
ENGROSSED SUBSTITUTE SENATE BILL 6589

State of Washington 57th Legislature

2002 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Keiser and Long)

READ FIRST TIME 02/08/2002.

1 AN ACT Relating to mental health advance directives; amending RCW
2 11.94.010, 11.88.010, 11.88.030, and 7.70.065; adding a new chapter to
3 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 a mental
8 health advance directive can be an essential tool for a person to
9 express his or her choices before the effects of mental illness deprive
10 the person of the power to express his or her instructions and
11 preferences for mental health treatment. The legislature affirms that,
12 pursuant to other provisions of law, a mental health advance directive
13 created under this chapter is to be respected by health care providers
14 and mental health professionals, guardians, attorneys-in-fact, and
15 other surrogate decision makers acting on behalf of the person who
16 created it.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply
18 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) "Agent" means an attorney-in-fact or agent as provided in
4 chapter 11.94 RCW and shall include any alternative agent appointed.

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

6 (4) "Health care information" has the meaning in RCW 70.02.010 and
7 includes mental health, sexually transmitted diseases and human
8 immunodeficiency virus/AIDS, and alcohol and substance abuse
9 information.

10 (5) "Health care provider" means a person licensed under chapter
11 18.57, 18.57A, 18.71, or 18.71A RCW or RCW 18.79.050.

12 (6) "Incapacitated person" or "incapacitated" means a person who is
13 not a person with capacity.

14 (7) "Informed consent" means consent that conforms to the elements
15 of RCW 7.70.060.

16 (8) "Mental disorder" has the meaning given in RCW 71.05.020.

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

22 (10) "Mental health professional" has the meaning given in RCW
23 71.05.020.

24 (11) "Person with capacity" means an adult who is able to give
25 informed consent under RCW 7.70.065.

26 (12) "Professional person" has the meaning given in RCW 71.05.020.

27 NEW SECTION. **Sec. 3.** (1) For the purposes of this chapter, an
28 adult is presumed to be a person with capacity.

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

31 (a) A court order;

32 (b) One mental health professional and one health care provider; or

33 (c) Two health care providers.

34 (3) When a court has found that the person is a person with
35 capacity and there is a subsequent change in the person's condition,
36 subsequent determinations whether the person is incapacitated may be
37 made by any of the provisions of subsection (2) of this section.

1 (4)(a) A principal, agent, professional person, or health care
2 provider may seek a determination whether the principal is
3 incapacitated.

4 (b) The determination shall be made within forty-eight hours of the
5 request for a determination. If no determination has been made within
6 forty-eight hours, the principal shall be considered to have been a
7 person with capacity at the time in question.

8 NEW SECTION. **Sec. 4.** (1) A person with capacity may create a
9 mental health advance directive.

10 (2) A declaration executed in accordance with this chapter is
11 presumed to be valid. The inability to honor one or more provisions of
12 a directive does not affect the validity of the remaining conditions.

13 (3) A directive may include any provision relating to mental health
14 treatment or the care of the person or the person's personal affairs.
15 Without limitation, a directive may include:

16 (a) The person's preferences and instructions for mental health
17 treatment;

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

19 (c) Refusal to consent to specific types of mental health
20 treatment;

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

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

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

28 (g) Appointment of an agent to make mental health treatment
29 decisions on the person's behalf, including authorizing the agent to
30 provide consent on the person's behalf to voluntary admission to
31 inpatient mental health treatment consistent with section 8 of this act
32 and to consent to or authorize the uses and disclosures in (h) and (i)
33 of this subsection;

34 (h) Consent to release of the person's health care information used
35 for purposes of treatment, payment, and operations;

36 (i) Authorization to have the person's health care information
37 released to third parties; and

1 (j) The person's nomination of a guardian or limited guardian for
2 consideration by the court if guardianship proceedings are commenced.

3 (4)(a) A directive may be combined with or be independent of the
4 power of attorney authorized in chapter 11.94 RCW or guardianship
5 authorized in chapter 11.88 RCW, so long as the processes for each are
6 executed in accordance with its own statutes.

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

10 (c) Where a directive executed under this chapter is inconsistent
11 with a directive executed under chapter 70.122 RCW, the most recently
12 created directive controls as to the inconsistent provisions.

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

14 (a) Be in writing;

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

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

18 (d) Be witnessed in writing by at least two adults, each of whom
19 shall certify that he or she personally knows the person, was present
20 when the person dated and signed the directive, and that the person did
21 not appear to be an incapacitated person or acting under fraud, undue
22 influence, or duress.

