
SUBSTITUTE SENATE BILL 6589

State of Washington 57th Legislature

2002 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Keiser and Long)

READ FIRST TIME 02/08/2002.

1 AN ACT Relating to mental health advance directives; amending RCW
2 11.94.010, 11.88.010, and 11.88.030; adding a new chapter to Title 71
3 RCW; and creating a new section.

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

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

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

1 (1) "Agent" means an attorney-in-fact or agent as provided in
2 chapter 11.94 RCW.

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

5 (3) "Incapacitated person" means a person who is not a person with
6 capacity. Age alone is not sufficient to deem an adult incapacitated.

7 (4) "Mental disorder" has the meaning given in RCW 71.05.020.

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

13 (6) "Mental health professional" has the meaning given in RCW
14 71.05.020.

15 (7) "Person with capacity" means an adult who has the ability to
16 understand the significance of a directive or its revocation, who acts
17 free from fraud and undue influence, and who has not been declared
18 incompetent under RCW 11.88.010(1)(e).

19 (8) "Professional person" has the meaning given in RCW 71.05.020.

20 (9) "Psychiatrist" has the meaning given in RCW 71.05.020.

21 NEW SECTION. **Sec. 3.** (1) For the purposes of this chapter, an
22 adult is presumed to be a person with capacity. A person who has been
23 declared an incapacitated person may subsequently reassert his or her
24 capacity and it shall be presumed that the person has regained capacity
25 until he or she is declared otherwise.

26 (2) For the purposes of this chapter, no adult may be declared an
27 incapacitated person except by: (a) Court order; or (b) the opinion of
28 two mental health professionals, at least one of whom is a
29 psychiatrist.

30 (3) When a court has found that the person is a person with
31 capacity and there is a subsequent change in the person's condition,
32 subsequent determinations whether the person is incapacitated may be
33 made by a court order or by the opinion of two mental health
34 professionals, at least one of whom is a psychiatrist.

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

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

4 (a) The person's preferences and instructions for mental health
5 treatment;

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

7 (c) Refusal to consent to specific types of mental health
8 treatment;

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

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

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

16 (g) Appointment of an agent to make mental health treatment
17 decisions on the person's behalf, including authorizing the agent to
18 provide consent on the person's behalf to voluntary admission to
19 inpatient mental health treatment consistent with section 7 of this act
20 and to consent to or authorize the uses and disclosures in (h) and (i)
21 of this subsection;

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

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

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

28 (3)(a) A directive may be combined with or be independent of the
29 power of attorney authorized in chapter 11.94 RCW or guardianship
30 authorized in chapter 11.88 RCW, so long as the processes for each are
31 executed in accordance with its own statutes. If a directive
32 authorizes the appointment of an agent, the provisions of chapter 11.94
33 RCW and RCW 7.70.065 shall apply unless otherwise stated in this
34 chapter.

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

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

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

5 (a) Be in writing;

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

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

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

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

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

17 (b) A professional person directly involved with caring for the
18 person at the time the directive is executed;

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

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

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

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

28 (g) A minor.

29 (3) A directive executed in accordance with this section is
30 presumed to be valid.

31 (4) A directive may:

32 (a) Become operative immediately or at a later time as designated
33 in the directive;

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

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

37 (d) Expire under its own terms;

1 (e) Be superseded or revoked by a court order, including a criminal
2 sentence. To the extent a directive is not in conflict with a court
3 order, the directive remains effective.

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

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

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

18 (2) In the absence of actual notice to the contrary, a professional
19 person shall presume that a person who created a directive was a person
20 with capacity at the time the directive was created and that the
21 directive is valid.

22 (3) Subject to subsections (6) and (7) of this section, a
23 professional person who has been presented with or has obtained a
24 person's directive and who is treating the person shall act in
25 accordance with the provisions of the directive to the fullest extent
26 possible, consistent with reasonable medical practice, the availability
27 of treatments, and applicable law. If the professional person is at
28 any time unable to comply, the professional person shall offer to
29 withdraw from treating the person unless no other treatment provider is
30 reasonably available.

