

SSB 5370 - S AMD 479
By Senator Keiser

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

3 **"Sec. 1.** RCW 71.32.010 and 2003 c 283 s 1 are each amended to
4 read as follows:

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

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

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

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

15 (d) (~~Mentally ill individuals~~) Individuals with behavioral
16 health disorders need some method of expressing their instructions
17 and preferences for treatment and providing advance consent to or
18 refusal of treatment.

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

24 (~~(2)~~) (3) The legislature further finds that:

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

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

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

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

3 Consequently, the legislature affirms that, pursuant to other
4 provisions of law, a validly executed mental health advance directive
5 is to be respected by agents, guardians, and other surrogate decision
6 makers, health care providers, professional persons, and health care
7 facilities.

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

10 The definitions in this section apply throughout this chapter
11 unless the context clearly requires otherwise.

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

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

16 (3) "Capacity" means that (~~(an adult)~~) a person has not been
17 found to be incapacitated pursuant to this chapter or RCW
18 11.88.010(1)(e).

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

20 (5) "Health care facility" means a hospital, as defined in RCW
21 70.41.020; an institution, as defined in RCW 71.12.455; a state
22 hospital, as defined in RCW 72.23.010; a nursing home, as defined in
23 RCW 18.51.010; or a clinic that is part of a community mental health
24 service delivery system, as defined in RCW 71.24.025.

25 (6) "Health care provider" means an osteopathic physician or
26 osteopathic physician's assistant licensed under chapter 18.57 or
27 18.57A RCW, a physician or physician's assistant licensed under
28 chapter 18.71 or 18.71A RCW, or an advanced registered nurse
29 practitioner licensed under RCW 18.79.050.

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

37 (8) "Informed consent" means consent that is given after (~~(the)~~)
38 a person: (a) Is provided with a description of the nature,
39 character, and anticipated results of proposed treatments and

1 alternatives, and the recognized serious possible risks,
2 complications, and anticipated benefits in the treatments and
3 alternatives, including nontreatment, in language that the person can
4 reasonably be expected to understand; or (b) elects not to be given
5 the information included in (a) of this subsection.

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

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

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

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

21 (13) "Principal" means (~~(an adult)~~) a person who has executed a
22 mental health advance directive.

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

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

30 (16) "Behavioral health disorder" means a mental disorder, a
31 substance use disorder, or a co-occurring mental health and substance
32 use disorder.

33 (17) "Substance use disorder" means a cluster of cognitive,
34 behavioral, and physiological symptoms indicating that an individual
35 continues using the substance despite significant substance-related
36 problems. The diagnosis of a substance use disorder is based on a
37 pathological pattern of behaviors related to the use of the
38 substances.

1 **Sec. 3.** RCW 71.32.020 and 2020 c 312 s 732 are each amended to
2 read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

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

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

9 (3) "Capacity" means that (~~(an adult)~~) a person has not been
10 found to be incapacitated pursuant to this chapter or subject to a
11 guardianship under RCW 11.130.265.

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

13 (5) "Health care facility" means a hospital, as defined in RCW
14 70.41.020; an institution, as defined in RCW 71.12.455; a state
15 hospital, as defined in RCW 72.23.010; a nursing home, as defined in
16 RCW 18.51.010; or a clinic that is part of a community (~~(mental)~~)
17 behavioral health service delivery system, as defined in RCW
18 71.24.025.

19 (6) "Health care provider" means an osteopathic physician or
20 osteopathic physician's assistant licensed under chapter 18.57 or
21 18.57A RCW, a physician or physician's assistant licensed under
22 chapter 18.71 or 18.71A RCW, or an advanced registered nurse
23 practitioner licensed under RCW 18.79.050.

24 (7) "Incapacitated" means (~~(an adult)~~) a person who: (a) Is
25 unable to understand the nature, character, and anticipated results
26 of proposed treatment or alternatives; understand the recognized
27 serious possible risks, complications, and anticipated benefits in
28 treatments and alternatives, including nontreatment; or communicate
29 his or her understanding or treatment decisions; or (b) has been
30 found to be subject to a guardianship under RCW 11.130.265.

31 (8) "Informed consent" means consent that is given after (~~(the)~~)
32 (a) person: (a) Is provided with a description of the nature,
33 character, and anticipated results of proposed treatments and
34 alternatives, and the recognized serious possible risks,
35 complications, and anticipated benefits in the treatments and
36 alternatives, including nontreatment, in language that the person can
37 reasonably be expected to understand; or (b) elects not to be given
38 the information included in (a) of this subsection.

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

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

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

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

14 (13) "Principal" means (~~an adult~~) a person who has executed a
15 mental health advance directive.

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

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

23 (16) "Behavioral health disorder" means a mental disorder, a
24 substance use disorder, or a co-occurring mental health and substance
25 use disorder.

26 (17) "Substance use disorder" means a cluster of cognitive,
27 behavioral, and physiological symptoms indicating that an individual
28 continues using the substance despite significant substance-related
29 problems. The diagnosis of a substance use disorder is based on a
30 pathological pattern of behaviors related to the use of the
31 substances.

32 **Sec. 4.** RCW 71.32.020 and 2020 c 312 s 732 and 2020 c 80 s 53
33 are each reenacted and amended to read as follows:

34 The definitions in this section apply throughout this chapter
35 unless the context clearly requires otherwise.

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

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

1 (3) "Capacity" means that ((~~an adult~~)) a person has not been
2 found to be incapacitated pursuant to this chapter or subject to a
3 guardianship under RCW 11.130.265.

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

5 (5) "Health care facility" means a hospital, as defined in RCW
6 70.41.020; an institution, as defined in RCW 71.12.455; a state
7 hospital, as defined in RCW 72.23.010; a nursing home, as defined in
8 RCW 18.51.010; or a clinic that is part of a community ((~~mental~~
9 ~~behavioral~~)) behavioral health service delivery system, as defined
10 in RCW 71.24.025.

