

Multiple Agency Fiscal Note Summary

Bill Number: 5223 SB

Title: Mental health adv directives

Estimated Cash Receipts

Agency Name	2003-05		2005-07		2007-09	
	GF- State	Total	GF- State	Total	GF- State	Total
Department of Social and Health Services	0	75,000	0	36,000	0	36,000
Total \$	0	75,000	0	36,000	0	36,000

Local Gov. Courts *						
Local Gov. Other **						
Local Gov. Total						

Estimated Expenditures

Agency Name	2003-05			2005-07			2007-09		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Office of Administrator for the Courts	Indeterminate								
Department of Social and Health Services	.7	80,000	155,000	.3	38,000	74,000	.3	38,000	74,000
Department of Corrections	Indeterminate								
Sentencing Guidelines Commission	.0	0	0	.0	0	0	.0	0	0
Total	0.7	\$80,000	\$155,000	0.3	\$38,000	\$74,000	0.3	\$38,000	\$74,000

Local Gov. Courts *	Indeterminate								
Local Gov. Other **	Indeterminate								
Local Gov. Total									

Now includes the local government fiscal note.

Prepared by: Tom Lineham, OFM	Phone: 360-902-0543	Date Published: Final 2/ 9/2003
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* See Office of the Administrator for the Courts judicial fiscal note

** See local government fiscal note

Judicial Impact Fiscal Note

Bill Number: 5223 SB	Title: Mental health adv directives	Agency: 055-Office of Administrator for Courts
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

FUND	FY 2004	FY 2005	2003-05	2005-07	2007-09
Counties					
Cities					
Total \$					

Estimated Expenditures from:

Indeterminate Impact

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☒ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.

Legislative Contact:	Phone:	Date: 01/21/2003
Agency Preparation: Yvonne Pettus	Phone: (360) 705-5314	Date: 01/22/2003
Agency Approval: Janet McLane	Phone: (360) 705-5305	Date: 01/22/2003
OFM Review: Garry Austin	Phone: 360-902-0564	Date: 01/22/2003

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

Sec. 8 of this bill allows for a court hearing to determine a person's capacity to revoke a directive. Sec. 32 of this bill creates a new class C felony - fraudulent creation or revocation of a mental health advance directive. This new felony is ranked at seriousness level I.

II. B - Cash Receipts Impact

II. C - Expenditures

An advance directive for mental health treatment is a new tool. It is not known how many court hearings would result related to the determination of a person's capacity to revoke an agreement. It is not know how cases alleging the newly created class C felony would be filed. Expenditure impact cannot be determined therefore.

Part III: Expenditure Detail

Part IV: Capital Budget Impact

Individual State Agency Fiscal Note

Revised

Bill Number: 5223 SB	Title: Mental health adv directives	Agency: 300-Dept of Social and Health Services
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

FUND	FY 2004	FY 2005	2003-05	2005-07	2007-09
General Fund-Federal 001-2	57,000	18,000	75,000	36,000	36,000
Total \$	57,000	18,000	75,000	36,000	36,000

Estimated Expenditures from:

	FY 2004	FY 2005	2003-05	2005-07	2007-09
FTE Staff Years	1.0	0.3	0.7	0.3	0.3
Fund					
General Fund-State 001-1	61,000	19,000	80,000	38,000	38,000
General Fund-Federal 001-2	57,000	18,000	75,000	36,000	36,000
Total \$	118,000	37,000	155,000	74,000	74,000

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact:	Phone:	Date: 01/21/2003
Agency Preparation: Kelly Wise	Phone: 360 902-8197	Date: 01/28/2003
Agency Approval: Dave Daniels	Phone: 360-902-8174	Date: 01/29/2003
OFM Review: Tom Lineham	Phone: 360-902-0543	Date: 01/31/2003

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

The bill formally recognizes Mental Health Advance Directives, a document enabling mental health consumers to express their treatment preferences in the event they become incapacitated. This would allow consumers to actively participate in treatment decisions during times of incapacity due to the presence of a mental disorder by offering some assurance that a previously prepared Mental Health Advance Directive would be honored whenever possible. Consumers would be allowed to appoint an agent who could act in keeping with their best wishes. This bill creates a new law that allows an "individual with capacity" to develop mental health advance directives that gives provisions for mental health treatment once that person is deemed "incapacitated" by 1) the court; 2) one mental health professional and one health care provider, one of whom is a psychiatrist or psychologist, or 3) two health care providers, one of whom is a psychiatrist or psychologist.