31 (4) If the directive authorizes the appointment of an agent, the
32 agent has the same right as the person to receive, review, and
33 authorize disclosure of the person's health care information, including
34 mental health, sexually transmitted diseases and human immunodeficiency
35 virus/AIDS, and alcohol and substance abuse information. If the person
36 consents in the directive to having his or her health care information
37 released to other providers or third parties, or provides for an agent

1 who authorizes such disclosure, the professional person's disclosure of
2 health care information shall not be a violation of chapter 70.02 RCW.

3 (5) The professional person shall obtain the person's informed
4 consent regarding all mental health treatment decisions unless the
5 person has waived the right to informed consent. Treatment under
6 chapters 71.05 and 71.34 RCW shall be provided pursuant to the
7 provisions of those chapters, notwithstanding the requirement for
8 informed consent under this subsection.

9 (6) A professional person who is treating a person involuntarily
10 detained or committed under chapter 71.05 or 71.34 RCW shall act in
11 accordance with the provisions of the person's directive to the fullest
12 extent possible and as permitted by the applicable involuntary
13 treatment laws, consistent with reasonable medical practice and the
14 availability of treatment.

15 (7) The professional person may provide treatment that is
16 inconsistent with specific preferences or instructions in the directive
17 if the directive authorizes the professional person to use his or her
18 best medical judgment in cases of emergencies.

19 (8)(a) A private or public agency, government entity, or
20 professional person, or personnel acting under the direction of a
21 professional person, or any health care facility or long-term care
22 facility is not subject to civil liability or professional conduct
23 sanctions for failure to act in accordance with a directive if that
24 person does not have actual knowledge of the directive.

25 (b) A private or public agency, government entity, or professional
26 person, or personnel acting under the direction of a professional
27 person, or any health care facility or long-term care facility is not
28 subject to civil liability for providing, in good faith, mental health
29 treatment to a person in accordance with the person's directive.

30 (9) For purposes of this section, "reasonable medical practice"
31 means that degree of care, skill, and learning expected of a reasonably
32 prudent health care provider at that time in the profession to which he
33 or she belongs, in the state of Washington, acting in the same or
34 similar circumstances.

35 NEW SECTION. **Sec. 7.** (1) If a person consents in the directive,
36 or authorizes an agent to consent on the person's behalf, to voluntary
37 admission to inpatient mental health treatment, the admission may not
38 exceed seventy-two hours. If, after the seventy-two hour period, the

1 person does not consent to remain for additional treatment, the patient
2 must be released during reasonable daylight hours following the
3 expiration of the seventy-two hours.

4 (2)(a) If a person consents in the directive, or authorizes the
5 agent to consent on the person's behalf, to voluntary admission to
6 inpatient mental health treatment and the person subsequently refuses
7 to be admitted, the refusal shall be considered a revocation of that
8 provision of the person's directive. An agent or professional person
9 may seek a determination of the person's capacity to revoke as provided
10 under section 8 of this act. If it is determined that the person has
11 the capacity to revoke, then the person's refusal of voluntary
12 admission shall be a revocation of that provision of the directive. If
13 it is determined that the person does not have the capacity to revoke,
14 then the directive remains valid, and the agent's consent on the
15 person's behalf to voluntary admission to inpatient mental health
16 treatment shall be considered a voluntary admission.

17 (b) If a person who is determined by two mental health
18 professionals, one of whom must be a psychiatrist, to lack the capacity
19 to revoke the directive, the person may immediately seek injunctive
20 relief for release from the facility. The sole issue to be decided is
21 the person's capacity to revoke the directive.

