
SENATE BILL 6589

State of Washington 57th Legislature

2002 Regular Session

By Senators Keiser and Long

Read first time 01/22/2002. Referred to Committee on Human Services & Corrections.

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

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

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

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

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

3 (2) "Incapacitated person" means a person who is not a person with
4 capacity.

5 (3) "Mental disorder" has the meaning given in RCW 71.05.020.

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

11 (5) "Mental health professional" has the meaning given in RCW
12 71.05.020.

13 (6) "Person with capacity" means an adult who has the ability to
14 understand the significance of a directive or its revocation and who
15 acts free from fraud and undue influence.

16 (7) "Professional person" has the meaning given in RCW 71.05.020.

17 (8) "Psychiatrist" has the meaning given in RCW 71.05.020.

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

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

27 NEW SECTION. **Sec. 4.** (1) A person with capacity may create a
28 directive.

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

32 (a) The person's preferences and instructions for mental health
33 treatment;

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

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

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

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

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

8 (g) Appointment of an agent to make mental health treatment
9 decisions on the person's behalf, including authorizing the agent to
10 provide consent on the person's behalf to voluntary admission to
11 inpatient mental health treatment consistent with section 7 of this
12 act;

13 (h) Consent to have the person's health care information released
14 to other providers or third parties; and

15 (i) The person's nomination of a guardian or limited guardian for
16 consideration by the court if guardianship proceedings are commenced.

17 (3)(a) A directive may be combined with or be independent of the
18 power of attorney authorized in chapter 11.94 RCW or guardianship
19 authorized in chapter 11.92 RCW, so long as the processes for each are
20 executed in accordance with its own statutes. If a directive
21 authorizes the appointment of an agent, the provisions of chapter 11.94
22 RCW shall apply unless otherwise stated in this chapter.

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

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

27 (a) Be in writing;

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

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

31 (d) Be witnessed in writing by at least two adults, each of whom
32 shall certify that he or she personally knows the person, was present
33 when the person dated and signed the directive, and that the person did
34 not appear to be an incapacitated person.

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

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

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

3 (c) An owner, operator, or relative of an owner or operator of a
4 health care facility or long-term care facility in which the person is
5 a patient or resident;

6 (d) A person who is related by blood, marriage, or adoption to the
7 person; or

8 (e) A person who is declared to be an incapacitated person.

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

11 (4) A directive may:

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

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

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

17 (d) Expire under its own terms;

18 (e) Be superseded or revoked by a court order. To the extent a
19 directive is not in conflict with a court order, the directive remains
20 effective.

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

24 NEW SECTION. **Sec. 6.** (1)(a) Upon receiving a directive, a
25 professional person treating the person shall make the directive a part
26 of the person's medical record and shall be deemed to have actual
27 knowledge of its contents. Whenever possible, the professional person
28 shall inform a person or the person's agent if he or she may be
29 precluded from honoring all or part of the directive based on the
30 reasons in subsection (3) of this section.

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

34 (2) In the absence of actual notice to the contrary, a professional
35 person shall presume that a person who created a directive was a person
36 with capacity at the time the directive was created and that the
37 directive is valid.

1 (3) Subject to subsections (6) and (7) of this section, a
2 professional person who has been presented with or has obtained a
3 person's directive and who is treating the person shall act in
4 accordance with the provisions of the directive to the fullest extent
5 possible, consistent with reasonable medical practice, the availability
6 of treatments, and applicable law. If the professional person is at
7 any time unable to comply, the professional person shall offer to
8 withdraw from treating the person.

9 (4) If the directive authorizes the appointment of an agent, the
10 agent has the same right as the person to receive and review the
11 person's medical records. If the person consents in the directive to
12 having his or her health care information released to other providers
13 or third parties, the professional person's disclosure of health care
14 information shall not be a violation of chapter 70.62 RCW.

