

HOUSE BILL REPORT

SHB 1481

As Amended by the Senate

Title: An act relating to the natural death act.

Brief Description: Amending the natural death act.

Sponsor(s): By House 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).

Brief History:

Reported by House Committee on:
Health Care, January 27, 1992, DPS;
Passed House, February 13, 1992, 82-14;
Amended by Senate.

**HOUSE COMMITTEE ON
HEALTH CARE**

Majority Report: *The substitute bill be substituted therefor and the substitute bill do pass.* Signed by 10 members: Representatives Braddock, Chair; Day, Vice Chair; Moyer, Ranking Minority Member; Cantwell; Edmondson; Franklin; Morris; Paris; Prentice; and Sprenkle.

Minority Report: *Do not pass.* Signed by 1 member: Representative Casada, Assistant Ranking Minority Member;

Staff: John Welsh (786-7133).

Background: The Natural Death Act establishes a legal process for evidencing a patient's decision to die naturally. It authorizes adult persons to sign written directives ordering their physicians to withhold or withdraw life-sustaining procedures in situations where the attending physician determines that the patient has a terminal condition and death is imminent. An additional physician must certify that the patient is terminally ill.

Recent state and federal Supreme Court decisions declared that persons have a constitutional right to authorize the withholding or withdrawal of life-sustaining procedures when they have a terminal condition, and that the courts are not normally the proper forums to be making these decisions.

Life-sustaining procedures can be withheld or withdrawn in accordance with a written directive where they would serve only to artificially prolong the moment of death. Life-sustaining procedures include any medical or surgical procedures which utilizes mechanical or other artificial means to sustain a vital function, but artificially provided nutrition and hydration is not specifically referenced. Medical intervention cannot be withdrawn if deemed necessary to alleviate pain.

Before treatment can be withdrawn, death must be imminent. The current law does not cover patients in irreversible coma or persistent vegetative states.

The directive must essentially be in the form provided in the statute but may include other specific directions.

There is no reference to the validity of directives written in other jurisdictions.

There is no right granted a patient choosing to die at home to be immediately discharged by a hospital.

Non-licensed health personnel are not accorded immunity from liability for honoring a patient's directive.

A physician refusing to effectuate the directive must make a good faith effort to transfer the patient to a complying physician, but other persons or health facilities are not so obligated. There is no protection from legal liability for those persons and facilities choosing not to comply with patient directives. Nor is there a duty to inform the patient of any policy that would preclude the honoring of patient directives.

Complying with a patient's directive does not constitute suicide, but there is no reference to homicide. The law does not condone or authorize mercy killing, but physician-assisted suicide is not referenced.

The directive is conclusively presumed to be the patient's directions.

There is no reference regarding the provision of futile treatment.

Summary of Bill: There are legislative declarations that pain medication for terminal patients should not be withheld to increase the patients's comfort; the right to control health care decisions may also be exercised through a Durable Power of Attorney or through an authorized health care decision-maker; and that the court is normally not the proper forum for making decisions regarding life-sustaining treatment.

Life-sustaining procedures are referenced as treatment that can be withheld or withdrawn according to a patient's written directive (also known as a "living will"), where the treatment would serve only to prolong the process of dying. Life-sustaining treatment is clarified to include artificially provided nutrition and hydration. However, surgical, as well as medical intervention, cannot be withdrawn if it is deemed necessary solely to alleviate pain.

The death need not be imminent. The directive authorizes the withholding or withdrawing of life-sustaining treatment where it would serve only to prolong the process of dying of a patient diagnosed by the attending physician to have a terminal condition which would cause death within a reasonable period of time in accordance with accepted medical standards; or where the patient is diagnosed by two physicians as having no reasonable probability of recovery from an irreversible and incurable comatose or persistent vegetative state.

In order to have artificially provided nutrition and hydration, the declarant must specifically indicate his or her choice on the spaces provided in the written directive.

A directive executed in another political jurisdiction is valid to the extent allowable by law.

A patient who wishes to die with dignity at home must be discharged as soon as reasonably possible.

