

2 SHB 1481 - S COMM AMD

3 By Committee on Health & Long-Term Care

4

5 Strike everything after the enacting clause and insert the
6 following:

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

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12 (~~procedures~~) treatment withheld or withdrawn in instances of a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

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

17 The legislature further finds that, in the interest of protecting
18 individual autonomy, such prolongation of (~~life~~) the process of dying
19 for persons with a terminal condition or permanent unconscious
20 condition may cause loss of patient dignity, and unnecessary pain and
21 suffering, while providing nothing medically necessary or beneficial to
22 the patient. The legislature further believes that physicians and
23 nurses should not withhold or unreasonably diminish pain medication for
24 patients in a terminal condition where the primary intent of providing
25 such medication is to alleviate pain and maintain or increase the
26 patient's comfort.

27 The legislature further finds that there exists considerable
28 uncertainty in the medical and legal professions as to the legality of

1 terminating the use or application of life-sustaining (~~procedures~~)
2 treatment where the patient having the capacity to make health care
3 decisions has voluntarily (~~and in sound mind~~) evidenced a desire that
4 such (~~procedures~~) treatment be withheld or withdrawn.

5 In recognition of the dignity and privacy which patients have a
6 right to expect, the legislature hereby declares that the laws of the
7 state of Washington shall recognize the right of an adult person to
8 make a written directive instructing such person's physician to
9 withhold or withdraw life-sustaining (~~procedures~~) treatment in the
10 event of a terminal condition or permanent unconscious condition. The
11 legislature also recognizes that a person's right to control his or her
12 health care may be exercised by an authorized representative who
13 validly holds the person's durable power of attorney for health care."

14 "Sec. 2. RCW 70.122.020 and 1979 c 112 s 3 are each amended to
15 read as follows:

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

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

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

24 (~~(2)~~) (3) "Directive" means a written document voluntarily
25 executed by the declarer (~~in accordance with the requirements~~)
26 generally consistent with the guidelines of RCW 70.122.030.

27 (~~(3)~~) (4) "Health facility" means a hospital as defined in RCW
28 (~~70.38.020(7)~~) 70.41.020(2) or a nursing home as defined in RCW
29 (~~70.38.020(8)~~) 18.51.010, a home health agency or hospice agency as

1 defined in RCW 70.126.010, or a boarding home as defined in RCW
2 18.20.020.

3 ~~((4))~~ (5) "Life-sustaining ~~((procedure))~~ treatment" means any
4 medical or surgical ~~((procedure or intervention which utilizes))~~
5 intervention that uses mechanical or other artificial means, including
6 artificially provided nutrition and hydration, to sustain, restore, or
7 ~~((supplant))~~ replace a vital function, which, when applied to a
8 qualified patient, would serve only to ~~((artificially))~~ prolong the
9 ~~((moment of death and where, in the judgment of the attending~~
10 ~~physician, death is imminent whether or not such procedures are~~
11 ~~utilized))~~ process of dying. "Life-sustaining ~~((procedure))~~ treatment"
12 shall not include the administration of medication or the performance
13 of any medical ~~((procedure))~~ or surgical intervention deemed necessary
14 solely to alleviate pain.

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

19 ~~((5))~~ (7) "Physician" means a person licensed under chapters
20 18.71 or 18.57 RCW.

21 ~~((6))~~ (8) "Qualified patient" means an adult person who is a
22 patient diagnosed ~~((and certified))~~ in writing to ~~((be afflicted with))~~
23 have a terminal condition by ~~((two physicians one of whom shall be))~~
24 the patient's attending physician, who ~~((have))~~ has personally examined
25 the patient, or a patient who is diagnosed in writing to be in a
26 permanent unconscious condition in accordance with accepted medical
27 standards by two physicians, one of whom is the patient's attending
28 physician, and both of whom have personally examined the patient.

29 ~~((7))~~ (9) "Terminal condition" means an incurable and and
30 irreversible condition caused by injury, disease, or illness, ~~((which,~~

1 ~~regardless of the application of life-sustaining procedures, would))~~
2 that, within reasonable medical judgment, ((produce)) will cause death
3 within a reasonable period of time in accordance with accepted medical
4 standards, and where the application of life-sustaining ((procedures))
5 treatment serves only to ((postpone the moment of death of the
6 patient)) prolong the process of dying.

