

2 SSB 6589 - S AMD 612

3 By Senators Keiser, Hargrove and Long

4 ADOPTED 02/19/02

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

7 NEW SECTION. **Sec. 1.** The legislature declares that a person with  
8 capacity has the ability to control decisions relating to his or her  
9 own mental health care. The legislature recognizes that a mental  
10 health advance directive can be an essential tool for a person to  
11 express his or her choices before the effects of mental illness deprive  
12 the person of the power to express his or her instructions and  
13 preferences for mental health treatment. The legislature affirms that,  
14 pursuant to other provisions of law, a mental health advance directive  
15 created under this chapter is to be respected by health care providers  
16 and mental health professionals, guardians, attorneys-in-fact, and  
17 other surrogate decision makers acting on behalf of the person who  
18 created it.

19 NEW SECTION. **Sec. 2.** The definitions in this section apply  
20 throughout this chapter unless the context clearly requires otherwise.

21 (1) "Adult" means any person who has attained the age of majority  
22 as defined in RCW 26.28.010 or an emancipated minor.

23 (2) "Agent" means an attorney-in-fact or agent as provided in  
24 chapter 11.94 RCW and shall include any alternative agent appointed.

25 (3) "Court" means a superior court under chapter 2.08 RCW.

26 (4) "Health care information" has the meaning in RCW 70.02.010 and  
27 includes mental health, sexually transmitted diseases and human  
28 immunodeficiency virus/AIDS, and alcohol and substance abuse  
29 information.

30 (5) "Health care provider" means a person licensed under chapter  
31 18.57, 18.57A, 18.71, or 18.71A RCW or RCW 18.79.050.

32 (6) "Incapacitated person" or "incapacitated" means a person who is  
33 not a person with capacity.

34 (7) "Informed consent" means consent that conforms to the elements  
35 of RCW 7.70.060.

1 (8) "Mental disorder" has the meaning given in RCW 71.05.020.

2 (9) "Mental health advance directive" or "directive" means a  
3 written document in which the person makes a declaration of  
4 instructions or preferences or appoints an agent to make decisions on  
5 behalf of the person regarding the person's mental health treatment and  
6 that is consistent with the provisions of this chapter.

7 (10) "Mental health professional" has the meaning given in RCW  
8 71.05.020.

9 (11) "Person with capacity" means an adult who is able to give  
10 informed consent under RCW 7.70.065.

11 (12) "Professional person" has the meaning given in RCW 71.05.020.

12 NEW SECTION. **Sec. 3.** (1) For the purposes of this chapter, an  
13 adult is presumed to be a person with capacity.

14 (2) For the purposes of this chapter, no adult may be declared an  
15 incapacitated person except by:

16 (a) A court order;

17 (b) One mental health professional and one health care provider; or

18 (c) Two health care providers.

19 (3) When a court has found that the person is a person with  
20 capacity and there is a subsequent change in the person's condition,  
21 subsequent determinations whether the person is incapacitated may be  
22 made by any of the provisions of subsection (2) of this section.

23 (4)(a) A principal, agent, professional person, or health care  
24 provider may seek a determination whether the principal is  
25 incapacitated.

26 (b) The determination shall be made within forty-eight hours of the  
27 request for a determination. If no determination has been made within  
28 forty-eight hours, the principal shall be considered to have been a  
29 person with capacity at the time in question.

30 NEW SECTION. **Sec. 4.** (1) A person with capacity may create a  
31 mental health advance directive.

32 (2) A declaration executed in accordance with this chapter is  
33 presumed to be valid. The inability to honor one or more provisions of  
34 a directive does not affect the validity of the remaining conditions.

35 (3) A directive may include any provision relating to mental health  
36 treatment or the care of the person or the person's personal affairs.  
37 Without limitation, a directive may include:

1 (a) The person's preferences and instructions for mental health  
2 treatment;

3 (b) Consent to specific types of mental health treatment;

4 (c) Refusal to consent to specific types of mental health  
5 treatment;

6 (d) Consent to admission to and retention in a facility for mental  
7 health treatment;

8 (e) Descriptions of situations that may cause the person to  
9 experience a mental health crisis;

10 (f) Suggested alternative responses that may supplement or be in  
11 lieu of direct mental health treatment, such as treatment approaches  
12 from other providers;

13 (g) Appointment of an agent to make mental health treatment  
14 decisions on the person's behalf, including authorizing the agent to  
15 provide consent on the person's behalf to voluntary admission to  
16 inpatient mental health treatment consistent with section 8 of this act  
17 and to consent to or authorize the uses and disclosures in (h) and (i)  
18 of this subsection;

19 (h) Consent to release of the person's health care information used  
20 for purposes of treatment, payment, and operations;

21 (i) Authorization to have the person's health care information  
22 released to third parties; and

23 (j) The person's nomination of a guardian or limited guardian for  
24 consideration by the court if guardianship proceedings are commenced.

25 (4)(a) A directive may be combined with or be independent of the  
26 power of attorney authorized in chapter 11.94 RCW or guardianship  
27 authorized in chapter 11.88 RCW, so long as the processes for each are  
28 executed in accordance with its own statutes.

29 (b) Unless provided otherwise in either document, the directive or  
30 power of attorney most recently created shall be construed to be the  
31 person's mental health treatment preferences and instructions.

32 (c) Where a directive executed under this chapter is inconsistent  
33 with a directive executed under chapter 70.122 RCW, the most recently  
34 created directive controls as to the inconsistent provisions.

35 NEW SECTION. **Sec. 5.** (1) A directive shall:

36 (a) Be in writing;

37 (b) Contain language that clearly indicates that the person intends  
38 to create a directive;

1 (c) Be dated and signed by the person; and

2 (d) Be witnessed in writing by at least two adults, each of whom  
3 shall certify that he or she personally knows the person, was present  
4 when the person dated and signed the directive, and that the person did  
5 not appear to be an incapacitated person or acting under fraud, undue  
6 influence, or duress.

7 (2) A witness may not be any of the following:

8 (a) A person designated to make health care decisions on the  
9 person's behalf;

10 (b) A health care provider or professional person directly involved  
11 with the provision of care to the person at the time the directive is  
12 executed;

13 (c) An owner, operator, employee, or relative of an owner or  
14 operator of a health care facility or long-term care facility in which  
15 the person is a patient or resident;

16 (d) A person who is related by blood, marriage, or adoption to the  
17 person or with whom the person has a dating relationship, as defined in  
18 RCW 26.50.010;

19 (e) A person who is declared to be an incapacitated person;

20 (f) A person who would benefit financially if the person making the  
21 directive undergoes mental health treatment; or

22 (g) A minor.

