1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: **09/27/1999**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Fiscal Bureau 266-8799**

By/Representing: **Morgan**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Alt. Drafters:

Subject: **Health - long-term care**

Extra Copies: **TAY**

Pre Topic:

LFB:.....Morgan -

Topic:

Hospice decisionmaking

Instructions:

Same as 99b1719

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	kenneda 09/27/1999	jgeller 09/27/1999		_____ _____			
/1			martykr 09/27/1999	_____ _____	lrb_docadmin 09/27/1999		

FE Sent For:

<END>

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/?	kenneda	1 9/27 jg	9/27	9/27			

FE Sent For:

<END>

Memorandum

Quarles & Brady LLP

August 27, 1999

To: Debora Kennedy

Copy: Tony Driessen
Mary Michal

From: Lisa Boyce

Re: Redraft of hospice decision making amendment contained in the budget

During this interim period we have been working with the Coalition of Wisconsin Aging Groups (CWAG) and the Wisconsin Catholic Conference (WCC) to address their questions and concerns about the hospice decision making amendment contained in the budget. Attached you will find a revised amendment written cooperatively with both CWAG and WCC that meets with their approval. You will also find a cover note that addresses each change made to the original amendment draft so you can understand why the revisions were added.

With Senator Erpenbach's blessing, we are now at the drafting stage. Senator Erpenbach has also agreed to allow us to work directly with you to formally draft this language for the conference committee's consideration. Because this amendment is contained within the budget, our goal is to have this language drafted before the conference committee resumes its review of the budget.

Both Mary Michal of Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C and Tony Driessen of Quarles and Brady, have been involved in this issue and are available to work with you directly to draft this amendment. Mary Michal can be reached at (608) 229-2200 and Tony Driessen can be reached at (414) 277-5759 or (608) 283-2493.

If neither Mary or Tony are available to address your questions, you may also call me directly at (608) 283-2408. Thank you for your assistance and immediate attention to this matter.

Attachments

.1

Issues addressed with new language

As proposed by:
The Coalition of Wisconsin Aging Groups and the Wisconsin Catholic Conference

1. **Adds definition for a close friend** {1 (a)}. *Definition added to clarify who could be considered a close friend.*

2. **Narrowly defines terminal illness and requires that such a diagnosis to be certified by a physician** {1(c) & 2 (a)}. *Narrows the definition of terminal illness to a six month prognosis to match the federal regulation requirements for hospice eligibility. Also, for the purposes of this amendment, the life expectancy is narrowed from 12 months to 6 months to qualify only those individuals who are especially disadvantaged by the guardianship process due to impending death.*

3. **Specifically defines what decisions a substitute decision maker can make.** *This clause ensures that one serving as a substitute decision maker is clear about their role and responsibilities and does not make decisions beyond their role.* {(4)}

4. **Requires a substitute decision maker to sign a statement declaring he or she believes incapacitated individual would have elected hospice care if he/she was able** {(5)}. *This clause reconfirms the substitute decision makers role of representing the desires of the patient in their election of hospice care.*

5. **Prohibits admission to receive hospice care if the patient objects** {(6)}. *Ensures that the patient's rights and desires are honored above those of an appointed substitute decision maker.*

6. **Establishes a dispute resolution mechanism if a person does not agree with the decision to admit the incapacitated individual to receive hospice care** {(7)}. *This allows for a court review of an objection made by any person who disagrees with the individual making hospice care decisions. This is intended to further ensure that the patient's desires are being appropriately represented by the substitute decision maker.*

7. **Requires that when feasible, all family members are notified of decision to admit incapacitated individual into hospice care** {(8)}. *This action is akin to notice required in guardianship. Notification serves to alert family members and all who care for this individual of the situation so they can monitor the decisions made to ensure that they are made in the best interest of the patient.*

Section 1531p. 50.94 of the statutes is created to read:

50.94 Certain admissions to hospice care of an incapacitated person.

(1) In this section:

(a) "Close friend or other relative" means an individual:

1. who is at least 18 years of age and has maintained regular contact with the person sufficient to be familiar with the person's activities, health and beliefs; and
2. has exhibited special care and concern for the incapacitated person.

Move to (3)(e)

(b) "Incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that the person lacks the capacity to manage his or her health care decisions.

(c) "Terminal condition" means an incurable condition caused by injury, disease or illness that according to reasonable medical judgement will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

active voice (2) To qualify for admission to a hospice program under this section, all of the following requirements shall be met:

(a) A physician certifies that the person has a terminal condition.

