


2019 DRAFTING REQUEST

Bill

For: **Steve Doyle (608) 266-0631** Drafter: **kpaczusk**
 By: **Lori** Secondary Drafters:
 Date: **1/24/2019** May Contact:

Same as LRB: **-5096** 

Submit via email: **YES**
 Requester's email: **Rep.Doyle@legis.wisconsin.gov**
 Carbon copy (CC) to: **konrad.paczuski@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Add notary public to people who can witness powers of attorney for health care and declarations to physicians

Instructions:

Add notary public to the people who can witness powers of attorney for health care and other advanced directives in chs. 154 and 155

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kpaczusk 2/19/2019	aernstr 2/19/2019			
/P1	kpaczusk 3/6/2019	aernstr 3/8/2019	jmurphy 2/19/2019		
/P2	kpaczusk 10/21/2019	aernstr 10/21/2019	lparisi 3/8/2019		State
/P3			lparisi 10/21/2019		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1			lparisi 10/23/2019	mbarman 12/30/2019	State

FE Sent For: *2*
at
intro

<END>



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1608/pep
KP...
aha

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

IN: 2/19/2019
OUT: 2/19/2019, Please

saw

gen

1 AN ACT ...; relating to: health care powers of attorney and declarations to
2 physicians witnessed by a notary public.

Analysis by the Legislative Reference Bureau

Under this bill, a power of attorney for health care may be witnessed by one notary public, instead of two witnesses as current law requires, as long as the notary public satisfies the requirements that apply to witnesses under current law. Current law requires each witness of a health care power of attorney instrument to satisfy all of the following: 1) may not be related to the person executing the instrument by blood, marriage, adoption, or domestic partnership; 3) may not have knowledge of being entitled to a portion of the person's estate; 2) may not be directly financially responsible for the person's health care; and 4) generally may not be the person's health care provider or an employee of the person's health care provider or health care facility. A health care power of attorney designates another person as an agent to make health care decisions on behalf of an individual who is incapable of making those decisions.

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The bill also allows one notary public to witness a declaration to physicians, also known as a living will, as long as the notary public satisfies the requirements that apply to witnesses of a declaration under current law. Current law requires 2 people to witness a declaration, and each witness must satisfy the following: 1) may not be related to the declarant by blood, marriage, or adoption; 2) may not have knowledge of being entitled to a portion of the declarant's estate; 3) may not be directly financially responsible for the declarant's health care; and 4) generally may not be the declarant's health care provider or an employee of the declarant's health care

☆

two

provider or health care facility. A declaration to physicians authorizes the withholding or withdrawal of life-sustaining procedures or of feeding tubes in some situations when a person is in a terminal condition or a persistent vegetative state.

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

****NOTE: This draft allows a power of attorney for health care and a declaration to physicians (also known as a living will) to be witnessed by one notary public. Under current law, an authorization for final disposition under s. 154.30 may be acknowledged by one notary public (see s. 154.30 (8) (d) 2.). Current law allows only a patient's attending physician to issue a do-not-resuscitate order, see s. 154.19 (1), and this draft does not change that requirement.

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

2 154.03 (1) (intro.) Any person of sound mind and 18 years of age or older may
3 at any time voluntarily execute a declaration, which shall take effect on the date of
4 execution, authorizing the withholding or withdrawal of life-sustaining procedures
5 or of feeding tubes when the person is in a terminal condition or is in a persistent
6 vegetative state. A declarant may not authorize the withholding or withdrawal of
7 any medication, life-sustaining procedure or feeding tube if the declarant's
8 attending physician advises that, in his or her professional judgment, the
9 withholding or withdrawal will cause the declarant pain or reduce the declarant's
10 comfort and the pain or discomfort cannot be alleviated through pain relief
11 measures. A declarant may not authorize the withholding or withdrawal of nutrition
12 or hydration that is administered or otherwise received by the declarant through
13 means other than a feeding tube unless the declarant's attending physician advises
14 that, in his or her professional judgment, the administration is medically
15 contraindicated. A declaration must be signed by the declarant in the presence of 2
16 witnesses or one notary public. If the declarant is physically unable to sign a
17 declaration, the declaration must be signed in the declarant's name by one of the

