

## Washington PAD Statute

### RCW 71.32.010

#### Legislative declaration -- Findings.

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

- (a) Some mental illnesses cause individuals to fluctuate between capacity and incapacity;
- (b) During periods when an individual's capacity is unclear, the individual may be unable to access needed treatment because the individual may be unable to give informed consent;
- (c) Early treatment may prevent an individual from becoming so ill that involuntary treatment is necessary; and
- (d) Mentally ill individuals need some method of expressing their instructions and preferences for treatment and providing advance consent to or refusal of treatment.

The legislature recognizes that a mental health advance directive can be an essential tool for an individual to express his or her choices at a time when the effects of mental illness have not deprived him or her of the power to express his or her instructions or preferences.

(2) The legislature further finds that:

- (a) A mental health advance directive must provide the individual with a full range of choices;
- (b) Mentally ill individuals have varying perspectives on whether they want to be able to revoke a directive during periods of incapacity;
- (c) For a mental health advance directive to be an effective tool, individuals must be able to choose how they want their directives treated during periods of incapacity; and
- (d) There must be clear standards so that treatment providers can readily discern an individual's treatment choices.

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

### RCW 71.32.020

#### Definitions.

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

- (1) "Adult" means any individual who has attained the age of majority or is an emancipated minor.
- (2) "Agent" has the same meaning as an attorney-in-fact or agent as provided in chapter [11.94](#) RCW.
- (3) "Capacity" means that an adult has not been found to be incapacitated pursuant to this chapter or RCW [11.88.010](#)(1)(e).
- (4) "Court" means a superior court under chapter [2.08](#) RCW.
- (5) "Health care facility" means a hospital, as defined in RCW [70.41.020](#); an institution, as defined in RCW [71.12.455](#); a state hospital, as defined in RCW [72.23.010](#); a nursing home, as defined in RCW [18.51.010](#); or a clinic that is part of a community mental health service delivery system, as defined in RCW [71.24.025](#).

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

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

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

(9) "Long-term care facility" has the same meaning as defined in RCW [43.190.020](#).

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

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

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

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

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

#### **RCW 71.32.030**

##### **Construction of definitions.**

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

(2) The definitions of mental disorder, mental health professional, and professional person are to be construed to be consistent with those terms as they are defined in RCW [71.05.020](#).

[2003 c 283 § 3.]

#### **RCW 71.32.040**

##### **Adult presumed to have capacity.**

For the purposes of this chapter, an adult is presumed to have capacity.

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**RCW 71.32.060****Execution of directive -- Elements -- Effective date -- Expiration.**

(1) A directive shall:

- (a) Be in writing;
- (b) Contain language that clearly indicates that the principal intends to create a directive;
- (c) Be dated and signed by the principal or at the principal's direction in the principal's presence if the principal is unable to sign;
- (d) Designate whether the principal wishes to be able to revoke the directive during any period of incapacity or wishes to be unable to revoke the directive during any period of incapacity; and
- (e) Be witnessed in writing by at least two adults, each of whom shall declare that he or she personally knows the principal, was present when the principal dated and signed the directive, and that the principal did not appear to be incapacitated or acting under fraud, undue influence, or duress.

(2) A directive that includes the appointment of an agent under chapter [11.94](#) RCW shall contain the words "This power of attorney shall not be affected by the incapacity of the principal," or "This power of attorney shall become effective upon the incapacity of the principal," or similar words showing the principal's intent that the authority conferred shall be exercisable notwithstanding the principal's incapacity.

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

(4) A directive may:

- (a) Be revoked, in whole or in part, pursuant to the provisions of RCW [71.32.080](#); or
- (b) Expire under its own terms.

**RCW 71.32.070****Prohibited elements.**

A directive may not:

- (1) Create an entitlement to mental health or medical treatment or supersede a determination of medical necessity;
- (2) Obligate any health care provider, professional person, or health care facility to pay the costs associated with the treatment requested;
- (3) Obligate any health care provider, professional person, or health care facility to be responsible for the nontreatment personal care of the principal or the principal's personal affairs outside the scope of services the facility normally provides;
- (4) Replace or supersede the provisions of any will or testamentary document or supersede the provisions of intestate succession;

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

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

**RCW 71.32.080**  
**Revocation -- Waiver.**

(1)(a) A principal with capacity may, by written statement by the principal or at the principal's direction in the principal's presence, revoke a directive in whole or in part.

