

SSB 5370 - S AMD 315  
By Senator Dhingra

ADOPTED 03/08/2021

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 71.32.010 and 2003 c 283 s 1 are each amended to  
4 read as follows:

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

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

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

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

15 (d) (~~Mentally ill individuals~~) Individuals with behavioral  
16 health disorders need some method of expressing their instructions  
17 and preferences for treatment and providing advance consent to or  
18 refusal of treatment.

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

24 (~~(2)~~) (3) The legislature further finds that:

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

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

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

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

3 Consequently, the legislature affirms that, pursuant to other  
4 provisions of law, a validly executed mental health advance directive  
5 is to be respected by agents, guardians, and other surrogate decision  
6 makers, health care providers, professional persons, and health care  
7 facilities.

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

10 The definitions in this section apply throughout this chapter  
11 unless the context clearly requires otherwise.

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

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

16 (3) "Capacity" means that (~~(an adult)~~) a person has not been  
17 found to be incapacitated pursuant to this chapter or RCW  
18 11.88.010(1)(e).

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

20 (5) "Health care facility" means a hospital, as defined in RCW  
21 70.41.020; an institution, as defined in RCW 71.12.455; a state  
22 hospital, as defined in RCW 72.23.010; a nursing home, as defined in  
23 RCW 18.51.010; or a clinic that is part of a community mental health  
24 service delivery system, as defined in RCW 71.24.025.

25 (6) "Health care provider" means an osteopathic physician or  
26 osteopathic physician's assistant licensed under chapter 18.57 or  
27 18.57A RCW, a physician or physician's assistant licensed under  
28 chapter 18.71 or 18.71A RCW, or an advanced registered nurse  
29 practitioner licensed under RCW 18.79.050.

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

37 (8) "Informed consent" means consent that is given after (~~(the)~~)  
38 a person: (a) Is provided with a description of the nature,  
39 character, and anticipated results of proposed treatments and

1 alternatives, and the recognized serious possible risks,  
2 complications, and anticipated benefits in the treatments and  
3 alternatives, including nontreatment, in language that the person can  
4 reasonably be expected to understand; or (b) elects not to be given  
5 the information included in (a) of this subsection.

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

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

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

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

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

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

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

30 (16) "Behavioral health disorder" means a mental disorder, a  
31 substance use disorder, or a co-occurring mental health and substance  
32 use disorder.

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

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

3       The definitions in this section apply throughout this chapter  
4 unless the context clearly requires otherwise.

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

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

9       (3) "Capacity" means that (~~(an adult)~~) a person has not been  
10 found to be incapacitated pursuant to this chapter or subject to a  
11 guardianship under RCW 11.130.265.

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

13       (5) "Health care facility" means a hospital, as defined in RCW  
14 70.41.020; an institution, as defined in RCW 71.12.455; a state  
15 hospital, as defined in RCW 72.23.010; a nursing home, as defined in  
16 RCW 18.51.010; or a clinic that is part of a community (~~(mental)~~)  
17 behavioral health service delivery system, as defined in RCW  
18 71.24.025.

19       (6) "Health care provider" means an osteopathic physician or  
20 osteopathic physician's assistant licensed under chapter 18.57 or  
21 18.57A RCW, a physician or physician's assistant licensed under  
22 chapter 18.71 or 18.71A RCW, or an advanced registered nurse  
23 practitioner licensed under RCW 18.79.050.

24       (7) "Incapacitated" means (~~(an adult)~~) a person who: (a) Is  
25 unable to understand the nature, character, and anticipated results  
26 of proposed treatment or alternatives; understand the recognized  
27 serious possible risks, complications, and anticipated benefits in  
28 treatments and alternatives, including nontreatment; or communicate  
29 his or her understanding or treatment decisions; or (b) has been  
30 found to be subject to a guardianship under RCW 11.130.265.

31       (8) "Informed consent" means consent that is given after (~~(the)~~)  
32 (a) person: (a) Is provided with a description of the nature,  
33 character, and anticipated results of proposed treatments and  
34 alternatives, and the recognized serious possible risks,  
35 complications, and anticipated benefits in the treatments and  
36 alternatives, including nontreatment, in language that the person can  
37 reasonably be expected to understand; or (b) elects not to be given  
38 the information included in (a) of this subsection.

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

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

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

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

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

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

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

23 (16) "Behavioral health disorder" means a mental disorder, a  
24 substance use disorder, or a co-occurring mental health and substance  
25 use disorder.

