
SUBSTITUTE SENATE BILL 5370

State of Washington

67th Legislature

2021 Regular Session

By Senate Behavioral Health Subcommittee to Health & Long Term Care (originally sponsored by Senators Keiser, Dhingra, Saldaña, and Wilson, C.)

READ FIRST TIME 02/15/21.

1 AN ACT Relating to updating mental health advance directive laws;
2 amending RCW 71.32.010, 71.32.020, 71.32.020, 71.32.030, 71.32.040,
3 71.32.050, 71.32.060, 71.32.070, 71.32.100, 71.32.110, 71.32.130,
4 71.32.170, 71.32.180, 71.32.210, 71.32.220, 71.32.250, and 71.34.755;
5 reenacting and amending RCW 71.32.020, 71.32.140, and 71.32.260;
6 providing effective dates; and providing expiration dates.

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

8 **Sec. 1.** RCW 71.32.010 and 2003 c 283 s 1 are each amended to
9 read as follows:

10 (1) The legislature declares that an individual with capacity has
11 the ability to control decisions relating to his or her own
12 (~~mental~~) behavioral health care. The legislature finds that:

13 (a) Some (~~mental illnesses~~) behavioral health disorders cause
14 individuals to fluctuate between capacity and incapacity;

15 (b) During periods when an individual's capacity is unclear, the
16 individual may be unable to access needed treatment because the
17 individual may be unable to give informed consent;

18 (c) Early treatment may prevent an individual from becoming so
19 ill that involuntary treatment is necessary; and

20 (d) (~~Mentally ill individuals~~) Individuals with behavioral
21 health disorders need some method of expressing their instructions

1 and preferences for treatment and providing advance consent to or
2 refusal of treatment.

3 (2) The legislature recognizes that a mental health advance
4 directive can be an essential tool for an individual to express his
5 or her choices at a time when the effects of (~~(mental illness)~~) a
6 behavioral health disorder have not deprived him or her of the power
7 to express his or her instructions or preferences.

8 (~~((2))~~) (3) The legislature further finds that:

9 (a) A mental health advance directive must provide the individual
10 with a full range of choices;

11 (b) (~~(Mentally ill individuals)~~) Individuals with behavioral
12 health disorders have varying perspectives on whether they want to be
13 able to revoke a directive during periods of incapacity;

14 (c) For a mental health advance directive to be an effective
15 tool, individuals must be able to choose how they want their
16 directives treated during periods of incapacity; and

17 (d) There must be clear standards so that treatment providers can
18 readily discern an individual's treatment choices.

19 Consequently, the legislature affirms that, pursuant to other
20 provisions of law, a validly executed mental health advance directive
21 is to be respected by agents, guardians, and other surrogate decision
22 makers, health care providers, professional persons, and health care
23 facilities.

24 **Sec. 2.** RCW 71.32.020 and 2016 c 209 s 407 are each amended to
25 read as follows:

26 The definitions in this section apply throughout this chapter
27 unless the context clearly requires otherwise.

28 (1) "Adult" means any individual who has attained the age of
29 majority or is an emancipated minor.

30 (2) "Agent" has the same meaning as an attorney-in-fact or agent
31 as provided in chapter 11.125 RCW.

32 (3) "Capacity" means that (~~(an adult)~~) a person has not been
33 found to be incapacitated pursuant to this chapter or RCW
34 11.88.010(1)(e).

35 (4) "Court" means a superior court under chapter 2.08 RCW.

36 (5) "Health care facility" means a hospital, as defined in RCW
37 70.41.020; an institution, as defined in RCW 71.12.455; a state
38 hospital, as defined in RCW 72.23.010; a nursing home, as defined in

1 RCW 18.51.010; or a clinic that is part of a community mental health
2 service delivery system, as defined in RCW 71.24.025.

3 (6) "Health care provider" means an osteopathic physician or
4 osteopathic physician's assistant licensed under chapter 18.57 or
5 18.57A RCW, a physician or physician's assistant licensed under
6 chapter 18.71 or 18.71A RCW, or an advanced registered nurse
7 practitioner licensed under RCW 18.79.050.

8 (7) "Incapacitated" means (~~(an adult)~~) a person who: (a) Is
9 unable to understand the nature, character, and anticipated results
10 of proposed treatment or alternatives; understand the recognized
11 serious possible risks, complications, and anticipated benefits in
12 treatments and alternatives, including nontreatment; or communicate
13 his or her understanding or treatment decisions; or (b) has been
14 found to be incompetent pursuant to RCW 11.88.010(1)(e).

15 (8) "Informed consent" means consent that is given after (~~the~~)
16 a person: (a) Is provided with a description of the nature,
17 character, and anticipated results of proposed treatments and
18 alternatives, and the recognized serious possible risks,
19 complications, and anticipated benefits in the treatments and
20 alternatives, including nontreatment, in language that the person can
21 reasonably be expected to understand; or (b) elects not to be given
22 the information included in (a) of this subsection.

23 (9) "Long-term care facility" has the same meaning as defined in
24 RCW 43.190.020.

25 (10) "Mental disorder" means any organic, mental, or emotional
26 impairment which has substantial adverse effects on an individual's
27 cognitive or volitional functions.

28 (11) "Mental health advance directive" or "directive" means a
29 written document in which the principal makes a declaration of
30 instructions or preferences or appoints an agent to make decisions on
31 behalf of the principal regarding the principal's mental health
32 treatment, or both, and that is consistent with the provisions of
33 this chapter.

34 (12) "Mental health professional" means a psychiatrist,
35 psychologist, psychiatric nurse, or social worker, and such other
36 mental health professionals as may be defined by rules adopted by the
37 secretary pursuant to the provisions of chapter 71.05 RCW.

38 (13) "Principal" means (~~(an adult)~~) a person who has executed a
39 mental health advance directive.

1 (14) "Professional person" means a mental health professional and
2 shall also mean a physician, registered nurse, and such others as may
3 be defined by rules adopted by the secretary pursuant to the
4 provisions of chapter 71.05 RCW.

5 (15) "Social worker" means a person with a master's or further
6 advanced degree from a social work educational program accredited and
7 approved as provided in RCW 18.320.010.

8 (16) "Behavioral health disorder" means a mental disorder, a
9 substance use disorder, or a co-occurring mental health and substance
10 use disorder.

11 (17) "Substance use disorder" means a cluster of cognitive,
12 behavioral, and physiological symptoms indicating that an individual
13 continues using the substance despite significant substance-related
14 problems. The diagnosis of a substance use disorder is based on a
15 pathological pattern of behaviors related to the use of the
16 substances.

17 **Sec. 3.** RCW 71.32.020 and 2020 c 312 s 732 are each amended to
18 read as follows:

19 The definitions in this section apply throughout this chapter
20 unless the context clearly requires otherwise.

21 (1) "Adult" means any individual who has attained the age of
22 majority or is an emancipated minor.

23 (2) "Agent" has the same meaning as an attorney-in-fact or agent
24 as provided in chapter 11.125 RCW.

25 (3) "Capacity" means that an adult has not been found to be
26 incapacitated pursuant to this chapter or subject to a guardianship
27 under RCW 11.130.265.

28 (4) "Court" means a superior court under chapter 2.08 RCW.

29 (5) "Health care facility" means a hospital, as defined in RCW
30 70.41.020; an institution, as defined in RCW 71.12.455; a state
31 hospital, as defined in RCW 72.23.010; a nursing home, as defined in
32 RCW 18.51.010; or a clinic that is part of a community (~~(mental)~~)
33 behavioral health service delivery system, as defined in RCW
34 71.24.025.

35 (6) "Health care provider" means an osteopathic physician or
36 osteopathic physician's assistant licensed under chapter 18.57 or
37 18.57A RCW, a physician or physician's assistant licensed under
38 chapter 18.71 or 18.71A RCW, or an advanced registered nurse
39 practitioner licensed under RCW 18.79.050.

1 (7) "Incapacitated" means an adult who: (a) Is unable to
2 understand the nature, character, and anticipated results of proposed
3 treatment or alternatives; understand the recognized serious possible
4 risks, complications, and anticipated benefits in treatments and
5 alternatives, including nontreatment; or communicate his or her
6 understanding or treatment decisions; or (b) has been found to be
7 subject to a guardianship under RCW 11.130.265.