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

21 (6) A professional person who is treating a person involuntarily
22 detained under chapter 71.05 or 71.34 RCW shall act in accordance with
23 the provisions of the person's directive to the fullest extent possible
24 and as permitted by the applicable involuntary detention laws,
25 consistent with reasonable medical practice and the availability of
26 treatment.

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

31 (8)(a) A private or public agency, government entity, or
32 professional person, or personnel acting under the direction of a
33 professional person, or any health care facility or long-term care
34 facility is not subject to civil liability for failure to act in
35 accordance with a directive if that person does not have actual
36 knowledge of the directive.

37 (b) A private or public agency, government entity, or professional
38 person, or personnel acting under the direction of a professional
39 person, or any health care facility or long-term care facility is not

1 subject to civil liability for providing, in good faith, mental health
2 treatment to a person in accordance with the person's directive.

3 NEW SECTION. **Sec. 7.** (1) If a person consents in the directive,
4 or authorizes an agent to consent on the person's behalf, to voluntary
5 admission to inpatient mental health treatment, the admission may not
6 exceed seventy-two hours. If, after the seventy-two hour period, the
7 person does not consent to remain for additional treatment, the patient
8 must be released during reasonable daylight hours following the
9 expiration of the seventy-two hours.

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

23 NEW SECTION. **Sec. 8.** (1) A person with capacity may revoke a
24 directive in whole or in part by written statement at any time. The
25 written statement of revocation is effective when signed by the person
26 and it is delivered to the agent, if one is appointed, and the
27 professional person who is responsible for the delivery of mental
28 health treatment to the person. The professional person shall make the
29 revocation part of the person's medical record.

30 (2)(a) If an agent or professional person believes that the person
31 seeking to revoke all or part of the directive does not have capacity
32 to revoke, the agent or professional person may seek a determination of
33 the person's capacity within forty-eight hours of the attempted
34 revocation.

35 (b) If a court or two mental health professionals, one of whom is
36 a psychiatrist, find that it is more likely than not that the person
37 did not have the capacity to revoke, then the attempted revocation is

1 invalid. If the court or two mental health professionals, one of whom
2 is a psychiatrist, find that it is more likely than not that the person
3 had the capacity to revoke the directive, the revocation is valid. If
4 a determination of the person's capacity to revoke has not been made
5 within forty-eight hours of the time the agent or professional person
6 seeks a determination, then it is presumed that the person had the
7 capacity to revoke the directive.

8 (3) A person declared under this chapter to be an incapacitated
9 person by a court or two mental health professionals, one of whom is a
10 psychiatrist, may not revoke a directive. If an incapacitated person
11 seeks to revoke all or part of the directive, the agent or professional
12 person may seek a determination of the person's capacity to revoke
13 within forty-eight hours of the attempted revocation. If a
14 determination of the person's capacity to revoke has not been made
15 within forty-eight hours of the time the agent or professional person
16 seeks a determination, then it is presumed that the incapacitated
17 person had the capacity to revoke the directive.

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

24 NEW SECTION. **Sec. 9.** Any person with good reason to believe that
25 a directive has been created or revoked under circumstances amounting
26 to falsification, forgery, or coercion may petition the court for
27 appointment of a guardian for the person.

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

31 NEW SECTION. **Sec. 11.** A person shall not be required to execute
32 or to refrain from executing a directive as a criterion for insurance,
33 as a condition for receiving mental or physical health services, or as
34 a condition of admission or discharge from a health care facility or
35 long-term care facility.

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

5 NEW SECTION. **Sec. 13.** The directive may, but is not required to,
6 be in the following form:

7 **"PART I. STATEMENT OF INTENT TO CREATE A MENTAL HEALTH ADVANCE**
8 **DIRECTIVE**

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

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

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

26 I understand that I may revoke this mental health advance directive in
27 whole or in part by written statement only if I am a person with
28 capacity. I understand that I cannot revoke this directive if a court
29 or two mental health professionals, at least one being a psychiatrist,
30 find that I am an incapacitated person.