22 (3) If a person, contrary to his or her directive, refuses to be
23 admitted to inpatient mental health treatment, or to accept other
24 treatment, including medications, no agent may use or threaten physical
25 force, abuse, neglect, financial exploitation, or abandonment of the
26 person, as those terms are defined in RCW 74.34.020, to enforce or
27 carry out the directive.

28 (4) Any person who is voluntarily admitted to mental health
29 treatment under this chapter, or who consents to remain for additional
30 treatment after the initial seventy-two hour period, has no less than
31 all the rights provided to individuals who are voluntarily admitted to
32 inpatient treatment under chapter 71.05, 71.34, or 72.23 RCW. The
33 continuing need for treatment of a person who consents to remain for
34 additional treatment under this chapter shall be reviewed by the
35 treating facility, and the person's agent if any, at least as
36 frequently as set forth for voluntary patients under chapter 71.05,
37 71.34, or 72.23 RCW.

1 NEW SECTION. **Sec. 8.** (1) Except as provided in section 7(2) of
2 this act, a person with capacity may revoke a directive in whole or in
3 part by written statement at any time. The written statement of
4 revocation is effective when signed by the person and it is delivered
5 to the agent, if one is appointed, and the professional person who is
6 responsible for the delivery of mental health treatment to the person.
7 The professional person shall make the revocation part of the person's
8 medical record.

9 (2)(a) If an agent or professional person believes that the person
10 seeking to revoke all or part of the directive does not have capacity
11 to revoke, the agent or professional person may seek a determination of
12 the person's capacity within forty-eight hours of the attempted
13 revocation.

14 (b) If a court or two mental health professionals, one of whom is
15 a psychiatrist, find that it is more likely than not that the person
16 did not have the capacity to revoke, then the attempted revocation is
17 invalid. If the court or two mental health professionals, one of whom
18 is a psychiatrist, find that it is more likely than not that the person
19 had the capacity to revoke the directive, the revocation is valid. If
20 a determination of the person's capacity to revoke has not been made
21 within forty-eight hours of the time the agent or professional person
22 seeks a determination, then it is presumed that the person had the
23 capacity to revoke the directive. If the court makes the
24 determination, in reaching its determination, the court shall, at a
25 minimum, be informed by the declaration of one mental health
26 professional familiar with the person, and shall, except for good
27 cause, give the alleged incapacitated person an opportunity to appear
28 in court before the determination.

29 (3) A person declared under this chapter to be an incapacitated
30 person by a court or two mental health professionals, one of whom is a
31 psychiatrist, may not revoke a directive. If an incapacitated person
32 seeks to revoke all or part of the directive, the agent or professional
33 person may seek a determination of the person's capacity to revoke
34 within forty-eight hours of the attempted revocation. If a
35 determination of the person's capacity to revoke has not been made
36 within forty-eight hours of the time the agent or professional person
37 seeks a determination, then it is presumed that the incapacitated
38 person had the capacity to revoke the directive.

1 (4) A private or public agency, government entity, or professional
2 person, or personnel acting under the direction of a professional
3 person, or any health care facility or long-term care facility
4 participating in good faith in the mental health treatment of a person
5 is not civilly liable for failing to follow or act upon a revocation if
6 there was no actual knowledge of the revocation.

7 NEW SECTION. **Sec. 9.** Any person with good reason to believe that
8 a directive has been created or revoked under circumstances amounting
9 to falsification, forgery, or coercion may petition the court for
10 appointment of a guardian for the person or to review the actions of
11 the agent or person alleged to be involved in the improper conduct
12 under RCW 11.94.090 or 74.34.110.

13 NEW SECTION. **Sec. 10.** The fact that a person has executed a
14 directive does not constitute an indication of mental disorder or that
15 the person is not capable of providing informed consent.

16 NEW SECTION. **Sec. 11.** A person shall not be required to execute
17 or to refrain from executing a directive as a criterion for insurance,
18 as a condition for receiving mental or physical health services, or as
19 a condition of admission or discharge from a health care facility or
20 long-term care facility.

