
SENATE BILL 6320

State of Washington

52nd Legislature

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By Senators Amondson, M. Kreidler, Stratton, Sellar, Rinehart, Bailey, McCaslin, Snyder, Gaspard, Wojahn, Bauer, Niemi, Jesernig, Nelson, Moore, Williams, Talmadge, Owen, Bluechel, Barr, Skratek and Erwin

Read first time 01/24/92. 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; adding a new
4 section to chapter 43.70 RCW; creating a new section; and repealing RCW
5 70.122.050.

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

7 **Sec. 1.** RCW 70.122.010 and 1979 c 112 s 2 are each amended to read
8 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12 (~~procedures~~) treatment withheld or withdrawn in instances of a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.

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.

10 The legislature further believes that physicians and nurses should
11 not withhold or unreasonably diminish pain medication for patients in
12 a terminal condition where the primary intent of providing such
13 medication is to alleviate pain and maintain or increase the patient's
14 comfort.

15 The legislature further finds that there exists considerable
16 uncertainty in the medical and legal professions as to the legality of
17 terminating the use or application of life-sustaining ~~((procedures))~~
18 treatment where the patient has voluntarily ~~((and in sound mind))~~
19 evidenced a desire that such ~~((procedures))~~ treatment be withheld or
20 withdrawn.

21 In recognition of the dignity and privacy which patients have a
22 right to expect, the legislature hereby declares that the laws of the
23 state of Washington shall recognize the right of an adult person to
24 make a written directive instructing such person's physician to
25 withhold or withdraw life-sustaining ~~((procedures))~~ treatment in the
26 event of a terminal condition or permanent unconscious condition. The
27 legislature also recognizes a person's right to control their health
28 care may be exercised by an authorized representative who validly holds
29 the person's durable power of attorney for health care or is otherwise
30 the person's authorized health care decision maker pursuant to law.

1 The legislature further recognizes that in the absence of
2 controversy, the court is normally not the proper forum in which to
3 make decisions regarding life-sustaining treatment.

4 To avoid treatment that is not desired by a person in a terminal
5 condition or permanent unconscious condition, the legislature declares
6 this chapter to be in the interest of the public health and welfare.

7 **Sec. 2.** RCW 70.122.020 and 1979 c 112 s 3 are each amended to read
8 as follows:

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

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

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

17 ~~((2))~~ (3) "Directive" means a written document voluntarily
18 executed by the declarer ~~((in accordance with the requirements))~~
19 generally consistent with the guidelines of RCW 70.122.030.

20 ~~((3))~~ (4) "Health facility" means a hospital as defined in RCW
21 ~~((70.38.020(7))~~ 70.41.020(2) or a nursing home as defined in RCW
22 ~~((70.38.020(8))~~ 18.51.010, a home health agency or hospice agency as
23 defined in RCW 70.126.010, or a boarding home as defined in RCW
24 18.20.020.

25 ~~((4))~~ (5) "Life-sustaining ~~((procedure))~~ treatment" means any
26 medical or surgical ~~((procedure or intervention which utilizes))~~
27 intervention that uses mechanical or other artificial means, including
28 but not limited to artificially provided nutrition and hydration, to
29 sustain, restore, or ~~((supplant))~~ replace a vital function, which, when

1 applied to a qualified patient, would serve only to (~~artificially~~)
2 prolong the (~~moment of death and where, in the judgment of the~~
3 ~~attending physician, death is imminent whether or not such procedures~~
4 ~~are utilized~~) process of dying. "Life-sustaining (~~procedure~~)
5 treatment" shall not include the administration of medication or the
6 performance of any medical (~~procedure~~) or surgical intervention
7 deemed necessary solely to alleviate pain.

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

12 (~~(5)~~) (7) "Physician" means a person licensed under chapters
13 18.71 or 18.57 RCW.

14 (~~(6)~~) (8) "Qualified patient" means a patient diagnosed (~~and~~
15 certified) in writing to (~~be afflicted with~~) have a terminal
16 condition by (~~two physicians one of whom shall be~~) the patient's
17 attending physician, who (~~have~~) has personally examined the patient,
18 or a patient who is diagnosed in writing to be in a permanent
19 unconscious condition by two physicians, one of whom is the patient's
20 attending physician, and both of whom have personally examined the
21 patient.