31 **PART II. STATEMENT OF INTENT REGARDING WHEN THIS DIRECTIVE BECOMES**
32 **OPERATIVE**

33 I intend that this directive become operative (check only one):

34 . . . Immediately upon my signing of this directive

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

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

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

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

10 I do not wish to be treated by:

11 B. Preferences or Instructions About Other Providers

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

16 Name Profession Telephone

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

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

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

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

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

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

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

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

6 Medication Allergies

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

10 Other Medication Preferences or Instructions

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

15 D. Preferences or Instructions About Hospitalization and Alternatives

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

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

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

30 Authority to Consent to Inpatient Treatment

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

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

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

5

6 Hospital Preferences or Instructions

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

8

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

10

11 E. Preferences or Instructions About Pre-Emergency Interventions

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

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

15 . . . More medication

16 . . . Time out/privacy

17 . . . Show of authority/force

18 . . . Shift my attention to something else

19 . . . Set firm limits

20 . . . Help me to discuss/vent feelings

21 . . . Decrease stimulation

22 . . . Offer to have neutral person settle dispute

23 . . . Other, specify

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

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

30 . . . Seclusion

31 . . . Physical restraints

32 . . . Seclusion and physical restraint (combined)

33 . . . Medication by injection

34 . . . Medication in pill or liquid form

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

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

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

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

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

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

19 H. Additional Instructions About My Mental Health Care

20 Other instructions about my mental health care:
21

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

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

33 A. Designation of an Agent

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

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

8 Agent's Acceptance

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

11 B. Designation of Alternate Agent

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

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

19 Alternate Agent's Acceptance

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

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

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

25 D. Limitations on My Agent's Authority

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

28 E. Preference as to Court-Appointed Guardian

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

32 Name: Relationship:

1 Address:

2 Day Telephone: Evening Telephone:

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

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

9 A. Who Should Be Notified

10 I desire staff to notify the following individuals, in addition to my
11 agent (if named) immediately when this directive becomes operative:

12 Name: Relationship:

13 Address:

14 Day Telephone: Evening Telephone:

15 B. Who Should Not be Permitted to Visit

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

18 Name: Relationship:

19 C. Consents to Obtain Previous Treatment Records

20 I consent to release treatment records from the following previous
21 treatment providers upon request by treatment providers acting under
22 this mental health advance directive:

23 Provider(s):

24 D. Consents to Release Treatment Information

25 I consent to release relevant treatment information to the following
26 individuals in addition to my agent and current treatment providers:

27 Name: Relationship:

28 Address:

29 Day Telephone: Evening Telephone:

30 E. Preferences or Instructions About Personal Affairs

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

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

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

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

9 **PART VII. SIGNATURE**

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

12
13 Signature Date

14 The directive above was signed and declared by the "Declarant,"
15 to be his or her mental health advance directive, in our
16 presence who, at his or her request, have signed names below as
17 witness. We declare that, at the time of the creation of this
18 instrument, the Declarant is personally known to us, and, according to
19 our best knowledge and belief, was a person with capacity at the time.
20 We further declare that none of us is: (1) A person designated to make
21 medical decisions on the person's behalf; (2) a mental health
22 professional or other professional person directly involved with the
23 provision of care to the person at the time the mental health advance
24 directive is executed; (3) an owner, operator, or relative of an owner
25 or operator of a health care facility or long-term care facility in
26 which the person is a patient or resident; (4) a person who is related
27 by blood, marriage, or adoption to the person; or (5) an incapacitated
28 person.

