/15/06, 2/20/06 [DP-WM, w/oRec].
Ways & Means: 2/27/06 [DP].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Thibaudeau, Vice Chair; Deccio, Ranking Minority Member; Franklin, Johnson, Kastama, Kline and Parlette.

Minority Report: That it be referred without recommendation.

Signed by Senator Brandland.

Staff: Sharon Swanson (786-7447)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Kohl-Welles, Parlette, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Thibaudeau.

Staff: Tim Yowell (786-7435)

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 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.

By December 1, 2008, the Department of Health must report to the appropriate legislative committees the following information:

- the number of participants in the registry;
- the number of health care declarations submitted by type of declaration;
- number of health care declarations revoked and the method of revocation;
- number of providers and facilities, by type, that have been provided access to the registry;
- actual costs of operation of the registry;
- donations received by the department for deposit into the health care declarations registry account.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Testimony For (Health & Long-Term Care): This is a bill that has been worked on quite a bit. The concept of a health directive registry is one that everyone seems to support. It is very important to honor the wishes and decisions of people who are incapacitated by illness or injury. In addition to carrying out the wishes of the patient, a registry will take pressure off of family members during very difficult moments. The registry is intended to make access to information easier but not in any way impede a person's right to revoke or change a directive. There is a concern about the cost of implementing and maintaining a registry. The issue of charging a fee was discussed extensively. There is a concern that charging a fee may deter people from registering directives and the goal is to register as many directives as possible. A health care directive registry is an excellent communication tool. The bill passed the House 97-1.

Testimony Against (Health & Long-Term Care): None.

Who Testified (Health & Long-Term Care): PRO: Steve Wehrly, Compassion & Choices; Terry Barnett, Compassion & Choices; Ken Bertrand, Group Health; Susie Tracy, Washington State Medical Association; Brad Tower, Washington Health Care Association; Brian Peyton, Department of Health.

Testimony For (Ways & Means): None.

Testimony Against (Ways & Means): None.

Who Testified (Ways & Means): No one.