11 (6) "Health care provider" means an osteopathic physician
12 licensed under chapter 18.57 RCW, a physician or physician's
13 assistant licensed under chapter 18.71 or 18.71A RCW, or an advanced
14 registered nurse practitioner licensed under RCW 18.79.050.

15 (7) "Incapacitated" means ((~~an adult~~)) a person who: (a) Is
16 unable to understand the nature, character, and anticipated results
17 of proposed treatment or alternatives; understand the recognized
18 serious possible risks, complications, and anticipated benefits in
19 treatments and alternatives, including nontreatment; or communicate
20 his or her understanding or treatment decisions; or (b) has been
21 found to be subject to a guardianship under RCW 11.130.265.

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

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

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

35 (11) "Mental health advance directive" or "directive" means a
36 written document in which the principal makes a declaration of
37 instructions or preferences or appoints an agent to make decisions on
38 behalf of the principal regarding the principal's mental health
39 treatment, or both, and that is consistent with the provisions of
40 this chapter.

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

5 (13) "Principal" means (~~(an adult)~~) a person who has executed a
6 mental health advance directive.

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

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

14 (16) "Behavioral health disorder" means a mental disorder, a
15 substance use disorder, or a co-occurring mental health and substance
16 use disorder.

17 (17) "Substance use disorder" means a cluster of cognitive,
18 behavioral, and physiological symptoms indicating that an individual
19 continues using the substance despite significant substance-related
20 problems. The diagnosis of a substance use disorder is based on a
21 pathological pattern of behaviors related to the use of the
22 substances.

23 **Sec. 5.** RCW 71.32.030 and 2003 c 283 s 3 are each amended to
24 read as follows:

25 (1) The definition of informed consent is to be construed to be
26 consistent with that term as it is used in chapter 7.70 RCW.

27 (2) The definitions of mental disorder, behavioral health
28 disorder, mental health professional, and professional person are to
29 be construed to be consistent with those terms as they are defined in
30 RCW 71.05.020.

31 **Sec. 6.** RCW 71.32.040 and 2003 c 283 s 4 are each amended to
32 read as follows:

33 For the purposes of this chapter, an adult is presumed to have
34 capacity. A person who is at least 13 years of age but under the age
35 of majority is considered to have capacity for the purpose of
36 executing a mental health advance directive if the person is able to
37 demonstrate that they are capable of making informed decisions
38 related to behavioral health care.

1 **Sec. 7.** RCW 71.32.050 and 2016 c 209 s 408 are each amended to
2 read as follows:

3 (1) (~~An adult~~) A person with capacity may execute a mental
4 health advance directive.

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

9 (3) A directive may include any provision relating to (~~mental~~)
10 behavioral health treatment or the care of the principal or the
11 principal's personal affairs. Without limitation, a directive may
12 include:

13 (a) The principal's preferences and instructions for (~~mental~~)
14 behavioral health treatment;

15 (b) Consent to specific types of (~~mental~~) behavioral health
16 treatment;

17 (c) Refusal to consent to specific types of (~~mental~~) behavioral
18 health treatment;

19 (d) Consent to admission to and retention in a facility for
20 (~~mental~~) behavioral health treatment for up to (~~fourteen~~) 14
21 days;

22 (e) Descriptions of situations that may cause the principal to
23 experience a (~~mental~~) behavioral health crisis;

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

27 (g) Appointment of an agent pursuant to chapter 11.125 RCW to
28 make (~~mental~~) behavioral health treatment decisions on the
29 principal's behalf, including authorizing the agent to provide
30 consent on the principal's behalf to voluntary admission to inpatient
31 (~~mental~~) behavioral health treatment; and

32 (h) The principal's nomination of a guardian or limited guardian
33 as provided in RCW 11.125.080 for consideration by the court if
34 guardianship proceedings are commenced.

35 (4) A directive may be combined with or be independent of a
36 nomination of a guardian or other durable power of attorney under
37 chapter 11.125 RCW, so long as the processes for each are executed in
38 accordance with its own statutes.

1 **Sec. 8.** RCW 71.32.060 and 2016 c 209 s 409 are each amended to
2 read as follows:

3 (1) A directive shall:

4 (a) Be in writing;

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

7 (c) Be dated and signed by the principal or at the principal's
8 direction in the principal's presence if the principal is unable to
9 sign;

10 (d) Designate whether the principal wishes to be able to revoke
11 the directive during any period of incapacity or wishes to be unable
12 to revoke the directive during any period of incapacity; and

13 (e) ~~((Be))~~ Have the signature acknowledged before a notary public
14 or other individual authorized by law to take acknowledgments, or be
15 witnessed in writing by at least two adults, each of whom shall
16 declare that he or she personally knows the principal, was present
17 when the principal dated and signed the directive, and that the
18 principal did not appear to be incapacitated or acting under fraud,
19 undue influence, or duress.

20 (2) A directive that includes the appointment of an agent
21 pursuant to a power of attorney under chapter 11.125 RCW shall
22 contain the words "This power of attorney shall not be affected by
23 the incapacity of the principal," or "This power of attorney shall
24 become effective upon the incapacity of the principal," or similar
25 words showing the principal's intent that the authority conferred
26 shall be exercisable notwithstanding the principal's incapacity.

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

30 (4) A directive may:

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

33 (b) Expire under its own terms.

