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HOUSE BILL 1481

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State of Washington                      52nd Legislature                      1991 Regular Session

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 January 30, 1991. Referred to Committee on Health Care.

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 new sections to chapter 70.122 RCW; creating new  
4 sections; 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11 (~~procedures~~) treatment withheld or withdrawn in instances of a  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.

13            The legislature further finds that modern medical technology has  
14 made possible the artificial prolongation of human life beyond natural  
15 limits.

1       The legislature further finds that, in the interest of protecting  
2 individual autonomy, such prolongation of ~~((life))~~ the process of dying  
3 for persons with a terminal condition or permanent unconscious  
4 condition may cause loss of patient dignity, and unnecessary pain and  
5 suffering, while providing nothing medically necessary or beneficial to  
6 the patient.

7       The legislature further finds that there exists considerable  
8 uncertainty in the medical and legal professions as to the legality of  
9 terminating the use or application of life-sustaining ~~((procedures))~~  
10 treatment where the patient has voluntarily ~~((and in sound mind))~~  
11 evidenced a desire that such ~~((procedures))~~ treatment be withheld or  
12 withdrawn.

13       In recognition of the dignity and privacy which patients have a  
14 right to expect, the legislature hereby declares that the laws of the  
15 state of Washington shall recognize the right of an adult person to  
16 make a written directive instructing such person's physician to  
17 withhold or withdraw life-sustaining ~~((procedures))~~ treatment in the  
18 event of a terminal condition or permanent unconscious condition.

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

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

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

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

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

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

7       ~~((2))~~ (3) "Directive" means a written document voluntarily  
8 executed by the declarer ~~((in accordance with the requirements))~~  
9 generally consistent with the guidelines of RCW 70.122.030.

10       ~~((3))~~ (4) "Health facility" means a hospital as defined in RCW  
11 ~~((70.38.020(7))~~ 70.41.020(2) or a nursing home as defined in RCW  
12 ~~((70.38.020(8))~~ 18.51.010, a home health agency or hospice agency as  
13 defined in RCW 70.126.010, or a boarding home as defined in RCW  
14 18.20.020.

15       ~~((4))~~ (5) "Life-sustaining ~~((procedure))~~ treatment" means any  
16 medical or surgical ~~((procedure or intervention which utilizes))~~  
17 intervention that uses mechanical or other artificial means, including  
18 but not limited to artificial nutrition and hydration, to sustain,  
19 restore, or ~~((supplant))~~ replace a vital function, which, when applied  
20 to a qualified patient, would serve only to ~~((artificially))~~ prolong  
21 the ~~((moment of death and where, in the judgment of the attending~~  
22 ~~physician, death is imminent whether or not such procedures are~~  
23 ~~utilized))~~ process of dying. "Life-sustaining ~~((procedure))~~ treatment"  
24 shall not include the administration of medication or the performance  
25 of any medical ~~((procedure))~~ or surgical intervention deemed necessary  
26 solely to alleviate pain.

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

1       (~~(5)~~) (7) "Physician" means a person licensed under chapters  
2 18.71 or 18.57 RCW.

3       (~~(6)~~) (8) "Qualified patient" means a patient diagnosed ~~((and~~  
4 ~~certified))~~ in writing to ~~((be afflicted with))~~ have a terminal  
5 condition by ~~((two physicians one of whom shall be))~~ the patient's  
6 attending physician, who ~~((have))~~ has personally examined the patient,  
7 or a patient who is diagnosed in writing to be in a permanent  
8 unconscious condition by two physicians, one of whom is the patient's  
9 attending physician, and both of whom have personally examined the  
10 patient.

11       (~~(7)~~) (9) "Terminal condition" means an incurable and  
12 irreversible condition caused by injury, disease, or illness, ~~((which,~~  
13 ~~regardless of the application of life-sustaining procedures, would))~~  
14 that, within reasonable medical judgment, ((produce)) will cause death  
15 within a reasonable period of time in accordance with accepted medical  
16 standards, and where the application of life-sustaining ((procedures))  
17 treatment serves only to ((postpone the moment of death of the  
18 patient)) prolong the process of dying.