8 (8) "Informed consent" means consent that is given after ~~((the))~~
9 (a) person: (a) Is provided with a description of the nature,
10 character, and anticipated results of proposed treatments and
11 alternatives, and the recognized serious possible risks,
12 complications, and anticipated benefits in the treatments and
13 alternatives, including nontreatment, in language that the person can
14 reasonably be expected to understand; or (b) elects not to be given
15 the information included in (a) of this subsection.

16 (9) "Long-term care facility" has the same meaning as defined in
17 RCW 43.190.020.

18 (10) "Mental disorder" means any organic, mental, or emotional
19 impairment which has substantial adverse effects on an individual's
20 cognitive or volitional functions.

21 (11) "Mental health advance directive" or "directive" means a
22 written document in which the principal makes a declaration of
23 instructions or preferences or appoints an agent to make decisions on
24 behalf of the principal regarding the principal's mental health
25 treatment, or both, and that is consistent with the provisions of
26 this chapter.

27 (12) "Mental health professional" means a psychiatrist,
28 psychologist, psychiatric nurse, or social worker, and such other
29 mental health professionals as may be defined by rules adopted by the
30 secretary pursuant to the provisions of chapter 71.05 RCW.

31 (13) "Principal" means an adult who has executed a mental health
32 advance directive.

33 (14) "Professional person" means a mental health professional and
34 shall also mean a physician, registered nurse, and such others as may
35 be defined by rules adopted by the secretary pursuant to the
36 provisions of chapter 71.05 RCW.

37 (15) "Social worker" means a person with a master's or further
38 advanced degree from a social work educational program accredited and
39 approved as provided in RCW 18.320.010.

1 (16) "Behavioral health disorder" means a mental disorder, a
2 substance use disorder, or a co-occurring mental health and substance
3 use disorder.

4 (17) "Substance use disorder" means a cluster of cognitive,
5 behavioral, and physiological symptoms indicating that an individual
6 continues using the substance despite significant substance-related
7 problems. The diagnosis of a substance use disorder is based on a
8 pathological pattern of behaviors related to the use of the
9 substances.

10 **Sec. 4.** RCW 71.32.020 and 2020 c 312 s 732 and 2020 c 80 s 53
11 are each reenacted and amended to read as follows:

12 The definitions in this section apply throughout this chapter
13 unless the context clearly requires otherwise.

14 (1) "Adult" means any individual who has attained the age of
15 majority or is an emancipated minor.

16 (2) "Agent" has the same meaning as an attorney-in-fact or agent
17 as provided in chapter 11.125 RCW.

18 (3) "Capacity" means that an adult has not been found to be
19 incapacitated pursuant to this chapter or subject to a guardianship
20 under RCW 11.130.265.

21 (4) "Court" means a superior court under chapter 2.08 RCW.

22 (5) "Health care facility" means a hospital, as defined in RCW
23 70.41.020; an institution, as defined in RCW 71.12.455; a state
24 hospital, as defined in RCW 72.23.010; a nursing home, as defined in
25 RCW 18.51.010; or a clinic that is part of a community (~~mental~~
26 ~~behavioral~~) behavioral health service delivery system, as defined
27 in RCW 71.24.025.

28 (6) "Health care provider" means an osteopathic physician
29 licensed under chapter 18.57 RCW, a physician or physician's
30 assistant licensed under chapter 18.71 or 18.71A RCW, or an advanced
31 registered nurse practitioner licensed under RCW 18.79.050.

32 (7) "Incapacitated" means an adult who: (a) Is unable to
33 understand the nature, character, and anticipated results of proposed
34 treatment or alternatives; understand the recognized serious possible
35 risks, complications, and anticipated benefits in treatments and
36 alternatives, including nontreatment; or communicate his or her
37 understanding or treatment decisions; or (b) has been found to be
38 subject to a guardianship under RCW 11.130.265.

1 (8) "Informed consent" means consent that is given after ~~((the))~~
2 a person: (a) Is provided with a description of the nature,
3 character, and anticipated results of proposed treatments and
4 alternatives, and the recognized serious possible risks,
5 complications, and anticipated benefits in the treatments and
6 alternatives, including nontreatment, in language that the person can
7 reasonably be expected to understand; or (b) elects not to be given
8 the information included in (a) of this subsection.

9 (9) "Long-term care facility" has the same meaning as defined in
10 RCW 43.190.020.

11 (10) "Mental disorder" means any organic, mental, or emotional
12 impairment which has substantial adverse effects on an individual's
13 cognitive or volitional functions.

14 (11) "Mental health advance directive" or "directive" means a
15 written document in which the principal makes a declaration of
16 instructions or preferences or appoints an agent to make decisions on
17 behalf of the principal regarding the principal's mental health
18 treatment, or both, and that is consistent with the provisions of
19 this chapter.

20 (12) "Mental health professional" means a psychiatrist,
21 psychologist, psychiatric nurse, or social worker, and such other
22 mental health professionals as may be defined by rules adopted by the
23 secretary pursuant to the provisions of chapter 71.05 RCW.

24 (13) "Principal" means an adult who has executed a mental health
25 advance directive.

26 (14) "Professional person" means a mental health professional and
27 shall also mean a physician, registered nurse, and such others as may
28 be defined by rules adopted by the secretary pursuant to the
29 provisions of chapter 71.05 RCW.

30 (15) "Social worker" means a person with a master's or further
31 advanced degree from a social work educational program accredited and
32 approved as provided in RCW 18.320.010.

33 (16) "Behavioral health disorder" means a mental disorder, a
34 substance use disorder, or a co-occurring mental health and substance
35 use disorder.

36 (17) "Substance use disorder" means a cluster of cognitive,
37 behavioral, and physiological symptoms indicating that an individual
38 continues using the substance despite significant substance-related
39 problems. The diagnosis of a substance use disorder is based on a

1 pathological pattern of behaviors related to the use of the
2 substances.

3 **Sec. 5.** RCW 71.32.030 and 2003 c 283 s 3 are each amended to
4 read as follows:

5 (1) The definition of informed consent is to be construed to be
6 consistent with that term as it is used in chapter 7.70 RCW.

7 (2) The definitions of mental disorder, behavioral health
8 disorder, mental health professional, and professional person are to
9 be construed to be consistent with those terms as they are defined in
10 RCW 71.05.020.

11 **Sec. 6.** RCW 71.32.040 and 2003 c 283 s 4 are each amended to
12 read as follows:

13 For the purposes of this chapter, an adult is presumed to have
14 capacity. A person who is at least 13 years of age but under the age
15 of majority is considered to have capacity for the purpose of
16 executing a mental health advance directive if the person is able to
17 demonstrate that they are capable of making informed decisions
18 related to behavioral health care.

19 **Sec. 7.** RCW 71.32.050 and 2016 c 209 s 408 are each amended to
20 read as follows:

21 (1) (~~An adult~~) A person with capacity may execute a mental
22 health advance directive.

23 (2) A directive executed in accordance with this chapter is
24 presumed to be valid. The inability to honor one or more provisions
25 of a directive does not affect the validity of the remaining
26 provisions.

27 (3) A directive may include any provision relating to (~~mental~~)
28 behavioral health treatment or the care of the principal or the
29 principal's personal affairs. Without limitation, a directive may
30 include:

31 (a) The principal's preferences and instructions for (~~mental~~)
32 behavioral health treatment;

33 (b) Consent to specific types of (~~mental~~) behavioral health
34 treatment;

35 (c) Refusal to consent to specific types of (~~mental~~) behavioral
36 health treatment;

1 (d) Consent to admission to and retention in a facility for
2 (~~mental~~) behavioral health treatment for up to (~~fourteen~~) 14
3 days;

4 (e) Descriptions of situations that may cause the principal to
5 experience a (~~mental~~) behavioral health crisis;

6 (f) Suggested alternative responses that may supplement or be in
7 lieu of direct (~~mental~~) behavioral health treatment, such as
8 treatment approaches from other providers;

9 (g) Appointment of an agent pursuant to chapter 11.125 RCW to
10 make (~~mental~~) behavioral health treatment decisions on the
11 principal's behalf, including authorizing the agent to provide
12 consent on the principal's behalf to voluntary admission to inpatient
13 (~~mental~~) behavioral health treatment; and

14 (h) The principal's nomination of a guardian or limited guardian
15 as provided in RCW 11.125.080 for consideration by the court if
16 guardianship proceedings are commenced.

