

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5370

Chapter 287, Laws of 2021

67th Legislature
2021 Regular Session

MENTAL HEALTH ADVANCE DIRECTIVES—VARIOUS PROVISIONS

EFFECTIVE DATE: July 25, 2021—Except for section 3, which takes effect January 1, 2022; and section 4, which takes effect July 1, 2022.

Passed by the Senate April 15, 2021
Yeas 46 Nays 2

DENNY HECK

President of the Senate

Passed by the House April 8, 2021
Yeas 79 Nays 19

LURIE JINKINS

**Speaker of the House of
Representatives**

Approved May 12, 2021 3:08 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5370** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

May 12, 2021

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5370

AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

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 adding a new section to chapter 71.32 RCW; providing effective dates;
7 and providing expiration dates.

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

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

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

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

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

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

1 (d) (~~(Mentally ill individuals)~~) Individuals with behavioral
2 health disorders need some method of expressing their instructions
3 and preferences for treatment and providing advance consent to or
4 refusal of treatment.

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

10 (~~((2))~~) (3) The legislature further finds that:

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

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

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

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

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

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

28 The definitions in this section apply throughout this chapter
29 unless the context clearly requires otherwise.

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

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

34 (3) "Capacity" means that (~~(an adult)~~) a person has not been
35 found to be incapacitated pursuant to this chapter or RCW
36 11.88.010(1)(e).

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

38 (5) "Health care facility" means a hospital, as defined in RCW
39 70.41.020; an institution, as defined in RCW 71.12.455; a state

1 hospital, as defined in RCW 72.23.010; a nursing home, as defined in
2 RCW 18.51.010; or a clinic that is part of a community mental health
3 service delivery system, as defined in RCW 71.24.025.

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

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

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

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

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

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

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

39 (13) "Principal" means (~~(an adult)~~) a person who has executed a
40 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)~~) a person has not been
26 found to be incapacitated pursuant to this chapter or subject to a
27 guardianship 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)~~) a person who: (a) Is
2 unable to understand the nature, character, and anticipated results
3 of proposed treatment or alternatives; understand the recognized
4 serious possible risks, complications, and anticipated benefits in
5 treatments and alternatives, including nontreatment; or communicate
6 his or her understanding or treatment decisions; or (b) has been
7 found to be 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)~~) a person who has executed a
32 mental health 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)~~) a person has not been
19 found to be incapacitated pursuant to this chapter or subject to a
20 guardianship 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)~~) a person who: (a) Is
33 unable to understand the nature, character, and anticipated results
34 of proposed treatment or alternatives; understand the recognized
35 serious possible risks, complications, and anticipated benefits in
36 treatments and alternatives, including nontreatment; or communicate
37 his or her understanding or treatment decisions; or (b) has been
38 found to be 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))~~ a person who has executed a
25 mental health 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) An agent's authority terminates when an action is filed for
5 the dissolution or annulment of the agent's marriage to the principal
6 or for their legal separation, or an action is filed for dissolution
7 or annulment of the agent's state registered domestic partnership
8 with the principal or for their legal separation.

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

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

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

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

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

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

23 (iii) Two health care providers.

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

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

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

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

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

37 (5) (a) When a court makes a determination whether a principal has
38 capacity, the court shall, at a minimum, be informed by the testimony
39 of one mental health professional or substance use disorder

1 professional familiar with the principal and shall, except for good
2 cause, give the principal an opportunity to appear in court prior to
3 the court making its determination.

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

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

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

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

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

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

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

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

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

5 (b) When a principal who does not have an agent for (~~mental~~)
6 behavioral health treatment decisions is being treated in an
7 inpatient facility and requests a determination or redetermination of
8 capacity, the mental health professional or health care provider must
9 complete the determination or, if the principal is seeking a
10 determination from a court, must make reasonable efforts to notify
11 the person authorized to make decisions for the principal under RCW
12 7.70.065 of the principal's request.

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

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

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

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

25 (1) A principal who:

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

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

31 (c) At the time of admission to inpatient treatment, refuses to
32 be admitted,
33 may only be admitted into inpatient (~~mental~~) behavioral health
34 treatment under subsection (2) of this section.

