

ESSB 5635 - H COMM AMD
By Committee on Judiciary

ADOPTED 03/03/2016

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

3 "PART I

4 NEW SECTION. **Sec. 101.** This act may be known and cited as the
5 uniform power of attorney act.

6 NEW SECTION. **Sec. 102.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

9 (1) "Agent" means a person granted authority to act for a
10 principal under a power of attorney, whether denominated an agent,
11 attorney-in-fact, or otherwise. The term includes an original agent,
12 coagent, successor agent, and a person to which an agent's authority
13 is delegated.

14 (2) "Durable," with respect to a power of attorney, means not
15 terminated by the principal's incapacity.

16 (3) "Electronic" means relating to technology having electrical,
17 digital, magnetic, wireless, optical, electromagnetic, or similar
18 capabilities.

19 (4) "Good faith" means honesty in fact.

20 (5) "Incapacity" means inability of an individual to manage
21 property, business, personal, or health care affairs because the
22 individual:

23 (a) Has an impairment in the ability to receive and evaluate
24 information or make or communicate decisions even with the use of
25 technological assistance; or

26 (b) Is:

27 (i) An absentee, as defined in chapter 11.80 RCW; or

28 (ii) Outside the United States and unable to return.

29 (6) "Person" means an individual, corporation, business trust,
30 estate, trust, partnership, limited liability company, association,

1 joint venture, public corporation, government or governmental
2 subdivision, agency, or instrumentality, or any other legal or
3 commercial entity.

4 (7) "Power of attorney" means a writing that uses the term "power
5 of attorney" and grants authority to an agent to act in the place of
6 the principal.

7 (8) "Presently exercisable general power of appointment," with
8 respect to property or a property interest subject to a power of
9 appointment, means power exercisable at the time in question to vest
10 absolute ownership in the principal individually, the principal's
11 estate, the principal's creditors, or the creditors of the
12 principal's estate. The term includes a power of appointment not
13 exercisable until the occurrence of a specified event, the
14 satisfaction of an ascertainable standard, or the passage of a
15 specified period only after the occurrence of the specified event,
16 the satisfaction of the ascertainable standard, or the passage of the
17 specified period. The term does not include a power exercisable in a
18 fiduciary capacity or only by will.

19 (9) "Principal" means an individual who grants authority to an
20 agent in a power of attorney.

21 (10) "Property" means anything that may be the subject of
22 ownership, whether real or personal, legal or equitable, tangible or
23 intangible, or any interest or right therein.

24 (11) "State" means a state of the United States, the District of
25 Columbia, Puerto Rico, the United States Virgin Islands, or any
26 territory or insular possession subject to the jurisdiction of the
27 United States.

28 (12) "Stocks, bonds, and financial instruments" means stocks,
29 bonds, mutual funds, and all other types of securities and financial
30 instruments, whether held directly, indirectly, or in any other
31 manner. The term shall also include but not be limited to commodity
32 futures contracts, call or put options on stocks or stock indexes,
33 derivatives, and margin accounts.

34 NEW SECTION. **Sec. 103.** (1) This chapter applies to all powers
35 of attorney except:

36 (a) A power to the extent it is coupled with an interest in the
37 subject of the power, including a power given to or for the benefit
38 of a creditor in connection with a credit transaction;

1 (b) A proxy or other delegation to exercise voting rights or
2 management rights with respect to an entity; and

3 (c) A power created on a form prescribed by a government or
4 governmental subdivision, agency, or instrumentality for a
5 governmental purpose.

6 (2) Notwithstanding subsection (1) of this section, section 117
7 of this act shall not apply to a power to make health care decisions
8 under sections 217 and 218 of this act, nor shall it apply to the
9 power to nominate a guardian for a minor child under section 218 of
10 this act.

11 NEW SECTION. **Sec. 104.** The authority conferred under a power of
12 attorney created prior to the effective date of this section, and
13 also for a power of attorney created on or after the effective date
14 of this section, terminates upon the incapacity of the principal
15 unless the writing contains the words "This power of attorney shall
16 not be affected by disability of the principal," or "This power of
17 attorney shall become effective upon the disability of the
18 principal," or similar words showing the intent of the principal that
19 the authority conferred shall be exercisable notwithstanding the
20 principal's incapacity.

21 NEW SECTION. **Sec. 105.** (1) A power of attorney must be signed
22 and dated by the principal, and the signature must be either
23 acknowledged before a notary public or other individual authorized by
24 law to take acknowledgments, or attested by two or more competent
25 witnesses who are neither home care providers for the principal nor
26 care providers at an adult family home or long-term care facility in
27 which the principal resides, and who are unrelated to the principal
28 or agent by blood, marriage, or state registered domestic
29 partnership, by subscribing their names to the power of attorney,
30 while in the presence of the principal and at the principal's
31 direction or request.

32 (2) A power of attorney shall be considered signed in accordance
33 with this section if, in the case of a principal who is physically
34 unable to sign his or her name, the principal makes a mark in
35 accordance with RCW 11.12.030, or in the case of a principal who is
36 physically unable to make a mark, the power of attorney is executed
37 in accordance with RCW 64.08.100.

1 (3) A signature on a power of attorney is presumed to be genuine
2 if the principal acknowledges the signature before a notary public or
3 other individual authorized by law to take acknowledgments.

4 NEW SECTION. **Sec. 106.** (1) A power of attorney executed in this
5 state on or after the effective date of this section is valid if its
6 execution complies with section 105 of this act.

7 (2) A power of attorney executed in this state before the
8 effective date of this section is valid if its execution complied
9 with the law of this state as it existed at the time of execution.

10 (3) A power of attorney executed other than in this state is
11 valid in this state if, when the power of attorney was executed, the
12 execution complied with:

13 (a) The law of the jurisdiction that determines the meaning and
14 effect of the power of attorney pursuant to section 107 of this act;
15 or

16 (b) The requirements for a military power of attorney pursuant to
17 10 U.S.C. Sec. 1044b, as amended.

18 (4) Except as otherwise provided by statute other than this act,
19 a photocopy or electronically transmitted copy of an original power
20 of attorney has the same effect as the original.

21 NEW SECTION. **Sec. 107.** The meaning and effect of a power of
22 attorney is determined by the law of the jurisdiction indicated in
23 the power of attorney and, in the absence of an indication of
24 jurisdiction, by the law of the jurisdiction in which the power of
25 attorney was executed.

26 NEW SECTION. **Sec. 108.** (1) In a power of attorney, a principal
27 may nominate a guardian of the principal's estate or guardian of the
28 principal's person for consideration by the court if protective
29 proceedings for the principal's estate or person are begun after the
30 principal executes the power of attorney. Except for good cause shown
31 or disqualification, the court shall make its appointment in
32 accordance with the principal's most recent nomination.

33 (2) If, after a principal executes a power of attorney, a court
34 appoints a guardian of the principal's estate or other fiduciary
35 charged with the management of all of the principal's property, the
36 power of attorney is terminated and the agent's authority does not
37 continue unless continued by the court.

1 (3) If, after a principal executes a power of attorney, a court
2 appoints a guardian of the principal's estate or other fiduciary
3 charged with the management of some but not all of the principal's
4 property, the power of attorney shall not terminate or be modified,
5 except to the extent ordered by the court.

6 NEW SECTION. **Sec. 109.** (1) A power of attorney is effective
7 when executed unless the principal provides in the power of attorney
8 that it becomes effective at a future date or upon the occurrence of
9 a future event or contingency.

10 (2) If a power of attorney becomes effective upon the occurrence
11 of a future event or contingency, the principal, in the power of
12 attorney, may authorize one or more persons to determine in a writing
13 that the event or contingency has occurred.

14 (3) If a power of attorney becomes effective upon the principal's
15 incapacity and the principal has not authorized a person to determine
16 whether the principal is incapacitated, or the person authorized is
17 unable or unwilling to make the determination, the power of attorney
18 becomes effective upon a determination in a writing by:

19 (a) A physician or licensed psychologist, unrelated to the
20 principal or agent by blood or marriage, who has personally examined
21 the principal, that the principal is incapacitated within the meaning
22 of section 102(5)(a) of this act; or

23 (b) A judge or an appropriate governmental official that the
24 principal is incapacitated within the meaning of section 102(5)(b) of
25 this act.

26 (4) A person authorized by the principal in the power of attorney
27 to determine that the principal is incapacitated may act as the
28 principal's personal representative pursuant to the health insurance
29 portability and accountability act, sections 1171 through 1179 of the
30 social security act, 42 U.S.C. Sec. 1320d, as amended, and applicable
31 regulations, to obtain access to the principal's health care
32 information and communicate with the principal's health care
33 provider.

34 NEW SECTION. **Sec. 110.** (1) A power of attorney terminates when:

35 (a) The principal dies;

36 (b) The principal becomes incapacitated, if the power of attorney
37 is not durable;

38 (c) The principal revokes the power of attorney;

1 (d) The power of attorney provides that it terminates;
2 (e) The purpose of the power of attorney is accomplished; or
3 (f) The principal revokes the agent's authority or the agent
4 dies, becomes incapacitated, or resigns, and the power of attorney
5 does not provide for another agent to act under the power of
6 attorney.

7 (2) An agent's authority terminates when:

8 (a) The principal revokes the authority;

9 (b) The agent dies, becomes incapacitated, or resigns;

10 (c) An action is filed for the dissolution or annulment of the
11 agent's marriage to the principal or for their legal separation, or
12 an action is filed for dissolution or annulment of the agent's state
13 registered domestic partnership with the principal or for their legal
14 separation, unless the power of attorney otherwise provides; or

15 (d) The power of attorney terminates.

16 (3) An agent's authority which has been terminated under
17 subsection (2)(c) of this section shall be reinstated effective
18 immediately in the event that such action is dismissed with the
19 consent of both parties or the petition for dissolution, annulment,
20 or legal separation is withdrawn.

21 (4) Unless the power of attorney otherwise provides, an agent's
22 authority is exercisable until the authority terminates under
23 subsection (2) of this section, notwithstanding a lapse of time since
24 the execution of the power of attorney.

25 (5) Termination of an agent's authority or of a power of attorney
26 is not effective as to the agent or another person that, without
27 actual knowledge of the termination, acts in good faith under the
28 power of attorney. An act so performed, unless otherwise invalid or
29 unenforceable, binds the principal and the principal's successors in
30 interest.

31 (6) Incapacity of the principal of a power of attorney that is
32 not durable does not revoke or terminate the power of attorney as to
33 an agent or other person that, without actual knowledge of the
34 incapacity, acts in good faith under the power of attorney. An act so
35 performed, unless otherwise invalid or unenforceable, binds the
36 principal and the principal's successors in interest.

37 (7) The execution of a power of attorney does not revoke a power
38 of attorney previously executed by the principal unless the
39 subsequent power of attorney provides that the previous power of
40 attorney is revoked or that all other powers of attorney are revoked.

1 NEW SECTION. **Sec. 111.** (1) A principal may designate in a power
2 of attorney two or more persons to act as coagents. Unless the power
3 of attorney otherwise provides, all coagents must exercise their
4 authority jointly; provided, however, a coagent may delegate that
5 coagent's authority to another coagent.

6 (2) A principal may designate one or more successor agents to act
7 if an agent resigns, dies, becomes incapacitated, is not qualified to
8 serve, or declines to serve. A principal may grant authority to
9 designate one or more successor agents to an agent or other person
10 designated by name, office, or function. Unless the power of attorney
11 otherwise provides, a successor agent:

12 (a) Has the same authority as that granted to the original agent;
13 and

14 (b) May not act until all predecessor agents have resigned, died,
15 become incapacitated, are no longer qualified to serve, or have
16 declined to serve.