34 **Sec. 9.** RCW 71.32.070 and 2003 c 283 s 7 are each amended to
35 read as follows:

36 A directive may not:

37 (1) Create an entitlement to ~~((mental))~~ behavioral health or
38 medical treatment or supersede a determination of medical necessity;

1 (2) Obligate any health care provider, professional person, or
2 health care facility to pay the costs associated with the treatment
3 requested;

4 (3) Obligate any health care provider, professional person, or
5 health care facility to be responsible for the nontreatment personal
6 care of the principal or the principal's personal affairs outside the
7 scope of services the facility normally provides;

8 (4) Replace or supersede the provisions of any will or
9 testamentary document or supersede the provisions of intestate
10 succession;

11 (5) Be revoked by an incapacitated principal unless that
12 principal selected the option to permit revocation while
13 incapacitated at the time his or her directive was executed; or

14 (6) Be used as the authority for inpatient admission for more
15 than ((fourteen)) 14 days in any ((twenty-one)) 21 day period.

16 **Sec. 10.** RCW 71.32.100 and 2016 c 209 s 410 are each amended to
17 read as follows:

18 (1) If a directive authorizes the appointment of an agent, the
19 provisions of chapter 11.125 RCW and RCW 7.70.065 shall apply unless
20 otherwise stated in this chapter.

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

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

24 (4) An agent may make decisions on behalf of the principal.
25 Unless the principal has revoked the directive, the decisions must be
26 consistent with the instructions and preferences the principal has
27 expressed in the directive, or if not expressed, as otherwise known
28 to the agent. If the principal's instructions or preferences are not
29 known, the agent shall make a decision he or she determines is in the
30 best interest of the principal.

31 (5) (~~Except to the extent the right is limited by the~~
32 ~~appointment or any federal or state law, the agent has the same right~~
33 ~~as the principal to receive, review, and authorize the use and~~
34 ~~disclosure of the principal's health care information when the agent~~
35 ~~is acting on behalf of the principal and to the extent required for~~
36 ~~the agent to carry out his or her duties.)) A person authorized to
37 act as an agent during periods when the principal is incapacitated
38 may act as the principal's personal representative pursuant to the
39 health insurance portability and accountability act, sections 1171~~

1 through 1179 of the social security act, 42 U.S.C. Sec. 1320d, as
2 amended, and applicable regulations, to obtain access to the
3 principal's health care information and communicate with the
4 principal's health care provider. This subsection shall be construed
5 to be consistent with chapters 70.02, 70.24, (~~70.96A,~~) 71.05, and
6 71.34 RCW, and with federal law regarding health care information.

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

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

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

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

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

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

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

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

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

34 (iii) Two health care providers.

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

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

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

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

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

10 (5) (a) When a court makes a determination whether a principal has
11 capacity, the court shall, at a minimum, be informed by the testimony
12 of one mental health professional or substance use disorder
13 professional familiar with the principal and shall, except for good
14 cause, give the principal an opportunity to appear in court prior to
15 the court making its determination.

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

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

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

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

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

38 (ii) When an incapacitated principal has been admitted to and
39 remains in inpatient treatment for more than (~~seventy-two~~) 120

1 hours pursuant to the provisions of his or her directive, the
2 principal's capacity must be reevaluated when there has been a change
3 in his or her condition that indicates that he or she appears to have
4 regained capacity.

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

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

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

17 (b) When a principal who does not have an agent for (~~(mental)~~)
18 behavioral health treatment decisions is being treated in an
19 inpatient facility and requests a determination or redetermination of
20 capacity, the mental health professional or health care provider must
21 complete the determination or, if the principal is seeking a
22 determination from a court, must make reasonable efforts to notify
23 the person authorized to make decisions for the principal under RCW
24 7.70.065 of the principal's request.

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

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

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

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

37 (1) A principal who:

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

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

4 (c) At the time of admission to inpatient treatment, refuses to
5 be admitted,

6 may only be admitted into inpatient (~~(mental)~~) behavioral health
7 treatment under subsection (2) of this section.

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

13 (a) Evaluates the principal's mental condition, including a
14 review of reasonably available psychiatric and psychological history,
15 diagnosis, and treatment needs, and determines, in conjunction with
16 another health care provider (~~(or)~~) mental health professional, or
17 substance use disorder professional, that the principal is
18 incapacitated;

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

21 (c) Makes a written determination that the principal needs an
22 inpatient evaluation or is in need of inpatient treatment and that
23 the evaluation or treatment cannot be accomplished in a less
24 restrictive setting; and

25 (d) Documents in the principal's medical record a summary of the
26 physician's, physician assistant's, or psychiatric advanced
27 registered nurse practitioner's findings and recommendations for
28 treatment or evaluation.

29 (3) In the event the admitting physician is not a psychiatrist,
30 the admitting physician assistant is not supervised by a
31 psychiatrist, or the advanced registered nurse practitioner is not a
32 psychiatric advanced registered nurse practitioner, the principal
33 shall receive a complete (~~(psychological)~~) behavioral health
34 assessment by a mental health professional or substance use disorder
35 professional within (~~(twenty-four)~~) 24 hours of admission to
36 determine the continued need for inpatient evaluation or treatment.

37 (4) (a) If it is determined that the principal has capacity, then
38 the principal may only be admitted to, or remain in, inpatient
39 treatment if he or she consents at the time, is admitted for family-

1 initiated treatment under chapter 71.34 RCW, or is detained under the
2 involuntary treatment provisions of chapter 71.05 or 71.34 RCW.

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

8 (5) If, at the end of the period of time that the principal or
9 the principal's agent, if any, has consented to voluntary inpatient
10 treatment, but no more than (~~fourteen~~) 14 days after admission, the
11 principal has not regained capacity or has regained capacity but
12 refuses to consent to remain for additional treatment, the principal
13 must be released during reasonable daylight hours, unless detained
14 under chapter 71.05 or 71.34 RCW.