23 (3) A directive may:

24 (a) Become operative upon execution or at a later time as  
25 designated in the directive;

26 (b) Be revoked, in whole or in part, by the person who created it;

27 (c) Be revoked, in whole or in part, expressly or to the extent of  
28 any inconsistency, by a subsequent directive;

29 (d) Expire under its own terms;

30 (e) Be superseded or revoked by a court order, including a criminal  
31 sentence. To the extent a directive is not in conflict with a court  
32 order, the directive remains effective. A declaration shall not be  
33 interpreted in a manner that interferes with incarceration or detention  
34 by the department of corrections, a city or county jail, or the  
35 juvenile rehabilitation administration or with supervision of a person  
36 who is subject to involuntary treatment pursuant to chapter 10.77,  
37 70.96A, 71.05, 71.09, or 71.34 RCW.

38 (4) A directive may not:

39 (a) Create an entitlement to treatment;

1 (b) Obligate any health care provider to pay the costs associated  
2 with the treatment requested; or

3 (c) Obligate any health care provider to be responsible for the  
4 nontreatment personal care of the person or the person's personal  
5 affairs; or

6 (d) Be revoked by an incapacitated person.

7 (5) A directive that would have otherwise expired but is operative  
8 because the person is an incapacitated person remains operative until  
9 the person is no longer an incapacitated person.

10 NEW SECTION. **Sec. 6.** (1) If a directive authorizes the  
11 appointment of an agent, the provisions of chapter 11.94 RCW and RCW  
12 7.70.065 shall apply unless otherwise stated in this chapter.

13 (2) An agent must act in good faith.

14 (3) An agent who has accepted the appointment in writing may make  
15 decisions on behalf of the principal only pursuant to the terms of the  
16 directive. The decisions must be consistent with the instructions and  
17 preferences the principal has expressed in the directive, or if not  
18 expressed, as otherwise known to the agent. If the principal's  
19 instructions or preferences are not known, the agent shall make the  
20 decision he or she, in good faith, determines the principal would make  
21 if capable to do so.

22 (4) The agent has the same right as the person to receive, review,  
23 and authorize the release of the person's health care information when  
24 the agent is acting on behalf of the principal and to the extent  
25 required for the agent to carry out his or her duties. This subsection  
26 shall be construed to be consistent with chapters 70.02, 70.24, 70.96A,  
27 71.05, and 71.34 RCW, and with federal law regarding health care  
28 information.

29 (5) Unless otherwise provided in the directive and agreed to in  
30 writing by the agent, the agent is not, as a result of acting in the  
31 capacity of agent, personally liable for the cost of treatment provided  
32 to the principal.

33 (6) An agent may not use or threaten physical force, abuse,  
34 neglect, financial exploitation, or abandonment of the principal, as  
35 those terms are defined in RCW 74.34.020, to enforce or carry out the  
36 directive.

1        NEW SECTION.    **Sec. 7.**    (1)(a) Upon receiving a directive, a health  
2 care provider or professional person treating the person, or personnel  
3 acting under the direction of the health care provider or professional  
4 person, shall make the directive a part of the person's medical record  
5 and shall be deemed to have actual knowledge of the directive's  
6 contents. Whenever possible, the health care provider or professional  
7 person shall inform a person or the person's agent if he or she may be  
8 precluded from honoring all or part of the directive based on the  
9 reasons in subsection (2) of this section.

10        (b) If no physician-patient relationship has previously been  
11 established, nothing in this statute requires the establishment of a  
12 physician-patient relationship.

13        (2)(a) A health care provider or professional person who has been  
14 presented with or has obtained a person's directive and who is treating  
15 the person shall act in accordance with the provisions of the directive  
16 to the fullest extent possible unless, in the determination of the  
17 health care provider or professional person:

18        (i) Compliance with the provision would violate the accepted  
19 standard of care established in RCW 7.70.040;

20        (ii) The requested treatment is not available;

21        (iii) Compliance with the provision would violate applicable law;

22        (iv) It is an emergency situation and compliance would endanger any  
23 person's life or health; or

24        (v) The principal, without the benefit of the specific treatment  
25 measure, is incapable of participating in any available treatment plan  
26 that will give the principal a realistic opportunity of improving his  
27 or her condition.

28        If the health care provider or professional person is at any time  
29 unable to comply, the health care provider or professional person shall  
30 offer to withdraw from treating the person unless no other treatment  
31 provider is reasonably available. A health care provider or  
32 professional person who withdraws shall promptly notify the principal  
33 and the agent, if any, and shall document the notification in the  
34 principal's medical record.

35        (b) If the person consents in the directive to having his or her  
36 health care information released to other providers or third parties,  
37 or provides for an agent who authorizes such disclosure, the  
38 professional person's disclosure of health care information shall not  
39 be a violation of chapter 70.02 RCW.

1 (3) The health care provider or professional person shall obtain  
2 the person's informed consent regarding all mental health treatment  
3 decisions unless the person has waived the right to informed consent.

4 (4) Treatment under chapters 71.05 and 71.34 RCW shall be provided  
5 pursuant to the provisions of those chapters. A professional person  
6 who is treating a person involuntarily detained or committed under  
7 chapter 71.05 or 71.34 RCW shall act in accordance with the provisions  
8 of the person's directive to the fullest extent possible and as  
9 permitted by the applicable involuntary treatment laws, consistent with  
10 accepted standard of care and the availability of treatment.

11 (5) For purposes of this section, "accepted standard of care" is  
12 the standard established in RCW 7.70.040.