17 (3) Except as otherwise provided in the power of attorney and
18 subsection (4) of this section, an agent that does not participate in
19 or conceal a breach of fiduciary duty committed by another agent,
20 including a predecessor agent, is not liable for the actions of the
21 other agent.

22 (4) An agent that has actual knowledge of a breach or imminent
23 breach of fiduciary duty by another agent shall notify the principal
24 and, if the principal is incapacitated, take any action reasonably
25 appropriate in the circumstances to safeguard the principal's best
26 interest. An agent that fails to notify the principal or take action
27 as required by this subsection is liable for the reasonably
28 foreseeable damages that could have been avoided if the agent had
29 notified the principal or taken such action.

30 NEW SECTION. **Sec. 112.** Unless the power of attorney otherwise
31 provides, an agent is entitled to reimbursement of expenses
32 reasonably incurred on behalf of the principal and to reasonable
33 compensation.

34 NEW SECTION. **Sec. 113.** Except as otherwise provided in the
35 power of attorney, a person accepts appointment as an agent under a
36 power of attorney by exercising authority or performing duties as an
37 agent or by any other assertion or conduct indicating acceptance.

1 NEW SECTION. **Sec. 114.** (1) Notwithstanding provisions in the
2 power of attorney, an agent that has accepted appointment shall:

3 (a) Act in accordance with the principal's reasonable
4 expectations to the extent actually known by the agent and,
5 otherwise, in the principal's best interest;

6 (b) Act in good faith; and

7 (c) Act only within the scope of authority granted in the power
8 of attorney.

9 (2) Except as otherwise provided in the power of attorney, an
10 agent that has accepted appointment shall:

11 (a) Act loyally for the principal's benefit;

12 (b) Act so as not to create a conflict of interest that impairs
13 the agent's ability to act impartially in the principal's best
14 interest;

15 (c) Act with the care, competence, and diligence ordinarily
16 exercised by agents in similar circumstances;

17 (d) Keep a record of all receipts, disbursements, and
18 transactions made on behalf of the principal;

19 (e) Cooperate with a person that has authority to make health
20 care decisions for the principal to carry out the principal's
21 reasonable expectations to the extent actually known by the agent
22 and, otherwise, act in the principal's best interest; and

23 (f) Attempt to preserve the principal's estate plan, to the
24 extent actually known by the agent, if preserving the plan is
25 consistent with the principal's best interest based on all relevant
26 factors, including:

27 (i) The value and nature of the principal's property;

28 (ii) The principal's foreseeable obligations and need for
29 maintenance;

30 (iii) Minimization of taxes, including income, estate,
31 inheritance, generation-skipping transfer, and gift taxes; and

32 (iv) Eligibility for a benefit, a program, or assistance under a
33 statute or rule.

34 (3) An agent that acts in good faith is not liable to any
35 beneficiary of the principal's estate plan for failure to preserve
36 the plan.

37 (4) An agent that acts with care, competence, and diligence for
38 the best interest of the principal is not liable solely because the
39 agent also benefits from the act or has an individual or conflicting
40 interest in relation to the property or affairs of the principal.

1 (5) If an agent is selected by the principal because of special
2 skills or expertise possessed by the agent or in reliance on the
3 agent's representation that the agent has special skills or
4 expertise, the special skills or expertise must be considered in
5 determining whether the agent has acted with care, competence, and
6 diligence under the circumstances.

7 (6) Absent a breach of duty to the principal, an agent is not
8 liable if the value of the principal's property declines.

9 (7) An agent that engages another person on behalf of the
10 principal is not liable for an act, error of judgment, or default of
11 that person if the agent exercises care, competence, and diligence in
12 selecting and monitoring the person, provided however that the agent
13 shall not be relieved of liability for such person's discretionary
14 acts, that, if done by the agent, would result in liability to the
15 agent.

16 (8) Unless section 111(1) of this act applies, an agent may only
17 delegate authority to another person if expressly authorized to do so
18 in the power of attorney and may delegate some, but not all, of the
19 authority granted by the principal. An agent that exercises authority
20 to delegate to another person the authority granted by the principal
21 is not liable for an act, error of judgment, or default of that
22 person if the agent exercises care, competence, and diligence in
23 selecting and monitoring the person, provided however that the agent
24 shall not be relieved of liability for such person's discretionary
25 acts, that, if done by the agent, would result in liability to the
26 agent.

27 (9) Except as otherwise provided in the power of attorney, an
28 agent is not required to disclose receipts, disbursements, or
29 transactions conducted on behalf of the principal unless ordered by a
30 court or requested in writing by the principal, a guardian, a
31 conservator, another fiduciary acting for the principal, a
32 governmental agency having authority to protect the welfare of the
33 principal, or, upon the death of the principal, by the personal
34 representative or successor in interest of the principal's estate.
35 Such request by a guardian, conservator, or another fiduciary acting
36 for the principal must be limited to information reasonably related
37 to that guardian, conservator, or fiduciary's duties. If so
38 requested, within thirty days the agent shall comply with the request
39 or provide a writing or other record substantiating why additional

1 time is needed and shall comply with the request within an additional
2 thirty days.

3 NEW SECTION. **Sec. 115.** A provision in a power of attorney
4 relieving an agent of liability for breach of duty is binding on the
5 principal and the principal's successors in interest except to the
6 extent the provision:

7 (1) Relieves the agent of liability for breach of duty committed
8 dishonestly, with an improper motive, or with gross negligence to the
9 purposes of the power of attorney or the best interest of the
10 principal; or

11 (2) Was inserted as a result of an abuse of a confidential or
12 fiduciary relationship with the principal.

13 NEW SECTION. **Sec. 116.** (1) Except as otherwise provided in the
14 power of attorney, the following persons may bring a petition
15 described in subsection (2) of this section:

16 (a) The principal or the agent;

17 (b) The spouse or state registered domestic partner of the
18 principal;

19 (c) The guardian of the estate or person of the principal;

20 (d) Any other interested person, as long as the person
21 demonstrates to the court's satisfaction that the person is
22 interested in the welfare of the principal and has a good faith
23 belief that the court's intervention is necessary, and that the
24 principal is incapacitated at the time of filing the petition or
25 otherwise unable to protect his or her own interests; and

26 (e) A person asked to accept the power of attorney.

27 (2) A person designated in subsection (1) of this section may
28 file a petition requesting the court to construe a power of attorney
29 or grant any other appropriate relief, including but not limited to:

30 (a) Determination of whether the power of attorney is in effect
31 or has terminated;

32 (b) Compelling the agent to submit the agent's accounts or report
33 the agent's acts as agent to the principal, the spouse or state
34 registered domestic partner of the principal, the guardian of the
35 person or the estate of the principal, or to any other person
36 required by the court in its discretion, if the agent has not timely
37 complied with a request under section 114(9) of this act. However, a
38 government agency having authority to protect the welfare of the

1 principal may file a petition upon the agent's refusal or failure to
2 submit an accounting upon written request and shall not be required
3 to wait sixty days;

4 (c) Ratification of past acts or approval of proposed acts of the
5 agent;

6 (d) Issuance of an order directing the agent to exercise or
7 refrain from exercising authority in a power of attorney in a
8 particular manner or for a particular purpose;

9 (e) Modification of the authority of an agent under a power of
10 attorney;

11 (f) Removal of the agent on a determination by the court of both
12 of the following:

13 (i) Determination that the agent has violated or is unfit to
14 perform the fiduciary duties under the power of attorney; and

15 (ii) Determination that the removal of the agent is in the best
16 interest of the principal;

17 (g) Approval of the resignation of the agent and approval of the
18 final accountings of the resigning agent if submitted, subject to any
19 orders the court determines are necessary to protect the principal's
20 interests;

21 (h) Confirmation of the authority of a successor agent to act
22 under a power of attorney upon removal or resignation of the previous
23 agent;

24 (i) Compelling a third person to honor the authority of an agent,
25 provided that a third person may not be compelled to honor the
26 agent's authority if the principal could not compel the third person
27 to act in the same circumstances;

28 (j) Order the agent to furnish a bond in an amount the court
29 determines to be appropriate.

30 (3) Any action commenced under this section shall be subject to
31 the notice requirements of chapter 11.96A RCW.

32 (4) Upon motion by the principal, the court shall dismiss a
33 petition filed under this section, unless the court finds that the
34 principal lacks capacity to revoke the agent's authority or the power
35 of attorney.

36 (5) Except as otherwise provided in section 120(3)(b) of this
37 act, any action commenced under this section shall be subject to the
38 provisions of RCW 11.96A.150.

1 NEW SECTION. **Sec. 117.** An agent that violates this chapter is
2 liable to the principal or the principal's successors in interest for
3 the amount required to restore the value of the principal's property
4 to what it would have been had the violation not occurred.

5 NEW SECTION. **Sec. 118.** Unless the power of attorney has been
6 terminated in accordance with section 108 of this act, or the power
7 of attorney provides a different method for an agent's resignation,
8 an agent may resign by giving notice to the principal and, if the
9 principal is incapacitated:

10 (1) To the conservator or guardian, if one has been appointed for
11 the principal, and a coagent or successor agent, if designated; or

12 (2) If there is no person described in subsection (1) of this
13 section:

14 (a) To any person reasonably believed by the agent to have
15 sufficient interest in the principal's welfare;

16 (b) To a governmental agency having authority to protect the
17 welfare of the principal; or

18 (c) By filing notice with the county recorder's office in the
19 county where the principal resides.

20 NEW SECTION. **Sec. 119.** (1) For purposes of this section and
21 section 120 of this act, "acknowledged" means purportedly verified
22 before a notary public or other individual authorized to take
23 acknowledgments.

24 (2) A person that in good faith accepts an acknowledged power of
25 attorney without actual knowledge that the signature is not genuine
26 may rely upon the presumption under section 105 of this act that the
27 signature is genuine.

28 (3) A person that in good faith accepts an acknowledged power of
29 attorney without actual knowledge that the power of attorney is void,
30 invalid, or terminated, that the purported agent's authority is void,
31 invalid, or terminated, or that the agent is exceeding or improperly
32 exercising the agent's authority may rely upon the power of attorney
33 as if the power of attorney were genuine, valid and still in effect,
34 the agent's authority were genuine, valid and still in effect, and
35 the agent had not exceeded and had properly exercised the authority.

36 (4) A person that is asked to accept an acknowledged power of
37 attorney may request, and rely upon, without further investigation:

1 (a) An agent's certification given under penalty of perjury
2 meeting the requirements of subsection (5) of this section; and

3 (b) An English translation of the power of attorney if the power
4 of attorney contains, in whole or in part, language other than
5 English.

6 (5) A certification presented pursuant to subsection (4) of this
7 section or pursuant to section 120 of this act shall state that:

8 (a) The person presenting himself or herself as the agent and
9 signing the affidavit or declaration is the person so named in the
10 power of attorney;

11 (b) If the agent is named in the power of attorney as a successor
12 agent, the circumstances or conditions stated in the power of
13 attorney that would cause that person to become the acting agent have
14 occurred;

15 (c) To the best of the agent's knowledge, the principal is still
16 alive;

17 (d) To the best of the agent's knowledge, at the time the power
18 of attorney was signed, the principal was competent to execute the
19 document and was not under undue influence to sign the document;

20 (e) All events necessary to making the power of attorney
21 effective have occurred;

22 (f) The agent does not have actual knowledge of the revocation,
23 termination, limitation, or modification of the power of attorney or
24 of the agent's authority;

25 (g) The agent does not have actual knowledge of the existence of
26 other circumstances that would limit, modify, revoke, or terminate
27 the power of attorney or the agent's authority to take the proposed
28 action;

29 (h) If the agent was married to or in a state registered domestic
30 partnership with the principal at the time of execution of the power
31 of attorney, then at the time of signing the affidavit or
32 declaration, the marriage or state registered domestic partnership of
33 the principal and the agent has not been dissolved or declared
34 invalid, and no action is pending for the dissolution of the marriage
35 or domestic partnership or for legal separation; and

36 (i) The agent is acting in good faith pursuant to the authority
37 given under the power of attorney.

