
SENATE BILL 5370

State of Washington

67th Legislature

2021 Regular Session

By Senators Keiser, Dhingra, Saldaña, and Wilson, C.

Read first time 01/28/21. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to updating mental health advance directive laws;
2 amending RCW 71.32.010, 71.32.020, 71.32.020, 71.32.030, 71.32.040,
3 71.32.050, 71.32.060, 71.32.070, 71.32.100, 71.32.110, 71.32.130,
4 71.32.170, 71.32.180, 71.32.210, 71.32.220, 71.32.250, and 71.34.755;
5 reenacting and amending RCW 71.32.020, 71.32.140, and 71.32.260;
6 providing effective dates; and providing expiration dates.

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

8 **Sec. 1.** RCW 71.32.010 and 2003 c 283 s 1 are each amended to
9 read as follows:

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

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

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

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

20 (d) (~~Mentally ill individuals~~) Individuals with behavioral
21 health disorders need some method of expressing their instructions

1 and preferences for treatment and providing advance consent to or
2 refusal of treatment.

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

8 (~~(+2)~~) (3) The legislature further finds that:

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

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

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

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

19 Consequently, the legislature affirms that, pursuant to other
20 provisions of law, a validly executed mental health advance directive
21 is to be respected by agents, guardians, and other surrogate decision
22 makers, health care providers, professional persons, and health care
23 facilities.

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

26 The definitions in this section apply throughout this chapter
27 unless the context clearly requires otherwise.

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

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

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

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

35 (5) "Health care facility" means a hospital, as defined in RCW
36 70.41.020; an institution, as defined in RCW 71.12.455; a state
37 hospital, as defined in RCW 72.23.010; a nursing home, as defined in
38 RCW 18.51.010; or a clinic that is part of a community mental health
39 service delivery system, as defined in RCW 71.24.025.

1 (6) "Health care provider" means an osteopathic physician or
2 osteopathic physician's assistant licensed under chapter 18.57 or
3 18.57A RCW, a physician or physician's assistant licensed under
4 chapter 18.71 or 18.71A RCW, or an advanced registered nurse
5 practitioner licensed under RCW 18.79.050.

6 (7) "Incapacitated" means an adult who: (a) Is unable to
7 understand the nature, character, and anticipated results of proposed
8 treatment or alternatives; understand the recognized serious possible
9 risks, complications, and anticipated benefits in treatments and
10 alternatives, including nontreatment; or communicate his or her
11 understanding or treatment decisions; or (b) has been found to be
12 incompetent pursuant to RCW 11.88.010(1)(e).

13 (8) "Informed consent" means consent that is given after ((the))
14 a person: (a) Is provided with a description of the nature,
15 character, and anticipated results of proposed treatments and
16 alternatives, and the recognized serious possible risks,
17 complications, and anticipated benefits in the treatments and
18 alternatives, including nontreatment, in language that the person can
19 reasonably be expected to understand; or (b) elects not to be given
20 the information included in (a) of this subsection.

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

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

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

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

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

38 (14) "Professional person" means a mental health professional and
39 shall also mean a physician, registered nurse, and such others as may

1 be defined by rules adopted by the secretary pursuant to the
2 provisions of chapter 71.05 RCW.

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

6 (16) "Behavioral health disorder" means a mental disorder, a
7 substance use disorder, or a co-occurring mental health and substance
8 use disorder.

9 (17) "Substance use disorder" means a cluster of cognitive,
10 behavioral, and physiological symptoms indicating that an individual
11 continues using the substance despite significant substance-related
12 problems. The diagnosis of a substance use disorder is based on a
13 pathological pattern of behaviors related to the use of the
14 substances.

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

17 The definitions in this section apply throughout this chapter
18 unless the context clearly requires otherwise.

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

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

23 (3) "Capacity" means that an adult has not been found to be
24 incapacitated pursuant to this chapter or subject to a guardianship
25 under RCW 11.130.265.

