

2019 Assembly Bill 287 (LRB -1737)

An Act to renumber 155.01 (1); to renumber and amend 154.01 (1), 154.01 (3) and 302.384; to amend 154.01 (5) (intro.), subchapter II (title) of chapter 154 [precedes 154.02], 154.02 (3), 154.03 (title), 154.03 (1) (intro.), 154.03 (2), 154.05 (1) (c), 154.05 (2), 154.07 (1) (a) (intro.), 154.07 (1) (a) 3., 154.07 (2), 154.19 (1) (intro.), 154.19 (1) (e), 154.19 (2) (a), 154.19 (2) (b) (intro.), 154.21 (2), 154.23 (intro.), 154.27 (1), 155.05 (2), 155.20 (4), 155.30 (1), 155.30 (3), 155.50 (1) (b), 165.77 (1) (a) and 441.07 (1g) (d) (intro.); and to create 154.01 (1g), 154.01 (3) (a), 154.01 (3) (b), 154.01 (3) (c), 155.01 (1g), 302.384 (1m) and 448.015 (4) (am) 2m. of the statutes; relating to: certifications for advance directives and findings of incapacity related to powers of attorney for health care. (FE)

2019

06-13.	A.	Introduced by Representatives Snyder, Doyle, Brostoff, Hintz, Kolste, Kulp, B. Meyers, Ohnstad, Oldenburg, Ramthun, Rohrkaste, Sinicki, Spiros, Spreitzer, Subeck, Tittl, VanderMeer, Vining, Magnafici and Brooks ; cosponsored by Senators Marklein, Ringhand, Bewley, Carpenter, Feyen, Hansen, Kooyenga, Olsen, Schachtner, Shilling, Testin, Tiffany, Wanggaard and Bernier.	172
06-13.	A.	Read first time and referred to Committee on Health	172
09-26.	A.	Assembly Amendment 1 offered by Representative Snyder (LRB a0403)	289
10-15.	A.	Fiscal estimate received	
10-16.	A.	Public hearing held	
10-30.	A.	Executive action taken	
11-06.	A.	Report Assembly Amendment 1 adoption recommended by Committee on Health, Ayes 13, Noes 1	361
11-06.	A.	Report passage as amended recommended by Committee on Health, Ayes 13, Noes 1	361
11-06.	A.	Referred to committee on Rules	361
11-07.	A.	Placed on calendar 11-12-2019 by Committee on Rules	
11-12.	A.	Read a second time	387
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11-12.	A.	Rules suspended	388
11-12.	A.	Read a third time and passed	388
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2020

01-09.	S.	Read first time and referred to committee on Senate Organization	570
01-09.	S.	Available for scheduling	
01-17.	S.	Public hearing requirement waived by committee on Senate Organization, pursuant to Senate Rule 18 (1m), Ayes 5, Noes 0	586
01-17.	S.	Placed on calendar 1-21-2020 pursuant to Senate Rule 18(1)	586
01-21.	S.	Senator Larson added as a cosponsor	
01-21.	S.	Read a second time	
01-21.	S.	Ordered to a third reading	
01-21.	S.	Rules suspended	
01-21.	S.	Read a third time and concurred in	
01-21.	S.	Ordered immediately messaged	
01-21.	A.	Received from Senate concurred in	

9MB



19en A B-287

ENROLLED BILL

Adopted Documents

Original

Engrossed

Substitute Amdt

19 1737, 1

Amendments: None or Listed below.

AA 1

Corrections: None or Listed by date below.

4/23/20

Topic: Same as relating clause or Indicated below.

4/23/20

Date

Enrolling Drafter



State of Wisconsin
2019-2020 LEGISLATURE

CORRECTIONS IN:

2019 ASSEMBLY BILL 287

Prepared by the Legislative Reference Bureau
(January 27, 2020)

In enrolling, the following correction was made:

1. Page 2, line 1: delete "SECTION 1" and substitute "SECTION 1u".

(END)



2019 ASSEMBLY BILL 287

June 13, 2019 - Introduced by Representatives SNYDER, DOYLE, BROSTOFF, HINTZ, KOLSTE, KULP, B. MEYERS, OHNSTAD, OLDENBURG, RAMTHUN, ROHRKASTE, SINICKI, SPIROS, SPREITZER, SUBECK, TITTL, VANDERMEER, VINING, MAGNAFICI and BROOKS, cosponsored by Senators MARKLEIN, RINGHAND, BEWLEY, CARPENTER, FEYEN, HANSEN, KOOYENGA, OLSEN, SCHACHTNER, SHILLING, TESTIN, TIFFANY, WANGGAARD and BERNIER. Referred to Committee on Health.