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

20 (b) Notwithstanding RCW 71.05.050 regarding consent to inpatient
21 treatment for a specified length of time, the choices an
22 incapacitated principal expressed in his or her directive shall
23 control, provided, however, that a principal who takes action
24 demonstrating a desire to be discharged, in addition to making
25 statements requesting to be discharged, shall be discharged, and no
26 principal shall be restrained in any way in order to prevent his or
27 her discharge. Nothing in this subsection shall be construed to
28 prevent detention and evaluation for civil commitment under chapter
29 71.05 RCW.

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

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

36 (1) For the purposes of this section, "provider" means a private
37 or public agency, government entity, health care provider,
38 professional person, health care facility, or person acting under the

1 direction of a health care provider or professional person, health
2 care facility, or long-term care facility.

3 (2) A provider is not subject to civil liability or sanctions for
4 unprofessional conduct under the uniform disciplinary act, chapter
5 18.130 RCW, when in good faith and without negligence:

6 (a) The provider provides treatment to a principal in the absence
7 of actual knowledge of the existence of a directive, or provides
8 treatment pursuant to a directive in the absence of actual knowledge
9 of the revocation of the directive;

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

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

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

20 (e) The provider provides treatment according to the principal's
21 directive.

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

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

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

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

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

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

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

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

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

8 A person shall not be required to execute or to refrain from
9 executing a directive, nor shall the existence of a directive be used
10 as a criterion for insurance, as a condition for receiving (~~mental~~)
11 behavioral or physical health services, or as a condition of
12 admission to or discharge from a health care facility or long-term
13 care facility.

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

16 (1) If a principal who is a resident of a long-term care facility
17 is admitted to inpatient (~~mental~~) behavioral health treatment
18 pursuant to his or her directive, the principal shall be allowed to
19 be readmitted to the same long-term care facility as if his or her
20 inpatient admission had been for a physical condition on the same
21 basis that the principal would be readmitted under state or federal
22 statute or rule when:

23 (a) The treating facility's professional staff determine that
24 inpatient (~~mental~~) behavioral health treatment is no longer
25 medically necessary for the resident. The determination shall be made
26 in writing by a psychiatrist, physician assistant working with a
27 supervising psychiatrist, or a psychiatric advanced registered nurse
28 practitioner, or (i) one physician and a mental health professional
29 or substance use disorder professional; (ii) one physician assistant
30 and a mental health professional or substance use disorder
31 professional; or (iii) one psychiatric advanced registered nurse
32 practitioner and a mental health professional or substance use
33 disorder professional; or

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

36 (2)(a) If the long-term care facility does not have a bed
37 available at the time of discharge, the treating facility may
38 discharge the resident, in consultation with the resident and agent

1 if any, and in accordance with a medically appropriate discharge
2 plan, to another long-term care facility.

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

7 (c) This section does not restrict the right of the resident to
8 an earlier release from the inpatient treatment facility. This
9 section does not restrict the right of a long-term care facility to
10 initiate transfer or discharge of a resident who is readmitted
11 pursuant to this section, provided that the facility has complied
12 with the laws governing the transfer or discharge of a resident.

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

17 **Sec. 19.** RCW 71.32.260 and 2016 c 209 s 413 and 2016 c 155 s 16
18 are each reenacted and amended to 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 **PART III.**

16 **DURATION OF THIS DIRECTIVE**

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

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

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

20 Automatically expire years from the date it was created.

21
22 **PART IV.**

23 **WHEN I MAY REVOKE THIS DIRECTIVE**

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

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

26 Only when I have capacity.

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

30 Even if I am incapacitated.

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

PART V:

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

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

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

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

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

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

~~B. Preferences and Instructions About Other Providers~~

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

Name..... Profession..... Contact information.....

Name..... Profession..... Contact information.....

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

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

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

..... I am willing to take the medications excluded above if my only reason for excluding them is the side effects which include.....

and these side effects can be eliminated by dosage adjustment or other means

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

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

..... I do not want to try any other medications.

~~Medication Allergies~~

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

~~Other Medication Preferences or Instructions~~

..... 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, physician assistant, or psychiatric
21 advanced registered nurse 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, physician assistant, or psychiatric advanced registered nurse practitioner decides
23 to use medication in response to an emergency situation after due consideration of my preferences and instructions for
24 emergency treatments stated above, I expect the choice of medication to reflect any preferences and instructions I have
25 expressed in Part III C of this form. The preferences and instructions I express in this section regarding medication in
26 emergency situations do not 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 (Signature)

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

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

9 Name:

10 Name:

11 Name:

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

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

14 Other instructions about my mental health care:

15 In case of emergency, please contact:

16 Name: Address:

17 Work telephone: Home telephone:

18 Physician, Physician Assistant, or Psychiatric Address:

19 Advanced Registered Nurse Practitioner:

20 Telephone:

21 The following may help me to avoid a hospitalization:

22 I generally react to being hospitalized as follows:

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

24 **J. Refusal of Treatment**

25 I do not consent to any mental health treatment.

26

27 (Signature)

28

29 **PART VI.**

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

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

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

8 **A. Designation of an Agent**

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

11 Name: Address:
12 Work telephone: Home telephone:
13 Relationship:

14 **B. Designation of Alternate Agent**

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

18 Name: Address:
19 Work telephone: Home telephone:
20 Relationship:

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

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

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

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

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

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

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

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

31 Name: Address:
32 Work telephone: Home telephone:
33 Relationship:

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

4

5 (Signature required if nomination is made)

6
7 **PART VII.**
8 **OTHER DOCUMENTS**

9 *(Initial all that apply)*

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

12 Health care power of attorney (chapter 11.125 RCW)

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

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

16
17 **PART VIII.**
18 **NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS**

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

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

22 **A. Who Should Be Notified**

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

24 Name: Address:

25 Day telephone: Evening telephone:

26 Name: Address:

27 Day telephone: Evening telephone:

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

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

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

32
33 **PART IX.**
34 **SIGNATURE**

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

5 Signature: Date:

6 Printed Name:

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

- 11 (A) A person designated to make medical decisions on the principal's behalf;
- 12 (B) A health care provider or professional person directly involved with the provision of care to the principal at the time the
13 directive is executed;
- 14 (C) An owner, operator, employee, or relative of an owner or operator of a health care facility or long-term care facility in
15 which the principal is a patient or resident;
- 16 (D) A person who is related by blood, marriage, or adoption to the person, or with whom the principal has a dating
17 relationship as defined in RCW 26.50.010;
- 18 (E) An incapacitated person;
- 19 (F) A person who would benefit financially if the principal undergoes mental health treatment; or
- 20 (G) A minor.