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

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

26 (b) A health care provider or professional person directly involved
27 with the provision of care to the person at the time the directive is
28 executed;

29 (c) An owner, operator, employee, or relative of an owner or
30 operator of a health care facility or long-term care facility in which
31 the person is a patient or resident;

32 (d) A person who is related by blood, marriage, or adoption to the
33 person or with whom the person has a dating relationship, as defined in
34 RCW 26.50.010;

35 (e) A person who is declared to be an incapacitated person;

36 (f) A person who would benefit financially if the person making the
37 directive undergoes mental health treatment; or

38 (g) A minor.

- 1 (3) A directive may:
- 2 (a) Become operative upon execution or at a later time as
- 3 designated in the directive;
- 4 (b) Be revoked, in whole or in part, by the person who created it;
- 5 (c) Be revoked, in whole or in part, expressly or to the extent of
- 6 any inconsistency, by a subsequent directive;
- 7 (d) Expire under its own terms;
- 8 (e) Be superseded or revoked by a court order, including a criminal
- 9 sentence. To the extent a directive is not in conflict with a court
- 10 order, the directive remains effective. A declaration shall not be
- 11 interpreted in a manner that interferes with incarceration or detention
- 12 by the department of corrections, a city or county jail, or the
- 13 juvenile rehabilitation administration or with supervision of a person
- 14 who is subject to involuntary treatment pursuant to chapter 10.77,
- 15 70.96A, 71.05, 71.09, or 71.34 RCW.
- 16 (4) A directive may not:
- 17 (a) Create an entitlement to treatment;
- 18 (b) Obligate any health care provider to pay the costs associated
- 19 with the treatment requested; or
- 20 (c) Obligate any health care provider to be responsible for the
- 21 nontreatment personal care of the person or the person's personal
- 22 affairs; or
- 23 (d) Be revoked by an incapacitated person.
- 24 (5) A directive that would have otherwise expired but is operative
- 25 because the person is an incapacitated person remains operative until
- 26 the person is no longer an incapacitated person.

27 NEW SECTION. **Sec. 6.** (1) If a directive authorizes the

28 appointment of an agent, the provisions of chapter 11.94 RCW and RCW

29 7.70.065 shall apply unless otherwise stated in this chapter.

30 (2) An agent must act in good faith.

31 (3) An agent who has accepted the appointment in writing may make

32 decisions on behalf of the principal only pursuant to the terms of the

33 directive. The decisions must be consistent with the instructions and

34 preferences the principal has expressed in the directive, or if not

35 expressed, as otherwise known to the agent. If the principal's

36 instructions or preferences are not known, the agent shall make the

37 decision he or she, in good faith, determines the principal would make

38 if capable to do so.

1 (4) The agent has the same right as the person to receive, review,
2 and authorize the release of the person's health care information when
3 the agent is acting on behalf of the principal and to the extent
4 required for the agent to carry out his or her duties. This subsection
5 shall be construed to be consistent with chapters 70.02, 70.24, 70.96A,
6 71.05, and 71.34 RCW, and with federal law regarding health care
7 information.

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

12 (6) An agent may not use or threaten physical force, abuse,
13 neglect, financial exploitation, or abandonment of the principal, as
14 those terms are defined in RCW 74.34.020, to enforce or carry out the
15 directive.

16 NEW SECTION. **Sec. 7.** (1)(a) Upon receiving a directive, a health
17 care provider or professional person treating the person, or personnel
18 acting under the direction of the health care provider or professional
19 person, shall make the directive a part of the person's medical record
20 and shall be deemed to have actual knowledge of the directive's
21 contents. Whenever possible, the health care provider or professional
22 person shall inform a person or the person's agent if he or she may be
23 precluded from honoring all or part of the directive based on the
24 reasons in subsection (2) of this section.

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

28 (2)(a) A health care provider or professional person who has been
29 presented with or has obtained a person's directive and who is treating
30 the person shall act in accordance with the provisions of the directive
31 to the fullest extent possible unless, in the determination of the
32 health care provider or professional person:

33 (i) Compliance with the provision would violate the accepted
34 standard of care established in RCW 7.70.040;

35 (ii) The requested treatment is not available;

36 (iii) Compliance with the provision would violate applicable law;

37 (iv) It is an emergency situation and compliance would endanger any
38 person's life or health; or

1 (v) The principal, without the benefit of the specific treatment
2 measure, is incapable of participating in any available treatment plan
3 that will give the principal a realistic opportunity of improving his
4 or her condition.

5 If the health care provider or professional person is at any time
6 unable to comply, the health care provider or professional person shall
7 offer to withdraw from treating the person unless no other treatment
8 provider is reasonably available. A health care provider or
9 professional person who withdraws shall promptly notify the principal
10 and the agent, if any, and shall document the notification in the
11 principal's medical record.