(b) An incapacitated principal may revoke a directive only if he or she elected at the time of executing the directive to be able to revoke when incapacitated.

(2) The revocation need not follow any specific form so long as it is written and the intent of the principal can be discerned.

(3) The principal shall provide a copy of his or her written statement of revocation to his or her agent, if any, and to each health care provider, professional person, or health care facility that received a copy of the directive from the principal.

(4) The written statement of revocation is effective:

(a) As to a health care provider, professional person, or health care facility, upon receipt. The professional person, health care provider, or health care facility, or persons acting under their direction shall make the statement of revocation part of the principal's medical record; and

(b) As to the principal's agent, upon receipt. The principal's agent shall notify the principal's health care provider, professional person, or health care facility of the revocation and provide them with a copy of the written statement of revocation.

(5) A directive also may:

(a) Be revoked, in whole or in part, expressly or to the extent of any inconsistency, by a subsequent directive; or

(b) Be superseded or revoked by a court order, including any order entered in a criminal matter. A directive may be superseded by a court order regardless of whether the order contains an explicit reference to the directive. To the extent a directive is not in conflict with a court order, the directive remains effective, subject to the provisions of RCW [71.32.150](#). A directive shall not be interpreted in a manner that interferes with: (i) Incarceration or detention by the department of corrections, in a city or county jail, or by the department of social and health services; or (ii) treatment of a principal who is subject to involuntary treatment pursuant to chapter [10.77](#), [70.96A](#), [71.05](#), [71.09](#), or [71.34](#) RCW.

(6) A directive that would have otherwise expired but is effective because the principal is incapacitated remains effective until the principal is no longer incapacitated unless the principal has elected to be able to revoke while incapacitated and has revoked the directive.

(7) When a principal with capacity consents to treatment that differs from, or refuses treatment consented to in, the provisions of his or her directive, the consent or refusal constitutes a waiver of that provision and does not constitute a revocation of the provision or directive unless the principal also revokes the directive or provision.

**RCW 71.32.090**  
**Witnesses.**

A witness may not be any of the following:

- (1) A person designated to make health care decisions on the principal's behalf;
- (2) A health care provider or professional person directly involved with the provision of care to the principal at the time the directive is executed;
- (3) An owner, operator, employee, or relative of an owner or operator of a health care facility or long-term care facility in which the principal is a patient or resident;
- (4) A person who is related by blood, marriage, or adoption to the person or with whom the principal has a dating relationship, as defined in RCW [26.50.010](#);
- (5) A person who is declared to be an incapacitated person; or
- (6) A person who would benefit financially if the principal making the directive undergoes mental health treatment.

**RCW 71.32.100**  
**Appointment of agent.**

- (1) If a directive authorizes the appointment of an agent, the provisions of chapter [11.94](#) RCW and RCW [7.70.065](#) shall apply unless otherwise stated in this chapter.
- (2) The principal who appoints an agent must notify the agent in writing of the appointment.
- (3) An agent must act in good faith.
- (4) An agent may make decisions on behalf of the principal. Unless the principal has revoked the directive, the decisions must be consistent with the instructions and preferences the principal has expressed in the directive, or if not expressed, as otherwise known to the agent. If the principal's instructions or preferences are not known, the agent shall make a decision he or she determines is in the best interest of the principal.
- (5) Except to the extent the right is limited by the appointment or any federal or state law, the agent has the same right as the principal to receive, review, and authorize the use and disclosure of the principal's health care information when the agent is acting on behalf of the principal and to the extent required for the agent to carry out his or her duties. This subsection shall be construed to be consistent with chapters [70.02](#), [70.24](#), [70.96A](#), [71.05](#), and [71.34](#) RCW, and with federal law regarding health care information.
- (6) Unless otherwise provided in the appointment and agreed to in writing by the agent, the agent is not, as a result of acting in the capacity of agent, personally liable for the cost of treatment provided to the principal.
- (7) An agent may resign or withdraw at any time by giving written notice to the principal. The agent must also give written notice to any health care provider, professional person, or health care facility providing treatment to the principal. The resignation or withdrawal is effective upon receipt unless otherwise specified in the resignation or withdrawal.
- (8) If the directive gives the agent authority to act while the principal has capacity, the decisions of the principal supersede those of the agent at any time the principal has capacity.
- (9) Unless otherwise provided in the durable power of attorney, the principal may revoke the agent's appointment as provided under other state law.