13 NEW SECTION. **Sec. 8.** (1) If a principal consents in his or her  
14 directive, or authorizes an agent to consent on the principal's behalf,  
15 to voluntary admission to inpatient mental health treatment, and at the  
16 time of admission the principal refuses treatment, the principal may  
17 only be admitted to inpatient psychiatric treatment if a physician  
18 member of the treating facility's professional staff:

19 (a) Evaluates the principal's mental condition, including a review  
20 of reasonably available psychiatric and psychological history,  
21 diagnosis, and treatment needs, and determines, in conjunction with  
22 another health care provider or mental health professional, that the  
23 principal is incapacitated;

24 (b) Obtains the informed consent of the agent, if any, designated  
25 in the directive;

26 (c) Makes a written determination that the principal needs an  
27 inpatient evaluation or is in need of inpatient treatment and that the  
28 evaluation or treatment cannot be accomplished in a less restrictive  
29 setting; and

30 (d) Documents in the principal's medical chart a summary of the  
31 physician's findings and recommendations for treatment.

32 (2) In the event the admitting physician is not a psychiatrist, the  
33 principal shall receive a complete psychological assessment by a mental  
34 health professional within twenty-four hours of admission to determine  
35 the continued need for inpatient evaluation or treatment.

36 (3)(a) A person authorized in section 3 of this act may seek a  
37 determination of the person's capacity to revoke. If it is determined  
38 that the person has the capacity to revoke, then the person's refusal

1 of voluntary admission shall be a revocation of that provision of the  
2 directive.

3 (b) If a person who is determined by two health care providers or  
4 one mental health professional and one health care provider to lack the  
5 capacity to revoke the directive, the person may immediately seek  
6 injunctive relief for release from the facility. The sole issue to be  
7 decided is the person's capacity to revoke the directive.

8 (4) If, after a seventy-two hour period, the principal has not  
9 regained capacity or has regained capacity but refuses to consent to  
10 remain for additional treatment, the principal must be released during  
11 reasonable daylight hours, unless detained under chapter 70.96A, 71.05,  
12 or 71.34 RCW.

13 (5) Any principal who is voluntarily admitted to inpatient mental  
14 health treatment under this chapter, or who consents to remain for  
15 additional treatment after the initial seventy-two hour period, shall  
16 have all the rights provided to individuals who are voluntarily  
17 admitted to inpatient treatment under chapter 71.05, 71.34, or 72.23  
18 RCW. The continuing need for treatment of a principal who consents to  
19 remain for additional treatment under this chapter shall be reviewed by  
20 the professional staff of the treating facility, and the person's agent  
21 if any, at least as frequently as set forth for voluntary patients  
22 under chapter 71.05, 71.34, or 72.23 RCW.

23 NEW SECTION. **Sec. 9.** A person with capacity may revoke a  
24 directive in whole or in part by written statement at any time. The  
25 notice need not follow any specific form so long as it is written and  
26 the intent of the principal can be discerned. The written statement of  
27 revocation is effective when signed by the person and delivered to the  
28 agent, if one is appointed, and the health care provider or  
29 professional person who is responsible for the delivery of mental  
30 health treatment to the person. The health care provider or  
31 professional person shall make the revocation part of the person's  
32 medical record.

33 NEW SECTION. **Sec. 10.** (1) For the purposes of this section,  
34 "provider" means a private or public agency, government entity, health  
35 care provider, professional person, person acting under the direction  
36 of a health care provider or professional person, health care facility,  
37 or long-term care facility.



1 (2) A provider is not subject to civil liability or professional  
2 conduct sanctions when, in good faith:

3 (a) The provider provides treatment to a principal in the absence  
4 of actual knowledge of the existence of a directive, or provides  
5 treatment pursuant to a directive in the absence of actual knowledge of  
6 the revocation of the directive, unless the absence of actual knowledge  
7 resulted from the negligence of the provider;

8 (b) A health care provider or mental health professional determines  
9 in good faith that the principal is or is not incapacitated for the  
10 purpose of deciding whether to proceed or not to proceed according to  
11 a directive, and acts upon that determination;

12 (c) The provider administers or does not administer mental health  
13 treatment according to the principal's directive in good faith reliance  
14 upon the validity of the directive and the directive is subsequently  
15 found to be invalid;

16 (d) The provider does not provide treatment according to the  
17 directive for one of the reasons authorized under section 7 of this  
18 act; or

19 (e) The provider provides treatment according to the principal's  
20 directive.

21 NEW SECTION. **Sec. 11.** Any person with good reason to believe that  
22 a directive has been created or revoked under circumstances amounting  
23 to fraud, duress, or undue influence, may petition the court for  
24 appointment of a guardian for the person or to review the actions of  
25 the agent or person alleged to be involved in the improper conduct  
26 under RCW 11.94.090 or 74.34.110.

27 NEW SECTION. **Sec. 12.** The fact that a person has executed a  
28 directive does not constitute an indication of mental disorder or that  
29 the person is not capable of providing informed consent.

30 NEW SECTION. **Sec. 13.** A person shall not be required to execute  
31 or to refrain from executing a directive as a criterion for insurance,  
32 as a condition for receiving mental or physical health services, or as  
33 a condition of admission or discharge from a health care facility or  
34 long-term care facility.

1        NEW SECTION.    **Sec. 14.**    A directive does not limit any authority  
2 otherwise provided in Title 71 or 10 RCW, or any other applicable state  
3 or federal laws to detain a person, take a person into custody, or to  
4 admit, retain, or treat a person in a health care facility.

5        NEW SECTION.    **Sec. 15.**    Where a person consents in a directive, or  
6 authorizes his or her agent to consent to electroconvulsive therapy,  
7 the professional person must document, in the person's medical record,  
8 the reasons the professional person elected to use electroconvulsive  
9 therapy.

10       NEW SECTION.    **Sec. 16.**    The directive may, but is not required to,  
11 be in the following form:

12    **"PART I.        STATEMENT OF INTENT TO CREATE A MENTAL HEALTH ADVANCE**  
13    **DIRECTIVE**

14    I, . . . . ., being a person with capacity, willfully and voluntarily  
15 execute this mental health advance directive so that my choices  
16 regarding my mental health care will be carried out in circumstances  
17 when I am unable to express my intent regarding my mental health care.  
18 If a guardian or other decision maker is appointed by a court to make  
19 mental health decisions for me, I intend this document to take  
20 precedence over all other means of ascertaining my intent.

21    The fact that I may have left blanks in this mental health advance  
22 directive should not affect its validity in any way. I intend that all  
23 completed sections be followed. If I have not expressed a choice, my  
24 agent should make the decision that he or she determines is the  
25 decision I would make if I were capable to do so.

