
SENATE BILL 6779

State of Washington

54th Legislature

1996 Regular Session

By Senators Thibaudeau and Quigley

Read first time 02/26/96. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to modifying and clarifying requirements and
2 responsibilities for informed consent to health care; amending RCW
3 7.70.065, 11.88.010, 11.94.010, 70.122.020, 70.122.060, and 70.122.110;
4 adding a new section to chapter 11.94 RCW; and adding a new section to
5 chapter 7.70 RCW.

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

7 **Sec. 1.** RCW 7.70.065 and 1987 c 162 s 1 are each amended to read
8 as follows:

9 (1) Informed consent for health care for a patient who is not
10 competent, as defined in RCW 11.88.010(1)((~~to~~)) (e), to consent may be
11 obtained from a person who is authorized in this section to consent on
12 behalf of ((such)) the patient. Persons authorized to provide informed
13 consent to health care on behalf of a patient who is not competent to
14 consent shall be a member of one of the following classes of persons in
15 the following order of priority:

16 (a) The person appointed guardian of the patient who has court
17 authority to make health care decisions for the patient, if any;

1 (b) The individual, if any, to whom the patient has given a durable
2 power of attorney that encompasses the authority to make health care
3 decisions subject to limitations of the power of attorney;

4 (c) The patient's spouse;

5 (d) Children of the patient who are at least eighteen years of age;

6 (e) Parents of the patient; ((and))

7 (f) Grandparents of the patient;

8 (g) Adult brothers and sisters of the patient; and

9 (h) The person or persons previously and most recently identified
10 by the patient in his or her treating physician's records or in the
11 hospital records as the person or persons with authority to make health
12 care decisions if the patient is not competent to provide informed
13 consent. However, the treating physician must first determine, based
14 upon the information reasonably available to him or her, that the
15 designation was made at a time when the patient was competent to make
16 such a designation. Further, in an instance where there is a conflict
17 between a written statement of the patient's wishes in regard to
18 authority to make health care decisions, that is signed by the patient,
19 and the patient's oral statements as noted in the physician's or
20 hospital records, the written statement controls.

21 (2) If the physician seeking informed consent for proposed health
22 care of the patient who is not competent to consent makes reasonable
23 efforts to locate and secure authorization from a competent person in
24 the first or succeeding class and finds no such person available,
25 authorization may be given by any person in the next class in the order
26 of descending priority. However, no person under this section may
27 provide informed consent to health care:

28 (a) If a person of higher priority under this section who is
29 competent to so act and willing to make the health care decision has
30 refused to give ((such)) or withhold the authorization; or

31 (b) If there are two or more individuals in the same class and the
32 decision is not unanimous among all available members of that class who
33 are willing to participate in such decision.

34 (3) Before any person authorized to provide informed consent on
35 behalf of a patient not competent to consent exercises that authority,
36 the person must first determine in good faith that that patient, if
37 competent, would consent to the proposed health care. If such a
38 determination cannot be made, the decision to consent to the proposed
39 health care may be made only after determining that the proposed health

1 care is in the patient's best interests. In making a determination of
2 the patient's wishes, the stated preferences of a patient who is
3 considered by the treating physician to be unable to give informed
4 consent must nonetheless be given substantial deference by the person
5 or persons authorized to provide informed consent.

6 **Sec. 2.** RCW 11.88.010 and 1991 c 289 s 1 are each amended to read
7 as follows:

8 (1) The superior court of each county shall have power to appoint
9 guardians for either the persons (~~(and/or)~~) or estates, or both, of
10 incapacitated persons, and guardians for the estates of nonresidents of
11 the state who have property in the county needing care and attention.

12 (a) For purposes of this chapter, a person may be deemed
13 incapacitated as to person when the superior court determines the
14 individual has a significant risk of personal harm based upon a
15 demonstrated inability to adequately provide for nutrition, health,
16 housing, or physical safety.

17 (b) For purposes of this chapter, a person may be deemed
18 incapacitated as to the person's estate when the superior court
19 determines the individual is at significant risk of financial harm
20 based upon a demonstrated inability to adequately manage property or
21 financial affairs.

22 (c) A determination of incapacity is a legal not a medical
23 decision, based upon a demonstration of management insufficiencies over
24 time in the area of person or estate. Age, eccentricity, poverty, or
25 medical diagnosis alone (~~(shall)~~) is not (~~(be)~~) sufficient to justify
26 a finding of incapacity.

27 (d) A person may also be determined incapacitated if he or she is
28 under the age of majority as defined in RCW 26.28.010.