### **RCW 71.32.110**

#### **Determination of capacity.**

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

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

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

(ii) One mental health professional and one health care provider; or

(iii) Two health care providers.

(b) One of the persons making the determination under (a)(ii) or (iii) of this subsection must be a psychiatrist, psychologist, or a psychiatric advanced registered nurse practitioner.

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

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

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

(4) At least one mental health professional or health care provider must personally examine the principal prior to making a capacity determination.

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

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

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

### **RCW 71.32.120**

#### **Action to contest directive.**

A principal may bring an action to contest the validity of his or her directive. If an action under this section is commenced while an action to determine the principal's capacity is pending, the court shall consolidate the actions and decide the issues simultaneously.

### **RCW 71.32.130**

#### **Determination of capacity -- Reevaluations of capacity.**

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

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

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

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

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

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

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

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

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

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

#### **RCW 71.32.140**

#### **Refusal of admission to inpatient treatment -- Effect of directive.**

(1) A principal who:

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

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

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

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

(2) A principal may only be admitted to inpatient mental health treatment under his or her directive if, prior to admission, a physician member of the treating facility's professional staff:

(a) Evaluates the principal's mental condition, including a review of reasonably available psychiatric and psychological history, diagnosis, and treatment needs, and determines, in conjunction with another health care provider or mental health professional, that the principal is incapacitated;

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

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

(d) Documents in the principal's medical record a summary of the physician's findings and recommendations for treatment or evaluation.

(3) In the event the admitting physician is not a psychiatrist, the principal shall receive a complete psychological assessment by a mental health professional within twenty-four hours of admission to determine the continued need for inpatient evaluation or treatment.

(4)(a) If it is determined that the principal has capacity, then the principal may only be admitted to, or remain in, inpatient treatment if he or she consents at the time or is detained under the involuntary treatment provisions of chapter [70.96A](#), [71.05](#), or [71.34](#) RCW.

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

(5) If, at the end of the period of time that the principal or the principal's agent, if any, has consented to voluntary inpatient treatment, but no more than fourteen days after admission, the principal has not regained capacity or has regained capacity but refuses to consent to remain for additional treatment, the principal must be released during reasonable daylight hours, unless detained under chapter [70.96A](#), [71.05](#), or [71.34](#) RCW.

(6)(a) Except as provided in (b) of this subsection, any principal who is voluntarily admitted to inpatient mental health treatment under this chapter shall have all the rights provided to individuals who are voluntarily admitted to inpatient treatment under chapter [71.05](#), [71.34](#), or [72.23](#) RCW.

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

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

#### **RCW 71.32.150**

##### **Compliance with directive -- Conditions for noncompliance.**

(1) Upon receiving a directive, a health care provider, professional person, or health care facility providing treatment to the principal, or persons acting under the direction of the health care provider, professional person, or health care facility, shall make the directive a part of the principal's medical record and shall be deemed to have actual knowledge of the directive's contents.

(2) When acting under authority of a directive, a health care provider, professional person, or health care facility shall act in accordance with the provisions of the directive to the fullest extent possible, unless in the determination of the health care provider, professional person, or health care facility:

(a) Compliance with the provision would violate the accepted standard of care established in RCW [7.70.040](#);

(b) The requested treatment is not available;

(c) Compliance with the provision would violate applicable law; or

(d) It is an emergency situation and compliance would endanger any person's life or health.

(3)(a) In the case of a principal committed or detained under the involuntary treatment provisions of chapter [10.77](#), [70.96A](#), [71.05](#), [71.09](#), or [71.34](#) RCW, those provisions of a principal's directive that, in the determination of the health care provider, professional person, or health care facility, are inconsistent with the purpose of the commitment or with any order of the court relating to the commitment are invalid during the commitment.

(b) Remaining provisions of a principal's directive are advisory while the principal is committed or detained.

The treatment provider is encouraged to follow the remaining provisions of the directive, except as provided in (a) of this subsection or subsection (2) of this section.

(4) In the case of a principal who is incarcerated or committed in a state or local correctional facility, provisions of the principal's directive that are inconsistent with reasonable penological objectives or administrative hearings regarding involuntary medication are invalid during the period of incarceration or commitment. In addition, treatment may be given despite refusal of the principal or the provisions of the directive: (a) For any reason under subsection (2) of this section; or (b) if, without the benefit of the specific treatment measure, there is a significant possibility that the person will harm self or others before an improvement of the person's condition occurs.