26    I intend this mental health advance directive to take precedence over  
27 any and all durable powers of attorney for health care documents and/or  
28 other mental health advance directives I have previously executed, to  
29 the extent that they are inconsistent with this document, or unless I  
30 expressly state otherwise in this mental health advance directive.

31    I understand that I may revoke this mental health advance directive in  
32 whole or in part only if I am a person with capacity. I understand  
33 that I cannot revoke this mental health advance directive if a court,  
34 two health care providers, or one mental health professional and one  
35 health care provider find that I am an incapacitated person. I

1 understand that, except as otherwise provided in law, revocation must  
2 be in writing.

3 I understand that nothing in this mental health advance directive, or  
4 in my refusal of treatment to which I consent in this mental health  
5 advance directive, authorizes any agent designated by this mental  
6 health advance directive to use or threaten to use physical force,  
7 abuse, neglect, financial exploitation, or abandonment to enforce or  
8 carry out my mental health advance directive.

9 **PART II. STATEMENT OF INTENT REGARDING WHEN THIS MENTAL HEALTH ADVANCE**  
10 **DIRECTIVE BECOMES OPERATIVE**

11 I intend that this mental health advance directive become operative  
12 (initial only one):

13 . . . Immediately upon my signing of this mental health advance  
14 directive

15 . . . When the following circumstances, symptoms, or behaviors occur:  
16 . . . . .

17 . . . If I become incapacitated.

18 **PART III. STATEMENT OF INTENT REGARDING PREFERENCES OR INSTRUCTIONS**  
19 **ABOUT TREATMENT, FACILITIES, AND PHYSICIANS**

20 A. Preferences or Instructions About Physician(s) to Be Involved in My  
21 Treatment

22 I would like the physician named below to be involved in my treatment  
23 decisions: Dr. . . . . Telephone . . . . .  
24 Dr. . . . . Telephone . . . . .

25 I do not wish to be treated by: . . . . .

26 B. Preferences or Instructions About Other Providers

27 I am receiving other treatment or care from providers who I feel have  
28 an impact on my mental health care. I would like the following  
29 additional service provider(s) to be contacted when this mental health  
30 advance directive is operative:

31 Name . . . . Profession . . . . Telephone . . . . .  
32 Name . . . . Profession . . . . Telephone . . . . .

1 Name . . . . . Profession . . . . . Telephone . . . . .

2 C. Preferences or Instructions About Medications for Psychiatric  
3 Treatment (initial all that apply):

4 . . . I consent, and authorize my agent (if appointed) to consent, to  
5 the following medications: . . . . .  
6 . . . . .

7 . . . I specifically do not consent and I do not authorize my agent (if  
8 appointed) to consent to the administration of the following  
9 medications: . . . . .  
10 . . . . .

11 . . . I am willing to take the medications excluded above if my only  
12 reason for excluding them is the side effects which include . . . . .  
13 and these side effects can be eliminated by dosage adjustment or other  
14 means.

15 . . . I am willing to try any new medication the hospital doctor  
16 recommends.

17 . . . I am willing to try any new medications my outpatient doctor  
18 recommends.

19 . . . I do not want to try any new medications.

20 Medication Allergies

21 I have allergies to, or severe side effects from, the following  
22 medications: . . . . .  
23 . . . . .

24 Other Medication Preferences or Instructions

25 I have the following other preferences or instructions about  
26 medications: . . . . .  
27 . . . . .  
28 . . . . .

29 D. Preferences or Instructions About Hospitalization and Alternatives  
30 (initial all that apply and, if desired, rank "1" for first choice, "2"  
31 for second choice, and so on):

1 . . . In the event my psychiatric condition is serious enough to  
2 require 24-hour care and I have no physical conditions that require  
3 immediate access to emergency medical care, I prefer to receive this  
4 care in programs/facilities designed as alternatives to psychiatric  
5 hospitalizations.

6 I would also like the interventions below to be tried before  
7 hospitalization is considered:

8 . . . Calling someone or having someone call you when needed

9 . . . Staying overnight with someone

10 Name: . . . . . Telephone: . . . . .

11 . . . Having a mental health service provider come to see you

12 . . . Going to a crisis triage center or emergency room

13 . . . Staying overnight at a crisis respite (temporary) bed

14 . . . Seeing a service provider for help with psychiatric medications

15 . . . Other, specify . . . . .

16 Authority to Consent to Inpatient Treatment

17 I consent, and authorize my agent (if appointed) to consent, to  
18 voluntary admission to inpatient mental health treatment for a period  
19 not to exceed 72 hours (initial one if desired):

20 . . . If deemed appropriate by my agent (if appointed) and treating  
21 physician

22 . . . Under the following circumstances (specify symptoms, behaviors,  
23 or circumstances that indicate the need for hospitalization)  
24 . . . . .

25 . . . I do not consent, or authorize my agent (if appointed) to consent  
26 to inpatient treatment.

27 Hospital Preferences or Instructions

28 If hospitalization is required, I prefer the following hospitals:

29 . . . . .

30 I do not wish to be admitted to the following hospitals:

31 . . . . .

32 E. Preferences or Instructions About Pre-Emergency Interventions

1 I would like the interventions below to be tried before use of  
2 seclusion or restraint is considered (initial all that apply):

3 . . . "Talk me down" one-on-one

4 . . . More medication

5 . . . Time out/privacy

6 . . . Show of authority/force

7 . . . Shift my attention to something else

8 . . . Set firm limits

9 . . . Help me to discuss/vent feelings

10 . . . Decrease stimulation

11 . . . Offer to have neutral person settle dispute

12 . . . Other, specify . . . . .

13 F. Preferences or Instructions About Seclusion, Restraint, and  
14 Emergency Medications

15 If it is determined that I am engaging in behavior that requires  
16 seclusion, physical restraint, and/or emergency use of medication, I  
17 prefer these interventions in the following order (rank "1" for first  
18 choice, "2" for second choice, and so on):

19 . . . Seclusion

20 . . . Physical restraints

21 . . . Seclusion and physical restraint (combined)

22 . . . Medication by injection

23 . . . Medication in pill or liquid form

24 In the event that my attending physician decides to use medication in  
25 response to an emergency situation after due consideration of my  
26 preferences or instructions for emergency treatments stated above, I  
27 expect the choice of medication to reflect any preferences or  
28 instructions I have expressed in Part III C of this form. The  
29 preferences or instructions I express in this section regarding  
30 medication in emergency situations do not constitute consent to use of  
31 the medication for nonemergency treatment.