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

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

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

1 ((shall)) may be ((essentially)) in the following form, but in addition
2 may include other specific directions:

3 ((DIRECTIVE TO PHYSICIANS))

4 Health Care Directive

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

6 I _____, ((being of sound mind)) having the capacity to make
7 health care decisions, willfully, and voluntarily make known my desire
8 that my ((life)) dying shall not be artificially prolonged under the
9 circumstances set forth below, and do hereby declare that:

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

1 (b) In the absence of my ability to give directions regarding the
2 use of such life-sustaining (~~procedures~~) treatment, it is my
3 intention that this directive shall be honored by my family and
4 physician(s) as the final expression of my legal right to refuse
5 medical or surgical treatment and I accept the consequences (~~from~~) of
6 such refusal. If another person is appointed to make these decisions
7 for me, whether through a durable power of attorney or otherwise, I
8 request that the person be guided by this directive and any other clear
9 expressions of my desires.

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

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

13 I DO NOT want to have artificially provided nutrition and
14 hydration.

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

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

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

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

29 Signed.....

30 City, County, and State of Residence

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

3 Witness.....

4 Witness.....

5 (2) Prior to (~~effectuating a directive~~) withholding or
6 withdrawing life-sustaining treatment, the diagnosis of a terminal
7 condition by (~~two physicians~~) the attending physician or the
8 diagnosis of a permanent unconscious state by two physicians shall be
9 (~~verified~~) entered in writing(~~(, attached to the directive,)~~) and
10 made a permanent part of the patient's medical records.

11 (3) A directive executed in another political jurisdiction is valid
12 to the extent permitted by Washington state law and federal
13 constitutional law."

14 "NEW SECTION. Sec. 4. If a qualified patient capable of making
15 health care decisions indicates that he or she wishes to die at home,
16 the patient shall be discharged as soon as reasonably possible. The
17 health care provider or facility has an obligation to explain the
18 medical risks of an immediate discharge to the qualified patient. If
19 the provider or facility complies with the obligation to explain the
20 medical risks of an immediate discharge to a qualified patient, there
21 shall be no civil or criminal liability for claims arising from such
22 discharge."

23 "NEW SECTION. Sec. 5. Any physician, health care provider
24 acting under the direction of a physician, or health facility and its
25 personnel who participate in good faith in the withholding or
26 withdrawal of life-sustaining treatment from a qualified patient in
27 accordance with the requirements of this chapter, shall be immune from

1 legal liability, including civil, criminal, or professional conduct
2 sanctions, unless otherwise negligent."

3 "Sec. 6. RCW 70.122.060 and 1979 c 112 s 7 are each amended to
4 read as follows:

5 (1) Prior to ~~((effectuating a))~~ the withholding or withdrawal of
6 life-sustaining ~~((procedures))~~ treatment from a qualified patient
7 pursuant to the directive, the attending physician shall make a
8 reasonable effort to determine that the directive complies with RCW
9 70.122.030 and, if the patient is ~~((mentally competent))~~ capable of
10 making health care decisions, that the directive and all steps proposed
11 by the attending physician to be undertaken are currently in accord
12 with the desires of the qualified patient.

13 (2) The attending physician or health facility shall inform a
14 patient or patient's authorized representative of the existence of any
15 policy or practice that would preclude the honoring of the patient's
16 directive at the time the physician or facility becomes aware of the
17 existence of such a directive. If the patient, after being informed of
18 such policy or directive, chooses to retain the physician or facility,
19 the physician or facility with the patient or the patient's
20 representative shall prepare a written plan to be filed with the
21 patient's directive that sets forth the physician's or facilities'
22 intended actions should the patient's medical status change so that the
23 directive would become operative. The physician or facility under this
24 subsection has no obligation to honor the patient's directive if they
25 have complied with the requirements of this subsection, including
26 compliance with the written plan required under this subsection.