26 (17) "Substance use disorder" means a cluster of cognitive,  
27 behavioral, and physiological symptoms indicating that an individual  
28 continues using the substance despite significant substance-related  
29 problems. The diagnosis of a substance use disorder is based on a  
30 pathological pattern of behaviors related to the use of the  
31 substances.

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

34 The definitions in this section apply throughout this chapter  
35 unless the context clearly requires otherwise.

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

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

1 (3) "Capacity" means that ((~~an adult~~)) a person has not been  
2 found to be incapacitated pursuant to this chapter or subject to a  
3 guardianship under RCW 11.130.265.

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

5 (5) "Health care facility" means a hospital, as defined in RCW  
6 70.41.020; an institution, as defined in RCW 71.12.455; a state  
7 hospital, as defined in RCW 72.23.010; a nursing home, as defined in  
8 RCW 18.51.010; or a clinic that is part of a community ((~~mental~~  
9 ~~behavioral~~)) behavioral health service delivery system, as defined  
10 in RCW 71.24.025.

11 (6) "Health care provider" means an osteopathic physician  
12 licensed under chapter 18.57 RCW, a physician or physician's  
13 assistant licensed under chapter 18.71 or 18.71A RCW, or an advanced  
14 registered nurse practitioner licensed under RCW 18.79.050.

15 (7) "Incapacitated" means ((~~an adult~~)) a person who: (a) Is  
16 unable to understand the nature, character, and anticipated results  
17 of proposed treatment or alternatives; understand the recognized  
18 serious possible risks, complications, and anticipated benefits in  
19 treatments and alternatives, including nontreatment; or communicate  
20 his or her understanding or treatment decisions; or (b) has been  
21 found to be subject to a guardianship under RCW 11.130.265.

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

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

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

35 (11) "Mental health advance directive" or "directive" means a  
36 written document in which the principal makes a declaration of  
37 instructions or preferences or appoints an agent to make decisions on  
38 behalf of the principal regarding the principal's mental health  
39 treatment, or both, and that is consistent with the provisions of  
40 this chapter.

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

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

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

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

14 (16) "Behavioral health disorder" means a mental disorder, a  
15 substance use disorder, or a co-occurring mental health and substance  
16 use disorder.

17 (17) "Substance use disorder" means a cluster of cognitive,  
18 behavioral, and physiological symptoms indicating that an individual  
19 continues using the substance despite significant substance-related  
20 problems. The diagnosis of a substance use disorder is based on a  
21 pathological pattern of behaviors related to the use of the  
22 substances.

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

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

27 (2) The definitions of mental disorder, behavioral health  
28 disorder, mental health professional, and professional person are to  
29 be construed to be consistent with those terms as they are defined in  
30 RCW 71.05.020.

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

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

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

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

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

9       (3) A directive may include any provision relating to (~~mental~~)  
10 behavioral health treatment or the care of the principal or the  
11 principal's personal affairs. Without limitation, a directive may  
12 include:

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

15       (b) Consent to specific types of (~~mental~~) behavioral health  
16 treatment;

17       (c) Refusal to consent to specific types of (~~mental~~) behavioral  
18 health treatment;

19       (d) Consent to admission to and retention in a facility for  
20 (~~mental~~) behavioral health treatment for up to (~~fourteen~~) 14  
21 days;

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

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

27       (g) Appointment of an agent pursuant to chapter 11.125 RCW to  
28 make (~~mental~~) behavioral health treatment decisions on the  
29 principal's behalf, including authorizing the agent to provide  
30 consent on the principal's behalf to voluntary admission to inpatient  
31 (~~mental~~) behavioral health treatment; and

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

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



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

3       (1) A directive shall:

4       (a) Be in writing;

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

7       (c) Be dated and signed by the principal or at the principal's  
8 direction in the principal's presence if the principal is unable to  
9 sign;

10       (d) Designate whether the principal wishes to be able to revoke  
11 the directive during any period of incapacity or wishes to be unable  
12 to revoke the directive during any period of incapacity; and

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

20       (2) A directive that includes the appointment of an agent  
21 pursuant to a power of attorney under chapter 11.125 RCW shall  
22 contain the words "This power of attorney shall not be affected by  
23 the incapacity of the principal," or "This power of attorney shall  
24 become effective upon the incapacity of the principal," or similar  
25 words showing the principal's intent that the authority conferred  
26 shall be exercisable notwithstanding the principal's incapacity.

