

**2019 DRAFTING REQUEST****Bill**

For: **Patrick Snyder (608) 266-0654** Drafter: **kpaczusk**  
 By: **Storm** Secondary Drafters:  
 Date: **2/1/2019** May Contact:

Same as LRB:

Submit via email: **YES**  
 Requester's email: **Rep.Snyder@legis.wisconsin.gov**  
 Carbon copy (CC) to: **tamara.dodge@legis.wisconsin.gov**  
**sarah.walkenhorstbarber@legis.wisconsin.gov**  
**konrad.paczuski@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Adding practitioners to Powers of Attorney, Do-Not-Resuscitate Orders, and Declaration to physicians

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kpaczusk 2/22/2019	wjackson 2/28/2019			
/P1	kpaczusk 3/27/2019	csicilia 3/28/2019	lparisi 2/28/2019		
/P2			dwalker 3/28/2019		State
/1			dwalker 5/9/2019	dwalker 5/9/2019	State

FE Sent For: 2  
at  
intro

<END>

**Paczuski, Konrad**

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**From:** Trendel, Storm <[Storm.Trendel@legis.wisconsin.gov](mailto:Storm.Trendel@legis.wisconsin.gov)>  
**Sent:** Tuesday, January 29, 2019 4:27 PM  
**To:** Dodge, Tamara <[Tamara.Dodge@legis.wisconsin.gov](mailto:Tamara.Dodge@legis.wisconsin.gov)>  
**Subject:** Drafting request

Hi Tamara,

Rep. Snyder wants legislation drafted that would allow advanced practice providers to do certain things that only physicians can do under current statute, particularly pertaining to advance directives and power of attorneys. This legislation is coming from medical professionals who, especially in light of the healthcare workforce shortage, struggle to have timely decisions made in this regard. We have been working with the Wisconsin Hospital Association to put some language on paper that would accomplish this goal. I have attached their language to this email. We are not 100% attached to this language, if there is a more effective way to get this goal accomplished. Please feel free to call or email me if you have any questions on this request!

Thanks,

**Storm Trendel**  
Office of Representative Patrick Snyder  
85<sup>th</sup> Assembly District  
Room 307 North, State Capitol Building  
608-266-0654 (office)

## CHAPTER 154 ADVANCE DIRECTIVES

### SUBCHAPTER I DEFINITIONS

**154.01 Definitions.** In this chapter:

- (1) "Advanced practice registered nurse" means a nurse licensed under ch. 441 who is currently certified by a national certifying body approved by the Board of Nursing as a nurse practitioner, certified nurse-midwife, certified registered nurse anesthetist or clinical nurse specialist.

COMMENT: This language was borrowed from this webpage:

<https://dsps.wi.gov/Pages/Professions/APNP/Default.aspx>

- (1m) "Attending physician health care professional" means a ~~physician licensed under ch. 448~~ health care professional who has primary responsibility for the treatment and care of the patient.
- (2g) "Department" means the department of health services.
- (3) "Health care professional" means a ~~person licensed, certified or registered under ch. 441, 448 or 455~~ physician licensed under ch. 448, a physician assistant licensed under ch. 448, or an advanced practice registered nurse.
- (3m) ~~"Health care provider" has the meaning provider under s. 146.81.~~
- (4) "Inpatient health care facility" has the meaning provided under s. 50.135 (1) and includes community-based residential facilities, as defined in s. 50.01 (1g).
- (5) "Life-sustaining procedure" means any medical procedure or intervention that, in the judgment of the attending ~~physician health care professional~~, would serve only to prolong the dying process but not avert death when applied to a qualified patient. "Life-sustaining procedure" includes assistance in respiration, artificial maintenance of blood pressure and heart rate, blood transfusion, kidney dialysis and other similar procedures, but does not include:
- (a) The alleviation of pain by administering medication or by performing any medical procedure.
  - (b) The provision of nutrition or hydration.
- (5m) "Persistent vegetative state" means a condition that reasonable medical judgment finds constitutes complete and irreversible loss of all of the functions of the cerebral cortex and results in a complete, chronic and irreversible cessation of all cognitive functioning and consciousness and a complete lack of behavioral responses that indicate cognitive functioning, although autonomic functions continue.
- (8) "Terminal condition" means an incurable condition caused by injury or illness that reasonable medical judgment finds would cause death imminently, so that the application of life-sustaining procedures serves only to postpone the moment of death.

**History:** 1983 a. 202; 1985 a. 199; 1987 a. 161 s. 13m; 1991 a. 84; 1993 a. 27; 1995 a. 27 s. 9126 (19); 1995 a. 168, 200; 2007 a. 20 s. 9121 (6) (a).

### SUBCHAPTER II DECLARATION TO PHYSICIANS HEALTH CARE PROFESSIONALS

**154.02 Definitions.** In this subchapter:

- (1) "Declaration" means a written, witnessed document voluntarily executed by the declarant under s. 154.03 (1), but is not limited in form or substance to that provided in s. 154.03 (2).
- (2) "Feeding tube" means a medical tube through which nutrition or hydration is administered into the vein, stomach, nose, mouth or other body opening of a qualified patient.
- (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 shall be a physician, who have personally examined the declarant.

History: 1995 a. 200.

**154.03 Declaration to physicians health care professionals.**

- (1) 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 administration is medically contraindicated. A declaration must be signed by the declarant in the presence of 2 witnesses. If the declarant is physically unable to sign a declaration, the declaration must be signed in the declarant's name by one of the witnesses or some other person at the declarant's express direction and in his or her presence; such a proxy signing shall either take place or be acknowledged by the declarant in the presence of 2 witnesses. The declarant is responsible for notifying his or her attending physician health care professional of the existence of the declaration. An attending physician health care professional who is so notified shall make the declaration a part of the declarant's medical records. No witness to the execution of the declaration may, at the time of the execution, be any of the following:
- (a) Related to the declarant by blood, marriage or adoption.
  - (b) Have knowledge that he or she is entitled to or has a claim on any portion of the declarant's estate.
  - (c) Directly financially responsible for the declarant's health care.
  - (d) An individual ~~who is a health care provider, as defined~~ described in s. 155.01 (7), who is serving the declarant at the time of execution, an employee, other than a chaplain or a social worker, of the health care provider or an employee, other than a chaplain or a social worker, of an inpatient health care facility in which the declarant is a patient.
- (2) The department shall prepare and provide copies of the declaration and accompanying information for distribution in quantities to health care professionals health care providers licensed under ch. 441, 448 or 455, hospitals, nursing homes, county clerks and local bar associations and individually to private persons. The department shall include, in information accompanying the declaration, at least the statutory definitions of terms used in the declaration, statutory restrictions on who may be witnesses to a valid declaration, a statement explaining that valid witnesses acting in good faith are statutorily immune from civil or criminal liability, an instruction to potential declarants to read and understand the information before completing the declaration and a statement explaining that an instrument may, but need not be, filed with the register in probate of the declarant's county of residence. The department may charge a reasonable fee for the cost of preparation and distribution. The declaration distributed by the department of health services shall be easy to read, the type size may be no smaller than 10 point, and the declaration shall be in the following form, setting forth on the first page the wording before the ATTENTION statement and setting forth on the 2nd page the ATTENTION statement and remaining wording:

DECLARATION TO PHYSICIANS, PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE REGISTERED NURSES

(WISCONSIN LIVING WILL)

I, ..., being of sound mind, voluntarily state my desire that my dying not be prolonged under the circumstances specified in this document. Under those circumstances, I direct that I be permitted to die naturally. If I am unable to give directions regarding the use of life-sustaining procedures or feeding

tubes, I intend that my family and physician, physician assistant, or advanced practice registered nurse honor this document as the final expression of my legal right to refuse medical or surgical treatment.

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

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

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

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

2. If I am in a PERSISTENT VEGETATIVE STATE, as determined by 2 physicians a physician, physician assistant or advanced practice registered nurse who ~~have~~ has personally examined me, and if an additional physician who has also personally examined me concurs with that determination, the following are my directions regarding the use of life-sustaining procedures:

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

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

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

3. If I am in a PERSISTENT VEGETATIVE STATE, as determined by 2 physicians a physician, physician assistant or advanced practice registered nurse who ~~have~~ has personally examined me, and if an additional physician who has also personally examined me concurs with that determination, the following are my directions regarding the use of life-sustaining procedures: the following are my directions regarding the use of feeding tubes:

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

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

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

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

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

Signed .... Date ....

Address .... Date of birth ....

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

Witness signature .... Date signed ....

Print name ....

Witness signature .... Date signed ....

Print name ....

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

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

2. The choices in this document were made by a competent adult. Under the law, the patient's stated desires must be followed unless you believe that withholding or withdrawing life-sustaining procedures or feeding tubes would cause the patient pain or reduced comfort and that the pain or discomfort cannot be

alleviated through pain relief measures. If the patient's stated desires are that life-sustaining procedures or feeding tubes be used, this directive must be followed.

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

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

\* \* \* \* \*

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

.....  
.....  
.....

**154.05 Revocation of declaration.**

- (1) METHOD OF REVOCATION. A declaration may be revoked at any time by the declarant by any of the following methods:
  - (a) By being canceled, defaced, obliterated, burned, torn or otherwise destroyed by the declarant or by some person who is directed by the declarant and who acts in the presence of the declarant.
  - (b) By a written revocation of the declarant expressing the intent to revoke, signed and dated by the declarant.
  - (c) By a verbal expression by the declarant of his or her intent to revoke the declaration. This revocation becomes effective only if the declarant or a person who is acting on behalf of the declarant notifies the attending physician health care professional of the revocation.
  - (d) By executing a subsequent declaration.
- (2) RECORDING THE REVOCATION. The attending physician health care professional shall record in the patient's medical record the time, date and place of the revocation and the time, date and place, if different, that he or she was notified of the revocation.

History: 1983 a. 202; 1995 a. 168.

**154.07 Duties and immunities.**

- (1) LIABILITY.
  - (a) No physician health care provider, inpatient health care facility or health care professional acting under the direction of a physician may be held criminally or civilly liable, or charged with unprofessional conduct, for any of the following:
    1. Participating in the withholding or withdrawal of life-sustaining procedures or feeding tubes under this subchapter.
    2. Failing to act upon a revocation unless the person or facility has actual knowledge of the revocation.
    3. Failing to comply with a declaration, except that failure by a physician health care professional to comply with a declaration of a qualified patient constitutes unprofessional conduct if the physician health care professional refuses or fails to make a good faith attempt to transfer the qualified patient to another physician health care professional who will comply with the declaration.
  - (b)
    1. No person who acts in good faith as a witness to a declaration under this subchapter may be held civilly or criminally liable for participating in the withholding or withdrawal of life-sustaining procedures or feeding tubes under this subchapter.
    2. Subdivision 1. does not apply to a person who acts as a witness in violation of s. 154.03 (1).
- (c) Pars. (a) and (b) apply to acts or omissions in connection with a provision of a document that is executed in another jurisdiction if the provision is valid and enforceable under s. 154.11 (9).