1 witnesses witness or some other person at the declarant's express direction and in
2 his or her presence; such a proxy signing shall either take place or be acknowledged
3 by the declarant in the presence of 2 witnesses or one notary public. The declarant
4 is responsible for notifying his or her attending physician of the existence of the
5 declaration. An attending physician who is so notified shall make the declaration
6 a part of the declarant's medical records. No witness to the execution of the
7 declaration or notary public who witnesses the execution of the declaration may, at
8 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).

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

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

1 ATTENTION statement and setting forth on the 2nd page the ATTENTION
2 statement and remaining wording:

③ DECLARATION TO PHYSICIANS — center

④ (WISCONSIN LIVING WILL) — center

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

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

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

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

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

18 2. If I am in a PERSISTENT VEGETATIVE STATE, as determined by 2
19 physicians who have personally examined me, the following are my directions
20 regarding the use of life-sustaining procedures:

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

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

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

1 3. If I am in a PERSISTENT VEGETATIVE STATE, as determined by 2
2 physicians who have personally examined me, the following are my directions
3 regarding the use of feeding tubes:

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

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

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

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

10 ATTENTION: You and the 2 witnesses or one notary public must sign the
11 document at the same time.

12 ← _____ Signed
Date → *same line as signed*
13 ← _____ Address
Date of birth → *same line as signed*

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

18 ← _____ Witness signature
Date signed →

19 ← _____ Print name

20 ← _____ Witness signature
21 Date signed →

1

← _____ Print name

2

DIRECTIVES TO ATTENDING PHYSICIAN - Center

3

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

7

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.

13

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 who will comply. Refusal or failure to make a good faith attempt to do so constitutes unprofessional conduct.

16

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

18

* * * * * - center

19

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:

22

.....

23

.....

24

.....

Paczuski, Konrad

From: Rep.Doyle <Rep.Doyle@legis.wisconsin.gov>
Sent: Monday, March 04, 2019 10:29 AM
To: Paczuski, Konrad <Konrad.Paczuski@legis.wisconsin.gov>
Subject: FW: Draft review: LRB -1608/P1

Hello Konrad,

Below is the email we received regarding LRB 1608 from the stakeholders involved. Please let me know if you have any questions.

Best,
Jimmy

Jimmy Macken
Office of Representative Steve Doyle
(608) 237-9274

From: Peek, Arthur L. <Peek.Art@mayo.edu>
Sent: Thursday, February 28, 2019 2:38 PM
To: Rep.Doyle <Rep.Doyle@legis.wisconsin.gov>
Subject: FW: Draft review: LRB -1608/P1

Dear Mr. Macken and Rep. Doyle, again, thank you so much for addressing the issue of adding Notary as another option to witnessing the Power of Attorney for Health Care and for the Living Will/Declaration to Physicians. This will be a great benefit to our patients in Wisconsin and especially those of our rural areas. As a point of reference going forward, though the Living Will/Declaration is a viable form, we very rarely use it. so most of my comments will be relating to the POA for Healthcare as it provides the option for appointing a health care agent, and granting authority for NH placement.

Also, I am not an expert in how all this plays out and therefore will only share what I have read in the draft review. Here are my thoughts and again, I don't know how all this works in connecting all the dots going forward.

1. We do want to have notary added as a second option for Wisconsin residents to have this document witnessed, this option is very much needed.
2. In going through the draft we love that you have now proposed to add the benefit of a Notary as a second option to witness a POA-HC and or a Living Will/ Declaration to Physicians. However, the criteria that is used as a qualifying Notary 1 – 4 is some of the criteria as a person who cannot witness a POA-HC. See section below statute 155.10.
3. Even though there are 4 criteria's listed, the state statute 155 lists a few others such as over 18 and not a health care agent, including social worker or Chaplain, to name a few.
4. Using this verbiage, even though we now have an option to have it notarized, we would still have the need to send the patient out into the community to a Bank or somewhere to have it witnessed and then hope they bring back a copy.
5. Item 4 then would rule out a Notary if it was a notary from a health care institution.
6. We did have some discussion as to the term "Generally" as to what that meant and we did not really understand and perhaps this could open a can of worms.