1 **AN ACT** *to renumber* 155.01 (1); *to renumber and amend* 154.01 (1), 154.01
2 (3) and 302.384; *to amend* 154.01 (5) (intro.), subchapter II (title) of chapter
3 154 [precedes 154.02], 154.02 (3), 154.03 (title), 154.03 (1) (intro.), 154.03 (2),
4 154.05 (1) (c), 154.05 (2), 154.07 (1) (a) (intro.), 154.07 (1) (a) 3., 154.07 (2),
5 154.19 (1) (intro.), 154.19 (1) (e), 154.19 (2) (a), 154.19 (2) (b) (intro.), 154.21 (2),
6 154.23 (intro.), 154.27 (1), 155.05 (2), 155.20 (4), 155.30 (1), 155.30 (3), 155.50
7 (1) (b), 165.77 (1) (a) and 441.07 (1g) (d) (intro.); and *to create* 154.01 (1g),
8 154.01 (3) (a), 154.01 (3) (b), 154.01 (3) (c), 155.01 (1g), 302.384 (1m) and
9 448.015 (4) (am) 2m. of the statutes; **relating to:** certifications for advance
10 directives and findings of incapacity related to powers of attorney for health
11 care.

Am 1.

INS AM 1

Analysis by the Legislative Reference Bureau

This bill makes the following changes regarding certifications for advance directives and health care powers of attorney:

1. Allows, unless a health care power of attorney instrument specifies otherwise, one physician and one qualified physician assistant or nurse practitioner

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to personally examine principals and make findings of incapacity upon which a health care power of attorney becomes effective. Under a health care power of attorney instrument executed under current law, unless specified otherwise, two physicians or one physician and one psychologist must personally examine and determine that a principal has incapacity for a health care power of attorney to become effective. Also, a physician assistant may make findings of incapacity under the bill only if a physician who oversees the physician assistant's practice affirms that the physician assistant is competent to evaluate the capacity of patients to manage health care decisions. A health care power of attorney instrument designates another person as an agent to make health care decisions on behalf of an individual who is incapable of making those decisions.

2. Allows an attending physician assistant or attending advanced practice registered nurse to issue do-not-resuscitate orders. Current law allows only attending physicians to issue do-not-resuscitate orders. Under current law, if a person has a serious medical condition that satisfies certain requirements, the person may request a do-not-resuscitate order which directs medical personnel to not attempt various types of resuscitation procedures on a person if the person suffers cardiac or respiratory arrest.

3. Specifies that under a declaration to physicians, also called a living will, unless specified otherwise, a physician assistant or advanced practice registered nurse may certify that a patient is afflicted with a terminal condition or is in a persistent vegetative state. Under current law, unless a declaration specifies otherwise, only physicians may make those certifications. If a patient has executed a declaration, and is certified to have a terminal condition or to be in a persistent vegetative state, in certain situations the declaration authorizes the withholding or withdrawal of life-sustaining procedures or of feeding tubes from the patient.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

INS
PAA
2.

1 **SECTION 1.** 154.01 (1) of the statutes is renumbered 154.01 (1r) and amended

2 to read:

3 154.01 (1r) "Attending physician health care professional" means a physician
4 ~~licensed under ch. 448~~ health care professional who has primary responsibility for
5 the treatment and care of the patient.

6 **SECTION 2.** 154.01 (1g) of the statutes is created to read:

ccc
1.

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SUBCHAPTER II

DECLARATION TO PHYSICIANS

HEALTH CARE PROFESSIONALS

SECTION 9. 154.02 (3) of the statutes is amended to read:

154.02 (3) "Qualified patient" means a declarant who has been diagnosed and certified in writing to be afflicted with a terminal condition or to be in a persistent vegetative state by ~~2 physicians~~ health care professionals, one of whom is the attending ~~physician~~ health care professional and one of whom is a physician, who have personally examined the declarant.

SECTION 10. 154.03 (title) of the statutes is amended to read:

154.03 (title) **Declaration to ~~physicians~~ health care professionals.**

SECTION 11. 154.03 (1) (intro.) of the statutes is amended to read:

154.03 (1) (intro.) Any person of sound mind and 18 years of age or older may at any time voluntarily execute a declaration, which shall take effect on the date of execution, authorizing the withholding or withdrawal of life-sustaining procedures or of feeding tubes when the person is in a terminal condition or is in a persistent vegetative state. A declarant may not authorize the withholding or withdrawal of any medication, life-sustaining procedure or feeding tube if the declarant's attending ~~physician~~ health care professional advises that, in his or her professional judgment, the withholding or withdrawal will cause the declarant pain or reduce the declarant's comfort and the pain or discomfort cannot be alleviated through pain relief measures. A declarant may not authorize the withholding or withdrawal of nutrition or hydration that is administered or otherwise received by the declarant through means other than a feeding tube unless the declarant's attending ~~physician~~ health care professional advises that, in his or her professional judgment, the

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1 administration is medically contraindicated. A declaration must be signed by the
2 declarant in the presence of 2 witnesses. If the declarant is physically unable to sign
3 a declaration, the declaration must be signed in the declarant's name by one of the
4 witnesses or some other person at the declarant's express direction and in his or her
5 presence; such a proxy signing shall either take place or be acknowledged by the
6 declarant in the presence of 2 witnesses. The declarant is responsible for notifying
7 his or her attending ~~physician~~ health care professional of the existence of the
8 declaration. An attending ~~physician~~ health care professional who is so notified shall
9 make the declaration a part of the declarant's medical records. No witness to the
10 execution of the declaration may, at the time of the execution, be any of the following:

11 **SECTION 12.** 154.03 (2) of the statutes is amended to read:

12 154.03 (2) The department shall prepare and provide copies of the declaration
13 and accompanying information for distribution in quantities to ~~health care~~
14 ~~professionals~~ persons licensed, certified, or registered under ch. 441, 448, or 455,
15 hospitals, nursing homes, county clerks and local bar associations and individually
16 to private persons. The department shall include, in information accompanying the
17 declaration, at least the statutory definitions of terms used in the declaration,
18 statutory restrictions on who may be witnesses to a valid declaration, a statement
19 explaining that valid witnesses acting in good faith are statutorily immune from civil
20 or criminal liability, an instruction to potential declarants to read and understand
21 the information before completing the declaration and a statement explaining that
22 an instrument may, but need not be, filed with the register in probate of the
23 declarant's county of residence. The department may charge a reasonable fee for the
24 cost of preparation and distribution. The declaration distributed by the department
25 of health services shall be easy to read, the type size may be no smaller than 10 point,

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SECTION 12

1 and the declaration shall be in the following form, setting forth on the first page the
2 wording before the ATTENTION statement and setting forth on the 2nd page the
3 ATTENTION statement and remaining wording:

4 DECLARATION TO PHYSICIANS HEALTH CARE PROFESSIONALS

5 (WISCONSIN LIVING WILL)

6 I,...., being of sound mind, voluntarily state my desire that my dying not be
7 prolonged under the circumstances specified in this document. Under those
8 circumstances, I direct that I be permitted to die naturally. If I am unable to give
9 directions regarding the use of life-sustaining procedures or feeding tubes, I intend
10 that my family and physician, physician assistant, or advanced practice registered
11 nurse honor this document as the final expression of my legal right to refuse medical
12 or surgical treatment.

13 1. If I have a TERMINAL CONDITION, as determined by ~~2~~ physicians a
14 physician, physician assistant, or advanced practice registered nurse who ~~have~~ has
15 personally examined me, and if a physician who has also personally examined me
16 agrees with that determination, I do not want my dying to be artificially prolonged
17 and I do not want life-sustaining procedures to be used. In addition, the following
18 are my directions regarding the use of feeding tubes:

19 YES, I want feeding tubes used if I have a terminal condition.

20 NO, I do not want feeding tubes used if I have a terminal condition.

21 If you have not checked either box, feeding tubes will be used.

22 2. If I am in a PERSISTENT VEGETATIVE STATE, as determined by ~~2~~
23 physicians a physician, physician assistant, or advanced practice registered nurse
24 who ~~have~~ has personally examined me, and if a physician who has also personally

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1 examined me agrees with that determination, the following are my directions
2 regarding the use of life-sustaining procedures:

3 YES, I want life-sustaining procedures used if I am in a persistent
4 vegetative state.

5 NO, I do not want life-sustaining procedures used if I am in a persistent
6 vegetative state.

7 If you have not checked either box, life-sustaining procedures will be used.

8 3. If I am in a PERSISTENT VEGETATIVE STATE, as determined by -2
9 physicians a physician, physician assistant, or advanced practice registered nurse
10 who have has personally examined me, and if a physician who has also personally
11 examined me agrees with that determination, the following are my directions
12 regarding the use of feeding tubes:

13 YES, I want feeding tubes used if I am in a persistent vegetative state.

14 NO, I do not want feeding tubes used if I am in a persistent vegetative state.

15 If you have not checked either box, feeding tubes will be used.

16 If you are interested in more information about the significant terms used in
17 this document, see section 154.01 of the Wisconsin Statutes or the information
18 accompanying this document.

19 ATTENTION: You and the 2 witnesses must sign the document at the same
20 time.

21 Signed

Date

22 Address

Date of birth

ASSEMBLY BILL 287**SECTION 12**

1 I believe that the person signing this document is of sound mind. I am an adult
 2 and am not related to the person signing this document by blood, marriage or
 3 adoption. I am not entitled to and do not have a claim on any portion of the person's
 4 estate and am not otherwise restricted by law from being a witness.

5 Witness signature

Date signed

6 Print name

7

8 Witness signature

Date signed

9 Print name

10 DIRECTIVES TO ATTENDING PHYSICIAN, PHYSICIAN ASSISTANT, OR
 11 ADVANCED PRACTICE REGISTERED NURSE

12 1. This document authorizes the withholding or withdrawal of life-sustaining
 13 procedures or of feeding tubes when ~~2 physicians~~ a physician and another physician,
 14 physician assistant, or advanced practice registered nurse, one of whom is the
 15 attending ~~physician~~ health care professional, have personally examined and
 16 certified in writing that the patient has a terminal condition or is in a persistent
 17 vegetative state.

18 2. The choices in this document were made by a competent adult. Under the
 19 law, the patient's stated desires must be followed unless you believe that withholding
 20 or withdrawing life-sustaining procedures or feeding tubes would cause the patient
 21 pain or reduced comfort and that the pain or discomfort cannot be alleviated through
 22 pain relief measures. If the patient's stated desires are that life-sustaining
 23 procedures or feeding tubes be used, this directive must be followed.

