Mental Health Advance Directives

A guide presented by the Spokane Regional Behavioral Health Ombuds of Adams, Ferry, Lincoln, Pend Oreille, Stevens, and Spokane Counties
Disclaimer about this presentation

• Nothing in this presentation replaces legal advice and is only intended as a guide to walk you through the process so you can make the best decisions for you and your situation.

• It is meant to help you understand what a mental health advance directive is and is not.

• If you have legal questions about a mental health advance directive, please consult a lawyer.

This presentation is sponsored by the Spokane County Behavioral Health (Administrative Services Organization).
Mental Health Advance Directives

Part One: Overview
What is a Mental Health Advance Directive?

- For many years, people have used medical advance directives to say what treatment they want at the end of life. These directives can be used when a person is in a coma or otherwise not able to say what he or she wants to happen.

- A mental health advance directive, sometimes known as a psychiatric advance directive, tells health professionals, therapists, and your agent what works and what does not work for you when you are in a psychiatric crisis or not in capacity to make decisions.

- A mental health advance directive is a written document that says what behavioral health treatment you want and don’t want for the future. It is used when your behavioral health symptoms make you unable to say what you want, or you are not able to make decisions when you are incapacitated.
(1) The legislature declares that an individual with capacity has the ability to control decisions relating to his or her own behavioral health care. The legislature finds that:

(a) Some behavioral health disorders 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 provide informed consent.

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

(d) Individuals with behavioral health disorders need some method of expressing their instructions and preferences for treatment and providing advance consent to or refusal of treatment.

(2) 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 a behavioral health disorder have not deprived him or her of the power to express his or her instructions or preferences.
(3) The legislature further finds that:

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

(b) Individuals with behavioral health conditions 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 to be 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.
What does Having Capacity or Being Incapacitated Mean?

RCW 71.32.020 defines having capacity and being incapacitated as follows:

• **“Capacity”** means that a person has not been found to be incapacitated pursuant to this chapter (71.32) or subject to a guardianship under RCW 11.30.265

• **“Incapacitated”** means a person 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).
History of Advance Directives for Psychiatric Care in Washington State

- The Patient Self-Determination Act of 1990, passed by the United States Congress, operationalized advance directives by requiring hospitals receiving federal funds to ask patients if they had an advance directive or would like one, to give them information about how to create one, and to honor them.

- Psychiatric or mental health advance directives were developed at about the same time, to provide parity in behavioral health services.

- In 2002 the Washington state legislature passed a law about mental health advance directives. It is found in RCW 71.32 and includes the form for mental health advance directives.
Who Can Write a Mental Health Advance Directive?

• Any person who has the “capacity” to make his or her own decisions can write a mental health advance directive. You can write a mental health advance directive even if you are in a Dept. of Corrections facility (WA DOC Policy 630.520) or if you have been involuntarily committed – as long as you have “capacity.”

• All adults are presumed under the law to have “capacity.” However, there are specific exceptions:
  • A guardian has been appointed to make your health care decisions;
  • You can’t understand the possible risks and benefits of the treatment suggested for you by professionals.

• A person who is at least 13 years of age but under the age of majority is considered to have capacity for the purpose of executing a mental health advance directive if the person is able to demonstrate that they are capable of making informed decisions related to behavioral health care. (RCW 71.32.040)

• The fact that you have executed a mental health advance directive is not an indication that you are not capable of providing informed consent or that you lack capacity. (RCW 71.32.210)
Why Make a Mental Health Advance Directive?

You can make better decisions now about what you want to happen later, when you are in a crisis.

- When you are in crisis, it could be much harder to decide what kind of treatment you want and to weigh all the risks and benefits.

Your choices will be considered.

- Although hospital staff are not required to do everything you ask for in your mental health advance directive, they must know and consider what is in your mental health advance directive and follow the parts they can.

You take responsibility for planning your own treatment.

- Making a plan and creating a mental health advance directive is a way to be more in control of this part of your life.
Why Make a Mental Health Advance Directive?

You communicate your preferences and choices.
  • You will help others understand how they can help you when you’re in a crisis.