17 (4) A directive may be combined with or be independent of a
18 nomination of a guardian or other durable power of attorney under
19 chapter 11.125 RCW, so long as the processes for each are executed in
20 accordance with its own statutes.

21 **Sec. 8.** RCW 71.32.060 and 2016 c 209 s 409 are each amended to
22 read as follows:

23 (1) A directive shall:

24 (a) Be in writing;

25 (b) Contain language that clearly indicates that the principal
26 intends to create a directive;

27 (c) Be dated and signed by the principal or at the principal's
28 direction in the principal's presence if the principal is unable to
29 sign;

30 (d) Designate whether the principal wishes to be able to revoke
31 the directive during any period of incapacity or wishes to be unable
32 to revoke the directive during any period of incapacity; and

33 (e) (~~Be~~) Have the signature acknowledged before a notary public
34 or other individual authorized by law to take acknowledgments, or be
35 witnessed in writing by at least two adults, each of whom shall
36 declare that he or she personally knows the principal, was present
37 when the principal dated and signed the directive, and that the
38 principal did not appear to be incapacitated or acting under fraud,
39 undue influence, or duress.

1 (2) A directive that includes the appointment of an agent
2 pursuant to a power of attorney under chapter 11.125 RCW shall
3 contain the words "This power of attorney shall not be affected by
4 the incapacity of the principal," or "This power of attorney shall
5 become effective upon the incapacity of the principal," or similar
6 words showing the principal's intent that the authority conferred
7 shall be exercisable notwithstanding the principal's incapacity.

8 (3) A directive is valid upon execution, but all or part of the
9 directive may take effect at a later time as designated by the
10 principal in the directive.

11 (4) A directive may:

12 (a) Be revoked, in whole or in part, pursuant to the provisions
13 of RCW 71.32.080; or

14 (b) Expire under its own terms.

15 **Sec. 9.** RCW 71.32.070 and 2003 c 283 s 7 are each amended to
16 read as follows:

17 A directive may not:

18 (1) Create an entitlement to (~~mental~~) behavioral health or
19 medical treatment or supersede a determination of medical necessity;

20 (2) Obligate any health care provider, professional person, or
21 health care facility to pay the costs associated with the treatment
22 requested;

23 (3) Obligate any health care provider, professional person, or
24 health care facility to be responsible for the nontreatment personal
25 care of the principal or the principal's personal affairs outside the
26 scope of services the facility normally provides;

27 (4) Replace or supersede the provisions of any will or
28 testamentary document or supersede the provisions of intestate
29 succession;

30 (5) Be revoked by an incapacitated principal unless that
31 principal selected the option to permit revocation while
32 incapacitated at the time his or her directive was executed; or

33 (6) Be used as the authority for inpatient admission for more
34 than (~~fourteen~~) 14 days in any (~~twenty-one~~) 21 day period.

35 **Sec. 10.** RCW 71.32.100 and 2016 c 209 s 410 are each amended to
36 read as follows:

1 (1) If a directive authorizes the appointment of an agent, the
2 provisions of chapter 11.125 RCW and RCW 7.70.065 shall apply unless
3 otherwise stated in this chapter.

4 (2) The principal who appoints an agent must notify the agent in
5 writing of the appointment.

6 (3) An agent must act in good faith.

7 (4) An agent may make decisions on behalf of the principal.
8 Unless the principal has revoked the directive, the decisions must be
9 consistent with the instructions and preferences the principal has
10 expressed in the directive, or if not expressed, as otherwise known
11 to the agent. If the principal's instructions or preferences are not
12 known, the agent shall make a decision he or she determines is in the
13 best interest of the principal.

14 (5) (~~Except to the extent the right is limited by the~~
15 ~~appointment or any federal or state law, the agent has the same right~~
16 ~~as the principal to receive, review, and authorize the use and~~
17 ~~disclosure of the principal's health care information when the agent~~
18 ~~is acting on behalf of the principal and to the extent required for~~
19 ~~the agent to carry out his or her duties.)) A person authorized to
20 act as an agent during periods when the principal is incapacitated
21 may act as the principal's personal representative pursuant to the
22 health insurance portability and accountability act, sections 1171
23 through 1179 of the social security act, 42 U.S.C. Sec. 1320d, as
24 amended, and applicable regulations, to obtain access to the
25 principal's health care information and communicate with the
26 principal's health care provider. This subsection shall be construed
27 to be consistent with chapters 70.02, 70.24, ((70.96A,)) 71.05, and
28 71.34 RCW, and with federal law regarding health care information.~~

29 (6) Unless otherwise provided in the appointment 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
32 provided to the principal.

33 (7) An agent may resign or withdraw at any time by giving written
34 notice to the principal. The agent must also give written notice to
35 any health care provider, professional person, or health care
36 facility providing treatment to the principal. The resignation or
37 withdrawal is effective upon receipt unless otherwise specified in
38 the resignation or withdrawal.

1 (8) If the directive gives the agent authority to act while the
2 principal has capacity, the decisions of the principal supersede
3 those of the agent at any time the principal has capacity.

4 (9) Unless otherwise provided in the durable power of attorney,
5 the principal may revoke the agent's appointment as provided under
6 other state law.

7 **Sec. 11.** RCW 71.32.110 and 2016 c 155 s 13 are each amended to
8 read as follows:

9 (1) For the purposes of this chapter, a principal, agent,
10 professional person, or health care provider may seek a determination
11 whether the principal is incapacitated or has regained capacity.

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

14 (i) A court, if the request is made by the principal or the
15 principal's agent;

16 (ii) One mental health professional or substance use disorder
17 professional and one health care provider; or

18 (iii) Two health care providers.

19 (b) One of the persons making the determination under (a)(ii) or
20 (iii) of this subsection must be a psychiatrist, physician assistant
21 working with a supervising psychiatrist, psychologist, or a
22 psychiatric advanced registered nurse practitioner.

23 (3) When a professional person or health care provider requests a
24 capacity determination, he or she shall promptly inform the principal
25 that:

26 (a) A request for capacity determination has been made; and

27 (b) The principal may request that the determination be made by a
28 court.

29 (4) At least one mental health professional, substance use
30 disorder professional, or health care provider must personally
31 examine the principal prior to making a capacity determination.

32 (5)(a) When a court makes a determination whether a principal has
33 capacity, the court shall, at a minimum, be informed by the testimony
34 of one mental health professional or substance use disorder
35 professional familiar with the principal and shall, except for good
36 cause, give the principal an opportunity to appear in court prior to
37 the court making its determination.

38 (b) To the extent that local court rules permit, any party or
39 witness may testify telephonically.

1 (6) When a court has made a determination regarding a principal's
2 capacity and there is a subsequent change in the principal's
3 condition, subsequent determinations whether the principal is
4 incapacitated may be made in accordance with any of the provisions of
5 subsection (2) of this section.

6 **Sec. 12.** RCW 71.32.130 and 2003 c 283 s 13 are each amended to
7 read as follows:

8 (1) An initial determination of capacity must be completed within
9 (~~forty-eight~~) 48 hours of a request made by a person authorized in
10 RCW 71.32.110. During the period between the request for an initial
11 determination of the principal's capacity and completion of that
12 determination, the principal may not be treated unless he or she
13 consents at the time or treatment is otherwise authorized by state or
14 federal law.

15 (2) (a) (i) When an incapacitated principal is admitted to
16 inpatient treatment pursuant to the provisions of his or her
17 directive, his or her capacity must be reevaluated within (~~seventy-~~
18 ~~two~~) 120 hours or when there has been a change in the principal's
19 condition that indicates that he or she appears to have regained
20 capacity, whichever occurs first.

21 (ii) When an incapacitated principal has been admitted to and
22 remains in inpatient treatment for more than (~~seventy-two~~) 120
23 hours pursuant to the provisions of his or her directive, the
24 principal's capacity must be reevaluated when there has been a change
25 in his or her condition that indicates that he or she appears to have
26 regained capacity.

27 (iii) When a principal who is being treated on an inpatient basis
28 and has been determined to be incapacitated requests, or his or her
29 agent requests, a redetermination of the principal's capacity the
30 redetermination must be made within (~~seventy-two~~) 120 hours.