This bill amends and adds a chapter to the power of attorney statute (RCW 11.94) and actions for injuries from health care statute (RCW 7.70), adds a new section to the fraud statute (RCW 9A.60), adds a new section to the chapter on mental illness (RCW 71) and reenacts and amends RCW 9.94A.515, and adds a new section to RCW 9A.60.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

The implementation of this legislation would result in a fiscal impact to the department associated with training and case management requirements. Federal law (42 CFR, Ch IV, Subpart I §489.102) currently governs agency and provider requirements related to client education regarding advance directives such as a living will or durable power of attorney. (See below). In order to assure that providers, case managers and other departmental employees understand and follow the requirements of mental health advance directives, the department is considering the hire of a full time employee in the first year to train/educate the RSN's, providers, and stakeholders in the provisions of the law. An informational brochure would also be developed and distributed to clients. Training costs and increased case management requirements would result in a fiscal impact for implementation in the first biennium of \$155,000. In addition, there will be ongoing material updates and printing costs, as well as support costs to the Mental Health Regional Support Networks, which should average \$37,000 per year.

As currently written, the proposed legislation potentially impacts care and treatment of residents at the Special Commitment Center (SCC) and in the custody of the Juvenile Rehabilitation Administration. The assumption in this fiscal note is to exclude calculations of any costs associated with the involuntary treatment programs, including the providers delivering the service within the program.

As a basis for the training component, the following items indicate how MHD and ADSA are attempting to meet federal requirements on advance directives.

MHD

There are federal requirements with regard to advance directives and managed care programs (42 CFR 438.6), requiring plans to provide adult enrollees with written information on advance directives policies, including a description of the applicable state law. The information must also reflect changes in the laws as soon as possible but no later than 90 days

after the change. The contract between the MHD and the plans must ensure compliance with this regulation. The Mental Health Division will be held responsible by the Centers for Medicare and Medicaid to ensure complete implementation of this law.

In order to ensure compliance with 42 CFR 438.6, it will be necessary for the MHD to provide training to providers of service. In the past, CMS Region X has held MHD for accountable for implementation. During the on-site review by CMS in 2001, they found variation in the implementation of access procedures and grievance procedures across the state. Those differences resulted in special terms and conditions on our 1915 (b) waiver renewal mandating the MHD to provide training and technical assistance. This training is required for the RSN manager level to case manager level on consumers right s to access, their right with regard to grievance and fair hearing and the responsibility of the plan for notification with regards to denial of services. A training plan has been submitted and monitoring results must be submitted in September 2003 and final monitoring results in December 2004.

ADSA

The Self-Determination Act of 1990 (42 U.S.C. §§1396a(A0(57), 1396a(a)(58), and 1396a(w)) mandates DSHS to inform those receiving Medicaid about advanced directives. ADSA caseworkers give a brochure to each client that applies for or is approved for ADSA core services and answer questions, but caseworkers do not give advice.

MB-AASA-AFO-92-07 directs HCS/AAA/DDD staff to distribute the advance directives brochure to all clients the department assesses (Medicaid and private pay). Staff are required to enter the date they give the brochure to the client in the Comprehensive assessment system. There is a reminder to include special instructions on the service plan.