29 Dated at (county, state),
30 this day of of

31 Witness 1 Witness 2
32
33 Signature Signature

1
2 Printed Name Printed Name
3
4
5 Address Address

6 **PART VIII. RECORD OF ADVANCE DIRECTIVE**

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

9 **PART IX. REVOCATION OF MY ADVANCE DIRECTIVE**

10 . . . I am revoking the following part(s) of this directive (specify):
11

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

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

15
16 Signature Date"

17 **Sec. 14.** RCW 11.94.010 and 1995 c 297 s 9 are each amended to read
18 as follows:

19 (1) Whenever a principal designates another as his or her attorney
20 in fact or agent, by a power of attorney in writing, and the writing
21 contains the words "This power of attorney shall not be affected by
22 disability of the principal," or "This power of attorney shall become
23 effective upon the disability of the principal," or similar words
24 showing the intent of the principal that the authority conferred shall
25 be exercisable notwithstanding the principal's disability, the
26 authority of the attorney in fact or agent is exercisable on behalf of
27 the principal as provided notwithstanding later disability or
28 incapacity of the principal at law or later uncertainty as to whether
29 the principal is dead or alive. All acts done by the attorney in fact
30 or agent pursuant to the power during any period of disability or
31 incompetence or uncertainty as to whether the principal is dead or
32 alive have the same effect and inure to the benefit of and bind the
33 principal or the principal's guardian or heirs, devisees, and personal

1 representative as if the principal were alive, competent, and not
2 disabled. A principal may nominate, by a durable power of attorney,
3 the guardian or limited guardian of his or her estate or person for
4 consideration by the court if protective proceedings for the
5 principal's person or estate are thereafter commenced. The court shall
6 make its appointment in accordance with the principal's most recent
7 nomination in a durable power of attorney except for good cause or
8 disqualification. If a guardian thereafter is appointed for the
9 principal, the attorney in fact or agent, during the continuance of the
10 appointment, shall account to the guardian rather than the principal.
11 The guardian has the same power the principal would have had if the
12 principal were not disabled or incompetent, to revoke, suspend or
13 terminate all or any part of the power of attorney or agency.

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

18 (3)(a) A principal may authorize his or her attorney-in-fact to
19 provide informed consent for health care decisions on the principal's
20 behalf. If a principal has created both a power of attorney and a
21 directive, pursuant to chapter 71.-- RCW (sections 1 through 13 of this
22 act), authorizing an agent to make mental health care decisions on the
23 person's behalf, the directive or power of attorney most recently
24 created shall be construed to contain the person's most recent mental
25 health treatment preferences and instructions, unless provided
26 otherwise in either document. An attorney-in-fact appointed under a
27 mental health advance directive has the same right as the principal to
28 receive and review the principal's medical records relating to mental
29 health treatment. If the principal so states in the mental health
30 advance directive, an attorney-in-fact may provide consent on behalf of
31 the principal to voluntary admission to inpatient mental health
32 treatment for a period not to exceed seventy-two hours.

33 (b) Unless he or she is the spouse, or adult child or brother or
34 sister of the principal, none of the following persons may act as the
35 attorney-in-fact for the principal or as an agent in a mental health
36 advance directive: Any of the principal's physicians, the physicians'
37 employees, or the owners, administrators, or employees of the health
38 care facility or long-term care facility where the principal resides or
39 receives care. Except as provided in subsection (a) of this section,

1 this authorization is subject to the same limitations as those that
2 apply to a guardian under RCW 11.92.043(5) (a) through (c).

3 **Sec. 15.** RCW 11.88.010 and 1991 c 289 s 1 are each amended to read
4 as follows:

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

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

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

19 (c) A determination of incapacity is a legal not a medical
20 decision, based upon a demonstration of management insufficiencies over
21 time in the area of person or estate. Age, eccentricity, poverty, or
22 medical diagnosis alone shall not be sufficient to justify a finding of
23 incapacity.

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

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

33 (f) For purposes of the terms "incompetent," "disabled," or "not
34 legally competent," as those terms are used in the Revised Code of
35 Washington to apply to persons incapacitated under this chapter, those
36 terms shall be interpreted to mean "incapacitated" persons for purposes
37 of this chapter.