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

**History:** 1983 a. 202; 1991 a. 84; 1995 a. 200; 2003 a. 290; 2005 a. 387.

#### **154.11 General provisions.**

- (1) **SUICIDE.** The withholding or withdrawal of life-sustaining procedures or feeding tubes from a qualified patient under this subchapter does not, for any purpose, constitute suicide. Execution of a declaration under this subchapter does not, for any purpose, constitute attempted suicide.
- (2) **LIFE INSURANCE.** Making a declaration under s. 154.03 may not be used to impair in any manner the procurement of any policy of life insurance, and may not be used to modify the terms of an existing policy of life insurance. No policy of life insurance may be impaired in any manner by the withholding or withdrawal of life-sustaining procedures or feeding tubes from an insured qualified patient.
- (3) **HEALTH INSURANCE.** No person may be required to execute a declaration as a condition prior to being insured for, or receiving, health care services.
- (4) **OTHER RIGHTS.** This subchapter does not impair or supersede any of the following:
- (a) A person's right to withhold or withdraw life-sustaining procedures or feeding tubes.
- (b) The right of any person who does not have a declaration in effect to receive life-sustaining procedures or feeding tubes.
- (5) **INTENT.** Failure to execute a declaration under this subchapter creates no presumption that the person consents to the use or withholding of life-sustaining procedures or feeding tubes in the event that the person suffers from a terminal condition or is in a persistent vegetative state.
- (5m) **VALID DECLARATION.** A declaration that is in its original form or is a legible photocopy or electronic facsimile copy is presumed to be valid.
- (6) **CONSTRUCTION.** Nothing in this subchapter condones, authorizes or permits any affirmative or deliberate act to end life other than to permit the natural process of dying.
- (7) **APPLICABILITY.**
- (a) A declaration under s. 154.03 (2), 1983 stats., that is executed before April 22, 1986, and that is not subsequently revoked or has not subsequently expired is governed by the provisions of ch. 154, 1983 stats.
- (b) A declaration under s. 154.03 (2), 1983 stats., that is executed after April 22, 1986, is void.
- (c) A declaration under s. 154.03 (2), 1989 stats., that is executed before, on or after December 11, 1991, and that is not subsequently revoked or has not subsequently expired is governed by the provisions of ch. 154, 1989 stats.
- (d) Nothing in this chapter, except par. (b), may be construed to render invalid a declaration that was validly executed under this chapter before April 6, 1996.
- (8) **INCLUSION IN MEDICAL RECORD.** Upon receipt of a declaration, a health care facility, as defined in s. 155.01 (6), or a health care provider, as defined in s. 155.01 (7), shall, if the declarant is a patient of the health care facility or health care provider, include the declaration in the medical record of the declarant.
- (9) **DECLARATION FROM OTHER JURISDICTION.** A valid document that authorizes the withholding or withdrawal of life-sustaining procedures or of feeding tubes and that is executed in another state or jurisdiction in compliance with the law of that state or jurisdiction is valid and enforceable in this state to the extent that the document is consistent with the laws of this state.

**History:** 1983 a. 202; 1985 a. 199; 1991 a. 84; 1995 a. 168, 200.



### **154.13 Filing declaration.**

- (1) A declarant or an individual authorized by the declarant may, for a fee, file the declarant's declaration, for safekeeping, with the register in probate of the county in which the declarant resides.
- (2) If a declarant or authorized individual has filed the declarant's declaration as specified in sub. (1), the following persons may have access to the declaration without first obtaining consent from the declarant:
  - (a) The individual authorized by the declarant.
  - (b) A health care provider who is providing care to the declarant.
  - (c) The court and all parties involved in proceedings in this state for adjudication of incompetency and appointment of a guardian for the declarant, for emergency detention under s. 51.15, for involuntary commitment under s. 51.20, or for protective placement or protective services under ch. 55.
  - (d) Any person under the order of a court for good cause shown.
- (3) Failure to file a declaration under sub. (1) creates no presumption about the intent of an individual with regard to his or her health care decisions.

**History:** 1991 a. 281; 2005 a. 387.

### **154.15 Penalties.**

- (1) Any person who intentionally conceals, cancels, defaces, obliterates or damages the declaration of another without the declarant's consent may be fined not more than \$500 or imprisoned not more than 30 days or both.
- (2) Any person who, with the intent to cause a withholding or withdrawal of life-sustaining procedures or feeding tubes contrary to the wishes of the declarant, illegally falsifies or forges the declaration of another or conceals a declaration revoked under s. 154.05 (1) (a) or (b) or any person who intentionally withholds actual knowledge of a revocation under s. 154.05 is guilty of a Class F felony.

**History:** 1983 a. 202; 1985 a. 199; 1991 a. 84; 1995 a. 168; 1997 a. 283; 2001 a. 109.

## **SUBCHAPTER III**

### **DO-NOT-RESUSCITATE ORDERS**

#### **154.17 Definitions.** In this subchapter:

- (1) "Do-not-resuscitate bracelet" means a standardized identification bracelet that meets the specifications established under s. 154.27 (1), or that is approved by the department under s. 154.27 (2), that bears the inscription "Do Not Resuscitate" and signifies that the wearer is a qualified patient who has obtained a do-not-resuscitate order and that the order has not been revoked.
- (2) "Do-not-resuscitate order" means a written order issued under the requirements of this subchapter that directs emergency medical services practitioners, emergency medical responders, and emergency health care facilities personnel not to attempt cardiopulmonary resuscitation on a person for whom the order is issued if that person suffers cardiac or respiratory arrest.
- (2r) "Emergency medical responder" has the meaning given under s. 256.01 (4p).
- (3) "Emergency medical services practitioner" has the meaning given under s. 256.01 (5).
- (4) "Qualified patient" means a person who has attained the age of 18 and to whom any of the following conditions applies:
  - (a) The person has a terminal condition.
  - (b) The person has a medical condition such that, were the person to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful in restoring cardiac or respiratory function or the person would experience repeated cardiac or pulmonary failure within a short period before death occurs.
  - (c) The person has a medical condition such that, were the person to suffer cardiac or pulmonary failure, resuscitation of that person would cause significant physical pain or harm that would outweigh the possibility that resuscitation would successfully restore cardiac or respiratory function for an indefinite period of time.
- (5) "Resuscitation" means cardiopulmonary resuscitation or any component of cardiopulmonary resuscitation, including cardiac compression, endotracheal intubation and other advanced airway management, artificial

ventilation, defibrillation, administration of cardiac resuscitation medications and related procedures. "Resuscitation" does not include the Heimlich maneuver or similar procedure used to expel an obstruction from the throat.

**History:** 1995 a. 200; 1997 a. 27; 1999 a. 9; 2007 a. 130; 2017 a. 12.

#### **154.19 Do-not-resuscitate order.**

(1) No person except an attending physician health care professional may issue a do-not-resuscitate order. An attending physician health care professional may issue a do-not-resuscitate order to a patient only if all of the following apply:

(a) The patient is a qualified patient.

(b) Except as provided in s. 154.225 (2), the patient requests the order.

(bm) Except as provided in s. 154.225 (2), the patient consents to the order after being provided the information specified in sub. (2) (a).

(c) The order is in writing.

(d) Except as provided in s. 154.225 (2), the patient signs the order.

(e) The physician health care professional does not know the patient to be pregnant.

(2)

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

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

1. Affix to the wrist of the patient a do-not-resuscitate bracelet that meets the specifications established under s. 154.27 (1).

2. Provide an order form from a commercial vendor approved by the department under s. 154.27 (2) to permit the patient to order a do-not-resuscitate bracelet from the commercial vendor.

(3)

(a) Except as provided in par. (b), emergency medical services practitioners, as defined in s. 256.01 (5), emergency medical responders, as defined in s. 256.01 (4p), and emergency health care facilities personnel shall follow do-not-resuscitate orders. The procedures used in following a do-not-resuscitate order shall be in accordance with any procedures established by the department by rule.

(b) Paragraph (a) does not apply under any of the following conditions:

1. The order is revoked under s. 154.21 or 154.225 (2).

2. The do-not-resuscitate bracelet appears to have been tampered with or removed.

3. The emergency medical services practitioner, emergency medical responder or member of the emergency health care facility knows that the patient is pregnant.

#### **154.21 Revocation of do-not-resuscitate order.**

(1) **METHOD OF REVOCATION.** A patient may revoke a do-not-resuscitate order at any time by any of the following methods:

(a) The patient expresses to an emergency medical services practitioner, to an emergency medical responder, or to a person who serves as a member of an emergency health care facility's personnel the desire to be resuscitated. The emergency medical services practitioner, emergency medical responder, or the member of the emergency health care facility shall promptly remove the do-not-resuscitate bracelet.

(b) The patient defaces, burns, cuts or otherwise destroys the do-not-resuscitate bracelet.

- (c) The patient removes the do-not-resuscitate bracelet or another person, at the patient's request, removes the do-not-resuscitate bracelet.
- (2) RECORDING THE REVOCATION. The attending physician health care professional shall be notified as soon as practicable of the patient's revocation and shall record in the patient's medical record the time, date and place of the revocation, if known, and the time, date and place, if different, that he or she was notified of the revocation. A revocation under sub. (1) is effective regardless of when the attending physician health care professional has been notified of that revocation.

History: 1995 a. 200; 2017 a. 12.

#### **154.225 Guardians and health care agents.**

- (1) In this section:
- (a) "Guardian" has the meaning given in s. 51.40 (1) (f).
- (b) "Health care agent" has the meaning given in s. 155.01 (4).
- (c) "Incapacitated" has the meaning given in s. 50.06 (1).
- (2) The guardian or health care agent of an incapacitated qualified patient may request a do-not-resuscitate order on behalf of that incapacitated qualified patient and consent to the order and sign it after receiving the information specified in s. 154.19 (2) (a). The guardian or health care agent of an incapacitated qualified patient may revoke a do-not-resuscitate order on behalf of the incapacitated qualified patient by any of the following methods:
- (a) The guardian or health care agent directs an emergency medical services practitioner, an emergency medical responder, or a person who serves as a member of an emergency health care facility's personnel to resuscitate the patient. The emergency medical services practitioner, the emergency medical responder, or the member of the emergency health care facility shall promptly remove the do-not-resuscitate bracelet.
- (b) The guardian or health care agent defaces, burns, cuts or otherwise destroys the do-not-resuscitate bracelet.
- (c) The guardian or health care agent removes the do-not-resuscitate bracelet.

History: 1997 a. 27; 2017 a. 12.

#### **154.23 Liability.** No physician, emergency medical services practitioner, emergency medical responder, health care professional provider, or emergency health care facility may be held criminally or civilly liable, or charged with unprofessional conduct, for any of the following:

- (1) Under the directive of a do-not-resuscitate order, withholding or withdrawing, or causing to be withheld or withdrawn, resuscitation from a patient.
- (2) Failing to act upon the revocation of a do-not-resuscitate order unless the person or facility had actual knowledge of the revocation.
- (3) Failing to comply with a do-not-resuscitate order if the person or facility did not have actual knowledge of the do-not-resuscitate order or if the person or facility in good faith believed that the order had been revoked.

History: 1995 a. 200; 2017 a. 12.