21 NEW SECTION. **Sec. 12.** A directive does not limit any authority
22 otherwise provided in Title 71 or 10 RCW, or any other applicable state
23 or federal laws to detain a person, take a person into custody, or to
24 admit, retain, or treat a person in a health care facility.

25 NEW SECTION. **Sec. 13.** Where a person consents in a directive, or
26 authorizes his or her agent to consent to electroconvulsive therapy,
27 the professional person must document, in the person's medical record,
28 the reasons the professional person elected to use electroconvulsive
29 therapy.

30 NEW SECTION. **Sec. 14.** The directive may, but is not required to,
31 be in the following form:

32 "PART I. STATEMENT OF INTENT TO CREATE A MENTAL HEALTH ADVANCE
33 DIRECTIVE

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

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

13 I intend this mental health advance directive to take precedence over
14 any and all durable power of attorney for health care documents and/or
15 other mental health advance directives I have previously executed, to
16 the extent that they are inconsistent with this document, or unless I
17 expressly state otherwise in this mental health advance directive.

18 I understand that I may revoke this mental health advance directive in
19 whole or in part only if I am a person with capacity. I understand
20 that I cannot revoke this mental health advance directive if a court or
21 two mental health professionals, at least one being a psychiatrist,
22 find that I am an incapacitated person. I understand that, except as
23 otherwise provided in law, revocation must be in writing.

24 I understand that nothing in this mental health advance directive, or
25 in my refusal of treatment to which I consent in this mental health
26 advance directive, authorizes any agent designated by this mental
27 health advance directive to use or threaten physical force, abuse,
28 neglect, financial exploitation, or abandonment to enforce or carry out
29 my mental health advance directive.

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

32 I intend that this mental health advance directive become operative
33 (check only one):

34 . . . Immediately upon my signing of this mental health advance
35 directive

1 . . . When the following circumstances, symptoms, or behaviors occur:
2
3 . . . If I become incapacitated.

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

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

8 I would like the physician named below to be involved in my treatment
9 decisions: Dr. Telephone

10 I do not wish to be treated by:

11 B. Preferences or Instructions About Other Providers

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

16 Name Profession Telephone

17 C. Preferences or Instructions About Medications for Psychiatric
18 Treatment

19 . . . I consent, and authorize my agent (if named) to consent, to the
20 following medications:
21

22 . . . I specifically do not consent and I do not authorize my agent (if
23 named) to consent to the administration of the following medications:
24
25

26 Consideration of Medications Not Listed Above (check one below)

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

1 . . . I am willing to try any new medication the hospital doctor
2 recommends.

3 . . . I am willing to try any new medications my outpatient doctor
4 recommends.

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

6 Medication Allergies

7 I have allergies to or severe side effects from the following
8 medications:
9

10 Other Medication Preferences or Instructions

11 I have the following other preferences or instructions about
12 psychiatric medications:
13
14

15 D. Preferences or Instructions About Hospitalization and Alternatives

16 . . . (check if desired) In the event my psychiatric condition is
17 serious enough to require 24-hour care and I have no physical
18 conditions that require immediate access to emergency medical care, I
19 would prefer to receive this care in programs/facilities designed as
20 alternatives to psychiatric hospitalizations.

21 I would also like the interventions below to be tried, before
22 hospitalization is considered (check all that apply):

- 23 . . . Calling someone or having someone call you when needed
- 24 . . . Staying overnight with someone Name: . . . Telephone: . . .
- 25 . . . Having a mental health service provider come to see you
- 26 . . . Going to a crisis triage center or emergency room
- 27 . . . Staying overnight at a crisis respite (temporary) bed
- 28 . . . Seeing a service provider for help with psychiatric medications
- 29 . . . Other, specify

