Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Early Learning & Human Services Committee

HB 1724

Brief Description: Improving access and practices relating to portable orders for life-sustaining treatment.

Sponsors: Representatives Paul, Griffey, Bronoske, Shavers, Schmidt, Reed, Pollet, Nance and Ormsby.

Brief Summary of Bill

- Establishes alternatives to physical signatures for Portable Orders for Life Sustaining Treatment (POLST) forms.
- Requires the Department of Health (DOH) to establish and maintain a statewide registry containing POLST forms.
- Provides immunity from legal liability and professional conduct sanctions for a provider's actions or inactions in accordance with a POLST form and in relation to the POLST registry, and provides liability protection for the DOH in administering the registry.
- Requires the DOH to research and report on options for types of alternative evidence that may be utilized to indicate that a person has completed the POLST form and does not wish to have resuscitative efforts.

Hearing Date: 2/7/25

Staff: Omeara Harrington (786-7136).

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.

There are several types of advance planning 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. 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 Portable Orders for Life Sustaining Treatment (POLST) form is another type of document implemented by the Department of Health that is designed for seriously ill individuals and those in poor health. The POLST is a standardized form that is signed by an individual's physician, physician assistant, or advanced registered nurse practitioner 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. The POLST form allows individuals, through their health care provider, to indicate whether they would like to receive cardiopulmonary resuscitation (CPR), if necessary, as well as the level of medical intervention they would like to receive.

In 2006 the DOH was directed to establish and maintain a statewide registry of health care declarations submitted by Washington residents on a secure website, which included advance directives, durable powers of attorney for health care, mental health advance directives, and POLST forms. Funding for the registry was eliminated in 2011.

Summary of Bill:

Completion and Review of Portable Orders for Life Sustaining Treatment Forms.
Electronic signatures may be utilized in place of handwritten signatures on Portable Orders for Life Sustaining Treatment (POLST) forms. An individual's verbal confirmation of the POLST form satisfies any requirement for their signature if requiring the individual to sign the form in person or electronically would require significant difficulty or expense and a licensed health care provider witnesses the verbal confirmation and signs the form attesting that the provider witnessed the confirmation. The witnessing health care provider may not be the same provider who signs the order and must verify the identity of the individual who is providing the verbal confirmation.

Providers who are treating an individual who has completed a POLST form may review the individual's form with them on an annual or more frequent basis to ensure that it reflects the patient's current health status and treatment preferences.

Statewide POLST Registry.
POLST forms are removed from the types of health care declarations that an individual may submit to the existing, unfunded registry. The Department of Health (DOH) must establish and maintain a new statewide registry containing POLST forms submitted by health care providers

and Washington residents. The POLST registry must be designed to allow for future expansion to support the addition of other health care declarations such as advance directives, durable powers of attorney for health care, and mental health advance directives.

The registry must:

- be maintained in a secure database accessible through a website maintained by the DOH or its contractor;
- provide each individual that has a POLST form submitted to the registry with a registration number;
- store contact information for individuals who have a POLST form in the registry, their health care agents, and other authorized individuals, to the extent such information is available;
- send annual notices, electronically through email, text message, or push notification when possible, to individuals that have a POLST form in the registry to request that they review the registry materials to ensure they are current;
- provide individuals that have a POLST form in the registry with access to their forms and the ability to revoke the form at all times; and
- provide the following persons and entities with access to the registry at all times: the personal representatives of individuals who have a POLST form in the registry; physicians, physician assistants, advanced registered nurse practitioners, and health care providers acting under the direction of a physician, physician assistant, or an advanced registered nurse practitioner, including an emergency medical technician or paramedic; and health care facilities.

The provider that signed a completed POLST form or their agents or employees may submit the form to the DOH or registry consistent with the standards adopted by the DOH on the individual's behalf, unless the individual has opted out of submitting the form to the registry. The POLST form itself must include an option for the individual to opt out of their provider submitting their form to the registry. Additionally, an individual or the individual's personal representative may submit the individual's POLST form in digital format to the DOH for inclusion in the registry. The DOH must collaborate with health care providers and individuals to establish best practices for health care providers that sign POLST forms to discuss with individuals if the form should be submitted to the registry and how the form will be submitted.

The DOH must review the POLST forms it receives to determine if they comply with all requirements, and must digitally reproduce and store the submitted POLST forms in the registry. The DOH must establish standards for providers and individuals to submit POLST forms directly to the registry. The DOH must also prescribe procedures for an individual to revoke POLST forms contained in the registry, and for removal or archival of an individual's POLST form on request of the individual or upon confirmation that the individual who completed the form has died.

The POLST registry must be designed to comply with state and federal requirements related to patient confidentiality. The registry is exempt from public copying and inspection for purposes

of the Public Records Act, however, the DOH may allow qualified researchers access to deidentified registry data.

Failure to submit a POLST form to DOH does not affect the validity of the form. Failure to notify the DOH of a valid revocation of a POLST form does not affect the validity of the revocation. The entry of a POLST form in the registry does not affect the validity of the POLST form, take the place of any existing requirements necessary to make the form legal, or create a presumption regarding the validity of the form.

The DOH may accept donations, grants, gifts, or other forms of voluntary contributions to support activities related to the creation and maintenance of the registry and public education campaigns. All receipts from donations made, and other contributions and appropriations for creating and maintaining the registry and statewide public education campaigns must be deposited into the General Fund. These moneys may be spent only after appropriation.

Immunity from Legal Liability and Professional Conduct Sanctions.
Any provider who participates in good faith in the provision of medical care or the withholding or withdrawal of treatment from a person in accordance with the person's POLST form is immune from legal liability, including civil, criminal, or professional conduct sanctions, unless otherwise negligent. The establishment of the registry does not create any new or distinct obligation for a provider to determine whether a person has completed a POLST form.

Except for acts of gross negligence, willful misconduct, or intentional wrongdoing, the DOH is not subject to civil liability for any claims or demands arising out of the administration or operation of the registry. A provider is not subject to civil or criminal liability or sanctions for unprofessional conduct when, in good faith and without negligence, the provider provides, does not provide, withdraws, or withholds treatment:

- in the absence of actual knowledge of the existence of a POLST form stored in the registry;
- pursuant to a POLST form stored in the registry in the absence of actual knowledge of the revocation of the form;
- according to a POLST form stored in the registry in good faith reliance upon the validity of the form and the form is subsequently found to be invalid; or
- according to a POLST form stored in the registry.

Report on Alternative Evidence.
The DOH must research options for types of alternative evidence that may be utilized to indicate that a person has executed the POLST form and does not wish to have resuscitative efforts, for example, medical jewelry, a physical card, or an electronic application-based form. The DOH must submit a report to the Legislature by June 30, 2026, with recommendations regarding whether alternative evidence should be implemented and in what form, guidelines and protocols for emergency medical personnel to recognize alternative evidence, and standards for production and endorsement of alternative evidence.

Appropriation: None.

Fiscal Note: Requested on February 3, 2025.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.