Persons and health facilities participating in good faith with a patient's directive are immune from legal liability. Persons or health facilities choosing not to comply with the directive must immediately take reasonable steps to transfer the patient to another physician or health facility, and are unconditionally protected from legal liability unless otherwise negligent. A physician or health facility must inform the patient of any policy precluding the honoring of a patient's directive.

The withholding or withdrawal of life-support treatment does not constitute a suicide or homicide, but the law is not to

be construed to condone or authorize physician-assisted suicide. Nor is it to be construed to require futile treatment, nor to be the exclusive means by which individuals may decide to withhold or withdraw life-support treatment.

A person or health facility may assume that a patient's directive complies with this law, and directives executed prior to these amendments are valid.

The Department of Health is directed to adopt guidelines for emergency medical personnel for persons evidencing a desire not to receive futile treatment.

EFFECT OF SENATE AMENDMENT(S): Language declarative of legislative intent is deleted that declares that the courts are not the proper forum regarding decisions to withhold or withdraw life-support treatment in the absence of controversy, and declares that the chapter is in the interest of the public health and welfare.

A qualified patient must be an adult, and can only be diagnosed to be in a permanent unconscious condition in accordance with accepted medical standards.

Before the discharge of the patient from a health facility, the patient must be informed of the medical risks by the health provider as a condition for immunity from legal liability.

Language is deleted that requires health facilities and providers that do not choose to honor a patient's directive to take reasonable steps to transfer the patient to another facility or provider that will. However, health care providers must inform the patient of any policy that would preclude the honoring of the patient's directive. If the patient still wishes to be admitted or remain at the facility, then the provider must work out a written plan with the patient when the patient's directive becomes operative. The provider is immune from legal liability when either complying with the directive or the plan.

No health provider is required by law to carry out the patient's directive, and discrimination against any person participating or refusing to participate in the withholding or withdrawal of life-support treatment is prohibited.

Language is deleted that declares that providers are not required to provide futile treatment.

References to durable power of attorney or other authorized health care decision makers, and any application of these patient's representatives to the chapter are deleted.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Persons should have the right to control the decisions regarding their own health care when they become terminal by executing "living wills." The 1979 Natural Death Act limits this right in several regards. First, the act is unclear with regard to the ability to authorize the withholding or withdrawal of artificially provided nutrition and hydration. People should have an opportunity to evidence a choice in the document. Second, death must be "imminent" in order to have life-support procedures withheld or withdrawn, which leaves uncovered the majority of situations involving persons who may be in incurable and irreversible unconscious conditions.

Testimony Against: Artificial nutrition and hydration should never be withdrawn as it is tantamount to life itself, one of the mainstays of comfort care, and is on a higher plane than other medical procedures that are curative. To permit such a thing is a version of euthanasia as equally unethical as "physician assisted aid-in-dying" in Initiative 119, rejected by the voters in November 1991. Further, there are occasions when persons in comatose or persistent vegetative states actually recover. Some 58 percent regain consciousness within three years. Physicians and health care facilities objecting to carrying out "living wills" for ethical reasons should not be obliged to refer the patient to other health providers who will honor such directives because it is equally unethical.

Witnesses: Representative May, prime sponsor, (Pro); Senator Moore (Pro with amendments); Karen Cooper, Dr. Sheldon Biback, Harold Fogelquist, and Reverend Marvin Evans, Washington Clergy for Death with Dignity (Pro); Esther Stohl and Arnold Livingston, Seniors Educating Seniors (Pro); Bill Pilkey (Pro); Diane Altman, Washington State Hospice Organization (Pro); Mary Jo Kahler, Human Life (Con); Dr. Les Newton, Physicians for Moral Responsibility (Con); Lyn Brock, Cottessmore Nursing Home (Con); Margie Cristofaro, The Center for Patients' Rights (Con); Dr. Jim Kilduff, Washington State Medical Association (Pro); Sister Sharon Park, Washington State Catholic Conference (Pro); and Ralph Mero, Hemlock Society (Pro).

VOTE ON FINAL PASSAGE:

Yeas 82; Nays 14; Excused 2

Nays: Representatives Ballard, Carlson, Casada, Fuhrman, Hargrove, Hochstatter, Johnson P, Morton, Padden, Silver, Sommers D, Tate, Vance, Van Luven

Excused: Representatives Basich, Wineberry