30 Authority to Consent to Inpatient Treatment

31 I consent, and authorize my agent (if named) to consent, to voluntary
32 admission to inpatient mental health treatment for a period not to
33 exceed 72 hours (check one if desired):

1 . . . If deemed appropriate by my agent (if named) and treating
2 physician

3 . . . Under the following circumstances (specify symptoms, behaviors,
4 or circumstances that indicate the need for hospitalization)

5

6 Hospital Preferences or Instructions

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

8

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

10

11 E. Preferences or Instructions About Pre-Emergency Interventions

12 I would like the interventions below to be tried before use of
13 seclusion or restraint is considered (check all that apply):

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

15 . . . More medication

16 . . . Time out/privacy

17 . . . Show of authority/force

18 . . . Shift my attention to something else

19 . . . Set firm limits

20 . . . Help me to discuss/vent feelings

21 . . . Decrease stimulation

22 . . . Offer to have neutral person settle dispute

23 . . . Other, specify

24 F. Preferences or Instructions About Seclusion, Restraint, and
25 Emergency Medications

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

30 . . . Seclusion

31 . . . Physical restraints

32 . . . Seclusion and physical restraint (combined)

33 . . . Medication by injection

34 . . . Medication in pill or liquid form

1 In the event that my attending physician decides to use medication in
2 response to an emergency situation after due consideration of my
3 preferences or instructions for emergency treatments stated above, I
4 expect the choice of medication to reflect any preferences or
5 instructions I have expressed in Part III C of this form. The
6 preferences or instructions I express in this section regarding
7 medication in emergency situations do not constitute consent to use of
8 the medication for nonemergency treatment.

9 G. Preferences or Instructions About Electroconvulsive Therapy (ECT or
10 Shock Therapy)

11 My wishes regarding electroconvulsive therapy are (check one):

12 . . . I do not consent, nor authorize my agent (if named) to consent,
13 to the administration of electroconvulsive therapy

14 . . . I consent, and authorize my agent (if named) to consent, to the
15 administration of electroconvulsive therapy

16 . . . I consent, and authorize my agent (if named) to consent, to the
17 administration of electroconvulsive therapy, but only under the
18 following conditions:

19 H. Additional Instructions About My Mental Health Care

20 Other instructions about my mental health care:
21

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

23 I,, authorize an agent to make mental health treatment
24 decisions on my behalf. The authority granted to my agent includes the
25 right to consent, refuse consent, or withdraw consent to any mental
26 health care, treatment, service, or procedure, and to authorize
27 disclosure of information relevant to such health care, treatment,
28 service, or procedure consistent with any instructions and/or
29 limitations I have set forth in this mental health advance directive.
30 I intend that those decisions should be made in accordance with my
31 expressed wishes as set forth in this document. If I have not
32 expressed a choice in this document, I authorize my agent to make the
33 decision that my agent determines is the decision I would make if I
34 were capable to do so.

1 A. Designation of an Agent

2 I hereby appoint the following person as my agent to make mental health
3 care decisions for me as authorized in this document and desire for
4 this person to be notified immediately when this mental health advance
5 directive becomes operative:

6 Name: Relationship:
7 Address:
8 Day Telephone: Evening Telephone:

9 Agent's Acceptance

10 I hereby accept the designation as the agent for purposes described in
11 this document (agent's signature)

12 B. Designation of Alternate Agent

13 If the person named above is unavailable or unable to serve as my
14 agent, I hereby appoint the following person as my alternate agent and
15 desire for this person to be notified immediately when this mental
16 health advance directive becomes operative:

17 Name: Relationship:
18 Address:
19 Day Telephone: Evening Telephone:

20 Alternate Agent's Acceptance

21 I hereby accept the designation as the alternate agent for purposes
22 described in this document (alternate's signature)

23 C. When My Spouse is My Agent (check if desired)

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

26 D. Limitations on My Agent's Authority

27 I do not grant my agent the authority to consent on my behalf to the
28 following:

29 E. Preference as to Court-Appointed Guardian

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

1 Name: Relationship:
2 Address:
3 Day Telephone: Evening Telephone:

4 The appointment of a guardian of my estate or my person or any other
5 decision maker shall not give the guardian or decision maker the power
6 to revoke, suspend, or terminate this mental health advance directive
7 or the powers of my agent, except as specifically required by law.

