

HOUSE BILL REPORT

2SSB 6591

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to establishing a work group to address mental health advance directives.

Brief Description: Establishing a work group to address mental health advance directives.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Dhingra, Das, Darneille, Keiser, Rivers and Wilson, C.).

Brief History:

Committee Activity:

Health Care & Wellness: 2/27/20 [DPA].

**Brief Summary of Second Substitute Bill
(As Amended by Committee)**

- Establishes a work group to review the use of mental health advance directives and ways to promote awareness of mental health advance directives.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass as amended. Signed by 14 members: Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Chambers, Chopp, Davis, DeBolt, Harris, Maycumber, Riccelli, Robinson, Stonier, Thai and Tharinger.

Staff: Chris Blake (786-7392).

Background:

A mental health advance directive is a document that either provides instructions or declares a person's preferences regarding the person's mental health treatment in the event of incapacitation. A mental health advance directive may also appoint another person to make decisions regarding mental health treatment on the person's behalf in the event of incapacitation. A mental health advance directive may include preferences and instructions for mental health treatment, consent to specific types of mental health treatment, consent to

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admission to a facility for 14-day treatment, descriptions of situations that may cause the person to experience a mental health crisis, and the appointment of an agent to make decisions on the person's behalf.

A person may be determined to be incapacitated if the person is an adult who is unable to:

- understand the nature, character, and anticipated results of proposed treatments or alternatives;
- understand the serious possible risks, complications, and anticipated benefits in treatments and alternatives; or
- communicate the person's understanding or treatment decisions.

The person, the person's agent, a mental health professional, or a health care provider may seek a determination of a person's capacity. Incapacity is determined by either: (1) a court; (2) one mental health professional and one health care provider; or (3) two health care providers. The term "health care provider" means a physician, osteopathic physician, advanced registered nurse practitioner, physician assistant, or osteopathic physician assistant. At least one mental health professional or health care provider must personally examine the person before making a capacity determination. Determinations whether a person is incapacitated or has regained capacity must be made within 48 hours of a request.

Summary of Amended Bill:

The Health Care Authority (Authority) must facilitate a work group regarding mental health advance directives. The Authority shall invite participation from behavioral health advocates, peers and peer advocates, hospitals, physicians, psychiatrists, community behavioral health agencies, dementia advocates, the Elder Law Section of the Washington State Bar Association, Seattle University School of Law, the Washington State Long-Term Care Ombuds, managed care organizations, designated crisis responders, and jails. The work group must:

- examine the use of mental health advance directives in Washington;
- identify ways to improve and promote awareness and utilization of mental health advance directives;
- examine barriers and outcomes; and
- advise the Legislature in updating laws regarding mental health advance directives.

The work group must submit a final report to the Governor and appropriate committees of the Legislature by October 1, 2021.

Amended Bill Compared to Second Substitute Bill:

The amended bill adds psychiatrists to the work group on mental health advance directives.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 24, 2020.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Mental health advance directives have been available for a long time, however, they are being inappropriately used, when used at all. There are challenges with the registry, how advance directives get triggered and transmitted, and the statutes. This bill will convene stakeholders to come back to the Legislature with a plan to more fully utilize mental health advance directives. It would be good to amend the bill to include a psychiatrist on the work group.

(Opposed) None.

Persons Testifying: Melanie Smith, National Alliance on Mental Illness Washington; and Seth Dawson, Washington State Psychiatric Association.

Persons Signed In To Testify But Not Testifying: None.