#### **154.25 General provisions.**

- (1) SUICIDE. Under this subchapter, the withholding or withdrawing of resuscitation from a patient wearing a valid do-not-resuscitate bracelet does not, for any purpose, constitute suicide. Requesting a do-not-resuscitate order under this subchapter does not, for any purpose, constitute attempted suicide.
- (2) LIFE INSURANCE. Requesting a do-not-resuscitate order under s. 154.19 may not be used to impair in any manner the procurement of any policy of life insurance, and may not be used to modify the terms of an existing policy of life insurance. No policy of life insurance may be impaired in any manner by the withholding or withdrawal of resuscitation from a qualified patient.
- (3) HEALTH INSURANCE. No person may be required to request a do-not-resuscitate order as a condition prior to being admitted to a health care facility or being insured for, or receiving, health care services.
- (4) OTHER RIGHTS. This subchapter does not impair or supersede any of the following:

- (a) A person's right to withhold or withdraw resuscitation.
- (b) The right of any person who does not have a do-not-resuscitate order in effect to receive resuscitation.
- (5) INTENT. Failure to request a do-not-resuscitate order creates no presumption that the person consents to the use or withholding of resuscitation in the event that the person suffers from a condition that renders the person a qualified patient.
- (6) VALID DO-NOT-RESUSCITATE BRACELET. A do-not-resuscitate bracelet that has not been removed, altered, or tampered with in any way shall be presumed valid, unless the patient, the patient's guardian, or the patient's health care agent expresses to the emergency medical services practitioner, emergency medical responder, or emergency health care facility personnel the patient's desire to be resuscitated.
- (6m) DESIRE OF THE PATIENT. The desire of a patient to be resuscitated supersedes the effect of that patient's do-not-resuscitate order at all times.
- (7) CONSTRUCTION. Nothing in this subchapter condones, authorizes or permits any affirmative or deliberate act to end life other than to permit the natural process of dying.

**History:** 1995 a. 200; 1997 a. 27; 2017 a. 12.

#### **154.27 Specifications and distribution of do-not-resuscitate bracelet.**

- (1) The department shall establish by rule a uniform standard for the size, color, and design of all do-not-resuscitate bracelets. Except as provided in sub. (2), the rules shall require that the do-not-resuscitate bracelets include the inscription "Do Not Resuscitate"; the name, address, date of birth and gender of the patient; and the name, business telephone number and signature of the attending physician health care professional issuing the order.
- (2) The department may approve a do-not-resuscitate bracelet developed and distributed by a commercial vendor if the bracelet contains an emblem that displays an internationally recognized medical symbol on the front and the words "Wisconsin Do-Not-Resuscitate-EMS" and the qualified patient's first and last name on the back. The department may not approve a do-not-resuscitate bracelet developed and distributed by a commercial vendor if the vendor does not require a doctor's order for the bracelet prior to distributing it to a patient.

**History:** 1995 a. 200; 1999 a. 9.

**Cross-reference:** See also ch. DHS 125, Wis. adm. code.

#### **154.29 Penalties.**

- (1) Any person who willfully conceals, defaces or damages the do-not-resuscitate bracelet of another person without that person's consent may be fined not more than \$500 or imprisoned for not more than 30 days or both.
- (2) Any person who, with the intent to cause the withholding or withdrawal of resuscitation contrary to the wishes of any patient, falsifies, forges or transfers a do-not-resuscitate bracelet to that patient or conceals the revocation under s. 154.21 of a do-not-resuscitate order or any responsible person who withholds personal knowledge of a revocation under s. 154.21 is guilty of a Class F felony.
- (3) Any person who directly or indirectly coerces, threatens or intimidates an individual so as to cause the individual to sign or issue a do-not-resuscitate order shall be fined not more than \$500 or imprisoned for not more than 30 days or both.

**History:** 1995 a. 200; 1997 a. 283; 2001 a. 109.

### **SUBCHAPTER IV**

#### **AUTHORIZATION FOR FINAL DISPOSITION**

##### **154.30 Control of final disposition of certain human remains.**

###### **(1) DEFINITIONS.**

- (a) "Authorization for final disposition" means a document that satisfies the conditions under sub. (8) (d) or (dm), and that is voluntarily executed by a declarant under sub. (8), but is not limited in form or substance to that provided in sub. (8).
- (b) "Cemetery authority" has the meaning given in s. 157.061 (2).
- (c) "Credential" has the meaning given in s. 440.01 (2) (a).

- (d) "Crematory authority" has the meaning given in s. 440.70 (9).
- (e) "Declarant" means an individual who executes an authorization for final disposition.
- (f) "Estranged" means being physically and emotionally alienated for a period of time, at the time of the decedent's death, and clearly demonstrating an absence of due affection, trust, and regard.
- (g) "Final disposition" means disposition of a decedent's remains, including any of the following:
  1. Arrangements for a viewing.
  2. A funeral ceremony, memorial service, graveside service, or other last rite.
  3. A burial, cremation and burial, or other disposition, or donation of the decedent's body.
- (h) "Funeral director" has the meaning given in s. 445.01 (5).
- (i) "Health care provider" means any individual who has a credential to provide health care.
- (L) "Representative" means an individual specifically designated in an authorization for final disposition or, if that individual is unable or unwilling to carry out the declarant's decisions and preferences, a successor representative designated in the authorization for final disposition to do so.
- (m) "Social worker" has the meaning given in s. 252.15 (1) (er).

**(2) INDIVIDUALS WITH CONTROL OF FINAL DISPOSITION; ORDER.**

- (a) Notwithstanding s. 445.14 and except as provided in par. (b) and sub. (3), any of the following, as prioritized in the following order, who is at least 18 years old and has not been adjudicated incompetent under ch. 54 or ch. 880, 2003 stats., may control final disposition, including the location, manner, and conditions of final disposition:
  1. Subject to sub. (8) (e), a representative of the decedent acting under the decedent's authorization for final disposition that conveys to the representative the control of final disposition, or a successor representative.
  2. The surviving spouse of the decedent.
  3. The surviving child of the decedent, unless more than one child of the decedent survives. In such an instance, the majority of the surviving children has control of the final disposition, except that fewer than the majority of the surviving children may control the final disposition if that minority has used reasonable efforts to notify all other surviving children and is not aware of opposition by the majority to the minority's intended final disposition.
  4. The surviving parent or parents of the decedent or a surviving parent who is available if the other surviving parent is unavailable after the available surviving parent has made reasonable efforts to locate him or her.
  5. The surviving sibling of the decedent, unless more than one sibling of the decedent survives. In such an instance, the majority of the surviving siblings has control of the final disposition, except that fewer than the majority of the surviving siblings may control the final disposition if that minority has used reasonable efforts to notify all other surviving siblings and is not aware of opposition by the majority to the minority's intended final disposition.
  6. In descending order, an individual in the class of the next degree of kinship specified in s. 990.001 (16).
  7. The guardian of the person, if any, of the decedent.
  8. Any individual other than an individual specified under subds. 1. to 7. who is willing to control the final disposition and who attests in writing that he or she has made a good-faith effort, to no avail, to contact the individuals under subds. 1. to 7.
- (b) Control of final disposition under par. (a), in the order of priority specified in par. (a), is restored to an individual specified in sub. (3) (b) 1. for whom charges under sub. (3) (b) 1. a. to d. are dismissed or who is found not guilty of the offense. Subject to s. 69.18 (4), the control of final disposition under this paragraph, with respect to a decedent for whom disposition has already been made of his or her remains, is limited, as appropriate, to any of the following:
  1. A funeral ceremony, memorial service, graveside service, or other last rite.
  2. Disinterment.

3. Reinterment, cremation and reinterment, or other disposition of the decedent's body.

**(3) EXCEPTIONS.**

(a) All of the following are exceptions to any control conferred under sub. (2):

1. The disposition of any unrevoked anatomical gift made by the decedent under s. 157.06 or made by an individual other than the decedent under s. 157.06.
2. Any power or duty of a coroner, medical examiner, or other physician licensed to perform autopsies with respect to the reporting of certain deaths, performance of autopsies, and inquests under ch. 979.

(b) None of the following is authorized under sub. (2) to control the final disposition:

1. Unless sub. (2) (b) applies, an individual who is otherwise authorized to control final disposition under the order of priority of individuals specified in sub. (2) (a) but who has been charged with any of the following in connection with the decedent's death and the charges are known to the funeral director, crematory authority, or cemetery authority:
    - a. First-degree intentional homicide under s. 940.01 (1).
    - b. First-degree reckless homicide under s. 940.02.
    - c. Second-degree intentional homicide under s. 940.05.
    - d. Second-degree reckless homicide under s. 940.06.
  2. An individual who is otherwise authorized to control final disposition under the order of priority of individuals specified in sub. (2) (a) but who fails to exercise this authorization within 2 days after he or she is notified of the decedent's death or who cannot be located after reasonable efforts to do so has been made.
  3. The decedent's spouse, if an action under ch. 767 to terminate the marriage of the spouse and the decedent was pending at the time of the decedent's death.
  4. An individual for whom a determination is made by the probate court under par. (c) 2. b. that the individual and the decedent were estranged at the time of death.
- (c) If the individuals on the same level of priority specified in sub. (2) (a) are unable to agree on the final disposition, the probate court that has jurisdiction for the county in which the decedent resided at the time of his or her death may designate an individual as most fit and appropriate to control the final disposition. All of the following apply to a designation made under this paragraph:
1. After the decedent's death, a petition regarding control of the final disposition shall be filed with the probate court by any of the following:
    - a. A relative of the decedent.
    - b. An individual seeking control of the final disposition who claims a closer personal relationship to the decedent than the decedent's next of kin and who was not in the employ of the decedent or the decedent's family.
    - c. If 2 or more individuals on the same level of priority in sub. (2) (a) cannot, by majority vote, decide concerning the final disposition, any of those individuals or the funeral director, crematory authority, or cemetery authority that possesses the decedent's remains.
  2. The probate court may consider all of the following:
    - a. The reasonableness and practicality of the proposed final disposition.
    - b. The degree of the personal relationship between the decedent and each of the individuals claiming the right of final disposition, including whether the decedent was estranged from any of the individuals.
    - c. Except as provided in subd. 3., the desires of the individual or individuals who are ready, able, and willing to pay the cost of the final disposition.
    - d. The express written desires of the decedent.
    - e. The degree to which any proposed final disposition would permit maximum participation by family members, friends, and others who wish to pay final respects to the decedent.