8 **PART V. PREFERENCES OR INSTRUCTIONS ABOUT NOTIFICATION OF OTHERS, CARE**
9 **OF PERSONAL AFFAIRS, AND CONSENTS TO RELEASE TREATMENT INFORMATION**

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

14 A. Who Should Be Notified

15 I desire staff to notify the following individuals, in addition to my
16 agent (if named) immediately when this mental health advance directive
17 becomes operative:

18 Name: Relationship:
19 Address:
20 Day Telephone: Evening Telephone:

21 B. Who Should Not be Permitted to Visit

22 If I have been admitted to a mental health treatment facility, I do not
23 wish the following people to be permitted to visit me there:

24 Name: Relationship:

25 C. Authorization to Obtain Previous Treatment Records

26 I authorize the release of treatment records from the following
27 previous treatment providers upon request by treatment providers acting
28 under this mental health advance directive:

29 Provider(s):

30 D. Authorization to Release Treatment Information

1 I authorize the release of relevant treatment information to the
2 following individuals in addition to my agent and current treatment
3 providers:

4 Name: Relationship:
5 Address:
6 Day Telephone: Evening Telephone:

7 E. Preferences or Instructions About Personal Affairs

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

11 **PART VI. DURATION OF MY MENTAL HEALTH ADVANCE DIRECTIVE**

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

14 . . . I want this mental health advance directive to automatically
15 expire within . . . years from the date it was created.

16 **PART VII. SIGNATURE**

17 By signing here, I indicate that I understand the purpose and effect of
18 this document.

19
20 Signature Date

21 The mental health advance directive above was signed and declared by
22 the "Declarant," to be his or her mental health advance
23 directive, in our presence who, at his or her request, have signed
24 names below as witness. We declare that, at the time of the creation
25 of this instrument, the Declarant is personally known to us, and,
26 according to our best knowledge and belief, was a person with capacity
27 at the time and did not appear to be acting under undue influence or
28 fraud. We further declare that none of us is: (1) A person designated
29 to make medical decisions on the person's behalf; (2) a mental health
30 professional or other professional person directly involved with the
31 provision of care to the person at the time the mental health advance
32 directive is executed; (3) an owner, operator, employee, or relative of
33 an owner or operator of a health care facility or long-term care

1 facility in which the person is a patient or resident; (4) a person who
2 is related by blood, marriage, or adoption to the person; or (5) an
3 incapacitated person.

4 Dated at (county, state),
5 this day of of

6	Witness 1	Witness 2
7
8	Signature	Signature
9
10	Printed Name	Printed Name
11
12
13	Address	Address

14 **PART VIII. RECORD OF MENTAL HEALTH ADVANCE DIRECTIVE**

15 I have given a copy of this mental health advance directive to the
16 following persons:

17 **PART IX. REVOCATION OF MY MENTAL HEALTH ADVANCE DIRECTIVE**

18 . . . I am revoking the following part(s) of this mental health advance
19 directive (specify):
20

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

22 By signing here, I indicate that I understand the purpose and effect of
23 my revocation.

24
25 Signature Date"

26 **Sec. 15.** RCW 11.94.010 and 1995 c 297 s 9 are each amended to read
27 as follows:

28 (1) Whenever a principal designates another as his or her attorney
29 in fact or agent, by a power of attorney in writing, and the writing
30 contains the words "This power of attorney shall not be affected by
31 disability of the principal," or "This power of attorney shall become