[Code of Federal Regulations]

[Title 42, Volume 3]

[Revised as of October 1, 2002]

From the U.S. Government Printing Office via GPO Access

[CITE: 42CFR489.102]

[Page 948-950]

TITLE 42--PUBLIC HEALTH

CHAPTER IV--CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES--(Continued)

PART 489--PROVIDER AGREEMENTS AND SUPPLIER APPROVAL--Table of Contents

Subpart I--Advance Directives

Sec. 489.102 Requirements for providers.

(a) Hospitals, critical access hospitals, skilled nursing facilities, nursing facilities, home health agencies, providers of home health care (and for Medicaid purposes, providers of personal care services), and hospices must maintain written policies and procedures concerning advance directives with respect to all adult individuals receiving medical care by or through the provider and are required to:

(1) Provide written information to such individuals concerning--

(i) An individual's rights under State law (whether statutory or recognized by the courts of the State) to make decisions concerning such

medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate, at the individual's option, advance directives. Providers are permitted to contract with other entities to furnish this information but are still legally responsible for ensuring that the requirements of this section are met. Providers are to update and disseminate amended information as soon as possible, but no later than 90 days from the effective date of the changes to State law; and

(ii) The written policies of the provider or organization respecting the implementation of such rights, including a clear and precise statement of limitation if the provider cannot implement an advance directive on the basis of conscience. At a minimum, a provider's statement of limitation should:

(A) Clarify any differences between institution-wide conscience objections and those that may be raised by individual physicians;

(B) Identify the state legal authority permitting such objection; and

(C) Describe the range of medical conditions or procedures affected by the conscience objection.

(2) Document in a prominent part of the individual's current medical record, or patient care record in the case of an individual in a religious nonmedical health care institution, whether or not the individual has executed an advance directive;

(3) Not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

(4) Ensure compliance with requirements of State law (whether statutory or recognized by the courts of the State) regarding advance directives. The provider must inform individuals that complaints concerning the advance directive requirements may be filed with the State survey and certification agency;

(5) Provide for education of staff concerning its policies and procedures on advance directives; and

(6) Provide for community education regarding issues concerning advance directives that may include material required in paragraph (a)(1) of this section, either directly or in concert with other providers and organizations. Separate community education materials may be developed and used, at the discretion of providers. The same written materials do not have to be provided in all settings, but the material should define what constitutes an advance directive, emphasizing that an advance directive is designed to enhance an incapacitated individual's control over medical treatment, and describe applicable State law concerning advance directives. A provider must be able to document its community education efforts.

(b) The information specified in paragraph (a) of this section is furnished:

(1) In the case of a hospital, at the time of the individual's admission as an inpatient.

(2) In the case of a skilled nursing facility at the time of the individual's admission as a resident.

(3)(i) In the case of a home health agency, in advance of the individual coming under the care of the agency. The HHA may furnish advance directives information to a patient at the time of the first

home visit, as long as the information is furnished before care is provided.

(ii) In the case of personal care services, in advance of the individual coming under the care of the personal care services provider. The personal care provider may furnish advance directives information to a patient at the time of the first home visit, as long as the information is furnished before care is provided.

(4) In the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program.

(c) The providers listed in paragraph (a) of this section--

(1) Are not required to provide care that conflicts with an advance directive.

(2) Are not required to implement an advance directive if, as a matter of conscience, the provider cannot implement an advance directive and State law allows any health care provider or any agent of such provider to conscientiously object.

(d) Prepaid or eligible organizations (as specified in sections 1833(a)(1)(A) and 1876(b) of the Act) must meet the requirements specified in Sec. 417.436 of this chapter.

(e) If an adult individual is incapacitated at the time of admission or at the start of care and is unable to receive information (due to the incapacitating conditions or a mental disorder) or articulate whether or not he or she has executed an advance directive, then the provider may give advance directive information to the individual's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State law. The provider is not relieved of its obligation to provide this information to the individual once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.