3. An individual's payment or agreement to pay for all or part of the costs of final disposition, or the fact that an individual is the personal representative of the decedent, does not, by itself, provide the individual any greater opportunity to control the final disposition than the individual otherwise has under this section.
- (4) **DECLINING TO EXERCISE CONTROL OR RESIGNING CONTROL.** An individual who is otherwise authorized to control final disposition under the order of priority of individuals specified in sub. (2) (a) or who is designated under sub. (3) (c) may accept the control, may decline to exercise the control, or may, after accepting the control, resign it.
- (5) **LIABILITY OF FUNERAL DIRECTOR, CREMATORY AUTHORITY, OR CEMETERY AUTHORITY.**
- (a) If inability to agree exists among any individuals, as specified in sub. (3) (c) (intro.), no funeral director, crematory authority, or cemetery authority is civilly or criminally liable for his or her refusal to accept the decedent's remains, to inter or otherwise dispose of the decedent's remains, or to complete the arrangements for the final disposition unless specifically directed to do so under an order of the probate court or unless the individuals in disagreement present the funeral director, crematory authority, or cemetery authority with a written agreement, signed by the individuals, that specifies the final disposition.
- (b) A funeral director, crematory authority, or cemetery authority that retains the remains of a decedent for final disposition before individuals specified in sub. (3) (c) (intro.) reach agreement or before the probate court makes a final decision under sub. (3) (c) may embalm the remains, unless the authorization for final disposition forbids embalming, or may refrigerate and shelter the remains while awaiting the agreement or the probate court's decision and may add the cost of embalming or refrigeration and shelter, as appropriate, to the final disposition costs.
- (c) If a funeral director, crematory authority, or cemetery authority files a petition under sub. (3) (c) 1., the funeral director, crematory authority, or cemetery authority may add to the cost of final disposition reasonable legal fees and costs associated with the court's review of the petition.
- (d) This subsection may not be construed to require or otherwise impose a duty upon a funeral director, crematory authority, or cemetery authority to file a petition under sub. (3) (c) 1., and a funeral director, crematory authority, or cemetery authority may not be held criminally or civilly liable for failing or omitting to file the petition.
- (e) In the absence of written notice to the contrary from an individual who claims control of the final disposition because of precedence under the order of priority of individuals specified under sub. (2) (a), no funeral director, crematory authority, or cemetery authority, who relies in good faith on instructions concerning the final disposition from another individual who first claims control of the final disposition but has less precedence under the order of priority of individuals specified in sub. (2) (a), and who acts or omits to act in accordance with these instructions, is civilly or criminally liable or may be found guilty of unprofessional conduct for the action or omission.
- (6) **LIABILITY FOR COSTS OF FINAL DISPOSITION.** Notwithstanding s. 445.14, liability for the reasonable costs of the final disposition is from the declarant decedent's estate, as specified under s. 859.25 (1).
- (7) **JURISDICTION.** The probate court for the county in which the decedent last resided has exclusive jurisdiction over matters that arise under this section.
- (8) **AUTHORIZATION FOR FINAL DISPOSITION.**
- (a) An individual who is of sound mind and has attained age 18 may voluntarily execute an authorization for final disposition, which shall take effect on the date of execution. An individual for whom an adjudication of incompetence and appointment of a guardian of the person is in effect under ch. 54 or ch. 880, 2003 stats., is presumed not to be of sound mind for purposes of this subsection.
- (b) An authorization for final disposition may express the declarant's special directions, instructions concerning religious observances, and suggestions concerning any of the following:
1. Arrangements for a viewing.
  2. Funeral ceremony, memorial service, graveside service, or other last rite.
  3. Burial, cremation and burial, or other disposition, or donation of the declarant's body after death.

- (c) An authorization for final disposition requires a representative and one or more named successor representatives to carry out the directions, instructions, and suggestions of the declarant, as expressed in the declarant's authorization for final disposition, unless the directions, instructions, and suggestions exceed available resources from the decedent's estate or are unlawful or unless there is no realistic possibility of compliance.
- (d) Except as provided in par. (dm), an authorization for final disposition shall meet all of the following requirements:
1. List the name and last-known address, as of the date of execution of the authorization for final disposition, of each representative and each successor representative named, and be signed by each representative and each successor representative named.
  2. Be signed and dated by the declarant, with the signature witnessed by 2 witnesses who each have attained age 18 and who are not related by blood, marriage, or adoption to the declarant, or acknowledged before a notary public. If the declarant is physically unable to sign an authorization for final disposition, the authorization shall be signed in the declarant's name by an individual at the declarant's express direction and in his or her presence; such a proxy signing shall take place or be acknowledged by the declarant in the presence of 2 witnesses or a notary public.
- (dm) A document executed by a member of the U.S. armed forces in the manner and on a form provided by the federal department of defense that designates a person to direct the disposition of the member's remains is a valid authorization for final disposition under this section.
- (e) If any of the following has a direct professional relationship with or provides professional services directly to the declarant and is not related to the declarant by blood, marriage, or adoption, that person may not serve as a representative under the requirements of this subsection:
1. A funeral director.
  2. A crematory authority.
  3. A cemetery authority.
  4. An employee of a funeral director, crematory authority, or cemetery authority.
  6. A health care provider.
  8. A social worker.
- (f) The department shall prepare and provide copies of the authorization for final disposition form and accompanying information for distribution in quantities to funeral directors, crematory authorities, cemetery authorities, hospitals, nursing homes, county clerks, and local bar associations and individually to private persons. The department shall include, in information accompanying the authorization for final disposition form, at least the statutory definitions of terms used in the form, and an instruction to potential declarants to read and understand the information before completing the form. The department may charge a reasonable fee for the cost of preparation and distribution. The authorization for final disposition form distributed by the department shall be easy to read, in not less than 10-point type, and in the following form:

#### **AUTHORIZATION FOR FINAL DISPOSITION**

I, .... (print name and address), being of sound mind, willfully and voluntarily make known by this document my desire that, upon my death, the final disposition of my remains be under the control of my representative under the requirements of section 154.30, Wisconsin statutes, and, with respect to that final disposition only, I hereby appoint the representative and any successor representative named in this document. All decisions made by my representative or any successor representative with respect to the final disposition of my remains are binding.

Name of representative

Address

Telephone number



If my representative dies, becomes incapacitated, resigns, refuses to act, ceases to be qualified, or cannot be located within the time necessary to control the final disposition of my remains, I hereby appoint the following individuals, each to act alone and successively, in the order specified, to serve as my successor representative:

1. Name of first successor representative

Address

Telephone number

2. Name of second successor representative

Address

Telephone number

SUGGESTED SPECIAL DIRECTIONS

SUGGESTED INSTRUCTIONS CONCERNING RELIGIOUS  
OBSERVANCES

SUGGESTED SOURCE OF FUNDS FOR  
IMPLEMENTING FINAL DISPOSITION  
DIRECTIONS AND INSTRUCTIONS

This authorization becomes effective upon my death.

I hereby revoke any prior authorization for final disposition that I may have signed before the date that this document is signed.

I hereby agree that any funeral director, crematory authority, or cemetery authority that receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to a funeral director, crematory authority, or cemetery authority until the funeral director, crematory authority, or cemetery authority receives actual notice of the modification or revocation. No funeral director, crematory authority, or cemetery authority may be liable because of reliance on a copy of this document.

The representative and any successor representative, by accepting appointment under this document, assume the powers and duties specified for a representative under section 154.30, Wisconsin statutes.

Signed this day of

Signature of declarant

I hereby accept appointment as representative for the control of final disposition of the declarant's remains.

Signed this day of

Signature of representative

I hereby accept appointment as successor representative for the control of final disposition of the declarant's remains.

Signed this day of

Signature of first successor representative

Signed this day of

Signature of second successor  
representative

I attest that the declarant signed or acknowledged this authorization for final disposition in my presence and that the declarant appears to be of sound mind and not subject to duress, fraud, or undue influence. I further attest that I am not the representative or the successor representative appointed under this document, that I am aged at least 18, and that I am not related to the declarant by blood, marriage, or adoption.

Witness (print name)

Signature

Address

Date

Witness (print name)

Signature

Address

Date

State of Wisconsin

County of

On (date) , before me personally appeared (name of declarant) , known to me or satisfactorily proven to be the individual whose name is specified in this document as the declarant and who has acknowledged that he or she executed the document for the purposes expressed in it. I attest that the declarant appears to be of sound mind and not subject to duress, fraud, or undue influence.

Notary public

My commission expires

- (9) REVOCATION OF AUTHORIZATION FOR FINAL DISPOSITION. A declarant may revoke an authorization for final disposition at any time by any of the following methods:
- (a) Cancelling, defacing, obliterating, burning, tearing, or otherwise destroying the authorization for final disposition or directing some other person to cancel, deface, obliterate, burn, tear, or otherwise destroy the authorization for final disposition in the presence of the declarant. In this paragraph, "cancelling" includes a declarant's writing on a declaration of final disposition, "I hereby revoke this declaration of final disposition," and signing and dating that statement.
  - (b) Revoking in writing the authorization for final disposition. The declarant shall sign and date any written revocation under this subsection.
  - (c) Executing a subsequent authorization for final disposition.
- (10) PENALTY. Any person who intentionally conceals, cancels, defaces, obliterates, or damages the authorization for final disposition of another without the declarant's consent may be fined not more than \$500 or imprisoned not more than 30 days or both.

## CHAPTER 155

### POWER OF ATTORNEY FOR HEALTH CARE

**155.01 Definitions.** In this chapter:

(1) "Advanced Practice Clinician" means any of the following:

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

(b) A nurse practitioner who meets all of the following:

1. The individual is a nurse licensed under ch. 441.

2. The individual is currently certified by a national certifying body approved by the Board of Nursing as a nurse practitioner.

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

- (12) "Department" means the department of health services.
- (2m) "Feeding tube" means a medical tube through which nutrition or hydration is administered into the vein, stomach, nose, mouth or other body opening of a declarant.
- (3) "Health care" means any care, treatment, service or procedure to maintain, diagnose or treat an individual's physical or mental condition.
- (4) "Health care agent" means an individual designated by a principal to make health care decisions on behalf of the principal or, if that individual is unable or unwilling to make those decisions, an alternate individual designated by the principal to do so.
- (5) "Health care decision" means an informed decision in the exercise of the right to accept, maintain, discontinue or refuse health care.
- (6) "Health care facility" means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community-based residential facility, county home, county infirmary, county hospital, county mental health center or other place licensed or approved by the department under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.35, 51.08 or 51.09 or a facility under s. 45.50, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.
- (7) "Health care provider" means a nurse licensed or permitted under ch. 441, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447, a physician, physician assistant, perfusionist, podiatrist, physical therapist, physical therapist assistant, occupational therapist, or occupational therapy assistant licensed under ch. 448, a person practicing Christian Science treatment, an optometrist licensed under ch. 449, a psychologist licensed under ch. 455, a partnership thereof, a corporation or limited liability company thereof that provides health care services, a cooperative health care association organized under s. 185.981 that directly provides services through salaried employees in its own facility, or a home health agency, as defined in s. 50.49 (1) (a).
- (8) "Incapacity" means the inability to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions.
- (9) "Multipurpose senior center" means a facility that is the focal point for the delivery of services in a community to individuals aged 60 or older for purposes of the state plan under 42 USC 3027.
- (10) "Power of attorney for health care" means the designation, by an individual, of another as his or her health care agent for the purpose of making health care decisions on his or her behalf if the individual cannot, due to incapacity.
- (11) "Principal" means an individual who executes a power of attorney for health care.
- (12) "Relative" means an individual related by blood within the 3rd degree of kinship as computed under s. 990.001 (16); a spouse, domestic partner under ch. 770, or an individual related to a spouse or domestic partner within the 3rd degree as so computed; and includes an individual in an adoptive relationship within the 3rd degree.

**History:** 1989 a. 200; 1991 a. 281; 1993 a. 27, 105, 112, 490; 1995 a. 27 ss. 4395, 9126 (19); 1997 a. 35, 67; 1999 a. 9, 180; 2001 a. 70, 89, 105; 2005 a. 22; 2007 a. 20 s. 9121 (6) (a); 2009 a. 28, 165.

#### **155.05 Power of attorney for health care.**

- (1) An individual who is of sound mind and has attained age 18 may voluntarily execute a power of attorney for health care. An individual for whom an adjudication of incompetence and appointment of a guardian of the person is in effect in this state is presumed not to be of sound mind for purposes of this subsection executing a power of attorney for health care.
- (2) Unless otherwise specified in the power of attorney for health care instrument, an individual's power of attorney for health care takes effect upon a finding of incapacity by 2 physicians, as defined in s. 448.01 (5), or one physician and one licensed psychologist, as defined in s. 455.01 (4) advanced practice clinician, who personally examine the principal and sign a statement specifying that the principal has incapacity. Mere old age, eccentricity or physical disability, either singly or together, are insufficient to make a finding of incapacity. Neither of the individuals who make a finding of incapacity may be a relative of the

principal or have knowledge that he or she is entitled to or has a claim on any portion of the principal's estate. A copy of the statement, if made, shall be appended to the power of attorney for health care instrument.