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1 3. If you feel that you cannot comply with this document, you must make a good
2 faith attempt to transfer the patient to another physician, physician assistant, or
3 advanced practice registered nurse who will comply. Refusal or failure to make a
4 good faith attempt to do so constitutes unprofessional conduct.

5 4. If you know that the patient is pregnant, this document has no effect during
6 her pregnancy.

7 * * * * *

8 The person making this living will may use the following space to record the
9 names of those individuals and health care providers to whom he or she has given
10 copies of this document:

11
12
13

14 **SECTION 13.** 154.05 (1) (c) of the statutes is amended to read:

15 154.05 (1) (c) By a verbal expression by the declarant of his or her intent to
16 revoke the declaration. This revocation becomes effective only if the declarant or a
17 person who is acting on behalf of the declarant notifies the attending ~~physician~~
18 health care professional of the revocation.

19 **SECTION 14.** 154.05 (2) of the statutes is amended to read:

20 154.05 (2) **RECORDING THE REVOCATION.** The attending ~~physician~~ health care
21 professional shall record in the patient's medical record the time, date and place of
22 the revocation and the time, date and place, if different, that he or she was notified
23 of the revocation.

24 **SECTION 15.** 154.07 (1) (a) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 287**SECTION 15**

1 154.07 (1) (a) (intro.) No physician health care professional, inpatient health
2 care facility or health care professional person licensed, certified, or registered under
3 ch. 441, 448, or 455 acting under the direction of a physician health care professional
4 may be held criminally or civilly liable, or charged with unprofessional conduct, for
5 any of the following:

6 **SECTION 16.** 154.07 (1) (a) 3. of the statutes is amended to read:

7 154.07 (1) (a) 3. Failing to comply with a declaration, except that failure by a
8 physician health care professional to comply with a declaration of a qualified patient
9 constitutes unprofessional conduct if the physician health care professional refuses
10 or fails to make a good faith attempt to transfer the qualified patient to another
11 physician health care professional who will comply with the declaration.

12 **SECTION 17.** 154.07 (2) of the statutes is amended to read:

13 154.07 (2) EFFECT OF DECLARATION. The desires of a qualified patient who is
14 competent supersede the effect of the declaration at all times. If a qualified patient
15 is adjudicated incompetent at the time of the decision to withhold or withdraw
16 life-sustaining procedures or feeding tubes, a declaration executed under this
17 subchapter is presumed to be valid. The declaration of a qualified patient who is
18 diagnosed as pregnant by the attending physician health care professional has no
19 effect during the course of the qualified patient's pregnancy. For the purposes of this
20 subchapter, a physician health care professional or inpatient health care facility may
21 presume in the absence of actual notice to the contrary that a person who executed
22 a declaration was of sound mind at the time.

23 **SECTION 18.** 154.19 (1) (intro.) of the statutes is amended to read:

24 154.19 (1) (intro.) No person except an attending physician health care
25 professional may issue a do-not-resuscitate order. An attending physician health

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1 care professional may issue a do-not-resuscitate order to a patient only if all of the
2 following apply:

3 **SECTION 19.** 154.19 (1) (e) of the statutes is amended to read:

4 154.19 (1) (e) The ~~physician~~ health care professional does not know the patient
5 to be pregnant.

6 **SECTION 20.** 154.19 (2) (a) of the statutes is amended to read:

7 154.19 (2) (a) The attending ~~physician~~ health care professional, or a person
8 directed by the attending ~~physician~~ health care professional, shall provide the
9 patient with written information about the resuscitation procedures that the patient
10 has chosen to forego and the methods by which the patient may revoke the
11 do-not-resuscitate order.

12 **SECTION 21.** 154.19 (2) (b) (intro.) of the statutes is amended to read:

13 154.19 (2) (b) (intro.) After providing the information under par. (a), the
14 attending ~~physician~~ health care professional, or the person directed by the attending
15 ~~physician~~ health care professional, shall document in the patient's medical record
16 the medical condition that qualifies the patient for the do-not-resuscitate order,
17 shall make the order in writing and shall do one of the following, as requested by the
18 qualified patient:

19 **SECTION 22.** 154.21 (2) of the statutes is amended to read:

20 154.21 (2) RECORDING THE REVOCATION. The attending ~~physician~~ health care
21 professional shall be notified as soon as practicable of the patient's revocation and
22 shall record in the patient's medical record the time, date and place of the revocation,
23 if known, and the time, date and place, if different, that he or she was notified of the
24 revocation. A revocation under sub. (1) is effective regardless of when the attending
25 ~~physician~~ health care professional has been notified of that revocation.

ASSEMBLY BILL 287**SECTION 23**

1 **SECTION 23.** 154.23 (intro.) of the statutes is amended to read:

2 **154.23 Liability.** (intro.) No physician, emergency medical services
3 practitioner, emergency medical responder, health care professional provider, as
4 defined in s. 146.81 (1), or emergency health care facility may be held criminally or
5 civilly liable, or charged with unprofessional conduct, for any of the following:

6 **SECTION 24.** 154.27 (1) of the statutes is amended to read:

7 154.27 (1) The department shall establish by rule a uniform standard for the
8 size, color, and design of all do-not-resuscitate bracelets. Except as provided in sub.
9 (2), the rules shall require that the do-not-resuscitate bracelets include the
10 inscription "Do Not Resuscitate"; the name, address, date of birth and gender of the
11 patient; and the name, business telephone number and signature of the attending
12 physician health care professional issuing the order.