29 (e) For purposes of giving informed consent for health care
30 (~~(pursuant to)~~) under RCW 7.70.050 and 7.70.065, an "incompetent"
31 person is any person who is (i) incompetent by reason of mental
32 illness, developmental disability, senility, habitual drunkenness,
33 excessive use of drugs, or other mental incapacity, of (~~(either~~
34 ~~managing his or her property or)~~) caring for himself or herself (~~(, or~~
35 ~~both,~~) or (ii) incapacitated as defined in (a) (~~(, (b),~~) and (c) or
36 (d) of this subsection.

37 (f) For purposes of the terms "incompetent," "disabled," or "not
38 legally competent," as those terms are used in the Revised Code of

1 Washington to apply to persons incapacitated under this chapter, those
2 terms shall be interpreted to mean "incapacitated" persons for purposes
3 of this chapter.

4 (2) The superior court for each county shall have power to appoint
5 limited guardians for the persons and estates, or either thereof, of
6 incapacitated persons, who by reason of their incapacity have need for
7 protection and assistance, but who are capable of managing some of
8 their personal and financial affairs. After considering all evidence
9 presented as a result of ((such)) the investigation, the court shall
10 impose, by order, only ((such)) the specific limitations and
11 restrictions on an incapacitated person to be placed under a limited
12 guardianship as the court finds necessary for ((such)) the person's
13 protection and assistance. A person shall not be presumed to be
14 incapacitated nor shall a person lose any legal rights or suffer any
15 legal disabilities as the result of being placed under a limited
16 guardianship, except as to those rights and disabilities specifically
17 set forth in the court order establishing such a limited guardianship.
18 In addition, the court order shall state the period of time for which
19 it shall be applicable.

20 (3) Venue for petitions for guardianship or limited guardianship
21 shall lie in the county wherein the alleged incapacitated person is
22 domiciled, or if ((such)) the person resides in a facility supported in
23 whole or in part by local, state, or federal funding sources, in either
24 the county where the facility is located, the county of domicile prior
25 to residence in the supported facility, or the county where a parent or
26 spouse of the alleged incapacitated person is domiciled.

27 If the alleged incapacitated person's residency has changed within
28 one year of the filing of the petition, any interested person may move
29 for a change of venue for any proceedings seeking the appointment of a
30 guardian or a limited guardian under this chapter to the county of the
31 alleged incapacitated person's last place of residence of one year or
32 more. The motion shall be granted when it appears to the court that
33 ((such)) the venue would be in the best interests of the alleged
34 incapacitated person and would promote more complete consideration of
35 all relevant matters.

36 (4) Under RCW 11.94.010, a principal may nominate, by a durable
37 power of attorney, the guardian or limited guardian of his or her
38 estate or person for consideration by the court if guardianship
39 proceedings for the principal's person or estate are thereafter

1 commenced. The court shall make its appointment in accordance with the
2 principal's most recent nomination in a durable power of attorney
3 except for good cause or disqualification.

4 (5) When a court imposes a full guardianship for an incapacitated
5 person, the person shall be considered incompetent for purposes of
6 rationally exercising the right to vote and shall lose the right to
7 vote, unless the court specifically finds that the person is rationally
8 capable of exercising the franchise. Imposition of a limited
9 guardianship for an incapacitated person shall not result in the loss
10 of the right to vote unless the court determines that the person is
11 incompetent for purposes of rationally exercising the franchise.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 11.94 RCW
13 to read as follows:

14 A durable power of attorney to make health care decisions for the
15 principal, as authorized by RCW 7.70.065(1)(b), that is executed on or
16 after January 1, 1997, must:

17 (1) Name the person who is being appointed as attorney in fact to
18 make health care decisions for the principal. The document may also
19 name an alternative attorney in fact for this purpose and successive
20 alternates;

21 (2) Describe the circumstances under which the powers granted take
22 effect. Examples of these statements include, but are not limited to:
23 "When I am unable to communicate in any manner"; "when I am not
24 competent to give informed consent"; and "when my attending physician
25 certifies in writing that I am not able to understand my medical
26 condition and make a choice regarding recommended treatment";

27 (3) State that the powers being conferred are to be in effect only
28 during the disability of the principal; and

29 (4) Be signed by the principal either before two witnesses who are
30 not heirs at law of the principal or before a notary public.

31 **Sec. 4.** RCW 11.94.010 and 1995 c 297 s 9 are each amended to read
32 as follows:

33 (1) Whenever a principal designates another as his or her attorney
34 in fact or agent, by a power of attorney in writing, and the writing
35 contains the words "This power of attorney shall not be affected by
36 disability of the principal," or "This power of attorney shall become
37 effective upon the disability of the principal," or similar words