[57 FR 8203, Mar. 6, 1992, as amended at 59 FR 45403, Sept. 1, 1994; 60 FR 33294, June 27, 1995; 62 FR 46037, Aug. 29, 1997; 64 FR 67052, Nov. 30, 1999]

See attachment: 03-5223 Advance Directives Attachment 1.xls

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2004	FY 2005	2003-05	2005-07	2007-09
FTE Staff Years	1.0	0.3	0.7	0.3	0.3
A-Salaries and Wages	60,000	20,000	80,000	40,000	40,000
B-Employee Benefits	15,000	5,000	20,000	10,000	10,000
C-Personal Service Contracts					
E-Goods and Services	38,500	12,000	50,500	24,000	24,000
G-Travel	4,500		4,500		
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
Total:	\$118,000	\$37,000	\$155,000	\$74,000	\$74,000

III. B - Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2004	FY 2005	2003-05	2005-07	2007-09
Program Manager	75,000	1.0	0.3	0.7	0.3	0.3
Total FTE's		1.0	0.3	0.7	0.3	0.3

III. C - Expenditures By Program (optional)

Program	FY 2004	FY 2005	2003-05	2005-07	2007-09
JRA (020)	2,750		2,750		
MHD (030)	106,750	37,000	143,750	74,000	74,000
DDD (040)	2,750		2,750		
AAS (050)	5,750		5,750		
Total \$	118,000	37,000	155,000	74,000	74,000

Part IV: Capital Budget Impact

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

**Mental Health Division
Advance Directives for Mental Healthcare
Consumer Information & Training**

		FY1	FY2	Total	
MHD: 50/50					
FTE	Staffing costs	1 FTE	.3 FTE		1 FTE in first year and .3 fte on an ongoing basis.
	Staffing costs for development, train the trainer, Training RSN's & Mental Health Providers and ongoing maintenance and training				
Staffing FTE S/B		\$ 75,000.00	\$ 25,000.00	\$ 100,000.00	
					Initial cost to MHD + Future copies (\$6000/ 100000 copies) = design charge of \$ approx \$1,500)
Printing costs	200,000 tri-fold brochure - 2 inks - text + 250 each in 7 languages	\$ 25,000.00	\$ 12,000.00	\$ 37,000.00	
Translation Costs 7 lang.	Using state contracted services	\$ 1,500.00	\$ -	\$ 1,500.00	one time cost
Training Materials	training materials,	\$ 500.00	\$ -	\$ 500.00	one time cost
Travel	travel to the 6 regions at least twice	\$ 3,000.00	\$ -	\$ 3,000.00	one time cost
		\$ 105,000.00	\$ 37,000.00	\$ 142,000.00	
AG: @\$175/hour. 50/50					
Review (3 Hrs.)		\$ 525.00	\$ -	\$ 525.00	one time cost
Q&A document (7 Hrs.)		\$ 1,225.00	\$ -	\$ 1,225.00	one time cost
		\$ 1,750.00	\$ -	\$ 1,750.00	
DDD: Ron Sherman 2-8477 50/50					
	Training materials @ 250/ region + inst +				
Materials	hdqtrs	\$ 2,250.00	\$ -	\$ 2,250.00	one time cost
Travel		\$ 500.00	\$ -	\$ 500.00	one time cost
		\$ 2,750.00	\$ -	\$ 2,750.00	
JRA: Cheryl Reule 2-8101 State Only					
	Training materials @ 250/ region + inst +				
Materials	hdqtrs	\$ 2,250.00	\$ -	\$ 2,250.00	one time cost
Travel		\$ 500.00	\$ -	\$ 500.00	one time cost
		\$ 2,750.00	\$ -	\$ 2,750.00	
Aging: 50/50					
	Training materials @ 250/ region + inst +				
Materials	hdqtrs	\$ 5,250.00	\$ -	\$ 5,250.00	one time cost
Travel		\$ 500.00	\$ -	\$ 500.00	one time cost
		\$ 5,750.00	\$ -	\$ 5,750.00	
		\$ 118,000.00	\$ 37,000.00	\$ 155,000.00	
Federal		\$ 57,000.00	\$ 18,000.00		
State		\$ 61,000.00	\$ 19,000.00		
TOTAL		\$ 118,000.00	\$ 37,000.00		
	A (80%)	\$ 60,000.00	\$ 20,000.00		
	B (20%)	\$ 15,000.00	\$ 5,000.00		
	E	\$ 38,500.00	\$ 12,000.00		
	G	\$ 4,500.00	\$ -		
	TOTAL	\$ 118,000.00	\$ 37,000.00		