32 G. Preferences or Instructions About Electroconvulsive Therapy (ECT or  
33 Shock Therapy)

34 My wishes regarding electroconvulsive therapy are (initial one):

1 . . . I do not consent, nor authorize my agent (if appointed) to  
2 consent, to the administration of electroconvulsive therapy

3 . . . I consent, and authorize my agent (if appointed) to consent, to  
4 the administration of electroconvulsive therapy

5 . . . I consent, and authorize my agent (if appointed) to consent, to  
6 the administration of electroconvulsive therapy, but only under the  
7 following conditions: . . . . .

8 H. Additional Instructions About My Mental Health Care

9 Other instructions about my mental health care: . . . . .  
10 . . . . .

11 In case of emergency, please contact:

12 Name: . . . . .

13 Address: . . . . .

14 . . . . .

15 Work telephone: . . . . .

16 Home telephone: . . . . .

17 Relationship: . . . . .

18 Physician: . . . . .

19 Address: . . . . .

20 . . . . .

21 Telephone: . . . . .

22 The following may help me to avoid a hospitalization:

23 . . . . .

24 I generally react to being hospitalized as follows:

25 . . . . .

26 Staff of the hospital or crisis unit can help me by doing the  
27 following:

28 . . . . .

29 **PART IV. STATEMENT OF INTENT TO APPOINT AN AGENT**

30 I authorize an agent to make mental health treatment decisions on my  
31 behalf. The authority granted to my agent includes the right to  
32 consent, refuse consent, or withdraw consent to any mental health care,  
33 treatment, service, or procedure, and to obtain and to authorize

1 disclosure of health care information, as defined in section 2 of this  
2 act, and other information relevant to such health care, treatment,  
3 service, or procedure consistent with any instructions and/or  
4 limitations I have set forth in this mental health advance directive.  
5 I intend that those decisions should be made in accordance with my  
6 expressed wishes as set forth in this document. If I have not  
7 expressed a choice in this document, I authorize my agent to make the  
8 decision that my agent determines is the decision I would make if I  
9 were capable to do so.

10 A. Designation of an Agent

11 I hereby appoint the following person as my agent to make mental health  
12 treatment decisions for me as authorized in this document and request  
13 that this person to be notified immediately when this mental health  
14 advance directive becomes operative:

15 Name: . . . . . Relationship: . . . . .  
16 Address: . . . . .  
17 Day Telephone: . . . . . Evening Telephone: . . . . .

18 Agent's Acceptance

19 I hereby accept the designation as the agent for purposes described in  
20 this document (agent's signature) . . . . .

21 B. Designation of Alternate Agent

22 If the person named above is unavailable, unable, or refuses to serve  
23 as my agent, or I revoke that person's authority to serve as my agent,  
24 I hereby appoint the following person as my alternate agent and request  
25 that this person be notified immediately when this mental health  
26 advance directive becomes operative:

27 Name: . . . . . Relationship: . . . . .  
28 Address: . . . . .  
29 Day Telephone: . . . . . Evening Telephone: . . . . .

30 Alternate Agent's Acceptance

31 I hereby accept the designation as the alternate agent for purposes  
32 described in this document (alternate's signature) . . . . .

33 C. When My Spouse is My Agent (initial if desired)



1 . . . If my spouse is my agent, I desire that person to remain as my  
2 agent even if we become legally separated or our marriage is dissolved.

3 D. Limitations on My Agent's Authority

4 I do not grant my agent the authority to consent on my behalf to the  
5 following: . . . . .

6 E. Agent Authorized During Principal's Incapacity (initial if desired)

7 . . . This agency shall not be affected by the disability or incapacity  
8 of the principal.

9 F. Preference as to Court-Appointed Guardian

10 In the event a court decides to appoint a guardian who will make  
11 decisions regarding my mental health treatment, I desire the following  
12 person to be appointed:

13 Name: . . . . . Relationship: . . . . .  
14 Address: . . . . .  
15 Day Telephone: . . . . . Evening Telephone: . . . . .

16 The appointment of a guardian of my estate or my person or any other  
17 decision maker shall not give the guardian or decision maker the power  
18 to revoke, suspend, or terminate this mental health advance directive  
19 or the powers of my agent, except as authorized by law.

20 **PART V. OTHER DOCUMENTS**

21 (Initial all that apply):

22 . . . I have executed the following documents that include the power to  
23 make decisions regarding health care services for myself:

- 24 . . . Health care power of attorney (chapter 11.94 RCW)
- 25 . . . Advance directive or "living will" (chapter 70.122 RCW)

26 . . . I authorize my agent appointed under this directive and the agent  
27 appointed under the other documents to serve:

- 28 . . . Jointly with consent of each other as to my mental health  
29 treatment
- 30 . . . Separately without each other's consent as to my mental health  
31 treatment

1 In the event a decision about health care treatment impacts both mental  
2 health and physical health treatment and the agents appointed under my  
3 health care power of attorney, advance directive, and mental health  
4 advance directive cannot reach a consensus, the agent appointed under  
5 the following document will control (check only one):

- 6 . . . Health care power of attorney (chapter 11.94 RCW)
- 7 . . . Advance directive or "living will" (chapter 70.122 RCW)
- 8 . . . Mental health advance directive (chapter 71.-- RCW (sections 1  
9 through 16 of this act))

10 . . . I have also executed a general or financial power of attorney  
11 that **does not include** the power to make decisions regarding health care  
12 services for me.

13 **PART VI. PREFERENCES OR INSTRUCTIONS ABOUT NOTIFICATION OF OTHERS,**  
14 **CARE OF PERSONAL AFFAIRS, AND CONSENTS TO RELEASE TREATMENT INFORMATION**

15 I acknowledge that state and federal law may require that I be notified  
16 of my rights to limit disclosure of health information. I hereby waive  
17 any specific type of notification of such rights and authorize  
18 disclosure as set forth in detail herein or as authorized by my agent.

19 A. Who Should Be Notified

20 I desire staff to notify the following individuals, in addition to my  
21 agent (if appointed) immediately when this mental health advance  
22 directive becomes operative:

23 Name: . . . . . Relationship: . . . . .  
24 Address: . . . . .  
25 Day Telephone: . . . . . Evening Telephone: . . . . .

