
SUBSTITUTE HOUSE BILL 1481

State of Washington

52nd Legislature

1992 Regular Session

By Committee on Health Care (originally sponsored by Representatives May; Hine; Ballard; R. Johnson; Betrozoff; Spanel; Broback; Rasmussen; Wood; Brumsickle; Neher; Leonard; Ferguson; Day; Lisk; Cooper; Brough; Prentice; Forner; Basich; Paris; Holland; G. Fisher; Horn; Sprenkle; Dellwo; Moyer; Grant; Braddock; Bowman; Heavey; Kremen; Cantwell; Winsley; Zellinsky; Silver; Franklin; Pruitt; Inslee; Edmondson; Sheldon; McLean; Riley; Wynne; Rayburn; Wilson; and Orr)

Read first time 01/27/92.

1 AN ACT Relating to the natural death act; amending RCW 70.122.010,
2 70.122.020, 70.122.030, 70.122.060, 70.122.070, 70.122.080, 70.122.090,
3 and 70.122.100; adding a new section to chapter 43.70 RCW; adding new
4 sections to chapter 70.122 RCW; and repealing RCW 70.122.050.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 70.122.010 and 1979 c 112 s 2 are each amended to read
7 as follows:

8 The legislature finds that adult persons have the fundamental right
9 to control the decisions relating to the rendering of their own
10 (~~medical~~) health care, including the decision to have life-sustaining
11 (~~procedures~~) treatment withheld or withdrawn in instances of a
12 terminal condition or permanent unconscious condition.

1 The legislature further finds that modern medical technology has
2 made possible the artificial prolongation of human life beyond natural
3 limits.

4 The legislature further finds that, in the interest of protecting
5 individual autonomy, such prolongation of ~~((life))~~ the process of dying
6 for persons with a terminal condition or permanent unconscious
7 condition may cause loss of patient dignity, and unnecessary pain and
8 suffering, while providing nothing medically necessary or beneficial to
9 the patient. The legislature further believes that physicians and
10 nurses should not withhold or unreasonably diminish pain medication for
11 patients in a terminal condition where the primary intent of providing
12 such medication is to alleviate pain and maintain or increase the
13 patient's comfort.

14 The legislature further finds that there exists considerable
15 uncertainty in the medical and legal professions as to the legality of
16 terminating the use or application of life-sustaining ~~((procedures))~~
17 treatment where the patient has voluntarily ~~((and in sound mind))~~
18 evidenced a desire that such ~~((procedures))~~ treatment be withheld or
19 withdrawn.

20 In recognition of the dignity and privacy which patients have a
21 right to expect, the legislature hereby declares that the laws of the
22 state of Washington shall recognize the right of an adult person to
23 make a written directive instructing such person's physician to
24 withhold or withdraw life-sustaining ~~((procedures))~~ treatment in the
25 event of a terminal condition or permanent unconscious condition. The
26 legislature also recognizes that a person's right to control his or her
27 health care may be exercised by an authorized representative who
28 validly holds the person's durable power of attorney for health care or
29 is otherwise the person's authorized health care decision maker
30 pursuant to law.

1 The legislature further recognizes that in the absence of
2 controversy, the court is normally not the proper forum in which to
3 make decisions regarding life-sustaining treatment.

4 To avoid treatment that is not desired by a person in a terminal
5 condition or permanent unconscious condition, the legislature declares
6 this chapter to be in the interest of the public health and welfare.

7 **Sec. 2.** RCW 70.122.020 and 1979 c 112 s 3 are each amended to read
8 as follows:

9 Unless the context clearly requires otherwise, the definitions
10 contained in this section shall apply throughout this chapter.

11 (1) "Adult person" means a person who has attained the age of
12 majority as defined in RCW 26.28.010 and 26.28.015, and who has the
13 capacity to make health care decisions.

14 (2) "Attending physician" means the physician selected by, or
15 assigned to, the patient who has primary responsibility for the
16 treatment and care of the patient.

17 ~~((2))~~ (3) "Directive" means a written document voluntarily
18 executed by the declarer ~~((in accordance with the requirements))~~
19 generally consistent with the guidelines of RCW 70.122.030.

20 ~~((3))~~ (4) "Health facility" means a hospital as defined in RCW
21 ~~((70.38.020(7))~~ 70.41.020(2) or a nursing home as defined in RCW
22 ~~((70.38.020(8))~~ 18.51.010, a home health agency or hospice agency as
23 defined in RCW 70.126.010, or a boarding home as defined in RCW
24 18.20.020.