1 showing the intent of the principal that the authority conferred shall
2 be exercisable notwithstanding the principal's disability, the
3 authority of the attorney in fact or agent is exercisable on behalf of
4 the principal as provided notwithstanding later disability or
5 incapacity of the principal at law or later uncertainty as to whether
6 the principal is dead or alive. All acts done by the attorney in fact
7 or agent pursuant to the power during any period of disability or
8 incompetence or uncertainty as to whether the principal is dead or
9 alive have the same effect and inure to the benefit of and bind the
10 principal or the principal's guardian or heirs, devisees, and personal
11 representative as if the principal were alive, competent, and not
12 disabled. A principal may nominate, by a durable power of attorney,
13 the guardian or limited guardian of his or her estate or person for
14 consideration by the court if protective proceedings for the
15 principal's person or estate are thereafter commenced. The court shall
16 make its appointment in accordance with the principal's most recent
17 nomination in a durable power of attorney except for good cause or
18 disqualification. If a guardian thereafter is appointed for the
19 principal, the attorney in fact or agent, during the continuance of the
20 appointment, shall account to the guardian rather than the principal.
21 The guardian has the same power the principal would have had if the
22 principal were not disabled or incompetent, to revoke, suspend or
23 terminate all or any part of the power of attorney or agency.

24 (2) Persons shall place reasonable reliance on any determination of
25 disability or incompetence as provided in the instrument that specifies
26 the time and the circumstances under which the power of attorney
27 document becomes effective.

28 (3) A principal may authorize his or her attorney-in-fact to
29 provide informed consent for health care decisions on the principal's
30 behalf. Unless he or she is the spouse, or adult child or brother or
31 sister of the principal, none of the following persons may act as the
32 attorney-in-fact for the principal: Any of the principal's physicians,
33 the physicians' employees, or the owners, administrators, or employees
34 of the health care facility where the principal resides or receives
35 care. This authorization is subject to the same limitations as those
36 that apply to a guardian under RCW 11.92.043(5) (~~((a) through (c))~~) and
37 11.92.190.

1 **Sec. 5.** RCW 70.122.020 and 1992 c 98 s 2 are each amended to read
2 as follows:

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

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

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

11 (3) "Authorized representative" means the individual or individuals
12 who have authority to give or withhold informed consent for medical
13 care for a person who is not competent to give consent in accordance
14 with RCW 7.70.065.

15 (4) "Directive" means a written document voluntarily executed by
16 the declarer generally consistent with the guidelines of RCW
17 70.122.030.

18 ~~((+4))~~ (5) "Health facility" means a hospital as defined in RCW
19 70.41.020(2) or a nursing home as defined in RCW 18.51.010, a home
20 health agency or hospice agency as defined in RCW 70.126.010, or a
21 boarding home as defined in RCW 18.20.020.

22 ~~((+5))~~ (6) "Life-sustaining treatment" means any medical or
23 surgical intervention that uses mechanical or other artificial means,
24 including artificially provided nutrition and hydration, to sustain,
25 restore, or replace a vital function, which, when applied to a
26 qualified patient, would serve only to prolong the process of dying.
27 "Life-sustaining treatment" shall not include the administration of
28 medication or the performance of any medical or surgical intervention
29 deemed necessary solely to alleviate pain.

30 ~~((+6))~~ (7) "Permanent unconscious condition" means an incurable
31 and irreversible condition in which the patient is medically assessed
32 within reasonable medical judgment as having no reasonable probability
33 of recovery from an irreversible coma or a persistent vegetative state.

34 ~~((+7))~~ (8) "Physician" means a person licensed under chapters
35 18.71 or 18.57 RCW.

36 ~~((+8))~~ (9) "Qualified patient" means an adult person who is a
37 patient diagnosed in writing to have a terminal condition by the
38 patient's attending physician, who has personally examined the patient,
39 or a patient who is diagnosed in writing to be in a permanent

1 unconscious condition in accordance with accepted medical standards by
2 two physicians, one of whom is the patient's attending physician, and
3 both of whom have personally examined the patient.

4 ((+9)) (10) "Terminal condition" means an incurable and
5 irreversible condition caused by injury, disease, or illness, that,
6 within reasonable medical judgment, will cause death within a
7 reasonable period of time in accordance with accepted medical
8 standards, and where the application of life-sustaining treatment
9 serves only to prolong the process of dying.

10 **Sec. 6.** RCW 70.122.060 and 1992 c 98 s 6 are each amended to read
11 as follows:

12 (1) Prior to the withholding or withdrawal of life-sustaining
13 treatment from a qualified patient pursuant to the directive, the
14 attending physician shall make a reasonable effort to determine that
15 the directive complies with RCW 70.122.030 and, if the patient is
16 capable of making health care decisions, that the directive and all
17 steps proposed by the attending physician to be undertaken are
18 currently in accord with the desires of the qualified patient.
19 However, where the patient is not competent to give informed consent
20 for health care in the attending physician's judgment, prior to giving
21 effect to the directive, the physician must, to the extent reasonably
22 possible, consult with the patient's authorized representative and
23 consider any information known to the authorized representative, in
24 interpreting and applying the patient's wishes regarding the directive
25 under the specific medical facts known to the physician.