- (3) No **health care provider** for an individual, employee of that **health care provider** or employee of a health care facility in which an individual is a patient or resides, or a spouse of any of those providers or employees, may be designated by the individual as a health care agent unless the **health care provider**, employee or spouse of the provider or employee is a relative of the individual.
- (4) The desires of a principal who does not have incapacity supersede the effect of his or her power of attorney for health care at all times.
- (5) A principal may designate an alternate individual to serve as his or her health care agent in the event that the health care agent first designated is unable or unwilling to do so.

**History:** 1989 a. 200; 2005 a. 387.

Power of Attorney for Health Care. Sweet. Wis. Law. Sept. 1990.

Planning Ahead for Incapacity. Shapiro. Wis. Law. Aug. 1991.

### **155.10 Power of attorney for health care instrument; execution; witnesses.**

- (1) A valid power of attorney for health care instrument shall be all of the following:
  - (a) In writing.
  - (b) Dated and signed by the principal or by an individual who has attained age 18, at the express direction and in the presence of the principal.
  - (c) Signed in the presence of 2 witnesses who meet the requirements of sub. (2).
  - (d) Voluntarily executed.
- (2) A witness to the execution of a valid power of attorney for health care instrument shall be an individual who has attained age 18. No witness to the execution of the power of attorney for health care instrument may, at the time of the execution, be any of the following:
  - (a) Related to the principal by blood, marriage, or adoption, or the domestic partner under ch. 770 of the individual.
  - (b) Have knowledge that he or she is entitled to or has a claim on any portion of the principal's estate.
  - (c) Directly financially responsible for the principal's health care.
  - (d) An individual who is a **health care provider** who is serving the principal at the time of execution, an employee, other than a chaplain or a social worker, of the **health care provider** or an employee, other than a chaplain or a social worker, of an inpatient health care facility in which the principal is a patient.
  - (e) The principal's health care agent.

### **155.20 Health care agent; powers; limitations.**

- (1) Unless the power of attorney for health care instrument otherwise provides and except as specified in subs. (2) (a) and (b), (3) and (4) and s. 155.60 (2), the health care agent who is known to the **health care provider** to be available to make health care decisions for the principal has priority over any individual other than the principal to make these health care decisions.
- (2)
  - (a) A health care agent may not consent to admission of the principal on an inpatient basis to any of the following:
    1. An institution for mental diseases, as defined in s. 49.43 (6m).
    2. An intermediate care facility for persons with an intellectual disability, as defined in s. 46.278 (1m) (am).
    3. A state treatment facility, as defined in s. 51.01 (15).
    4. A treatment facility, as defined in s. 51.01 (19).
  - (b) A principal may be admitted or committed on an inpatient basis to a facility specified in par. (a) 1. to 4. only under the applicable requirements of ch. 51 or 55.

(c)

1. In this paragraph:

a. "Community-based residential facility" has the meaning given in s. 50.01 (1g).

b. "Nursing home" has the meaning given in s. 50.01 (3).

2. A health care agent may consent to the admission of a principal to the following facilities, under the following conditions:

a. To a nursing home, for recuperative care for a period not to exceed 3 months, if the principal is admitted directly from a hospital inpatient unit, unless the hospital admission was for psychiatric care.

b. If the principal lives with his or her health care agent, to a nursing home or a community-based residential facility, as a temporary placement not to exceed 30 days, in order to provide the health care agent with a vacation or to release temporarily the health care agent for a family emergency.

c. To a nursing home or a community-based residential facility, for purposes other than those specified in subd. 2. a. and b., if the power of attorney for health care instrument specifically so authorizes and if the principal is not diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission.

(3) A health care agent may not consent to experimental mental health research or to psychosurgery, electroconvulsive treatment or drastic mental health treatment procedures for the principal.

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

(5) The health care agent shall act in good faith consistently with the desires of the principal as expressed in the power of attorney for health care instrument or as otherwise specifically directed by the principal to the health care agent at any time. The health care agent shall act in good faith consistently with any valid declaration executed by the principal under subch. II of ch. 154, except that the provisions of a principal's valid power of attorney for health care instrument supersede any directly conflicting provisions of a valid declaration executed by the principal under subch. II of ch. 154. In the absence of a specific directive by the principal or if the principal's desires are unknown, the health care agent shall, in good faith, act in the best interests of the principal in exercising his or her authority.

(6) If the principal is known to be pregnant, the health care agent may make a health care decision on behalf of the principal that the power of attorney for health care instrument authorizes.

(7) If necessary to implement the health care decisions that a health care agent is authorized to make, in accordance with the desires of the principal, the health care agent may sign or otherwise execute any documents, waivers or releases related to the principal's care or treatment.

(8) A health care agent may make an anatomical gift of all or a part of the principal's body as provided under s. 157.06 (4) (b) or (9) (a) 1.

**History:** 1989 a. 200; 1991 a. 84, 269, 281; 1995 a. 200; 1997 a. 206; 2007 a. 106, 153; 2011 a. 126.

### **155.30 Power of attorney for health care instrument; form.**

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

"NOTICE TO PERSON  
MAKING THIS DOCUMENT

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

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

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

THIS IS AN IMPORTANT LEGAL DOCUMENT. IT GIVES YOUR AGENT BROAD POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. IT REVOKES ANY PRIOR POWER OF ATTORNEY FOR HEALTH CARE THAT YOU MAY HAVE MADE. IF YOU WISH TO CHANGE YOUR POWER OF ATTORNEY FOR HEALTH CARE, YOU MAY REVOKE THIS DOCUMENT AT ANY TIME BY DESTROYING IT, BY DIRECTING ANOTHER PERSON TO DESTROY IT IN YOUR PRESENCE, BY SIGNING A WRITTEN AND DATED STATEMENT OR BY STATING THAT IT IS REVOKED IN THE PRESENCE OF TWO WITNESSES. IF YOU REVOKE, YOU SHOULD NOTIFY YOUR AGENT, YOUR **HEALTH CARE PROVIDERS** AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A COPY. IF YOUR AGENT IS YOUR SPOUSE OR DOMESTIC PARTNER AND YOUR MARRIAGE IS ANNULLED OR YOU ARE DIVORCED OR THE DOMESTIC PARTNERSHIP IS TERMINATED AFTER SIGNING THIS DOCUMENT, THE DOCUMENT IS INVALID.

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

DO NOT SIGN THIS DOCUMENT UNLESS YOU CLEARLY UNDERSTAND IT.

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

- (2) A power of attorney for health care instrument that is other than that specified in sub. (1) or (3) shall include either the notice specified in sub. (1) or a certificate signed by the principal's lawyer stating: "I am a lawyer authorized to practice law in Wisconsin. I have advised my client concerning his or her rights in connection with this power of attorney for health care and the applicable law."
- (3) The department shall prepare and provide copies of a power of attorney for health care instrument and accompanying information for distribution in quantities to health care professionals, hospitals, nursing homes, multipurpose senior centers, county clerks, and local bar associations and individually to private persons. The department shall include, in information accompanying the copy of the instrument, at least the statutory definitions of terms used in the instrument, statutory restrictions on who may be witnesses to

a valid instrument, a statement explaining that valid witnesses acting in good faith are statutorily immune from civil or criminal liability and a statement explaining that an instrument may, but need not, be filed with the register in probate of the principal's county of residence. The department may charge a reasonable fee for the cost of preparation and distribution. The power of attorney for health care instrument distributed by the department shall include the notice specified in sub. (1) and shall be in the following form:

#### POWER OF ATTORNEY FOR HEALTH CARE

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

#### CREATION OF POWER OF ATTORNEY FOR HEALTH CARE

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

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

#### DESIGNATION OF HEALTH CARE AGENT

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

#### GENERAL STATEMENT OF AUTHORITY GRANTED

Unless I have specified otherwise in this document, if I ever have incapacity I instruct my health care provider to obtain the health care decision of my health care agent, if I need treatment, for all of my health care and treatment. I have discussed my desires thoroughly with my health care agent and believe that he or she understands my philosophy regarding the health care decisions I would make if I were able. I desire that my wishes be carried out through the authority given to my health care agent under this document.

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

#### LIMITATIONS ON MENTAL HEALTH TREATMENT

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

#### ADMISSION TO NURSING HOMES OR COMMUNITY-BASED RESIDENTIAL FACILITIES

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

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

1. A nursing home — Yes.... No....
2. A community-based residential facility — Yes.... No....

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

#### PROVISION OF A FEEDING TUBE

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

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

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

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

#### HEALTH CARE DECISIONS FOR PREGNANT WOMEN

If I have checked "Yes" to the following, my health care agent may make health care decisions for me even if my agent knows I am pregnant. If I have checked "No" to the following, my health care agent may not make health care decisions for me if my health care agent knows I am pregnant.

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

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

#### STATEMENT OF DESIRES, SPECIAL PROVISIONS OR LIMITATIONS

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

- 1) -
- 2) -
- 3) -

#### INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH

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



(a) Request, review and receive any information, oral or written, regarding my physical or mental health, including medical and hospital records.

(b) Execute on my behalf any documents that may be required in order to obtain this information.

(c) Consent to the disclosure of this information.

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

#### SIGNATURE OF PRINCIPAL

(person creating the power of attorney for health care)

Signature.... Date....

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

#### STATEMENT OF WITNESSES

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

Witness No. 1:

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

Address....

Signature....

Witness No. 2:

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

Address....

Signature....

#### STATEMENT OF HEALTH CARE AGENT AND ALTERNATE HEALTH CARE AGENT

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

Agent's signature....

Address....

Alternate's signature....

Address....

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

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

#### ANATOMICAL GIFTS (optional)

Upon my death:

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

.... I wish to donate any needed organ or part.

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

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

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

Signature.... Date....

**History:** 1989 a. 200; 1991 a. 281; 1993 a. 213, 491; 1997 a. 206; 2007 a. 106, 153; 2009 a. 28; 2011 a. 126.

#### **155.40 Revocation of power of attorney for health care.**

- (1) A principal may revoke his or her power of attorney for health care and invalidate the power of attorney for health care instrument at any time by doing any of the following:
  - (a) Canceling, defacing, obliterating, burning, tearing or otherwise destroying the power of attorney for health care instrument or directing another in the presence of the principal to so destroy the power of attorney for health care instrument.
  - (b) Executing a statement, in writing, that is signed and dated by the principal, expressing the principal's intent to revoke the power of attorney for health care.
  - (c) Verbally expressing the principal's intent to revoke the power of attorney for health care, in the presence of 2 witnesses.
  - (d) Executing a subsequent power of attorney for health care instrument.
- (2) If the health care agent is the principal's spouse or domestic partner under ch. 770 and, subsequent to the execution of a power of attorney for health care instrument, the marriage is annulled or divorce from the spouse is obtained or the domestic partnership under ch. 770 is terminated, the power of attorney for health care is revoked and the power of attorney for health care instrument is invalid.
- (2m) If a principal, after executing a power of attorney for health care, is adjudicated incompetent in this state, the power of attorney for health care remains in effect, except that a court may under s. 54.46 (2) (b), for good cause shown, revoke the power of attorney for health care and invalidate the power of attorney for health care instrument, or limit the authority of the agent under the terms of the power of attorney for health care instrument.
- (3) If an individual knows that the power of attorney for health care that named him or her as health care agent has been revoked, he or she shall communicate this fact to any **health care provider** for the principal that he or she knows has a copy of the power of attorney for health care instrument.
- (4) The principal's **health care provider** shall, upon notification of revocation of the principal's power of attorney for health care instrument, record in the principal's medical record the time, date and place of the revocation and the time, date and place, if different, of the notification to the **health care provider** of the revocation.