Individual State Agency Fiscal Note

Bill Number: 5223 SB	Title: Mental health adv directives	Agency: 310-Department of Corrections
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

FUND					
Total \$					

Estimated Expenditures from:

Indeterminate Impact

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact:	Phone:	Date: 01/21/2003
Agency Preparation: Keenan Konopaski	Phone: 360-753-7371	Date: 01/22/2003
Agency Approval: Ronna Cole	Phone: 360-664-0688	Date: 01/22/2003
OFM Review: Randi Warick	Phone: 360-902-0570	Date: 01/24/2003

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

This proposed legislation addresses the creation and implementation of mental health advance directives. These directives can dictate instructions for the treatment of mentally ill individuals who are incapacitated. The bill also establishes a new Class C felony for the fraudulent creation or revocation of a mental health advance directive. (See also HB1041)

Sections 1 through 14 establish intent, definitions, contents of the advance directive document, and the process for how it is applied with incapacitated individuals.

Section 15: If a person with a mental health advance directive is incarcerated in a state correctional facility, then the Department has discretion to invalidate the directive if inconsistent with reasonable penological objectives.

Section 16: Requires medical providers to document electroconvulsive therapy in patient records.

Section 17: Providers, including government entities, are not subject to civil liability or sanctions for unprofessional conduct when the treatment provided is in good faith without negligence as it relates to a mental health directive.

Sections 18 through 31 specify how directives should be interpreted, the form of the directive, amends current law to ensures power of attorney provisions are consistent with advance directives, and other clarifying law changes.

Sections 32 through 34: Fraudulent creation or revocation of a mental health advance directive would be established as a Class C felony. This felony would be ranked as Seriousness Level I on the adult felony sentencing grid.

Sections 35 through 38 are technical items on severability, reference to new Title in RCW, and immediate effective dates for the new felony.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

N/A

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Since penological objectives would supersede mental health advance directives for prison inmates, the Department assumes its costs for offender mental health treatment will not change as a result of this bill. Other provisions would not result in workload increases for the provision of mental health treatment to offenders.

The Sentencing Guidelines Commission currently has no information to estimate the expected incidence of offense or the sentences that might actually be imposed as a result of this bill. The offense would be punishable by a standard term between 0 - 60 days in jail to 22-29 months in prison, depending on the offenders' prior history. Therefore, any impact could be on jail and/or prison beds. However, without a quantified estimate of the number of new offenders or average length of sentences, the Department is unable to determine a fiscal impact for its correctional facilities.

Part III: Expenditure Detail

Part IV: Capital Budget Impact

N/A

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

N/A

Individual State Agency Fiscal Note

Bill Number: 5223 SB	Title: Mental health adv directives	Agency: 325-Sentencing Guidelines Commission
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Part I: Estimates

☒ No Fiscal Impact

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact:	Phone:	Date: 01/21/2003
Agency Preparation: Ed Vukich	Phone: (360) 956-2143	Date: 01/22/2003
Agency Approval: Paula Ditton	Phone: (360) 956-2134	Date: 01/23/2003
OFM Review: Randi Warick	Phone: 360-902-0570	Date: 01/24/2003

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Please see the attachment.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

None.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Please see the attachment.

Part III: Expenditure Detail

Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

None.

SB 5223

MENTAL HEALTH ADVANCE DIRECTIVES

325 – Sentencing Guidelines Commission

January 23, 2003

SUMMARY

A brief description of what the measure does that has fiscal impact.

Section 32 establishes a new Class C felony: fraudulent creation or revocation of a mental health advance directive.