26 (2) The attending physician or health facility shall inform a
27 patient or patient's authorized representative of the existence of any
28 policy or practice that would preclude the honoring of the patient's
29 directive at the time the physician or facility becomes aware of the
30 existence of such a directive. If the patient, or his or her
31 authorized representative, where applicable, after being informed of
32 such policy or directive, chooses to retain the physician or facility,
33 the physician or facility with the patient or the patient's
34 representative shall prepare a written plan to be filed with the
35 patient's directive that sets forth the physician's or facilities'
36 intended actions should the patient's medical status change so that the
37 directive would become operative. The physician or facility under this
38 subsection has no obligation to honor the patient's directive if they

1 have complied with the requirements of this subsection, including
2 compliance with the written plan required under this subsection.

3 (3) 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 treatment. No physician, health
6 facility, or health personnel acting in good faith with the directive
7 or in accordance with the written plan in subsection (2) of this
8 section shall be criminally or civilly liable for failing to effectuate
9 the directive of the qualified patient pursuant to this subsection.

10 (4) No nurse, physician, or other health care practitioner may be
11 required by law or contract in any circumstances to participate in the
12 withholding or withdrawal of life-sustaining treatment if such person
13 objects to so doing. No person may be discriminated against in
14 employment or professional privileges because of the person's
15 participation or refusal to participate in the withholding or
16 withdrawal of life-sustaining treatment.

17 **Sec. 7.** RCW 70.122.110 and 1992 c 98 s 4 are each amended to read
18 as follows:

19 If a qualified patient capable of making health care decisions, or,
20 where the patient is not capable of the decisions, the patient's
21 authorized representative, indicates that ((he or she)) the patient
22 wishes to die at home, the patient shall be discharged as soon as
23 reasonably possible. The health care provider or facility has an
24 obligation to explain the medical risks of an immediate discharge to
25 the qualified patient or the patient's authorized representative, where
26 applicable. If the provider or facility complies with the obligation
27 to explain the medical risks of an immediate discharge to a qualified
28 patient, there shall be no civil or criminal liability for claims
29 arising from such discharge.

30 NEW SECTION. **Sec. 8.** A new section is added to chapter 7.70 RCW
31 to read as follows:

32 (1) For purposes of this section, the term "emergency medical
33 directive" means a written statement of what response a medical
34 provider is authorized to take in the event a patient experiences a
35 medical condition that will result in death or serious permanent and
36 irreparable injury unless immediate action is take to revive or
37 otherwise treat the patient.

1 (2) Nothing in this chapter prohibits a health care provider from
2 making available to patients or their authorized representatives the
3 opportunity to execute emergency medical directives to govern the
4 medical procedures to be followed in the event of a life-threatening
5 medical emergency, such as the use of cardiopulmonary resuscitation.
6 However, the directives are not required from the patient or his or her
7 authorized representative, as that term is defined in RCW
8 70.122.020(3). Further, whenever emergency medical directives are
9 executed and made a part of the patient's medical records, the person
10 accepting the emergency medical directives on behalf of the health care
11 provider must execute a separate written statement that contains the
12 following information:

13 (a) The name of the person who signed the emergency medical
14 directive;

15 (b) The authority under which the directives were accepted, with
16 specific reference to the provisions of RCW 7.70.065 where the
17 directive or directives are signed by a person other than the patient;
18 and

19 (c) A statement that the person obtaining the directives explained
20 the effect of the directives and believes the patient or, where
21 applicable, the patient's authorized representative, to understand the
22 full nature and effect of the directives. The written statement must
23 be signed and dated by the patient or his or her authorized
24 representative and witnessed and dated by the person accepting the
25 advance medical directives.

26 (3) As of January 1, 1997, all emergency medical directives must
27 contain a section for the person executing the directive to provide
28 clarifications or limitations to the general emergency medical
29 directive being given. However, emergency medical directives executed
30 prior to this date remain in full force and effect until effectively
31 revoked.

32 (4) Whenever a health care provider that provides residential care
33 for a patient obtains a patient's advance medical directives, it must
34 establish procedures for reviewing the directives with the patient or
35 the patient's authorized representative, if applicable, at least once
36 every ninety days, unless the patient or his or her authorized
37 representative expressly waives the review in writing, and whenever
38 there is a significant change in the patient's capacity or medical
39 condition.

1 (5) All health care providers that provide residential care for a
2 patient must establish procedures for reviewing a standard medical
3 directive by physicians that address emergency medical procedures to be
4 followed in the event of a life-threatening medical emergency, and
5 policies to reconcile differences between the standard medical
6 directives and the emergency medical directives by the patient, as well
7 as applicable provisions set forth in a durable power of attorney,
8 health care directive, or other written statement as described in this
9 section.

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