(5)(a) If the health care provider, professional person, or health care facility is, at the time of receiving the directive, unable or unwilling to comply with any part or parts of the directive for any reason, the health care provider, professional person, or health care facility shall promptly notify the principal and, if applicable, his or her agent and shall document the reason in the principal's medical record.

(b) If the health care provider, professional person, or health care facility is acting under authority of a directive and is unable to comply with any part or parts of the directive for the reasons listed in subsection (2) or (3) of this section, the health care provider, professional person, or health care facility shall promptly notify the principal and if applicable, his or her agent, and shall document the reason in the principal's medical record.

(6) In the event that one or more parts of the directive are not followed because of one or more of the reasons set forth in subsection (2) or (4) of this section, all other parts of the directive shall be followed.

(7) If no provider-patient relationship has previously been established, nothing in this chapter requires the establishment of a provider-patient relationship.

#### **RCW 71.32.160 Electroconvulsive therapy.**

Where a principal consents in a directive to electroconvulsive therapy, the health care provider, professional person, or health care facility, or persons acting under the direction of the health care provider, professional person, or health care facility, shall document the therapy and the reason it was used in the principal's medical record.

#### **RCW 71.32.170 Providers -- Immunity from liability -- Conditions.**

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

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

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

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

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

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

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

#### **RCW 71.32.180**

##### **Multiple directives, agents -- Effect -- Disclosure of court orders.**

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

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

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

(2) Where an incapacitated principal has appointed more than one agent under chapter 11.94 RCW with authority to make mental health treatment decisions, RCW [11.94.010](#) controls.

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

#### **RCW 71.32.190**

##### **Preexisting, foreign directives -- Validity.**

(1) Directives validly executed before July 27, 2003, shall be given full force and effect until revoked, superseded, or expired.

(2) A directive validly executed in another political jurisdiction is valid to the extent permitted by Washington state law.

#### **RCW 71.32.200**

##### **Fraud, duress, undue influence -- Appointment of guardian.**

Any person with reasonable cause to believe that a directive has been created or revoked under circumstances amounting to fraud, duress, or undue influence may petition the court for appointment of a guardian for the person or to review the actions of the agent or person alleged to be involved in improper conduct under RCW [11.94.090](#) or [74.34.110](#).

**RCW 71.32.210****Execution of directive not evidence of mental disorder or lack of capacity.**

The fact that a person has executed a directive does not constitute an indication of mental disorder or that the person is not capable of providing informed consent.

**RCW 71.32.220****Requiring directive prohibited.**

A person shall not be required to execute or to refrain from executing a directive, nor shall the existence of a directive be used as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of admission to or discharge from a health care facility or long-term care facility

**RCW 71.32.230****Coercion, threats prohibited.**

No person or health care facility may use or threaten abuse, neglect, financial exploitation, or abandonment of the principal, as those terms are defined in RCW [74.34.020](#), to carry out the directive.

**RCW 71.32.240****Other authority not limited.**

A directive does not limit any authority otherwise provided in Title [10,70](#), or [71](#) RCW, or any other applicable state or federal laws to detain a person, take a person into custody, or to admit, retain, or treat a person in a health care facility.

**RCW 71.32.250****Long-term care facility residents -- Readmission after inpatient mental health treatment -- Evaluation, report to legislature.**

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

(a) The treating facility's professional staff determine that inpatient mental health treatment is no longer medically necessary for the resident. The determination shall be made in writing by a psychiatrist or by a mental health professional and a physician; or

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

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

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

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

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

**RCW 71.32.260  
Form.**

The directive shall be in substantially the following form:

Mental Health Advance Directive  
**NOTICE TO PERSONS**

**CREATING A MENTAL HEALTH ADVANCE DIRECTIVE**

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

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

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

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

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

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

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

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

**YOU MAY NOT REVOKE THIS DIRECTIVE WHEN YOU HAVE BEEN FOUND TO BE**

**INCAPACITATED UNLESS YOU HAVE SPECIFICALLY STATED IN THIS DIRECTIVE THAT**

**YOU WANT IT TO BE REVOCABLE WHEN YOU ARE INCAPACITATED.**

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

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

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

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

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

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

**PART I.**

**STATEMENT OF INTENT TO CREATE A**

**MENTAL HEALTH ADVANCE DIRECTIVE**

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

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

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

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

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

**PART II.**

**WHEN THIS DIRECTIVE IS EFFECTIVE**

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

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

- . . . . . Immediately upon my signing of this directive.
- . . . . . If I become incapacitated.
- . . . . . When the following circumstances, symptoms, or behaviors occur: . . . . .
- . . . . .
- . . . . .