38 (6) An English translation requested under this section must be
39 provided at the principal's expense unless the request is made more

1 than seven business days after the power of attorney is presented for
2 acceptance.

3 (7) For purposes of this section and section 120 of this act, a
4 person that conducts activities through employees is without actual
5 knowledge of a fact relating to a power of attorney, a principal, or
6 an agent if the employee conducting the transaction involving the
7 power of attorney is without actual knowledge of the fact.

8 NEW SECTION. **Sec. 120.** (1) Except as otherwise provided in
9 subsection (2) of this section:

10 (a) A person shall either accept an acknowledged power of
11 attorney or request a certification or a translation no later than
12 seven business days after presentation of the power of attorney for
13 acceptance;

14 (b) If a person requests a certification or a translation, the
15 person shall accept the power of attorney no later than five business
16 days after receipt of the certification or translation; and

17 (c) A person may not require an additional or different form of
18 power of attorney for authority granted in the power of attorney
19 presented.

20 (2) A person is not required to accept an acknowledged power of
21 attorney if:

22 (a) The person is not otherwise required to engage in a
23 transaction with the principal in the same circumstances;

24 (b) Engaging in a transaction with the agent or the principal in
25 the same circumstances would be inconsistent with federal law;

26 (c) The person has actual knowledge of the termination of the
27 agent's authority or of the power of attorney before exercise of the
28 power;

29 (d) A request for a certification or a translation is refused;

30 (e) The person in good faith believes that the power is not valid
31 or that the agent does not have the authority to perform the act
32 requested, whether or not a certification or a translation has been
33 requested or provided; or

34 (f) The person makes, or has actual knowledge that another person
35 has made, a report to the department of social and health services
36 stating a good faith belief that the principal may be subject to
37 physical or financial abuse, neglect, exploitation, or abandonment by
38 the agent or a person acting for or with the agent.

1 (3) A person that refuses in violation of this section to accept
2 an acknowledged power of attorney is subject to:

3 (a) A court order mandating acceptance of the power of attorney;
4 and

5 (b) Liability for reasonable attorneys' fees and costs incurred
6 in any action or proceeding that confirms the validity of the power
7 of attorney or mandates acceptance of the power of attorney.

8 NEW SECTION. **Sec. 121.** Unless displaced by a provision of this
9 chapter, the principles of law and equity supplement this chapter.

10 NEW SECTION. **Sec. 122.** This chapter does not supersede any
11 other law applicable to financial institutions or other entities, and
12 the other law controls if inconsistent with this chapter.

13 NEW SECTION. **Sec. 123.** The remedies under this chapter are not
14 exclusive and do not abrogate any right or remedy under the law of
15 this state other than this chapter.

16 **PART II**

17 NEW SECTION. **Sec. 201.** (1) An agent under a power of attorney
18 may, subject to the requirements of section 114 of this act, and in
19 particular section 114(2)(f) of this act, do the following on behalf
20 of the principal or with the principal's property only if the power
21 of attorney expressly grants the agent the authority and exercise of
22 the authority is not otherwise prohibited by another agreement or
23 instrument to which the authority or property is subject:

24 (a) Create, amend, revoke, or terminate an inter vivos trust;

25 (b) Make a gift;

26 (c) Create or change rights of survivorship;

27 (d) Create or change a beneficiary designation;

28 (e) Delegate some but not all of the authority granted under the
29 power of attorney, except as otherwise provided in section 111(1) of
30 this act;

31 (f) Waive the principal's right to be a beneficiary of a joint
32 and survivor annuity, including a survivor benefit under a retirement
33 plan;

34 (g) Exercise fiduciary powers that the principal has authority to
35 delegate;

1 (h) Exercise any power of appointment in favor of anyone other
2 than the principal;

3 (i) Create, amend, or revoke a community property agreement;

4 (j) Cause a trustee to make distributions of property held in
5 trust under the same conditions that the principal could;

6 (k) Make any other provisions for nonprobate transfer at death
7 contained in nontestamentary instruments described in RCW 11.02.091;

8 (l) Make health care decisions for the principal, or give
9 informed consent to health care decisions on the principal's behalf.

10 (2) Notwithstanding the provisions of subsection (1)(a) of this
11 section, an agent may, even in the absence of a specific grant of
12 authority, make transfers of property to any trust that benefits the
13 principal alone and does not have dispositive provisions that are
14 different from those that would have governed the property had it not
15 been transferred into such trust.

16 (3) Notwithstanding the provisions of subsection (1)(b) of this
17 section, an agent may, even in the absence of a specific grant of
18 authority, make any transfer of resources not prohibited under
19 chapter 74.09 RCW when the transfer is for the purpose of qualifying
20 the principal for medical assistance or the limited casualty program
21 for the medically needy.

22 (4) Notwithstanding a grant of authority to do an act described
23 in subsection (1) of this section, unless the power of attorney
24 otherwise provides, an agent that is not an ancestor, spouse, state
25 registered domestic partner, or descendant of the principal, may not
26 exercise authority under a power of attorney to create in the agent,
27 or in an individual to whom the agent owes a legal obligation of
28 support, an interest in the principal's property, whether by gift,
29 right of survivorship, beneficiary designation, disclaimer, or
30 otherwise.

31 (5) Unless the power of attorney otherwise provides, a grant of
32 authority to make a gift is subject to section 216 of this act.

33 (6) Subject to subsections (1) through (5) of this section, if
34 the subjects over which authority is granted in a power of attorney
35 are similar or overlap, the broadest authority controls.

36 (7) Authority granted in a power of attorney is exercisable with
37 respect to property that the principal has when the power of attorney
38 is executed or acquires later, whether or not the property is located
39 in this state and whether or not the authority is exercised or the
40 power of attorney is executed in this state.

1 (8) An act performed by an agent pursuant to a power of attorney
2 has the same effect and inures to the benefit of and binds the
3 principal and the principal's successors in interest as if the
4 principal had performed the act.

5 NEW SECTION. **Sec. 202.** (1) Subject to the provisions of section
6 201 of this act, if a power of attorney grants to an agent authority
7 to do all acts that a principal could do or contains words of similar
8 effect, the agent has the general authority described in sections 203
9 through 218 of this act.

10 (2) An agent has authority described in this act if the power of
11 attorney refers to general authority with respect to the descriptive
12 term for the subjects stated in sections 204 through 218 of this act
13 or cites the section in which the authority is described.

14 (3) A reference in a power of attorney to general authority with
15 respect to the descriptive term for a subject in sections 204 through
16 218 of this act or a citation to a section of sections 204 through
17 218 of this act incorporates the entire section as if it were set out
18 in full in the power of attorney.

19 (4) A principal may modify authority incorporated by reference.

20 NEW SECTION. **Sec. 203.** Except as otherwise provided in the
21 power of attorney, by executing a power of attorney that incorporates
22 by reference a subject described in sections 204 through 218 of this
23 act or that grants to an agent authority to do all acts that a
24 principal could do pursuant to section 202(1) of this act, a
25 principal authorizes the agent, with respect to that subject, to:

26 (1) Demand, receive, and obtain by litigation or otherwise,
27 declaratory or injunctive relief, money, or another thing of value to
28 which the principal is, may become, or claims to be entitled, and
29 conserve, invest, disburse, or use anything so received or obtained
30 for the purposes intended;

31 (2) Contract in any manner with any person, on terms agreeable to
32 the agent, to accomplish a purpose of a transaction and perform,
33 rescind, cancel, terminate, reform, restate, release, or modify the
34 contract or another contract made by or on behalf of the principal;

35 (3) Execute, acknowledge, seal, deliver, file, or record any
36 instrument or communication the agent considers desirable to
37 accomplish a purpose of a transaction, including creating at any time

1 a schedule listing some or all of the principal's property and
2 attaching it to the power of attorney;

3 (4) Initiate, participate in, submit to alternative dispute
4 resolution, settle, oppose, or propose or accept a compromise with
5 respect to a claim existing in favor of or against the principal or
6 intervene in litigation relating to the claim;

7 (5) Seek on the principal's behalf the assistance of a court or
8 other governmental agency to carry out an act authorized in the power
9 of attorney;

10 (6) Engage, compensate, and discharge an attorney, accountant,
11 investment manager, expert witness, or other advisor;

12 (7) Prepare, execute, and file a record, report, or other
13 document to safeguard or promote the principal's interest under a
14 statute or regulation;

15 (8) Communicate with any representative or employee of a
16 government or governmental subdivision, agency, or instrumentality,
17 on behalf of the principal;

18 (9) Access communications intended for, and communicate on behalf
19 of the principal, whether by mail, electronic transmission,
20 telephone, or other means; and

21 (10) Do any lawful act with respect to the subject and all
22 property related to the subject.

23 NEW SECTION. **Sec. 204.** Unless the power of attorney otherwise
24 provides, language in a power of attorney granting general authority
25 with respect to real property authorizes the agent to:

26 (1) Demand; buy; sublease; license; receive; accept as a gift or
27 as security for an extension of credit; or otherwise acquire or
28 reject an interest in real property or a right incident to real
29 property;

30 (2) Sell; exchange; convey with or without reservations,
31 covenants, representations, or warranties; quitclaim; release;
32 surrender; retain title for security; encumber; partition; consent to
33 partitioning; subject to an easement or covenant, common interest
34 regime; subdivide; apply for zoning or other governmental permits;
35 plat or consent to platting; develop; grant an option concerning;
36 lease; sublease; license; contribute to an entity in exchange for an
37 interest in that entity; or, subject to section 201 of this act,
38 otherwise grant or dispose of an interest in real property or a right
39 incident to real property;

1 (3) Pledge or mortgage an interest in real property or right
2 incident to real property as security to borrow money or pay, renew,
3 extend the time of payment of a debt of the principal or a debt
4 guaranteed by the principal, or as security for a nonmonetary
5 obligation;

6 (4) Release, assign, satisfy, or enforce by litigation or
7 otherwise a mortgage, deed of trust, conditional sale contract,
8 encumbrance, lien, or other claim to real property which exists or is
9 asserted;

10 (5) Manage or conserve an interest in real property or a right
11 incident to real property owned or claimed to be owned by the
12 principal, including:

13 (a) Insuring against liability or casualty or other loss;

14 (b) Obtaining or regaining possession of or protecting the
15 interest or right by litigation or otherwise;

16 (c) Paying, assessing, compromising, or contesting taxes or
17 assessments or applying for and receiving refunds in connection with
18 them; and

19 (d) Purchasing supplies, hiring assistance or labor, and making
20 repairs or alterations to the real property;

21 (6) Use, develop, alter, replace, remove, erect, or install
22 structures or other improvements upon real property in or incident to
23 which the principal has, or claims to have, an interest or right;

24 (7) Participate in a reorganization with respect to real property
25 or an entity that owns an interest in or right incident to real
26 property and receive, and hold, and act with respect to stocks and
27 bonds or other property received in a plan of reorganization,
28 including:

29 (a) Selling or otherwise disposing of them;

30 (b) Exercising or selling an option, right of conversion, or
31 similar right with respect to them; and

32 (c) Exercising any voting rights in person or by proxy;

33 (8) Change the form of title of an interest in or right incident
34 to real property; and

35 (9) Dedicate to public use, with or without consideration,
36 easements or other real property in which the principal has, or
37 claims to have, an interest.