27 (3) The directive shall be conclusively presumed, unless revoked,
28 to be the directions of the patient regarding the withholding or
29 withdrawal of life-sustaining ~~((procedures))~~ treatment. No physician,

1 ((and no licensed)) health facility, or health personnel acting in good
2 faith ((under the direction of a physician,)) with the directive or in
3 accordance with the written plan in subsection (2) of this section
4 shall be criminally or civilly liable for failing to effectuate the
5 directive of the qualified patient pursuant to this subsection. ((If
6 the physician refuses to effectuate the directive, such physician shall
7 make a good faith effort to transfer the qualified patient to another
8 physician who will effectuate the directive of the qualified
9 patient.))"

10 "Sec. 7. RCW 70.122.070 and 1979 c 112 s 8 are each amended to
11 read as follows:

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

16 (2) The making of a directive pursuant to RCW 70.122.030 shall not
17 restrict, inhibit, or impair in any manner the sale, procurement, or
18 issuance of any policy of life insurance, nor shall it be deemed to
19 modify the terms of an existing policy of life insurance. No policy of
20 life insurance shall be legally impaired or invalidated in any manner
21 by the withholding or withdrawal of life-sustaining ((procedures))
22 treatment from an insured qualified patient, notwithstanding any term
23 of the policy to the contrary.

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

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

3 The act of withholding or withdrawing life-sustaining
4 (~~procedures~~) treatment, when done pursuant to a directive described
5 in RCW 70.122.030 and which (~~causes~~) results in the death of the
6 declarer, shall not be construed to be an intervening force or to
7 affect the chain of proximate cause between the conduct of (~~any~~
8 ~~person~~) anyone that placed the declarer in a terminal condition or a
9 permanent unconscious condition and the death of the declarer."

10 **"Sec. 9.** RCW 70.122.090 and 1979 c 112 s 9 are each amended to
11 read as follows:

12 Any person who willfully conceals, cancels, defaces, obliterates,
13 or damages the directive of another without such declarer's consent
14 shall be guilty of a gross misdemeanor. Any person who falsifies or
15 forges the directive of another, or willfully conceals or withholds
16 personal knowledge of a revocation as provided in RCW 70.122.040 with
17 the intent to cause a withholding or withdrawal of life-sustaining
18 (~~procedures~~) treatment contrary to the wishes of the declarer, and
19 thereby, because of any such act, directly causes life-sustaining
20 (~~procedures~~) treatment to be withheld or withdrawn and death to
21 thereby be hastened, shall be subject to prosecution for murder in the
22 first degree as defined in RCW 9A.32.030."

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

25 Nothing in this chapter shall be construed to condone, authorize,
26 or approve mercy killing or physician-assisted suicide, or to permit
27 any affirmative or deliberate act or omission to end life other than to
28 permit the natural process of dying."

1 "NEW SECTION. **Sec. 11.** This chapter shall not be construed as
2 providing the exclusive means by which individuals may make decisions
3 regarding their health treatment, including but not limited to, the
4 withholding or withdrawal of life-sustaining treatment, nor limiting
5 the means provided by case law more expansive than this act."

6 "NEW SECTION. **Sec. 12.** Any person or health facility may assume
7 that a directive complies with this chapter and is valid."

8 "NEW SECTION. **Sec. 13.** A directive executed anytime before the
9 effective date of this act which generally complies with this act is
10 effective under this act."

11 "NEW SECTION. **Sec. 14.** A new section is added to chapter 43.70
12 RCW to read as follows:

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

18 "NEW SECTION. **Sec. 15.** RCW 70.122.050 and 1979 c 112 s 6 are
19 each repealed."

20 "NEW SECTION. **Sec. 16.** Sections 4, 5, and 11 through 13 of this
21 act are each added to chapter 70.122 RCW."

22 "NEW SECTION. **Sec. 17.** If any provision of this act or its
23 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."

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6 On page 1, line 1 of the title, after "act;" strike the remainder
7 of the title and insert "amending RCW 70.122.010, 70.122.020,
8 70.122.030, 70.122.060, 70.122.070, 70.122.080, 70.122.090, and
9 70.122.100; adding a new section to chapter 43.70 RCW; adding new
10 sections to chapter 70.122 RCW; and repealing RCW 70.122.050."