12 (b) If the person consents in the directive to having his or her
13 health care information released to other providers or third parties,
14 or provides for an agent who authorizes such disclosure, the
15 professional person's disclosure of health care information shall not
16 be a violation of chapter 70.02 RCW.

17 (3) The health care provider or professional person shall obtain
18 the person's informed consent regarding all mental health treatment
19 decisions unless the person has waived the right to informed consent.

20 (4) Treatment under chapters 71.05 and 71.34 RCW shall be provided
21 pursuant to the provisions of those chapters. A professional person
22 who is treating a person involuntarily detained or committed under
23 chapter 71.05 or 71.34 RCW shall act in accordance with the provisions
24 of the person's directive to the fullest extent possible and as
25 permitted by the applicable involuntary treatment laws, consistent with
26 accepted standard of care and the availability of treatment.

27 (5) For purposes of this section, "accepted standard of care" is
28 the standard established in RCW 7.70.040.

29 NEW SECTION. **Sec. 8.** (1) If a principal consents in his or her
30 directive, or authorizes an agent to consent on the principal's behalf,
31 to voluntary admission to inpatient mental health treatment, and at the
32 time of admission the principal refuses treatment, the principal may
33 only be admitted to inpatient psychiatric treatment if a physician
34 member of the treating facility's professional staff:

35 (a) Evaluates the principal's mental condition, including a review
36 of reasonably available psychiatric and psychological history,
37 diagnosis, and treatment needs, and determines, in conjunction with

1 another health care provider or mental health professional, that the
2 principal is incapacitated;

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

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

9 (d) Documents in the principal's medical chart a summary of the
10 physician's findings and recommendations for treatment.

11 (2) In the event the admitting physician is not a psychiatrist, the
12 principal shall receive a complete psychological assessment by a mental
13 health professional within twenty-four hours of admission to determine
14 the continued need for inpatient evaluation or treatment.

15 (3)(a) A person authorized in section 3 of this act may seek a
16 determination of the person's capacity to revoke. If it is determined
17 that the person has the capacity to revoke, then the person's refusal
18 of voluntary admission shall be a revocation of that provision of the
19 directive.

20 (b) If a person who is determined by two health care providers or
21 one mental health professional and one health care provider to lack the
22 capacity to revoke the directive, the person may immediately seek
23 injunctive relief for release from the facility. The sole issue to be
24 decided is the person's capacity to revoke the directive.

25 (4) If, after a seventy-two hour period, the principal has not
26 regained capacity or has regained capacity but refuses to consent to
27 remain for additional treatment, the principal must be released during
28 reasonable daylight hours, unless detained under chapter 70.96A, 71.05,
29 or 71.34 RCW.

30 (5) Any principal who is voluntarily admitted to inpatient mental
31 health treatment under this chapter, or who consents to remain for
32 additional treatment after the initial seventy-two hour period, shall
33 have all the rights provided to individuals who are voluntarily
34 admitted to inpatient treatment under chapter 71.05, 71.34, or 72.23
35 RCW. The continuing need for treatment of a principal who consents to
36 remain for additional treatment under this chapter shall be reviewed by
37 the professional staff of the treating facility, and the person's agent
38 if any, at least as frequently as set forth for voluntary patients
39 under chapter 71.05, 71.34, or 72.23 RCW.

1 NEW SECTION. **Sec. 9.** A person with capacity may revoke a
2 directive in whole or in part by written statement at any time. The
3 notice need not follow any specific form so long as it is written and
4 the intent of the principal can be discerned. The written statement of
5 revocation is effective when signed by the person and delivered to the
6 agent, if one is appointed, and the health care provider or
7 professional person who is responsible for the delivery of mental
8 health treatment to the person. The health care provider or
9 professional person shall make the revocation part of the person's
10 medical record.

11 NEW SECTION. **Sec. 10.** (1) For the purposes of this section,
12 "provider" means a private or public agency, government entity, health
13 care provider, professional person, person acting under the direction
14 of a health care provider or professional person, health care facility,
15 or long-term care facility.

16 (2) A provider is not subject to civil liability or professional
17 conduct sanctions when, in good faith:

18 (a) The provider provides treatment to a principal in the absence
19 of actual knowledge of the existence of a directive, or provides
20 treatment pursuant to a directive in the absence of actual knowledge of
21 the revocation of the directive, unless the absence of actual knowledge
22 resulted from the negligence of the provider;

23 (b) A health care provider or mental health professional determines
24 in good faith that the principal is or is not incapacitated for the
25 purpose of deciding whether to proceed or not to proceed according to
26 a directive, and acts upon that determination;

27 (c) The provider administers or does not administer mental health
28 treatment according to the principal's directive in good faith reliance
29 upon the validity of the directive and the directive is subsequently
30 found to be invalid;

31 (d) The provider does not provide treatment according to the
32 directive for one of the reasons authorized under section 7 of this
33 act; or

34 (e) The provider provides treatment according to the principal's
35 directive.

