
SENATE BILL 5839

State of Washington

52nd Legislature

1991 Regular Session

By Senators Jesernig, Talmadge, Stratton, Bailey, Gaspard, Snyder and Sutherland.

Read first time February 25, 1991. Referred to Committee on Health & Long-Term 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 a
4 new section; 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11 (~~procedures~~) treatment withheld or withdrawn in instances of a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12 withdrawn.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 artificially provided nutrition and hydration, to
19 sustain, restore, or ~~((supplant))~~ replace a vital function, which, when
20 applied to a qualified patient, would serve only to ~~((artificially))~~
21 prolong the ~~((moment of death and where, in the judgment of the~~
22 ~~attending physician, death is imminent whether or not such procedures~~
23 ~~are utilized))~~ process of dying. "Life-sustaining ~~((procedure))~~
24 treatment" shall not include the administration of medication or the
25 performance of any medical ~~((procedure))~~ or surgical intervention
26 deemed necessary 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. The directive,
7 or a copy thereof, shall be made part of the patient's medical records
8 retained by the attending physician, a copy of which shall be forwarded
9 by the custodian of the records to the health facility (~~((upon the~~
10 ~~withdrawal of life-sustaining procedures))~~ when the withholding or
11 withdrawal of life-support treatment is contemplated. The directive
12 (~~((shall))~~) may be (~~((essentially))~~) in the following form, (~~((but))~~) and in
13 addition may include other specific directions:

14 (~~((DIRECTIVE TO PHYSICIANS))~~)

15 Health Care Directive

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

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

21 (a) If at any time I should (~~((have an incurable injury, disease, or~~
22 ~~illness certified))~~) be diagnosed in writing to be in a terminal
23 condition by (~~((two physicians))~~) the attending physician who has
24 personally examined me, or in a permanent unconscious condition by two
25 physicians, both of whom have personally examined me, and where the
26 application of life-sustaining (~~((procedures))~~) treatment would serve
27 only to artificially prolong the (~~((moment of my death and where my~~
28 ~~physician determines that my death is imminent whether or not life-~~
29 ~~sustaining procedures are utilized))~~) process of my dying, I direct that
30 such (~~((procedures))~~) treatment be withheld or withdrawn, and that I be

1 permitted to die naturally. I understand by using this form that a
2 terminal condition means an incurable and irreversible condition caused
3 by injury, disease, or illness, that would within reasonable medical
4 judgment cause death within a reasonable period of time in accordance
5 with accepted medical standards, and where the application of life-
6 sustaining treatment would serve only to prolong the process of dying.
7 I further understand in using this form that a permanent unconscious
8 condition means an incurable and irreversible condition in which I am
9 medically assessed within reasonable medical judgment as having no
10 reasonable probability of recovery from an irreversible coma or a
11 persistent vegetative state.

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

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

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

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

27 (f) I understand that before I sign this directive, I can add to or
28 delete from or otherwise change the wording of this directive and that
29 I may add to or delete from this directive at any time as long as it is
30 consistent with Washington state law or federal constitutional law.

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

4 Signed.....
5 City, County, and State of Residence

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

8 Witness.....
9 Witness.....

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

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

19 (4) After the effective date of this act, all directives should
20 include a reference to a qualified patient's desires with regard to the
21 withholding or withdrawal of artificial nutrition and hydration.

22 NEW SECTION. Sec. 4. If a qualified patient capable of making
23 health care decisions indicates by words or actions that he or she
24 wishes to die at home in dignity, the patient shall be discharged as
25 soon as reasonably possible. There shall be no civil or criminal
26 liability for claims arising from such discharge.

27 NEW SECTION. Sec. 5. A new section is added to chapter 70.122 RCW
28 to read as follows:

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

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

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

18 (2) The directive shall be conclusively presumed, unless revoked,
19 to be the directions of the patient regarding the withholding or
20 withdrawal of life-sustaining ~~((procedures))~~ treatment. No physician,
21 ~~((and no licensed))~~ health facility, or health personnel acting in good
22 faith ~~((under the direction of a physician,))~~ shall be criminally or
23 civilly liable for failing to effectuate the directive of the qualified
24 patient pursuant to this subsection. ~~((If the physician refuses to~~
25 ~~effectuate the directive, such physician shall make a good faith effort~~
26 ~~to transfer the qualified patient to another physician who will~~
27 ~~effectuate the directive of the qualified patient))~~ A person or health
28 facility who chooses not to comply with the directive shall immediately
29 take all reasonable steps to transfer care of the qualified patient to

1 another physician or health facility who will effectuate the directive.
2 A person whose conscience, or a health facility with a policy that,
3 does not allow participation in the withholding or withdrawal of life-
4 sustaining treatment, and who takes all reasonable steps to transfer
5 care of the qualified patient, shall be unconditionally protected from
6 civil and criminal liability unless otherwise negligent.

7 (3) The attending physician or health facility shall inform a
8 patient or patient's authorized representative of the existence of any
9 policy or practice that would preclude the honoring of the patient's
10 directive at the time the physician or facility becomes aware of the
11 existence of such a directive.

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

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

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

26 (3) No physician, health facility, or other health provider, and no
27 health care service plan, insurer issuing disability insurance, self-
28 insured employee welfare benefit plan, or nonprofit hospital service

1 plan, shall require any person to execute a directive as a condition
2 for being insured for, or receiving, health care services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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