1 NEW SECTION. **Sec. 205.** Unless the power of attorney otherwise
2 provides, language in a power of attorney granting general authority
3 with respect to tangible personal property authorizes the agent to:

4 (1) Demand, buy, receive, accept as a gift or as security for an
5 extension of credit, or otherwise acquire or reject ownership or
6 possession of tangible personal property or an interest in tangible
7 personal property;

8 (2) Sell; exchange; convey with or without covenants,
9 representations, or warranties; quitclaim; release; surrender; create
10 a security interest in; grant options concerning; lease; sublease;
11 or, otherwise dispose of tangible personal property or an interest in
12 tangible personal property;

13 (3) Grant a security interest in tangible personal property or an
14 interest in tangible personal property as security to borrow money or
15 pay, renew, or extend the time of payment of a debt of the principal
16 or a debt guaranteed by the principal;

17 (4) Release, assign, satisfy, or enforce by litigation or
18 otherwise, a security interest, lien, or other claim on behalf of the
19 principal, with respect to tangible personal property or an interest
20 in tangible personal property;

21 (5) Manage or conserve tangible personal property or an interest
22 in tangible personal property on behalf of the principal, including:

23 (a) Insuring against liability or casualty or other loss;

24 (b) Obtaining or regaining possession of or protecting the
25 property or interest, by litigation or otherwise;

26 (c) Paying, assessing, compromising, or contesting taxes or
27 assessments or applying for and receiving refunds in connection with
28 taxes or assessments;

29 (d) Moving the property from place to place;

30 (e) Storing the property for hire or on a gratuitous bailment;
31 and

32 (f) Using and making repairs, alterations, or improvements to the
33 property; and

34 (6) Change the form of title of an interest in tangible personal
35 property.

36 NEW SECTION. **Sec. 206.** Unless the power of attorney otherwise
37 provides, language in a power of attorney granting general authority
38 with respect to stocks, bonds, and financial instruments authorizes
39 the agent to:

- 1 (1) Buy, sell, and exchange stocks, bonds, and financial
2 instruments;
- 3 (2) Establish, continue, modify, or terminate an account with
4 respect to stocks, bonds, and financial instruments;
- 5 (3) Pledge stocks, bonds, and financial instruments as security
6 to borrow, pay, renew, or extend the time of payment of a debt of the
7 principal;
- 8 (4) Receive certificates and other evidences of ownership with
9 respect to stocks, bonds, and financial instruments;
- 10 (5) Exercise voting rights with respect to stocks, bonds, and
11 financial instruments in person or by proxy, enter into voting
12 trusts, and consent to limitations on the right to vote;
- 13 (6) Buy, sell, exchange, assign, settle, and exercise commodity
14 futures contracts and call or put options on stocks or stock indexes
15 traded on a regulated option exchange; and
- 16 (7) Establish, continue, modify, and terminate option accounts.

17 NEW SECTION. **Sec. 207.** Except as otherwise expressly provided
18 in this act and in chapter 30A.22 RCW, unless the power of attorney
19 otherwise provides, language in a power of attorney granting general
20 authority with respect to banks and other financial institutions
21 authorizes the agent to:

- 22 (1) Continue, modify, and terminate an account or other banking
23 arrangement made by or on behalf of the principal;
- 24 (2) Establish, modify, and terminate an account or other banking
25 arrangement with a bank, trust company, savings and loan association,
26 credit union, thrift company, brokerage firm, or other financial
27 institution selected by the agent;
- 28 (3) Contract for services available from a financial institution,
29 including renting a safe deposit box or space in a vault;
- 30 (4) Withdraw, by check, order, electronic funds transfer, or
31 otherwise, money or property of the principal deposited with or left
32 in the custody of a financial institution;
- 33 (5) Receive statements of account, vouchers, notices, and similar
34 documents from a financial institution and act with respect to them;
- 35 (6) Enter a safe deposit box or vault and withdraw or add to the
36 contents;
- 37 (7) Borrow money and pledge as security personal property of the
38 principal necessary to borrow money or pay, renew, or extend the time

1 of payment of a debt of the principal or a debt guaranteed by the
2 principal;

3 (8) Make, assign, draw, endorse, discount, guarantee, and
4 negotiate promissory notes, checks, drafts, and other negotiable or
5 nonnegotiable paper of the principal or payable to the principal or
6 the principal's order, transfer money, receive the cash or other
7 proceeds of those transactions, and accept a draft drawn by a person
8 upon the principal and pay it when due;

9 (9) Receive for the principal and act upon a sight draft,
10 warehouse receipt, or other document of title whether tangible or
11 electronic, or other negotiable or nonnegotiable instrument;

12 (10) Apply for, receive, and use letters of credit, credit and
13 debit cards, electronic transaction authorizations, and traveler's
14 checks from a financial institution and give an indemnity or other
15 agreement in connection with letters of credit; and

16 (11) Consent to an extension of the time of payment with respect
17 to commercial paper or a financial transaction with a financial
18 institution.

19 NEW SECTION. **Sec. 208.** Subject to the terms of a document or an
20 agreement governing an entity or an entity ownership interest, and
21 unless the power of attorney otherwise provides, language in a power
22 of attorney granting general authority with respect to operation of
23 an entity or business authorizes the agent to:

24 (1) Operate, buy, sell, enlarge, reduce, or terminate an
25 ownership interest;

26 (2) Perform a duty or discharge a liability and exercise in
27 person or by proxy a right, power, privilege, or option that the
28 principal has, may have, or claims to have;

29 (3) Enforce the terms of an ownership agreement;

30 (4) Initiate, participate in, submit to alternative dispute
31 resolution, settle, oppose, or propose or accept a compromise with
32 respect to litigation to which the principal is a party because of an
33 ownership interest;

34 (5) Exercise in person or by proxy, or enforce by litigation or
35 otherwise, a right, power, privilege, or option the principal has or
36 claims to have as the holder of stocks, bonds, and financial
37 instruments;

38 (6) Initiate, participate in, submit to alternative dispute
39 resolution, settle, oppose, or propose or accept a compromise with

1 respect to litigation to which the principal is a party concerning
2 stocks, bonds, and financial instruments;

3 (7) With respect to an entity or business owned solely by the
4 principal:

5 (a) Continue, modify, renegotiate, extend, and terminate a
6 contract made by or on behalf of the principal with respect to the
7 entity or business before execution of the power of attorney;

8 (b) Determine:

9 (i) The location of its operation;

10 (ii) The nature and extent of its business;

11 (iii) The methods of manufacturing, selling, merchandising,
12 financing, accounting, and advertising employed in its operation;

13 (iv) The amount and types of insurance carried; and

14 (v) The mode of engaging, compensating, and dealing with its
15 employees and accountants, attorneys, or other advisors;

16 (c) Change the name or form of organization under which the
17 entity or business is operated and enter into an ownership agreement
18 with other persons to take over all or part of the operation of the
19 entity or business; and

20 (d) Demand and receive money due or claimed by the principal or
21 on the principal's behalf in the operation of the entity or business
22 and control and disburse the money in the operation of the entity or
23 business;

24 (8) Put additional capital into an entity or business in which
25 the principal has an interest;

26 (9) Join in a plan of reorganization, consolidation, conversion,
27 domestication, or merger of the entity or business;

28 (10) Sell or liquidate all or part of an entity or business;

29 (11) Establish through agreement or independent appraisal the
30 value of an entity or business to which the principal is a party;

31 (12) Prepare, sign, file, and deliver reports, compilations of
32 information, returns, or other papers with respect to an entity or
33 business and make related payments; and

34 (13) Pay, compromise, or contest taxes, assessments, fines, or
35 penalties and perform any other act to protect the principal from
36 illegal or unnecessary taxation, assessments, fines, or penalties,
37 with respect to an entity or business, including attempts to recover,
38 in any manner permitted by law, money paid before or after the
39 execution of the power of attorney.

1 NEW SECTION. **Sec. 209.** Unless the power of attorney otherwise
2 provides, language in a power of attorney granting general authority
3 with respect to insurance and annuities authorizes the agent to:

4 (1) Continue, pay the premium or make a contribution on, modify,
5 exchange, sell, rescind, release, or terminate a contract procured by
6 or on behalf of the principal which insures or provides an annuity to
7 either the principal or another person, whether or not the principal
8 is a beneficiary under the contract;

9 (2) Procure new, different, and additional contracts of insurance
10 and annuities for the benefit of the principal and the principal's
11 spouse, state registered domestic partner, children, and other
12 dependents, and select the amount, type of insurance or annuity, and
13 mode of payment;

14 (3) Pay the premium or make a contribution on, modify, exchange,
15 rescind, release, or terminate a contract of insurance or annuity
16 procured by the agent;

17 (4) Apply for and receive a loan secured by a contract of
18 insurance or annuity;

19 (5) Surrender and receive the cash surrender value on a contract
20 of insurance or annuity;

21 (6) Exercise an election;

22 (7) Exercise investment powers available under a contract of
23 insurance or annuity;

24 (8) Change the manner of paying premiums on a contract of
25 insurance or annuity;

26 (9) Change or convert the type of insurance or annuity with
27 respect to which the principal has or claims to have authority
28 described in this section;

29 (10) Apply for and procure a benefit or assistance under a
30 statute or regulation to guarantee or pay premiums of a contract of
31 insurance on the life of the principal;

32 (11) Collect, sell, assign, hypothecate, borrow against, or
33 pledge the interest of the principal in a contract of insurance or
34 annuity;

35 (12) Select the form and timing of the payment of proceeds from a
36 contract of insurance or annuity; and

37 (13) Pay, from proceeds or otherwise, compromise or contest, and
38 apply for refunds in connection with, a tax or assessment levied by a
39 taxing authority with respect to a contract of insurance or annuity

1 or its proceeds or liability accruing by reason of the tax or
2 assessment.

3 NEW SECTION. **Sec. 210.** (1) In this section, "estates, trusts,
4 and other beneficial interests" means a trust, probate estate,
5 guardianship, conservatorship, escrow, or custodianship or a fund
6 from which the principal is, may become, or claims to be, entitled to
7 a share or payment.

8 (2) Unless the power of attorney otherwise provides, language in
9 a power of attorney granting general authority with respect to
10 estates, trusts, and other beneficial interests authorizes the agent
11 to:

12 (a) Accept, receive, receipt for, sell, assign, pledge, or
13 exchange a share in or payment from the fund;

14 (b) Demand or obtain money or another thing of value to which the
15 principal is, may become, or claims to be, entitled by reason of the
16 fund, by litigation or otherwise;

17 (c) Exercise for the benefit of the principal a presently
18 exercisable general power of appointment held by the principal;

19 (d) Exercise for the benefit of the principal a presently
20 exercisable limited power of appointment held by the principal;

21 (e) Initiate, participate in, submit to alternative dispute
22 resolution, settle, oppose, or propose or accept a compromise with
23 respect to litigation to ascertain the meaning, validity, or effect
24 of a deed, will, declaration of trust, or other instrument or
25 transaction affecting the interest of the principal;

26 (f) Initiate, participate in, submit to alternative dispute
27 resolution, settle, oppose, or propose or accept a compromise with
28 respect to litigation to remove, substitute, or surcharge a
29 fiduciary, and any other matter as defined under RCW 11.96A.030;

30 (g) Conserve, invest, disburse, or use anything received for an
31 authorized purpose;

32 (h) Transfer an interest of the principal in real property,
33 stocks, bonds, and financial instruments, accounts with financial
34 institutions or securities intermediaries, insurance, annuities, and
35 other property to the trustee of a revocable trust created by the
36 principal as settlor, subject to the limitations in section 201(1) of
37 this section; and

38 (i) Reject, renounce, disclaim, release, or consent to a
39 reduction in or modification of a share in or payment from the fund.