1 effective upon the disability of the principal," or similar words
2 showing the intent of the principal that the authority conferred shall
3 be exercisable notwithstanding the principal's disability, the
4 authority of the attorney in fact or agent is exercisable on behalf of
5 the principal as provided notwithstanding later disability or
6 incapacity of the principal at law or later uncertainty as to whether
7 the principal is dead or alive. All acts done by the attorney in fact
8 or agent pursuant to the power during any period of disability or
9 incompetence or uncertainty as to whether the principal is dead or
10 alive have the same effect and inure to the benefit of and bind the
11 principal or the principal's guardian or heirs, devisees, and personal
12 representative as if the principal were alive, competent, and not
13 disabled. A principal may nominate, by a durable power of attorney,
14 the guardian or limited guardian of his or her estate or person for
15 consideration by the court if protective proceedings for the
16 principal's person or estate are thereafter commenced. The court shall
17 make its appointment in accordance with the principal's most recent
18 nomination in a durable power of attorney except for good cause or
19 disqualification. If a guardian thereafter is appointed for the
20 principal, the attorney in fact or agent, during the continuance of the
21 appointment, shall account to the guardian rather than the principal.
22 The guardian has the same power the principal would have had if the
23 principal were not disabled or incompetent, to revoke, suspend or
24 terminate all or any part of the power of attorney or agency.

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

29 (3)(a) A principal may authorize his or her attorney-in-fact to
30 provide informed consent for health care decisions on the principal's
31 behalf. If a principal has created both a power of attorney and a
32 mental health advance directive, pursuant to chapter 71.-- RCW
33 (sections 1 through 14 of this act), authorizing an agent to make
34 mental health care decisions on the person's behalf, the mental health
35 advance directive or power of attorney most recently created shall be
36 construed to contain the person's mental health treatment preferences
37 and instructions, unless provided otherwise in either document. An
38 agent appointed under a mental health advance directive has the same
39 right as the principal to receive and review the principal's health

1 care information, including mental health, sexually transmitted
2 diseases and human immunodeficiency virus/AIDS, and alcohol and
3 substance abuse information. If the principal so states in the mental
4 health advance directive, an agent may provide consent on behalf of the
5 principal to voluntary admission to inpatient mental health treatment
6 for a period not to exceed seventy-two hours.

7 (b) Unless he or she is the spouse, or adult child or brother or
8 sister of the principal, none of the following persons may act as the
9 attorney-in-fact for the principal or as an agent in a mental health
10 advance directive: Any of the principal's physicians, the physicians'
11 employees, or the owners, administrators, or employees of the health
12 care facility or long-term care facility where the principal resides or
13 receives care. Except as provided in (a) of this subsection, this
14 authorization is subject to the same limitations as those that apply to
15 a guardian under RCW 11.92.043(5) (a) through (c).

16 **Sec. 16.** RCW 11.88.010 and 1991 c 289 s 1 are each amended to read
17 as follows:

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

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

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

32 (c) A determination of incapacity is a legal not a medical
33 decision, based upon a demonstration of management insufficiencies over
34 time in the area of person or estate. Age, eccentricity, poverty, or
35 medical diagnosis alone shall not be sufficient to justify a finding of
36 incapacity.

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

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

8 (f) For purposes of the terms "incompetent," "disabled," or "not
9 legally competent," as those terms are used in the Revised Code of
10 Washington to apply to persons incapacitated under this chapter, those
11 terms shall be interpreted to mean "incapacitated" persons for purposes
12 of this chapter.

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

28 (3) Venue for petitions for guardianship or limited guardianship
29 shall lie in the county wherein the alleged incapacitated person is
30 domiciled, or if such person resides in a facility supported in whole
31 or in part by local, state, or federal funding sources, in either the
32 county where the facility is located, the county of domicile prior to
33 residence in the supported facility, or the county where a parent or
34 spouse of the alleged incapacitated person is domiciled.