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

30       (4) A directive may:

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

33       (b) Expire under its own terms.

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

36       A directive may not:

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

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

4 (3) Obligate any health care provider, professional person, or  
5 health care facility to be responsible for the nontreatment personal  
6 care of the principal or the principal's personal affairs outside the  
7 scope of services the facility normally provides;

8 (4) Replace or supersede the provisions of any will or  
9 testamentary document or supersede the provisions of intestate  
10 succession;

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

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

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

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

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

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

24 (4) An agent may make decisions on behalf of the principal.  
25 Unless the principal has revoked the directive, the decisions must be  
26 consistent with the instructions and preferences the principal has  
27 expressed in the directive, or if not expressed, as otherwise known  
28 to the agent. If the principal's instructions or preferences are not  
29 known, the agent shall make a decision he or she determines is in the  
30 best interest of the principal.

31 (5) (~~Except to the extent the right is limited by the~~  
32 ~~appointment or any federal or state law, the agent has the same right~~  
33 ~~as the principal to receive, review, and authorize the use and~~  
34 ~~disclosure of the principal's health care information when the agent~~  
35 ~~is acting on behalf of the principal and to the extent required for~~  
36 ~~the agent to carry out his or her duties.)) A person authorized to  
37 act as an agent during periods when the principal is incapacitated  
38 may act as the principal's personal representative pursuant to the  
39 health insurance portability and accountability act, sections 1171~~

1 through 1179 of the social security act, 42 U.S.C. Sec. 1320d, as  
2 amended, and applicable regulations, to obtain access to the  
3 principal's health care information and communicate with the  
4 principal's health care provider. This subsection shall be construed  
5 to be consistent with chapters 70.02, 70.24, (~~70.96A,~~) 71.05, and  
6 71.34 RCW, and with federal law regarding health care information.

7 (6) Unless otherwise provided in the appointment and agreed to in  
8 writing by the agent, the agent is not, as a result of acting in the  
9 capacity of agent, personally liable for the cost of treatment  
10 provided to the principal.

11 (7) An agent may resign or withdraw at any time by giving written  
12 notice to the principal. The agent must also give written notice to  
13 any health care provider, professional person, or health care  
14 facility providing treatment to the principal. The resignation or  
15 withdrawal is effective upon receipt unless otherwise specified in  
16 the resignation or withdrawal.

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

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

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

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

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

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

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

34 (iii) Two health care providers.

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

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

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

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

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

10 (5) (a) When a court makes a determination whether a principal has  
11 capacity, the court shall, at a minimum, be informed by the testimony  
12 of one mental health professional or substance use disorder  
13 professional familiar with the principal and shall, except for good  
14 cause, give the principal an opportunity to appear in court prior to  
15 the court making its determination.

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

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

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

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

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

38 (ii) When an incapacitated principal has been admitted to and  
39 remains in inpatient treatment for more than (~~seventy-two~~) 120

1 hours pursuant to the provisions of his or her directive, the  
2 principal's capacity must be reevaluated when there has been a change  
3 in his or her condition that indicates that he or she appears to have  
4 regained capacity.

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

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

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

17 (b) When a principal who does not have an agent for (~~(mental)~~)  
18 behavioral health treatment decisions is being treated in an  
19 inpatient facility and requests a determination or redetermination of  
20 capacity, the mental health professional or health care provider must  
21 complete the determination or, if the principal is seeking a  
22 determination from a court, must make reasonable efforts to notify  
23 the person authorized to make decisions for the principal under RCW  
24 7.70.065 of the principal's request.

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

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

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

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

37 (1) A principal who:

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

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

4 (c) At the time of admission to inpatient treatment, refuses to  
5 be admitted,

6 may only be admitted into inpatient (~~(mental)~~) behavioral health  
7 treatment under subsection (2) of this section.

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

13 (a) Evaluates the principal's mental condition, including a  
14 review of reasonably available psychiatric and psychological history,  
15 diagnosis, and treatment needs, and determines, in conjunction with  
16 another health care provider (~~(or)~~), mental health professional, or  
17 substance use disorder professional, that the principal is  
18 incapacitated;

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

21 (c) Makes a written determination that the principal needs an  
22 inpatient evaluation or is in need of inpatient treatment and that  
23 the evaluation or treatment cannot be accomplished in a less  
24 restrictive setting; and

25 (d) Documents in the principal's medical record a summary of the  
26 physician's, physician assistant's, or psychiatric advanced  
27 registered nurse practitioner's findings and recommendations for  
28 treatment or evaluation.