7. If we were to add any other input it would be at least in this section. It would be nice if somehow wording could be stated that would allow a notary in a health care institution to be able to notarize these documents without the patient having to go somewhere to find one.
8. In short, we would love to have the ability to meet with the patient, educate the patient, help them to put their wishes down into a legal document and also to have it witness in our medical setting either by two witnesses or a notary as you have drafted.. Granted, having a notary as a second option is amazing, but being able to use one in our health care system would be great. I talking with our folks in Eau Claire today, they also indicated that not sending a patient out to find a witness would be ideal. It just would seem to be disruptive in the flow of completing a POA – Healthcare document. We understand that for most rural medical sites, a notary is not going to be a Physician , but a secretary, receptionist, manager or etc.. I personally am not aware of what a Notary can or do or not do. Could a respiratory therapist be a notary and then help a patient complete a POA-Health care and then notarize it?
9. it could possible say “generally may not be the person’s health care provider or an employee of the person’s health care provider or health care facility other than a social worker, chaplain or a notary that works in the persons health care facility.” Just a thought
10. Also, you have provided reference for the Declaration to Physicians but I don’t see any changes to Statute 155 which pertains to the POA-HC and updating the state format. Of course, I am not an expert on the law I hope I have not messed things up, in short we want that which the law will allow but also, that which will be in the best interest of our patients. Especially those in our rural areas where we don’t have access to social workers or chaplains in rural medical settings such as NH, Assisted Livings, Clinics and even small Hospitals. Thank you for your undertaking of this work. please let me know if you will need any other thoughts from me. thank you. art

Analysis by the Legislative Reference Bureau

Under this bill, a power of attorney for health care may be witnessed by one notary public, instead of two witnesses as current law requires, as long as the notary public satisfies the requirements that apply to witnesses under current law. Current law requires each witness of a health care power of attorney instrument to satisfy all of the following: 1) may not be related to the person executing the instrument by blood, marriage, adoption, or domestic partnership; 2) may not have knowledge of being entitled to a portion of the person’s estate; 3) may not be directly financially responsible for the person’s health care; and 4) generally may not be the person’s health care provider or an employee of the person’s health care provider or health care facility. A health care power of attorney designates another person as an agent to make health care decisions on behalf of an individual who is incapable of making those decisions.

155.10

.....

- (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.

From: Rep.Doyle [<mailto:Rep.Doyle@legis.wisconsin.gov>]
Sent: Monday, February 25, 2019 2:19 PM
To: Peek, Arthur L.; Rep.Doyle; O'Brien, Marlis M. (Marlis Mae)
Subject: [EXTERNAL] RE: Draft review: LRB -1608/P1

Hello Art,

Any update on this? I think Rep. Doyle is hoping to get this out as soon as possible.

Best,
Jimmy

Jimmy Macken
Office of Representative Steve Doyle
(608) 237-9274

From: Peek, Arthur L. <Peek.Art@mayo.edu>
Sent: Thursday, February 21, 2019 8:56 AM
To: Rep.Doyle <Rep.Doyle@legis.wisconsin.gov>; O'Brien, Marlis M. (Marlis Mae) <Obrien.Marlis@mayo.edu>
Subject: RE: Draft review: LRB -1608/P1

Thank you for letting us see the draft. I will pass this along to our legal department for review as well. we will get back to you soon. art

From: Rep.Doyle [<mailto:Rep.Doyle@legis.wisconsin.gov>]
Sent: Wednesday, February 20, 2019 4:08 PM
To: O'Brien, Marlis M. (Marlis Mae); Peek, Arthur L.
Subject: [EXTERNAL] FW: Draft review: LRB -1608/P1

Hello Marlis and Art,

Attached is the bill draft for allowing a notary to be a witness for advanced care directives. Could you please look it over and let me know if there are any changes or additions you would like to see?