1 NEW SECTION. **Sec. 211.** Unless the power of attorney otherwise
2 provides, language in a power of attorney granting general authority
3 with respect to claims and litigation authorizes the agent, without
4 the need for appointment of a guardian or guardian ad litem under
5 Title 4 RCW, to:

6 (1) Assert and maintain before a court or administrative agency a
7 claim, claim for relief, cause of action, counterclaim, offset,
8 recoupment, or defense, including an action to recover property or
9 other thing of value, recover damages sustained by the principal,
10 eliminate or modify tax liability, or seek an injunction, specific
11 performance, or other relief;

12 (2) Bring or defend an action to determine adverse claims or
13 intervene or otherwise participate in litigation;

14 (3) Seek an attachment, garnishment, order of arrest, or other
15 preliminary, provisional, or intermediate relief and use an available
16 procedure to effect or satisfy a judgment, order, or decree;

17 (4) Make or accept a tender, offer of judgment, or admission of
18 facts, submit a controversy on an agreed statement of facts, consent
19 to examination, and bind the principal in litigation;

20 (5) Submit to alternative dispute resolution, settle, and propose
21 or accept a compromise, subject to special proceeding rule 98.16W;

22 (6) Waive the issuance and service of process upon the principal,
23 accept service of process, appear for the principal, designate
24 persons upon which process directed to the principal may be served,
25 execute, and file or deliver stipulations on the principal's behalf,
26 verify pleadings, seek appellate review, procure and give surety and
27 indemnity bonds, contract and pay for the preparation and printing of
28 records and briefs, receive, execute, and file or deliver a consent,
29 waiver, release, confession of judgment, satisfaction of judgment,
30 notice, agreement, or other instrument in connection with the
31 prosecution, settlement, or defense of a claim or litigation;

32 (7) Act for the principal with respect to bankruptcy or
33 insolvency, whether voluntary or involuntary, concerning the
34 principal or some other person, or with respect to a reorganization,
35 receivership, or application for the appointment of a receiver or
36 trustee which affects an interest of the principal in property or
37 other thing of value;

38 (8) Pay a judgment, award, or order against the principal or a
39 settlement made in connection with a claim or litigation; and

1 (9) Receive money or other thing of value paid in settlement of
2 or as proceeds of a claim or litigation.

3 NEW SECTION. **Sec. 212.** (1) Unless the power of attorney
4 otherwise provides, language in a power of attorney granting general
5 authority with respect to personal and family maintenance authorizes
6 the agent to:

7 (a) Perform the acts necessary to maintain the customary standard
8 of living of the principal, the principal's spouse or state
9 registered domestic partner, and the following individuals, whether
10 living when the power of attorney is executed or later born:

11 (i) The principal's children;

12 (ii) Other individuals legally entitled to be supported by the
13 principal; and

14 (iii) The individuals whom the principal has customarily
15 supported or indicated the intent to support;

16 (b) Make periodic payments of child support and other family
17 maintenance required by a court or governmental agency or an
18 agreement to which the principal is a party;

19 (c) Provide living quarters for the individuals described in
20 subsection (1) of this section by:

21 (i) Purchase, lease, or other contract; or

22 (ii) Paying the operating costs, including interest, amortization
23 payments, repairs, improvements, and taxes, for premises owned by the
24 principal or occupied by those individuals;

25 (d) Provide reasonable domestic help, usual vacations and travel
26 expenses, and funds for shelter, clothing, food, appropriate
27 education, including postsecondary and vocational education, and
28 other current living costs for the individuals described in
29 subsection (1) of this section;

30 (e) Pay expenses for necessary health care and custodial care on
31 behalf of the individuals described in subsection (1) of this
32 section;

33 (f) Act as the principal's personal representative pursuant to
34 the health insurance portability and accountability act, sections
35 1171 through 1179 of the social security act, 42 U.S.C. Sec. 1320d,
36 as amended, and applicable regulations, for the limited purpose of
37 making decisions regarding the payment of costs and expenses arising
38 from past, present, or future health care provided to the principal
39 which was consented to by the principal or anyone authorized under

1 the law of this state to consent to health care on behalf of the
2 principal;

3 (g) Continue any provision made by the principal for automobiles
4 or other means of transportation, including registering, licensing,
5 insuring, and replacing them, for the individuals described in
6 subsection (1) of this section;

7 (h) Maintain credit and debit accounts for the convenience of the
8 individuals described in subsection (1) of this section and open new
9 accounts; and

10 (i) Continue payments incidental to the membership or affiliation
11 of the principal in a religious institution, club, society, order, or
12 other organization or to continue contributions to those
13 organizations.

14 (2) Authority with respect to personal and family maintenance is
15 neither dependent upon, nor limited by, authority that an agent may
16 or may not have with respect to gifts under this act.

17 NEW SECTION. **Sec. 213.** (1) In this section, "benefits from
18 governmental programs or civil or military service" means any
19 benefit, program or assistance provided under a statute or regulation
20 including social security, medicare, and medicaid.

21 (2) Unless the power of attorney otherwise provides, language in
22 a power of attorney granting general authority with respect to
23 benefits from governmental programs or civil or military service
24 authorizes the agent to:

25 (a) Execute vouchers in the name of the principal for allowances
26 and reimbursements payable by the United States or a foreign
27 government or by a state or subdivision of a state to the principal,
28 including allowances and reimbursements for transportation of the
29 individuals described in section 212(1)(a) of this act, and for
30 shipment of their household effects;

31 (b) Take possession and order the removal and shipment of
32 property of the principal from a post, warehouse, depot, dock, or
33 other place of storage or safekeeping, either governmental or
34 private, and execute and deliver a release, voucher, receipt, bill of
35 lading, shipping ticket, certificate, or other instrument for that
36 purpose;

37 (c) Enroll in, apply for, select, reject, change, amend, or
38 discontinue, on the principal's behalf, a benefit or program;

1 (d) Prepare, file, and maintain a claim of the principal for a
2 benefit or assistance, financial or otherwise, to which the principal
3 may be entitled under a statute or regulation;

4 (e) Initiate, participate in, submit to alternative dispute
5 resolution, settle, oppose, or propose or accept a compromise with
6 respect to litigation concerning any benefit or assistance the
7 principal may be entitled to receive under a statute or regulation;
8 and

9 (f) Receive the financial proceeds of a claim described in (d) of
10 this subsection and conserve, invest, disburse, or use for a lawful
11 purpose anything so received.

12 NEW SECTION. **Sec. 214.** (1) In this section, "retirement plan"
13 means a plan or account created by an employer, the principal, or
14 another individual to provide retirement benefits or deferred
15 compensation of which the principal is a participant, beneficiary, or
16 owner, including but not limited to a plan or account under the
17 following sections of the internal revenue code:

18 (a) An individual retirement account under internal revenue code
19 section 408, 26 U.S.C. Sec. 408, as amended;

20 (b) A roth individual retirement account under internal revenue
21 code section 408A, 26 U.S.C. Sec. 408A, as amended;

22 (c) A deemed individual retirement account under internal revenue
23 code section 408(q), 26 U.S.C. Sec. 408(q), as amended;

24 (d) An annuity or mutual fund custodial account under internal
25 revenue code section 403(b), 26 U.S.C. Sec. 403(b), as amended;

26 (e) A pension, profit-sharing, stock bonus, or other retirement
27 plan qualified under internal revenue code section 401(a), 26 U.S.C.
28 Sec. 401(a), as amended;

29 (f) A plan under internal revenue code section 457(b), 26 U.S.C.
30 Sec. 457(b), as amended; and

31 (g) A nonqualified deferred compensation plan under internal
32 revenue code section 409A, 26 U.S.C. Sec. 409A, as amended.

33 (2) Unless the power of attorney otherwise provides, language in
34 a power of attorney granting general authority with respect to
35 retirement plans authorizes the agent to:

36 (a) Select the form and timing of payments under a retirement
37 plan and withdraw benefits from a plan;

38 (b) Make a rollover, including a direct trustee-to-trustee
39 rollover, of benefits from one retirement plan to another;

- 1 (c) Establish a retirement plan in the principal's name;
- 2 (d) Make contributions to a retirement plan;
- 3 (e) Exercise investment powers available under a retirement plan;
- 4 and
- 5 (f) Borrow from, sell assets to, or purchase assets from a
- 6 retirement plan.

7 NEW SECTION. **Sec. 215.** Unless the power of attorney otherwise
8 provides, language in a power of attorney granting general authority
9 with respect to taxes authorizes the agent to:

10 (1) Prepare, sign, and file federal, state, local, and foreign
11 income, gift, payroll, property, federal insurance contributions act,
12 and other tax returns, claims for refunds, requests for extension of
13 time, petitions regarding tax matters, and any other tax-related
14 documents, including receipts, offers, waivers, consents, including
15 consents and agreements under internal revenue code section 2032A, 26
16 U.S.C. Sec. 2032A, as amended, closing agreements, and any power of
17 attorney required by the internal revenue service or other taxing
18 authority including, but not limited to, an internal revenue service
19 form 2848 in favor of any third party with respect to a tax year upon
20 which the statute of limitations has not run and the following
21 twenty-five tax years;

22 (2) Pay taxes due, collect refunds, post bonds, receive
23 confidential information, and contest deficiencies determined by the
24 internal revenue service or other taxing authority;

25 (3) Exercise any election available to the principal under
26 federal, state, local, or foreign tax law; and

27 (4) Act for the principal in all tax matters for all periods
28 before the internal revenue service, or other taxing authority.

29 NEW SECTION. **Sec. 216.** (1) In this section, a gift "for the
30 benefit of" a person includes but is not limited to a gift to a
31 trust, an account under the uniform transfers to minors act of any
32 jurisdiction, and a tuition savings account or prepaid tuition plan
33 as defined under internal revenue code section 529, 26 U.S.C. Sec.
34 529, as amended. Notwithstanding the terms of section 201(1)(a) of
35 this act, the power to make a gift pursuant to section 201(1)(b) of
36 this act shall include the power to create a trust, an account under
37 the uniform transfers to minors act, or a tuition savings account or

1 prepaid tuition plan as defined under internal revenue code section
2 529, 26 U.S.C. Sec. 529, as amended, into which a gift is to be made.

3 (2) Unless the power of attorney otherwise provides, language in
4 a power of attorney granting general authority with respect to gifts
5 authorizes the agent only to:

6 (a) Make outright to, or for the benefit of, a person, a gift of
7 any of the principal's property, including by the exercise of a
8 presently exercisable general power of appointment held by the
9 principal, in an amount per donee not to exceed the annual dollar
10 limits of the federal gift tax exclusion under internal revenue code
11 section 2503(b), 26 U.S.C. Sec. 2503(b), as amended, without regard
12 to whether the federal gift tax exclusion applies to the gift, or if
13 the principal's spouse agrees to consent to a split gift pursuant to
14 internal revenue code section 2513, 26 U.S.C. Sec. 2513, as amended,
15 in an amount per donee not to exceed twice the annual federal gift
16 tax exclusion limit; and

17 (b) Consent, pursuant to internal revenue code section 2513, 26
18 U.S.C. Sec. 2513, as amended, to the splitting of a gift made by the
19 principal's spouse in an amount per donee not to exceed the aggregate
20 annual gift tax exclusions for both spouses.