29 (3) In the event the admitting physician is not a psychiatrist,  
30 the admitting physician assistant is not supervised by a  
31 psychiatrist, or the advanced registered nurse practitioner is not a  
32 psychiatric advanced registered nurse practitioner, the principal  
33 shall receive a complete (~~(psychological)~~) behavioral health  
34 assessment by a mental health professional or substance use disorder  
35 professional within (~~(twenty-four)~~) 24 hours of admission to  
36 determine the continued need for inpatient evaluation or treatment.

37 (4) (a) If it is determined that the principal has capacity, then  
38 the principal may only be admitted to, or remain in, inpatient  
39 treatment if he or she consents at the time, is admitted for family-

1 initiated treatment under chapter 71.34 RCW, or is detained under the  
2 involuntary treatment provisions of chapter 71.05 or 71.34 RCW.

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

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

15 (6) (a) Except as provided in (b) of this subsection, any  
16 principal who is voluntarily admitted to inpatient (~~mental~~)  
17 behavioral health treatment under this chapter shall have all the  
18 rights provided to individuals who are voluntarily admitted to  
19 inpatient treatment under chapter 71.05, 71.34, or 72.23 RCW.

20 (b) Notwithstanding RCW 71.05.050 regarding consent to inpatient  
21 treatment for a specified length of time, the choices an  
22 incapacitated principal expressed in his or her directive shall  
23 control, provided, however, that a principal who takes action  
24 demonstrating a desire to be discharged, in addition to making  
25 statements requesting to be discharged, shall be discharged, and no  
26 principal shall be restrained in any way in order to prevent his or  
27 her discharge. Nothing in this subsection shall be construed to  
28 prevent detention and evaluation for civil commitment under chapter  
29 71.05 RCW.

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

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

36 (1) For the purposes of this section, "provider" means a private  
37 or public agency, government entity, health care provider,  
38 professional person, health care facility, or person acting under the

1 direction of a health care provider or professional person, health  
2 care facility, or long-term care facility.

3 (2) A provider is not subject to civil liability or sanctions for  
4 unprofessional conduct under the uniform disciplinary act, chapter  
5 18.130 RCW, when in good faith and without negligence:

6 (a) The provider provides treatment to a principal in the absence  
7 of actual knowledge of the existence of a directive, or provides  
8 treatment pursuant to a directive in the absence of actual knowledge  
9 of the revocation of the directive;

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

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

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

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

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

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

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

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

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

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



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

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

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

8       A person shall not be required to execute or to refrain from  
9 executing a directive, nor shall the existence of a directive be used  
10 as a criterion for insurance, as a condition for receiving (~~mental~~)  
11 behavioral or physical health services, or as a condition of  
12 admission to or discharge from a health care facility or long-term  
13 care facility.

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

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

23       (a) The treating facility's professional staff determine that  
24 inpatient (~~mental~~) behavioral health treatment is no longer  
25 medically necessary for the resident. The determination shall be made  
26 in writing by a psychiatrist, physician assistant working with a  
27 supervising psychiatrist, or a psychiatric advanced registered nurse  
28 practitioner, or (i) one physician and a mental health professional  
29 or substance use disorder professional; (ii) one physician assistant  
30 and a mental health professional or substance use disorder  
31 professional; or (iii) one psychiatric advanced registered nurse  
32 practitioner and a mental health professional or substance use  
33 disorder professional; or

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

36       (2)(a) If the long-term care facility does not have a bed  
37 available at the time of discharge, the treating facility may  
38 discharge the resident, in consultation with the resident and agent

1 if any, and in accordance with a medically appropriate discharge  
2 plan, to another long-term care facility.

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

7 (c) This section does not restrict the right of the resident to  
8 an earlier release from the inpatient treatment facility. This  
9 section does not restrict the right of a long-term care facility to  
10 initiate transfer or discharge of a resident who is readmitted  
11 pursuant to this section, provided that the facility has complied  
12 with the laws governing the transfer or discharge of a resident.