21 Witness 1: Signature: Date:

22 Printed Name:

23 Telephone: Address:

24 Witness 2: Signature: Date:

25 Printed Name:

26 Telephone: Address:

27
28 **PART X.**
29 **RECORD OF DIRECTIVE**

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

31 ~~DO NOT FILL OUT PART XI UNLESS YOU INTEND TO REVOKE~~
32 ~~THIS DIRECTIVE IN PART OR IN WHOLE~~

33
34 **PART XI.**
35 **REVOCATION OF THIS DIRECTIVE**

1 *(Initial any that apply):*

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

3 I am revoking all of this directive.

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

6 Signature: Date:

7 Printed Name:

8 **DO NOT SIGN THIS PART UNLESS YOU INTEND TO REVOKE THIS**
9 **DIRECTIVE IN PART OR IN WHOLE))**

10 Mental Health Advance Directive of (client name)
11 With Appointment of (agent name) as
12 Agent for Mental Health Decisions

13
14 **PART I.**
15 **STATEMENT OF INTENT TO CREATE A**
16 **MENTAL HEALTH ADVANCE DIRECTIVE**

17 I, (Client name), being a person with capacity, willfully and voluntarily execute this mental health advance directive so that
18 my choices regarding my mental health care will be carried out in circumstances when I am unable to express my
19 instructions and preferences regarding my mental health care.

20 **PART II.**
21 **MY CARE NEEDS – WHAT WORKS FOR ME**

22 In order to assist in carrying out my directive I would like my providers and my agent to know the following information:

23 I have been diagnosed with (client illnesses both mental health and physical diagnoses) for which I take (list medications).

24 I am also on the following other medications: (list any other medications for other conditions).

25 The best treatment method for my illness is (give general overview of what works best for client).

26 I have/do not have a history of substance abuse. My preferences and treatment options around medication management
27 related to substance abuse are:

28 **PART III.**
29 **WHEN THIS DIRECTIVE IS EFFECTIVE**

30 *(You must complete this part for your directive to be valid.)*

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

32 Immediately upon my signing of this directive.

33 If I become incapacitated.

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

1 **PART IV.**

2 **DURATION OF THIS DIRECTIVE**

3 *(You must complete this part for your directive to be valid.)*

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

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

6 Automatically expire years from the date it was created.

7 **PART V.**

8 **WHEN I MAY REVOKE THIS DIRECTIVE**

9 *(You must complete this part for this directive to be valid.)*

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

11 Only when I have capacity.

12 I understand that choosing this option means I may only revoke this directive if I have capacity. I further understand that if

13 I choose this option and become incapacitated while this directive is in effect, I may receive treatment that I specify in this
14 directive, even if I object at the time.

15 Even if I am incapacitated.

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

19 **PART VI.**

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

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

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

26 I do not wish to be treated by

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

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

1 **C. Preferences and Instructions About Medications for Psychiatric Treatment (check all that apply)**

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

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

5 I am willing to take the medications excluded above if my only reason for excluding them is the side effects which
6 include:

7 and these side effects can be eliminated by dosage adjustment or other means

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

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

12 I do not want to try any other medications.

13 Medication Allergies.

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

15 Other Medication Preferences or Instructions

16 I have the following other preferences or instructions about medications:

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

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

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

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

23 Calling someone or having someone call me when needed.

24 Name:..... Telephone/text:..... Email:.....

25 Staying overnight with someone

26 Name:..... Telephone/text:..... Email:.....

27 Having a mental health service provider come to see me.

28 Going to a crisis triage center or emergency room.

29 Staying overnight at a crisis respite (temporary) bed.

30 Seeing a service provider for help with psychiatric medications.

31 Other, specify:

32 Authority to Consent to Inpatient Treatment

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

35 (Sign one):

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

1
2

(Signature)

3 Or

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

6

7 (Signature)

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

9

10 (Signature)

11 Hospital Preferences and Instructions

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

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

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

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

16 "Talk me down" one-on-one

17 More medication

18 Time out/privacy

19 Show of authority/force

20 Shift my attention to something else

21 Set firm limits on my behavior

22 Help me to discuss/vent feelings

23 Decrease stimulation

24 Offer to have neutral person settle dispute

25 Other:

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

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

30 Seclusion

31 Seclusion and physical restraint (combined)

32 Medication by injection

33 Medication in pill or liquid form

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

1 **G. Preferences and Instructions About Electroconvulsive Therapy**

2 **(ECT or Shock Therapy)**

3 My wishes regarding electroconvulsive therapy are (sign one):

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

5

6 (Signature)

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

8

9 (Signature)

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

12

13 (Signature)

14
15 **H. Preferences and Instructions About Who is Permitted to Visit**

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

17 Name:

18 Name:

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

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

21 Other instructions about my mental health care:

22 In case of emergency, please contact:

23 Name: Address:

24 Work telephone: Home telephone:

25 Physician, physician assistant, or advanced Address:

26 registered nurse practitioner: Email:

27 Telephone:

28 The following may help me to avoid a hospitalization:

29 I generally react to being hospitalized as follows:

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

31 **J. Refusal of Treatment**

32 I do not consent to any mental health treatment.

33

34 (Signature)

35 **PART VII.**

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

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

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

HIPAA Release Authority. In addition to the other powers granted by this document, I grant to my Attorney-in-Fact the power and authority to serve as my personal representative for all purposes under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended from time to time, and its regulations. My Attorney-in-Fact will serve as my "HIPAA personal representative" and will exercise this authority at any time that my Attorney-in-Fact is exercising authority under this document.

