

# SENATE BILL REPORT

## SB 5370

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As of February 8, 2021

**Title:** An act relating to updating mental health advance directive laws.

**Brief Description:** Updating mental health advance directive laws.

**Sponsors:** Senators Keiser, Dhingra, Saldaña and Wilson, C..

**Brief History:**

**Committee Activity:** Health & Long Term Care: 2/03/21 [w/oRec-BH].

Behavioral Health Subcommittee to Health & Long Term Care: 2/05/21.

**Brief Summary of Bill**

- Simplifies the form used to create a mental health advanced directive.
- Allows a mental health advanced directive to be acknowledged by a notary public instead of two witnesses.
- Changes terminology to refer to behavioral health disorders instead of mental health disorders.
- Creates a role for substance use disorder professionals in evaluating capacity for the purpose of a mental health advanced directive.

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### SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE

**Staff:** Kevin Black (786-7747)

**Background:** A mental health advanced directive is a document that declares a person's preferences regarding the person's mental health treatment in the event of incapacitation. Washington State's mental health advance directive law passed in 2003. A mental health advanced directive may include:

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- the person's preferences and instructions for mental health treatment;
- consent to specific types of mental health treatment;
- refusal to consent to specific types of mental health treatment;
- consent to admission to and retention in a facility for mental health treatment for up to 14 days; or
- appointment of an agent to make mental health treatment decisions on behalf of a person, including empowering that person to consent to voluntary mental health treatment on behalf of the person.

A mental health advanced directive must provide a person with a full range of choices and be signed by two witnesses who know the person and attest that the person does not appear to be acting under incapacity, fraud, undue influence, or duress. A mental health advanced directive may be revoked at any time except during a period of incapacity, unless the terms of the directive allow revocation during periods of incapacity.

A health care provider must act in accordance with the terms of a mental health advanced directive to the fullest extent possible, unless compliance would violate an accepted standard of care, the requested treatment is not available, or another exception applies. Liability protections apply to providers who provide treatment according to a mental health advanced directive. A standard form for a mental health advance directive is provided in state law.

**Summary of Bill:** The pattern form used to create a mental health advanced directive is changed by:

- removing a long notice section before the start of the directive;
- streamlining and simplifying certain language used in the body of the form;
- adding a "my care needs" section near the front of the form for the principal to describe what works for the principal and the principal's diagnoses, medications, and best approach to treatment;
- granting power to the agent to act as the person's personal representative for the purpose of the Health Insurance Portability and Accountability Act (HIPAA);
- removing language that automatically removes a former spouse as an agent if the principal gets remarried; and
- removing sections to specify limitations on the agent's authority and limitations on ability to revoke a durable power of attorney

A mental health advance directive may be acknowledged before a notary public instead of being witnessed by two adults.

A person who is 13 to 17 years of age may execute a mental health advance directive if the person is able to demonstrate they are capable of making informed decisions relating to behavioral health care.

Provisions stating an agent may act on behalf of the principal with respect to health care

information are changed to specify the agent may act as the principal's personal representative for the purposes of HIPAA.

References to mental health are changed to behavioral health in the context of disorders and conditions which could trigger the provisions of a mental health advance directive. A substance use disorder professional may participate in an incapacity determination for the purpose of invoking a person's mental health advance directive in circumstances in which the role may be fulfilled by a mental health professional.

**Appropriation:** None.

**Fiscal Note:** Requested on February 1, 2021.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.