13 **SECTION 25.** 155.01 (1) of the statutes is renumbered 155.01 (1r).

14 **SECTION 26.** 155.01 (1g) of the statutes is created to read:

15 155.01 (1g) "Advanced practice clinician" means any of the following:

16 (a) A licensed psychologist, as defined in s. 455.01 (4).

17 (b) A registered nurse under ch. 441 who is currently certified as a nurse
18 practitioner by a national certifying body approved by the board of nursing.

19 (c) A physician assistant licensed under ch. 448 who a physician responsible
20 for overseeing the physician assistant's practice affirms is competent to conduct
21 evaluations of the capacity of patients to manage health care decisions.

22 **SECTION 27.** 155.05 (2) of the statutes is amended to read:

23 155.05 (2) Unless otherwise specified in the power of attorney for health care
24 instrument, an individual's power of attorney for health care takes effect upon a
25 finding of incapacity by 2 physicians, as defined in s. 448.01 (5), or one physician and

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1 one licensed ~~psychologist, as defined in s. 455.01 (4)~~ advanced practice clinician, who
2 personally examine the principal and sign a statement specifying that the principal
3 has incapacity. Mere old age, eccentricity or physical disability, either singly or
4 together, are insufficient to make a finding of incapacity. Neither of the individuals
5 who make a finding of incapacity may be a relative of the principal or have knowledge
6 that he or she is entitled to or has a claim on any portion of the principal's estate.
7 A copy of the statement, if made, shall be appended to the power of attorney for health
8 care instrument.

9 **SECTION 28.** 155.20 (4) of the statutes is amended to read:

10 155.20 (4) A health care agent may consent to the withholding or withdrawal
11 of a feeding tube for the principal if the power of attorney for health care instrument
12 so authorizes, unless the principal's attending ~~physician~~ health care professional, as
13 defined in s. 154.01 (1r), advises that, in his or her professional judgment, the
14 withholding or withdrawal will cause the principal pain or reduce the principal's
15 comfort. A health care agent may not consent to the withholding or withdrawal of
16 orally ingested nutrition or hydration unless provision of the nutrition or hydration
17 is medically contraindicated.

18 **SECTION 29.** 155.30 (1) of the statutes is amended to read:

19 155.30 (1) A printed form of a power of attorney for health care instrument that
20 is sold or otherwise distributed for use by an individual in this state who does not
21 have the advice of legal counsel shall provide no authority other than the authority
22 to make health care decisions on behalf of the principal and shall contain the
23 following statement in not less than 10-point boldface type:

24 "NOTICE TO PERSON

25 MAKING THIS DOCUMENT

ASSEMBLY BILL 287**SECTION 29**

1 YOU HAVE THE RIGHT TO MAKE DECISIONS ABOUT YOUR HEALTH
2 CARE. NO HEALTH CARE MAY BE GIVEN TO YOU OVER YOUR OBJECTION,
3 AND NECESSARY HEALTH CARE MAY NOT BE STOPPED OR WITHHELD IF
4 YOU OBJECT.

5 BECAUSE YOUR HEALTH CARE PROVIDERS IN SOME CASES MAY NOT
6 HAVE HAD THE OPPORTUNITY TO ESTABLISH A LONG-TERM
7 RELATIONSHIP WITH YOU, THEY ARE OFTEN UNFAMILIAR WITH YOUR
8 BELIEFS AND VALUES AND THE DETAILS OF YOUR FAMILY
9 RELATIONSHIPS. THIS POSES A PROBLEM IF YOU BECOME PHYSICALLY
10 OR MENTALLY UNABLE TO MAKE DECISIONS ABOUT YOUR HEALTH CARE.

11 IN ORDER TO AVOID THIS PROBLEM, YOU MAY SIGN THIS LEGAL
12 DOCUMENT TO SPECIFY THE PERSON WHOM YOU WANT TO MAKE
13 HEALTH CARE DECISIONS FOR YOU IF YOU ARE UNABLE TO MAKE THOSE
14 DECISIONS PERSONALLY. THAT PERSON IS KNOWN AS YOUR HEALTH
15 CARE AGENT. YOU SHOULD TAKE SOME TIME TO DISCUSS YOUR
16 THOUGHTS AND BELIEFS ABOUT MEDICAL TREATMENT WITH THE
17 PERSON OR PERSONS WHOM YOU HAVE SPECIFIED. YOU MAY STATE IN
18 THIS DOCUMENT ANY TYPES OF HEALTH CARE THAT YOU DO OR DO NOT
19 DESIRE, AND YOU MAY LIMIT THE AUTHORITY OF YOUR HEALTH CARE
20 AGENT. IF YOUR HEALTH CARE AGENT IS UNAWARE OF YOUR DESIRES
21 WITH RESPECT TO A PARTICULAR HEALTH CARE DECISION, HE OR SHE IS
22 REQUIRED TO DETERMINE WHAT WOULD BE IN YOUR BEST INTERESTS IN
23 MAKING THE DECISION.