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

27 (5) "Health care facility" means a hospital, as defined in RCW
28 70.41.020; an institution, as defined in RCW 71.12.455; a state
29 hospital, as defined in RCW 72.23.010; a nursing home, as defined in
30 RCW 18.51.010; or a clinic that is part of a community (~~(mental)~~)
31 behavioral health service delivery system, as defined in RCW
32 71.24.025.

33 (6) "Health care provider" means an osteopathic physician or
34 osteopathic physician's assistant licensed under chapter 18.57 or
35 18.57A RCW, a physician or physician's assistant licensed under
36 chapter 18.71 or 18.71A RCW, or an advanced registered nurse
37 practitioner licensed under RCW 18.79.050.

38 (7) "Incapacitated" means an adult who: (a) Is unable to
39 understand the nature, character, and anticipated results of proposed

1 treatment or alternatives; understand the recognized serious possible
2 risks, complications, and anticipated benefits in treatments and
3 alternatives, including nontreatment; or communicate his or her
4 understanding or treatment decisions; or (b) has been found to be
5 subject to a guardianship under RCW 11.130.265.

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

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

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

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

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

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

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

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

38 (16) "Behavioral health disorder" means a mental disorder, a
39 substance use disorder, or a co-occurring mental health and substance
40 use disorder.

1 (17) "Substance use disorder" means a cluster of cognitive,
2 behavioral, and physiological symptoms indicating that an individual
3 continues using the substance despite significant substance-related
4 problems. The diagnosis of a substance use disorder is based on a
5 pathological pattern of behaviors related to the use of the
6 substances.

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

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

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

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

15 (3) "Capacity" means that an adult has not been found to be
16 incapacitated pursuant to this chapter or subject to a guardianship
17 under RCW 11.130.265.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (2) The definitions of mental disorder, behavioral health
4 disorder, mental health professional, and professional person are to
5 be construed to be consistent with those terms as they are defined in
6 RCW 71.05.020.

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

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

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

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

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

23 (3) A directive may include any provision relating to (~~mental~~)
24 behavioral health treatment or the care of the principal or the
25 principal's personal affairs. Without limitation, a directive may
26 include:

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

29 (b) Consent to specific types of (~~mental~~) behavioral health
30 treatment;

31 (c) Refusal to consent to specific types of (~~mental~~) behavioral
32 health treatment;

33 (d) Consent to admission to and retention in a facility for
34 (~~mental~~) behavioral health treatment for up to (~~fourteen~~) 14
35 days;

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

1 (f) Suggested alternative responses that may supplement or be in
2 lieu of direct ((mental)) behavioral health treatment, such as
3 treatment approaches from other providers;

4 (g) Appointment of an agent pursuant to chapter 11.125 RCW to
5 make ((mental)) behavioral health treatment decisions on the
6 principal's behalf, including authorizing the agent to provide
7 consent on the principal's behalf to voluntary admission to inpatient
8 ((mental)) behavioral health treatment; and

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

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

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

18 (1) A directive shall:

19 (a) Be in writing;

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

22 (c) Be dated and signed by the principal or at the principal's
23 direction in the principal's presence if the principal is unable to
24 sign;

25 (d) Designate whether the principal wishes to be able to revoke
26 the directive during any period of incapacity or wishes to be unable
27 to revoke the directive during any period of incapacity; and

28 (e) ((Be)) Have the signature acknowledged before a notary public
29 or other individual authorized by law to take acknowledgments, or be
30 witnessed in writing by at least two adults, each of whom shall
31 declare that he or she personally knows the principal, was present
32 when the principal dated and signed the directive, and that the
33 principal did not appear to be incapacitated or acting under fraud,
34 undue influence, or duress.

35 (2) A directive that includes the appointment of an agent
36 pursuant to a power of attorney under chapter 11.125 RCW shall
37 contain the words "This power of attorney shall not be affected by
38 the incapacity of the principal," or "This power of attorney shall
39 become effective upon the incapacity of the principal," or similar

1 words showing the principal's intent that the authority conferred
2 shall be exercisable notwithstanding the principal's incapacity.

