



Meeting with Rep. Snyder's office:

Additional Instructions

• For the provisions in ch. 154, instead of the term "advanced practice nurse prescriber," the draft should create a definition of "advanced practice registered nurse" based on s. N 8.02(1), Wis. Adm. Code

• Adjust the language on p. 6 of the draft about findings of terminal condition or persistent vegetative state to say: "as determined by a physician, physician assistant, or advanced practice registered nurse ... and if another physician who has also personally examined me agrees..."

• p. 12, l. 8: change "determines" to "affirms"

• s. 155.50(1)(b) should use the definition of "healthcare professional" in s. 154.01(3)

• A nurse making a determination under ch. 154 or 155 if the nurse does not have sufficient education, training, and experience to make the determination should be included in the definition of "unprofessional conduct" under s. 447.07(1g)(d)

• Remove the initial applicability provision - but the draft is not intended to have retroactive effect



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1737/PI ^{ep2}
KP:wlj
+
egjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERT

IN: 3/27/2019
OUT: 3/28/2019

ew

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

Analysis by the Legislative Reference Bureau

unless 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

personally examine principals and

unless specified otherwise,

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.

affirms

unless specified otherwise,

3. Specifies that under

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.

may

Under current law, unless a declaration specifies otherwise,

2. registered

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 do-not-resuscitate orders. Under current law, if a person has a serious medical condition that satisfies certain requirements, the person may request a do-not-resuscitate order which directs medical personnel to not attempt various types of resuscitation procedures on a person if the person suffers cardiac or respiratory arrest.

FE-STATE

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

INS 2-1

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.

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:

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.

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

2 154.01 (3) (b) A physician assistant licensed under ch. 448.

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

4 154.01 (3) (c) An advanced practice ^{registered} nurse ~~prescriber~~ certified under s. 441.16

5 (2).

6 SECTION 6. 154.01 (5) (intro.) of the statutes is amended to read:

7 154.01 (5) (intro.) "Life-sustaining procedure" means any medical procedure
8 or intervention that, in the judgment of the attending physician health care
9 professional, would serve only to prolong the dying process but not avert death when
10 applied to a qualified patient. "Life-sustaining procedure" includes assistance in
11 respiration, artificial maintenance of blood pressure and heart rate, blood
12 transfusion, kidney dialysis and other similar procedures, but does not include:

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

15 CHAPTER 154

16 SUBCHAPTER II

17 DECLARATION TO PHYSICIANS

18 HEALTH CARE PROFESSIONALS

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

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

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

1 **154.03 (title) Declaration to physicians health care professionals.**

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

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

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 ~~2~~ physicians a
4 physician *physician assistant, or advanced practice registered nurse* who have has personally examined me, and if another physician, physician
5 assistant, or advanced practice nurse prescriber *who has also personally examined me* 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 ~~2~~
13 physicians a physician *physician assistant, or advanced practice registered nurse* who have has personally examined me, and if another
14 physician, physician assistant, or advanced practice nurse prescriber *who has also personally examined me* 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 ~~2~~
23 physicians a physician *physician assistant, or advanced practice registered nurse* who have has personally examined me, and if another
24 physician, physician assistant, or advanced practice nurse prescriber *who has also personally examined me* 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 ^{REGISTERED} (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 ^{registered} (prescriber), one of whom is the
6 attending ~~physician~~ 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 ^{registered} (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

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.

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.

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

14 154.07 (1) (a) (intro.) No physician 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 physician health care professional
17 may be held criminally or civilly liable, or charged with unprofessional conduct, for
18 any of the following:

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 physician health care professional to comply with a declaration of a qualified patient
22 constitutes unprofessional conduct if the physician health care professional refuses
23 or fails to make a good faith attempt to transfer the qualified patient to another
24 physician health care professional who will comply with the declaration.

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

1 154.07 (2) EFFECT OF DECLARATION. The desires of a qualified patient who is
2 competent supersede the effect of the declaration at all times. If a qualified patient
3 is adjudicated incompetent at the time of the decision to withhold or withdraw
4 life-sustaining procedures or feeding tubes, a declaration executed under this
5 subchapter is presumed to be valid. The declaration of a qualified patient who is
6 diagnosed as pregnant by the attending ~~physician~~ health care professional has no
7 effect during the course of the qualified patient's pregnancy. For the purposes of this
8 subchapter, a ~~physician~~ health care professional or inpatient health care facility may
9 presume in the absence of actual notice to the contrary that a person who executed
10 a declaration was of sound mind at the time.

