

HOUSE BILL REPORT

2SSB 5660

As Reported by House Committee On:

Civil Rights & Judiciary
Appropriations

Title: An act relating to establishing a mental health advance directive effective implementation work group.

Brief Description: Establishing a mental health advance directive effective implementation work group.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Boehnke, Dhingra, Saldaña, Wellman and Wilson, C.).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/20/24, 2/21/24 [DP];
Appropriations: 2/23/24, 2/26/24 [DP].

Brief Summary of Second Substitute Bill

- Directs the Health Care Authority to convene a work group for the purpose of creating recommendations for effective implementation of mental health advance directives.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Taylor, Chair; Farivar, Vice Chair; Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Cheney, Entenman, Goodman, Peterson, Thai and Walen.

Staff: Benjamin Ratcliff (786-7291) and Edie Adams (786-7180).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

A mental health advanced directive is a document that declares a person's preferences regarding the person's behavioral health treatment in the event of a temporary period of incapacity due to a behavioral health disorder. A mental health advanced directive may include:

- the person's preferences and instructions for behavioral health treatment;
- consent to specific types of behavioral health treatment;
- refusal to consent to specific types of behavioral health treatment;
- consent to admission to and retention in a facility for behavioral health treatment for up to 14 days; or
- appointment of an agent to make behavioral health treatment decisions on behalf of a person, including empowering that agent to consent to voluntary behavioral health treatment on behalf of a person.

A mental health advanced directive must be in writing and be acknowledged before a notary public or signed by two witnesses who know the person and attest that the person does not appear to be acting under incapacity, fraud, undue influence, or duress. A mental health advanced directive may be revoked at any time except during a period of incapacity unless the terms of the directive allow revocation during periods of incapacity.

A person is deemed incapacitated for purposes of a mental health advanced directive when he or she is:

- unable to understand the nature, character, and anticipated results of proposed treatment or alternatives;
- unable to understand the recognized serious possible risks, complications, and anticipated benefits in treatments and alternatives, including nontreatment;
- unable to communicate his or her understanding or treatment decisions; or
- subject to a guardianship.

A health care provider must act in accordance with the terms of a mental health advanced directive to the fullest extent possible, unless compliance would violate an accepted standard of care, the requested treatment is not available, or there is another exception. Health care providers who provide treatment in accordance with a mental health advanced directive or other specified standards are protected from liability. A standard form for mental health advanced directives is provided for in state law.

Summary of Bill:

The Health Care Authority (HCA) must convene a Mental Health Advance Directive Effective Implementation Work Group (Work Group) to develop recommendations for the effective implementation of mental health advance directives. The Work Group must have two subgroups. The first subgroup is responsible for document storage, and must recommend a method for the creation, maintenance, storage, and sharing of mental health advanced directives. The document storage subgroup must also develop recommendations

regarding the creation and implementation of a statewide mental health advance directive repository. The second subgroup is responsible for the training for document creation and utilization, and must develop training toolkits and program testing of the training toolkits and engagement strategies in two pilot locations.

The Work Group's membership must be representative of individuals who use mental health advanced directives and behavioral health services, and must include representatives of 19 named constituencies, including:

- the peer advocacy community;
- individuals and families with lived experience of behavioral health crises;
- Chad's Legacy Project;
- licensed or certified behavioral health agencies;
- the Washington State Department of Veterans Affairs;
- Black, Indigenous, and persons of color;
- LGBTQI+ community members;
- the Behavioral Health and Recovery Division of the HCA;
- the Washington State Medical Association;
- the Washington State Hospital Association;
- the Washington State Psychiatric Association;
- the National Alliance on Mental Illness Washington;
- the Washington Council for Behavioral Health;
- emergency services responders;
- designated crisis responders;
- law enforcement or a member of a coresponder program;
- emergency departments;
- inpatient hospitals;
- electronic health record vendors;
- an expert in technical repositories;
- 988 behavioral health crisis response and suicide prevention call centers; and
- individuals with expertise in health care ethics and law.

The Work Group must report its findings and recommendations to the Governor and the Legislature by December 1, 2025.

The state may provide stipends to low-income members or those who have lived experiences if the HCA determines their participation is desirable to promote statutory equity goals.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 20, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the

bill is passed.

Staff Summary of Public Testimony:

(In support) This bill represents a great first step to allow individuals with behavioral health disorders to have input into their care when a crisis occurs and help them to build better lives. Mental health advocates are hopeful to continue this important work of providing more comprehensive mental health resources next session as well.

(Opposed) None.

Persons Testifying: Michael Transue, National Alliance on Mental Illness.

Persons Signed In To Testify But Not Testifying: Todd Crooks, Chad's Legacy Project; and Gail Kogle.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 29 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Berg, Callan, Chopp, Davis, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Stokesbary, Stonier, Tharinger and Wilcox.

Staff: Andy Toulon (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Civil Rights & Judiciary:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is a first step to allowing people with a behavioral health condition to provide input into their care for use at a later date. Convening the two work groups, one with regard to document storage and one with regard to training for document creation and

utilization, is a good approach.

Despite being law since 2003, mental health advance directives remain woefully underutilized. Over the past three years, a work group of individuals and organizations across the state has strived to identify the best path to a well utilized tool. This legislation marks a significant milestone, offering the first real opportunity in two decades to amplify patients' voices in their care journey by adding a new framework of training and ease of document access. This bill champions the principle of self-determination in health care and affirms individuals' rights to be active participants in their mental health treatment decisions.

(Opposed) None.

Persons Testifying: Todd Crooks, Chad's Legacy Project; and Michael Transue, National Alliance on Mental Illness.

Persons Signed In To Testify But Not Testifying: None.