Section 33 ranks fraudulent creation or revocation of a mental health advance directive at Seriousness Level I on the adult felony sentencing grid – this section expires July 1, 2004.

Section 34 ranks fraudulent creation or revocation of a mental health advance directive at Seriousness Level I on the adult felony sentencing grid – this section takes effect July 1, 2004.

EXPENDITURES

Assumptions.

None.

Impact on the Sentencing Guidelines Commission.

This bill would require modification of the Commission's database and data entry programs. These recurring costs are included in the agency's budget.

Impact on prison and jail beds.

This bill establishes and ranks a new Class C felony.

The felony offense established by this bill is currently not a felony offense under Washington State law. As such, the Sentencing Guidelines Commission has no information about its expected incidence or the sentences that might actually be imposed. However, as a Class C felony ranked at Seriousness Level I on the adult felony sentencing grid, fraudulent creation or revocation of a mental health advance directive would be punishable by a standard range confinement term of between 0-60 days in jail to 22-29 months in prison, depending on the offenders' prior history. Therefore, any impact could be on both jail beds and prison beds.

LOCAL GOVERNMENT FISCAL NOTE

Department of Community, Trade and Economic Development

Bill Number: 5223 SB	Title: Mental health adv directives
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Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- ☐ Cities:
- ☒ Counties:
- ☐ Special Districts:
- ☐ Specific jurisdictions only:
- ☐ Variance occurs due to:

Part II: Estimates

- ☐ No fiscal impacts.
- ☒ Expenditures represent one-time costs: Includes staff time devoted to receiving training from DSHS training in FY 2004, revision of local agency policy and procedures, revision of provider contracts, and county attorney review of provider contracts
- ☐ Legislation provides local option:
- ☒ Key variables cannot be estimated with certainty at this time: It is indeterminate at this time how many capacity determinations will be filed in Superior Court. Similarly, it is indeterminable at this time how many Class C felonies of fraudulent creation or revocation of a mental health advance directive will be filed in superior court.

Estimated revenue impacts to:

Jurisdiction	FY 2004	FY 2005	2003-05	2005-07	2007-09
City					
County					
Special District					
TOTAL \$					
GRAND TOTAL \$					

Estimated expenditure impacts to:

Indeterminate Impact

Part III: Preparation and Approval

Fiscal Note Analyst: Sofia Aragon	Phone: (360) 725-5030	Date: 02/07/2003
Leg. Committee Contact:	Phone:	Date: 01/21/2003
Agency Approval: Louise Deng Davis	Phone: (360) 725-5034	Date: 02/07/2003
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Part IV: Analysis

A. SUMMARY OF BILL

Provide a clear, succinct description of the bill with an emphasis on how it impacts local government.

Sec 1: This bill allows an individual to execute a document known as a mental health advance directive for the purpose of accessing mental health services in the event that s/he becomes incapacitated.

Sec 11: Upon request of a principal, an agent, or professional persons as defined in the act, or health care providers, a determination of capacity can be made. A superior court is to determine capacity if the request was made by the principal or agent. Otherwise, a mental health provider or health care provider or combination thereof can make a determination.

Sec 13: In the event that the mental health directive is invoked and the principal is admitted to an inpatient facility, this section requires a periodic evaluation of the principal’s mental capacity.

Sec 32: Creates a new Class C felony for fraudulent creation or revocation of a mental health directive.

B. SUMMARY OF EXPENDITURE IMPACTS

Briefly describe and quantify the expenditure impacts of the legislation on local governments, identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.

Although the costs to RSNs is indeterminate at this time, a preliminary survey of Regional Support Networks (RSNs) report the potential cost for all RSNs in FY 2004-2009 is \$37,458 (\$14,598 in FY2004 for initial training, and \$4,572 for FY05-FY09 for maintenance costs). See discussion of potential cost components below.