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

17 **Sec. 19.** RCW 71.32.260 and 2016 c 209 s 413 and 2016 c 155 s 16  
18 are each reenacted and amended to read as follows:

19 The directive shall be in substantially the following form:

20 ~~((Mental Health Advance Directive~~

21 **~~NOTICE TO PERSONS~~**

22 **~~CREATING A MENTAL HEALTH ADVANCE DIRECTIVE~~**

23 ~~This is an important legal document. It creates an advance directive for mental health treatment. Before signing this~~  
24 ~~document you should know these important facts:~~

25 ~~(1) This document is called an advance directive and allows you to make decisions in advance about your mental health~~  
26 ~~treatment, including medications, short-term admission to inpatient treatment and electroconvulsive therapy.~~

27 **~~YOU DO NOT HAVE TO FILL OUT OR SIGN THIS FORM.~~**

28 **~~IF YOU DO NOT SIGN THIS FORM, IT WILL NOT TAKE EFFECT.~~**

29 ~~If you choose to complete and sign this document, you may still decide to leave some items blank.~~

30 ~~(2) You have the right to appoint a person as your agent to make treatment decisions for you. You must notify your agent~~  
31 ~~that you have appointed him or her as an agent. The person you appoint has a duty to act consistently with your wishes~~  
32 ~~made known by you. If your agent does not know what your wishes are, he or she has a duty to act in your best interest.~~

33 ~~Your agent has the right to withdraw from the appointment at any time.~~

1 (3) The instructions you include with this advance directive and the authority you give your agent to act will only become  
2 effective under the conditions you select in this document. You may choose to limit this directive and your agent's authority  
3 to times when you are incapacitated or to times when you are exhibiting symptoms or behavior that you specify. You may  
4 also make this directive effective immediately. No matter when you choose to make this directive effective, your treatment  
5 providers must still seek your informed consent at all times that you have capacity to give informed consent.

6 (4) You have the right to revoke this document in writing at any time you have capacity.

7 **YOU MAY NOT REVOKE THIS DIRECTIVE WHEN YOU HAVE BEEN FOUND TO BE**  
8 **INCAPACITATED UNLESS YOU HAVE SPECIFICALLY STATED IN THIS DIRECTIVE THAT**  
9 **YOU WANT IT TO BE REVOCABLE WHEN YOU ARE INCAPACITATED.**

10 (5) This directive will stay in effect until you revoke it unless you specify an expiration date. If you specify an expiration  
11 date and you are incapacitated at the time it expires, it will remain in effect until you have capacity to make treatment  
12 decisions again unless you chose to be able to revoke it while you are incapacitated and you revoke the directive.

13 (6) You cannot use your advance directive to consent to civil commitment. The procedures that apply to your advance  
14 directive are different than those provided for in the Involuntary Treatment Act. Involuntary treatment is a different  
15 process.

16 (7) If there is anything in this directive that you do not understand, you should ask a lawyer to explain it to you.

17 (8) You should be aware that there are some circumstances where your provider may not have to follow your directive.

18 (9) You should discuss any treatment decisions in your directive with your provider.

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

20  
21 **PART I.**

22 **STATEMENT OF INTENT TO CREATE A**  
23 **MENTAL HEALTH ADVANCE DIRECTIVE**

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

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

32 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  
33 revoke this directive if a court, two health care providers, or one mental health professional and one health care provider  
34 find that I am an incapacitated person, unless, when I executed this directive, I chose to be able to revoke this directive  
35 while incapacitated.

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

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

6  
7 **PART II.**

8 **WHEN THIS DIRECTIVE IS EFFECTIVE**

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

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

11 ..... Immediately upon my signing of this directive.

12 ..... If I become incapacitated.

13 ..... When the following circumstances, symptoms, or behaviors occur: .....

14  
15 **PART III.**

16 **DURATION OF THIS DIRECTIVE**

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

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

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

20 ..... Automatically expire ..... years from the date it was created.

21  
22 **PART IV.**

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.

PART V:

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

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

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

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

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

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

~~B. Preferences and Instructions About Other Providers~~

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

Name..... Profession..... Contact information.....

Name..... Profession..... Contact information.....

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

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

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

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

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

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

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

..... I do not want to try any other medications.

~~Medication Allergies~~

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

~~Other Medication Preferences or Instructions~~

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

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

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

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

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

7 ..... Calling someone or having someone call me when needed:

8 Name: ..... Telephone: .....

9 ..... Staying overnight with someone

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

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

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

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

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

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

16 **Authority to Consent to Inpatient Treatment**

17 I consent, and authorize my agent (if appointed) to consent, to voluntary admission to inpatient mental health treatment  
18 for ..... days *(not to exceed 14 days)*

19 (Sign one):

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

22 .....

23 (Signature)

24 or

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

27 .....

28 (Signature)

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

30 .....