21 (3) An agent may make a gift outright to, or for the benefit of,
22 a person of the principal's property only as the agent determines is
23 consistent with the principal's objectives if actually known by the
24 agent and, if unknown, as the agent determines is consistent with the
25 principal's best interest based on all relevant factors, including
26 but not limited to:

27 (a) The value and nature of the principal's property;

28 (b) The principal's foreseeable obligations and need for
29 maintenance;

30 (c) Minimization of taxes, including income, estate, inheritance,
31 generation-skipping transfer, and gift taxes;

32 (d) Eligibility for a benefit, a program, or assistance under a
33 statute or rule; and

34 (e) The principal's personal history of making or joining in
35 making gifts.

36 NEW SECTION. **Sec. 217.** Unless the power of attorney otherwise
37 provides, where language in a power of attorney grants general
38 authority with respect to health care matters:

1 (1) The agent shall be authorized to act as the principal's
2 personal representative pursuant to the health insurance portability
3 and accountability act, sections 1171 through 1179 of the social
4 security act, 42 U.S.C. Sec. 1320d, as amended, and applicable
5 regulations for all purposes thereunder, including but not limited to
6 accessing and acquiring the principal's health care related
7 information.

8 (2) The agent shall be authorized to provide informed consent for
9 health care decisions on the principal's behalf. If a principal has
10 appointed more than one agent with authority to make mental health
11 treatment decisions in accordance with a directive under chapter
12 71.32 RCW, to the extent of any conflict, the most recently appointed
13 agent shall be treated as the principal's agent for mental health
14 treatment decisions unless provided otherwise in either appointment.

15 (3) Unless he or she is the spouse, state registered domestic
16 partner, father or mother, or adult child or brother or sister of the
17 principal, none of the following persons may act as the agent for the
18 principal: Any of the principal's physicians, the physicians'
19 employees, or the owners, administrators, or employees of the health
20 care facility or long-term care facility as defined in RCW 43.190.020
21 where the principal resides or receives care. Except when the
22 principal has consented in a mental health advance directive executed
23 under chapter 71.32 RCW to inpatient admission or electroconvulsive
24 therapy, this authorization is subject to the same limitations as
25 those that apply to a guardian under RCW 11.92.043(5) (a) through (c)
26 and 11.92.190.

27 NEW SECTION. **Sec. 218.** Unless the power of attorney otherwise
28 provides, the following general provisions shall apply to any power
29 of attorney making reference to the care of the principal's minor
30 children:

31 (1) A parent or guardian, through a power of attorney, may
32 authorize an agent to make health care decisions on behalf of one or
33 more of his or her children, or children for whom he or she is the
34 legal guardian, who are under the age of majority as defined in RCW
35 26.28.015, to be effective if the child has no other parent or legal
36 representative readily available and authorized to give such consent.

37 (2) A principal may further nominate a guardian or guardians of
38 the person, or of the estate or both, of a minor child, whether born
39 at the time of making the durable power of attorney or afterwards, to

1 continue during the disability of the principal, during the minority
2 of the child or for any less time by including such a provision in
3 his or her power of attorney.

4 (3) The authority of any guardian of the person of any minor
5 child shall supersede the authority of a designated agent to make
6 health care decisions for the minor only after such designated
7 guardian has been appointed by the court.

8 (4) In the event a conflict between the provisions of a will
9 nominating a testamentary guardian under the authority of RCW
10 11.88.080 and the nomination of a guardian under the authority of
11 this statute, the most recent designation shall control.

12 NEW SECTION. **Sec. 219.** Notwithstanding any provision in this
13 act, or any provision in a power of attorney, no rights under
14 Washington's death with dignity act, chapter 70.245 RCW, may be
15 exercised through a power of attorney.

16 **PART III**

17 NEW SECTION. **Sec. 301.** The following optional form may be used
18 by an agent to certify facts concerning a power of attorney.

19 **AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY**
20 **AND AGENT'S AUTHORITY**

21 State of _____

22 [County] of _____]

23 I, _____ (Name of Agent), [certify] under penalty of perjury that
24 (Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated _____.

25 I further [certify] that to my knowledge:

26 (1) I am acting in good faith pursuant to the authority given under the power of attorney;

27 (2) The principal is alive and has not terminated, revoked, limited, or modified the power of attorney or my
28 authority to act under the power of attorney; nor has the power of attorney or my authority to act under the power of
29 attorney been terminated, revoked, limited, or modified by any other circumstances;

30 (3) When the power of attorney was signed, the principal was competent to execute it and was not under undue
31 influence to sign;

32 (4) All events necessary to making the power of attorney effective have occurred;

1 (5) If I was married or a registered domestic partner of the principal when the power of attorney was executed,
2 there has been no subsequent dissolution, annulment, or legal separation, and no action is pending for the dissolution of the
3 marriage or domestic partnership or for legal separation;

4 (6) If the power of attorney was drafted to become effective upon the happening of an event or contingency, the
5 event or contingency has occurred;

6 (7) If I was named as a successor agent, the prior agent is no longer able or willing to serve, or the conditions
7 stated in the power of attorney that cause me to become the acting agent have occurred; and

8 (8) _____
9 _____
10 _____
11 _____

12 (Insert other relevant statements)

13 **SIGNATURE AND ACKNOWLEDGMENT**

14 _____
15 Agent's Signature Date

16 _____
17 Agent's Name Printed

18 _____
19 _____

20 Agent's Address
21 _____

22 Agent's Telephone Number

23 This document was acknowledged before me on _____,
24 (Date)

25 by _____
26 (Name of Agent)

27 _____ (Seal, if any)
28 Signature of Notary

29 My commission expires: _____

30 [This document prepared by:
31 _____]

32 **PART IV**

1 **Sec. 401.** RCW 11.88.080 and 2005 c 97 s 11 are each amended to
2 read as follows:

3 When either parent is deceased, the surviving parent of any minor
4 child or a sole parent of a minor child, may by last will or durable
5 power of attorney nominate a guardian or guardians of the person, or
6 of the estate or both, of a minor child, whether born at the time of
7 executing the instrument or afterwards, to continue during the
8 minority of such child or for any less time. This nomination shall be
9 effective in the event of the death or incapacity of such parent.
10 Every guardian of the estate of a child shall give bond in like
11 manner and with like conditions as required by RCW 11.88.100 and
12 11.88.110, and he or she shall have the same powers and perform the
13 same duties with regard to the person and estate of the minor as a
14 guardian appointed under this chapter. The court shall confirm the
15 parent's nomination unless the court finds, based upon evidence
16 presented at a hearing on the matter, that the individual nominated
17 in the surviving parent's will or durable power of attorney is not
18 qualified to serve. In the event of a conflict between the provisions
19 of a will nominating a testamentary guardian under the authority of
20 this section and the nomination of a guardian under section 218 of
21 this act, the most recent designation shall control. This section
22 applies to actions commenced under section 116 of this act.

23 **Sec. 402.** RCW 11.86.021 and 1989 c 34 s 2 are each amended to
24 read as follows:

25 (1) A beneficiary may disclaim an interest in whole or in part,
26 or with reference to specific parts, shares or assets, in the manner
27 provided in RCW 11.86.031.

28 (2) Likewise, a beneficiary may so disclaim through an agent or
29 attorney so authorized by written instrument.

30 (3) A personal representative, guardian, attorney-in-fact if
31 authorized under a durable power of attorney under chapter ((11.94))
32 11.-- RCW (the new chapter created in section 505 of this act), or
33 other legal representative of the estate of a minor, incompetent, or
34 deceased beneficiary, may so disclaim on behalf of the beneficiary,
35 with or without court order, if:

36 (a) The legal representative deems the disclaimer to be in the
37 best interests of those interested in the estate of the beneficiary
38 and of those who take the disclaimed interest because of the

1 disclaimer, and not detrimental to the best interests of the
2 beneficiary; and

3 (b) In the case of a guardian, no order has been issued under RCW
4 11.92.140 determining that the disclaimer is not in the best
5 interests of the beneficiary.

6 **Sec. 403.** RCW 11.88.010 and 2008 c 6 s 802 are each amended to
7 read as follows:

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

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

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

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

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

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

36 (f) For purposes of the terms "incompetent," "disabled," or "not
37 legally competent," as those terms are used in the Revised Code of
38 Washington to apply to persons incapacitated under this chapter,

1 those terms shall be interpreted to mean "incapacitated" persons for
2 purposes of this chapter.

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

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

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

36 (4) Under (~~RCW 11.94.010~~) section 108 of this act, a principal
37 may nominate, by a durable power of attorney, the guardian or limited
38 guardian of his or her estate or person for consideration by the
39 court if guardianship proceedings for the principal's person or
40 estate are thereafter commenced. The court shall make its appointment

1 in accordance with the principal's most recent nomination in a
2 durable power of attorney except for good cause or disqualification.

3 (5) Imposition of a guardianship for an incapacitated person
4 shall not result in the loss of the right to vote unless the court
5 determines that the person is incompetent for purposes of rationally
6 exercising the franchise in that the individual lacks the capacity to
7 understand the nature and effect of voting such that she or he cannot
8 make an individual choice. The court order establishing guardianship
9 shall specify whether or not the individual retains voting rights.
10 When a court determines that the person is incompetent for the
11 purpose of rationally exercising the right to vote, the court shall
12 notify the appropriate county auditor.

13 **Sec. 404.** RCW 11.103.030 and 2013 c 272 s 24 are each amended to
14 read as follows:

15 (1) Unless the terms of a trust expressly provide that the trust
16 is revocable, the trustor may not revoke or amend the trust.

17 (2) If a revocable trust is created or funded by more than one
18 trustor and unless the trust agreement provides otherwise:

19 (a) To the extent the trust consists of community property, the
20 trust may be revoked by either spouse or either domestic partner
21 acting alone but may be amended only by joint action of both spouses
22 or both domestic partners;

23 (b) To the extent the trust consists of property other than
24 community property, each trustor may revoke or amend the trust with
25 regard to the portion of the trust property attributable to that
26 trustor's contribution;

27 (c) The character of community property or separate property is
28 unaffected by its transfer to and from a revocable trust; and

29 (d) Upon the revocation or amendment of the trust by fewer than
30 all of the trustors, the trustee must promptly notify the other
31 trustors of the revocation or amendment.

32 (3) The trustor may revoke or amend a revocable trust:

33 (a) By substantial compliance with a method provided in the terms
34 of the trust; or

35 (b)(i) If the terms of the trust do not provide a method or the
36 method provided in the terms is not expressly made exclusive, by:

37 (A) A later will or codicil that expressly refers to the trust or
38 specifically devises property that would otherwise have passed
39 according to the terms of the trust; or

1 (B) A written instrument signed by the trustor evidencing intent
2 to revoke or amend.

3 (ii) The requirements of chapter 11.11 RCW do not apply to
4 revocation or amendment of a revocable trust under (b)(i) of this
5 subsection.

6 (4) Upon revocation of a revocable trust, the trustee must
7 deliver the trust property as the trustor directs.