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

12 154.19 (1) (intro.) No person except an attending ~~physician~~ health care
13 professional may issue a do-not-resuscitate order. An attending ~~physician~~ health
14 care professional may issue a do-not-resuscitate order to a patient only if all of the
15 following apply:

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

17 154.19 (1) (e) The ~~physician~~ health care professional does not know the patient
18 to be pregnant.

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

20 154.19 (2) (a) The attending ~~physician~~ health care professional, or a person
21 directed by the attending ~~physician~~ health care professional, shall provide the
22 patient with written information about the resuscitation procedures that the patient
23 has chosen to forego and the methods by which the patient may revoke the
24 do-not-resuscitate order.

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

1 154.19 (2) (b) (intro.) After providing the information under par. (a), the
2 attending ~~physieian~~ health care professional, or the person directed by the attending
3 ~~physieian~~ health care professional, shall document in the patient's medical record
4 the medical condition that qualifies the patient for the do-not-resuscitate order,
5 shall make the order in writing and shall do one of the following, as requested by the
6 qualified patient:

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

8 154.21 (2) RECORDING THE REVOCATION. The attending ~~physieian~~ health care
9 professional shall be notified as soon as practicable of the patient's revocation and
10 shall record in the patient's medical record the time, date and place of the revocation,
11 if known, and the time, date and place, if different, that he or she was notified of the
12 revocation. A revocation under sub. (1) is effective regardless of when the attending
13 ~~physieian~~ health care professional has been notified of that revocation.

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

15 **154.23 Liability.** (intro.) No physician, emergency medical services
16 practitioner, emergency medical responder, health care ~~professional~~ provider, as
17 defined in s. 146.81 (1), or emergency health care facility may be held criminally or
18 civilly liable, or charged with unprofessional conduct, for any of the following:

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

20 154.27 (1) The department shall establish by rule a uniform standard for the
21 size, color, and design of all do-not-resuscitate bracelets. Except as provided in sub.
22 (2), the rules shall require that the do-not-resuscitate bracelets include the
23 inscription "Do Not Resuscitate"; the name, address, date of birth and gender of the
24 patient; and the name, business telephone number and signature of the attending
25 ~~physieian~~ health care professional issuing the order.

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

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

3 155.01 (1g) "Advanced practice clinician" means any of the following:

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

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

7 (c) A physician assistant licensed under ch. 448 who a physician responsible
8 for overseeing the physician assistant's practice ^{or affirms} ~~determines~~ is competent to conduct
9 evaluations of the capacity of patients to manage health care decisions.

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

11 155.05 (2) Unless otherwise specified in the power of attorney for health care
12 instrument, an individual's power of attorney for health care takes effect upon a
13 finding of incapacity by 2 physicians, as defined in s. 448.01 (5), or one physician and
14 one licensed psychologist, as defined in s. 455.01 (4) advanced practice clinician, who
15 personally examine the principal and sign a statement specifying that the principal
16 has incapacity. Mere old age, eccentricity or physical disability, either singly or
17 together, are insufficient to make a finding of incapacity. Neither of the individuals
18 who make a finding of incapacity may be a relative of the principal or have knowledge
19 that he or she is entitled to or has a claim on any portion of the principal's estate.
20 A copy of the statement, if made, shall be appended to the power of attorney for health
21 care instrument.

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

23 155.20 (4) A health care agent may consent to the withholding or withdrawal
24 of a feeding tube for the principal if the power of attorney for health care instrument
25 so authorizes, unless the principal's attending physician health care professional, as

1 defined in s. 154.01 (1)^(1r) advises that, in his or her professional judgment, the
2 withholding or withdrawal will cause the principal pain or reduce the principal's
3 comfort. A health care agent may not consent to the withholding or withdrawal of
4 orally ingested nutrition or hydration unless provision of the nutrition or hydration
5 is medically contraindicated.

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

7 155.30 (1) A printed form of a power of attorney for health care instrument that
8 is sold or otherwise distributed for use by an individual in this state who does not
9 have the advice of legal counsel shall provide no authority other than the authority
10 to make health care decisions on behalf of the principal and shall contain the
11 following statement in not less than 10-point boldface type:

12 "NOTICE TO PERSON

13 MAKING THIS DOCUMENT

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

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

24 IN ORDER TO AVOID THIS PROBLEM, YOU MAY SIGN THIS LEGAL
25 DOCUMENT TO SPECIFY THE PERSON WHOM YOU WANT TO MAKE

1 HEALTH CARE DECISIONS FOR YOU IF YOU ARE UNABLE TO MAKE THOSE
2 DECISIONS PERSONALLY. THAT PERSON IS KNOWN AS YOUR HEALTH
3 CARE AGENT. YOU SHOULD TAKE SOME TIME TO DISCUSS YOUR
4 THOUGHTS AND BELIEFS ABOUT MEDICAL TREATMENT WITH THE
5 PERSON OR PERSONS WHOM YOU HAVE SPECIFIED. YOU MAY STATE IN
6 THIS DOCUMENT ANY TYPES OF HEALTH CARE THAT YOU DO OR DO NOT
7 DESIRE, AND YOU MAY LIMIT THE AUTHORITY OF YOUR HEALTH CARE
8 AGENT. IF YOUR HEALTH CARE AGENT IS UNAWARE OF YOUR DESIRES
9 WITH RESPECT TO A PARTICULAR HEALTH CARE DECISION, HE OR SHE IS
10 REQUIRED TO DETERMINE WHAT WOULD BE IN YOUR BEST INTERESTS IN
11 MAKING THE DECISION.

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

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

8 DO NOT SIGN THIS DOCUMENT UNLESS YOU CLEARLY UNDERSTAND
9 IT.

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

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

14 155.30 (3) The department shall prepare and provide copies of a power of
15 attorney for health care instrument and accompanying information for distribution
16 in quantities to health care professionals, hospitals, nursing homes, multipurpose
17 senior centers, county clerks, and local bar associations and individually to private
18 persons. The department shall include, in information accompanying the copy of the
19 instrument, at least the statutory definitions of terms used in the instrument,
20 statutory restrictions on who may be witnesses to a valid instrument, a statement
21 explaining that valid witnesses acting in good faith are statutorily immune from civil
22 or criminal liability and a statement explaining that an instrument may, but need
23 not, be filed with the register in probate of the principal’s county of residence. The
24 department may charge a reasonable fee for the cost of preparation and distribution.

1 The power of attorney for health care instrument distributed by the department
2 shall include the notice specified in sub. (1) and shall be in the following form:

3 **POWER OF ATTORNEY FOR HEALTH CARE**

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

5 **CREATION OF POWER OF ATTORNEY**

6 **FOR HEALTH CARE**

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

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

17 **DESIGNATION OF HEALTH CARE AGENT**

18 If I am no longer able to make health care decisions for myself, due to my
19 incapacity, I hereby designate.... (print name, address and telephone number) to be
20 my health care agent for the purpose of making health care decisions on my behalf.
21 If he or she is ever unable or unwilling to do so, I hereby designate.... (print name,
22 address and telephone number) to be my alternate health care agent for the purpose
23 of making health care decisions on my behalf. Neither my health care agent nor my
24 alternate health care agent whom I have designated is my health care provider, an
25 employee of my health care provider, an employee of a health care facility in which

1 I am a patient or a spouse of any of those persons, unless he or she is also my relative.
2 For purposes of this document, “incapacity” exists if 2 physicians or a physician and
3 a psychologist, nurse practitioner, or physician assistant who have personally
4 examined me sign a statement that specifically expresses their opinion that I have
5 a condition that means that I am unable to receive and evaluate information
6 effectively or to communicate decisions to such an extent that I lack the capacity to
7 manage my health care decisions. A copy of that statement must be attached to this
8 document.

9 GENERAL STATEMENT OF AUTHORITY GRANTED

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

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

1 LIMITATIONS ON MENTAL HEALTH TREATMENT

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

8 ADMISSION TO NURSING HOMES OR
9 COMMUNITY-BASED RESIDENTIAL FACILITIES

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

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

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

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

19 PROVISION OF A FEEDING TUBE

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

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

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

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

7 HEALTH CARE DECISIONS FOR
8 PREGNANT WOMEN

9 If I have checked “Yes” to the following, my health care agent may make health
10 care decisions for me even if my agent knows I am pregnant. If I have checked “No”
11 to the following, my health care agent may not make health care decisions for me if
12 my health care agent knows I am pregnant.

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

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

17 STATEMENT OF DESIRES,
18 SPECIAL PROVISIONS OR LIMITATIONS

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

23 1) -

24 2) -

25 3) -

1 INSPECTION AND DISCLOSURE OF
2 INFORMATION RELATING TO MY PHYSICAL
3 OR MENTAL HEALTH

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

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

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

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

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

12 SIGNATURE OF PRINCIPAL

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

14 Signature.... Date....

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

17 STATEMENT OF WITNESSES

18 I know the principal personally and I believe him or her to be of sound mind and
19 at least 18 years of age. I believe that his or her execution of this power of attorney
20 for health care is voluntary. I am at least 18 years of age, am not related to the
21 principal by blood, marriage, or adoption, am not the domestic partner under ch. 770
22 of the principal, and am not directly financially responsible for the principal's health
23 care. I am not a health care provider who is serving the principal at this time, an
24 employee of the health care provider, other than a chaplain or a social worker, or an
25 employee, other than a chaplain or a social worker, of an inpatient health care facility

1 in which the declarant is a patient. I am not the principal's health care agent. To
2 the best of my knowledge, I am not entitled to and do not have a claim on the
3 principal's estate.