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

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

23       (1) Any adult person may execute a directive directing the  
24 withholding or withdrawal of life-sustaining ~~((procedures))~~ treatment  
25 in a terminal condition or permanent unconscious condition. The  
26 directive shall be signed by the declarer in the presence of two  
27 witnesses not related to the declarer by blood or marriage and who  
28 would not be entitled to any portion of the estate of the declarer upon  
29 declarer's decease under any will of the declarer or codicil thereto

1 then existing or, at the time of the directive, by operation of law  
2 then existing. In addition, a witness to a directive shall not be the  
3 attending physician, an employee of the attending physician or a health  
4 facility in which the declarer is a patient, or any person who has a  
5 claim against any portion of the estate of the declarer upon declarer's  
6 decease at the time of the execution of the directive. However, a  
7 witness to a directive may be an employee of a long-term care facility,  
8 as defined in RCW 43.190.020, in which the declarer is a resident if  
9 the second witness is a state long-term care ombudsman, pursuant to  
10 chapter 43.190 RCW. The directive, or a copy thereof, shall be made  
11 part of the patient's medical records retained by the attending  
12 physician, a copy of which shall be forwarded by the custodian of the  
13 records to the health facility ((upon the withdrawal of life-sustaining  
14 procedures)) when the withholding or withdrawal of life-support  
15 treatment is contemplated. The directive ((shall)) may be  
16 ((essentially)) in the following form, but in addition may include  
17 other specific directions:

18 ((DIRECTIVE TO PHYSICIANS))

19 Health Care Directive

20 Directive made this \_\_\_\_ day of \_\_\_\_\_ (month, year).

21 I \_\_\_\_\_, ((being of sound mind)) having the capacity to make  
22 health care decisions, willfully, and voluntarily make known my desire  
23 that my ((life)) dying shall not be artificially prolonged under the  
24 circumstances set forth below, and do hereby declare that:

25 (a) If at any time I should ((have an incurable injury, disease, or  
26 illness certified)) be diagnosed in writing to be in a terminal  
27 condition by ((two physicians)) the attending physician, or in a  
28 permanent unconscious condition by two physicians, and where the  
29 application of life-sustaining ((procedures)) treatment would serve  
30 only to artificially prolong the ((moment of my death and where my

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

15 (b) In the absence of my ability to give directions regarding the  
16 use of such life-sustaining ~~((procedures))~~ treatment, it is my  
17 intention that this directive shall be honored by my family and  
18 physician(s) as the final expression of my legal right to refuse  
19 medical or surgical treatment and I accept the consequences ~~((from))~~ of  
20 such refusal.

21 (c) If I am diagnosed to be in a terminal condition or a permanent  
22 unconscious condition, I wish to have artificial nutrition and  
23 hydration withheld or withdrawn.

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

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



1 soon as reasonably possible. There shall be no civil or criminal  
2 liability for claims arising from such discharge.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.122 RCW  
4 to read as follows:

5 Any physician, health care provider acting under the direction of  
6 a physician, or health facility and its personnel who participate in  
7 good faith in the withholding or withdrawal of life-sustaining  
8 treatment from a qualified patient in accordance with the requirements  
9 of this chapter shall be immune from legal liability, including civil,  
10 criminal, or professional conduct sanctions, unless otherwise  
11 negligent.

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

14 (1) Prior to ~~((effectuating a))~~ the withholding or withdrawal of  
15 life-sustaining ~~((procedures))~~ treatment from a qualified patient  
16 pursuant to the directive, the attending physician shall make a  
17 reasonable effort to determine that the directive complies with RCW  
18 70.122.030 and, if the patient is ~~((mentally competent))~~ capable of  
19 making health care decisions, that the directive and all steps proposed  
20 by the attending physician to be undertaken are currently in accord  
21 with the desires of the qualified patient.

22 (2) The directive shall be conclusively presumed, unless revoked,  
23 to be the directions of the patient regarding the withholding or  
24 withdrawal of life-sustaining ~~((procedures))~~ treatment. No physician,  
25 ~~((and no licensed))~~ health facility, or health personnel acting in good  
26 faith ~~((under the direction of a physician,))~~ shall be criminally or  
27 civilly liable for failing to effectuate the directive of the qualified  
28 patient pursuant to this subsection. ~~((If the physician refuses to~~

1 ~~effectuate the directive, such physician shall make a good faith effort~~  
2 ~~to transfer the qualified patient to another physician who will~~  
3 ~~effectuate the directive of the qualified patient))~~ A person or health  
4 facility who chooses not to comply with the directive shall immediately  
5 take all reasonable steps to transfer care of the qualified patient to  
6 another physician or health facility who will effectuate the directive.  
7 A person whose conscience, or a health facility with a policy that,  
8 does not allow participation in the withholding or withdrawal of life-  
9 sustaining treatment, and who takes all reasonable steps to transfer  
10 care of the qualified patient, shall be unconditionally protected from  
11 civil and criminal liability unless otherwise negligent.

