

SENATE BILL REPORT

ESHB 2494

As Reported By Senate Committee On:
Judiciary, February 29, 2008

Title: An act relating to end-of-life health care directives.

Brief Description: Requiring the department of health to develop a medical treatment preference form and limiting liability for providers who act in accordance with such forms.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Moeller, Ormsby and Chase).

Brief History: Passed House: 2/13/08, 83-14.

Committee Activity: Judiciary: 2/26/08, 2/29/08 [DPF].

SENATE COMMITTEE ON JUDICIARY

Staff: Dawn Noel (786-7472)

Background: The Department of Health (Department) was directed to develop a simple medical order form for emergency medical personnel to follow when called to the site of a person's injury or illness. The Department created the Physician Orders for Life-Sustaining Treatment (POLST) form to provide emergency medical personnel with a physician's orders relating to life-sustaining treatment for a patient. A physician completes this form after discussion with the patient or surrogate decision-maker regarding patient preferences. These preferences include whether or not to attempt resuscitation, what medical interventions are permitted when a person has a pulse or is breathing, and whether and how administration of antibiotics and artificial administration of nutrition should occur.

A POLST differs from an advance health care directive in that the directive is signed by the declarer in the presence of two witnesses, neither of whom may be the declarer's heirs, attending physician, an employee of the attending physician, a health care facility in which the declarer is a patient, or any person who has a claim against the declarer's estate upon the declarer's death when the directive is signed. The directive generally specifies that if the declarer is in a terminal condition or in a permanent unconscious state, whether or not the declarer would want artificially provided nutrition or hydration. The directive may also include other specific directions.

In addition to emergency medical personnel, some health care providers and facilities also rely on the POLST. While these providers and facilities are immune from legal liability for carrying out advance directives, they do not have the same immunity with the POLST.

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.

Summary of Bill (Proposed Amendments): The Department is directed to include on the medical order form clear "resuscitate" and "do not resuscitate" orders and other choices for life-sustaining and emergency treatment or related comfort care that must be followed by certified emergency medical personnel. The form must be signed by an advanced registered nurse practitioner, osteopathic physician, osteopathic physician assistant, physician, or physician assistant and the person or the person's legal representative.

Emergency medical personnel and the providers specified below who in good faith provide, withhold or withdraw treatment from a person in accordance with the form are immune from civil or criminal liability. The immunity does not include immunity for failing to exercise the standard of care as required by statute.

The medical order form may be followed by other providers who are:

- an advanced registered nurse practitioner, naturopath, osteopathic physician, osteopathic physician assistant, physician, or physician assistant;
- a health care provider acting within the provider's licensed scope of practice and under the direction of an advanced registered nurse practitioner, osteopathic physician, osteopathic physician assistant, physician, or physician assistant;
- a kidney disease treatment center and its personnel; and
- a health facility (such as hospitals, home health or hospice agencies, nursing and boarding homes) and its personnel, health care facility (such as hospitals for the mentally ill and clinics that are part of a community mental health service delivery system) and its personnel, or an adult family home and its personnel.

These provisions do not supersede other legal requirements applicable to providers. Providers may not require any person to sign the form. The provider must follow informed consent requirements under current law. In addition, health care facilities, health facilities, and adult family homes must comply with all licensing and certification requirements.

If an unresolved conflict arises between a treatment decision made under an advance directive and an emergency or life-sustaining treatment decision made following the informed consent process, the provider must administer medically appropriate emergency or life-sustaining treatment until the conflict is resolved. A medical order developed under this section must not be signed until the conflict is resolved. This must not otherwise limit or prohibit the provider from issuing a medical order within his or her scope of practice when necessary to ensure the provision of medically appropriate care.

A provider who relies on a medical order form developed under this section may assume that it is compliant and valid.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Proposed Amendments): If an unresolved conflict arises between a treatment decision made under an advance directive and an emergency or life-sustaining treatment decision made following the informed consent process, the provider must administer medically appropriate emergency or life-sustaining treatment until the conflict is resolved. A medical order developed under this section must not be signed until the conflict is resolved. This must not otherwise limit or prohibit the provider from issuing a medical order within his or her scope of practice when necessary to ensure the provision of medically appropriate care.

A provider who relies on a medical order form developed under this section may assume that it is compliant and valid.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The POLST form has been in existence for ten years. It is portable and follows you as you progress through end-of-life stages, such as to long-term care and emergency facilities. Currently, no immunity exists when providers follow the POLST, which hinders providers in following this form. This bill will extend immunity to ensure patient wishes will be followed. Advance directives are often not honored. A POLST form is based on an informed consent discussion between a physician and a patient. If a conflict exists between a POLST form and an advance directive, the practice is to provide medical care until the conflict is resolved.

CON: Our concern is that as the use of the POLST is expanded, there won't be training on how to use the POLST. When someone in a nursing home does not have a physician, the home's medical director could sign it. We are concerned for those who can't speak for themselves, and want additional protections for them. The legal representative signing the form could be the patient's sole heir. The form addresses several matters on life-sustainable treatment, but no trigger is specified, such as whether the form becomes effective upon a terminal condition. The POLST was originally intended for the emergency medical treatment setting, but it's now being expanded. There is the potential to create conflict with advance directives, which can incorporate information on certain medical care decisions addressed in a POLST form. Particular concern exists for people with disabilities. It is important to clarify that if the POLST conflicts with an advance directive, that the POLST must be consistent with the directive unless there is a substantial change in circumstances.

OTHER: It is unclear under which conditions a POLST form becomes effective. We are concerned about the expansion of people eligible to carry out POLST orders. Not everyone on the list has a well-defined scope of practice. Section 2 allows the withholding of comfort care, and we're unsure that was intended. Sufficient confusion exists with use of the POSLT form among the public and health providers that more time is needed to address these issues.

Persons Testifying: PRO: Representative Moeller, prime sponsor; Jim Shaw, Washington State Medical Association; Barbara Shickich, Washington State Hospital Association; Deb Murphy, Washington Association of Housing & Services for the Aging; Jeff Mero, End of Life Consensus Coalition.

CON: Louise Ryan, Jeff Crollard, Long Term Care Ombudsman; Robert Nettleton, Washington State Bar Association Elder Law Section; David Lord, Disability Rights Washington.

OTHER: Donna Christensen, Catholic Conference.