36 NEW SECTION. **Sec. 11.** Any person with good reason to believe that
37 a directive has been created or revoked under circumstances amounting

1 to fraud, duress, or undue influence, may petition the court for
2 appointment of a guardian for the person or to review the actions of
3 the agent or person alleged to be involved in the improper conduct
4 under RCW 11.94.090 or 74.34.110.

5 NEW SECTION. **Sec. 12.** The fact that a person has executed a
6 directive does not constitute an indication of mental disorder or that
7 the person is not capable of providing informed consent.

8 NEW SECTION. **Sec. 13.** A person shall not be required to execute
9 or to refrain from executing a directive as a criterion for insurance,
10 as a condition for receiving mental or physical health services, or as
11 a condition of admission or discharge from a health care facility or
12 long-term care facility.

13 NEW SECTION. **Sec. 14.** A directive does not limit any authority
14 otherwise provided in Title 71 or 10 RCW, or any other applicable state
15 or federal laws to detain a person, take a person into custody, or to
16 admit, retain, or treat a person in a health care facility.

17 NEW SECTION. **Sec. 15.** Where a person consents in a directive, or
18 authorizes his or her agent to consent to electroconvulsive therapy,
19 the professional person must document, in the person's medical record,
20 the reasons the professional person elected to use electroconvulsive
21 therapy.

22 NEW SECTION. **Sec. 16.** The directive may, but is not required to,
23 be in the following form:

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

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

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

6 I intend this mental health advance directive to take precedence over
7 any and all durable powers of attorney for health care documents and/or
8 other mental health advance directives I have previously executed, to
9 the extent that they are inconsistent with this document, or unless I
10 expressly state otherwise in this mental health advance directive.

11 I understand that I may revoke this mental health advance directive in
12 whole or in part only if I am a person with capacity. I understand
13 that I cannot revoke this mental health advance directive if a court,
14 two health care providers, or one mental health professional and one
15 health care provider find that I am an incapacitated person. I
16 understand that, except as otherwise provided in law, revocation must
17 be in writing.

18 I understand that nothing in this mental health advance directive, or
19 in my refusal of treatment to which I consent in this mental health
20 advance directive, authorizes any agent designated by this mental
21 health advance directive to use or threaten to use physical force,
22 abuse, neglect, financial exploitation, or abandonment to enforce or
23 carry out my mental health advance directive.

24 **PART II. STATEMENT OF INTENT REGARDING WHEN THIS MENTAL HEALTH ADVANCE**
25 **DIRECTIVE BECOMES OPERATIVE**

26 I intend that this mental health advance directive become operative
27 (initial only one):

28 . . . Immediately upon my signing of this mental health advance
29 directive

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

31

32 . . . If I become incapacitated.

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

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

3 I would like the physician named below to be involved in my treatment
4 decisions: Dr. Telephone
5 Dr. Telephone

6 I do not wish to be treated by:

7 B. Preferences or Instructions About Other Providers

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

12 Name Profession Telephone
13 Name Profession Telephone
14 Name Profession Telephone

15 C. Preferences or Instructions About Medications for Psychiatric
16 Treatment (initial all that apply):

17 . . . I consent, and authorize my agent (if appointed) to consent, to
18 the following medications:
19

20 . . . I specifically do not consent and I do not authorize my agent (if
21 appointed) to consent to the administration of the following
22 medications:
23

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

28 . . . I am willing to try any new medication the hospital doctor
29 recommends.

30 . . . I am willing to try any new medications my outpatient doctor
31 recommends.

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

Medication Allergies

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

Other Medication Preferences or Instructions

I have the following other preferences or instructions about medications:

D. Preferences or Instructions About Hospitalization and Alternatives (initial all that apply and, if desired, rank "1" for first choice, "2" for second choice, and so on):

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

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

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

Authority to Consent to Inpatient Treatment

I consent, and authorize my agent (if appointed) to consent, to voluntary admission to inpatient mental health treatment for a period not to exceed 72 hours (initial one if desired):

. . . If deemed appropriate by my agent (if appointed) and treating physician

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

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

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 (initial 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 (initial one):

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

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

16 . . . I consent, and authorize my agent (if appointed) to consent, to
17 the 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 In case of emergency, please contact:

23 Name:

24 Address:

25

26 Work telephone:

27 Home telephone:

28 Relationship:

29 Physician:

30 Address:

31

32 Telephone:

33 The following may help me to avoid a hospitalization:

34

1 I generally react to being hospitalized as follows:
2
3 Staff of the hospital or crisis unit can help me by doing the
4 following:
5

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

7 I authorize an agent to make mental health treatment decisions on my
8 behalf. The authority granted to my agent includes the right to
9 consent, refuse consent, or withdraw consent to any mental health care,
10 treatment, service, or procedure, and to obtain and to authorize
11 disclosure of health care information, as defined in section 2 of this
12 act, and other information relevant to such health care, treatment,
13 service, or procedure consistent with any instructions and/or
14 limitations I have set forth in this mental health advance directive.
15 I intend that those decisions should be made in accordance with my
16 expressed wishes as set forth in this document. If I have not
17 expressed a choice in this document, I authorize my agent to make the
18 decision that my agent determines is the decision I would make if I
19 were capable to do so.