4 Witness No. 1:

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

6 Address....

7 Signature....

8 Witness No. 2:

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

10 Address....

11 Signature....

12 STATEMENT OF HEALTH CARE AGENT AND
13 ALTERNATE HEALTH CARE AGENT

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

18 Agent's signature....

19 Address....

20 Alternate's signature....

21 Address....

22 Failure to execute a power of attorney for health care document under chapter
23 155 of the Wisconsin Statutes creates no presumption about the intent of any
24 individual with regard to his or her health care decisions.

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

3 ANATOMICAL GIFTS (optional)

4 Upon my death:

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

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

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

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

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

14 Signature.... Date....

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

16 155.50 (1) (b) Failing to comply with a power of attorney for health care
17 instrument or the decision of a health care agent, except that failure of a [↓]physician
18 health care professional, as defined in s. 154.01 (3), or a person licensed, certified, or registered under ch. 441, 448, or 455 to comply
19 constitutes unprofessional conduct if the [↓]physician or person ^{or health care professional} refuses or fails to make
20 a good faith attempt to transfer the principal to another [↓]physician or person licensed, ^{or health care professional}
21 certified, or registered under ch. 441, 448, or 455 who will comply.

INS 22-271

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

23 441.07 (1g) (g) Made a determination under ch. 154 or 155 if the person does
24 not have sufficient education, training, and experience to make the determination.

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

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1737/P2ins
KP:...

1 INS 2-1

2 **SECTION 1.** 154.01 (1) of the statutes is renumbered 154.01 (1r) and amended
3 to read:

4 154.01 (1r) “Attending physician health care professional” means a physician
5 licensed under ch. 448 health care professional who has primary responsibility for
6 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).

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

8 154.01 (1g) “Advanced practice registered nurse” means a nurse licensed
9 under ch. 441 who is currently certified by a national certifying body approved by the
10 board of nursing as a nurse practitioner, certified nurse-midwife, certified registered
11 nurse anesthetist, or clinical nurse specialist.

12 END INS 2-1

13 INS 22-21

14 **SECTION 3.** 165.77 (1) (a) of the statutes is amended to read:

15 165.77 (1) (a) “Health care professional” has the meaning given in s. 154.01 (3)
16 means a person licensed, certified, or registered under ch. 441, 448, or 455.

History: 1993 a. 16, 98; 1995 a. 77, 440; 2001 a. 16; 2005 a. 60; 2011 a. 32; 2013 a. 20, 214; 2015 a. 55.

Cross-reference: See also ch. Jus 9, Wis. adm. code.

17 **SECTION 4.** 302.384 of the statutes is renumbered 302.384 (2m), and 302.384
18 (2m) (a), as renumbered, is amended to read:

19 302.384 (2m) (a) A sheriff, jailer, keeper or officer arranges for a health care
20 professional, as defined in s. 154.01 (3), to observe the prisoner.

History: 1987 a. 269, 403; 1989 a. 31 s. 1659; Stats. 1989 s. 302.384.

21 **SECTION 5.** 302.384 (1m) of the statutes is created to read:

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

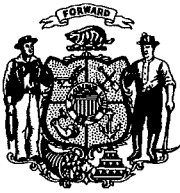
3 **SECTION 6.** 441.07 (1g) (d) (intro.) of the statutes is amended to read:

4 441.07 (1g) (d) (intro.) Misconduct or unprofessional conduct. In this
5 paragraph, "unprofessional conduct" includes making a determination under ch. 154
6 or 155 if the person does not have sufficient education, training, and experience to
7 make the determination. In this paragraph, "misconduct" and "unprofessional
8 conduct" do not include any of the following:

History: 1977 c. 418; 1979 c. 317, 337; 1981 c. 162; 1983 a. 273 s. 8; 1985 a. 29, 340; 1987 a. 264; 1993 a. 138; 1995 a. 309; 1997 a. 237; 1999 a. 22; 2009 a. 280; 2013 a. 114, 200.

Cross-reference: See also ch. N 7, Wis. adm. code.

9 **END INS 22-21**



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1737/P2 /
KP:wlj&cjs

No
Changes

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

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

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

Walker, Dan

From: Paczuski, Konrad
Sent: Thursday, May 09, 2019 3:15 PM
To: Walker, Dan
Subject: Jacket for -1737/1

Dan,
Could you please send over a jacket to Rep. Snyder's office for LRB-1737/1? The office does not need it rushed.
Thanks,
Konrad