DISCUSSION:

GENERAL ADMINISTRATIVE COSTS

In general, health care and mental health providers will potentially incur increased administrative costs associated with the following sections:

Sec 11 provides that a determination of a principal’s capacity can be made by one mental health professional and one health care provider or two health care providers.

Sec 13 mandates an initial determination of capacity within 48 hours after a request

Sec 15 requires that all health care providers, mental health professionals or health care facility involved in providing treatment are deemed to have actual knowledge of the principal’s mental health advance directive even if the provider was not the initial recipient.

POSSIBLE IMPLEMENTATION COSTS (see attached spreadsheet for estimates):

TRAINING

Assuming that DSHS will provide training sessions to train RSN representatives, each RSN will send one staff person to attend a training provided by DSHS at one of 6 training sites. Staff would probably require 4-6 hours of training and additional travel time depending upon the representative’s proximity to the training site. The currently average hourly rate for a likely RSN representative is \$31.86/hour on average. These costs would be incurred in the first fiscal year, with shorter “maintenance” training thereafter.

COMPLIANCE under state and federal law

Assuming that compliance to 42 C.F.R 489.102 is required (see DSHS fiscal note), health care providers must have internal written policies and procedures in place regarding advanced directives. For example, RSNs must ensure that contracted providers prepare written information for patients regarding state and federal law regarding advance directives. Similarly, RSN may have to revise contractual terms with local community mental health providers to ensure compliance with state and federal law. Thus the following costs will be incurred in the first fiscal year:

- Contract revisions by county attorneys at a rate of \$175 per hour.
- Revising RSN written procedures to include advanced directives requires committee oversight, with an average of 4 people in a committee, each spending 8 hours at an average rate of \$31.86/hour.
- RSNs must include mental health advance directive audits as part of periodic audits of service providers. Audits occur annually or biannually, with an average of 10 mental health providers per RSN. The time required to audit for mental health advance directives is approximately 30 minutes. Each provider is usually audited by two RSN staff members. (King County RSN and Greater Columbia RSN).

Sec 32 creates a new Class C felony for fraudulent creation or revocation of a mental health advance directive. Felonies are prosecuted in superior court, which are financed by counties.

SOURCES:
King County Regional Support Network
Greater Columbia Regional Support Network
Thurston-Mason Regional Support Network
Chelan-Douglas Regional Support Network
Washington Association of Counties
Washington Community Mental Health Counsel
Washington Chapter of the American Psychiatric Association
Administrative Office of the Courts

C. SUMMARY OF REVENUE IMPACTS

Briefly describe and quantify the revenue impacts of the legislation on local governments, identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.

There are no revenue impacts.

Estimated Costs to RSNs to implement Advanced Directives:

	FY 04		FY 05-09	
	low 4 hours	high 8 hours	low 4 hours	high
Costs to receive training from DSHS trainer	\$1,784	\$3,568	\$1,784	\$1,784
Revising RSN written policies and procedures	\$1,784	\$3,568	0	0
Revising provider contracts	\$892	\$2,676	0	0
County Attorney to review provider contracts	\$7,350	\$7,350	0	0
Provider performance audit by RSN	\$2,788	\$5,576	\$2,788	\$2,788
Total	low \$14,598	high \$22,738	\$4,572	\$4,572

- Figures FY 04 constitutes start-up costs while FY 05-09 constitute maintenance costs
- Receiving training requires one FTE to travel to training site for 8 hours at an average hourly rate of \$ 31.86/hour with one representative per RSN (assumed 14 RSNs total)
- Revising RSN written procedures to include advanced directives requires committee oversight, with an average of 4 people in a committee, 8 hours each.
- Revising provider contracts include review by county attorney at \$175 per hour for a total of 3 hours and drafting by RSN staff for 2-6 hours
- Provider performance audit involves auditing an average of 10 contracted providers, spending 15-30 minutes on advanced directive issue
- Performance audit calculation is derived by multiplying the hourly rate x average number of auditors (2.5) x number of minutes x avg number of providers x number of RSN