20 A. Designation of an Agent

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

25 Name: Relationship:
26 Address:
27 Day Telephone: Evening Telephone:

28 Agent's Acceptance

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

31 B. Designation of Alternate Agent

32 If the person named above is unavailable, unable, or refuses to serve
33 as my agent, or I revoke that person's authority to serve as my agent,
34 I hereby appoint the following person as my alternate agent and request

1 that this person be notified immediately when this mental health
2 advance directive becomes operative:

3 Name: Relationship:
4 Address:
5 Day Telephone: Evening Telephone:

6 Alternate Agent's Acceptance

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

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

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

12 D. Limitations on My Agent's Authority

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

15 E. Agent Authorized During Principal's Incapacity (initial if desired)

16 . . . This agency shall not be affected by the disability or incapacity
17 of the principal.

18 F. Preference as to Court-Appointed Guardian

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

22 Name: Relationship:
23 Address:
24 Day Telephone: Evening Telephone:

25 The appointment of a guardian of my estate or my person or any other
26 decision maker shall not give the guardian or decision maker the power
27 to revoke, suspend, or terminate this mental health advance directive
28 or the powers of my agent, except as authorized by law.

29 **PART V. OTHER DOCUMENTS**

30 (Initial all that apply):

1 . . . I have executed the following documents that include the power to
2 make decisions regarding health care services for myself:

3 . . . Health care power of attorney (chapter 11.94 RCW)

4 . . . Advance directive or "living will" (chapter 70.122 RCW)

5 . . . I authorize my agent appointed under this directive and the agent
6 appointed under the other documents to serve:

7 . . . Jointly with consent of each other as to my mental health
8 treatment

9 . . . Separately without each other's consent as to my mental health
10 treatment

11 In the event a decision about health care treatment impacts both mental
12 health and physical health treatment and the agents appointed under my
13 health care power of attorney, advance directive, and mental health
14 advance directive cannot reach a consensus, the agent appointed under
15 the following document will control (check only one):

16 . . . Health care power of attorney (chapter 11.94 RCW)

17 . . . Advance directive or "living will" (chapter 70.122 RCW)

18 . . . Mental health advance directive (chapter 71.-- RCW (sections 1
19 through 16 of this act))

20 . . . I have also executed a general or financial power of attorney
21 that **does not include** the power to make decisions regarding health care
22 services for me.

23 **PART VI. PREFERENCES OR INSTRUCTIONS ABOUT NOTIFICATION OF OTHERS,**
24 **CARE OF PERSONAL AFFAIRS, AND CONSENTS TO RELEASE TREATMENT INFORMATION**

25 I acknowledge that state and federal law may require that I be notified
26 of my rights to limit disclosure of health information. I hereby waive
27 any specific type of notification of such rights and authorize
28 disclosure as set forth in detail herein or as authorized by my agent.

29 A. Who Should Be Notified

30 I desire staff to notify the following individuals, in addition to my
31 agent (if appointed) immediately when this mental health advance
32 directive becomes operative:

33 Name: Relationship:

1 Address:
2 Day Telephone: Evening Telephone:
3 Name: Relationship:
4 Address:
5 Day Telephone: Evening Telephone:
6 Name: Relationship:
7 Address:
8 Day Telephone: Evening Telephone:

9 B. Who May Not be Permitted to Visit

10 If I have been admitted to a mental health treatment facility, the
11 following people may not be permitted to visit me there:

12 Name: Relationship:
13 Name: Relationship:
14 Name: Relationship:

15 C. Authorization to Release Previous Treatment Records

16 I authorize the release of health care information, as defined in
17 section 2 of this act, from the following previous treatment providers
18 upon request by treatment providers acting under this mental health
19 advance directive:

20 Provider(s):

21 D. Authorization to Release Treatment Information

22 I authorize the release of relevant health care information, as defined
23 in section 2 of this act, to the following individuals in addition to
24 my agent and current treatment providers:

25 Name: Relationship:
26 Address:
27 Day Telephone: Evening Telephone:

28 E. Preferences or Instructions About Personal Affairs

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

1 F. Additional Preferences and Instructions:
2

3 **PART VII. DURATION OF MY MENTAL HEALTH ADVANCE DIRECTIVE**

4 (Initial one):

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 . . . years from the date it was created.