31 (b) When a principal who has been determined to be incapacitated
32 is being treated on an outpatient basis and there is a request for a
33 redetermination of his or her capacity, the redetermination must be
34 made within five days of the first request following a determination.

35 (3) (a) When a principal who has appointed an agent for (~~mental~~)
36 behavioral health treatment decisions requests a determination or
37 redetermination of capacity, the agent must make reasonable efforts
38 to obtain the determination or redetermination.

1 (b) When a principal who does not have an agent for (~~mental~~)
2 behavioral health treatment decisions is being treated in an
3 inpatient facility and requests a determination or redetermination of
4 capacity, the mental health professional or health care provider must
5 complete the determination or, if the principal is seeking a
6 determination from a court, must make reasonable efforts to notify
7 the person authorized to make decisions for the principal under RCW
8 7.70.065 of the principal's request.

9 (c) When a principal who does not have an agent for (~~mental~~)
10 behavioral health treatment decisions is being treated on an
11 outpatient basis, the person requesting a capacity determination must
12 arrange for the determination.

13 (4) If no determination has been made within the time frames
14 established in subsection (1) or (2) of this section, the principal
15 shall be considered to have capacity.

16 (5) When an incapacitated principal is being treated pursuant to
17 his or her directive, a request for a redetermination of capacity
18 does not prevent treatment.

19 **Sec. 13.** RCW 71.32.140 and 2016 sp.s. c 29 s 424 and 2016 c 155
20 s 14 are each reenacted and amended to read as follows:

21 (1) A principal who:

22 (a) Chose not to be able to revoke his or her directive during
23 any period of incapacity;

24 (b) Consented to voluntary admission to inpatient (~~mental~~)
25 behavioral health treatment, or authorized an agent to consent on the
26 principal's behalf; and

27 (c) At the time of admission to inpatient treatment, refuses to
28 be admitted,
29 may only be admitted into inpatient (~~mental~~) behavioral health
30 treatment under subsection (2) of this section.

31 (2) A principal may only be admitted to inpatient (~~mental~~)
32 behavioral health treatment under his or her directive if, prior to
33 admission, a member of the treating facility's professional staff who
34 is a physician, physician assistant, or psychiatric advanced
35 registered nurse practitioner:

36 (a) Evaluates the principal's mental condition, including a
37 review of reasonably available psychiatric and psychological history,
38 diagnosis, and treatment needs, and determines, in conjunction with
39 another health care provider (~~or~~), mental health professional, or

1 substance use disorder professional, that the principal is
2 incapacitated;

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

5 (c) Makes a written determination that the principal needs an
6 inpatient evaluation or is in need of inpatient treatment and that
7 the evaluation or treatment cannot be accomplished in a less
8 restrictive setting; and

9 (d) Documents in the principal's medical record a summary of the
10 physician's, physician assistant's, or psychiatric advanced
11 registered nurse practitioner's findings and recommendations for
12 treatment or evaluation.

13 (3) In the event the admitting physician is not a psychiatrist,
14 the admitting physician assistant is not supervised by a
15 psychiatrist, or the advanced registered nurse practitioner is not a
16 psychiatric advanced registered nurse practitioner, the principal
17 shall receive a complete (~~(psychological)~~) behavioral health
18 assessment by a mental health professional or substance use disorder
19 professional within (~~(twenty-four)~~) 24 hours of admission to
20 determine the continued need for inpatient evaluation or treatment.

21 (4) (a) If it is determined that the principal has capacity, then
22 the principal may only be admitted to, or remain in, inpatient
23 treatment if he or she consents at the time, is admitted for family-
24 initiated treatment under chapter 71.34 RCW, or is detained under the
25 involuntary treatment provisions of chapter 71.05 or 71.34 RCW.

26 (b) If a principal who is determined by two health care providers
27 or one mental health professional or substance use disorder
28 professional and one health care provider to be incapacitated
29 continues to refuse inpatient treatment, the principal may
30 immediately seek injunctive relief for release from the facility.

31 (5) If, at the end of the period of time that the principal or
32 the principal's agent, if any, has consented to voluntary inpatient
33 treatment, but no more than (~~(fourteen)~~) 14 days after admission, the
34 principal has not regained capacity or has regained capacity but
35 refuses to consent to remain for additional treatment, the principal
36 must be released during reasonable daylight hours, unless detained
37 under chapter 71.05 or 71.34 RCW.

38 (6) (a) Except as provided in (b) of this subsection, any
39 principal who is voluntarily admitted to inpatient (~~(mental)~~)
40 behavioral health treatment under this chapter shall have all the

1 rights provided to individuals who are voluntarily admitted to
2 inpatient treatment under chapter 71.05, 71.34, or 72.23 RCW.

3 (b) Notwithstanding RCW 71.05.050 regarding consent to inpatient
4 treatment for a specified length of time, the choices an
5 incapacitated principal expressed in his or her directive shall
6 control, provided, however, that a principal who takes action
7 demonstrating a desire to be discharged, in addition to making
8 statements requesting to be discharged, shall be discharged, and no
9 principal shall be restrained in any way in order to prevent his or
10 her discharge. Nothing in this subsection shall be construed to
11 prevent detention and evaluation for civil commitment under chapter
12 71.05 RCW.

13 (7) Consent to inpatient admission in a directive is effective
14 only while the professional person, health care provider, and health
15 care facility are in substantial compliance with the material
16 provisions of the directive related to inpatient treatment.

17 **Sec. 14.** RCW 71.32.170 and 2003 c 283 s 17 are each amended to
18 read as follows:

19 (1) For the purposes of this section, "provider" means a private
20 or public agency, government entity, health care provider,
21 professional person, health care facility, or person acting under the
22 direction of a health care provider or professional person, health
23 care facility, or long-term care facility.

24 (2) A provider is not subject to civil liability or sanctions for
25 unprofessional conduct under the uniform disciplinary act, chapter
26 18.130 RCW, when in good faith and without negligence:

27 (a) The provider provides treatment to a principal in the absence
28 of actual knowledge of the existence of a directive, or provides
29 treatment pursuant to a directive in the absence of actual knowledge
30 of the revocation of the directive;

31 (b) A health care provider or mental health professional
32 determines that the principal is or is not incapacitated for the
33 purpose of deciding whether to proceed according to a directive, and
34 acts upon that determination;

35 (c) The provider administers or does not administer (~~mental~~)
36 behavioral health treatment according to the principal's directive in
37 good faith reliance upon the validity of the directive and the
38 directive is subsequently found to be invalid;

1 (d) The provider does not provide treatment according to the
2 directive for one of the reasons authorized under RCW 71.32.150; or

3 (e) The provider provides treatment according to the principal's
4 directive.

5 **Sec. 15.** RCW 71.32.180 and 2016 c 209 s 411 are each amended to
6 read as follows:

7 (1) Where an incapacitated principal has executed more than one
8 valid directive and has not revoked any of the directives:

9 (a) The directive most recently created shall be treated as the
10 principal's (~~mental~~) behavioral health treatment preferences and
11 instructions as to any inconsistent or conflicting provisions, unless
12 provided otherwise in either document.

13 (b) Where a directive executed under this chapter is inconsistent
14 with a directive executed under any other chapter, the most recently
15 created directive controls as to the inconsistent provisions.

16 (2) Where an incapacitated principal has appointed more than one
17 agent under chapter 11.125 RCW with authority to make (~~mental~~)
18 behavioral health treatment decisions, RCW 11.125.400 controls.

19 (3) The treatment provider shall inquire of a principal whether
20 the principal is subject to any court orders that would affect the
21 implementation of his or her directive.

22 **Sec. 16.** RCW 71.32.210 and 2003 c 283 s 21 are each amended to
23 read as follows:

24 The fact that a person has executed a directive does not
25 constitute an indication of (~~mental~~) behavioral health disorder or
26 that the person is not capable of providing informed consent.

27 **Sec. 17.** RCW 71.32.220 and 2003 c 283 s 22 are each amended to
28 read as follows:

29 A person shall not be required to execute or to refrain from
30 executing a directive, nor shall the existence of a directive be used
31 as a criterion for insurance, as a condition for receiving (~~mental~~)
32 behavioral or physical health services, or as a condition of
33 admission to or discharge from a health care facility or long-term
34 care facility.