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

6 (4) A directive may:

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

9 (b) Expire under its own terms.

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

12 A directive may not:

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

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

18 (3) Obligate any health care provider, professional person, or
19 health care facility to be responsible for the nontreatment personal
20 care of the principal or the principal's personal affairs outside the
21 scope of services the facility normally provides;

22 (4) Replace or supersede the provisions of any will or
23 testamentary document or supersede the provisions of intestate
24 succession;

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

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

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

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

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

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

1 (4) An agent may make decisions on behalf of the principal.
2 Unless the principal has revoked the directive, the decisions must be
3 consistent with the instructions and preferences the principal has
4 expressed in the directive, or if not expressed, as otherwise known
5 to the agent. If the principal's instructions or preferences are not
6 known, the agent shall make a decision he or she determines is in the
7 best interest of the principal.

8 ~~(5) ((Except to the extent the right is limited by the~~
9 ~~appointment or any federal or state law, the agent has the same right~~
10 ~~as the principal to receive, review, and authorize the use and~~
11 ~~disclosure of the principal's health care information when the agent~~
12 ~~is acting on behalf of the principal and to the extent required for~~
13 ~~the agent to carry out his or her duties. This subsection shall be~~
14 ~~construed to be consistent with chapters 70.02, 70.24, 70.96A, 71.05,~~
15 ~~and 71.34 RCW, and with federal law regarding health care~~
16 ~~information.))~~ A person authorized to act as an agent during periods
17 when the principal is incapacitated may act as the principal's
18 personal representative pursuant to the health insurance portability
19 and accountability act, sections 1171 through 1179 of the social
20 security act, 42 U.S.C. Sec. 1320d, as amended, and applicable
21 regulations, to obtain access to the principal's health care
22 information and communicate with the principal's health care
23 provider.

24 (6) Unless otherwise provided in the appointment and agreed to in
25 writing by the agent, the agent is not, as a result of acting in the
26 capacity of agent, personally liable for the cost of treatment
27 provided to the principal.

28 (7) An agent may resign or withdraw at any time by giving written
29 notice to the principal. The agent must also give written notice to
30 any health care provider, professional person, or health care
31 facility providing treatment to the principal. The resignation or
32 withdrawal is effective upon receipt unless otherwise specified in
33 the resignation or withdrawal.

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

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

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

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

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

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

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

12 (iii) Two health care providers.

13 (b) One of the persons making the determination under (a) (ii) or
14 (iii) of this subsection must be a psychiatrist, physician assistant
15 working with a supervising psychiatrist, psychologist, substance use
16 disorder professional, or a psychiatric advanced registered nurse
17 practitioner.

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

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

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

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

27 (5) (a) When a court makes a determination whether a principal has
28 capacity, the court shall, at a minimum, be informed by the testimony
29 of one mental health professional or substance use disorder
30 professional familiar with the principal and shall, except for good
31 cause, give the principal an opportunity to appear in court prior to
32 the court making its determination.

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

35 (6) When a court has made a determination regarding a principal's
36 capacity and there is a subsequent change in the principal's
37 condition, subsequent determinations whether the principal is
38 incapacitated may be made in accordance with any of the provisions of
39 subsection (2) of this section.

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

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

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

16 (ii) When an incapacitated principal has been admitted to and
17 remains in inpatient treatment for more than (~~seventy-two~~) 120
18 hours pursuant to the provisions of his or her directive, the
19 principal's capacity must be reevaluated when there has been a change
20 in his or her condition that indicates that he or she appears to have
21 regained capacity.

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

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

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

34 (b) When a principal who does not have an agent for (~~mental~~)
35 behavioral health treatment decisions is being treated in an
36 inpatient facility and requests a determination or redetermination of
37 capacity, the mental health professional or health care provider must
38 complete the determination or, if the principal is seeking a
39 determination from a court, must make reasonable efforts to notify

1 the person authorized to make decisions for the principal under RCW
2 7.70.065 of the principal's request.