31 (Signature)

32 **Hospital Preferences and Instructions**

33 If hospitalization is required, I prefer the following hospitals: .....

34 I do not consent to be admitted to the following hospitals: .....

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

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

- 4 ..... "Talk me down" one-on-one
- 5 ..... More medication
- 6 ..... Time out/privacy
- 7 ..... Show of authority/force
- 8 ..... Shift my attention to something else
- 9 ..... Set firm limits on my behavior
- 10 ..... Help me to discuss/vent feelings
- 11 ..... Decrease stimulation
- 12 ..... Offer to have neutral person settle dispute
- 13 ..... Other, specify .....

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

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

- 18 ..... Seclusion
- 19 ..... Seclusion and physical restraint (combined)
- 20 ..... Medication by injection
- 21 ..... Medication in pill or liquid form

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

27 **G. Preferences and Instructions About Electroconvulsive Therapy**  
28 **(ECT or Shock Therapy)**

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

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

32 .....

33 (Signature)

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

1 .....  
2

(Signature)

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

5 .....

6 (Signature)

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

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

9 Name: .....

10 Name: .....

11 Name: .....

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

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

14 Other instructions about my mental health care: .....

15 In case of emergency, please contact:

16 Name: ..... Address: .....

17 Work telephone: ..... Home telephone: .....

18 Physician, Physician Assistant, or Psychiatric Address: .....

19 Advanced Registered Nurse Practitioner: .....

20 Telephone: .....

21 The following may help me to avoid a hospitalization: .....

22 I generally react to being hospitalized as follows: .....

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

24 **J. Refusal of Treatment**

25 I do not consent to any mental health treatment.

26 .....

27 (Signature)

28  
29 **PART VI.**

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

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



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

8 **A. Designation of an Agent**

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

11 Name: ..... Address: .....  
12 Work telephone: ..... Home telephone: .....  
13 Relationship: .....

14 **B. Designation of Alternate Agent**

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

18 Name: ..... Address: .....  
19 Work telephone: ..... Home telephone: .....  
20 Relationship: .....

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

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

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

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

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

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

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

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

31 Name: ..... Address: .....  
32 Work telephone: ..... Home telephone: .....  
33 Relationship: .....

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

4 .....

5 (Signature required if nomination is made)

6  
7 **PART VII.**  
8 **OTHER DOCUMENTS**

9 *(Initial all that apply)*

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

12 ..... Health care power of attorney (chapter 11.125 RCW)

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

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

16  
17 **PART VIII.**  
18 **NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS**

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

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

22 **A. Who Should Be Notified**

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

24 Name: ..... Address: .....

25 Day telephone: ..... Evening telephone: .....

26 Name: ..... Address: .....

27 Day telephone: ..... Evening telephone: .....

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

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

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

32  
33 **PART IX.**  
34 **SIGNATURE**

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

5 Signature: ..... Date: .....

6 Printed Name: .....

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

- 11 (A) A person designated to make medical decisions on the principal's behalf;
- 12 (B) A health care provider or professional person directly involved with the provision of care to the principal at the time the  
13 directive is executed;
- 14 (C) An owner, operator, employee, or relative of an owner or operator of a health care facility or long-term care facility in  
15 which the principal is a patient or resident;
- 16 (D) A person who is related by blood, marriage, or adoption to the person, or with whom the principal has a dating  
17 relationship as defined in RCW 26.50.010;
- 18 (E) An incapacitated person;
- 19 (F) A person who would benefit financially if the principal undergoes mental health treatment; or
- 20 (G) A minor.

21 Witness 1: Signature: ..... Date: .....

22 Printed Name: .....

23 Telephone: ..... Address: .....

24 Witness 2: Signature: ..... Date: .....

25 Printed Name: .....

26 Telephone: ..... Address: .....

27  
28 **PART X.**  
29 **RECORD OF DIRECTIVE**

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

31 ~~DO NOT FILL OUT PART XI UNLESS YOU INTEND TO REVOKE~~  
32 ~~THIS DIRECTIVE IN PART OR IN WHOLE~~

33  
34 **PART XI.**  
35 **REVOCATION OF THIS DIRECTIVE**

1 *(Initial any that apply):*

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

3 ..... I am revoking all of this directive.