35 **Sec. 18.** RCW 71.32.250 and 2016 c 155 s 15 are each amended to
36 read as follows:

1 (1) If a principal who is a resident of a long-term care facility
2 is admitted to inpatient (~~mental~~) behavioral health treatment
3 pursuant to his or her directive, the principal shall be allowed to
4 be readmitted to the same long-term care facility as if his or her
5 inpatient admission had been for a physical condition on the same
6 basis that the principal would be readmitted under state or federal
7 statute or rule when:

8 (a) The treating facility's professional staff determine that
9 inpatient (~~mental~~) behavioral health treatment is no longer
10 medically necessary for the resident. The determination shall be made
11 in writing by a psychiatrist, physician assistant working with a
12 supervising psychiatrist, or a psychiatric advanced registered nurse
13 practitioner, or (i) one physician and a mental health professional
14 or substance use disorder professional; (ii) one physician assistant
15 and a mental health professional or substance use disorder
16 professional; or (iii) one psychiatric advanced registered nurse
17 practitioner and a mental health professional or substance use
18 disorder professional; or

19 (b) The person's consent to admission in his or her directive has
20 expired.

21 (2)(a) If the long-term care facility does not have a bed
22 available at the time of discharge, the treating facility may
23 discharge the resident, in consultation with the resident and agent
24 if any, and in accordance with a medically appropriate discharge
25 plan, to another long-term care facility.

26 (b) This section shall apply to inpatient (~~mental~~) behavioral
27 health treatment admission of long-term care facility residents,
28 regardless of whether the admission is directly from a facility,
29 hospital emergency room, or other location.

30 (c) This section does not restrict the right of the resident to
31 an earlier release from the inpatient treatment facility. This
32 section does not restrict the right of a long-term care facility to
33 initiate transfer or discharge of a resident who is readmitted
34 pursuant to this section, provided that the facility has complied
35 with the laws governing the transfer or discharge of a resident.

36 (3) The joint legislative audit and review committee shall
37 conduct an evaluation of the operation and impact of this section.
38 The committee shall report its findings to the appropriate committees
39 of the legislature by December 1, 2004.

1 (10) You may ask the court to rule on the validity of your directive.

2
3 **PART I.**

4 **STATEMENT OF INTENT TO CREATE A**
5 **MENTAL HEALTH ADVANCE DIRECTIVE**

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

10 The fact that I may have left blanks in this directive does not affect its validity in any way. I intend that all completed
11 sections be followed. If I have not expressed a choice, my agent should make the decision that he or she determines is in
12 my best interest. I intend this directive to take precedence over any other directives I have previously executed, to the
13 extent that they are inconsistent with this document, or unless I expressly state otherwise in either document.

14 I understand that I may revoke this directive in whole or in part if I am a person with capacity. I understand that I cannot
15 revoke this directive if a court, two health care providers, or one mental health professional and one health care provider
16 find that I am an incapacitated person, unless, when I executed this directive, I chose to be able to revoke this directive
17 while incapacitated.

18 I understand that, except as otherwise provided in law, revocation must be in writing. I understand that nothing in this
19 directive, or in my refusal of treatment to which I consent in this directive, authorizes any health care provider, professional
20 person, health care facility, or agent appointed in this directive to use or threaten to use abuse, neglect, financial
21 exploitation, or abandonment to carry out my directive.

22 I understand that there are some circumstances where my provider may not have to follow my directive.

23
24 **PART II.**

25 **WHEN THIS DIRECTIVE IS EFFECTIVE**

26 *YOU MUST COMPLETE THIS PART FOR YOUR DIRECTIVE TO BE VALID.*

27 I intend that this directive become effective (*YOU MUST CHOOSE ONLY ONE*):

28 Immediately upon my signing of this directive.

29 If I become incapacitated.

30 When the following circumstances, symptoms, or behaviors occur:

31
32 **PART III.**

33 **DURATION OF THIS DIRECTIVE**

34 *YOU MUST COMPLETE THIS PART FOR YOUR DIRECTIVE TO BE VALID.*

35 I want this directive to (*YOU MUST CHOOSE ONLY ONE*):

36 Remain valid and in effect for an indefinite period of time.

1 Automatically expire years from the date it was created.

2
3 **PART IV.**

4 **WHEN I MAY REVOKE THIS DIRECTIVE**

5 *YOU MUST COMPLETE THIS PART FOR THIS DIRECTIVE TO BE VALID.*

6 I intend that I be able to revoke this directive (*YOU MUST CHOOSE ONLY ONE*):

7 Only when I have capacity.

8 I understand that choosing this option means I may only revoke this directive if I have capacity. I further understand that if
9 I choose this option and become incapacitated while this directive is in effect, I may receive treatment that I specify in this
10 directive, even if I object at the time.

11 Even if I am incapacitated.

12 I understand that choosing this option means that I may revoke this directive even if I am incapacitated. I further
13 understand that if I choose this option and revoke this directive while I am incapacitated I may not receive treatment that I
14 specify in this directive, even if I want the treatment.

15
16 **PART V.**

17 **PREFERENCES AND INSTRUCTIONS ABOUT TREATMENT, FACILITIES, AND PHYSICIANS [,**
18 **PHYSICIAN ASSISTANTS,] OR PSYCHIATRIC ADVANCED REGISTERED NURSE PRACTITIONERS**

19 **A. Preferences and Instructions About Physician(s), Physician Assistant(s), or Psychiatric Advanced Registered**
20 **Nurse Practitioner(s) to be Involved in My Treatment**

21 I would like the physician(s), physician assistant(s), or psychiatric advanced registered nurse practitioner(s) named below
22 to be involved in my treatment decisions:

23 Dr., PA-C, or PARNP Contact information:.....

24 Dr., PA-C, or PARNP Contact information:.....

25 I do not wish to be treated by Dr. or PARNP.....

26 **B. Preferences and Instructions About Other Providers**

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

29 Name Profession Contact information.....

30 Name Profession Contact information.....

31 **C. Preferences and Instructions About Medications for Psychiatric Treatment** (*initial and complete all that apply*)

32 I consent, and authorize my agent (if appointed) to consent, to the following
33 medications:.....

34 I do not consent, and I do not authorize my agent (if appointed) to consent, to the administration of the following
35 medications:.....

1I am willing to take the medications excluded above if my only reason for excluding them is the side effects which
2 include.....
3 and these side effects can be eliminated by dosage adjustment or other means
4I am willing to try any other medication the hospital doctor, physician assistant, or psychiatric advanced registered
5 nurse practitioner recommends
6I am willing to try any other medications my outpatient doctor, physician assistant, or psychiatric advanced
7 registered nurse practitioner recommends
8I do not want to try any other medications.

9 **Medication Allergies**

10 I have allergies to, or severe side effects from, the following:.....
11

12 **Other Medication Preferences or Instructions**

13I have the following other preferences or instructions about medications.....
14

15 **D. Preferences and Instructions About Hospitalization and Alternatives**

16 *(initial all that apply and, if desired, rank "1" for first choice, "2" for second choice, and so on)*

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

20I would also like the interventions below to be tried before hospitalization is considered:

21 Calling someone or having someone call me when needed:

22 Name:..... Telephone:.....

23 Staying overnight with someone

24 Name:..... Telephone:.....

25 Having a mental health service provider come to see me

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 appointed) to consent, to voluntary admission to inpatient mental health treatment
32 for days *(not to exceed 14 days)*

33 *(Sign one):*

1 If deemed appropriate by my agent (if appointed) and treating physician, physician assistant, or psychiatric
2 advanced registered nurse practitioner

3
4 (Signature)

5 or

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

8
9 (Signature)

10 I do **not** consent, or authorize my agent (if appointed) to consent, to inpatient treatment

11
12 (Signature)

13 **Hospital Preferences and Instructions**

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

15 I do not consent to be admitted to the following hospitals:

16 **E. Preferences and Instructions About Preemergency**

17 I would like the interventions below to be tried before use of seclusion or restraint is considered

18 *(initial all that apply):*

19 "Talk me down" one-on-one

20 More medication

21 Time out/privacy

22 Show of authority/force

23 Shift my attention to something else

24 Set firm limits on my behavior

25 Help me to discuss/vent feelings

26 Decrease stimulation

27 Offer to have neutral person settle dispute

28 Other, specify

29 **F. Preferences and Instructions About Seclusion, Restraint, and Emergency Medications**