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

16 (3) Venue for petitions for guardianship or limited guardianship
17 shall lie in the county wherein the alleged incapacitated person is
18 domiciled, or if such person resides in a facility supported in whole
19 or in part by local, state, or federal funding sources, in either the
20 county where the facility is located, the county of domicile prior to
21 residence in the supported facility, or the county where a parent or
22 spouse of the alleged incapacitated person is domiciled.

23 If the alleged incapacitated person's residency has changed within
24 one year of the filing of the petition, any interested person may move
25 for a change of venue for any proceedings seeking the appointment of a
26 guardian or a limited guardian under this chapter to the county of the
27 alleged incapacitated person's last place of residence of one year or
28 more. The motion shall be granted when it appears to the court that
29 such venue would be in the best interests of the alleged incapacitated
30 person and would promote more complete consideration of all relevant
31 matters.

32 (4) Under RCW 11.94.010 or chapter 71.-- (sections 1 through 13 of
33 this act), a principal may nominate, by a durable power of attorney or
34 the mental health advance directive, the guardian or limited guardian
35 of his or her estate or person for consideration by the court if
36 guardianship proceedings for the principal's person or estate are
37 thereafter commenced. The court shall make its appointment in
38 accordance with the principal's most recent nomination in a durable

1 power of attorney or mental health advance directive except for good
2 cause or disqualification.

3 (5) When a court imposes a full guardianship for an incapacitated
4 person, the person shall be considered incompetent for purposes of
5 rationally exercising the right to vote and shall lose the right to
6 vote, unless the court specifically finds that the person is rationally
7 capable of exercising the franchise. Imposition of a limited
8 guardianship for an incapacitated person shall not result in the loss
9 of the right to vote unless the court determines that the person is
10 incompetent for purposes of rationally exercising the franchise.

11 **Sec. 16.** RCW 11.88.030 and 1996 c 249 s 8 are each amended to read
12 as follows:

13 (1) Any person or entity may petition for the appointment of a
14 qualified person, trust company, national bank, or nonprofit
15 corporation authorized in RCW 11.88.020 as the guardian or limited
16 guardian of an incapacitated person. No liability for filing a
17 petition for guardianship or limited guardianship shall attach to a
18 petitioner acting in good faith and upon reasonable basis. A petition
19 for guardianship or limited guardianship shall state:

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

22 (b) The nature of the alleged incapacity in accordance with RCW
23 11.88.010;

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

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

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

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

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

37 (h) The reason why the appointment of a guardian or limited
38 guardian is sought and the interest of the petitioner in the

1 appointment, and whether the appointment is sought as guardian or
2 limited guardian of the person, the estate, or both;

3 (i) A description of any alternate arrangements previously made by
4 the alleged incapacitated person, such as trusts, advanced directives
5 for mental health care, or powers of attorney, including identifying
6 any guardianship nominations contained in a power of attorney, and why
7 a guardianship is nevertheless necessary;

8 (j) The nature and degree of the alleged incapacity and the
9 specific areas of protection and assistance requested and the
10 limitation of rights requested to be included in the court's order of
11 appointment;

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

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

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

21 (b) Prepayment of a filing fee shall not be required in any
22 guardianship or limited guardianship brought by the attorney general.
23 Payment of the filing fee shall be ordered from the estate of the
24 incapacitated person at the hearing on the merits of the petition,
25 unless in the judgment of the court, such payment would impose a
26 hardship upon the incapacitated person, in which case the filing shall
27 be waived.

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

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

37 (b) Notice under this subsection shall include a clear and easily
38 readable statement of the legal rights of the alleged incapacitated
39 person that could be restricted or transferred to a guardian by a

1 NEW SECTION. **Sec. 17.** Nothing in this act creates a legal right
2 or cause of action. Nothing in this act denies or alters any existing
3 legal right or cause of action nor may it be relied upon to compel the
4 establishment of any program or special entitlement.

5 NEW SECTION. **Sec. 18.** Sections 1 through 13 of this act
6 constitute a new chapter in Title 71 RCW.

7 NEW SECTION. **Sec. 19.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

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