9 **PART VIII. SIGNATURE**

10 By signing here, I indicate that I understand the purpose and effect of
11 this document and that I am giving my informed consent to the
12 treatments and/or admission to which I have consented or authorized my
13 agent to consent in this directive. I intend that my consent in this
14 directive be construed as being consistent with the elements required
15 under RCW 7.70.060.

16
17 Signature Date

18 The mental health advance directive above was signed and declared by
19 the "Declarant," to be his or her mental health advance
20 directive, in our presence who, at his or her request, have signed
21 names below as witness. We declare that, at the time of the creation
22 of this instrument, the Declarant is personally known to us, and,
23 according to our best knowledge and belief, was a person with capacity
24 at the time and did not appear to be acting under duress, undue
25 influence, or fraud. We further declare that none of us is: (1) A
26 person designated to make medical decisions on the person's behalf; (2)
27 a health care provider or professional person directly involved with
28 the provision of care to the person at the time the mental health
29 advance directive is executed; (3) an owner, operator, employee, or
30 relative of an owner or operator of a health care facility or long-term
31 care facility in which the person is a patient or resident; (4) a
32 person who is related by blood, marriage, or adoption to the person, or
33 with whom the person has a dating relationship as defined in RCW
34 26.50.010; (5) an incapacitated person; (6) a person who would benefit

1 financially if the principal undergoes mental health treatment; or (7)
2 a minor.

3 Dated at (county, state),
4 this day of of

5	Witness 1	Witness 2
6	. . . . .	. . . . .
7	Signature	Signature
8	. . . . .	. . . . .
9	Printed Name	Printed Name
10	. . . . .	. . . . .
11	. . . . .	. . . . .
12	Address	Address
13	. . . . .	. . . . .
14	Telephone	Telephone

15 **PART IX. RECORD OF MENTAL HEALTH ADVANCE DIRECTIVE**

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

18 **PART X. REVOCATION OF MY MENTAL HEALTH ADVANCE DIRECTIVE**

19 (Initial any that apply):

20 . . . I am revoking the following part(s) of this mental health advance
21 directive (specify):

22

23 . . . I am revoking all of this mental health advance directive.

24 By signing here, I indicate that I understand the purpose and effect of
25 my revocation and that no person is bound by any revoked provision(s).

26
27 Signature Date"

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

1 (1) Whenever a principal designates another as his or her attorney
2 in fact or agent, by a power of attorney in writing, and the writing
3 contains the words "This power of attorney shall not be affected by
4 disability of the principal," or "This power of attorney shall become
5 effective upon the disability of the principal," or similar words
6 showing the intent of the principal that the authority conferred shall
7 be exercisable notwithstanding the principal's disability, the
8 authority of the attorney in fact or agent is exercisable on behalf of
9 the principal as provided notwithstanding later disability or
10 incapacity of the principal at law or later uncertainty as to whether
11 the principal is dead or alive. All acts done by the attorney in fact
12 or agent pursuant to the power during any period of disability or
13 incompetence or uncertainty as to whether the principal is dead or
14 alive have the same effect and inure to the benefit of and bind the
15 principal or the principal's guardian or heirs, devisees, and personal
16 representative as if the principal were alive, competent, and not
17 disabled. A principal may nominate, by a durable power of attorney,
18 the guardian or limited guardian of his or her estate or person for
19 consideration by the court if protective proceedings for the
20 principal's person or estate are thereafter commenced. The court shall
21 make its appointment in accordance with the principal's most recent
22 nomination in a durable power of attorney except for good cause or
23 disqualification. If a guardian thereafter is appointed for the
24 principal, the attorney in fact or agent, during the continuance of the
25 appointment, shall account to the guardian rather than the principal.
26 The guardian has the same power the principal would have had if the
27 principal were not disabled or incompetent, to revoke, suspend or
28 terminate all or any part of the power of attorney, mental health
29 advance directive, or agency.

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

34 (3)(a) A principal may authorize his or her attorney-in-fact to
35 provide informed consent for health care decisions on the principal's
36 behalf. If a principal has created both a power of attorney and a
37 mental health advance directive, pursuant to chapter 71.-- RCW
38 (sections 1 through 16 of this act), authorizing an agent to make
39 mental health care decisions on the person's behalf, the mental health

1 advance directive or power of attorney most recently created shall be
2 construed to contain the person's mental health treatment preferences
3 and instructions, unless provided otherwise in either document. An
4 agent appointed under a mental health advance directive has the same
5 right as the principal to receive and review the principal's health
6 care information, including mental health, sexually transmitted
7 diseases and human immunodeficiency virus/AIDS, and alcohol and
8 substance abuse information. If the principal so states in the mental
9 health advance directive, an agent may provide consent on behalf of the
10 principal to voluntary admission to inpatient mental health treatment
11 for a period not to exceed seventy-two hours.

