

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1481

52nd Legislature
1992 Regular Session

Passed by the House March 8, 1992
Yeas 74 Nays 16

**Speaker of the
House of Representatives**

Passed by the Senate March 5, 1992
Yeas 28 Nays 21

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 1481 as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1481

AS AMENDED BY THE SENATE

Passed Legislature - 1992 Regular Session

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11 (~~procedures~~) treatment withheld or withdrawn in instances of a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 having the capacity to make health care
18 decisions has voluntarily ~~((and in sound mind))~~ evidenced a desire that
19 such ~~((procedures))~~ treatment be withheld or 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.

1 **Sec. 2.** RCW 70.122.020 and 1979 c 112 s 3 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 ~~((2))~~ (3) "Directive" means a written document voluntarily
12 executed by the declarer ~~((in accordance with the requirements))~~
13 generally consistent with the guidelines of RCW 70.122.030.

14 ~~((3))~~ (4) "Health facility" means a hospital as defined in RCW
15 ~~((70.38.020(7))~~ 70.41.020(2) or a nursing home as defined in RCW
16 ~~((70.38.020(8))~~ 18.51.010, a home health agency or hospice agency as
17 defined in RCW 70.126.010, or a boarding home as defined in RCW
18 18.20.020.

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

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

5 ~~((5))~~ (7) "Physician" means a person licensed under chapters
6 18.71 or 18.57 RCW.

7 ~~((6))~~ (8) "Qualified patient" means an adult person who is a
8 patient diagnosed ~~((and certified))~~ in writing to ~~((be afflicted with))~~
9 have a terminal condition by ~~((two physicians one of whom shall be))~~
10 the patient's attending physician, who ~~((have))~~ has personally examined
11 the patient, or a patient who is diagnosed in writing to be in a
12 permanent unconscious condition in accordance with accepted medical
13 standards by two physicians, one of whom is the patient's attending
14 physician, and both of whom have personally examined the patient.

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

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

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

27 (1) Any adult person may execute a directive directing the
28 withholding or withdrawal of life-sustaining ~~((procedures))~~ treatment
29 in a terminal condition or permanent unconscious condition. The

1 directive shall be signed by the declarer in the presence of two
2 witnesses not related to the declarer by blood or marriage and who
3 would not be entitled to any portion of the estate of the declarer upon
4 declarer's decease under any will of the declarer or codicil thereto
5 then existing or, at the time of the directive, by operation of law
6 then existing. In addition, a witness to a directive shall not be the
7 attending physician, an employee of the attending physician or a health
8 facility in which the declarer is a patient, or any person who has a
9 claim against any portion of the estate of the declarer upon declarer's
10 decease at the time of the execution of the directive. The directive,
11 or a copy thereof, shall be made part of the patient's medical records
12 retained by the attending physician, a copy of which shall be forwarded
13 by the custodian of the records to the health facility ((upon the
14 withdrawal of life-sustaining procedures)) when the withholding or
15 withdrawal of life-support treatment is contemplated. The directive
16 ~~((shall))~~ may be ~~((essentially))~~ in the following form, but in addition
17 may include 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 dying, 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 death 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. If another person is appointed to make these decisions
21 for me, whether through a durable power of attorney or otherwise, I
22 request that the person be guided by this directive and any other clear
23 expressions of my desires.

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

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

27 I DO NOT want to have artificially provided nutrition and
28 hydration.

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

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

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

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

15 Signed.....

16 City, County, and State of Residence

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

19 Witness.....

20 Witness.....

21 (2) Prior to ~~((effectuating a directive))~~ withholding or
22 withdrawing life-sustaining treatment, the diagnosis of a terminal
23 condition by ~~((two physicians))~~ the attending physician or the
24 diagnosis of a permanent unconscious state by two physicians shall be
25 ~~((verified))~~ entered in writing ~~((, attached to the directive,))~~ and
26 made a permanent part of the patient's medical records.

27 (3) A directive executed in another political jurisdiction is valid
28 to the extent permitted by Washington state law and federal
29 constitutional law.