30 If it is determined that I am engaging in behavior that requires seclusion, physical restraint, and/or emergency use of
31 medication, I prefer these interventions in the order I have chosen (*choose "1" for first choice, "2" for second choice, and
32 so on*):

33 Seclusion

34 Seclusion and physical restraint (combined)

1Medication by injection

2Medication in pill or liquid form

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

8 **G. Preferences and Instructions About Electroconvulsive Therapy**
9 **(ECT or Shock Therapy)**

10 My wishes regarding electroconvulsive therapy are (*sign one*):

11I do not consent, nor authorize my agent (if appointed) to consent, to the administration of electroconvulsive
12 therapy

13

14 (Signature)

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

16

17 (Signature)

18I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy, but
19 only under the following conditions:

20

21 (Signature)

22 **H. Preferences and Instructions About Who is Permitted to Visit**

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

24 Name:

25 Name:

26 Name:

27 I understand that persons not listed above may be permitted to visit me.

28 **I. Additional Instructions About My Mental Health Care**

29 Other instructions about my mental health care:

30 In case of emergency, please contact:

31 Name: Address:

32 Work telephone: Home telephone:

33 Physician, Physician Assistant, or Psychiatric Address:

34 Advanced Registered Nurse Practitioner:

1 Telephone:

2 The following may help me to avoid a hospitalization:

3 I generally react to being hospitalized as follows:

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

5 **J. Refusal of Treatment**

6 I do not consent to any mental health treatment.

7

8 (Signature)

9

10 **PART VI.**

11 **DURABLE POWER OF ATTORNEY (APPOINTMENT OF MY AGENT)**

12 *(Fill out this part only if you wish to appoint an agent or nominate a guardian.)*

13 I authorize an agent to make mental health treatment decisions on my behalf. The authority granted to my agent includes
14 the right to consent, refuse consent, or withdraw consent to any mental health care, treatment, service, or procedure,
15 consistent with any instructions and/or limitations I have set forth in this directive. I intend that those decisions should be
16 made in accordance with my expressed wishes as set forth in this document. If I have not expressed a choice in this
17 document **and my agent does not otherwise know my wishes**, I authorize my agent to make the decision that my agent
18 determines is in my best interest. This agency shall not be affected by my incapacity. Unless I state otherwise in this
19 durable power of attorney, I may revoke it unless prohibited by other state law.

20 **A. Designation of an Agent**

21 I appoint the following person as my agent to make mental health treatment decisions for me as authorized in this document
22 and request that this person be notified immediately when this directive becomes effective:

23 Name: Address:

24 Work telephone: Home telephone:

25 Relationship:

26 **B. Designation of Alternate Agent**

27 If the person named above is unavailable, unable, or refuses to serve as my agent, or I revoke that person's authority to
28 serve as my agent, I hereby appoint the following person as my alternate agent and request that this person be notified
29 immediately when this directive becomes effective or when my original agent is no longer my agent:

30 Name: Address:

31 Work telephone: Home telephone:

32 Relationship:

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

34 If my spouse is my agent, that person shall remain my agent even if we become legally separated or our marriage is
35 dissolved, unless there is a court order to the contrary or I have remarried.

1 **D. Limitations on My Agent's Authority**

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

3 **E. Limitations on My Ability to Revoke this Durable Power of Attorney**

4 I choose to limit my ability to revoke this durable power of attorney as follows:

5 **F. Preference as to Court-Appointed Guardian**

6 In the event a court appoints a guardian who will make decisions regarding my mental health treatment, I **nominate** the
7 following person **as my guardian**:

8 Name: Address:

9 Work telephone: Home telephone:

10 Relationship:

11 The appointment of a guardian of my estate or my person or any other decision maker shall not give the guardian or
12 decision maker the power to revoke, suspend, or terminate this directive or the powers of my agent, except as authorized by
13 law.

14

15 (Signature required if nomination is made)

16
17 **PART VII.**
18 **OTHER DOCUMENTS**

19 (Initial all that apply)

20 I have executed the following documents that include the power to make decisions regarding health care services for
21 myself:

22 Health care power of attorney (chapter 11.125 RCW)

23 "Living will" (Health care directive; chapter 70.122 RCW)

24 I have appointed more than one agent. I understand that the most recently appointed agent controls except as stated
25 below:

26
27 **PART VIII.**
28 **NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS**

29 (Fill out this part only if you wish to provide nontreatment instructions.)

30 I understand the preferences and instructions in this part are **NOT** the responsibility of my treatment provider and that no
31 treatment provider is required to act on them.

32 **A. Who Should Be Notified**

33 I desire my agent to notify the following individuals as soon as possible when this directive becomes effective:

34 Name: Address:

1 Day telephone: Evening telephone:

2 Name: Address:

3 Day telephone: Evening telephone:

4 **B. Preferences or Instructions About Personal Affairs**

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

7 **C. Additional Preferences and Instructions:**

8

9

PART IX.

SIGNATURE

10

11 By signing here, I indicate that I understand the purpose and effect of this document and that I am giving my informed
12 consent to the treatments and/or admission to which I have consented or authorized my agent to consent in this directive. I
13 intend that my consent in this directive be construed as being consistent with the elements of informed consent under
14 chapter 7.70 RCW.

15 Signature: Date:

16 Printed Name:

17 This directive was signed and declared by the "Principal," to be his or her directive, in our presence who, at his or her
18 request, have signed our names below as witnesses. We declare that, at the time of the creation of this instrument, the
19 Principal is personally known to us, and, according to our best knowledge and belief, has capacity at this time and does not
20 appear to be acting under duress, undue influence, or fraud. We further declare that none of us is:

- 21 (A) A person designated to make medical decisions on the principal's behalf;
- 22 (B) A health care provider or professional person directly involved with the provision of care to the principal at the time the
23 directive is executed;
- 24 (C) An owner, operator, employee, or relative of an owner or operator of a health care facility or long-term care facility in
25 which the principal is a patient or resident;
- 26 (D) A person who is related by blood, marriage, or adoption to the person, or with whom the principal has a dating
27 relationship as defined in RCW 26.50.010;
- 28 (E) An incapacitated person;
- 29 (F) A person who would benefit financially if the principal undergoes mental health treatment; or
- 30 (G) A minor.

31 Witness 1: Signature: Date:

32 Printed Name:

33 Telephone: Address:

34 Witness 2: Signature: Date:

35 Printed Name:

1 Telephone:..... Address:.....

2
3 **PART X.**
4 **RECORD OF DIRECTIVE**

5 I have given a copy of this directive to the following persons:

6 **DO NOT FILL OUT PART XI UNLESS YOU INTEND TO REVOKE**
7 **THIS DIRECTIVE IN PART OR IN WHOLE**

8
9 **PART XI.**
10 **REVOCATION OF THIS DIRECTIVE**

11 *(Initial any that apply):*

12I am revoking the following part(s) of this directive (specify):

13I am revoking all of this directive.

14 By signing here, I indicate that I understand the purpose and effect of my revocation and that no person is bound by any
15 revoked provision(s). I intend this revocation to be interpreted as if I had never completed the revoked provision(s).

16 Signature:..... Date:.....

17 Printed Name:.....

18 **DO NOT SIGN THIS PART UNLESS YOU INTEND TO REVOKE THIS**
19 **DIRECTIVE IN PART OR IN WHOLE))**

20 Mental Health Advance Directive of (client name)

21 With Appointment of (agent name) as

22 Agent for Mental Health Decisions

23
24 **PART I.**
25 **STATEMENT OF INTENT TO CREATE A**
26 **MENTAL HEALTH ADVANCE DIRECTIVE**

27 I, (Client name), being a person with capacity, willfully and voluntarily execute this mental health advance directive so that
28 my choices regarding my mental health care will be carried out in circumstances when I am unable to express my
29 instructions and preferences regarding my mental health care.

1 **PART II.**

2 **MY CARE NEEDS – WHAT WORKS FOR ME**

3 In order to assist in carrying out my directive I would like my providers and my agent to know the following information:

4 I have been diagnosed with (client illnesses both mental health and physical diagnoses) for which I take (list medications).