12 (3) The attending physician or health facility shall inform a  
13 patient or patient's authorized representative of the existence of any  
14 policy or practice that would preclude the honoring of the patient's  
15 directive at the time the physician or facility becomes aware of the  
16 existence of such a directive.

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

19 (1) The withholding or withdrawal of life-sustaining ~~((procedures))~~  
20 treatment from a qualified patient pursuant to the patient's directive  
21 in accordance with the provisions of this chapter shall not, for any  
22 purpose, constitute a suicide or a homicide.

23 (2) The making of a directive pursuant to RCW 70.122.030 shall not  
24 restrict, inhibit, or impair in any manner the sale, procurement, or  
25 issuance of any policy of life insurance, nor shall it be deemed to  
26 modify the terms of an existing policy of life insurance. No policy of  
27 life insurance shall be legally impaired or invalidated in any manner  
28 by the withholding or withdrawal of life-sustaining ~~((procedures))~~

1 treatment from an insured qualified patient, notwithstanding any term  
2 of the policy to the contrary.

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

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

10 The act of withholding or withdrawing life-sustaining  
11 (~~procedures~~) treatment, when done pursuant to a directive described  
12 in RCW 70.122.030 and which causes the death of the declarer, shall  
13 not be construed to be an intervening force or to affect the chain of  
14 proximate cause between the conduct of (~~any person~~) anyone that  
15 placed the declarer in a terminal condition or a permanent unconscious  
16 condition and the death of the declarer.

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

19 Any person who willfully conceals, cancels, defaces, obliterates,  
20 or damages the directive of another without such declarer's consent  
21 shall be guilty of a gross misdemeanor. Any person who falsifies or  
22 forges the directive of another, or willfully conceals or withholds  
23 personal knowledge of a revocation as provided in RCW 70.122.040 with  
24 the intent to cause a withholding or withdrawal of life-sustaining  
25 (~~procedures~~) treatment contrary to the wishes of the declarer, and  
26 thereby, because of any such act, directly causes life-sustaining  
27 (~~procedures~~) treatment to be withheld or withdrawn and death to

1 thereby be hastened, shall be subject to prosecution for murder in the  
2 first degree as defined in RCW 9A.32.030.

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

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

9 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.122  
10 RCW to read as follows:

11 This chapter shall not be construed as requiring a physician or a  
12 registered nurse to provide futile treatment, nor shall it be construed  
13 as requiring a licensed practical nurse acting under the direction of  
14 a registered nurse, a physician's trained mobile technician or  
15 paramedic certified pursuant to RCW 18.71.205, or an emergency medical  
16 technician certified pursuant to RCW 18.73.081, acting under the  
17 direction of a physician, to provide futile treatment.

18 NEW SECTION. **Sec. 12.** A new section is added to chapter 70.122  
19 RCW to read as follows:

20 This chapter shall not be construed as providing the exclusive  
21 means by which individuals or their authorized representatives  
22 identified in RCW 7.70.065, including holders of durable powers of  
23 attorney pursuant to RCW 11.94.010 or otherwise, may make decisions  
24 regarding their health treatment, including but not limited to, the  
25 withholding or withdrawal of life-sustaining treatment, nor limiting  
26 the means provided by case law more expansive than this act.

1        NEW SECTION.    **Sec. 13.**    A new section is added to chapter 70.122  
2    RCW to read as follows:

3        Any person or health facility may assume that a directive complies  
4    with this chapter and is valid.

5        NEW SECTION.    **Sec. 14.**    A new section is added to chapter 70.122  
6    RCW to read as follows:

7        A directive executed anytime before the effective date    of this act  
8    which generally complies with this act is effective under this act.

9        NEW SECTION.    **Sec. 15.**        RCW 70.122.050 and 1979 c 112 s 6 are  
10    each repealed.

11       NEW SECTION.    **Sec. 16.**        If any provision of this act or its  
12    application to any person or circumstance is held invalid, the  
13    remainder of the act or the application of the provision to other  
14    persons or circumstances is not affected.

15       NEW SECTION.    **Sec. 17.**        This act constitutes an alternative to  
16    Initiative 119.    The secretary of state shall place this act on the  
17    ballot in conjunction with Initiative 119 at the next ensuing regular  
18    general election.