26 Name: . . . . . Relationship: . . . . .  
27 Address: . . . . .  
28 Day Telephone: . . . . . Evening Telephone: . . . . .

29 Name: . . . . . Relationship: . . . . .  
30 Address: . . . . .  
31 Day Telephone: . . . . . Evening Telephone: . . . . .

32 B. Who May Not be Permitted to Visit

1 If I have been admitted to a mental health treatment facility, the  
2 following people may not be permitted to visit me there:

3 Name: . . . . . Relationship: . . . . .

4 Name: . . . . . Relationship: . . . . .

5 Name: . . . . . Relationship: . . . . .

6 C. Authorization to Release Previous Treatment Records

7 I authorize the release of health care information, as defined in  
8 section 2 of this act, from the following previous treatment providers  
9 upon request by treatment providers acting under this mental health  
10 advance directive:

11 Provider(s): . . . . .

12 D. Authorization to Release Treatment Information

13 I authorize the release of relevant health care information, as defined  
14 in section 2 of this act, to the following individuals in addition to  
15 my agent and current treatment providers:

16 Name: . . . . . Relationship: . . . . .

17 Address: . . . . .

18 Day Telephone: . . . . . Evening Telephone: . . . . .

19 E. Preferences or Instructions About Personal Affairs

20 I have the following preferences or instructions about my personal  
21 affairs (e.g., care of dependents, pets, household) if I am admitted to  
22 a mental health treatment facility: . . . . .

23 F. Additional Preferences and Instructions: . . . . .

24 . . . . .

25 **PART VII. DURATION OF MY MENTAL HEALTH ADVANCE DIRECTIVE**

26 (Initial one):

27 . . . I want this mental health advance directive to remain valid and  
28 in effect for an indefinite period of time.

29 . . . I want this mental health advance directive to automatically  
30 expire . . . years from the date it was created.

1 **PART VIII. SIGNATURE**

2 By signing here, I indicate that I understand the purpose and effect of  
3 this document and that I am giving my informed consent to the  
4 treatments and/or admission to which I have consented or authorized my  
5 agent to consent in this directive. I intend that my consent in this  
6 directive be construed as being consistent with the elements required  
7 under RCW 7.70.060.

8 . . . . .  
9 Signature Date

10 The mental health advance directive above was signed and declared by  
11 the "Declarant," . . . . . to be his or her mental health advance  
12 directive, in our presence who, at his or her request, have signed  
13 names below as witness. We declare that, at the time of the creation  
14 of this instrument, the Declarant is personally known to us, and,  
15 according to our best knowledge and belief, was a person with capacity  
16 at the time and did not appear to be acting under duress, undue  
17 influence, or fraud. We further declare that none of us is: (1) A  
18 person designated to make medical decisions on the person's behalf; (2)  
19 a health care provider or professional person directly involved with  
20 the provision of care to the person at the time the mental health  
21 advance directive is executed; (3) an owner, operator, employee, or  
22 relative of an owner or operator of a health care facility or long-term  
23 care facility in which the person is a patient or resident; (4) a  
24 person who is related by blood, marriage, or adoption to the person, or  
25 with whom the person has a dating relationship as defined in RCW  
26 26.50.010; (5) an incapacitated person; (6) a person who would benefit  
27 financially if the principal undergoes mental health treatment; or (7)  
28 a minor.

29 Dated at . . . . . (county, state),  
30 this . . . . . day of . . . . . of . . . . .

31 Witness 1 Witness 2  
32 . . . . . . . . . . .  
33 Signature Signature  
34 . . . . . . . . . . .  
35 Printed Name Printed Name

1 . . . . .  
2 . . . . .  
3 Address Address  
4 . . . . .  
5 Telephone Telephone

6 **PART IX. RECORD OF MENTAL HEALTH ADVANCE DIRECTIVE**

7 I have given a copy of this mental health advance directive to the  
8 following persons: . . . . .

9 **PART X. REVOCATION OF MY MENTAL HEALTH ADVANCE DIRECTIVE**

10 (Initial any that apply):

11 . . . I am revoking the following part(s) of this mental health advance  
12 directive (specify):

13 . . . . .

14 . . . I am revoking all of this mental health advance directive.

15 By signing here, I indicate that I understand the purpose and effect of  
16 my revocation and that no person is bound by any revoked provision(s).

17 . . . . .

18 Signature Date"

19 **Sec. 17.** RCW 11.94.010 and 1995 c 297 s 9 are each amended to read  
20 as follows:

21 (1) Whenever a principal designates another as his or her attorney  
22 in fact or agent, by a power of attorney in writing, and the writing  
23 contains the words "This power of attorney shall not be affected by  
24 disability of the principal," or "This power of attorney shall become  
25 effective upon the disability of the principal," or similar words  
26 showing the intent of the principal that the authority conferred shall  
27 be exercisable notwithstanding the principal's disability, the  
28 authority of the attorney in fact or agent is exercisable on behalf of  
29 the principal as provided notwithstanding later disability or  
30 incapacity of the principal at law or later uncertainty as to whether  
31 the principal is dead or alive. All acts done by the attorney in fact  
32 or agent pursuant to the power during any period of disability or  
33 incompetence or uncertainty as to whether the principal is dead or

1 alive have the same effect and inure to the benefit of and bind the  
2 principal or the principal's guardian or heirs, devisees, and personal  
3 representative as if the principal were alive, competent, and not  
4 disabled. A principal may nominate, by a durable power of attorney,  
5 the guardian or limited guardian of his or her estate or person for  
6 consideration by the court if protective proceedings for the  
7 principal's person or estate are thereafter commenced. The court shall  
8 make its appointment in accordance with the principal's most recent  
9 nomination in a durable power of attorney except for good cause or  
10 disqualification. If a guardian thereafter is appointed for the  
11 principal, the attorney in fact or agent, during the continuance of the  
12 appointment, shall account to the guardian rather than the principal.  
13 The guardian has the same power the principal would have had if the  
14 principal were not disabled or incompetent, to revoke, suspend or  
15 terminate all or any part of the power of attorney, mental health  
16 advance directive, or agency.

17 (2) Persons shall place reasonable reliance on any determination of  
18 disability or incompetence as provided in the instrument that specifies  
19 the time and the circumstances under which the power of attorney  
20 document becomes effective.