24 THIS IS AN IMPORTANT LEGAL DOCUMENT. IT GIVES YOUR AGENT
25 BROAD POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. IT

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1 REVOKES ANY PRIOR POWER OF ATTORNEY FOR HEALTH CARE THAT YOU
2 MAY HAVE MADE. IF YOU WISH TO CHANGE YOUR POWER OF ATTORNEY
3 FOR HEALTH CARE, YOU MAY REVOKE THIS DOCUMENT AT ANY TIME BY
4 DESTROYING IT, BY DIRECTING ANOTHER PERSON TO DESTROY IT IN
5 YOUR PRESENCE, BY SIGNING A WRITTEN AND DATED STATEMENT OR BY
6 STATING THAT IT IS REVOKED IN THE PRESENCE OF TWO WITNESSES. IF
7 YOU REVOKE, YOU SHOULD NOTIFY YOUR AGENT, YOUR HEALTH CARE
8 PROVIDERS AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A COPY.
9 IF YOUR AGENT IS YOUR SPOUSE OR DOMESTIC PARTNER AND YOUR
10 MARRIAGE IS ANNULLED OR YOU ARE DIVORCED OR THE DOMESTIC
11 PARTNERSHIP IS TERMINATED AFTER SIGNING THIS DOCUMENT, THE
12 DOCUMENT IS INVALID.

13 YOU MAY ALSO USE THIS DOCUMENT TO MAKE OR REFUSE TO MAKE
14 AN ANATOMICAL GIFT UPON YOUR DEATH. IF YOU USE THIS DOCUMENT
15 TO MAKE OR REFUSE TO MAKE AN ANATOMICAL GIFT, THIS DOCUMENT
16 REVOKES ANY PRIOR RECORD OF GIFT THAT YOU MAY HAVE MADE. YOU
17 MAY REVOKE OR CHANGE ANY ANATOMICAL GIFT THAT YOU MAKE BY
18 THIS DOCUMENT BY CROSSING OUT THE ANATOMICAL GIFTS PROVISION
19 IN THIS DOCUMENT.

20 DO NOT SIGN THIS DOCUMENT UNLESS YOU CLEARLY UNDERSTAND
21 IT.

22 IT IS SUGGESTED THAT YOU KEEP THE ORIGINAL OF THIS
23 DOCUMENT ON FILE WITH YOUR PHYSICIAN OR OTHER PRIMARY CARE
24 PROVIDER.”

25 **SECTION 30.** 155.30 (3) of the statutes is amended to read:

ASSEMBLY BILL 287**SECTION 30**

1 155.30 (3) The department shall prepare and provide copies of a power of
2 attorney for health care instrument and accompanying information for distribution
3 in quantities to health care professionals, hospitals, nursing homes, multipurpose
4 senior centers, county clerks, and local bar associations and individually to private
5 persons. The department shall include, in information accompanying the copy of the
6 instrument, at least the statutory definitions of terms used in the instrument,
7 statutory restrictions on who may be witnesses to a valid instrument, a statement
8 explaining that valid witnesses acting in good faith are statutorily immune from civil
9 or criminal liability and a statement explaining that an instrument may, but need
10 not, be filed with the register in probate of the principal's county of residence. The
11 department may charge a reasonable fee for the cost of preparation and distribution.
12 The power of attorney for health care instrument distributed by the department
13 shall include the notice specified in sub. (1) and shall be in the following form:

14 **POWER OF ATTORNEY FOR HEALTH CARE**

15 Document made this.... day of.... (month),.... (year).

16 **CREATION OF POWER OF ATTORNEY**

17 **FOR HEALTH CARE**

18 I,.... (print name, address and date of birth), being of sound mind, intend by this
19 document to create a power of attorney for health care. My executing this power of
20 attorney for health care is voluntary. Despite the creation of this power of attorney
21 for health care, I expect to be fully informed about and allowed to participate in any
22 health care decision for me, to the extent that I am able. For the purposes of this
23 document, "health care decision" means an informed decision to accept, maintain,
24 discontinue or refuse any care, treatment, service or procedure to maintain, diagnose
25 or treat my physical or mental condition.

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1 In addition, I may, by this document, specify my wishes with respect to making
2 an anatomical gift upon my death.

3 **DESIGNATION OF HEALTH CARE AGENT**

4 If I am no longer able to make health care decisions for myself, due to my
5 incapacity, I hereby designate.... (print name, address and telephone number) to be
6 my health care agent for the purpose of making health care decisions on my behalf.
7 If he or she is ever unable or unwilling to do so, I hereby designate.... (print name,
8 address and telephone number) to be my alternate health care agent for the purpose
9 of making health care decisions on my behalf. Neither my health care agent nor my
10 alternate health care agent whom I have designated is my health care provider, an
11 employee of my health care provider, an employee of a health care facility in which
12 I am a patient or a spouse of any of those persons, unless he or she is also my relative.
13 For purposes of this document, "incapacity" exists if 2 physicians or a physician and
14 a psychologist, nurse practitioner, or physician assistant who have personally
15 examined me sign a statement that specifically expresses their opinion that I have
16 a condition that means that I am unable to receive and evaluate information
17 effectively or to communicate decisions to such an extent that I lack the capacity to
18 manage my health care decisions. A copy of that statement must be attached to this
19 document.