25 ~~((4))~~ (5) "Life-sustaining ~~((procedure))~~ treatment" means any
26 medical or surgical ~~((procedure or intervention which utilizes))~~
27 intervention that uses mechanical or other artificial means, including
28 but not limited to artificially provided nutrition and hydration, to
29 sustain, restore, or ~~((supplant))~~ replace a vital function, which, when

1 applied to a qualified patient, would serve only to (~~artificially~~)
2 prolong the (~~moment of death and where, in the judgment of the~~
3 ~~attending physician, death is imminent whether or not such procedures~~
4 ~~are utilized~~) process of dying. "Life-sustaining (~~procedure~~)
5 treatment" shall not include the administration of medication or the
6 performance of any medical (~~procedure~~) or surgical intervention
7 deemed necessary solely to alleviate pain.

8 (6) "Permanent unconscious condition" means an incurable and
9 irreversible condition in which the patient is medically assessed
10 within reasonable medical judgment as having no reasonable probability
11 of recovery from an irreversible coma or a persistent vegetative state.

12 (~~(5)~~) (7) "Physician" means a person licensed under chapters
13 18.71 or 18.57 RCW.

14 (~~(6)~~) (8) "Qualified patient" means a patient diagnosed (and
15 certified) in writing to (be afflicted with) have a terminal
16 condition by (two physicians one of whom shall be) the patient's
17 attending physician, who (have) has personally examined the patient,
18 or a patient who is diagnosed in writing to be in a permanent
19 unconscious condition by two physicians, one of whom is the patient's
20 attending physician, and both of whom have personally examined the
21 patient.

22 (~~(7)~~) (9) "Terminal condition" means an incurable and
23 irreversible condition caused by injury, disease, or illness, (which,
24 regardless of the application of life-sustaining procedures, would)
25 that, within reasonable medical judgment, (produce) will cause death
26 within a reasonable period of time in accordance with accepted medical
27 standards, and where the application of life-sustaining (procedures)
28 treatment serves only to (postpone the moment of death of the
29 patient) prolong the process of dying.

1 (~~(8)~~ "Adult person" means a person attaining the age of majority
2 as defined in RCW 26.28.010 and 26.28.015.))

3 **Sec. 3.** RCW 70.122.030 and 1979 c 112 s 4 are each amended to read
4 as follows:

5 (1) Any adult person may execute a directive directing the
6 withholding or withdrawal of life-sustaining (~~procedures~~) treatment
7 in a terminal condition or permanent unconscious condition. The
8 directive shall be signed by the declarer in the presence of two
9 witnesses not related to the declarer by blood or marriage and who
10 would not be entitled to any portion of the estate of the declarer upon
11 declarer's decease under any will of the declarer or codicil thereto
12 then existing or, at the time of the directive, by operation of law
13 then existing. In addition, a witness to a directive shall not be the
14 attending physician, an employee of the attending physician or a health
15 facility in which the declarer is a patient, or any person who has a
16 claim against any portion of the estate of the declarer upon declarer's
17 decease at the time of the execution of the directive. The directive,
18 or a copy thereof, shall be made part of the patient's medical records
19 retained by the attending physician, a copy of which shall be forwarded
20 by the custodian of the records to the health facility (~~upon the~~
21 ~~withdrawal of life-sustaining procedures~~) when the withholding or
22 withdrawal of life-support treatment is contemplated. The directive
23 (~~shall~~) may be (~~essentially~~) in the following form, but in addition
24 may include other specific directions:

25 (~~DIRECTIVE TO PHYSICIANS~~)

26 Health Care Directive

27 Directive made this ____ day of _____ (month, year).

28 I _____, (~~being of sound mind~~) having the capacity to make
29 health care decisions, willfully, and voluntarily make known my desire

1 that my ~~((life))~~ dying shall not be artificially prolonged under the
2 circumstances set forth below, and do hereby declare that:

3 (a) If at any time I should ~~((have an incurable injury, disease, or
4 illness certified))~~ be diagnosed in writing to be in a terminal
5 condition by ~~((two physicians))~~ the attending physician, or in a
6 permanent unconscious condition by two physicians, and where the
7 application of life-sustaining ~~((procedures))~~ treatment would serve
8 only to artificially prolong the ~~((moment of my death and where my~~
9 physician determines that my death is imminent whether or not life-
10 sustaining procedures are utilized)) process of my dying, I direct that
11 such ~~((procedures))~~ treatment be withheld or withdrawn, and that I be
12 permitted to die naturally. I understand by using this form that a
13 terminal condition means an incurable and irreversible condition caused
14 by injury, disease, or illness, that would within reasonable medical
15 judgment cause death within a reasonable period of time in accordance
16 with accepted medical standards, and where the application of life-
17 sustaining treatment would serve only to prolong the process of dying.
18 I further understand in using this form that a permanent unconscious
19 condition means an incurable and irreversible condition in which I am
20 medically assessed within reasonable medical judgment as having no
21 reasonable probability of recovery from an irreversible coma or a
22 persistent vegetative state.