**History:** 1989 a. 200; 2005 a. 387; 2009 a. 28.

#### **155.50 Duties and immunities.**

- (1) No health care facility or **health care provider** may be charged with a crime, held civilly liable or charged with unprofessional conduct for any of the following:
  - (a) Certifying incapacity under s. 155.05 (2), if the certification is made in good faith based on a thorough examination of the principal.
  - (b) Failing to comply with a power of attorney for health care instrument or the decision of a health care agent, except that failure of a **physician health care professional, as defined in s. 154.03(3)** to comply constitutes unprofessional conduct if the **physician such health care professional** refuses or fails to make a good faith attempt to transfer the principal to another **physician health care professional** who will comply.

- (c) Complying, in the absence of actual knowledge of a revocation, with the terms of a power of attorney for health care instrument that is in compliance with this chapter or the decision of a health care agent that is made under a power of attorney for health care that is in compliance with this chapter.
- (d) Acting contrary to or failing to act on a revocation of a power of attorney for health care, unless the health care facility or health care provider has actual knowledge of the revocation.
- (e) Failing to obtain the health care decision for a principal from the principal's health care agent, if the health care facility or health care provider has made a reasonable attempt to contact the health care agent and obtain the decision but has been unable to do so.
- (2) In the absence of actual notice to the contrary, a health care facility or health care provider may presume that a principal was authorized to execute the principal's power of attorney for health care under the requirements of this chapter and that the power of attorney for health care instrument is valid.
- (3) No health care agent may be charged with a crime or held civilly liable for making a decision in good faith under a power of attorney for health care instrument that is in compliance with this chapter. No health care agent who is not the spouse of the principal may be held personally liable for any goods or services purchased or contracted for under a power of attorney for health care instrument.
- (4) Subsections (1), (2), and (3) apply to acts or omissions in connection with a provision of a power of attorney for health care that is executed in another jurisdiction if the provision is valid and enforceable under s. 155.70 (10).

**History:** 1989 a. 200; 2003 a. 290.

#### **155.60 Safeguards.**

- (1) Nothing in this chapter prohibits an individual from petitioning a court in this state for a determination of incompetency and for appointment of a guardian for an individual who is a principal under this chapter.
- (2) If an individual who is a principal is adjudicated incompetent in this state and a guardian is appointed for him or her, the power of attorney for health care executed under this chapter by the principal remains in effect, except that the court may under s. 54.46 (2) (b), for good cause shown, revoke the power of attorney for health care and invalidate the power of attorney for health care instrument, or limit the authority of the agent under the terms of the power of attorney for health care instrument. Unless the court makes this revocation or limitation, the guardian for the individual may not make health care decisions for the ward that may be made by the health care agent, unless the guardian is the health care agent.
- (3) Upon receipt of a power of attorney for health care instrument or a statement of incapacity under s. 155.05 (2), a health care facility or health care provider shall acknowledge this receipt in writing and, if the principal is a patient of the health care provider, the health care provider shall include the instrument or the statement in the medical record of the principal.
- (4)
  - (a) Any interested party may petition the court assigned to exercise probate jurisdiction for the county where a principal is present or the county of the principal's legal residence to review whether the health care agent is performing his or her duties in accordance with the terms of the power of attorney for health care instrument executed by the principal. If the court finds after a hearing that the health care agent has not been performing in accordance with the terms of the instrument, the court may do any of the following:
    1. Direct the health care agent to act in accordance with the terms of the principal's power of attorney for health care instrument.
    2. Require the health care agent to report to the court concerning performance of the health care agent's duties at periods of time established by the court.
    3. Rescind all powers of the health care agent to act under the power of attorney for health care and the power of attorney for health care instrument.

- (b) If the principal has designated an alternate health care agent and if the powers of the first-designated health care agent are rescinded under par. (a) 3., the alternate health care agent is the health care agent and par. (a), except par. (a) 3., applies.

**History:** 1989 a. 200; 2005 a. 387.

#### **155.65 Filing power of attorney instrument.**

- (1) A principal or a principal's health care agent may, for a fee, file the principal's power of attorney for health care instrument, for safekeeping, with the register in probate of the county in which the principal resides.
- (2) If a principal or health care agent has filed the principal's power of attorney for health care instrument as specified in sub. (1), the following persons may have access to the instrument without first obtaining consent from the principal:
- (a) The health care agent for the principal.
- (b) A **health care provider** who is providing care to the principal.
- (c) The court and all parties involved in proceedings in this state for adjudication of incompetency and appointment of a guardian for the principal, for emergency detention under s. 51.15, for involuntary commitment under s. 51.20, or for protective placement or protective services under ch. 55.
- (d) Any person under the order of a court for good cause shown.
- (3) Failure to file a power of attorney for health care instrument under sub. (1) creates no presumption about the intent of an individual with regard to his or her health care decisions.

**History:** 1991 a. 281; 2005 a. 387.

#### **155.70 General provisions.**

- (1)
- (a) The making of a health care decision on behalf of a principal under the principal's power of attorney for health care instrument does not, for any purpose, constitute suicide. Execution of a power of attorney for health care instrument under this chapter does not, for any purpose, constitute attempted suicide.
- (b) Paragraph (a) does not prohibit an insurer from making a determination that a principal has attempted suicide or committed suicide based on the principal's action to do so, apart from the power of attorney for health care instrument.
- (2) No individual may be required to execute a power of attorney for health care as a condition for receipt of health care or admission to a health care facility. The designation by a principal of a health care agent under a power of attorney for health care instrument is not a bar to the receipt of health care or admission to a health care facility.
- (3) This chapter does not apply to the provisions of a valid declaration executed under subch. II of ch. 154, except that the provisions of a principal's valid power of attorney for health care instrument supersede any directly conflicting provisions of a valid declaration executed under subch. II of ch. 154 for a declarant who is that principal.
- (4)
- (a) Nothing in this chapter may be construed to render invalid a durable power of attorney that is executed under s. 243.07, 2007 stats., prior to April 28, 1990.
- (b) A health care decision made under the authority of a durable power of attorney specified in par. (a) is valid.
- (5) No insurer may refuse to pay for goods or services covered under a principal's insurance policy solely because the decision to use the goods or services was made by the principal's health care agent.
- (6) A power of attorney for health care instrument that is in its original form or is a legible photocopy or electronic facsimile copy is presumed to be valid.
- (7) Nothing in this chapter may be construed to condone, authorize, approve or permit any affirmative or deliberate act to end life other than the withholding or withdrawing of health care under a power of attorney for health care so as to permit the natural process of dying. In making health care decisions under a power of attorney for health care, an attempted suicide by the principal may not be construed to indicate a desire of the principal that health care treatment be restricted or inhibited.

- (8) Failure to execute a power of attorney for health care document under this chapter creates no presumption about the intent of any individual with regard to his or her health care decisions.
- (9) A power of attorney for health care instrument under s. 155.30 (1), 1989 stats., that is executed before, on or after May 14, 1992, and that is not subsequently revoked is governed by the provisions of ch. 155, 1989 stats.
- (10) A valid document granting a health care agent authority to make health care decisions for a principal that is executed in another state or jurisdiction in compliance with the law of that state or jurisdiction is valid and enforceable in this state to the extent that the document authorizes the health care agent to make decisions for the principal that a health care agent may make for a principal under this chapter.

**History:** 1989 a. 200; 1991 a. 84, 281; 1995 a. 200; 2003 a. 290; 2009 a. 319.

#### **155.80 Penalties.**

- (1) Whoever directly or indirectly coerces, threatens or intimidates an individual so as to cause the individual to execute a power of attorney for health care instrument shall be fined not more than \$500 or imprisoned for not more than 30 days or both.
- (2) Whoever intentionally conceals, cancels, defaces, obliterates, damages or destroys a power of attorney for health care instrument without the consent of the principal for that instrument may be fined not more than \$500 or imprisoned for not more than 30 days or both.
- (3) Whoever knowingly conceals, falsifies or forges a power of attorney for health care instrument with intent to create the false impression that a person other than the health care agent has been so designated shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.
- (4) Whoever intentionally withholds actual knowledge of the revocation of a power of attorney for health care or of the falsification or forgery of a power of attorney for health care instrument shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.
- (5) Whoever acts or attempts to act as a health care agent based on a power of attorney for health care that the individual knows has been executed without the voluntary consent of the principal, that the individual knows has been forged or substantially altered without the authorization of the principal, or that the individual knows has been revoked, shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

**History:** 1989 a. 200.

## **CHAPTER 448**

### **MEDICAL PRACTICES**

#### **SUBCHAPTER II**

#### **MEDICAL EXAMINING BOARD**

448.21 Physician assistants.

**448.21 Physician assistants.**

...

**(5) ADVANCE DIRECTIVES AND POWER OF ATTORNEY.** It is unprofessional conduct for a physician assistant to make a determination under chs. 154 or 155 if that physician assistant does not have sufficient education, training, and experience to make such a determination.

COMMENT: This language may be redundant, but may also reduce concerns of some that not all PAs are competent to make such determinations by making it explicit that a PA can be disciplined for making determinations under these statutes if he or she does not have the requisite competency.

## **CHAPTER 441 BOARD OF NURSING**

### **441.06 Licensure**

....

**(8)** It is unprofessional conduct for a nurse that is an advanced practice registered nurse as defined in s. 154.01(1) to make a determination under chs. 154 or 155 if that advanced practice registered nurse does not have sufficient education, training, and experience to make such a determination.

COMMENT: This language may be redundant, but may also reduce concerns of some that not all APRNs are competent to make such determinations by making it explicit that an APRN can be disciplined for making determinations under these statutes if he or she does not have the requisite competency.



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-17370-091  
KP: ...  
Wlj

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

IN: 2/22/2019  
OUT: 2/28/2019

1 AN ACT <sup>gc</sup> relating to: certifications for advance directives and findings of  
2 incapacity related to powers of attorney for health care.

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***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, for a health care power of attorney instrument executed after the bill takes effect, one physician and one qualified physician assistant or nurse practitioner to 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, 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 agrees 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, for a declaration to physicians, also called a living will, executed after the bill takes effect, a physician assistant or advanced practice nurse prescriber to certify that a patient is afflicted with a terminal condition or is in a persistent vegetative state. Under a declaration executed under current law, 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.

3. Allows an attending physician assistant or attending advanced practice nurse prescriber to issue do-not-resuscitate orders. Current law allows only attending physicians to issue a do-not-resuscitate order. 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.

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

1           **SECTION 1.** 154.01 (1) of the statutes is amended to read:

2           154.01 (1) "Attending physician health care professional" means a physician  
3 licensed under ch. 448 health care professional who has primary responsibility for  
4 the treatment and care of the patient.

History: 1983 a. 202; 1985 a. 199; 1987 a. 161 s. 13m; 1991 a. 84; 1993 a. 27; 1995 a. 27 s. 9126 (19); 1995 a. 168, 200; 2007 a. 20 s. 9121 (6) (a).