(b) An individual under sub. (3) signs an informed consent electing to receive hospice care for the incapacitated person.

(c) The incapacitated person does not have a valid living will or valid power of attorney for health care and has not been adjudicated incompetent under ch. 880.

(d) The physician believes that the designated individual under sub. (3) is acting in accordance with the views or beliefs of the incapacitated person.

How to tell? Certify

(3) The following individuals in the following order of priority, may serve as a substitute decision maker under sub. (2):

(a) The spouse of the incapacitated person.

(b) An adult child of the incapacitated person.

(c) A parent of the incapacitated person.

(d) An adult sibling of the incapacitated person.

(e) A close friend or other relative of the incapacitated person.

(4) The individual who provided consent to hospice admission under sub. (3) may make all health care decisions related to providing hospice care under ss. 50.90 (3), (3g), (3m) and (4). define

(5) An individual under sub. (3) when admitting an incapacitated person to hospice, shall sign a statement certifying that it is his or her belief, to the best of is or her knowledge, that the incapacitated person would have selected hospice care, if able. Shd be in (2)

(6) An incapacitated person or the individual under sub. (3) may object to or revoke the election of hospice care at any time. What happens?

(7) An individual, regardless of whether he or she is listed in sub. (3), who disagrees with a hospice decision made under this section may apply for temporary guardianship under chapter 880. In such situations, the burden is placed on the individual to prove that the incapacitated person would not have consented to hospice care.

(8) When admission to hospice is made under this section, the individual providing consent shall provide prior notice of the consenter's admission of the incapacitated person into hospice care and of the noticed individual's rights as set forth in sub. (7) to all individuals listed under sub. (3), when feasible. If it is not feasible to notify any of the individuals listed under sub. (3) in advance, the individual providing consent shall exercise reasonable diligence to provide notice to those individuals within 48 hours of admission.

(9) A determination that a person is incapacitated for purposes of sub. (2) shall be made by ~~2 p~~physicians, as defined in s. 448.01 (5), or by one physician and one licensed psychologist as defined in s. 455.01 (2), who personally examine the person and sign a statement specifying that the person is incapacitated. Mere old age, eccentricity, or physical disabilities, either singly or together, are insufficient to make a finding that a person is incapacitated. Neither of the individuals who make a finding that the person is incapacitated may be a relative, as defined in s. 242.02 (11), of the person or have knowledge that he or she is entitled to or has claim on any portion of the person's estate. A copy of the statement shall be included in the person's records in the facility to which he or she is admitted. define 4

2. Good faith exercised by the licensee.

3. Any previous violations committed by the licensee.

4. The financial benefit to the rural medical center of committing or continuing to commit the violation.

(c) The department may directly assess forfeitures provided for under par. (a). If the department determines that a forfeiture should be assessed for a particular violation or for failure to correct it, the department shall send a notice of assessment to the rural medical center. The notice shall specify the amount of the forfeiture assessed, the violation, and the statute or rule alleged to have been violated, and shall inform the licensee of the right to a hearing under par. (d).

(d) A rural medical center may contest an assessment of forfeiture by sending, within 10 days after receipt of notice under par. (c), a written request for hearing under s. 227.44 to the division of hearings and appeals under s. 15.103 (1). The division shall commence the hearing within 30 days after receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227.

(e) All forfeitures shall be paid to the department within 10 days after receipt of notice of assessment or, if the forfeiture is contested under par. (d), within 10 days after receipt of the final decision, unless the final decision is appealed and the decision is in favor of the appellant. The department shall remit all forfeitures paid to the state treasurer for deposit in the school fund.

(2) OTHER PENALTY. Whoever violates s. 50.54 (2) may be fined not more than $1,000 or imprisoned for not more than 6 months or both.

(3) INJUNCTION. The department may, upon the advice of the attorney general, who shall represent the department in all proceedings under this subsection, institute an action in the name of the state in the circuit court for Dane County for injunctive relief or other process against any licensee, owner, operator, administrator or representative of any owner of a rural medical center for the violation of any of the provisions of this subchapter or rules promulgated under this subchapter if the department determines that the violation seriously affects the care, treatment, health, safety, rights, welfare or comfort of patients.

History: 1995 a. 98

50.56 Applicability. (1) Any of the following facilities or entities is not required to obtain licensure or a certificate of approval under the following statutes or to pay license fees under the following statutes if all of the services of the facility or entity are provided as a part of a rural medical center that holds a valid license under this subchapter:

(a) A hospital, under ss. 50.135 (2) (a) and (b) and 50.35.