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

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

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

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

15 (1) A principal who:

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

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

21 (c) At the time of admission to inpatient treatment, refuses to
22 be admitted,
23 may only be admitted into inpatient (~~mental~~) behavioral health
24 treatment under subsection (2) of this section.

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

30 (a) Evaluates the principal's mental condition, including a
31 review of reasonably available psychiatric and psychological history,
32 diagnosis, and treatment needs, and determines, in conjunction with
33 another health care provider (~~or~~), mental health professional, or
34 substance use disorder professional, that the principal is
35 incapacitated;

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

38 (c) Makes a written determination that the principal needs an
39 inpatient evaluation or is in need of inpatient treatment and that

1 the evaluation or treatment cannot be accomplished in a less
2 restrictive setting; and

3 (d) Documents in the principal's medical record a summary of the
4 physician's, physician assistant's, or psychiatric advanced
5 registered nurse practitioner's findings and recommendations for
6 treatment or evaluation.

7 (3) In the event the admitting physician is not a psychiatrist,
8 the admitting physician assistant is not supervised by a
9 psychiatrist, or the advanced registered nurse practitioner is not a
10 psychiatric advanced registered nurse practitioner, the principal
11 shall receive a complete (~~(psychological)~~) behavioral health
12 assessment by a mental health professional or substance use disorder
13 professional within (~~(twenty-four)~~) 24 hours of admission to
14 determine the continued need for inpatient evaluation or treatment.

15 (4) (a) If it is determined that the principal has capacity, then
16 the principal may only be admitted to, or remain in, inpatient
17 treatment if he or she consents at the time or is detained under the
18 involuntary treatment provisions of chapter 71.05 or 71.34 RCW.

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

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

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

36 (b) Notwithstanding RCW 71.05.050 regarding consent to inpatient
37 treatment for a specified length of time, the choices an
38 incapacitated principal expressed in his or her directive shall
39 control, provided, however, that a principal who takes action
40 demonstrating a desire to be discharged, in addition to making

1 statements requesting to be discharged, shall be discharged, and no
2 principal shall be restrained in any way in order to prevent his or
3 her discharge. Nothing in this subsection shall be construed to
4 prevent detention and evaluation for civil commitment under chapter
5 71.05 RCW.

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

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

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

17 (2) A provider is not subject to civil liability or sanctions for
18 unprofessional conduct under the uniform disciplinary act, chapter
19 18.130 RCW, when in good faith and without negligence:

20 (a) The provider provides treatment to a principal in the absence
21 of actual knowledge of the existence of a directive, or provides
22 treatment pursuant to a directive in the absence of actual knowledge
23 of the revocation of the directive;

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

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

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

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

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

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

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

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

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

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

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

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

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

23 A person shall not be required to execute or to refrain from
24 executing a directive, nor shall the existence of a directive be used
25 as a criterion for insurance, as a condition for receiving ((~~mental~~))
26 behavioral or physical health services, or as a condition of
27 admission to or discharge from a health care facility or long-term
28 care facility.

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

31 (1) If a principal who is a resident of a long-term care facility
32 is admitted to inpatient ((~~mental~~)) behavioral health treatment
33 pursuant to his or her directive, the principal shall be allowed to
34 be readmitted to the same long-term care facility as if his or her
35 inpatient admission had been for a physical condition on the same
36 basis that the principal would be readmitted under state or federal
37 statute or rule when:

1 (a) The treating facility's professional staff determine that
2 inpatient (~~mental~~) behavioral health treatment is no longer
3 medically necessary for the resident. The determination shall be made
4 in writing by a psychiatrist, physician assistant working with a
5 supervising psychiatrist, or a psychiatric advanced registered nurse
6 practitioner, or (i) one physician and a mental health professional
7 or substance use disorder professional; (ii) one physician assistant
8 and a mental health professional or substance use disorder
9 professional; or (iii) one psychiatric advanced registered nurse
10 practitioner and a mental health professional or substance use
11 disorder professional; or

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

14 (2)(a) If the long-term care facility does not have a bed
15 available at the time of discharge, the treating facility may
16 discharge the resident, in consultation with the resident and agent
17 if any, and in accordance with a medically appropriate discharge
18 plan, to another long-term care facility.