20 **GENERAL STATEMENT OF AUTHORITY GRANTED**

21 Unless I have specified otherwise in this document, if I ever have incapacity I
22 instruct my health care provider to obtain the health care decision of my health care
23 agent, if I need treatment, for all of my health care and treatment. I have discussed
24 my desires thoroughly with my health care agent and believe that he or she
25 understands my philosophy regarding the health care decisions I would make if I

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1 were able. I desire that my wishes be carried out through the authority given to my
2 health care agent under this document.

3 If I am unable, due to my incapacity, to make a health care decision, my health
4 care agent is instructed to make the health care decision for me, but my health care
5 agent should try to discuss with me any specific proposed health care if I am able to
6 communicate in any manner, including by blinking my eyes. If this communication
7 cannot be made, my health care agent shall base his or her decision on any health
8 care choices that I have expressed prior to the time of the decision. If I have not
9 expressed a health care choice about the health care in question and communication
10 cannot be made, my health care agent shall base his or her health care decision on
11 what he or she believes to be in my best interest.

12 **LIMITATIONS ON MENTAL HEALTH TREATMENT**

13 My health care agent may not admit or commit me on an inpatient basis to an
14 institution for mental diseases, an intermediate care facility for persons with an
15 intellectual disability, a state treatment facility or a treatment facility. My health
16 care agent may not consent to experimental mental health research or
17 psychosurgery, electroconvulsive treatment or drastic mental health treatment
18 procedures for me.

19 **ADMISSION TO NURSING HOMES OR**

20 **COMMUNITY-BASED RESIDENTIAL FACILITIES**

21 My health care agent may admit me to a nursing home or community-based
22 residential facility for short-term stays for recuperative care or respite care.

23 If I have checked "Yes" to the following, my health care agent may admit me for
24 a purpose other than recuperative care or respite care, but if I have checked "No" to
25 the following, my health care agent may not so admit me:

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1 1. A nursing home — Yes.... No....

2 2. A community-based residential facility — Yes.... No....

3 If I have not checked either “Yes” or “No” immediately above, my health care
4 agent may admit me only for short-term stays for recuperative care or respite care.

5 **PROVISION OF A FEEDING TUBE**

6 If I have checked “Yes” to the following, my health care agent may have a
7 feeding tube withheld or withdrawn from me, unless my physician, physician
8 assistant, or nurse practitioner has advised that, in his or her professional judgment,
9 this will cause me pain or will reduce my comfort. If I have checked “No” to the
10 following, my health care agent may not have a feeding tube withheld or withdrawn
11 from me.

12 My health care agent may not have orally ingested nutrition or hydration
13 withheld or withdrawn from me unless provision of the nutrition or hydration is
14 medically contraindicated.

15 Withhold or withdraw a feeding tube — Yes.... No....

16 If I have not checked either “Yes” or “No” immediately above, my health care
17 agent may not have a feeding tube withdrawn from me.

18 **HEALTH CARE DECISIONS FOR**

19 **PREGNANT WOMEN**

20 If I have checked “Yes” to the following, my health care agent may make health
21 care decisions for me even if my agent knows I am pregnant. If I have checked “No”
22 to the following, my health care agent may not make health care decisions for me if
23 my health care agent knows I am pregnant.

24 Health care decision if I am pregnant — Yes.... No....

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1 If I have not checked either “Yes” or “No” immediately above, my health care
2 agent may not make health care decisions for me if my health care agent knows I am
3 pregnant.

4 STATEMENT OF DESIRES,
5 SPECIAL PROVISIONS OR LIMITATIONS

6 In exercising authority under this document, my health care agent shall act
7 consistently with my following stated desires, if any, and is subject to any special
8 provisions or limitations that I specify. The following are specific desires, provisions
9 or limitations that I wish to state (add more items if needed):

- 10 1) -
- 11 2) -
- 12 3) -

13 INSPECTION AND DISCLOSURE OF
14 INFORMATION RELATING TO MY PHYSICAL
15 OR MENTAL HEALTH

16 Subject to any limitations in this document, my health care agent has the
17 authority to do all of the following:

- 18 (a) Request, review and receive any information, oral or written, regarding my
19 physical or mental health, including medical and hospital records.
- 20 (b) Execute on my behalf any documents that may be required in order to obtain
21 this information.
- 22 (c) Consent to the disclosure of this information.

23 (The principal and the witnesses all must sign the document at the same time.)

24 SIGNATURE OF PRINCIPAL

25 (person creating the power of attorney for health care)

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1 Signature.... Date....

2 (The signing of this document by the principal revokes all previous powers of
3 attorney for health care documents.)