5 I am also on the following other medications: (list any other medications for other conditions).

6 The best treatment method for my illness is (give general overview of what works best for client).

7 I have/do not have a history of substance abuse. My preferences and treatment options around medication management
8 related to substance abuse are:

9 **PART III.**

10 **WHEN THIS DIRECTIVE IS EFFECTIVE**

11 *(You must complete this part for your directive to be valid.)*

12 I intend that this directive become effective (YOU MUST CHOOSE ONLY ONE):

13 Immediately upon my signing of this directive.

14 If I become incapacitated.

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

16 **PART IV.**

17 **DURATION OF THIS DIRECTIVE**

18 *(You must complete this part for your directive to be valid.)*

19 I want this directive to (YOU MUST CHOOSE ONLY ONE):

20 Remain valid and in effect for an indefinite period of time.

21 Automatically expire years from the date it was created.

22 **PART V.**

23 **WHEN I MAY REVOKE THIS DIRECTIVE**

24 *(You must complete this part for this directive to be valid.)*

25 I intend that I be able to revoke this directive (YOU MUST CHOOSE ONLY ONE):

26 Only when I have capacity.

27 I understand that choosing this option means I may only revoke this directive if I have capacity. I further understand that if

28 I choose this option and become incapacitated while this directive is in effect, I may receive treatment that I specify in this
29 directive, even if I object at the time.

30 Even if I am incapacitated.

31 I understand that choosing this option means that I may revoke this directive even if I am incapacitated. I further
32 understand that if I choose this option and revoke this directive while I am incapacitated I may not receive treatment that I
33 specify in this directive, even if I want the treatment.

34 **PART VI.**

35 **PREFERENCES AND INSTRUCTIONS ABOUT TREATMENT, FACILITIES, AND PHYSICIANS, PHYSICIAN**
36 **ASSISTANTS, OR ADVANCED REGISTERED NURSE PRACTITIONERS**

1 **A. Preferences and Instructions About Physician(s), Physician Assistant(s), or Advanced Registered Nurse**
2 **Practitioner(s) to be Involved in My Treatment**

3 I would like the physician(s), physician assistant(s), or advanced registered nurse practitioner(s) named below to be
4 involved in my treatment decisions:

5 I do not wish to be treated by

6 **B. Preferences and Instructions About Other Providers**

7 I am receiving other treatment or care from providers who I feel have an impact on my mental health care. I would like the
8 following treatment provider(s) to be contacted when this directive is effective:

9 **C. Preferences and Instructions About Medications for Psychiatric Treatment (check all that apply)**

10 I consent, and authorize my agent (if appointed) to consent, to the following medications:

11 I do not consent, and I do not authorize my agent (if appointed) to consent, to the administration of the following
12 medications:

13 I am willing to take the medications excluded above if my only reason for excluding them is the side effects which
14 include:

15 and these side effects can be eliminated by dosage adjustment or other means

16 I am willing to try any other medication the hospital doctor, physician assistant, or advanced registered nurse
17 practitioner recommends.

18 I am willing to try any other medications my outpatient doctor, physician assistant, or advanced registered nurse
19 practitioner recommends.

20 I do not want to try any other medications.

21 Medication Allergies.

22 I have allergies to, or severe side effects from, the following:

23 Other Medication Preferences or Instructions

24 I have the following other preferences or instructions about medications:

25 **D. Preferences and Instructions About Hospitalization and Alternatives**

26 (check all that apply and, if desired, rank "1" for first choice, "2" for second choice, and so on)

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

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

31 Calling someone or having someone call me when needed.

32 Name:..... Telephone/text:..... Email:.....

33 Staying overnight with someone

34 Name:..... Telephone/text:..... Email:.....

35 Having a mental health service provider come to see me.

36 Going to a crisis triage center or emergency room.

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

38 Seeing a service provider for help with psychiatric medications.

39 Other, specify:

1 Authority to Consent to Inpatient Treatment
2 I consent, and authorize my agent (if appointed) to consent, to voluntary admission to inpatient mental health treatment
3 for days (not to exceed 14 days).

4 (Sign one):
5 If deemed appropriate by my agent (if appointed) and treating physician, physician assistant, or advanced registered
6 nurse practitioner
7

8 (Signature)
9 Or

10 Under the following circumstances (specify symptoms, behaviors, or circumstances that indicate the need for
11 hospitalization)
12

13 (Signature)
14 I do not consent, or authorize my agent (if appointed) to consent, to inpatient treatment
15
16 (Signature)

17 Hospital Preferences and Instructions
18 If hospitalization is required, I prefer the following hospitals:
19 I do not consent to be admitted to the following hospitals:

20 **E. Preferences and Instructions About Preemergency**

- 21 I would like the interventions below to be tried before use of seclusion or restraint is considered (check all that apply):
22 "Talk me down" one-on-one
23 More medication
24 Time out/privacy
25 Show of authority/force
26 Shift my attention to something else
27 Set firm limits on my behavior
28 Help me to discuss/vent feelings
29 Decrease stimulation
30 Offer to have neutral person settle dispute
31 Other:

1 **F. Preferences and Instructions About Seclusion, Restraint, and Emergency Medications**

2 If it is determined that I am engaging in behavior that requires seclusion, physical restraint, and/or emergency use of
3 medication, I prefer these interventions in the order I have chosen (choose "1" for first choice, "2" for second choice, and so
4 on):

- 5 Seclusion
- 6 Seclusion and physical restraint (combined)
- 7 Medication by injection
- 8 Medication in pill or liquid form

9 In the event that my attending physician, physician assistant, or advanced registered nurse practitioner decides to use
10 medication in response to an emergency situation after due consideration of my preferences and instructions for emergency
11 treatments stated above, I expect the choice of medication to reflect any preferences and instructions I have expressed in
12 Part VI C. of this form. The preferences and instructions I express in this section regarding medication in emergency
13 situations do not constitute consent to use of the medication for nonemergency treatment.

14 **G. Preferences and Instructions About Electroconvulsive Therapy**
15 **(ECT or Shock Therapy)**

16 My wishes regarding electroconvulsive therapy are (sign one):

17I do not consent, nor authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy
18
19 (Signature)

20 I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy
21
22 (Signature)

23 I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy, but
24 only under the following conditions:
25
26 (Signature)

27
28 **H. Preferences and Instructions About Who is Permitted to Visit**

29 If I have been admitted to a mental health treatment facility, the following people are not permitted to visit me there:

30 Name:

31 Name:

32 I understand that persons not listed above may be permitted to visit me.

33 **I. Additional Instructions About My Mental Health Care**

34 Other instructions about my mental health care:

35 In case of emergency, please contact:

1 Name: Address:
2 Work telephone: Home telephone:
3 Physician, physician assistant, or advanced Address:
4 registered nurse practitioner: Email:
5 Telephone:

6 The following may help me to avoid a hospitalization:
7 I generally react to being hospitalized as follows:
8 Staff of the hospital or crisis unit can help me by doing the following:

9 **J. Refusal of Treatment**

10 I do not consent to any mental health treatment.
11
12 (Signature)

13 **PART VII.**
14 **DURABLE POWER OF ATTORNEY (APPOINTMENT OF MY AGENT)**

15 *(Fill out this part only if you wish to appoint an agent or nominate a guardian.)*

16 I authorize an agent to make mental health treatment decisions on my behalf. The authority granted to my agent includes
17 the right to consent, refuse consent, or withdraw consent to any mental health care, treatment, service, or procedure,
18 consistent with any instructions and/or limitations I have set forth in this directive. I intend that those decisions should be
19 made in accordance with my expressed wishes as set forth in this document. If I have not expressed a choice in this
20 document **and my agent does not otherwise know my wishes**, I authorize my agent to make the decision that my agent
21 determines is in my best interest. This agency shall not be affected by my incapacity. Unless I state otherwise in this
22 durable power of attorney, I may revoke it unless prohibited by other state law.

23
24 HIPAA Release Authority. In addition to the other powers granted by this document, I grant to my Attorney-in-Fact the
25 power and authority to serve as my personal representative for all purposes under the Health Insurance Portability and
26 Accountability Act (HIPAA) of 1996, as amended from time to time, and its regulations. My Attorney-in-Fact will serve as
27 my "HIPAA personal representative" and will exercise this authority at any time that my Attorney-in-Fact is exercising
28 authority under this document.