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

23 (c) This section does not restrict the right of the resident to
24 an earlier release from the inpatient treatment facility. This
25 section does not restrict the right of a long-term care facility to
26 initiate transfer or discharge of a resident who is readmitted
27 pursuant to this section, provided that the facility has complied
28 with the laws governing the transfer or discharge of a resident.

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

33 **Sec. 19.** RCW 71.32.260 and 2016 c 209 s 413 and 2016 c 155 s 16
34 are each reenacted and amended to read as follows:

35 The directive shall be in substantially the following form:

36 ~~((Mental Health Advance Directive~~

37 ~~NOTICE TO PERSONS~~

38 ~~CREATING A MENTAL HEALTH ADVANCE DIRECTIVE~~

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

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

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

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

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

8 (2) You have the right to appoint a person as your agent to make treatment decisions for you. You must notify your agent
9 that you have appointed him or her as an agent. The person you appoint has a duty to act consistently with your wishes
10 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.
11 Your agent has the right to withdraw from the appointment at any time.

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

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

18 **~~YOU MAY NOT REVOKE THIS DIRECTIVE WHEN YOU HAVE BEEN FOUND TO BE~~**
19 **~~INCAPACITATED UNLESS YOU HAVE SPECIFICALLY STATED IN THIS DIRECTIVE THAT~~**
20 **~~YOU WANT IT TO BE REVOCABLE WHEN YOU ARE INCAPACITATED.~~**

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

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

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

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

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

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

31
32 **PART I.**

33 **STATEMENT OF INTENT TO CREATE A**
34 **MENTAL HEALTH ADVANCE DIRECTIVE**

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

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

9 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
10 revoke this directive if a court, two health care providers, or one mental health professional and one health care provider
11 find that I am an incapacitated person, unless, when I executed this directive, I chose to be able to revoke this directive
12 while incapacitated.

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

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

18
19 **PART II.**

20 **WHEN THIS DIRECTIVE IS EFFECTIVE**

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

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

23 Immediately upon my signing of this directive.

24 If I become incapacitated.

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

26
27 **PART III.**

28 **DURATION OF THIS DIRECTIVE**

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

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

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

32 Automatically expire years from the date it was created.

33
34 **PART IV.**

35 **WHEN I MAY REVOKE THIS DIRECTIVE**

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

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

2 Only when I have capacity.

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

6 Even if I am incapacitated.

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

10
11 **PART V.**

12 **PREFERENCES AND INSTRUCTIONS ABOUT TREATMENT, FACILITIES, AND PHYSICIANS [;**
13 **PHYSICIAN ASSISTANTS,] OR PSYCHIATRIC ADVANCED REGISTERED NURSE PRACTITIONERS**

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

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

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

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

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

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

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

24 Name Profession Contact information:.....

25 Name Profession Contact information:.....

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

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

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

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

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

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

1I am willing to try any other medications my outpatient doctor, physician assistant, or psychiatric advanced
2 registered nurse practitioner recommends

3I do not want to try any other medications.

4 **Medication Allergies**

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

6

7 **Other Medication Preferences or Instructions**

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

9

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

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

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

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

16 Calling someone or having someone call me when needed:

17 Name: Telephone:

18 Staying overnight with someone

19 Name: Telephone:

20 Having a mental health service provider come to see me

21 Going to a crisis triage center or emergency room

22 Staying overnight at a crisis respite (temporary) bed

23 Seeing a service provider for help with psychiatric medications

24 Other, specify:

25 **Authority to Consent to Inpatient Treatment**

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

28 (Sign one):

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

31 _____

32 (Signature)

33 or

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

3

4 (Signature)

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

6

7 (Signature)