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

1 (a) Evaluates the principal's mental condition, including a
2 review of reasonably available psychiatric and psychological history,
3 diagnosis, and treatment needs, and determines, in conjunction with
4 another health care provider (~~(or)~~), mental health professional, or
5 substance use disorder professional, that the principal is
6 incapacitated;

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

9 (c) Makes a written determination that the principal needs an
10 inpatient evaluation or is in need of inpatient treatment and that
11 the evaluation or treatment cannot be accomplished in a less
12 restrictive setting; and

13 (d) Documents in the principal's medical record a summary of the
14 physician's, physician assistant's, or psychiatric advanced
15 registered nurse practitioner's findings and recommendations for
16 treatment or evaluation.

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

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

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

35 (5) If, at the end of the period of time that the principal or
36 the principal's agent, if any, has consented to voluntary inpatient
37 treatment, but no more than (~~(fourteen)~~) 14 days after admission, the
38 principal has not regained capacity or has regained capacity but
39 refuses to consent to remain for additional treatment, the principal

1 must be released during reasonable daylight hours, unless detained
2 under chapter 71.05 or 71.34 RCW.

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

8 (b) Notwithstanding RCW 71.05.050 regarding consent to inpatient
9 treatment for a specified length of time, the choices an
10 incapacitated principal expressed in his or her directive shall
11 control, provided, however, that a principal who takes action
12 demonstrating a desire to be discharged, in addition to making
13 statements requesting to be discharged, shall be discharged, and no
14 principal shall be restrained in any way in order to prevent his or
15 her discharge. Nothing in this subsection shall be construed to
16 prevent detention and evaluation for civil commitment under chapter
17 71.05 RCW.

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

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

24 (1) For the purposes of this section, "provider" means a private
25 or public agency, government entity, health care provider,
26 professional person, health care facility, or person acting under the
27 direction of a health care provider or professional person, health
28 care facility, or long-term care facility.

29 (2) A provider is not subject to civil liability or sanctions for
30 unprofessional conduct under the uniform disciplinary act, chapter
31 18.130 RCW, when in good faith and without negligence:

32 (a) The provider provides treatment to a principal in the absence
33 of actual knowledge of the existence of a directive, or provides
34 treatment pursuant to a directive in the absence of actual knowledge
35 of the revocation of the directive;

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

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

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

7 (e) The provider provides treatment according to the principal's
8 directive.

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

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

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

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

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

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

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

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

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

33 A person shall not be required to execute or to refrain from
34 executing a directive, nor shall the existence of a directive be used
35 as a criterion for insurance, as a condition for receiving (~~mental~~)
36 behavioral or physical health services, or as a condition of

1 admission to or discharge from a health care facility or long-term
2 care facility.

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

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

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

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

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

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

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

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

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

7 The directive shall be in substantially the following form:

8 ~~((Mental Health Advance Directive~~

9 **NOTICE TO PERSONS**

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

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

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

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

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

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

18 (2) You have the right to appoint a person as your agent to make treatment decisions for you. You must notify your agent
19 that you have appointed him or her as an agent. The person you appoint has a duty to act consistently with your wishes
20 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.
21 Your agent has the right to withdraw from the appointment at any time.

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

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

28 **~~YOU MAY NOT REVOKE THIS DIRECTIVE WHEN YOU HAVE BEEN FOUND TO BE~~**
29 **~~INCAPACITATED UNLESS YOU HAVE SPECIFICALLY STATED IN THIS DIRECTIVE THAT~~**
30 **~~YOU WANT IT TO BE REVOCABLE WHEN YOU ARE INCAPACITATED.~~**

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

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

- 1 (7) If there is anything in this directive that you do not understand, you should ask a lawyer to explain it to you.
- 2 (8) You should be aware that there are some circumstances where your provider may not have to follow your directive.
- 3 (9) You should discuss any treatment decisions in your directive with your provider.
- 4 (10) You may ask the court to rule on the validity of your directive.

5

6 **PART I.**

7 **STATEMENT OF INTENT TO CREATE A**

8 **MENTAL HEALTH ADVANCE DIRECTIVE**

9 I, being a person with capacity, willfully and voluntarily execute this mental health advance directive so that

10 my choices regarding my mental health care will be carried out in circumstances when I am unable to express my

11 instructions and preferences regarding my mental health care. If a guardian is appointed by a court to make mental health

12 decisions for me, I intend this document to take precedence over all other means of ascertaining my intent.