8 (5) A trustor's powers with respect to the revocation or
9 amendment of a trust or distribution of the property of a trust((~~7~~)
10 may be exercised by the trustor's agent under a power of attorney
11 only to the extent specified in the power of attorney document, as
12 provided in ((~~RCW 11.94.050(1)~~)) section 201 of this act and to the
13 extent consistent with or expressly authorized by the trust
14 agreement.

15 (6) A guardian of the trustor may exercise a trustor's powers
16 with respect to revocation, amendment, or distribution of trust
17 property only with the approval of the court supervising the
18 guardianship pursuant to RCW 11.92.140.

19 (7) A trustee who does not know that a trust has been revoked or
20 amended is not liable to the trustor or trustor's successors in
21 interest for distributions made and other actions taken on the
22 assumption that the trust had not been amended or revoked.

23 (8) This section does not limit or affect operation of RCW
24 11.96A.220 through 11.96A.240.

25 **Sec. 405.** RCW 30A.22.170 and 1981 c 192 s 17 are each amended to
26 read as follows:

27 Any funds on deposit in an account may be paid by a financial
28 institution to or upon the order of any agent of any depositor. The
29 contract of deposit or other document creating such agency may
30 provide, in accordance with chapter ((~~11.94~~)) 11.-- RCW (the new
31 chapter created in section 505 of this act), that any such agent's
32 powers to receive payments and make withdrawals from an account
33 continues in spite of, or arises by virtue of, the incompetency of a
34 depositor, in which event the agent's powers to make payments and
35 withdrawals from an account on behalf of a depositor is not affected
36 by the incompetency of a depositor. Except as provided in this
37 section, the authority of an agent to receive payments or make
38 withdrawals from an account terminates with the death or incompetency
39 of the agent's principal: PROVIDED, That a financial institution is

1 not liable for any payment or withdrawal made to or by an agent for a
2 deceased or incompetent depositor unless the financial institution
3 making the payment or permitting the withdrawal had actual knowledge
4 of the incompetency or death at the time payment was made.

5 **Sec. 406.** RCW 70.122.130 and 2013 c 251 s 12 are each amended to
6 read as follows:

7 (1) The department of health shall establish and maintain a
8 statewide health care declarations registry containing the health
9 care declarations identified in subsection (2) of this section as
10 submitted by residents of Washington. The department shall digitally
11 reproduce and store health care declarations in the registry. The
12 department may establish standards for individuals to submit
13 digitally reproduced health care declarations directly to the
14 registry, but is not required to review the health care declarations
15 that it receives to ensure they comply with the particular statutory
16 requirements applicable to the document. The department may contract
17 with an organization that meets the standards identified in this
18 section.

19 (2)(a) An individual may submit any of the following health care
20 declarations to the department of health to be digitally reproduced
21 and stored in the registry:

22 (i) A directive, as defined by this chapter;

23 (ii) A durable power of attorney for health care, as authorized
24 in chapter (~~11.94~~) 11.-- RCW (the new chapter created in section
25 505 of this act);

26 (iii) A mental health advance directive, as defined by chapter
27 71.32 RCW; or

28 (iv) A form adopted pursuant to the department of health's
29 authority in RCW 43.70.480.

30 (b) Failure to submit a health care declaration to the department
31 of health does not affect the validity of the declaration.

32 (c) Failure to notify the department of health of a valid
33 revocation of a health care declaration does not affect the validity
34 of the revocation.

35 (d) The entry of a health care directive in the registry under
36 this section does not:

37 (i) Affect the validity of the document;

38 (ii) Take the place of any requirements in law necessary to make
39 the submitted document legal; or

1 (iii) Create a presumption regarding the validity of the
2 document.

3 (3) The department of health shall prescribe a procedure for an
4 individual to revoke a health care declaration contained in the
5 registry.

6 (4) The registry must:

7 (a) Be maintained in a secure database that is accessible through
8 a web site maintained by the department of health;

9 (b) Send annual electronic messages to individuals that have
10 submitted health care declarations to request that they review the
11 registry materials to ensure that it is current;

12 (c) Provide individuals who have submitted one or more health
13 care declarations with access to their documents and the ability to
14 revoke their documents at all times; and

15 (d) Provide the personal representatives of individuals who have
16 submitted one or more health care declarations to the registry,
17 attending physicians, advanced registered nurse practitioners, health
18 care providers licensed by a disciplining authority identified in RCW
19 18.130.040 who is acting under the direction of a physician or an
20 advanced registered nurse practitioner, and health care facilities,
21 as defined in this chapter or in chapter 71.32 RCW, access to the
22 registry at all times.

23 (5) In designing the registry and web site, the department of
24 health shall ensure compliance with state and federal requirements
25 related to patient confidentiality.

26 (6) The department shall provide information to health care
27 providers and health care facilities on the registry web site
28 regarding the different federal and Washington state requirements to
29 ascertain and document whether a patient has an advance directive.

30 (7) The department of health may accept donations, grants, gifts,
31 or other forms of voluntary contributions to support activities
32 related to the creation and maintenance of the health care
33 declarations registry and statewide public education campaigns
34 related to the existence of the registry. All receipts from donations
35 made under this section, and other contributions and appropriations
36 specifically made for the purposes of creating and maintaining the
37 registry established under this section and statewide public
38 education campaigns related to the existence of the registry, shall
39 be deposited into the general fund. These moneys in the general fund
40 may be spent only after appropriation.

1 (8) The department of health may adopt rules as necessary to
2 implement chapter 108, Laws of 2006.

3 (9) By December 1, 2008, the department shall report to the house
4 and senate committees on health care the following information:

5 (a) Number of participants in the registry;

6 (b) Number of health care declarations submitted by type of
7 declaration as defined in this section;

8 (c) Number of health care declarations revoked and the method of
9 revocation;

10 (d) Number of providers and facilities, by type, that have been
11 provided access to the registry;

12 (e) Actual costs of operation of the registry.

13 **Sec. 407.** RCW 71.32.020 and 2011 c 89 s 15 are each amended to
14 read as follows:

15 The definitions in this section apply throughout this chapter
16 unless the context clearly requires otherwise.

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

19 (2) "Agent" has the same meaning as an attorney-in-fact or agent
20 as provided in chapter (~~11.94~~) 11.-- RCW (the new chapter created
21 in section 505 of this act).

22 (3) "Capacity" means that an adult has not been found to be
23 incapacitated pursuant to this chapter or RCW 11.88.010(1)(e).

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

25 (5) "Health care facility" means a hospital, as defined in RCW
26 70.41.020; an institution, as defined in RCW 71.12.455; a state
27 hospital, as defined in RCW 72.23.010; a nursing home, as defined in
28 RCW 18.51.010; or a clinic that is part of a community mental health
29 service delivery system, as defined in RCW 71.24.025.

30 (6) "Health care provider" means an osteopathic physician or
31 osteopathic physician's assistant licensed under chapter 18.57 or
32 18.57A RCW, a physician or physician's assistant licensed under
33 chapter 18.71 or 18.71A RCW, or an advanced registered nurse
34 practitioner licensed under RCW 18.79.050.

35 (7) "Incapacitated" means an adult who: (a) Is unable to
36 understand the nature, character, and anticipated results of proposed
37 treatment or alternatives; understand the recognized serious possible
38 risks, complications, and anticipated benefits in treatments and
39 alternatives, including nontreatment; or communicate his or her

1 understanding or treatment decisions; or (b) has been found to be
2 incompetent pursuant to RCW 11.88.010(1)(e).

3 (8) "Informed consent" means consent that is given after the
4 person: (a) Is provided with a description of the nature, character,
5 and anticipated results of proposed treatments and alternatives, and
6 the recognized serious possible risks, complications, and anticipated
7 benefits in the treatments and alternatives, including nontreatment,
8 in language that the person can reasonably be expected to understand;
9 or (b) elects not to be given the information included in (a) of this
10 subsection.

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

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

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

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

26 (13) "Principal" means an adult who has executed a mental health
27 advance directive.

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

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

35 **Sec. 408.** RCW 71.32.050 and 2003 c 283 s 5 are each amended to
36 read as follows:

37 (1) An adult with capacity may execute a mental health advance
38 directive.

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

5 (3) A directive may include any provision relating to mental
6 health treatment or the care of the principal or the principal's
7 personal affairs. Without limitation, a directive may include:

8 (a) The principal's preferences and instructions for mental
9 health treatment;

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

11 (c) Refusal to consent to specific types of mental health
12 treatment;

13 (d) Consent to admission to and retention in a facility for
14 mental health treatment for up to fourteen days;

15 (e) Descriptions of situations that may cause the principal to
16 experience a mental health crisis;

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

20 (g) Appointment of an agent pursuant to chapter ((11.94)) 11.--
21 RCW (the new chapter created in section 505 of this act) to make
22 mental health treatment decisions on the principal's behalf,
23 including authorizing the agent to provide consent on the principal's
24 behalf to voluntary admission to inpatient mental health treatment;
25 and

26 (h) The principal's nomination of a guardian or limited guardian
27 as provided in ((RCW—11.94.010)) section 108 of this act for
28 consideration by the court if guardianship proceedings are commenced.

29 (4) A directive may be combined with or be independent of a
30 nomination of a guardian or other durable power of attorney under
31 chapter ((11.94)) 11.-- RCW (the new chapter created in section 505
32 of this act), so long as the processes for each are executed in
33 accordance with its own statutes.

34 **Sec. 409.** RCW 71.32.060 and 2003 c 283 s 6 are each amended to
35 read as follows:

36 (1) A directive shall:

37 (a) Be in writing;

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

1 (c) Be dated and signed by the principal or at the principal's
2 direction in the principal's presence if the principal is unable to
3 sign;

4 (d) Designate whether the principal wishes to be able to revoke
5 the directive during any period of incapacity or wishes to be unable
6 to revoke the directive during any period of incapacity; and

7 (e) Be witnessed in writing by at least two adults, each of whom
8 shall declare that he or she personally knows the principal, was
9 present when the principal dated and signed the directive, and that
10 the principal did not appear to be incapacitated or acting under
11 fraud, undue influence, or duress.

12 (2) A directive that includes the appointment of an agent
13 pursuant to a power of attorney under chapter ((11.94)) 11.-- RCW
14 (the new chapter created in section 505 of this act) shall contain
15 the words "This power of attorney shall not be affected by the
16 incapacity of the principal," or "This power of attorney shall become
17 effective upon the incapacity of the principal," or similar words
18 showing the principal's intent that the authority conferred shall be
19 exercisable notwithstanding the principal's incapacity.

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

23 (4) A directive may:

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

26 (b) Expire under its own terms.

27 **Sec. 410.** RCW 71.32.100 and 2003 c 283 s 10 are each amended to
28 read as follows:

29 (1) If a directive authorizes the appointment of an agent, the
30 provisions of chapter ((11.94)) 11.-- RCW (the new chapter created in
31 section 505 of this act) and RCW 7.70.065 shall apply unless
32 otherwise stated in this chapter.

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

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

36 (4) An agent may make decisions on behalf of the principal.
37 Unless the principal has revoked the directive, the decisions must be
38 consistent with the instructions and preferences the principal has
39 expressed in the directive, or if not expressed, as otherwise known

1 to the agent. If the principal's instructions or preferences are not
2 known, the agent shall make a decision he or she determines is in the
3 best interest of the principal.

4 (5) Except to the extent the right is limited by the appointment
5 or any federal or state law, the agent has the same right as the
6 principal to receive, review, and authorize the use and disclosure of
7 the principal's health care information when the agent is acting on
8 behalf of the principal and to the extent required for the agent to
9 carry out his or her duties. This subsection shall be construed to be
10 consistent with chapters 70.02, 70.24, 70.96A, 71.05, and 71.34 RCW,
11 and with federal law regarding health care information.

