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**SUBSTITUTE HOUSE BILL 1481**

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**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11 (~~procedures~~) treatment withheld or withdrawn in instances of a  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.