A. Designation of an Agent

Name: Address:
Work phone: Home/cell phone:
Relationship: Email:

B. Designation of Alternate Agent

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

Name: Address:
Work phone: Home phone:
Relationship: Email:

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

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

D. Limitations on My Agent's Authority

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

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

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

F. Preference as to Court-Appointed Guardian

In the event a court appoints a guardian who will make decisions regarding my mental health treatment, I nominate my then-serving agent (or name someone else) as my guardian:

1 Name and contact information (if someone other than agent or alternate):

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

5
6
7 **PART VIII.**
8 **OTHER DOCUMENTS**

9 *(Initial all that apply)*

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

12 Health care power of attorney (chapter 11.125 RCW)

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

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

16 **PART IX.**
17 **NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS**

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

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

21 **A. Who Should Be Notified**

22 I desire my agent to notify the following individuals as soon as possible if I am admitted to a mental health facility:

23 Name: Address:

24 Day telephone: Evening telephone:

25 Name: Address:

26 Day telephone: Evening telephone:

27 Name: Address:

28 Day telephone: Evening telephone:

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

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

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

33 **PART X.**
34 **SIGNATURE**

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

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

6 Signature:

7 STATE OF WASHINGTON)

8) ss.

9 COUNTY OF)

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

15 SUBSCRIBED and SWORN to before me this day of,
16 20. . . .

17

18 SIGNATURE OF NOTARY

19

20

21 PRINT NAME OF NOTARY

22

23 NOTARY PUBLIC for the State of Washington at

24 My commission expires

25 OR have two witnesses:

26 Name:

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

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

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

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

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

- 1 (E) An incapacitated person;
- 2 (F) A person who would benefit financially if the principal undergoes mental health treatment; or
- 3 (G) A minor.

4 Witness 1 Signature: Date:

5 Printed Name: Address:

6 Telephone:

7 Witness 2 Signature: Date:

8 Printed Name: Address:

9 Telephone:

10 **PART XI.**
 11 **RECORD OF DIRECTIVE**

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

13

14 Name: Address:

15 Day telephone: Evening telephone:

16 Name: Address:

17 Day telephone: Evening telephone:

18

19 DO NOT FILL OUT PART XII UNLESS YOU INTEND TO REVOKE
 20 THIS DIRECTIVE IN PART OR IN WHOLE

21 **PART XII.**
 22 **REVOCAION OF THIS DIRECTIVE**

23 *(Initial any that apply):*

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

25 Date:

26 I am revoking all of this directive.

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

29

30

31 (Signature)

32 Printed Name:

33 **DO NOT SIGN THIS PART UNLESS YOU INTEND TO REVOKE THIS**
 34 **DIRECTIVE IN PART OR IN WHOLE**

1 NEW SECTION. Sec. 20. A new section is added to chapter 71.34
2 RCW to read as follows:

3 Nothing in this chapter undermines the right of a parent to seek
4 behavioral health evaluation and treatment for a nonconsenting
5 adolescent using family-initiated treatment laws under this chapter.

6 **Sec. 21.** RCW 7.70.065 and 2020 c 312 s 705 are each amended to
7 read as follows:

8 (1) Informed consent for health care for a patient who ((is a
9 minor or, to consent)) does not have the capacity to make a health
10 care decision may be obtained from a person authorized to consent on
11 behalf of such patient. For purposes of this section, a person who is
12 of the age of consent to make a particular health care decision is
13 presumed to have capacity, unless a health care provider reasonably
14 determines the person lacks capacity to make the health care decision
15 due to the person's demonstrated inability to understand and
16 appreciate the nature and consequences of a health condition, the
17 proposed treatment, including the anticipated results, benefits,
18 risks, and alternatives to the proposed treatment, including
19 nontreatment, and reach an informed decision as a result of cognitive
20 impairment; and the health care provider documents the basis for the
21 determination in the medical record. An adult person is presumed not
22 to have the capacity to make a health care decision if the person is
23 subject to a guardianship that includes health care decision making
24 under RCW 11.130.265.

25 (a) Persons authorized to provide informed consent to health care
26 on behalf of ((a)) an adult patient who ((has been placed under a
27 guardianship under RCW 11.130.265 a minor or,)) does not have the
28 capacity to make a health care decision shall be a member of one of
29 the following classes of persons in the following order of priority:

30 (i) The appointed guardian of the patient, if any;

31 (ii) The individual, if any, to whom the patient has given a
32 durable power of attorney that encompasses the authority to make
33 health care decisions;

34 (iii) In cases where inability to provide informed consent is due
35 to a behavioral health disorder, an agent designated to make
36 decisions on behalf of the principal by a mental health advance
37 directive under chapter 71.34 RCW;

38 (iv) The patient's spouse or state registered domestic partner;

1 (~~(iv)~~) (v) Children of the patient who are at least eighteen
2 years of age;

3 (~~(v)~~) (vi) Parents of the patient;

4 (~~(vi)~~) (vii) Adult brothers and sisters of the patient;

5 (~~(vii)~~) (viii) Adult grandchildren of the patient who are
6 familiar with the patient;

7 (~~(viii)~~) (ix) Adult nieces and nephews of the patient who are
8 familiar with the patient;

9 (~~(ix)~~) (x) Adult aunts and uncles of the patient who are
10 familiar with the patient; and

11 (~~(x)~~) (xi) (A) An adult who:

12 (I) Has exhibited special care and concern for the patient;

13 (II) Is familiar with the patient's personal values;

14 (III) Is reasonably available to make health care decisions;

15 (IV) Is not any of the following: A physician to the patient or
16 an employee of the physician; the owner, administrator, or employee
17 of a health care facility, nursing home, or long-term care facility
18 where the patient resides or receives care; or a person who receives
19 compensation to provide care to the patient; and

20 (V) Provides a declaration under (a)(~~(x)~~) (xi) (B) of this
21 subsection.