12 (6) Unless otherwise provided in the appointment and agreed to in
13 writing by the agent, the agent is not, as a result of acting in the
14 capacity of agent, personally liable for the cost of treatment
15 provided to the principal.

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

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

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

28 **Sec. 411.** RCW 71.32.180 and 2003 c 283 s 18 are each amended to
29 read as follows:

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

32 (a) The directive most recently created shall be treated as the
33 principal's mental health treatment preferences and instructions as
34 to any inconsistent or conflicting provisions, unless provided
35 otherwise in either document.

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

1 (2) Where an incapacitated principal has appointed more than one
2 agent under chapter ((11.94)) 11.-- RCW (the new chapter created in
3 section 505 of this act) with authority to make mental health
4 treatment decisions, ((RCW 11.94.010)) section 217 of this act
5 controls.

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

9 **Sec. 412.** RCW 71.32.200 and 2003 c 283 s 20 are each amended to
10 read as follows:

11 Any person with reasonable cause to believe that a directive has
12 been created or revoked under circumstances amounting to fraud,
13 duress, or undue influence may petition the court for appointment of
14 a guardian for the person or to review the actions of the agent or
15 person alleged to be involved in improper conduct under ((RCW
16 11.94.090)) section 116 of this act or RCW 74.34.110.

17 **Sec. 413.** RCW 71.32.260 and 2009 c 217 s 14 are each amended to
18 read as follows:

19 The directive shall be in substantially the following form:

20 Mental Health Advance Directive

21 **NOTICE TO PERSONS**

22 **CREATING A MENTAL HEALTH ADVANCE DIRECTIVE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20
21 **PART I.**

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

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

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

32 I understand that I may revoke this directive in whole or in part if I am a person with capacity. I understand that I cannot
33 revoke this directive if a court, two health care providers, or one mental health professional and one health care provider
34 find that I am an incapacitated person, unless, when I executed this directive, I chose to be able to revoke this directive
35 while incapacitated.

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

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

6

7

PART II.

8

WHEN THIS DIRECTIVE IS EFFECTIVE

9

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

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

11 Immediately upon my signing of this directive.

12 If I become incapacitated.

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

14

15

16

17

PART III.

18

DURATION OF THIS DIRECTIVE

19

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

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

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

22 Automatically expire years from the date it was created.

23

24

PART IV.

25

WHEN I MAY REVOKE THIS DIRECTIVE

26

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

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

28 Only when I have capacity.

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

32 Even if I am incapacitated.

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

1
2 **PART V.**

3 **PREFERENCES AND INSTRUCTIONS ABOUT TREATMENT, FACILITIES, AND PHYSICIANS OR**
4 **PSYCHIATRIC ADVANCED REGISTERED NURSE PRACTITIONERS**

5 **A. Preferences and Instructions About Physician(s) or Psychiatric Advanced Registered Nurse Practitioner(s) to be**
6 **Involved in My Treatment**

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

9 Dr. or PARNP Contact information:.....

10 Dr. or PARNP Contact information:.....

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

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

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

15 Name Profession Contact information.

16 Name Profession Contact information.

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

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

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

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

25 I am willing to try any other medication the hospital doctor or psychiatric advanced registered nurse practitioner
26 recommends

27 I am willing to try any other medications my outpatient doctor or psychiatric advanced registered nurse practitioner
28 recommends

29 I do not want to try any other medications.

30 **Medication Allergies**

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

33 **Other Medication Preferences or Instructions**

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

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

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

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

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

7 Calling someone or having someone call me when needed.

8 Name: Telephone:

9 Staying overnight with someone

10 Name: Telephone:

11 Having a mental health service provider come to see me

12 Going to a crisis triage center or emergency room

13 Staying overnight at a crisis respite (temporary) bed

14 Seeing a service provider for help with psychiatric medications

15 Other, specify:

16 **Authority to Consent to Inpatient Treatment**

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

19 (Sign one):

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

22

23 (Signature)

24 or

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

27

28 (Signature)

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

30

31 (Signature)

32 **Hospital Preferences and Instructions**

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

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

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

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

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

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

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

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

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

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

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

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

32

33 (Signature)

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

1

2 (Signature)

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

5

6

7 (Signature)

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

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

10 Name:

11 Name:

12 Name:

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

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

15 Other instructions about my mental health care:

16

17 In case of emergency, please contact:

18 Name: Address:

19 Work telephone: Home telephone:

20 Physician or Psychiatric Advanced Registered Address:

21 Nurse Practitioner:

22 Telephone:

23 The following may help me to avoid a hospitalization:

24

25 I generally react to being hospitalized as follows:

26

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

28

29

30 **J. Refusal of Treatment**

31 I do not consent to any mental health treatment.

32

33 (Signature)

1
2 **PART VI.**

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

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

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

12 **A. Designation of an Agent**

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

15 Name: Address:

16 Work telephone: Home telephone:

17 Relationship:

18 **B. Designation of Alternate Agent**

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

22 Name: Address:

23 Work telephone: Home telephone:

24 Relationship:

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

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

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

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

30

31

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

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

34

35

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

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

4 Name: Address:

5 Work telephone: Home telephone:

6 Relationship:

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

10

11 (Signature required if nomination is made)

12
13 **PART VII.**
14 **OTHER DOCUMENTS**

15 *(Initial all that apply)*

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

18 Health care power of attorney (chapter ~~((H.94))~~ 11. RCW (the new chapter created in section 505 of this act))

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

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

22

23
24 **PART VIII.**
25 **NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS**

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

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

29 **A. Who Should Be Notified**

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

31 Name: Address:

32 Day telephone: Evening telephone:

33 Name: Address:

34 Day telephone: Evening telephone:

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

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

4
5

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

7
8
9
10

11
12 **PART IX.**
13 **SIGNATURE**

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

18 Signature: Date:

19 Printed Name:

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

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

34 Witness 1: Signature: Date:

35 Printed Name:

1 Telephone: Address:

2 Witness 2: Signature: Date:

3 Printed Name:

4 Telephone: Address:

5

6 **PART X.**

7 **RECORD OF DIRECTIVE**

8 I have given a copy of this directive to the following persons:
9

10 DO NOT FILL OUT PART XI UNLESS YOU INTEND TO REVOKE
11 THIS DIRECTIVE IN PART OR IN WHOLE

12

13 **PART XI.**

14 **REVOCAION OF THIS DIRECTIVE**

15 *(Initial any that apply):*

16 I am revoking the following part(s) of this directive (specify):
17

18 I am revoking all of this directive.

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

21 Signature: Date:

22 Printed Name:

23 **DO NOT SIGN THIS PART UNLESS YOU INTEND TO REVOKE THIS**
24 **DIRECTIVE IN PART OR IN WHOLE**

25 **PART V**

26 NEW SECTION. **Sec. 501.** In applying and construing this uniform
27 act, consideration must be given to the need to promote uniformity of
28 the law with respect to its subject matter among the states that
29 enact it.

30 NEW SECTION. **Sec. 502.** This act modifies, limits, and
31 supersedes the federal electronic signatures in global and national
32 commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify,
33 limit, or supersede section 101(c) of that act, 15 U.S.C. Sec.

1 7001(c), or authorize electronic delivery of any of the notices
2 described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

3 NEW SECTION. **Sec. 503.** Except as otherwise provided in this
4 act, on the effective date of this section:

5 (1) This act applies to a power of attorney created before, on,
6 or after the effective date of this section;

7 (2) This act applies to a judicial proceeding concerning a power
8 of attorney commenced on or after the effective date of this section;

9 (3) This act applies to a judicial proceeding concerning a power
10 of attorney commenced before the effective date of this section
11 unless the court finds that application of a provision of this act
12 would substantially interfere with the effective conduct of the
13 judicial proceeding or prejudice the rights of a party, in which case
14 that provision does not apply and the superseded law applies; and

15 (4) An act done before the effective date of this section is not
16 affected by this act.

17 NEW SECTION. **Sec. 504.** The following acts or parts of acts are
18 each repealed:

19 (1) RCW 11.94.010 (Designation—Authority—Effect of acts done—
20 Appointment of guardian, effect—Accounting—Reliance on instrument)
21 and 2007 c 156 s 31, 2005 c 97 s 12, 2003 c 283 s 27, 1995 c 297 s 9,
22 1989 c 211 s 1, & 1985 c 30 s 25;

23 (2) RCW 11.94.020 (Effect of death, disability, or incompetence
24 of principal—Acts without knowledge) and 1985 c 30 s 26;

25 (3) RCW 11.94.030 (Banking transactions) and 1985 c 30 s 27;

26 (4) RCW 11.94.040 (Liability for reliance on power of attorney
27 document) and 2001 c 203 s 2 & 1985 c 30 s 28;

28 (5) RCW 11.94.043 (Durable power of attorney—Revocation or
29 termination) and 1989 c 211 s 2;

30 (6) RCW 11.94.046 (Durable power of attorney—Validity) and 1989 c
31 211 s 3;

32 (7) RCW 11.94.050 (Attorney or agent granted principal's powers—
33 Powers to be specifically provided for—Transfer of resources by
34 principal's attorney or agent) and 2014 c 58 s 23, 2011 c 327 s 4,
35 2001 c 203 s 12, 1989 c 87 s 1, & 1985 c 30 s 29;

36 (8) RCW 11.94.060 (Conveyance or encumbrance of homestead) and
37 1985 c 30 s 30;

1 (9) RCW 11.94.070 (Limitations on powers to benefit attorneys-in-
2 fact) and 1994 c 221 s 67;

3 (10) RCW 11.94.080 (Termination of marriage or state registered
4 domestic partnership) and 2007 c 156 s 14 & 2001 c 203 s 1;

5 (11) RCW 11.94.090 (Court petition) and 2008 c 6 s 808 & 2001 c
6 203 s 3;

7 (12) RCW 11.94.100 (Persons allowed to file court petition) and
8 2008 c 6 s 809 & 2001 c 203 s 4;

9 (13) RCW 11.94.110 (Ruling on court petition) and 2001 c 203 s 5;

10 (14) RCW 11.94.120 (Award of costs on court petition) and 2001 c
11 203 s 6;

12 (15) RCW 11.94.130 (Applicability of dispute resolution
13 provisions to court petition) and 2001 c 203 s 7;

14 (16) RCW 11.94.140 (Notice of hearing on court petition) and 2008
15 c 6 s 810 & 2001 c 203 s 8;

16 (17) RCW 11.94.150 (Mental health treatment decisions—
17 Compensation of agent prohibited—Reimbursement of expenses allowed)
18 and 2003 c 283 s 28;

19 (18) RCW 11.94.900 (Application of 1984 c 149 §§ 26-31 as of
20 January 1, 1985) and 1985 c 30 s 140; and

21 (19) RCW 11.94.901 (Construction—Chapter applicable to state
22 registered domestic partnerships—2009 c 521) and 2009 c 521 s 37.

23 NEW SECTION. **Sec. 505.** Sections 101 through 301 and 501 through
24 503 of this act constitute a new chapter in Title 11 RCW.

25 NEW SECTION. **Sec. 506.** This act takes effect January 1, 2017."

26 Correct the title.

EFFECT: Makes technical corrections for internal consistency:

(1) Modifies the requirements for a spouse agent's certification of authority to reflect the underlying presumption in the bill that powers of attorney are revoked upon a dissolution filing, rather than only upon final decree; and

(2) Modifies amendatory sections to reflect the default presumption in the bill that powers of attorney are nondurable.

--- END ---