29 **A. Designation of an Agent**

30 Name: Address:
31 Work phone: Home/cell phone:
32 Relationship: Email:

33 **B. Designation of Alternate Agent**

34 If the person named above is unavailable, unable, or refuses to serve as my agent, or I revoke that person's authority to
35 serve as my agent, I hereby appoint the following person as my alternate agent and request that this person be notified
36 immediately when this directive becomes effective or when my original agent is no longer my agent:

37 Name: Address:

1 Work phone: Home phone:

2 Relationship: Email:

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

4 If my spouse is my agent, that person shall remain my agent even if we become legally separated or our marriage is
5 dissolved, unless there is a court order to the contrary.

6 **D. Limitations on My Agent's Authority**

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

8 **E. Limitations on My Ability to Revoke this Durable Power of Attorney**

9 I choose to limit my ability to revoke this durable
10 power of attorney as follows: . .

11 **F. Preference as to Court-Appointed Guardian**

12 In the event a court appoints a guardian who will make decisions regarding my mental health treatment, I **nominate** my
13 then-serving agent (or name someone else) **as my guardian:**

14 Name and contact information (if someone other than agent or alternate):

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

18
19
20 **PART VIII.**

21 **OTHER DOCUMENTS**

22 *(Initial all that apply)*

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

25 Health care power of attorney (chapter 11.125 RCW)

26 "Living will" (Health care directive; chapter 70.122 RCW)

27 I have appointed more than one agent. I understand that the most recently appointed agent controls except as stated
28 below:

29 **PART IX.**

30 **NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS**

31 *(Fill out this part only if you wish to provide nontreatment instructions.)*

32 I understand the preferences and instructions in this part are **NOT** the responsibility of my treatment provider and that no
33 treatment provider is required to act on them.

34 **A. Who Should Be Notified**

35 I desire my agent to notify the following individuals as soon as possible if I am admitted to a mental health facility:

1 Name: Address:

2 Day telephone: Evening telephone:

3 Name: Address:

4 Day telephone: Evening telephone:

5 Name: Address:

6 Day telephone: Evening telephone:

7 **B. Preferences or Instructions About Personal Affairs**

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

10 **C. Additional Preferences and Instructions:**

11 **PART X.**

12 **SIGNATURE**

13 By signing here, I indicate that I understand the purpose and effect of this document and that I am giving my informed
14 consent to the treatments and/or admission to which I have consented or authorized my agent to consent in this directive. I
15 intend that my consent in this directive be construed as being consistent with the elements of informed consent under
16 chapter 7.70 RCW.

17 In witness of this, I have signed on this day of, 20....

18 Signature:

19 STATE OF WASHINGTON)

20) ss.

21 COUNTY OF

22 I certify that I know or have satisfactory evidence that (client name) is
23 the person who appeared before me, and said person acknowledged that
24 he or she signed this Durable Power of Attorney and acknowledged it to
25 be his or her free and voluntary act for the uses and purposes mentioned
26 in this instrument.

27 SUBSCRIBED and SWORN to before me this day of,
28 20....

1
2

SIGNATURE OF NOTARY

3
4
5

PRINT NAME OF NOTARY

6
7 NOTARY PUBLIC for the State of Washington at

8 My commission expires

9 OR have two witnesses:

10 Name:

11 This directive was signed and declared by the "Principal," to be his or her directive, in our presence who, at his or her
12 request, have signed our names below as witnesses. We declare that, at the time of the creation of this instrument, the
13 Principal is personally known to us, and, according to our best knowledge and belief, has capacity at this time and does not
14 appear to be acting under duress, undue influence, or fraud. We further declare that none of us is:

15 (A) A person designated to make medical decisions on the principal's behalf;

16 (B) A health care provider or professional person directly involved with the provision of care to the principal at the time the
17 directive is executed;

18 (C) An owner, operator, employee, or relative of an owner or operator of a health care facility or long-term care facility in
19 which the principal is a patient or resident;

20 (D) A person who is related by blood, marriage, or adoption to the person, or with whom the principal has a dating
21 relationship as defined in RCW 26.50.010;

22 (E) An incapacitated person;

23 (F) A person who would benefit financially if the principal undergoes mental health treatment; or

24 (G) A minor.

25 Witness 1 Signature: Date:

26 Printed Name: Address:

27 Telephone:

28 Witness 2 Signature: Date:

29 Printed Name: Address:

30 Telephone:

31 **PART XI.**

32 **RECORD OF DIRECTIVE**

33 I have given a copy of this directive to the following persons:

34
35 Name: Address:

1 Day telephone: Evening telephone:
2 Name: Address:
3 Day telephone: Evening telephone:

4
5 DO NOT FILL OUT PART XII UNLESS YOU INTEND TO REVOKE
6 THIS DIRECTIVE IN PART OR IN WHOLE

7 **PART XII.**
8 **REVOCATION OF THIS DIRECTIVE**

9 *(Initial any that apply):*
10 I am revoking the following part(s) of this directive (specify):
11 Date:

12 I am revoking all of this directive.

13 By signing here, I indicate that I understand the purpose and effect of my revocation and that no person is bound by any
14 revoked provision(s). I intend this revocation to be interpreted as if I had never completed the revoked provision(s).

15
16
17 (Signature)
18 Printed Name:

19 **DO NOT SIGN THIS PART UNLESS YOU INTEND TO REVOKE THIS**
20 **DIRECTIVE IN PART OR IN WHOLE**

21
22
23 **Sec. 20.** RCW 71.34.755 and 2020 c 302 s 96 are each amended to
24 read as follows:

25 (1) Less restrictive alternative treatment, at a minimum, must
26 include the following services:

- 27 (a) Assignment of a care coordinator;
- 28 (b) An intake evaluation with the provider of the less
29 restrictive alternative treatment;
- 30 (c) A psychiatric evaluation;
- 31 (d) A schedule of regular contacts with the provider of the less
32 restrictive alternative treatment services for the duration of the
33 order;
- 34 (e) A transition plan addressing access to continued services at
35 the expiration of the order;
- 36 (f) An individual crisis plan; (~~and~~)

1 (g) Consultation about the formation of a mental health advance
2 directive under chapter 71.32 RCW; and

3 (h) Notification to the care coordinator assigned in (a) of this
4 subsection if reasonable efforts to engage the client fail to produce
5 substantial compliance with court-ordered treatment conditions.

6 (2) Less restrictive alternative treatment may include the
7 following additional services:

8 (a) Medication management;

9 (b) Psychotherapy;

10 (c) Nursing;

11 (d) Substance abuse counseling;

12 (e) Residential treatment; and

13 (f) Support for housing, benefits, education, and employment.

14 (3) If the minor was provided with involuntary medication during
15 the involuntary commitment period, the less restrictive alternative
16 treatment order may authorize the less restrictive alternative
17 treatment provider or its designee to administer involuntary
18 antipsychotic medication to the person if the provider has attempted
19 and failed to obtain the informed consent of the person and there is
20 a concurring medical opinion approving the medication by a
21 psychiatrist, physician assistant working with a supervising
22 psychiatrist, psychiatric advanced registered nurse practitioner, or
23 physician or physician assistant in consultation with an independent
24 mental health professional with prescribing authority.

25 (4) Less restrictive alternative treatment must be administered
26 by a provider that is certified or licensed to provide or coordinate
27 the full scope of services required under the less restrictive
28 alternative order and that has agreed to assume this responsibility.

29 (5) The care coordinator assigned to a minor ordered to less
30 restrictive alternative treatment must submit an individualized plan
31 for the minor's treatment services to the court that entered the
32 order. An initial plan must be submitted as soon as possible
33 following the intake evaluation and a revised plan must be submitted
34 upon any subsequent modification in which a type of service is
35 removed from or added to the treatment plan.

36 (6) For the purpose of this section, "care coordinator" means a
37 clinical practitioner who coordinates the activities of less
38 restrictive alternative treatment. The care coordinator coordinates
39 activities with the designated crisis responders that are necessary
40 for enforcement and continuation of less restrictive alternative

1 treatment orders and is responsible for coordinating service
2 activities with other agencies and establishing and maintaining a
3 therapeutic relationship with the individual on a continuing basis.

4 NEW SECTION. **Sec. 21.** Section 2 of this act expires January 1,
5 2022.

6 NEW SECTION. **Sec. 22.** Section 3 of this act takes effect
7 January 1, 2022.

8 NEW SECTION. **Sec. 23.** Section 3 of this act expires July 1,
9 2022.

10 NEW SECTION. **Sec. 24.** Section 4 of this act takes effect July
11 1, 2022.

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