4 **STATEMENT OF WITNESSES**

5 I know the principal personally and I believe him or her to be of sound mind and
6 at least 18 years of age. I believe that his or her execution of this power of attorney
7 for health care is voluntary. I am at least 18 years of age, am not related to the
8 principal by blood, marriage, or adoption, am not the domestic partner under ch. 770
9 of the principal, and am not directly financially responsible for the principal's health
10 care. I am not a health care provider who is serving the principal at this time, an
11 employee of the health care provider, other than a chaplain or a social worker, or an
12 employee, other than a chaplain or a social worker, of an inpatient health care facility
13 in which the declarant is a patient. I am not the principal's health care agent. To
14 the best of my knowledge, I am not entitled to and do not have a claim on the
15 principal's estate.

16 Witness No. 1:

17 (print) Name.... Date....

18 Address....

19 Signature....

20 Witness No. 2:

21 (print) Name.... Date....

22 Address....

23 Signature....

24 **STATEMENT OF HEALTH CARE AGENT AND**

25 **ALTERNATE HEALTH CARE AGENT**

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1 I understand that.... (name of principal) has designated me to be his or her
 2 health care agent or alternate health care agent if he or she is ever found to have
 3 incapacity and unable to make health care decisions himself or herself. (name of
 4 principal) has discussed his or her desires regarding health care decisions with me.

5 Agent's signature....

6 Address....

7 Alternate's signature....

8 Address....

9 Failure to execute a power of attorney for health care document under chapter
 10 155 of the Wisconsin Statutes creates no presumption about the intent of any
 11 individual with regard to his or her health care decisions.

12 This power of attorney for health care is executed as provided in chapter 155
 13 of the Wisconsin Statutes.

14 ANATOMICAL GIFTS (optional)

15 Upon my death:

16 I wish to donate only the following organs or parts: (specify the organs or
 17 parts).

18 I wish to donate any needed organ or part.

19 I wish to donate my body for anatomical study if needed.

20 I refuse to make an anatomical gift. (If this revokes a prior commitment that
 21 I have made to make an anatomical gift to a designated donee, I will attempt to notify
 22 the donee to which or to whom I agreed to donate.)

23 Failing to check any of the lines immediately above creates no presumption
 24 about my desire to make or refuse to make an anatomical gift.

25 Signature....

Date....

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1 **SECTION 31.** 155.50 (1) (b) of the statutes is amended to read:

2 155.50 (1) (b) Failing to comply with a power of attorney for health care
3 instrument or the decision of a health care agent, except that failure of a ~~physician~~
4 health care professional, as defined in s. 154.01 (3), to comply constitutes
5 unprofessional conduct if the ~~physician~~ health care professional refuses or fails to
6 make a good faith attempt to transfer the principal to another ~~physician~~ health care
7 professional who will comply.

8 **SECTION 32.** 165.77 (1) (a) of the statutes is amended to read:

9 165.77 (1) (a) “Health care professional” ~~has the meaning given in s. 154.01 (3)~~
10 means a person licensed, certified, or registered under ch. 441, 448, or 455.

11 **SECTION 33.** 302.384 of the statutes is renumbered 302.384 (2m), and 302.384
12 (2m) (a), as renumbered, is amended to read:

13 302.384 (2m) (a) A sheriff, jailer, keeper or officer arranges for a health care
14 professional, ~~as defined in s. 154.01 (3), to observe the prisoner.~~

15 **SECTION 34.** 302.384 (1m) of the statutes is created to read:

16 302.384 (1m) In this section, “health care professional” means a person
17 licensed, certified, or registered under ch. 441, 448, or 455.

18 **SECTION 35.** 441.07 (1g) (d) (intro.) of the statutes is amended to read:

19 441.07 (1g) (d) (intro.) Misconduct or unprofessional conduct. In this
20 paragraph, “unprofessional conduct” includes making a determination under ch. 154
21 or 155 if the person does not have sufficient education, training, and experience to
22 make the determination. In this paragraph, “misconduct” and “unprofessional
23 conduct” do not include any of the following:

24 **SECTION 36.** 448.015 (4) (am) 2m. of the statutes is created to read:



**ASSEMBLY AMENDMENT 1,
TO ASSEMBLY BILL 287**

September 25, 2019 - Offered by Representative SNYDER.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 10: delete lines 10 and 11 and substitute "directives, findings
3 of incapacity related to powers of attorney for health care, and determinations that
4 a person is incapacitated for admission to a hospice!".

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5 **2.** Page 2, line 1: before that line insert:

6 "SECTION 1s. 50.94 (8) of the statutes is amended to read:

7 50.94 (8) A determination that a person is incapacitated may be made only by
8 2 physicians or by one physician and one licensed psychologist, as defined in s. 455.01
9 (4) advanced practice clinician, as defined in s. 155.01 (1g), who personally examine
10 the person and sign a statement specifying that the person is incapacitated. Mere
11 old age, eccentricity or physical disabilities, singly or together, are insufficient to
12 determine that a person is incapacitated. Whoever determines that the person is
13 incapacitated may not be a relative, as defined in s. 242.01 (11), of the person or have

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1 knowledge that he or she is entitled to or has claim on any portion of the person's
2 estate. A copy of the statement shall be included in the records of the incapacitated
3 person in the hospice to which he or she is admitted.".

4

(END)