
Civil Rights & Judiciary Committee

HB 1215

Brief Description: Removing references to pregnancy from the model directive form under the natural death act.

Sponsors: Representatives Taylor, Stonier, Ryu, Fitzgibbon, Macri, Wylie and Goodman.

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| <p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Removes references to pregnancy from the suggested statutory template for an advance health care directive. |
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Hearing Date: 1/28/25

Staff: Yelena Baker (786-7301).

Background:

Advance Health Care Directives Generally.

An advance health care directive, sometimes referred to as a living will, is a document that expresses an individual's preferences regarding the withholding or withdrawal of life-sustaining treatment if the individual is in a terminal condition or permanent unconscious condition, as defined in statute.

Under Washington's Natural Death Act, any individual who is at least 18 years old and has the capacity to make health care decisions may execute an advance directive. The directive must be signed by the individual in the presence of two witnesses or signed and acknowledged before a notary public or other individual authorized by law to take acknowledgments.

If a patient has an advance directive, the directive must be made part of the patient's records retained by the attending physician. Any Washington resident may also submit an advance

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directive to the statewide health care declarations registry maintained by the Department of Health (DOH). The DOH is not required to review the advance directives that it receives to ensure that they comply with the applicable statutory requirements. The entry of a directive in the registry does not create a presumption regarding the validity of the document or take the place of any legal requirements necessary to make the submitted document legal.

An advance directive may be revoked at any time by being destroyed by the declarer, through a written or verbal revocation, or by using an online method established by the DOH for the revocation of directives stored in the registry.

A health care provider who participates in good faith with a patient's advance directive in accordance with the Natural Death Act is immune from legal liability or professional conduct sanction.

The Natural Death Act prohibits requiring a provider by law or contract to participate in the withholding or withdrawal of life-sustaining treatment if the provider objects to so doing. The statute additionally prohibits discrimination in employment or professional privileges because of a person's participation or refusal to participate in the withholding or withdrawal of life-sustaining treatment.

A health care provider must inform the patient of any policy or practice that precludes the honoring of a patient's directive. If the informed patient chooses to retain the provider, the provider must prepare a written plan that sets forth the provider's intended actions if the patient's medical status changes and the directive becomes operative. If the provider complies with the requirements to inform the patient and prepare a written plan, the provider has no obligation to honor the patient's directive.

Pregnancy Provision in the Advance Health Care Directive Model Form.

A suggested form for an advance health care directive is provided in statute, but the directive may include other specific directions beyond those provided in the form. In addition, the statutory template itself includes a provision that allows an individual, before signing the directive, to "add or delete from or otherwise change the wording" of the directive. The same provision specifies that, to be legally valid, any changes must be consistent with Washington law or federal constitutional law.

In addition to setting forth the option to withhold or withdraw life-sustaining treatment, the model form contains the following pregnancy provision: "If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy."

Recent Court Decision Regarding a Pregnancy Provision in Idaho's Model Directive.

Similarly to Washington, Idaho's Medical Consent and Natural Death Act allows any competent person to direct end-of-life care and provides an advance directive template with options for choosing a level of care, ranging from withdrawing all medical care to providing all medical

care. Until 2021 the template also included a declaration that if the person is diagnosed as pregnant, the directive has no force during the pregnancy.

In a 2021 decision, the United State District Court for the District of Idaho found that while the language of the Idaho law was clear and did not require advance directives to contain the pregnancy exclusion, the state's long-held incorrect interpretation of that language created an ambiguity and a credible threat that health care providers and others will refuse to accept an incapacitated woman's advance directive if it failed to include the pregnancy exclusion. The court ruled that invalidating a pregnant woman's directive and forcing life support upon her until her baby could be delivered violates the constitutional right of a competent person to refuse unwanted lifesaving medical treatment. Additionally, the court ruled that a pregnancy exclusion compelled women to express the state's message in their health care directive in violation of the First Amendment.

Summary of Bill:

The pregnancy provision is removed from the suggested model form for an advance health care directive.

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.