13 The fact that I may have left blanks in this directive does not affect its validity in any way. I intend that all completed

14 sections be followed. If I have not expressed a choice, my agent should make the decision that he or she determines is in

15 my best interest. I intend this directive to take precedence over any other directives I have previously executed, to the

16 extent that they are inconsistent with this document, or unless I expressly state otherwise in either document.

17 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

18 revoke this directive if a court, two health care providers, or one mental health professional and one health care provider

19 find that I am an incapacitated person, unless, when I executed this directive, I chose to be able to revoke this directive

20 while incapacitated.

21 I understand that, except as otherwise provided in law, revocation must be in writing. I understand that nothing in this

22 directive, or in my refusal of treatment to which I consent in this directive, authorizes any health care provider, professional

23 person, health care facility, or agent appointed in this directive to use or threaten to use abuse, neglect, financial

24 exploitation, or abandonment to carry out my directive.

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

26

27 **PART II.**

28 **WHEN THIS DIRECTIVE IS EFFECTIVE**

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

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

31 Immediately upon my signing of this directive.

32 If I become incapacitated.

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

34

35 **PART III.**

36 **DURATION OF THIS DIRECTIVE**

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

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

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

4 Automatically expire years from the date it was created.

6 **PART IV.**

7 **WHEN I MAY REVOKE THIS DIRECTIVE**

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

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

10 Only when I have capacity.

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

14 Even if I am incapacitated.

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

18
19 **PART V.**

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

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

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

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

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

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

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

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

32 Name Profession Contact information.....

33 Name Profession Contact information.....

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

1I consent, and authorize my agent (if appointed) to consent, to the following
2 medications:.....

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

5I 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

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

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

12I do not want to try any other medications.

13 **Medication Allergies**

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

16 **Other Medication Preferences or Instructions**

17I have the following other preferences or instructions about medications:.....

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

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

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

24I would also like the interventions below to be tried before hospitalization is considered:

25 Calling someone or having someone call me when needed.

26 Name:..... Telephone:.....

27 Staying overnight with someone

28 Name:..... Telephone:.....

29 Having a mental health service provider come to see me

30 Going to a crisis triage center or emergency room

31 Staying overnight at a crisis respite (temporary) bed

32 Seeing a service provider for help with psychiatric medications

33 Other, specify:.....

34 **Authority to Consent to Inpatient Treatment**

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

3 (Sign one):

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

6

7 (Signature)

8 or

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

11

12 (Signature)

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

14

15 (Signature)

16 **Hospital Preferences and Instructions**

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

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

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

20 I would like the interventions below to be tried before use of seclusion or restraint is considered
21 (*initial 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, specify

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

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

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

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

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

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

16 I do not consent, nor authorize my agent (if appointed) to consent, to the administration of electroconvulsive
17 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 **H. Preferences and Instructions About Who is Permitted to Visit**

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

29 Name:

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 Psychiatric Address:.....

4 Advanced Registered Nurse Practitioner:.....

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)

14 **PART VI.**

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

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

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

24 **A. Designation of an Agent**

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

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

28 Work telephone:..... Home telephone:.....

29 Relationship:.....

30 **B. Designation of Alternate Agent**

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

34 Name:..... Address:.....

35 Work telephone:..... Home telephone:.....

1 Relationship:

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

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

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

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

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

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

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

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

12 Name: Address:

13 Work telephone: Home telephone:

14 Relationship:

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 *(Signature required if nomination is made)*

20
21 **PART VII.**
22 **OTHER DOCUMENTS**

23 *(Initial all that apply)*

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

26 Health care power of attorney (chapter 11.125 RCW)

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

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

30
31 **PART VIII.**
32 **NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS**

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

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

1 **A. Who Should Be Notified**

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

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
12 **PART IX.**
13 **SIGNATURE**

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

18 Signature: Date:

19 Printed Name:

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

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

34 Witness 1: Signature: Date:

35 Printed Name:

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

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

3 Printed Name:.....

4 Telephone:..... Address:.....

5

6

PART X.