22 (B) An adult who meets the requirements of (a)(~~(x)~~) (xi) (A) of
23 this subsection shall provide a declaration, which is effective for
24 up to six months from the date of the declaration, signed and dated
25 under penalty of perjury pursuant to chapter 5.50 RCW, that recites
26 facts and circumstances demonstrating that he or she is familiar with
27 the patient and that he or she:

28 (I) Meets the requirements of (a)(~~(x)~~) (xi) (A) of this
29 subsection;

30 (II) Is a close friend of the patient;

31 (III) Is willing and able to become involved in the patient's
32 health care;

33 (IV) Has maintained such regular contact with the patient as to
34 be familiar with the patient's activities, health, personal values,
35 and morals; and

36 (V) Is not aware of a person in a higher priority class willing
37 and able to provide informed consent to health care on behalf of the
38 patient.

39 (C) A health care provider may, but is not required to, rely on a
40 declaration provided under (a)(~~(x)~~) (xi) (B) of this subsection. The

1 health care provider or health care facility where services are
2 rendered is immune from suit in any action, civil or criminal, or
3 from professional or other disciplinary action when such reliance is
4 based on a declaration provided in compliance with (a) ~~((~~x~~))~~ (xi) (B)
5 of this subsection.

6 (b) If the health care provider seeking informed consent for
7 proposed health care of the patient who ~~((has been placed under a
8 guardianship under RCW 11.130.265,))~~ does not have the capacity to
9 make a particular health care decision, other than a person who is
10 under the age of consent for the particular health care decision,
11 makes reasonable efforts to locate and secure authorization from a
12 competent person in the first or succeeding class and finds no such
13 person available, authorization may be given by any person in the
14 next class in the order of descending priority. However, no person
15 under this section may provide informed consent to health care:

16 (i) If a person of higher priority under this section has refused
17 to give such authorization; or

18 (ii) If there are two or more individuals in the same class and
19 the decision is not unanimous among all available members of that
20 class.

21 (c) Before any person authorized to provide informed consent on
22 behalf of a patient who ~~((has been placed under a guardianship under
23 RCW 11.130.265,))~~ does not have the capacity to make a health care
24 decision exercises that authority, the person must first determine in
25 good faith that that patient, if ~~((competent))~~ he or she had the
26 capacity to make the health care decision, would consent to the
27 proposed health care. If such a determination cannot be made, the
28 decision to consent to the proposed health care may be made only
29 after determining that the proposed health care is in the patient's
30 best interests. This subsection (1)(c) does not apply to informed
31 consent provided on behalf of a patient who has not reached the age
32 of consent required to make a particular health care decision.

33 (d) No rights under Washington's death with dignity act, chapter
34 70.245 RCW, may be exercised through a person authorized to provide
35 informed consent to health care on behalf of a patient who ~~((is a
36 minor or has been placed under a guardianship under RCW 11.130.265))~~
37 does not have the capacity to make a health care decision.

38 (2) Informed consent for health care, including mental health
39 care, for a patient who is under the age of majority and who is not

1 otherwise authorized to provide informed consent, may be obtained
2 from a person authorized to consent on behalf of such a patient.

3 (a) Persons authorized to provide informed consent to health
4 care, including mental health care, on behalf of a patient who is
5 under the age of majority and who is not otherwise authorized to
6 provide informed consent, shall be a member of one of the following
7 classes of persons in the following order of priority:

8 (i) The appointed guardian, or legal custodian authorized
9 pursuant to Title 26 RCW, of the minor patient, if any;

10 (ii) A person authorized by the court to consent to medical care
11 for a child in out-of-home placement pursuant to chapter 13.32A or
12 13.34 RCW, if any;

13 (iii) Parents of the minor patient;

14 (iv) The individual, if any, to whom the minor's parent has given
15 a signed authorization to make health care decisions for the minor
16 patient; and

17 (v) A competent adult representing himself or herself to be a
18 relative responsible for the health care of such minor patient or a
19 competent adult who has signed and dated a declaration under penalty
20 of perjury pursuant to chapter 5.50 RCW stating that the adult person
21 is a relative responsible for the health care of the minor patient.
22 Such declaration shall be effective for up to six months from the
23 date of the declaration.

24 (b) (i) Informed consent for health care on behalf of a patient
25 who is under the age of majority and who is not otherwise authorized
26 to provide informed consent may be obtained from a school nurse,
27 school counselor, or homeless student liaison when:

28 (A) Consent is necessary for nonemergency, outpatient, primary
29 care services, including physical examinations, vision examinations
30 and eyeglasses, dental examinations, hearing examinations and hearing
31 aids, immunizations, treatments for illnesses and conditions, and
32 routine follow-up care customarily provided by a health care provider
33 in an outpatient setting, excluding elective surgeries;

34 (B) The minor patient meets the definition of a "homeless child
35 or youth" under the federal McKinney-Vento homeless education
36 assistance improvements act of 2001, P.L. 107-110, January 8, 2002,
37 115 Stat. 2005; and

38 (C) The minor patient is not under the supervision or control of
39 a parent, custodian, or legal guardian, and is not in the care and
40 custody of the department of social and health services.