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

6 Signature: ..... Date: .....

7 Printed Name: .....

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

10 Mental Health Advance Directive of (client name)  
11 With Appointment of (agent name) as  
12 Agent for Mental Health Decisions

13  
14 **PART I.**  
15 **STATEMENT OF INTENT TO CREATE A**  
16 **MENTAL HEALTH ADVANCE DIRECTIVE**

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

20 **PART II.**  
21 **MY CARE NEEDS – WHAT WORKS FOR ME**

22 In order to assist in carrying out my directive I would like my providers and my agent to know the following information:  
23 I have been diagnosed with (client illnesses both mental health and physical diagnoses) for which I take (list medications).  
24 I am also on the following other medications: (list any other medications for other conditions).  
25 The best treatment method for my illness is (give general overview of what works best for client).  
26 I have/do not have a history of substance abuse. My preferences and treatment options around medication management  
27 related to substance abuse are:

28 **PART III.**  
29 **WHEN THIS DIRECTIVE IS EFFECTIVE**

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

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

32 ..... Immediately upon my signing of this directive.

33 ..... If I become incapacitated.

34 ..... When the following circumstances, symptoms, or behaviors occur:

1 **PART IV.**

2 **DURATION OF THIS DIRECTIVE**

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

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

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

6 . . . . . Automatically expire . . . . . years from the date it was created.

7 **PART V.**

8 **WHEN I MAY REVOKE THIS DIRECTIVE**

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

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

11 . . . . . Only when I have capacity.

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

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

15 . . . . . Even if I am incapacitated.

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

19 **PART VI.**

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

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

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

26 I do not wish to be treated by

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

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

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

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

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

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

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

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

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

12 ..... I do not want to try any other medications.

13 Medication Allergies.

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

15 Other Medication Preferences or Instructions

16 ..... I have the following other preferences or instructions about medications:

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

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

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

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

23 ..... Calling someone or having someone call me when needed.

24 Name:..... Telephone/text:..... Email:.....

25 ..... Staying overnight with someone

26 Name:..... Telephone/text:..... Email:.....

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

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

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

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

31 ..... Other, specify:

32 Authority to Consent to Inpatient Treatment

33 I consent, and authorize my agent (if appointed) to consent, to voluntary admission to inpatient mental health treatment  
34 for ..... days (not to exceed 14 days).

35 (Sign one): .....

36 ..... If deemed appropriate by my agent (if appointed) and treating physician, physician assistant, or advanced registered  
37 nurse practitioner

1 .....  
2

(Signature)

3 Or

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

6 .....  
7

(Signature)

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

9 .....  
10

(Signature)

11 Hospital Preferences and Instructions

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

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

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

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

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

17 ..... More medication

18 ..... Time out/privacy

19 ..... Show of authority/force

20 ..... Shift my attention to something else

21 ..... Set firm limits on my behavior

22 ..... Help me to discuss/vent feelings

23 ..... Decrease stimulation

24 ..... Offer to have neutral person settle dispute

25 ..... Other:

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

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

30 ..... Seclusion

31 ..... Seclusion and physical restraint (combined)

32 ..... Medication by injection

33 ..... Medication in pill or liquid form

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

1 **G. Preferences and Instructions About Electroconvulsive Therapy**

2 **(ECT or Shock Therapy)**

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

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

5 .....

6 (Signature)

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

8 .....

9 (Signature)

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

12 .....

13 (Signature)

14  
15 **H. Preferences and Instructions About Who is Permitted to Visit**

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

17 Name: .....

18 Name: .....

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

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

21 Other instructions about my mental health care:

22 In case of emergency, please contact:

23 Name: ..... Address: .....

24 Work telephone: ..... Home telephone: .....

25 Physician, physician assistant, or advanced Address: .....

26 registered nurse practitioner: ..... Email: .....

27 Telephone: .....

28 The following may help me to avoid a hospitalization:

29 I generally react to being hospitalized as follows:

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

31 **J. Refusal of Treatment**

32 I do not consent to any mental health treatment.

33 .....

34 (Signature)

35 **PART VII.**

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



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

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

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

**A. Designation of an Agent**

Name: ..... Address: .....  
Work phone: ..... Home/cell phone: .....  
Relationship: ..... Email: .....

**B. Designation of Alternate Agent**

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

Name: ..... Address: .....  
Work phone: ..... Home phone: .....  
Relationship: ..... Email: .....