7

RECORD OF DIRECTIVE

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

9

DO NOT FILL OUT PART XI UNLESS YOU INTEND TO REVOKE

10

THIS DIRECTIVE IN PART OR IN WHOLE

11

12

PART XI.

13

REVOCATION OF THIS DIRECTIVE

14

(Initial any that apply):

15I am revoking the following part(s) of this directive (specify):.....

16

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

17

By signing here, I indicate that I understand the purpose and effect of my revocation and that no person is bound by any

18

revoked provision(s). I intend this revocation to be interpreted as if I had never completed the revoked provision(s).

19

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

20

Printed Name:.....

21

DO NOT SIGN THIS PART UNLESS YOU INTEND TO REVOKE THIS

22

DIRECTIVE IN PART OR IN WHOLE))

23

Mental Health Advance Directive of (client name)

24

With Appointment of (agent name) as

25

Agent for Mental Health Decisions

26

27

PART I.

28

STATEMENT OF INTENT TO CREATE A

29

MENTAL HEALTH ADVANCE DIRECTIVE

30

I, (Client name), being a person with capacity, willfully and voluntarily execute this mental health advance directive so that

31

my choices regarding my mental health care will be carried out in circumstances when I am unable to express my

32

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 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 **PART X.**
9 **SIGNATURE**

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

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

15 Signature:

16 STATE OF WASHINGTON)

17) ss.

18 COUNTY OF)

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

24 SUBSCRIBED and SWORN to before me this day of,
25 20....

26

27 SIGNATURE OF NOTARY

28

29

30 PRINT NAME OF NOTARY

31

32 NOTARY PUBLIC for the State of Washington at

33 My commission expires

34 OR have two witnesses:

35 Name:

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

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

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

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

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

12 (E) An incapacitated person;

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

14 (G) A minor.

15 Witness 1 Signature: Date:

16 Printed Name: Address:

17 Telephone:

18 Witness 2 Signature: Date:

19 Printed Name: Address:

20 Telephone:

21 **PART XI.**
22 **RECORD OF DIRECTIVE**

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

24
25 Name: Address:

26 Day telephone: Evening telephone:

27 Name: Address:

28 Day telephone: Evening telephone:

29
30 DO NOT FILL OUT PART XII UNLESS YOU INTEND TO REVOKE
31 THIS DIRECTIVE IN PART OR IN WHOLE

32 **PART XII.**
33 **REVOCAION OF THIS DIRECTIVE**

1 (Initial any that apply):

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

3 Date:

4 I am revoking all of this directive.

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

7
8

9 (Signature)

10 Printed Name:

11 **DO NOT SIGN THIS PART UNLESS YOU INTEND TO REVOKE THIS**
12 **DIRECTIVE IN PART OR IN WHOLE**

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

15 Nothing in this chapter restricts the right of a parent to seek
16 behavioral health evaluation and treatment for a nonconsenting
17 adolescent using family-initiated treatment laws under chapter 71.34
18 RCW.

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

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

23 (a) Assignment of a care coordinator;

24 (b) An intake evaluation with the provider of the less
25 restrictive alternative treatment;

26 (c) A psychiatric evaluation;

27 (d) A schedule of regular contacts with the provider of the less
28 restrictive alternative treatment services for the duration of the
29 order;

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

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

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

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

4 (2) Less restrictive alternative treatment may include the
5 following additional services:

6 (a) Medication management;

7 (b) Psychotherapy;

8 (c) Nursing;

9 (d) Substance abuse counseling;

10 (e) Residential treatment; and

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

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

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

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

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

1 activities with other agencies and establishing and maintaining a
2 therapeutic relationship with the individual on a continuing basis.

3 NEW SECTION. **Sec. 22.** Section 2 of this act expires January 1,
4 2022.

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

7 NEW SECTION. **Sec. 24.** Section 3 of this act expires July 1,
8 2022.

9 NEW SECTION. **Sec. 25.** Section 4 of this act takes effect July
10 1, 2022.

Passed by the Senate April 15, 2021.
Passed by the House April 8, 2021.
Approved by the Governor May 12, 2021.
Filed in Office of Secretary of State May 12, 2021.

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