12 (b) Unless he or she is the spouse, or adult child or brother or
13 sister of the principal, none of the following persons may act as the
14 attorney-in-fact for the principal or as an agent in a mental health
15 advance directive: Any of the principal's physicians, the physicians'
16 employees, or the owners, administrators, or employees of the health
17 care facility or long-term care facility where the principal resides or
18 receives care. Except as provided in (a) of this subsection, this
19 authorization is subject to the same limitations as those that apply to
20 a guardian under RCW 11.92.043(5) (a) through (c).

21 **Sec. 18.** RCW 11.88.010 and 1991 c 289 s 1 are each amended to read
22 as follows:

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

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

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

37 (c) A determination of incapacity is a legal not a medical
38 decision, based upon a demonstration of management insufficiencies over

1 time in the area of person or estate. Age, eccentricity, poverty, or
2 medical diagnosis alone shall not be sufficient to justify a finding of
3 incapacity.

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

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

13 (f) For purposes of the terms "incompetent," "disabled," or "not
14 legally competent," as those terms are used in the Revised Code of
15 Washington to apply to persons incapacitated under this chapter, those
16 terms shall be interpreted to mean "incapacitated" persons for purposes
17 of this chapter.

18 (2) The superior court for each county shall have power to appoint
19 limited guardians for the persons and estates, or either thereof, of
20 incapacitated persons, who by reason of their incapacity have need for
21 protection and assistance, but who are capable of managing some of
22 their personal and financial affairs. After considering all evidence
23 presented as a result of such investigation, the court shall impose, by
24 order, only such specific limitations and restrictions on an
25 incapacitated person to be placed under a limited guardianship as the
26 court finds necessary for such person's protection and assistance. A
27 person shall not be presumed to be incapacitated nor shall a person
28 lose any legal rights or suffer any legal disabilities as the result of
29 being placed under a limited guardianship, except as to those rights
30 and disabilities specifically set forth in the court order establishing
31 such a limited guardianship. In addition, the court order shall state
32 the period of time for which it shall be applicable.

33 (3) Venue for petitions for guardianship or limited guardianship
34 shall lie in the county wherein the alleged incapacitated person is
35 domiciled, or if such person resides in a facility supported in whole
36 or in part by local, state, or federal funding sources, in either the
37 county where the facility is located, the county of domicile prior to
38 residence in the supported facility, or the county where a parent or
39 spouse of the alleged incapacitated person is domiciled.

1 If the alleged incapacitated person's residency has changed within
2 one year of the filing of the petition, any interested person may move
3 for a change of venue for any proceedings seeking the appointment of a
4 guardian or a limited guardian under this chapter to the county of the
5 alleged incapacitated person's last place of residence of one year or
6 more. The motion shall be granted when it appears to the court that
7 such venue would be in the best interests of the alleged incapacitated
8 person and would promote more complete consideration of all relevant
9 matters.

10 (4) Under RCW 11.94.010 or chapter 71.-- RCW (sections 1 through 16
11 of this act), a principal may nominate, by a durable power of attorney
12 or the mental health advance directive, the guardian or limited
13 guardian of his or her estate or person for consideration by the court
14 if guardianship proceedings for the principal's person or estate are
15 thereafter commenced. The court shall make its appointment in
16 accordance with the principal's most recent nomination in a durable
17 power of attorney or mental health advance directive except for good
18 cause or disqualification.

19 (5) When a court imposes a full guardianship for an incapacitated
20 person, the person shall be considered incompetent for purposes of
21 rationally exercising the right to vote and shall lose the right to
22 vote, unless the court specifically finds that the person is rationally
23 capable of exercising the franchise. Imposition of a limited
24 guardianship for an incapacitated person shall not result in the loss
25 of the right to vote unless the court determines that the person is
26 incompetent for purposes of rationally exercising the franchise.