21 (3)(a) A principal may authorize his or her attorney-in-fact to  
22 provide informed consent for health care decisions on the principal's  
23 behalf. If a principal has created both a power of attorney and a  
24 mental health advance directive, pursuant to chapter 71.-- RCW  
25 (sections 1 through 16 of this act), authorizing an agent to make  
26 mental health care decisions on the person's behalf, the mental health  
27 advance directive or power of attorney most recently created shall be  
28 construed to contain the person's mental health treatment preferences  
29 and instructions, unless provided otherwise in either document. An  
30 agent appointed under a mental health advance directive has the same  
31 right as the principal to receive and review the principal's health  
32 care information, including mental health, sexually transmitted  
33 diseases and human immunodeficiency virus/AIDS, and alcohol and  
34 substance abuse information. If the principal so states in the mental  
35 health advance directive, an agent may provide consent on behalf of the  
36 principal to voluntary admission to inpatient mental health treatment  
37 for a period not to exceed seventy-two hours.

38 (b) Unless he or she is the spouse, or adult child or brother or  
39 sister of the principal, none of the following persons may act as the

1 attorney-in-fact for the principal or as an agent in a mental health  
2 advance directive: Any of the principal's physicians, the physicians'  
3 employees, or the owners, administrators, or employees of the health  
4 care facility or long-term care facility where the principal resides or  
5 receives care. Except as provided in (a) of this subsection, this  
6 authorization is subject to the same limitations as those that apply to  
7 a guardian under RCW 11.92.043(5) (a) through (c).

8 **Sec. 18.** RCW 11.88.010 and 1991 c 289 s 1 are each amended to read  
9 as follows:

10 (1) The superior court of each county shall have power to appoint  
11 guardians for the persons and/or estates of incapacitated persons, and  
12 guardians for the estates of nonresidents of the state who have  
13 property in the county needing care and attention.

14 (a) For purposes of this chapter, a person may be deemed  
15 incapacitated as to person when the superior court determines the  
16 individual has a significant risk of personal harm based upon a  
17 demonstrated inability to adequately provide for nutrition, health,  
18 housing, or physical safety.

19 (b) For purposes of this chapter, a person may be deemed  
20 incapacitated as to the person's estate when the superior court  
21 determines the individual is at significant risk of financial harm  
22 based upon a demonstrated inability to adequately manage property or  
23 financial affairs.

24 (c) A determination of incapacity is a legal not a medical  
25 decision, based upon a demonstration of management insufficiencies over  
26 time in the area of person or estate. Age, eccentricity, poverty, or  
27 medical diagnosis alone shall not be sufficient to justify a finding of  
28 incapacity.

29 (d) A person may also be determined incapacitated if he or she is  
30 under the age of majority as defined in RCW 26.28.010.

31 (e) For purposes of giving informed consent for health care  
32 pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any  
33 person who is (i) incompetent by reason of mental illness,  
34 developmental disability, senility, habitual drunkenness, excessive use  
35 of drugs, or other mental incapacity, of either managing his or her  
36 property or caring for himself or herself, or both, or (ii)  
37 incapacitated as defined in (a), (b), or (d) of this subsection.

1 (f) For purposes of the terms "incompetent," "disabled," or "not  
2 legally competent," as those terms are used in the Revised Code of  
3 Washington to apply to persons incapacitated under this chapter, those  
4 terms shall be interpreted to mean "incapacitated" persons for purposes  
5 of this chapter.

6 (2) The superior court for each county shall have power to appoint  
7 limited guardians for the persons and estates, or either thereof, of  
8 incapacitated persons, who by reason of their incapacity have need for  
9 protection and assistance, but who are capable of managing some of  
10 their personal and financial affairs. After considering all evidence  
11 presented as a result of such investigation, the court shall impose, by  
12 order, only such specific limitations and restrictions on an  
13 incapacitated person to be placed under a limited guardianship as the  
14 court finds necessary for such person's protection and assistance. A  
15 person shall not be presumed to be incapacitated nor shall a person  
16 lose any legal rights or suffer any legal disabilities as the result of  
17 being placed under a limited guardianship, except as to those rights  
18 and disabilities specifically set forth in the court order establishing  
19 such a limited guardianship. In addition, the court order shall state  
20 the period of time for which it shall be applicable.

21 (3) Venue for petitions for guardianship or limited guardianship  
22 shall lie in the county wherein the alleged incapacitated person is  
23 domiciled, or if such person resides in a facility supported in whole  
24 or in part by local, state, or federal funding sources, in either the  
25 county where the facility is located, the county of domicile prior to  
26 residence in the supported facility, or the county where a parent or  
27 spouse of the alleged incapacitated person is domiciled.

28 If the alleged incapacitated person's residency has changed within  
29 one year of the filing of the petition, any interested person may move  
30 for a change of venue for any proceedings seeking the appointment of a  
31 guardian or a limited guardian under this chapter to the county of the  
32 alleged incapacitated person's last place of residence of one year or  
33 more. The motion shall be granted when it appears to the court that  
34 such venue would be in the best interests of the alleged incapacitated  
35 person and would promote more complete consideration of all relevant  
36 matters.

37 (4) Under RCW 11.94.010 or chapter 71.-- RCW (sections 1 through 16  
38 of this act), a principal may nominate, by a durable power of attorney  
39 or the mental health advance directive, the guardian or limited



1 guardian of his or her estate or person for consideration by the court  
2 if guardianship proceedings for the principal's person or estate are  
3 thereafter commenced. The court shall make its appointment in  
4 accordance with the principal's most recent nomination in a durable  
5 power of attorney or mental health advance directive except for good  
6 cause or disqualification.

7 (5) When a court imposes a full guardianship for an incapacitated  
8 person, the person shall be considered incompetent for purposes of  
9 rationally exercising the right to vote and shall lose the right to  
10 vote, unless the court specifically finds that the person is rationally  
11 capable of exercising the franchise. Imposition of a limited  
12 guardianship for an incapacitated person shall not result in the loss  
13 of the right to vote unless the court determines that the person is  
14 incompetent for purposes of rationally exercising the franchise.