35 If the alleged incapacitated person's residency has changed within
36 one year of the filing of the petition, any interested person may move
37 for a change of venue for any proceedings seeking the appointment of a
38 guardian or a limited guardian under this chapter to the county of the
39 alleged incapacitated person's last place of residence of one year or

1 more. The motion shall be granted when it appears to the court that
2 such venue would be in the best interests of the alleged incapacitated
3 person and would promote more complete consideration of all relevant
4 matters.

5 (4) Under RCW 11.94.010 or chapter 71.-- RCW (sections 1 through 14
6 of this act), a principal may nominate, by a durable power of attorney
7 or the mental health advance directive, the guardian or limited
8 guardian of his or her estate or person for consideration by the court
9 if guardianship proceedings for the principal's person or estate are
10 thereafter commenced. The court shall make its appointment in
11 accordance with the principal's most recent nomination in a durable
12 power of attorney or mental health advance directive except for good
13 cause or disqualification.

14 (5) When a court imposes a full guardianship for an incapacitated
15 person, the person shall be considered incompetent for purposes of
16 rationally exercising the right to vote and shall lose the right to
17 vote, unless the court specifically finds that the person is rationally
18 capable of exercising the franchise. Imposition of a limited
19 guardianship for an incapacitated person shall not result in the loss
20 of the right to vote unless the court determines that the person is
21 incompetent for purposes of rationally exercising the franchise.

22 **Sec. 17.** RCW 11.88.030 and 1996 c 249 s 8 are each amended to read
23 as follows:

24 (1) Any person or entity may petition for the appointment of a
25 qualified person, trust company, national bank, or nonprofit
26 corporation authorized in RCW 11.88.020 as the guardian or limited
27 guardian of an incapacitated person. No liability for filing a
28 petition for guardianship or limited guardianship shall attach to a
29 petitioner acting in good faith and upon reasonable basis. A petition
30 for guardianship or limited guardianship shall state:

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

33 (b) The nature of the alleged incapacity in accordance with RCW
34 11.88.010;

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

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

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

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

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

11 (h) The reason why the appointment of a guardian or limited
12 guardian is sought and the interest of the petitioner in the
13 appointment, and whether the appointment is sought as guardian or
14 limited guardian of the person, the estate, or both;

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

20 (j) The nature and degree of the alleged incapacity and the
21 specific areas of protection and assistance requested and the
22 limitation of rights requested to be included in the court's order of
23 appointment;

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

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

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

33 (b) Prepayment of a filing fee shall not be required in any
34 guardianship or limited guardianship brought by the attorney general.
35 Payment of the filing fee shall be ordered from the estate of the
36 incapacitated person at the hearing on the merits of the petition,
37 unless in the judgment of the court, such payment would impose a
38 hardship upon the incapacitated person, in which case the filing shall
39 be waived.

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

5 (4)(a) Notice that a guardianship proceeding has been commenced
6 shall be personally served upon the alleged incapacitated person and
7 the guardian ad litem along with a copy of the petition for appointment
8 of a guardian. Such notice shall be served not more than five court
9 days after the petition has been filed.

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

17 IMPORTANT NOTICE
18 PLEASE READ CAREFULLY

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

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

32 UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

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

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

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

5 (5) All petitions filed under the provisions of this section shall
6 be heard within sixty days unless an extension of time is requested by
7 a party or the guardian ad litem within such sixty day period and
8 granted for good cause shown. If an extension is granted, the court
9 shall set a new hearing date.

10 NEW SECTION. **Sec. 18.** Nothing in this act creates a legal right
11 or cause of action. Nothing in this act denies or alters any existing
12 legal right or cause of action nor may it be relied upon to compel the
13 establishment of any program or special entitlement.

14 NEW SECTION. **Sec. 19.** Sections 1 through 14 of this act
15 constitute a new chapter in Title 71 RCW.

16 NEW SECTION. **Sec. 20.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

--- END ---