You can appoint an agent who will advocate for you.
  • If you decide to appoint an agent, your agent can make decisions for you when you are unable to make them.

You can give alternatives to hospitalization.
  • In your mental health advance directive, you can state who will take care of you and what can be done instead of going to the hospital.

You can arrange for care of your money, home, pets, children, and other matters.
Why Make a Mental Health Advance Directive?

• You can say what medication and treatment you want and don’t want while you’re in the hospital.
  • You can say what treatment works, doesn’t work, and what harms you. (Some of your choices can still be overridden under some circumstances, but your choices must be considered.)

• Your mental health advance directive may shorten the time you are in crisis.
  • By providing information about what works for you, you may be able to reduce the time you stay in the hospital and recover more quickly.
You Might Not Want to Write a Mental Health Advance Directive.

If you aren’t sure what you want, and there is no one you trust who you want to make your decisions for you, you may not have a good reason to write a mental health advance directive. Don’t write a mental health advance directive just to please someone else. If you are pressured into writing a mental health advance directive that you don’t want – revoke it.
Who Will Look at my Mental Health Advance Directive?

• **When you are in a mental health crisis**, other people will look at your mental health advance directive to find out what decisions you made about your treatment.

• **This includes your family and friends**, if you have asked them to do things for you. It also includes mental health professionals, case managers, hospital staff, doctors, psychiatrists, and nurses.

• **When you are hospitalized**, professionals must look at your mental health advance directive and consider your choices when treating you.
Designated Crisis Responders and Involuntary Detainment

• In 2021, the Washington State Legislature passed SSB 5073 that added a change to the way mental health advance directives are reviewed by crisis responders.

• Designated Crisis Responders (DCRs) now must attempt to find out if you have a mental health advance directive prior to initial detainment, while they are assessing if you meet the requirements of detainment.

• There is no other language in the bill about where they find the mental health advance directive or that they must follow it, but they must make a note about it if you tell them you have one.

• There may be more resources allocated to creating a statewide database of Advance Directives sometime in the future.
New Sections Added to 71.32 Mental Health Advance Directives, and 71.34 Behavioral Health Services for Minors in 2021

• A new section is added to chapter 71.32 RCW to read as follows:
  • Nothing in this chapter restricts the right of a parent to seek behavioral health and treatment for a nonconsenting adolescent using family-initiated treatment under chapter 71.34 RCW.
  • 71.34 is the chapter for Behavioral Health Services for Minors.

• RCW 71.34.755 was amended as follows:
  • (1) Less restrictive alternative treatment, at a minimum, must include the following services:
  • (g) Consultation about the formation of a mental health advance directive under chapter 71.32 RCW

By enacting this legislation, adolescents must now be presented with the option of creating their own mental health advance directive and it must be spelled out in the less restrictive alternative treatment plan.
Do Doctors and Others Have to Follow a Mental Health Advance Directive?

• The law says that your mental health advance directive should be followed to the “fullest extent possible.”

• However, the hospital, facility or your health care provider can object to some parts of your directive at the time you are admitted for treatment.

• If the health care provider, professional person or health care facility is unable or unwilling to comply with any parts of the mental health advance directive, they must document it in your clinical record.

• There are also some limitations on what you can do with your mental health advance directive.
What are Some Things You Can’t Do With a Mental Health Advance Directive?

- Give another person the power to make you stay in a hospital or otherwise hold you against your will unless you have been involuntarily detained.

- Force a hospital to admit you if they decide not to.

- Obligate a health care provider, professional person, or health care facility to pay the costs associated with the treatment requested.

- Force a doctor or other health care worker to respond in an emergency in a way that would endanger your life or health.

- Force a doctor or other health care worker to give you a treatment you ask for, if they decide it would violate their standard of care.

- Force a doctor or other health care worker to give you a treatment that is not available or that is against the law.
Is a Mental Health Advance Directive Right for You?

A mental health advance directive is a way to plan for your treatment in a crisis. Not everyone wants or needs a mental health advance directive. You will need to decide for yourself if writing a mental health advance directive is a good idea for you.
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End of Part One
Contact Information for Spokane Regional Behavioral Health Ombuds

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