15 **Sec. 19.** RCW 11.88.030 and 1996 c 249 s 8 are each amended to read  
16 as follows:

17 (1) Any person or entity may petition for the appointment of a  
18 qualified person, trust company, national bank, or nonprofit  
19 corporation authorized in RCW 11.88.020 as the guardian or limited  
20 guardian of an incapacitated person. No liability for filing a  
21 petition for guardianship or limited guardianship shall attach to a  
22 petitioner acting in good faith and upon reasonable basis. A petition  
23 for guardianship or limited guardianship shall state:

24 (a) The name, age, residence, and post office address of the  
25 alleged incapacitated person;

26 (b) The nature of the alleged incapacity in accordance with RCW  
27 11.88.010;

28 (c) The approximate value and description of property, including  
29 any compensation, pension, insurance, or allowance, to which the  
30 alleged incapacitated person may be entitled;

31 (d) Whether there is, in any state, a guardian or limited guardian,  
32 or pending guardianship action for the person or estate of the alleged  
33 incapacitated person;

34 (e) The residence and post office address of the person whom  
35 petitioner asks to be appointed guardian or limited guardian;

36 (f) The names and addresses, and nature of the relationship, so far  
37 as known or can be reasonably ascertained, of the persons most closely  
38 related by blood or marriage to the alleged incapacitated person;

1 (g) The name and address of the person or facility having the care  
2 and custody of the alleged incapacitated person;

3 (h) The reason why the appointment of a guardian or limited  
4 guardian is sought and the interest of the petitioner in the  
5 appointment, and whether the appointment is sought as guardian or  
6 limited guardian of the person, the estate, or both;

7 (i) A description of any alternate arrangements previously made by  
8 the alleged incapacitated person, such as trusts, mental health advance  
9 directives, or powers of attorney, including identifying any  
10 guardianship nominations contained in a power of attorney, and why a  
11 guardianship is nevertheless necessary;

12 (j) The nature and degree of the alleged incapacity and the  
13 specific areas of protection and assistance requested and the  
14 limitation of rights requested to be included in the court's order of  
15 appointment;

16 (k) The requested term of the limited guardianship to be included  
17 in the court's order of appointment;

18 (l) Whether the petitioner is proposing a specific individual to  
19 act as guardian ad litem and, if so, the individual's knowledge of or  
20 relationship to any of the parties, and why the individual is proposed.

21 (2)(a) The attorney general may petition for the appointment of a  
22 guardian or limited guardian in any case in which there is cause to  
23 believe that a guardianship is necessary and no private party is able  
24 and willing to petition.

25 (b) Prepayment of a filing fee shall not be required in any  
26 guardianship or limited guardianship brought by the attorney general.  
27 Payment of the filing fee shall be ordered from the estate of the  
28 incapacitated person at the hearing on the merits of the petition,  
29 unless in the judgment of the court, such payment would impose a  
30 hardship upon the incapacitated person, in which case the filing shall  
31 be waived.

32 (3) No filing fee shall be charged by the court for filing either  
33 a petition for guardianship or a petition for limited guardianship if  
34 the petition alleges that the alleged incapacitated person has total  
35 assets of a value of less than three thousand dollars.

36 (4)(a) Notice that a guardianship proceeding has been commenced  
37 shall be personally served upon the alleged incapacitated person and  
38 the guardian ad litem along with a copy of the petition for appointment

1 of a guardian. Such notice shall be served not more than five court  
2 days after the petition has been filed.

3 (b) Notice under this subsection shall include a clear and easily  
4 readable statement of the legal rights of the alleged incapacitated  
5 person that could be restricted or transferred to a guardian by a  
6 guardianship order as well as the right to counsel of choice and to a  
7 jury trial on the issue of incapacity. Such notice shall be in  
8 substantially the following form and shall be in capital letters,  
9 double-spaced, and in a type size not smaller than ten-point type:

10 IMPORTANT NOTICE  
11 PLEASE READ CAREFULLY

12 A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE  
13 . . . . . COUNTY SUPERIOR COURT BY . . . . . IF A GUARDIAN IS  
14 APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

- 15 (1) TO MARRY OR DIVORCE;  
16 (2) TO VOTE OR HOLD AN ELECTED OFFICE;  
17 (3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;  
18 (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;  
19 (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;  
20 (6) TO POSSESS A LICENSE TO DRIVE;  
21 (7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;  
22 (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;  
23 (9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;  
24 (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

25 UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

26 YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING.  
27 THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO  
28 PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

29 YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED  
30 A GUARDIAN TO HELP YOU.

31 YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING  
32 IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD  
33 LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE  
34 THAT PERSON.

35 (5) All petitions filed under the provisions of this section shall  
36 be heard within sixty days unless an extension of time is requested by

1 a party or the guardian ad litem within such sixty day period and  
2 granted for good cause shown. If an extension is granted, the court  
3 shall set a new hearing date.

4 **Sec. 20.** RCW 7.70.065 and 1987 c 162 s 1 are each amended to read  
5 as follows:

6 (1) Informed consent for health care for a patient who is not  
7 competent, as defined in RCW 11.88.010(1)((~~b~~)) (e), to consent may be  
8 obtained from a person authorized to consent on behalf of such patient.  
9 Persons authorized to provide informed consent to health care on behalf  
10 of a patient who is not competent to consent shall be a member of one  
11 of the following classes of persons in the following order of priority:

12 (a) The appointed guardian of the patient, if any;

13 (b) The individual, if any, to whom the patient has given a durable  
14 power of attorney that encompasses the authority to make health care  
15 decisions;

16 (c) The patient's spouse;

17 (d) Children of the patient who are at least eighteen years of age;

18 (e) Parents of the patient; and

19 (f) Adult brothers and sisters of the patient.

20 (2) If the physician seeking informed consent for proposed health  
21 care of the patient who is not competent to consent makes reasonable  
22 efforts to locate and secure authorization from a competent person in  
23 the first or succeeding class and finds no such person available,  
24 authorization may be given by any person in the next class in the order  
25 of descending priority. However, no person under this section may  
26 provide informed consent to health care:

27 (a) If a person of higher priority under this section has refused  
28 to give such authorization; or

29 (b) If there are two or more individuals in the same class and the  
30 decision is not unanimous among all available members of that class.

31 (3) Before any person authorized to provide informed consent on  
32 behalf of a patient not competent to consent exercises that authority,  
33 the person must first determine in good faith that that patient, if  
34 competent, would consent to the proposed health care. If such a  
35 determination cannot be made, the decision to consent to the proposed  
36 health care may be made only after determining that the proposed health  
37 care is in the patient's best interests.