27 **Sec. 19.** RCW 11.88.030 and 1996 c 249 s 8 are each amended to read
28 as follows:

29 (1) Any person or entity may petition for the appointment of a
30 qualified person, trust company, national bank, or nonprofit
31 corporation authorized in RCW 11.88.020 as the guardian or limited
32 guardian of an incapacitated person. No liability for filing a
33 petition for guardianship or limited guardianship shall attach to a
34 petitioner acting in good faith and upon reasonable basis. A petition
35 for guardianship or limited guardianship shall state:

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

1 (b) The nature of the alleged incapacity in accordance with RCW
2 11.88.010;

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

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

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

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

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

16 (h) The reason why the appointment of a guardian or limited
17 guardian is sought and the interest of the petitioner in the
18 appointment, and whether the appointment is sought as guardian or
19 limited guardian of the person, the estate, or both;

20 (i) A description of any alternate arrangements previously made by
21 the alleged incapacitated person, such as trusts, mental health advance
22 directives, or powers of attorney, including identifying any
23 guardianship nominations contained in a power of attorney, and why a
24 guardianship is nevertheless necessary;

25 (j) The nature and degree of the alleged incapacity and the
26 specific areas of protection and assistance requested and the
27 limitation of rights requested to be included in the court's order of
28 appointment;

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

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

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

38 (b) Prepayment of a filing fee shall not be required in any
39 guardianship or limited guardianship brought by the attorney general.

1 Payment of the filing fee shall be ordered from the estate of the
2 incapacitated person at the hearing on the merits of the petition,
3 unless in the judgment of the court, such payment would impose a
4 hardship upon the incapacitated person, in which case the filing shall
5 be waived.

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

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

15 (b) Notice under this subsection shall include a clear and easily
16 readable statement of the legal rights of the alleged incapacitated
17 person that could be restricted or transferred to a guardian by a
18 guardianship order as well as the right to counsel of choice and to a
19 jury trial on the issue of incapacity. Such notice shall be in
20 substantially the following form and shall be in capital letters,
21 double-spaced, and in a type size not smaller than ten-point type:

22 IMPORTANT NOTICE
23 PLEASE READ CAREFULLY

24 A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE
25 COUNTY SUPERIOR COURT BY IF A GUARDIAN IS
26 APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

- 27 (1) TO MARRY OR DIVORCE;
- 28 (2) TO VOTE OR HOLD AN ELECTED OFFICE;
- 29 (3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;
- 30 (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;
- 31 (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;
- 32 (6) TO POSSESS A LICENSE TO DRIVE;
- 33 (7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;
- 34 (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;
- 35 (9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;
- 36 (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

37 UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

1 YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING.
2 THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO
3 PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

4 YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED
5 A GUARDIAN TO HELP YOU.

6 YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING
7 IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD
8 LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE
9 THAT PERSON.

10 (5) All petitions filed under the provisions of this section shall
11 be heard within sixty days unless an extension of time is requested by
12 a party or the guardian ad litem within such sixty day period and
13 granted for good cause shown. If an extension is granted, the court
14 shall set a new hearing date.

15 **Sec. 20.** RCW 7.70.065 and 1987 c 162 s 1 are each amended to read
16 as follows:

17 (1) Informed consent for health care for a patient who is not
18 competent, as defined in RCW 11.88.010(1)((~~b~~)) (e), to consent may be
19 obtained from a person authorized to consent on behalf of such patient.
20 Persons authorized to provide informed consent to health care on behalf
21 of a patient who is not competent to consent shall be a member of one
22 of the following classes of persons in the following order of priority:

23 (a) The appointed guardian of the patient, if any;

24 (b) The individual, if any, to whom the patient has given a durable
25 power of attorney that encompasses the authority to make health care
26 decisions;

27 (c) The patient's spouse;

28 (d) Children of the patient who are at least eighteen years of age;

29 (e) Parents of the patient; and

30 (f) Adult brothers and sisters of the patient.

31 (2) If the physician seeking informed consent for proposed health
32 care of the patient who is not competent to consent makes reasonable
33 efforts to locate and secure authorization from a competent person in
34 the first or succeeding class and finds no such person available,
35 authorization may be given by any person in the next class in the order
36 of descending priority. However, no person under this section may
37 provide informed consent to health care:

1 (a) If a person of higher priority under this section has refused
2 to give such authorization; or

3 (b) If there are two or more individuals in the same class and the
4 decision is not unanimous among all available members of that class.

5 (3) Before any person authorized to provide informed consent on
6 behalf of a patient not competent to consent exercises that authority,
7 the person must first determine in good faith that that patient, if
8 competent, would consent to the proposed health care. If such a
9 determination cannot be made, the decision to consent to the proposed
10 health care may be made only after determining that the proposed health
11 care is in the patient's best interests.

12 NEW SECTION. **Sec. 21.** Nothing in this act creates a legal right
13 or cause of action. Nothing in this act denies or alters any existing
14 legal right or cause of action nor may it be relied upon to compel the
15 establishment of any program or special entitlement.

16 NEW SECTION. **Sec. 22.** Sections 1 through 16 of this act
17 constitute a new chapter in Title 71 RCW.

18 NEW SECTION. **Sec. 23.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

--- END ---