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

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

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

5 (1) Any adult person may execute a directive directing the
6 withholding or withdrawal of life-sustaining (~~(procedures)) treatment~~
7 in a terminal condition or permanent unconscious condition. The
8 directive shall be signed by the declarer in the presence of two
9 witnesses not related to the declarer by blood or marriage and who
10 would not be entitled to any portion of the estate of the declarer upon
11 declarer's decease under any will of the declarer or codicil thereto
12 then existing or, at the time of the directive, by operation of law
13 then existing. In addition, a witness to a directive shall not be the
14 attending physician, an employee of the attending physician or a health
15 facility in which the declarer is a patient, or any person who has a
16 claim against any portion of the estate of the declarer upon declarer's
17 decease at the time of the execution of the directive. However, a
18 witness to a directive may be an employee of a long-term care facility,
19 as defined in RCW 43.190.020, in which the declarer is a resident if
20 the second witness is a state long-term care ombudsman, pursuant to
21 chapter 43.190 RCW. The directive, or a copy thereof, shall be made
22 part of the patient's medical records retained by the attending
23 physician, a copy of which shall be forwarded by the custodian of the
24 records to the health facility (~~(upon the withdrawal of life-sustaining~~
25 ~~procedures)) when the withholding or withdrawal of life-support~~
26 treatment is contemplated. The directive (~~(shall)) may~~ be
27 (~~(essentially)) in the following form, but in addition may include~~
28 other specific directions:

29 (~~(DIRECTIVE TO PHYSICIANS))~~)

1 Health Care Directive

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

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

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

27 (b) In the absence of my ability to give directions regarding the
28 use of such life-sustaining (~~procedures~~) treatment, it is my
29 intention that this directive shall be honored by my family and
30 physician(s) as the final expression of my legal right to refuse

1 medical or surgical treatment and I accept the consequences (~~from~~) of
2 such refusal. If another person is appointed to make these decisions
3 for me, whether through a durable power of attorney or otherwise, I
4 request that person be guided by this directive and any other clear
5 expressions of my desires.

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

8 I DO

9 I DO NOT

10 want to have artificially supplied nutrition and hydration withheld or
11 withdrawn.

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

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

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

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

26 Signed.....

27 City, County, and State of Residence

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

30 Witness.....

Witness.....

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

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

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

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

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

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

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

3 (1) Prior to ~~((effectuating a))~~ the withholding or withdrawal of
4 life-sustaining ~~((procedures))~~ treatment from a qualified patient
5 pursuant to the directive, the attending physician shall make a
6 reasonable effort to determine that the directive complies with RCW
7 70.122.030, pursuant to lawful exercise of a valid durable power of
8 attorney for health care, or pursuant to appropriate directions of a
9 person otherwise lawfully authorized to make a patient's health care
10 decisions, and, if the patient is ~~((mentally competent))~~ capable of
11 making health care decisions, that the directive and all steps proposed
12 by the attending physician to be undertaken are currently in accord
13 with the desires of the qualified patient.

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

1 care of the qualified patient, shall be unconditionally protected from
2 civil and criminal liability unless otherwise negligent.

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

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

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

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

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

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

1 The act of withholding or withdrawing life-sustaining
2 ((~~procedures~~)) treatment, when done pursuant to a directive described
3 in RCW 70.122.030, pursuant to lawful exercise of a valid durable power
4 of attorney for health care, or pursuant to appropriate directions of
5 a person otherwise lawfully authorized to make a patient's health care
6 decisions and which causes the death of the declarer, shall not be
7 construed to be an intervening force or to affect the chain of
8 proximate cause between the conduct of ((~~any person~~)) anyone that
9 placed the declarer in a terminal condition or a permanent unconscious
10 condition and the death of the declarer.

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

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

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

26 Nothing in this chapter shall be construed to condone, authorize,
27 or approve mercy killing or physician-assisted suicide, or to permit

1 any affirmative or deliberate act or omission to end life other than to
2 permit the natural process of dying.

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

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

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

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

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

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

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

1 A directive executed anytime before the effective date of this act
2 that generally complies with this act is effective under this act.

3 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.70 RCW
4 to read as follows:

5 The department of health shall adopt rules for guidelines and
6 protocols for how emergency medical personnel shall respond in
7 circumstances where they have been summoned to the site of an injury or
8 illness but the ill or injured person has signed a living will or a
9 durable power of attorney for health care requesting that he or she not
10 receive aggressive emergency medical treatment.

11 NEW SECTION. **Sec. 16.** RCW 70.122.050 and 1979 c 112 s 6 are
12 each repealed.

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