8 **Hospital Preferences and Instructions**

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

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

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

12 I would like the interventions below to be tried before use of seclusion or restraint is considered

13 (*initial all that apply*):

14 "Talk me down" one-on-one

15 More medication

16 Time out/privacy

17 Show of authority/force

18 Shift my attention to something else

19 Set firm limits on my behavior

20 Help me to discuss/vent feelings

21 Decrease stimulation

22 Offer to have neutral person settle dispute

23 Other, specify

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

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

28 Seclusion

29 Seclusion and physical restraint (combined)

30 Medication by injection

31 Medication in pill or liquid form

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

6 **G. Preferences and Instructions About Electroconvulsive Therapy**
7 **(ECT or Shock Therapy)**

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

9I do not consent, nor authorize my agent (if appointed) to consent, to the administration of electroconvulsive
10 therapy

11 _____
12 (Signature)

13I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy

14 _____
15 (Signature)

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

18 _____
19 (Signature)

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

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

22 Name:

23 Name:

24 Name:

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

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

27 Other instructions about my mental health care:

28 In case of emergency, please contact:

29 Name: Address:

30 Work telephone: Home telephone:

31 Physician, Physician Assistant, or Psychiatric Address:

32 Advanced Registered Nurse Practitioner:

33 Telephone:

34 The following may help me to avoid a hospitalization:

1 I generally react to being hospitalized as follows:

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

3 **J. Refusal of Treatment**

4 I do not consent to any mental health treatment.

5

6 (Signature)

7

8 **PART VI.**

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

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

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

18 **A. Designation of an Agent**

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

21 Name: Address:

22 Work telephone: Home telephone:

23 Relationship:

24 **B. Designation of Alternate Agent**

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

28 Name: Address:

29 Work telephone: Home telephone:

30 Relationship:

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

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

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

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

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

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

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

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

6 Name: Address:
7 Work telephone: Home telephone:
8 Relationship:

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

12

13 (Signature required if nomination is made)

14
15 **PART VII.**
16 **OTHER DOCUMENTS**

17 *(Initial all that apply)*

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

20 Health care power of attorney (chapter 11.125 RCW)

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

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

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

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

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

30 **A. Who Should Be Notified**

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

32 Name: Address:
33 Day telephone: Evening telephone:
34 Name: Address:

1 Day telephone: Evening telephone:

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

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

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

6
7 **PART IX.**
8 **SIGNATURE**

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

13 Signature: Date:

14 Printed Name:

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

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

29 Witness 1: Signature: Date:

30 Printed Name:

31 Telephone: Address:

32 Witness 2: Signature: Date:

33 Printed Name:

34 Telephone: Address:

1
2 **PART X.**
3 **RECORD OF DIRECTIVE**

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

5 **DO NOT FILL OUT PART XI UNLESS YOU INTEND TO REVOKE**
6 **THIS DIRECTIVE IN PART OR IN WHOLE**

7
8 **PART XI.**
9 **REVOCAION OF THIS DIRECTIVE**

10 *(Initial any that apply):*

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

12 I am revoking all of this directive.

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

15 Signature: Date:

16 Printed Name:

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

19 Mental Health Advance Directive of (client name)

20 With Appointment of (agent name) as

21 Agent for Mental Health Decisions

22
23 **PART I.**
24 **STATEMENT OF INTENT TO CREATE A**
25 **MENTAL HEALTH ADVANCE DIRECTIVE**

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

29 **PART II.**
30 **MY CARE NEEDS – WHAT WORKS FOR ME**

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

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

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

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

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

1 **PART III.**

2 **WHEN THIS DIRECTIVE IS EFFECTIVE**

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

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

5 Immediately upon my signing of this directive.

6 If I become incapacitated.

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

8 **PART IV.**

9 **DURATION OF THIS DIRECTIVE**

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

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

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

13 Automatically expire years from the date it was created.

14 **PART V.**

15 **WHEN I MAY REVOKE THIS DIRECTIVE**

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

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

18 Only when I have capacity.

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

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

22 Even if I am incapacitated.

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

26 **PART VI.**

27 **PREFERENCES AND INSTRUCTIONS ABOUT TREATMENT, FACILITIES, AND PHYSICIANS**

28 **A. Preferences and Instructions About Physician(s) to be Involved in My Treatment**

29 I would like the physician(s) named below to be involved in my treatment decisions:

30 I do not wish to be treated by

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

32 I am receiving other treatment or care from providers who I feel have an impact on my mental health care. I would like the
33 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 recommends.