1 (ii) A person authorized to consent to care under this subsection
2 (2)(b) and the person's employing school or school district are not
3 subject to administrative sanctions or civil damages resulting from
4 the consent or nonconsent for care, any care, or payment for any
5 care, rendered pursuant to this section. Nothing in this section
6 prevents a health care facility or a health care provider from
7 seeking reimbursement from other sources for care provided to a minor
8 patient under this subsection (2)(b).

9 (iii) Upon request by a health care facility or a health care
10 provider, a person authorized to consent to care under this
11 subsection (2)(b) must provide to the person rendering care a
12 declaration signed and dated under penalty of perjury pursuant to
13 chapter 5.50 RCW stating that the person is a school nurse, school
14 counselor, or homeless student liaison and that the minor patient
15 meets the elements under (b)(i) of this subsection. The declaration
16 must also include written notice of the exemption from liability
17 under (b)(ii) of this subsection.

18 (c) A health care provider may, but is not required to, rely on
19 the representations or declaration of a person claiming to be a
20 relative responsible for the care of the minor patient, under (a)(v)
21 of this subsection, or a person claiming to be authorized to consent
22 to the health care of the minor patient under (b) of this subsection,
23 if the health care provider does not have actual notice of the
24 falsity of any of the statements made by the person claiming to be a
25 relative responsible for the health care of the minor patient, or
26 person claiming to be authorized to consent to the health care of the
27 minor patient.

28 (d) A health care facility or a health care provider may, in its
29 discretion, require documentation of a person's claimed status as
30 being a relative responsible for the health care of the minor
31 patient, or a person claiming to be authorized to consent to the
32 health care of the minor patient under (b) of this subsection.
33 However, there is no obligation to require such documentation.

34 (e) The health care provider or health care facility where
35 services are rendered shall be immune from suit in any action, civil
36 or criminal, or from professional or other disciplinary action when
37 such reliance is based on a declaration signed under penalty of
38 perjury pursuant to chapter 5.50 RCW stating that the adult person is
39 a relative responsible for the health care of the minor patient under
40 (a)(v) of this subsection, or a person claiming to be authorized to

1 consent to the health care of the minor patient under (b) of this
2 subsection.

3 (3) For the purposes of this section, "health care," "health care
4 provider," and "health care facility" shall be defined as established
5 in RCW 70.02.010.

6 (4) A person who knowingly provides a false declaration under
7 this section shall be subject to criminal penalties under chapter
8 9A.72 RCW.

9 **Sec. 22.** RCW 71.34.755 and 2020 c 302 s 96 are each amended to
10 read as follows:

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

13 (a) Assignment of a care coordinator;

14 (b) An intake evaluation with the provider of the less
15 restrictive alternative treatment;

16 (c) A psychiatric evaluation;

17 (d) A schedule of regular contacts with the provider of the less
18 restrictive alternative treatment services for the duration of the
19 order;

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

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

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

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

28 (2) Less restrictive alternative treatment may include the
29 following additional services:

30 (a) Medication management;

31 (b) Psychotherapy;

32 (c) Nursing;

33 (d) Substance abuse counseling;

34 (e) Residential treatment; and

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

36 (3) If the minor was provided with involuntary medication during
37 the involuntary commitment period, the less restrictive alternative
38 treatment order may authorize the less restrictive alternative
39 treatment provider or its designee to administer involuntary

1 antipsychotic medication to the person if the provider has attempted
2 and failed to obtain the informed consent of the person and there is
3 a concurring medical opinion approving the medication by a
4 psychiatrist, physician assistant working with a supervising
5 psychiatrist, psychiatric advanced registered nurse practitioner, or
6 physician or physician assistant in consultation with an independent
7 mental health professional with prescribing authority.

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

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

19 (6) For the purpose of this section, "care coordinator" means a
20 clinical practitioner who coordinates the activities of less
21 restrictive alternative treatment. The care coordinator coordinates
22 activities with the designated crisis responders that are necessary
23 for enforcement and continuation of less restrictive alternative
24 treatment orders and is responsible for coordinating service
25 activities with other agencies and establishing and maintaining a
26 therapeutic relationship with the individual on a continuing basis.

27 NEW SECTION. **Sec. 23.** Section 2 of this act expires January 1,
28 2022.

29 NEW SECTION. **Sec. 24.** Section 3 of this act takes effect
30 January 1, 2022.

31 NEW SECTION. **Sec. 25.** Section 3 of this act expires July 1,
32 2022.

33 NEW SECTION. **Sec. 26.** Section 4 of this act takes effect July
34 1, 2022.

1 NEW SECTION. **Sec. 27.** Section 21 of this act takes effect
2 January 1, 2022."

SSB 5370 - S AMD **479**
By Senator Keiser

3 On page 1, line 1 of the title, after "laws;" strike the
4 remainder of the title and insert "amending RCW 71.32.010, 71.32.020,
5 71.32.020, 71.32.030, 71.32.040, 71.32.050, 71.32.060, 71.32.070,
6 71.32.100, 71.32.110, 71.32.130, 71.32.170, 71.32.180, 71.32.210,
7 71.32.220, 71.32.250, 71.34.755, and 7.70.065; reenacting and
8 amending RCW 71.32.020, 71.32.140, and 71.32.260; adding a new
9 section to chapter 71.34 RCW; providing effective dates; and
10 providing expiration dates."

EFFECT: Clarifies that mental health advance directives do not undermine the right of a parent to seek a behavioral health evaluation and treatment for a nonconsenting adolescent using family-initiated treatment laws. Adds an agent designated to make decisions on behalf of the principal by a mental health advance directive to the priority list of persons who are authorized to provide informed consent for health care on behalf on another.

--- END ---