(b) A nursing home, under ss. 50.03 (1) and 50.135 (2) (a) and (b).

(c) A hospice, under ss. 50.92 (1) and 50.93 (1) (c).

(d) A home health agency, under s. 50.49 (2) (b) and (8).

(2) Subsection (1) may not be construed to apply to limit the authority of the department to develop, establish or enforce any statutes and rules for the care, treatment, health, safety, rights, welfare and comfort of patients or residents of facilities or entities that are specified in sub. (1) (a) to (d) and for the construction, general hygiene, maintenance or operation of those facilities or entities.

(3) Notwithstanding sub. (2), insofar as a conflict exists between this subchapter, or the rules promulgated under this subchapter, and subch. I, II or IV, or the rules promulgated under subch. I, II or IV, the provisions of this subchapter and the rules promulgated under this subchapter control.

(4) This subchapter may not be construed to limit a health care service that is included in a rural medical center from any tax–exempt financing or reimbursement, insurance, payment for services or other advantage for which a health care service that is not included in a rural medical center is eligible.

History: 1995 a. 98; 1997 a. 27, 237.

50.57 Fees permitted for a workshop or seminar. If the department develops and provides a workshop or seminar relating to the provision of services by rural medical centers under this subchapter, the department may establish a fee for each workshop or seminar and impose the fee on registrants for the workshop or seminar. A fee so established and imposed shall be in an amount sufficient to reimburse the department for the costs directly associated with developing and providing the workshop or seminar.

History: 1997 a. 27.

SUBCHAPTER IV

HOSPICES

50.90 Definitions. In this subchapter:

(1) "Hospice" means any of the following:

(a) An organization that primarily provides palliative care and supportive care to an individual with terminal illness where he or she lives or stays and, if necessary to meet the needs of an individual with terminal illness, arranges for or provides short–term inpatient care and treatment or provides respite care.

(b) A program, within an organization, that primarily provides palliative care and supportive care to an individual with terminal illness where he or she lives or stays, that uses designated staff time and facility services, that is distinct from other programs of care provided, and, if necessary to meet the needs of an individual with terminal illness, that arranges for or provides short–term inpatient care and treatment or respite care.

(c) A place, including a freestanding structure or a separate part of a structure in which other services are provided, that primarily provides palliative and supportive care and a place of residence to individuals with terminal illness and provides or arranges for short–term inpatient care as needed.

(1m) "Managing employe" means a general manager, business manager, administrator, director or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the operation of the hospice.

(2) "Organization" means a public agency, as defined in s. 46.93 (1m) (c), a nonprofit corporation, a for–profit stock corporation, a cooperative, a partnership, a limited liability company or a sole proprietorship.

(3) "Palliative care" means management and support provided for the reduction or abatement of pain, for other physical symptoms and for psychosocial or spiritual needs of individuals with terminal illness and includes physician services, skilled nursing care, medical social services, services of volunteers and bereavement services. "Palliative care" does not mean treatment provided in order to cure a medical condition or disease or to artificially prolong life.

(3g) "Respite care" means care provided to a terminally ill individual in order to provide temporary relief to the primary caregiver.

(3m) "Short–term care" means care provided to a terminally ill individual in an inpatient setting for brief periods of time for the purpose of pain control or acute or chronic symptom management.

(4) "Supportive care" means services provided during the final stages of an individual's terminal illness and dying and after the individual's death to meet the psychosocial, social and spiritual needs of family members of the terminally ill individual and other individuals caring for the terminally ill individual. "Supportive care" includes personal adjustment counseling, financial counseling, respite services, bereavement counseling and follow–up services provided by volunteers or other persons.

(5) "Terminal illness" means a medical prognosis that an individual's life expectancy is less than 12 months.

History: 1989 a. 199; 1993 a. 112.

50.91 Departmental powers and duties. The department shall provide uniform, statewide licensing, inspection and regulation of hospices as specified in this subchapter.

History: 1989 a. 199.

50.92 Licensing requirements. (1) No person may conduct, maintain, operate or otherwise participate in conducting, maintaining or operating a hospice unless the hospice is licensed by the department.

(2) The department shall issue a license if the department finds that the applicant is fit and qualified and that the hospice meets the requirements of this subchapter and the rules promulgated under this subchapter.