5           **SECTION 2.** 154.01 (3) of the statutes is renumbered 154.01 (3) (intro.) and  
6 amended to read:

7           154.01 (3) (intro.) "Health care professional" means a person licensed, certified  
8 or registered under ch. 441, 448 or 455. any of the following:

History: 1983 a. 202; 1985 a. 199; 1987 a. 161 s. 13m; 1991 a. 84; 1993 a. 27; 1995 a. 27 s. 9126 (19); 1995 a. 168, 200; 2007 a. 20 s. 9121 (6) (a).

9           **SECTION 3.** 154.01 (3) (a) of the statutes is created to read:

10           154.01 (3) (a) A physician licensed under ch. 448.

11           **SECTION 4.** 154.01 (3) (b) of the statutes is created to read:

12           154.01 (3) (b) A physician assistant licensed under ch. 448.

13           **SECTION 5.** 154.01 (3) (c) of the statutes is created to read:

14           154.01 (3) (c) An advanced practice nurse prescriber certified under s. 441.16  
15 (2).

16           **SECTION 6.** 154.01 (5) <sup>(intro.)</sup> of the statutes is amended to read:



*(intro.)*

1           154.01 (5) “Life-sustaining procedure” means any medical procedure or  
 2 intervention that, in the judgment of the attending physician health care  
 3 professional, would serve only to prolong the dying process but not avert death when  
 4 applied to a qualified patient. “Life-sustaining procedure” includes assistance in  
 5 respiration, artificial maintenance of blood pressure and heart rate, blood  
 6 transfusion, kidney dialysis and other similar procedures, but does not include:

- 7           (a) The alleviation of pain by administering medication or by performing any
- 8 medical procedure.
- 9           (b) The provision of nutrition or hydration.

History: 1983 a. 202; 1985 a. 199; 1987 a. 161 s. 13m; 1991 a. 84; 1993 a. 27; 1995 a. 27 s. 9126 (19); 1995 a. 168, 200; 2007 a. 20 s. 9121 (6) (a).

10           **SECTION 7.** Subchapter II (title) of chapter 154 [precedes 154.02] of the statutes  
 11 is amended to read:

**CHAPTER 154**

**SUBCHAPTER II**

**DECLARATION TO PHYSICIANS HEALTH CARE PROFESSIONALS**

15           **SECTION 8.** 154.02 (3) of the statutes is amended to read:

16           154.02 (3) “Qualified patient” means a declarant who has been diagnosed and  
 17 certified in writing to be afflicted with a terminal condition or to be in a persistent  
 18 vegetative state by 2 physicians health care professionals, one of whom is the  
 19 attending physician health care professional and one of whom is a physician, who  
 20 have personally examined the declarant.

History: 1995 a. 200.

21           **SECTION 9.** 154.03 (title) of the statutes is amended to read:

22           **154.03 (title) Declaration to physicians health care professionals.**

History: 1983 a. 202; 1985 a. 199; 1991 a. 84, 281; 1995 a. 27 s. 9126 (19); 1995 a. 168; 2007 a. 20 s. 9121 (6) (a).

23           **SECTION 10.** 154.03 (1) (intro.) of the statutes is amended to read:

1           154.03 (1) (intro.) Any person of sound mind and 18 years of age or older may  
2 at any time voluntarily execute a declaration, which shall take effect on the date of  
3 execution, authorizing the withholding or withdrawal of life-sustaining procedures  
4 or of feeding tubes when the person is in a terminal condition or is in a persistent  
5 vegetative state. A declarant may not authorize the withholding or withdrawal of  
6 any medication, life-sustaining procedure or feeding tube if the declarant's  
7 attending physician health care professional advises that, in his or her professional  
8 judgment, the withholding or withdrawal will cause the declarant pain or reduce the  
9 declarant's comfort and the pain or discomfort cannot be alleviated through pain  
10 relief measures. A declarant may not authorize the withholding or withdrawal of  
11 nutrition or hydration that is administered or otherwise received by the declarant  
12 through means other than a feeding tube unless the declarant's attending physician  
13 health care professional advises that, in his or her professional judgment, the  
14 administration is medically contraindicated. A declaration must be signed by the  
15 declarant in the presence of 2 witnesses. If the declarant is physically unable to sign  
16 a declaration, the declaration must be signed in the declarant's name by one of the  
17 witnesses or some other person at the declarant's express direction and in his or her  
18 presence; such a proxy signing shall either take place or be acknowledged by the  
19 declarant in the presence of 2 witnesses. The declarant is responsible for notifying  
20 his or her attending physician health care professional of the existence of the  
21 declaration. An attending physician health care professional who is so notified shall  
22 make the declaration a part of the declarant's medical records. No witness to the  
23 execution of the declaration may, at the time of the execution, be any of the following:

History: 1983 a. 202; 1985 a. 199; 1991 a. 84, 281; 1995 a. 27 s. 9126 (19); 1995 a. 168; 2007 a. 20 s. 9121 (6) (a).

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

1           154.03 (2) The department shall prepare and provide copies of the declaration  
2 and accompanying information for distribution in quantities to health-care  
3 ~~professionals~~ persons licensed, certified, or registered under ch. 441, 448, or 455,  
4 hospitals, nursing homes, county clerks and local bar associations and individually  
5 to private persons. The department shall include, in information accompanying the  
6 declaration, at least the statutory definitions of terms used in the declaration,  
7 statutory restrictions on who may be witnesses to a valid declaration, a statement  
8 explaining that valid witnesses acting in good faith are statutorily immune from civil  
9 or criminal liability, an instruction to potential declarants to read and understand  
10 the information before completing the declaration and a statement explaining that  
11 an instrument may, but need not be, filed with the register in probate of the  
12 declarant's county of residence. The department may charge a reasonable fee for the  
13 cost of preparation and distribution. The declaration distributed by the department  
14 of health services shall be easy to read, the type size may be no smaller than 10 point,  
15 and the declaration shall be in the following form, setting forth on the first page the  
16 wording before the ATTENTION statement and setting forth on the 2nd page the  
17 ATTENTION statement and remaining wording:

18           DECLARATION TO PHYSICIANS HEALTH CARE PROFESSIONALS

19           (WISCONSIN LIVING WILL)

20           I,...., being of sound mind, voluntarily state my desire that my dying not be  
21 prolonged under the circumstances specified in this document. Under those  
22 circumstances, I direct that I be permitted to die naturally. If I am unable to give  
23 directions regarding the use of life-sustaining procedures or feeding tubes, I intend  
24 that my family and physician, physician assistant, or advanced practice nurse

## SECTION 11

1 prescriber honor this document as the final expression of my legal right to refuse  
2 medical or surgical treatment.

3 1. If I have a TERMINAL CONDITION, as determined by <sup>↓</sup> 2 physicians a  
4 physician who have has personally examined me, and if another physician, physician  
5 assistant, or advanced practice nurse prescriber agrees with that determination, I  
6 do not want my dying to be artificially prolonged and I do not want life-sustaining  
7 procedures to be used. In addition, the following are my directions regarding the use  
8 of feeding tubes:

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

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

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

12 2. If I am in a PERSISTENT VEGETATIVE STATE, as determined by <sup>↓</sup> 2  
13 physicians a physician who have has personally examined me, and if another  
14 physician, physician assistant, or advanced practice nurse prescriber agrees with  
15 that determination, the following are my directions regarding the use of  
16 life-sustaining procedures:

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

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

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

22 3. If I am in a PERSISTENT VEGETATIVE STATE, as determined by <sup>↓</sup> 2  
23 physicians a physician who have has personally examined me, and if another  
24 physician, physician assistant, or advanced practice nurse prescriber agrees with

1 that determination, the following are my directions regarding the use of feeding  
2 tubes:

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

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

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

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

9 **ATTENTION:** You and the 2 witnesses must sign the document at the same  
10 time.

11 Signed ....

Date ....

12 Address ....

Date of birth ....

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

17 Witness signature ....

Date signed ....

18 Print name ....

19

20 Witness signature ....

Date signed ....

21

Print name ....

1            DIRECTIVES TO ATTENDING PHYSICIAN, PHYSICIAN ASSISTANT, OR  
2            ADVANCED PRACTICE NURSE PRESCRIBER

3            1. This document authorizes the withholding or withdrawal of life-sustaining  
4            procedures or of feeding tubes when ~~2 physicians~~ a physician and another physician,  
5            physician assistant, or advanced practice nurse prescriber, one of whom is the  
6            attending ~~physieian~~ health care professional, have personally examined and  
7            certified in writing that the patient has a terminal condition or is in a persistent  
8            vegetative state.

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

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

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

21            \* \* \* \* \*

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

25            .....

1 .....  
2

2 .....  
3

History: 1983 a. 202; 1985 a. 199; 1991 a. 84, 281; 1995 a. 27 s. 9126 (19); 1995 a. 168; 2007 a. 20 s. 9121 (6) (a).

3 SECTION 12. 154.05 (1) (c) of the statutes is amended to read:

4 154.05 (1) (c) By a verbal expression by the declarant of his or her intent to  
5 revoke the declaration. This revocation becomes effective only if the declarant or a  
6 person who is acting on behalf of the declarant notifies the attending physician  
7 health care professional of the revocation.

History: 1983 a. 202; 1995 a. 168.

8 SECTION 13. 154.05 (2) of the statutes is amended to read:

9 154.05 (2) RECORDING THE REVOCATION. The attending physician health care  
10 professional shall record in the patient's medical record the time, date and place of  
11 the revocation and the time, date and place, if different, that he or she was notified  
12 of the revocation.

History: 1983 a. 202; 1995 a. 168.

13 SECTION 14. 154.07 (1) (a) (intro.) of the statutes is amended to read:

14 154.07 (1) (a) (intro.) No ~~physieian~~ health care professional, inpatient health  
15 care facility or ~~health care professional person licensed, certified, or registered under~~  
16 ch. 441, 448, or 455 acting under the direction of a ~~physieian~~ health care professional  
17 may be held criminally or civilly liable, or charged with unprofessional conduct, for  
18 any of the following:

History: 1983 a. 202; 1991 a. 84; 1995 a. 200; 2003 a. 290; 2005 a. 387.

19 SECTION 15. 154.07 (1) (a) 3. of the statutes is amended to read:

20 154.07 (1) (a) 3. Failing to comply with a declaration, except that failure by a  
21 physieian health care professional to comply with a declaration of a qualified patient  
22 constitutes unprofessional conduct if the ~~physieian~~ health care professional refuses

1 or fails to make a good faith attempt to transfer the qualified patient to another  
2 physician health care professional who will comply with the declaration.

History: 1983 a. 202; 1991 a. 84; 1995 a. 200; 2003 a. 290; 2005 a. 387.

3 **SECTION 16.** 154.07 (2) of the statutes is amended to read:

4 154.07 (2) EFFECT OF DECLARATION. The desires of a qualified patient who is  
5 competent supersede the effect of the declaration at all times. If a qualified patient  
6 is adjudicated incompetent at the time of the decision to withhold or withdraw  
7 life-sustaining procedures or feeding tubes, a declaration executed under this  
8 subchapter is presumed to be valid. The declaration of a qualified patient who is  
9 diagnosed as pregnant by the attending physieian health care professional has no  
10 effect during the course of the qualified patient's pregnancy. For the purposes of this  
11 subchapter, a physieian health care professional or inpatient health care facility may  
12 presume in the absence of actual notice to the contrary that a person who executed  
13 a declaration was of sound mind at the time.

History: 1983 a. 202; 1991 a. 84; 1995 a. 200; 2003 a. 290; 2005 a. 387.