23 (b) In the absence of my ability to give directions regarding the
24 use of such life-sustaining ~~((procedures))~~ treatment, it is my
25 intention that this directive shall be honored by my family and
26 physician(s) as the final expression of my legal right to refuse
27 medical or surgical treatment and I accept the consequences ~~((from))~~ of
28 such refusal. If another person is appointed to make these decisions
29 for me, whether through a durable power of attorney or otherwise, I

1 request that the person be guided by this directive and any other clear
2 expressions of my desires.

3 (c) If I am diagnosed to be in a terminal condition or in a
4 permanent unconscious condition (check one):

5 I DO want to have artificially provided nutrition and hydration.

6 I DO NOT want to have artificially provided nutrition and
7 hydration.

8 (d) If I have been diagnosed as pregnant and that diagnosis is
9 known to my physician, this directive shall have no force or effect
10 during the course of my pregnancy.

11 ~~((d))~~ (e) I understand the full import of this directive and I am
12 emotionally and mentally ~~((competent))~~ capable to make the health care
13 decisions contained in this directive.

14 (f) I understand that before I sign this directive, I can add to or
15 delete from or otherwise change the wording of this directive and that
16 I may add to or delete from this directive at any time and that any
17 changes shall be consistent with Washington state law or federal
18 constitutional law to be legally valid.

19 (g) It is my wish that every part of this directive be fully
20 implemented. If for any reason any part is held invalid it is my wish
21 that the remainder of my directive be implemented.

22 Signed.....

23 City, County, and State of Residence

24 The declarer has been personally known to me and I believe him or her
25 to be ~~((of sound mind))~~ capable of making health care decisions.

26 Witness.....

27 Witness.....

28 (2) Prior to ~~((effectuating a directive))~~ withholding or
29 withdrawing life-sustaining treatment, the diagnosis of a terminal
30 condition by ~~((two physicians))~~ the attending physician or the

1 diagnosis of a permanent unconscious state by two physicians shall be
2 ~~((verified))~~ entered in writing~~((, attached to the directive,))~~ and
3 made a permanent part of the patient's medical records.

4 (3) A directive executed in another political jurisdiction is valid
5 to the extent permitted by Washington state law and federal
6 constitutional law.

7 NEW SECTION. Sec. 4. If a qualified patient capable of making
8 health care decisions indicates by words or actions that he or she
9 wishes to die at home in dignity, the patient shall be discharged as
10 soon as reasonably possible. There shall be no civil or criminal
11 liability for claims arising from such discharge.

12 NEW SECTION. Sec. 5. Any physician, health care provider
13 acting under the direction of a physician, or health facility and its
14 personnel who participate in good faith in the withholding or
15 withdrawal of life-sustaining treatment from a qualified patient in
16 accordance with the requirements of this chapter, or in accordance with
17 appropriate direction from a lawfully authorized decision maker, shall
18 be immune from legal liability, including civil, criminal, or
19 professional conduct sanctions, unless otherwise negligent.

20 **Sec. 6.** RCW 70.122.060 and 1979 c 112 s 7 are each amended to read
21 as follows:

22 (1) Prior to ~~((effectuating a))~~ the withholding or withdrawal of
23 life-sustaining ~~((procedures))~~ treatment from a qualified patient
24 pursuant to the directive, the attending physician shall make a
25 reasonable effort to determine that the directive complies with RCW
26 70.122.030 and, if the patient is ~~((mentally competent))~~ capable of
27 making health care decisions, that the directive and all steps proposed

1 by the attending physician to be undertaken are currently in accord
2 with the desires of the qualified patient.

3 (2) The directive shall be conclusively presumed, unless revoked,
4 to be the directions of the patient regarding the withholding or
5 withdrawal of life-sustaining ~~((procedures))~~ treatment. No physician,
6 ~~((and no licensed))~~ health facility, or health personnel acting in good
7 faith ~~((under the direction of a physician,))~~ shall be criminally or
8 civilly liable for failing to effectuate the directive of the qualified
9 patient pursuant to this subsection. ~~((If the physician refuses to
10 effectuate the directive, such physician shall make a good faith effort
11 to transfer the qualified patient to another physician who will
12 effectuate the directive of the qualified patient))~~ A person or health
13 facility who chooses not to comply with the directive shall immediately
14 take all reasonable steps to transfer care of the qualified patient to
15 another physician or health facility who will effectuate the directive.
16 A person whose conscience, or a health facility with a policy that,
17 does not allow participation in the withholding or withdrawal of life-
18 sustaining treatment, and who takes all reasonable steps to transfer
19 care of the qualified patient, shall be unconditionally protected from
20 civil and criminal liability unless otherwise negligent.

21 (3) The attending physician or health facility shall inform a
22 patient or patient's authorized representative of the existence of any
23 policy or practice that would preclude the honoring of the patient's
24 directive at the time the physician or facility becomes aware of the
25 existence of such a directive.