(3) The department or the department's designated representative shall inspect or investigate a hospice prior to issuance of a license for the hospice except as provided in sub. (4) and may inspect or investigate a hospice as the department deems necessary, including conducting home visits or a review of health care records of any individuals with terminal illness served by the hospice, to determine if any person is in violation of this subchapter.

(4) (a) In lieu of inspecting or investigating a hospice under sub. (3) prior to issuance of a license, the department may accept evidence that a hospice applying for licensure under s. 50.93 has been inspected under and is currently certified as meeting the conditions for medicare participation under 42 USC 1395 to 1395ccc. If a hospice fails to meet the conditions for medicare participation under 42 USC 1395 to 1395ccc, the department shall inspect or investigate the hospice under sub. (3) before initially issuing a license for the hospice.

(b) In lieu of inspecting or investigating a hospice under sub. (3) prior to issuance of a license, the department may accept evidence that a hospice applying for licensure under s. 50.93 has been inspected under and is currently in compliance with the hospice requirements of the joint commission for the accreditation of health organizations. A hospice shall provide the department with a copy of the report by the joint commission for the accreditation of health organizations of each periodic review the association conducts of the hospice.

(5) The past record of violations of applicable laws or regulations of the United States or of state statutes or rules of this or any other state, in the operation of any health–related organization, by an operator, managing employe or direct or indirect owner of a hospice or of an interest of a hospice is relevant to the issue of the fitness of an applicant for a license. The department or the department's designated representative shall inspect and investigate as necessary to determine the conditions existing in each case under this subsection and shall prepare and maintain a written report concerning the investigation and inspection.

History: 1989 a. 199; 1997 a. 27.

50.925 Use of name or advertising prohibited. No entity that is not a hospice licensed under this subchapter or an applicant for a license or a provisional license under this subchapter may designate itself as a "hospice" or use the word "hospice" to represent or tend to represent the entity as a hospice or services provided by the entity as services provided by a hospice.

History: 1989 a. 199.

50.93 Licensing procedure. (1) APPLICATION. The application for a license or for a provisional license shall:

(a) Be in writing on a form provided by the department.

(b) Contain such information as the department requires.

(c) Include licensing fee payment, unless the licensing fee is waived by the department on a case–by–case basis under criteria for determining financial hardship established in rules promulgated by the department. An initial licensing fee is $300, except that, for a hospice that is a nonprofit corporation and that is served entirely by uncompensated volunteers or employs persons in not more than 1.5 positions at 40 hours of employment per week, the initial licensing fee is $25. The annual fee thereafter is an amount equal to 0.15% of the net annual income of the hospice, based on the most recent annual report of the hospice under sub. (3m), or $200, whichever is greater, and if the amount equal to 0.15% of the net annual income of the hospice is greater than $1,000, the fee is $1,000, except that for a hospice that is a nonprofit corporation and that is served entirely by uncompensated volunteers or employs persons in not more than 1.5 positions at 40 hours of employment per week the annual fee is $10. The amount of the provisional licensing fee shall be established under s. 50.95 (2). The initial licensing fee for a hospice, including the initial licensing fee for a hospice that is a nonprofit corporation and that is served entirely by uncompensated volunteers or employs persons in not more than 1.5 positions at 40 hours of employment per week, issued after September 1 may be prorated.

(2) ISSUANCE OF LICENSE. (a) A hospice license is valid until suspended or revoked.

(c) Each license shall be issued only for the applicant named in the application and may not be transferred or assigned.

(d) Any license granted under special limitations prescribed by the department shall state the limitations.

(3) PROVISIONAL LICENSE. If the applicant has not been previously licensed under this subchapter or if the hospice is not in operation at the time that application is made, the department may issue a provisional license. Unless sooner suspended or revoked under sub. (4), a provisional license shall be valid for 24 months from the date of issuance. Within 30 days prior to the termination of a provisional license, the department shall fully and completely inspect the hospice and, if the hospice meets the applicable requirements for licensure, shall issue a regular license under sub. (2). If the department finds that the hospice does not meet the requirements for licensure, the department may not issue a regular license under sub. (2).

(3m) REPORTING. Every 12 months, on a schedule determined by the department, a licensed hospice shall submit an annual report in the form and containing the information that the department requires, including payment of the fee required under sub. (1) (c), evidence of current certification as meeting the conditions for medicare participation under 42 USC 1395 to 1395ccc and evidence of current compliance with the hospice requirements of the joint commission for the accreditation of health organizations. If a complete annual report is not timely filed, the department shall issue a warning to the licensee. The department may revoke the license for failure to timely and completely report within 60 days after the report date established under the schedule determined by the department.