14 **SECTION 17.** 154.19 (1) (intro.) of the statutes is amended to read:

15 154.19 (1) (intro.) No person except an attending physieian health care  
16 professional may issue a do-not-resuscitate order. An attending physieian health  
17 care professional may issue a do-not-resuscitate order to a patient only if all of the  
18 following apply:

History: 1995 a. 200; 1997 a. 27; 1999 a. 9; 2017 a. 12.

Cross-reference: See also ch. DHS 125, Wis. adm. code.

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

20 154.19 (1) (e) The physieian health care professional does not know the patient  
21 to be pregnant.

History: 1995 a. 200; 1997 a. 27; 1999 a. 9; 2017 a. 12.

Cross-reference: See also ch. DHS 125, Wis. adm. code.

22 **SECTION 19.** 154.19 (2) (a) of the statutes is amended to read:



1           154.19 (2) (a) The attending physieian health care professional, or a person  
2           directed by the attending physieian health care professional, shall provide the  
3           patient with written information about the resuscitation procedures that the patient  
4           has chosen to forego and the methods by which the patient may revoke the  
5           do-not-resuscitate order.

History: 1995 a. 200; 1997 a. 27; 1999 a. 9; 2017 a. 12.

Cross-reference: See also ch. DHS 125, Wis. adm. code.

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

7           154.19 (2) (b) (intro.) After providing the information under par. (a), the  
8           attending physieian health care professional, or the person directed by the attending  
9           physieian health care professional, shall document in the patient's medical record  
10          the medical condition that qualifies the patient for the do-not-resuscitate order,  
11          shall make the order in writing and shall do one of the following, as requested by the  
12          qualified patient:

History: 1995 a. 200; 1997 a. 27; 1999 a. 9; 2017 a. 12.

Cross-reference: See also ch. DHS 125, Wis. adm. code.

13          **SECTION 21.** 154.21 (2) of the statutes is amended to read:

14          154.21 (2) RECORDING THE REVOCATION. The attending physieian health care  
15          professional shall be notified as soon as practicable of the patient's revocation and  
16          shall record in the patient's medical record the time, date and place of the revocation,  
17          if known, and the time, date and place, if different, that he or she was notified of the  
18          revocation. A revocation under sub. (1) is effective regardless of when the attending  
19          physieian health care professional has been notified of that revocation.

History: 1995 a. 200; 2017 a. 12.

20          **SECTION 22.** 154.23 (intro.) of the statutes is amended to read:

21          **154.23 Liability.** (intro.) No physician, emergency medical services  
22          practitioner, emergency medical responder, health care professional provider, as

1 defined in s. 146.81 (1), or emergency health care facility may be held criminally or  
2 civilly liable, or charged with unprofessional conduct, for any of the following:

History: 1995 a. 200; 2017 a. 12.

3 **SECTION 23.** 154.27 (1) of the statutes is amended to read:

4 154.27 (1) The department shall establish by rule a uniform standard for the  
5 size, color, and design of all do-not-resuscitate bracelets. Except as provided in sub.  
6 (2), the rules shall require that the do-not-resuscitate bracelets include the  
7 inscription "Do Not Resuscitate"; the name, address, date of birth and gender of the  
8 patient; and the name, business telephone number and signature of the attending  
9 physician health care professional issuing the order.

History: 1995 a. 200; 1999 a. 9.

Cross-reference: See also ch. DHS 125, Wis. adm. code.

10 **SECTION 24.** 155.01 (1) of the statutes is renumbered 155.01 (1r).

11 **SECTION 25.** 155.01 (1g) of the statutes is created to read:

12 155.01 (1g) "Advanced practice clinician" means any of the following:

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

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

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

19 **SECTION 26.** 155.05 (2) of the statutes is amended to read:

20 155.05 (2) Unless otherwise specified in the power of attorney for health care  
21 instrument, an individual's power of attorney for health care takes effect upon a  
22 finding of incapacity by 2 physicians, as defined in s. 448.01 (5), or one physician and  
23 one licensed psychologist, as defined in s. 455.01 (4) advanced practice clinician, who

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

History: 1989 a. 200; 2005 a. 387.

8 **SECTION 27.** 155.20 (4) of the statutes is amended to read:

9 155.20 (4) A health care agent may consent to the withholding or withdrawal  
10 of a feeding tube for the principal if the power of attorney for health care instrument  
11 so authorizes, unless the principal's attending physician health care professional, as  
12 defined in s. 154.01 (1), advises that, in his or her professional judgment, the  
13 withholding or withdrawal will cause the principal pain or reduce the principal's  
14 comfort. A health care agent may not consent to the withholding or withdrawal of  
15 orally ingested nutrition or hydration unless provision of the nutrition or hydration  
16 is medically contraindicated.

History: 1989 a. 200; 1991 a. 84, 269, 281; 1995 a. 200; 1997 a. 206; 2007 a. 106, 153; 2011 a. 126.

17 **SECTION 28.** 155.30 (1) of the statutes is amended to read:

18 155.30 (1) A printed form of a power of attorney for health care instrument that  
19 is sold or otherwise distributed for use by an individual in this state who does not  
20 have the advice of legal counsel shall provide no authority other than the authority  
21 to make health care decisions on behalf of the principal and shall contain the  
22 following statement in not less than 10-point boldface type:

1 "NOTICE TO PERSON

2 MAKING THIS DOCUMENT

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

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

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

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

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

22          DO NOT SIGN THIS DOCUMENT UNLESS YOU CLEARLY UNDERSTAND  
23          IT.

1 IT IS SUGGESTED THAT YOU KEEP THE ORIGINAL OF THIS  
2 DOCUMENT ON FILE WITH YOUR PHYSICIAN OR OTHER PRIMARY CARE  
3 PROVIDER.”

History: 1989 a. 200; 1991 a. 281; 1993 a. 213, 491; 1997 a. 206; 2007 a. 106, 153; 2009 a. 28; 2011 a. 126.

4 **SECTION 29.** 155.30 (3) of the statutes is amended to read:

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

18 **POWER OF ATTORNEY FOR HEALTH CARE**

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

20 **CREATION OF POWER OF ATTORNEY**

21 **FOR HEALTH CARE**

22 I,.... (print name, address and date of birth), being of sound mind, intend by this  
23 document to create a power of attorney for health care. My executing this power of  
24 attorney for health care is voluntary. Despite the creation of this power of attorney

1 for health care, I expect to be fully informed about and allowed to participate in any  
2 health care decision for me, to the extent that I am able. For the purposes of this  
3 document, "health care decision" means an informed decision to accept, maintain,  
4 discontinue or refuse any care, treatment, service or procedure to maintain, diagnose  
5 or treat my physical or mental condition.

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

#### 8 DESIGNATION OF HEALTH CARE AGENT

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

#### 25 GENERAL STATEMENT OF AUTHORITY GRANTED

1 Unless I have specified otherwise in this document, if I ever have incapacity I  
2 instruct my health care provider to obtain the health care decision of my health care  
3 agent, if I need treatment, for all of my health care and treatment. I have discussed  
4 my desires thoroughly with my health care agent and believe that he or she  
5 understands my philosophy regarding the health care decisions I would make if I  
6 were able. I desire that my wishes be carried out through the authority given to my  
7 health care agent under this document.

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

#### 17 LIMITATIONS ON MENTAL HEALTH TREATMENT

18 My health care agent may not admit or commit me on an inpatient basis to an  
19 institution for mental diseases, an intermediate care facility for persons with an  
20 intellectual disability, a state treatment facility or a treatment facility. My health  
21 care agent may not consent to experimental mental health research or  
22 psychosurgery, electroconvulsive treatment or drastic mental health treatment  
23 procedures for me.

#### 24 ADMISSION TO NURSING HOMES OR 25 COMMUNITY-BASED RESIDENTIAL FACILITIES



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

3 If I have checked “Yes” to the following, my health care agent may admit me for  
4 a purpose other than recuperative care or respite care, but if I have checked “No” to  
5 the following, my health care agent may not so admit me:

6 1. A nursing home — Yes.... No....

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

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

#### 10 PROVISION OF A FEEDING TUBE

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

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

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

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

#### 23 HEALTH CARE DECISIONS FOR

24 PREGNANT WOMEN

1           If I have checked “Yes” to the following, my health care agent may make health  
2 care decisions for me even if my agent knows I am pregnant. If I have checked “No”  
3 to the following, my health care agent may not make health care decisions for me if  
4 my health care agent knows I am pregnant.

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

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

9           STATEMENT OF DESIRES,

10          SPECIAL PROVISIONS OR LIMITATIONS

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

15           1) -

16           2) -

17           3) -

18          INSPECTION AND DISCLOSURE OF  
19 INFORMATION RELATING TO MY PHYSICAL  
20 OR MENTAL HEALTH

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

23           (a) Request, review and receive any information, oral or written, regarding my  
24 physical or mental health, including medical and hospital records.

1 (b) Execute on my behalf any documents that may be required in order to obtain  
2 this information.

3 (c) Consent to the disclosure of this information.

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

5 SIGNATURE OF PRINCIPAL

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

7 Signature.... Date....

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

10 STATEMENT OF WITNESSES

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

22 Witness No. 1:

23 (print) Name.... Date....

24 Address....

25 Signature....

1           Witness No. 2:

2           (print) Name....                   Date....

3           Address....

4           Signature....

5           **STATEMENT OF HEALTH CARE AGENT AND**

6           **ALTERNATE HEALTH CARE AGENT**

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

11          Agent's signature....

12          Address....

13          Alternate's signature....

14          Address....

15          Failure to execute a power of attorney for health care document under chapter  
16          155 of the Wisconsin Statutes creates no presumption about the intent of any  
17          individual with regard to his or her health care decisions.

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

20          **ANATOMICAL GIFTS (optional)**

21          Upon my death:

22          .... I wish to donate only the following organs or parts: .... (specify the organs or  
23          parts).

24          .... I wish to donate any needed organ or part.

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

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

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

6           Signature....                      Date....

**History:** 1989 a. 200; 1991 a. 281; 1993 a. 213, 491; 1997 a. 206; 2007 a. 106, 153; 2009 a. 28; 2011 a. 126.

7           **SECTION 30.** 155.50 (1) (b) of the statutes is amended to read:

8           155.50 (1) (b) Failing to comply with a power of attorney for health care  
9 instrument or the decision of a health care agent, except that failure of a physician  
10 or a person licensed, certified or registered under ch. 441, 448, or 455 to comply  
11 constitutes unprofessional conduct if the physician or person refuses or fails to make  
12 a good faith attempt to transfer the principal to another physician or person licensed,  
13 certified, or registered under ch. 441, 448, or 455 who will comply.

**History:** 1989 a. 200; 2003 a. 290.

14           **SECTION 31.** 441.07 (1g) (g) of the statutes is created to read:

15           (STE) 441.07 (1g) (g) <sup>WV</sup> ~~Made~~ <sup>made</sup> a determination under ch. 154 or 155 if the person does  
16 not have sufficient education, training, and experience to make the determination.

17           **SECTION 32.** 448.015 (4) (am) 2m. of the statutes is created to read:

18           448.015 (4) (am) 2m. A determination made by a physician assistant under ch.  
19 154 or 155 if the physician assistant does not have sufficient education, training, and  
20 experience to make the determination.

21           **SECTION 33. Initial applicability.**

**SECTION 33**

1 (1) This act first applies to a power of attorney for health care, a declaration to  
2 health care professionals, or a do-not-resuscitate order executed or issued on the  
3 effective date of this subsection. ✓

4 (END)