9 I am willing to try any other medications my outpatient doctor recommends.

10 I do not want to try any other medications.

11 Medication Allergies.

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

13 Other Medication Preferences or Instructions

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

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

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

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

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

21 Calling someone or having someone call me when needed.

22 Name:..... Telephone/text:..... Email:.....

23 Staying overnight with someone

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

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

26 Going to a crisis triage center or emergency room.

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

28 Seeing a service provider for help with psychiatric medications.

29 Other, specify:

30 Authority to Consent to Inpatient Treatment

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

33 (Sign one):

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

35

36 (Signature)

37 Or

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

3 _____
4 (Signature)

5 I do not consent, or authorize my agent (if appointed) to consent, to inpatient treatment
6 _____
7 (Signature)

8 Hospital Preferences and Instructions

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

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

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

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

- 13 "Talk me down" one-on-one
- 14 More medication
- 15 Time out/privacy
- 16 Show of authority/force
- 17 Shift my attention to something else
- 18 Set firm limits on my behavior
- 19 Help me to discuss/vent feelings
- 20 Decrease stimulation
- 21 Offer to have neutral person settle dispute
- 22 Other:

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

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

- 27 Seclusion
- 28 Seclusion and physical restraint (combined)
- 29 Medication by injection
- 30 Medication in pill or liquid form

31 In the event that my attending physician decides to use medication in response to an emergency situation after due
32 consideration of my preferences and instructions for emergency treatments stated above, I expect the choice of medication
33 to reflect any preferences and instructions I have expressed in Part VI C. of this form. The preferences and instructions I
34 express in this section regarding medication in emergency situations do not constitute consent to use of the medication for
35 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: Address:

26 Telephone: Email:

27 The following may help me to avoid a hospitalization:

28 I generally react to being hospitalized as follows:

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

30 **J. Refusal of Treatment**

31 I do not consent to any mental health treatment.

32

33 (Signature)

34 **PART VII.**

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

36 (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
9 HIPAA Release Authority. In addition to the other powers granted by this document, I grant to my Attorney-in-Fact the
10 power and authority to serve as my personal representative for all purposes under the Health Insurance Portability and
11 Accountability Act (HIPAA) of 1996, as amended from time to time, and its regulations. My Attorney-in-Fact will serve as
12 my "HIPAA personal representative" and will exercise this authority at any time that my Attorney-in-Fact is exercising
13 authority under this document.

14 **A. Designation of an Agent**

15 Name: Address:
16 Work phone: Home/cell phone:
17 Relationship: Email:

18 **B. Designation of Alternate Agent**

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

22 Name: Address:
23 Work phone: Home phone:
24 Relationship: Email:

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

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

28 **D. 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** my
30 then-serving agent (or name someone else) **as my guardian**:

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

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

1
2
3 **PART VIII.**
4 **OTHER DOCUMENTS**

5 *(Initial all that apply)*

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

8 Health care power of attorney (chapter 11.125 RCW)

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

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

12 **PART IX.**
13 **NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS**

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

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

17 **A. Who Should Be Notified**

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

19 Name: Address:

20 Day telephone: Evening telephone:

21 Name: Address:

22 Day telephone: Evening telephone:

23 Name: Address:

24 Day telephone: Evening telephone:

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

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

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

29 **PART X.**
30 **SIGNATURE**

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

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

2 Signature:

3
4 STATE OF WASHINGTON)

5) ss.