(4) SUSPENSION AND REVOCATION. (a) The department, after notice to the applicant or licensee, may suspend or revoke a license in any case in which the department finds that there has been a substantial failure to comply with the requirements of this subchapter or the rules promulgated under this subchapter. No state or federal funds passing through the state treasury may be paid to a hospice not having a valid license issued under this section.

(b) Notice under this subsection shall include a clear and concise statement of the violations on which the revocation is based, the statute or rule violated and notice of the opportunity for an evidentiary hearing under par. (c).

(c) If a hospice desires to contest the revocation of a license, the hospice shall, within 10 days after receipt of notice under par. (b), notify the department in writing of its request for a hearing under s. 227.44.

(d) 1. Subject to s. 227.51 (3), revocation shall become effective on the date set by the department in the notice of revocation,

1999 **Date (time) needed** TODAY, if possible **LRB b** 1791 / 1

BUDGET AMENDMENT

DAK : jlg : cmh

See form **AMENDMENTS — COMPONENTS & ITEMS.**

LFB

CONFERENCE AMENDMENT
TO ASSEMBLY SUBSTITUTE AMENDMENT 1
TO 1999 ASSEMBLY BILL 133

At the locations indicated, amend the substitute amendment as follows:

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

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1791/1

1999 – 2000 LEGISLATURE

LRBb~~1791~~/1
DAK:cmh:~~kf~~

LFB—

ASSEMBLY AMENDMENT ,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 133

At the locations indicated, amend the substitute amendment as follows:

1. Page 752, line 10: after that line insert:

"**SECTION 1531r.** 50.94 of the statutes is created to read:

50.94 Admission to and care in a hospice for certain incapacitated persons. (1) In this section:

(a) "Hospice care" means palliative care, respite care, short–term care or supportive care.

(b) "Incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that a person lacks the capacity to manage his or her health care decisions.

(c) "Physician" means a person licensed to practice medicine and surgery under ch. 448.

(d) "Terminal condition" means an incurable condition caused by injury, disease or illness that according to reasonable medical judgment will produce death within 6 months, even with available life–sustaining treatment provided in accordance with the prevailing standard of medical care.

(2) A person who is determined to be incapacitated under the requirements of sub. (8), does not have a valid living will or valid power of attorney for health care and has not been adjudicated incompetent under ch. 880 may be admitted to a hospice under this section only if all of the following requirements are met:

(a) An individual who is specified in sub. (3) signs all of the following:

1. On behalf of the person who is incapacitated, an informed consent for the receipt of hospice care by the person who is incapacitated.

2. A statement certifying that it is his or her belief, to the best of his or her knowledge, that, if able to do so, the person who is incapacitated would have selected hospice care.

(b) A physician certifies that the person who is incapacitated has a terminal condition and that the physician believes that the individual under par. (a) is acting in accordance with the views or beliefs of the person who is incapacitated.

(3) The following individuals, in the following order of priority, may act under sub. (2) (a):

(a) The spouse of the person who is incapacitated.

(b) An adult child of the person who is incapacitated.

(c) A parent of the person who is incapacitated.

(d) An adult sibling of the person who is incapacitated.

(e) A close friend or a relative of the person who is incapacitated, other than as specified in pars. (a) to (d), to whom all of the following apply:

1. The close friend or other relative is aged at least 18 and has maintained sufficient regular contact with the person who is incapacitated to be familiar with the person's activities, health and beliefs.

2. The close friend or other relative has exhibited special care and concern for the incapacitated person.

(4) The individual who acts under sub. (2) (a) may make all health care decisions related to receipt of hospice care by the person who is incapacitated.

(5) The person who is incapacitated or the individual under sub. (4) may object to or revoke the election of hospice care at any time.

(6) A person who disagrees with a hospice decision made under this section may apply under ch. 880 for temporary guardianship of the person who is incapacitated. In applying for the temporary guardianship, such a person has the burden of proving that the person who is incapacitated would not have consented to admission to a hospice or hospice care.

(7) The individual who acts under sub. (2) (a) shall, if feasible, provide to all other individuals listed under sub. (3) notice of the proposed admission of the person who is incapacitated to a hospice and of the right to apply for temporary guardianship under sub. (6). If it is not feasible for the individual to provide this notice before admission of the person who is incapacitated to a hospice, the individual who acts under sub. (2) (a) shall exercise reasonable diligence in providing the notice within 48 hours after the admission.

