

# BULLETIN

No.: 3874

July 22, 2003

To: Chief Executive Officers, Chief Operating Officers, and Behavioral Health Services Directors

From: Taya Briley, Director Legal Affairs and Clinical Policy

Re: Mental Health Advance Directives

This memorandum provides information about several key resources that will assist your hospital in meeting its obligations under Washington state's new mental health advance directives law, Engrossed Substitute Senate Bill 5223. **A copy of this memorandum should be distributed to behavioral health services directors since WSHA does not have a list of their names.**

The effective date of the mental health advance directives law is July 27, 2003. It is principally intended to apply to persons with serious mental illness, whose ability to make sound decisions fluctuates depending on the state of their illness. However, under the law anyone can make a mental health advance directive that takes effect upon a person becoming "incapacitated" or unable to make sound decisions about matters affecting their care. In a mental health advance directive a person can provide instructions about consent to or refusal of care and/or can appoint an "agent" to make decisions for the person upon that person's incapacity.

Washington's new law is complex and interacts with other laws. Laws related to involuntary treatment, appointment of a durable power of attorney, and access to health care information are some examples. One important intersection is with the federal Patient Self Determination Act (PSDA) which is usually thought to apply to medical advance directives related to end-of-life treatment. Among other things, the PSDA requires hospitals to provide education to all patients about advance directives and inquire whether the patient has made an advance directive on admission. We believe those obligations now extend to mental health advance directives as well as medical directives.

The following materials are designed to assist with implementation of Washington's new law and either are or will soon be available on the "Current Issues" section of the Washington State Hospital Association web site at <http://www.wsha.org/currentissues.htm>



Washington State Hospital Association

300 Elliott Avenue West, Suite 300 Seattle, WA 98119-4118 Phone 206-281-7211 Fax 206-283-6122 [www.wsha.org](http://www.wsha.org)

- 1) Model hospital policy on mental health advance directives
- 2) Model clinician checklist to document specific tasks related to mental health advance directives
- 3) Patient informational brochure on mental health advance directives (to provide on admission to meet PSDA educational requirements)
- 4) Power point presentation for staff education on mental health advance directives
- 5) The full text of the law

Copies of the first three items are attached to this memorandum for your reference. **However, most of these documents will be available for modification on our web site so you can tailor them to the needs of your hospital.**

WSHA realizes that the law will be challenging for hospitals to implement. On learning about the original version of the mental health advance directives bill during the 2002 legislative session, WSHA determined the bill would be fundamentally unworkable for hospitals. It stopped the bill from moving further in the legislative process. While the bill was clearly going to pass through the legislative process, WSHA managed to ensure the provisions most problematic for hospitals were removed or changed before it did.

WSHA would like to thank the people who generously offered their time and expertise to help review the materials we are able to provide to you here. They are:

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We would like to extend special thanks to Sharon Hall and Becky Repp for their extensive involvement in development of the materials. (Both represent the Washington Health Care Risk Management Society.)

If you have questions about the mental health advance directives law or the materials provided by WSHA to assist with implementation, please contact Taya Briley at (206) 216-2554 or [tayab@wsha.org](mailto:tayab@wsha.org).