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

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

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

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

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

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

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

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

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

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

5  
6  
7 **PART VIII.**  
8 **OTHER DOCUMENTS**

9 *(Initial all that apply)*

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

12 ..... Health care power of attorney (chapter 11.125 RCW)

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

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

16 **PART IX.**  
17 **NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS**

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

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

21 **A. Who Should Be Notified**

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

23 Name: ..... Address: .....

24 Day telephone: ..... Evening telephone: .....

25 Name: ..... Address: .....

26 Day telephone: ..... Evening telephone: .....

27 Name: ..... Address: .....

28 Day telephone: ..... Evening telephone: .....

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

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

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

33 **PART X.**  
34 **SIGNATURE**

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

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

6 Signature: . . . . .

7 STATE OF WASHINGTON )

8 ) ss.

9 COUNTY OF . . . . .)

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

15 SUBSCRIBED and SWORN to before me this . . . . . day of . . . . .,  
16 20. . . .

17 . . . . .

18 SIGNATURE OF NOTARY

19 . . . . .

20 . . . . .

21 PRINT NAME OF NOTARY

22 . . . . .

23 NOTARY PUBLIC for the State of Washington at . . . . .

24 My commission expires . . . . .

25 OR have two witnesses:

26 Name: . . . . .

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

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

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

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

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



1        NEW SECTION.    **Sec. 20.**    A new section is added to chapter 71.32  
2    RCW to read as follows:

3        Nothing in this chapter restricts the right of a parent to seek  
4    behavioral health evaluation and treatment for a nonconsenting  
5    adolescent using family-initiated treatment laws under chapter 71.34  
6    RCW.

7        **Sec. 21.**    RCW 71.34.755 and 2020 c 302 s 96 are each amended to  
8    read as follows:

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

11        (a) Assignment of a care coordinator;

12        (b) An intake evaluation with the provider of the less  
13   restrictive alternative treatment;

14        (c) A psychiatric evaluation;

15        (d) A schedule of regular contacts with the provider of the less  
16   restrictive alternative treatment services for the duration of the  
17   order;

18        (e) A transition plan addressing access to continued services at  
19   the expiration of the order;

20        (f) An individual crisis plan; (~~and~~)

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

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

26        (2) Less restrictive alternative treatment may include the  
27   following additional services:

28        (a) Medication management;

29        (b) Psychotherapy;

30        (c) Nursing;

31        (d) Substance abuse counseling;

32        (e) Residential treatment; and

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

34        (3) If the minor was provided with involuntary medication during  
35   the involuntary commitment period, the less restrictive alternative  
36   treatment order may authorize the less restrictive alternative  
37   treatment provider or its designee to administer involuntary  
38   antipsychotic medication to the person if the provider has attempted  
39   and failed to obtain the informed consent of the person and there is

1 a concurring medical opinion approving the medication by a  
2 psychiatrist, physician assistant working with a supervising  
3 psychiatrist, psychiatric advanced registered nurse practitioner, or  
4 physician or physician assistant in consultation with an independent  
5 mental health professional with prescribing authority.

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

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

17 (6) For the purpose of this section, "care coordinator" means a  
18 clinical practitioner who coordinates the activities of less  
19 restrictive alternative treatment. The care coordinator coordinates  
20 activities with the designated crisis responders that are necessary  
21 for enforcement and continuation of less restrictive alternative  
22 treatment orders and is responsible for coordinating service  
23 activities with other agencies and establishing and maintaining a  
24 therapeutic relationship with the individual on a continuing basis.

25 NEW SECTION. **Sec. 22.** Section 2 of this act expires January 1,  
26 2022.

27 NEW SECTION. **Sec. 23.** Section 3 of this act takes effect  
28 January 1, 2022.

29 NEW SECTION. **Sec. 24.** Section 3 of this act expires July 1,  
30 2022.

31 NEW SECTION. **Sec. 25.** Section 4 of this act takes effect July  
32 1, 2022."

**ADOPTED 03/08/2021**

1       On page 1, line 1 of the title, after "laws;" strike the  
2 remainder of the title and insert "amending RCW 71.32.010, 71.32.020,  
3 71.32.020, 71.32.030, 71.32.040, 71.32.050, 71.32.060, 71.32.070,  
4 71.32.100, 71.32.110, 71.32.130, 71.32.170, 71.32.180, 71.32.210,  
5 71.32.220, 71.32.250, and 71.34.755; reenacting and amending RCW  
6 71.32.020, 71.32.140, and 71.32.260; adding a new section to chapter  
7 71.32 RCW; providing effective dates; and providing expiration  
8 dates."

EFFECT: Clarifies that mental health advance directives do not restrict the right of a parent to seek a behavioral health evaluation and treatment for a nonconsenting adolescent using family-initiated treatment laws.

--- END ---