1 NEW SECTION. **Sec. 4.** If a qualified patient capable of making
2 health care decisions indicates that he or she wishes to die at home,
3 the patient shall be discharged as soon as reasonably possible. The
4 health care provider or facility has an obligation to explain the
5 medical risks of an immediate discharge to the qualified patient. If
6 the provider or facility complies with the obligation to explain the
7 medical risks of an immediate discharge to a qualified patient, there
8 shall be no civil or criminal liability for claims arising from such
9 discharge.

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

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

19 (1) Prior to ~~((effectuating a))~~ the withholding or withdrawal of
20 life-sustaining ~~((procedures))~~ treatment from a qualified patient
21 pursuant to the directive, the attending physician shall make a
22 reasonable effort to determine that the directive complies with RCW
23 70.122.030 and, if the patient is ~~((mentally competent))~~ capable of
24 making health care decisions, that the directive and all steps proposed
25 by the attending physician to be undertaken are currently in accord
26 with the desires of the qualified patient.

27 (2) The attending physician or health facility shall inform a
28 patient or patient's authorized representative of the existence of any

1 policy or practice that would preclude the honoring of the patient's
2 directive at the time the physician or facility becomes aware of the
3 existence of such a directive. If the patient, after being informed of
4 such policy or directive, chooses to retain the physician or facility,
5 the physician or facility with the patient or the patient's
6 representative shall prepare a written plan to be filed with the
7 patient's directive that sets forth the physician's or facilities'
8 intended actions should the patient's medical status change so that the
9 directive would become operative. The physician or facility under this
10 subsection has no obligation to honor the patient's directive if they
11 have complied with the requirements of this subsection, including
12 compliance with the written plan required under this subsection.

13 (3) The directive shall be conclusively presumed, unless revoked,
14 to be the directions of the patient regarding the withholding or
15 withdrawal of life-sustaining ((procedures)) treatment. No physician,
16 ((and no licensed)) health facility, or health personnel acting in good
17 faith ((under the direction of a physician,)) with the directive or in
18 accordance with the written plan in subsection (2) of this section
19 shall be criminally or civilly liable for failing to effectuate the
20 directive of the qualified patient pursuant to this subsection. ((If
21 the physician refuses to effectuate the directive, such physician shall
22 make a good faith effort to transfer the qualified patient to another
23 physician who will effectuate the directive of the qualified patient.))

24 (4) No nurse, physician, or other health care practitioner may be
25 required by law or contract in any circumstances to participate in the
26 withholding or withdrawal of life-sustaining treatment if such person
27 objects to so doing. No person may be discriminated against in
28 employment or professional privileges because of the person's
29 participation or refusal to participate in the withholding or
30 withdrawal of life-sustaining treatment.

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

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

7 (2) The making of a directive pursuant to RCW 70.122.030 shall not
8 restrict, inhibit, or impair in any manner the sale, procurement, or
9 issuance of any policy of life insurance, nor shall it be deemed to
10 modify the terms of an existing policy of life insurance. No policy of
11 life insurance shall be legally impaired or invalidated in any manner
12 by the withholding or withdrawal of life-sustaining (~~procedures~~)
13 treatment from an insured qualified patient, notwithstanding any term
14 of the policy to the contrary.

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

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

22 The act of withholding or withdrawing life-sustaining
23 (~~procedures~~) treatment, when done pursuant to a directive described
24 in RCW 70.122.030 and which (~~causes~~) results in the death of the
25 declarer, shall not be construed to be an intervening force or to
26 affect the chain of proximate cause between the conduct of (~~any~~
27 ~~person~~) anyone that placed the declarer in a terminal condition or a
28 permanent unconscious condition and the death of the declarer.

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

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

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

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

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

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

1 NEW SECTION. **Sec. 13.** A directive executed anytime before the
2 effective date of this act which generally complies with this act is
3 effective under this act.

4 NEW SECTION. **Sec. 14.** A new section is added to chapter 43.70 RCW
5 to read as follows:

6 The department of health shall adopt guidelines and protocols for
7 how emergency medical personnel shall respond when summoned to the site
8 of an injury or illness for the treatment of a person who has signed a
9 written directive or durable power of attorney requesting that he or
10 she not receive futile emergency medical treatment.

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

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

15 NEW SECTION. **Sec. 17.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.