



2013 ASSEMBLY BILL 861

March 11, 2014 – Introduced by Representatives BERCEAU, C. TAYLOR, JOHNSON, POPE, RINGHAND, SARGENT, SINICKI and ZAMARRIPA, cosponsored by Senators SHILLING, ERPENBACH, HARRIS, RISSER and L. TAYLOR. Referred to Committee on Health.

1 **AN ACT** *to repeal* 154.19 (1) (e) and 154.19 (3) (b) 3.; and *to amend* 154.03 (2),
2 154.07 (2), 155.20 (6) and 155.30 (3) of the statutes; **relating to:** effect of
3 advance directives and powers of attorney for health care during pregnancy.

Analysis by the Legislative Reference Bureau

Current law allows an individual to execute a declaration to physicians that specifies whether that individual chooses to withhold or withdraw life-sustaining procedures or feeding tubes if that individual has a terminal condition or is in a vegetative state. The Wisconsin form to be prepared by the Department of Health Services specifies that the individual, if he or she has a terminal condition, does not want his or her dying to be artificially prolonged and does not want life-sustaining procedures to be used. Under current law the physician must follow the wishes in the declaration unless the physician believes 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. Under current law, the declaration to physicians has no effect during the pregnancy of a woman the physician knows to be pregnant. This bill eliminates the prohibition on giving effect to the declaration during a woman's pregnancy.

Under current law, a physician may issue a do-not-resuscitate order if all of the following apply: the patient has attained age 18 and has a terminal condition; the patient has a medical condition in which resuscitation would be unsuccessful in restoring cardiac or respiratory function or the patient would experience repeated cardiac or pulmonary failure within a short period before death; the patient or the

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patient's guardian or health care agent requests, consents to, and signs the order; the order is in writing; and the physician does not know the patient to be pregnant. Current law requires emergency medical technicians, first responders, and emergency health care facility personnel to follow a do-not-resuscitate order except if the do-not-resuscitate order is revoked, if the patient's do-not-resuscitate bracelet appears to have been tampered with or removed, or if the emergency personnel know the patient to be pregnant. The bill removes the restriction on obtaining a do-not-resuscitate order when the patient is pregnant. The bill also removes the prohibition on following do-not-resuscitate orders when the patient is pregnant.

Under current law, an individual may execute a power of attorney for health care, which allows the designation of a health care agent to make health care decisions on behalf of the individual while the individual is incapacitated. Current law and the Wisconsin form for the power of attorney for health care allow the individual who is executing the power of attorney for health care to specify certain decisions that the agent may make. Specifically, the individual may designate by checking "yes" or "no" whether the agent may make health care decisions when the individual is pregnant. If the individual does not check either "yes" or "no" on the form, the form specifies that the agent may not make health care decisions when the individual is pregnant. The bill changes the default so that if an individual does not check either "yes" or "no" on the form, the agent may make health care decisions when the individual is pregnant.

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

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

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

2 154.03 (2) The department shall prepare and provide copies of the declaration
3 and accompanying information for distribution in quantities to health care
4 professionals, hospitals, nursing homes, county clerks and local bar associations and
5 individually to private persons. The department shall include, in information
6 accompanying the declaration, at least the statutory definitions of terms used in the
7 declaration, statutory restrictions on who may be witnesses to a valid declaration,
8 a statement explaining that valid witnesses acting in good faith are statutorily
9 immune from civil or criminal liability, an instruction to potential declarants to read

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1 and understand the information before completing the declaration and a statement
2 explaining that an instrument may, but need not be, filed with the register in probate
3 of the declarant's county of residence. The department may charge a reasonable fee
4 for the cost of preparation and distribution. The declaration distributed by the
5 department of health services shall be easy to read, the type size may be no smaller
6 than 10 point, and the declaration shall be in the following form, setting forth on the
7 first page the wording before the ATTENTION statement and setting forth on the
8 2nd page the ATTENTION statement and remaining wording:

9 DECLARATION TO PHYSICIANS

10 (WISCONSIN LIVING WILL)

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

17 1. If I have a TERMINAL CONDITION, as determined by 2 physicians who
18 have personally examined me, I do not want my dying to be artificially prolonged and
19 I do not want life-sustaining procedures to be used. In addition, the following are
20 my directions regarding the use of feeding tubes:

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

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

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

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

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

14 **SECTION 3.** 154.19 (1) (e) of the statutes is repealed.

15 **SECTION 4.** 154.19 (3) (b) 3. of the statutes is repealed.

16 **SECTION 5.** 155.20 (6) of the statutes is amended to read:

17 155.20 (6) If the principal is known to be pregnant, the health care agent may
18 make a health care decision on behalf of the principal that the power of attorney for
19 health care instrument authorizes, unless the power of attorney for health care
20 instrument specifies otherwise.

21 **SECTION 6.** 155.30 (3) of the statutes is amended to read:

22 155.30 (3) The department shall prepare and provide copies of a power of
23 attorney for health care instrument and accompanying information for distribution
24 in quantities to health care professionals, hospitals, nursing homes, multipurpose
25 senior centers, county clerks, and local bar associations and individually to private

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1 persons. The department shall include, in information accompanying the copy of the
2 instrument, at least the statutory definitions of terms used in the instrument,
3 statutory restrictions on who may be witnesses to a valid instrument, a statement
4 explaining that valid witnesses acting in good faith are statutorily immune from civil
5 or criminal liability and a statement explaining that an instrument may, but need
6 not, be filed with the register in probate of the principal's county of residence. The
7 department may charge a reasonable fee for the cost of preparation and distribution.
8 The power of attorney for health care instrument distributed by the department
9 shall include the notice specified in sub. (1) and shall be in the following form:

10 POWER OF ATTORNEY

11 FOR HEALTH CARE

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

13 CREATION OF POWER OF ATTORNEY

14 FOR HEALTH CARE

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

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

ASSEMBLY BILL 861**SECTION 6**

1 DESIGNATION OF
2 HEALTH CARE AGENT

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

18 GENERAL STATEMENT
19 OF AUTHORITY GRANTED

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

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

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

12 **LIMITATIONS ON**
13 **MENTAL HEALTH TREATMENT**

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

20 **ADMISSION TO NURSING HOMES OR**
21 **COMMUNITY-BASED**
22 **RESIDENTIAL FACILITIES**

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

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

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

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

8 PROVISION OF A FEEDING TUBE

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

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

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

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

20 HEALTH CARE DECISIONS FOR 21 PREGNANT WOMEN

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

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

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

5 STATEMENT OF DESIRES, SPECIAL
6 PROVISIONS OR LIMITATIONS

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

- 11 1) -
- 12 2) -
- 13 3) -

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

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

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

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

25 SIGNATURE OF PRINCIPAL

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

2 Signature.... Date....

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

5 **STATEMENT OF WITNESSES**

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

17 Witness No. 1:

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

19 Address....

20 Signature....

21 Witness No. 2:

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

23 Address....

24 Signature....

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1 STATEMENT OF HEALTH CARE AGENT

2 AND ALTERNATE HEALTH CARE AGENT

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

7 Agent's signature....

8 Address....

9 Alternate's signature....

10 Address....

11 Failure to execute a power of attorney for health care document under chapter
12 155 of the Wisconsin Statutes creates no presumption about the intent of any
13 individual with regard to his or her health care decisions.

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

16 ANATOMICAL GIFTS (optional)

17 Upon my death:

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

20 I wish to donate any needed organ or part.

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

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