**PART III.**

**DURATION OF THIS DIRECTIVE**

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

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

- . . . . . Remain valid and in effect for an indefinite period of time.
- . . . . . Automatically expire . . . . . years from the date it was created.

**PART IV.**

**WHEN I MAY REVOKE THIS DIRECTIVE**

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

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

- . . . . . Only when I have capacity.

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

..... Even if I am incapacitated.

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

**PART V.**

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

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

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

Dr. .... Contact information: .....

Dr. .... Contact information: .....

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

**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 recommends

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

.....

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

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

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

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

..... Calling someone or having someone call me when needed.

Name: ..... Telephone: .....

..... Staying overnight with someone

Name: ..... Telephone: .....

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

..... Going to a crisis triage center or emergency room

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

..... Seeing a service provider for help with psychiatric medications

..... Other, specify: .....

**Authority to Consent to Inpatient Treatment**

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

(Sign one):

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

.....

(Signature)

or

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

.....

(Signature)

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

.....

(Signature)

**Hospital Preferences and Instructions**

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

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

**E. Preferences and Instructions About Preemergency**

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

*(initial all that apply):*

..... "Talk me down" one-on-one

..... More medication

..... Time out/privacy

..... Show of authority/force

..... Shift my attention to something else

..... Set firm limits on my behavior

- ..... Help me to discuss/vent feelings
- ..... Decrease stimulation
- ..... Offer to have neutral person settle dispute
- ..... Other, specify .....

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

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

- ..... Seclusion
- ..... Seclusion and physical restraint (combined)
- ..... Medication by injection
- ..... Medication in pill or liquid form

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

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

**(ECT or Shock Therapy)**

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

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

.....

(Signature)

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

.....

(Signature)

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

.....

.....

(Signature)

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

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

Name: .....

Name: .....

Name: .....

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

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

Other instructions about my mental health care: .....

.....

In case of emergency, please contact:

Name: ..... Address: .....  
Work telephone: ..... Home telephone: .....  
Physician: ..... Address: .....  
Telephone: .....  
The following may help me to avoid a hospitalization: .....

I generally react to being hospitalized as follows: .....

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

**J. Refusal of Treatment**

I do not consent to any mental health treatment.

.....

(Signature)

**PART VI.**

**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.

**A. Designation of an Agent**

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

Name: ..... Address: .....  
Work telephone: ..... Home telephone: .....  
Relationship: .....

**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 telephone: ..... Home telephone: .....  
Relationship: .....

**C. When My Spouse is My Agent *(initial 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 or I have remarried.

**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** the following person **as my guardian**:

Name: ..... Address: .....  
Work telephone: ..... Home telephone: .....  
Relationship: .....

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

.....

(Signature required if nomination is made)

**PART VII.**

**OTHER DOCUMENTS**

*(Initial all that apply)*

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

..... Health care power of attorney (chapter 11.94 RCW)  
..... "Living will" (Health care directive; chapter 70.122 RCW)

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

.....

**PART VIII.**

**NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS**

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

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

**A. Who Should Be Notified**

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

Name: ..... Address: .....  
Day telephone: ..... Evening telephone: .....  
Name: ..... Address: .....  
Day telephone: ..... Evening telephone: .....

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

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

.....  
.....

**C. Additional Preferences and Instructions:**

.....  
.....  
.....  
.....

**PART IX.**

**SIGNATURE**

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

Signature: ..... Date: .....  
Printed Name: .....

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

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

Witness 1: Signature: ..... Date: .....  
 Printed Name: .....  
 Telephone: ..... Address: .....  
 Witness 2: Signature: ..... Date: .....  
 Printed Name: .....  
 Telephone: ..... Address: .....

**PART X.**

**RECORD OF DIRECTIVE**

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

DO NOT FILL OUT PART XI UNLESS YOU INTEND TO REVOKE

THIS DIRECTIVE IN PART OR IN WHOLE

**PART XI.**

**REVOCATION OF THIS DIRECTIVE**

*(Initial any that apply):*

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

.....

..... I am revoking all of this directive.

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

Signature: .....

Date: .....

Printed Name: .....

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

**DIRECTIVE IN PART OR IN WHOLE**