26 **Sec. 7.** RCW 70.122.070 and 1979 c 112 s 8 are each amended to read
27 as follows:

28 (1) The withholding or withdrawal of life-sustaining ~~((procedures))~~
29 treatment from a qualified patient pursuant to the patient's directive

1 in accordance with the provisions of this chapter shall not, for any
2 purpose, constitute a suicide or a homicide.

3 (2) The making of a directive pursuant to RCW 70.122.030 shall not
4 restrict, inhibit, or impair in any manner the sale, procurement, or
5 issuance of any policy of life insurance, nor shall it be deemed to
6 modify the terms of an existing policy of life insurance. No policy of
7 life insurance shall be legally impaired or invalidated in any manner
8 by the withholding or withdrawal of life-sustaining ~~((procedures))~~
9 treatment from an insured qualified patient, notwithstanding any term
10 of the policy to the contrary.

11 (3) No physician, health facility, or other health provider, and no
12 health care service plan, insurer issuing disability insurance, self-
13 insured employee welfare benefit plan, or nonprofit hospital service
14 plan, shall require any person to execute a directive as a condition
15 for being insured for, or receiving, health care services.

16 **Sec. 8.** RCW 70.122.080 and 1979 c 112 s 10 are each amended to
17 read as follows:

18 The act of withholding or withdrawing life-sustaining
19 ~~((procedures))~~ treatment, when done pursuant to a directive described
20 in RCW 70.122.030, or in accordance with appropriate direction from a
21 lawfully authorized decision maker, and which causes the death of the
22 declarer, shall not be construed to be an intervening force or to
23 affect the chain of proximate cause between the conduct of ~~((any~~
24 ~~person))~~ anyone that placed the declarer in a terminal condition or a
25 permanent unconscious condition and the death of the declarer.

26 **Sec. 9.** RCW 70.122.090 and 1979 c 112 s 9 are each amended to read
27 as follows:

1 Any person who willfully conceals, cancels, defaces, obliterates,
2 or damages the directive of another without such declarer's consent
3 shall be guilty of a gross misdemeanor. Any person who falsifies or
4 forges the directive of another, or willfully conceals or withholds
5 personal knowledge of a revocation as provided in RCW 70.122.040 with
6 the intent to cause a withholding or withdrawal of life-sustaining
7 ((procedures)) treatment contrary to the wishes of the declarer, and
8 thereby, because of any such act, directly causes life-sustaining
9 ((procedures)) treatment to be withheld or withdrawn and death to
10 thereby be hastened, shall be subject to prosecution for murder in the
11 first degree as defined in RCW 9A.32.030.

12 **Sec. 10.** RCW 70.122.100 and 1979 c 112 s 11 are each amended to
13 read as follows:

14 Nothing in this chapter shall be construed to condone, authorize,
15 or approve mercy killing or physician-assisted suicide, or to permit
16 any affirmative or deliberate act or omission to end life other than to
17 permit the natural process of dying.

18 NEW SECTION. **Sec. 11.** This chapter shall not be construed as
19 requiring a physician or a registered nurse to provide futile
20 treatment, nor shall it be construed as requiring a licensed practical
21 nurse acting under the direction of a registered nurse, a physician's
22 trained mobile technician or paramedic certified pursuant to RCW
23 18.71.205, or an emergency medical technician certified pursuant to RCW
24 18.73.081, acting under the direction of a physician, to provide futile
25 treatment.

26 NEW SECTION. **Sec. 12.** This chapter shall not be construed as
27 providing the exclusive means by which individuals or their authorized

1 representatives identified in RCW 7.70.065, including holders of
2 durable powers of attorney pursuant to RCW 11.94.010 or otherwise, may
3 make decisions regarding their health treatment, including but not
4 limited to, the withholding or withdrawal of life-sustaining treatment,
5 nor limiting the means provided by case law more expansive than this
6 act.

7 NEW SECTION. **Sec. 13.** Any person or health facility may assume
8 that a directive complies with this chapter and is valid.

9 NEW SECTION. **Sec. 14.** A directive executed anytime before the
10 effective date of this act which generally complies with this act is
11 effective under this act.

12 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.70 RCW
13 to read as follows:

14 The department of health shall adopt guidelines and protocols for
15 how emergency medical personnel shall respond when summoned to the site
16 of an injury or illness for the treatment of a person who has signed a
17 written directive or durable power of attorney requesting that he or
18 she not receive futile emergency medical treatment.

19 NEW SECTION. **Sec. 16.** RCW 70.122.050 and 1979 c 112 s 6 are
20 each repealed.

21 NEW SECTION. **Sec. 17.** Sections 4, 5, and 11 through 14 of this
22 act are each added to chapter 70.122 RCW.

23 NEW SECTION. **Sec. 18.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.