6 COUNTY OF)

7
8 I certify that I know or have satisfactory evidence that (client name) is
9 the person who appeared before me, and said person acknowledged that
10 he or she signed this Durable Power of Attorney and acknowledged it to
11 be his or her free and voluntary act for the uses and purposes mentioned
12 in this instrument.

13 SUBSCRIBED and SWORN to before me this day of,
14 20. . . .

15
16
17 SIGNATURE OF NOTARY

18
19
20 PRINT NAME OF NOTARY

21
22 NOTARY PUBLIC for the State of Washington at

23 My commission expires

24 OR have two witnesses:

Name:

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

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

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

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

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

36 (E) An incapacitated person;

37 (F) A person who would benefit financially if the principal undergoes mental health treatment; or

1 (G) A minor.

2 Witness 1 Signature: Date:

3 Printed Name: Address:

4 Telephone:

5 Witness 2 Signature: Date:

6 Printed Name: Address:

7 Telephone:

8 **PART XI.**

9 **RECORD OF DIRECTIVE**

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

11
12 Name: Address:

13 Day telephone: Evening telephone:

14 Name: Address:

15 Day telephone: Evening telephone:

16
17 DO NOT FILL OUT PART XII UNLESS YOU INTEND TO REVOKE

18 THIS DIRECTIVE IN PART OR IN WHOLE

19 **PART XII.**

20 **REVOCAION OF THIS DIRECTIVE**

21 (Initial any that apply):

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

23 Date:

24 I am revoking all of this directive.

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

27
28

29 (Signature)

30 Printed Name:

31 **DO NOT SIGN THIS PART UNLESS YOU INTEND TO REVOKE THIS**

32 **DIRECTIVE IN PART OR IN WHOLE**

1 **Sec. 20.** RCW 71.34.755 and 2020 c 302 s 96 are each amended to
2 read as follows:

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

5 (a) Assignment of a care coordinator;

6 (b) An intake evaluation with the provider of the less
7 restrictive alternative treatment;

8 (c) A psychiatric evaluation;

9 (d) A schedule of regular contacts with the provider of the less
10 restrictive alternative treatment services for the duration of the
11 order;

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

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

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

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

20 (2) Less restrictive alternative treatment may include the
21 following additional services:

22 (a) Medication management;

23 (b) Psychotherapy;

24 (c) Nursing;

25 (d) Substance abuse counseling;

26 (e) Residential treatment; and

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

28 (3) If the minor was provided with involuntary medication during
29 the involuntary commitment period, the less restrictive alternative
30 treatment order may authorize the less restrictive alternative
31 treatment provider or its designee to administer involuntary
32 antipsychotic medication to the person if the provider has attempted
33 and failed to obtain the informed consent of the person and there is
34 a concurring medical opinion approving the medication by a
35 psychiatrist, physician assistant working with a supervising
36 psychiatrist, psychiatric advanced registered nurse practitioner, or
37 physician or physician assistant in consultation with an independent
38 mental health professional with prescribing authority.

39 (4) Less restrictive alternative treatment must be administered
40 by a provider that is certified or licensed to provide or coordinate

1 the full scope of services required under the less restrictive
2 alternative order and that has agreed to assume this responsibility.

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

10 (6) For the purpose of this section, "care coordinator" means a
11 clinical practitioner who coordinates the activities of less
12 restrictive alternative treatment. The care coordinator coordinates
13 activities with the designated crisis responders that are necessary
14 for enforcement and continuation of less restrictive alternative
15 treatment orders and is responsible for coordinating service
16 activities with other agencies and establishing and maintaining a
17 therapeutic relationship with the individual on a continuing basis.

18 NEW SECTION. **Sec. 21.** Section 2 of this act expires January 1,
19 2022.

20 NEW SECTION. **Sec. 22.** Section 3 of this act takes effect
21 January 1, 2022.

22 NEW SECTION. **Sec. 23.** Section 3 of this act expires July 1,
23 2022.

24 NEW SECTION. **Sec. 24.** Section 4 of this act takes effect July
25 1, 2022.

--- END ---