(8) A determination that a person is incapacitated may be made only by 2 physicians or by one physician and one licensed psychologist, as defined in s. 455.01 (4), who personally examine the person and sign a statement specifying that the person is incapacitated. Mere old age, eccentricity or physical disabilities, singly or

together, are insufficient to determine that a person is incapacitated. Whoever determines that the person is incapacitated may not be a relative, as defined in s. 242.01 (11), of the person or have knowledge that he or she is entitled to or has claim on any portion of the person's estate. A copy of the statement shall be included in the records of the incapacitated person in the hospice to which he or she is admitted.".

(END)

State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb1791/1
DAK:jlg&cmh:km

LFB:.....Morgan – Hospice decisionmaking

FOR 1999–01 BUDGET — NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

At the locations indicated, amend the substitute amendment as follows:

1. Page 752, line 10: after that line insert:

"**SECTION 1531r.** 50.94 of the statutes is created to read:

50.94 Admission to and care in a hospice for certain incapacitated persons. (1) In this section:

(a) "Hospice care" means palliative care, respite care, short–term care or supportive care.

(b) "Incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that a person lacks the capacity to manage his or her health care decisions.

(c) "Physician" means a person licensed to practice medicine and surgery under ch. 448.

(d) "Terminal condition" means an incurable condition caused by injury, disease or illness that according to reasonable medical judgment will produce death within 6 months, even with available life–sustaining treatment provided in accordance with the prevailing standard of medical care.

(2) A person who is determined to be incapacitated under the requirements of sub. (8), does not have a valid living will or valid power of attorney for health care and has not been adjudicated incompetent under ch. 880 may be admitted to a hospice under this section only if all of the following requirements are met:

(a) An individual who is specified in sub. (3) signs all of the following:

1. On behalf of the person who is incapacitated, an informed consent for the receipt of hospice care by the person who is incapacitated.

2. A statement certifying that it is his or her belief, to the best of his or her knowledge, that, if able to do so, the person who is incapacitated would have selected hospice care.

(b) A physician certifies that the person who is incapacitated has a terminal condition and that the physician believes that the individual under par. (a) is acting in accordance with the views or beliefs of the person who is incapacitated.

(3) The following individuals, in the following order of priority, may act under sub. (2) (a):

(a) The spouse of the person who is incapacitated.

(b) An adult child of the person who is incapacitated.

(c) A parent of the person who is incapacitated.

(d) An adult sibling of the person who is incapacitated.

(e) A close friend or a relative of the person who is incapacitated, other than as specified in pars. (a) to (d), to whom all of the following apply:

1. The close friend or other relative is aged at least 18 and has maintained sufficient regular contact with the person who is incapacitated to be familiar with the person's activities, health and beliefs.

2. The close friend or other relative has exhibited special care and concern for the incapacitated person.

(4) The individual who acts under sub. (2) (a) may make all health care decisions related to receipt of hospice care by the person who is incapacitated.

(5) The person who is incapacitated or the individual under sub. (4) may object to or revoke the election of hospice care at any time.

(6) A person who disagrees with a hospice decision made under this section may apply under ch. 880 for temporary guardianship of the person who is incapacitated. In applying for the temporary guardianship, such a person has the burden of proving that the person who is incapacitated would not have consented to admission to a hospice or hospice care.

(7) The individual who acts under sub. (2) (a) shall, if feasible, provide to all other individuals listed under sub. (3) notice of the proposed admission of the person who is incapacitated to a hospice and of the right to apply for temporary guardianship under sub. (6). If it is not feasible for the individual to provide this notice before admission of the person who is incapacitated to a hospice, the individual who acts under sub. (2) (a) shall exercise reasonable diligence in providing the notice within 48 hours after the admission.

(8) A determination that a person is incapacitated may be made only by 2 physicians or by one physician and one licensed psychologist, as defined in s. 455.01

(4), who personally examine the person and sign a statement specifying that the person is incapacitated. Mere old age, eccentricity or physical disabilities, singly or together, are insufficient to determine that a person is incapacitated. Whoever determines that the person is incapacitated may not be a relative, as defined in s. 242.01 (11), of the person or have knowledge that he or she is entitled to or has claim on any portion of the person's estate. A copy of the statement shall be included in the records of the incapacitated person in the hospice to which he or she is admitted.".

(END)