

HOUSE BILL REPORT

HB 1215

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to removing references to pregnancy from the model directive form under the natural death act.

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.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/28/25, 2/4/25 [DP].

Brief Summary of Bill

- Removes references to pregnancy from the suggested statutory template for an advance health care directive.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 7 members: Representatives Taylor, Chair; Farivar, Vice Chair; Entenman, Goodman, Salahuddin, Thai and Walen.

Minority Report: Do not pass. Signed by 4 members: Representatives Walsh, Ranking Minority Member; Abell, Assistant Ranking Minority Member; Burnett and Jacobsen.

Staff: Yelena Baker (786-7301).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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 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 States 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.

Staff Summary of Public Testimony:

(In support) It is the legal right of every adult person to think seriously about and direct in advance what they would want for themselves and their families if they were ever in an unconscious state and unable in that moment to consent to medical care. People do not lose their civil and human rights to refuse or accept medical treatment simply because they become or can become pregnant.

The Natural Death Act was amended in 1992 to include provisions for advance health care directives which allow a person to state their health care treatment wishes, including the withdrawal or removal of life-sustaining treatment, if the person is unable to make these decisions or unable to articulate them. The statute provides a model advance form directive for people to use, and given that this form is in the statute, it is the form most people and most lawyers use. Unfortunately, the model directive contains a pregnancy exclusion that invalidates the directive if a person is pregnant. In other words, the model lets any competent Washingtonian make their own decision about end-of-life choices, but not pregnant people. Taking away the pregnancy exception from the model template would bring parity for pregnant persons and ensure that they have the same level of rights as nonpregnant persons with regard to their advance directives.

The law does not specifically say that advance directives are automatically invalid if someone becomes pregnant, but because the model form does have that provision people continue to believe that they cannot have a valid advance directive if it does not include the pregnancy language. An individual would have to know that they can modify the language of the model form, including the pregnancy provision. This isn't just a problem of legal terminology and forms because this affects real people's real lives during some of the most difficult times imaginable, so this bill seeks to make a small but critical change to the model directive form. The bill does not prohibit hospitals or providers from taking actions to save the life of a child if the person dies before the full term of the pregnancy.

Idaho was sued over a similar provision. The court found the advance directive law unconstitutional, and Idaho then had to remove the advance directive forms from their existing websites, remove the pregnancy exclusion from the statute, and rewrite the model form.

(Opposed) Current law provides a form for health care directives, which includes a provision that a medical directive is without force and effective if a woman is pregnant. This protects and prioritizes the life of the child.

This bill removes any reference to pregnancy, effectively providing that the unborn child must die along with the mother, without specifically saying so. This bill is an assault on the life of an unborn baby at all stages of pregnancy. It is also an assault on a pregnant woman who is not notified when signing the directive, or even given an option of continuing her pregnancy and allowing her to bring the pregnancy to term.

Advance directives are usually executed long before the illness or condition which would

trigger its terms, and a woman may not have even considered the impact of the directive on her future pregnancy. The bill simply assumes, without input from the woman herself, that she wants her unborn baby to die with her. The Legislature should consider that this woman might actually want to live long enough to give birth to her baby or that she would be horrified to learn that by signing the document, she has condemned her own child to death. Instead of removing the pregnancy provision, the bill should allow a woman an option regarding potential pregnancy.

Persons Testifying: (In support) Representative Jamila Taylor, prime sponsor; Sara Ainsworth, If/When/How: Lawyering for Reproductive Justice; Yvette Maganya, Legal Voice; and Nancy Sapiro, Cedar River Clinics, End of Life WA, American College of Obstetricians and Gynecologists (ACOG).

(Opposed) Sandra Brock; and Theresa Schrempp.

Persons Signed In To Testify But Not Testifying: None.