Thank you,
Jimmy Macken

Office of Rep. Steve Doyle

From: LRB.Legal <lrblegal@legis.wisconsin.gov>
Sent: Tuesday, February 19, 2019 3:31 PM
To: Rep.Doyle <Rep.Doyle@legis.wisconsin.gov>
Subject: Draft review: LRB -1608/P1

Following is the PDF version of draft LRB -1608/P1.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERT

IN: 3/6/2019
OUT: 3/8/2019

Regen ✓

notarial officers taking acknowledgments of health care powers of attorney and declarations to physicians

1 **AN ACT to amend** 154.03 (1) (intro.), 154.03 (2) and 155.10 (1) (c) of the statutes;
2 **relating to:** health care powers of attorney and declarations to physicians
3 **witnessed by a notary public.**

Analysis by the Legislative Reference Bureau

Under this bill, a power of attorney for health care may be witnessed by one notary public, instead of two witnesses as current law requires, as long as the notary public satisfies the requirements that apply to witnesses under current law. Current law requires each witness of a health care power of attorney instrument to satisfy all of the following: 1) may not be related to the person executing the instrument by blood, marriage, adoption, or domestic partnership; 2) may not have knowledge of being entitled to a portion of the person's estate; 3) may not be directly financially responsible for the person's health care; and 4) generally may not be the person's health care provider or an employee of the person's health care provider or health care facility. A health care power of attorney designates another person as an agent to make health care decisions on behalf of an individual who is incapable of making those decisions.

The bill also allows one notary public to witness a declaration to physicians, also known as a living will, as long as the notary public satisfies the requirements that apply to witnesses of a declaration under current law. Current law requires two people to witness a declaration, and each witness must satisfy the following: 1) may not be related to the declarant by blood, marriage, or adoption; 2) may not have knowledge of being entitled to a portion of the declarant's estate; 3) may not be directly financially responsible for the declarant's health care; and 4) generally may

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not be the declarant's health care provider or an employee of the declarant's health care provider or health care facility. A declaration to physicians authorizes the withholding or withdrawal of life-sustaining procedures or of feeding tubes in some situations when a person is in a terminal condition or a persistent vegetative state.

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

INS2 2-1 1

****NOTE: This draft allows a power of attorney for health care and a declaration to physicians (also known as a living will) to be witnessed by one notary public. Under current law, an authorization for final disposition under s. 154.30 may be acknowledged by one notary public (see s. 154.30 (8) (d) 2.). Current law allows only a patient's attending physician to issue a do-not-resuscitate order, see s. 154.19 (1), and this draft does not change that requirement.

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

154.03 (1) (intro.) Any person of sound mind and 18 years of age or older may at any time voluntarily execute a declaration, which shall take effect on the date of execution, authorizing the withholding or withdrawal of life-sustaining procedures or of feeding tubes when the person is in a terminal condition or is in a persistent vegetative state. A declarant may not authorize the withholding or withdrawal of any medication, life-sustaining procedure or feeding tube if the declarant's attending physician 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 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 or one notary public. If the declarant is physically unable to sign a declaration, the declaration must be signed in the declarant's name by one of the

the declarant must make an acknowledgment of the declaration before a notarial officer authorized under s. 706.07
to take acknowledgments

1 witnesses witness or some other person at the declarant's express direction and in
 2 his or her presence; such a proxy signing shall either take place or be acknowledged
 3 ~~by the declarant in the presence of 2 witnesses or one notary public.~~ *or be acknowledged by the declarant before a notarial officer authorized under s. 706.07 to* The declarant *take*
 4 is responsible for notifying his or her attending physician of the existence of the *acknowledgments*
 5 declaration. An attending physician who is so notified shall make the declaration
 6 a part of the declarant's medical records. No witness to the execution of the
 7 declaration *or notarial officer who takes an acknowledgment* ~~or notary public who witnesses the execution~~ of the declaration may, at
 8 the time of the execution, be any of the following:

INS 3-81
INS 3-81

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

6 10 154.03 (2) The department shall prepare and provide copies of the declaration
 11 and accompanying information for distribution in quantities to health care
 12 professionals, hospitals, nursing homes, county clerks and local bar associations and
 13 individually to private persons. The department shall include, in information
 14 accompanying the declaration, at least the statutory definitions of terms used in the
 15 declaration, statutory restrictions on who may be *or be a notarial officer that takes an acknowledgment of* witnesses a witness to a valid
 16 declaration, a statement explaining that *plain* a valid *or notarial officers* witnesses witness acting in good
 17 faith *plain* ~~is~~ *is* statutorily immune from civil or criminal liability, an instruction to
 18 potential declarants to read and understand the information before completing the
 19 declaration and a statement explaining that an instrument may, but need not be,
 20 filed with the register in probate of the declarant's county of residence. The
 21 department may charge a reasonable fee for the cost of preparation and distribution.
 22 The declaration distributed by the department of health services shall be easy to
 23 read, the type size may be no smaller than 10 point, and the declaration shall be in
 24 the following form, setting forth on the first page the wording before the

1 ATTENTION statement and setting forth on the 2nd page the ATTENTION
2 statement and remaining wording:

3 DECLARATION TO PHYSICIANS

4 (WISCONSIN LIVING WILL)

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

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

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

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

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

18 2. If I am in a PERSISTENT VEGETATIVE STATE, as determined by 2
19 physicians who have personally examined me, the following are my directions
20 regarding the use of life-sustaining procedures:

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

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

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

SECTION 2

1 physician, have personally examined and certified in writing that the patient has a
2 terminal condition or is in a persistent vegetative state.

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

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

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

14 * * * * *

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

18

19

20

INS 23-8
INS 6-20
INS 6-20

21 SECTION 3. 155.10 (1) (c) of the statutes is amended to read:

22 155.10 (1) (c) Signed in the presence of 2 witnesses or one notary public who
23 ~~meet~~ meets the requirements of sub. (2).

24 (END)

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1608/P2ins
KP:...

1 INS A sav ✓

Under this bill, a power of attorney for health care instrument is validly executed if an individual who grants authority to a health care agent makes an acknowledgment of the instrument before an authorized notarial officer. Current law requires two witnesses in order to execute a health care power of attorney instrument. Additionally, the bill allows an authorized notarial officer who is employed by an individual's health care provider or inpatient health care facility to take an acknowledgement of the individual's health care power of attorney instrument if the notarial officer satisfies all of the following: 1) is not related by blood, marriage, adoption, or domestic partnership to the individual executing the instrument; 2) does not have knowledge of being entitled to a portion of the individual's estate; or 3) is not directly financially responsible for the individual's health care. Under current law, a witness to a health care power of attorney instrument must meet those requirements, and also may not be an employee, other than a chaplain or a social worker, of the individual's health care provider or inpatient health care facility. A health care power of attorney designates another person as an agent to make health care decisions on behalf of an individual who is incapable of making those decisions. ✓

The bill also allows an individual to execute a declaration to physicians, also known as a living will, if the individual makes an acknowledgement of the declaration before an authorized notarial officer. Current law requires two witnesses in order to execute a declaration to physicians. The bill allows an authorized notarial officer who is employed by the individual's health care provider or inpatient health care facility to take an acknowledgement of the individual's declaration to physicians if the notarial officer satisfies all of the following: 1) is not related by blood, marriage, adoption, or domestic partnership to the individual executing the declaration; 2) does not have knowledge of being entitled to a portion of the individual's estate; or 3) is not directly financially responsible for the individual's health care. Under current law, a witness to a declaration to physicians must meet those requirements, and also may not be an employee, other than a chaplain or a social worker, of the individual's health care provider or inpatient health care facility. If an individual 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 individual. ✓

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

2

3 END INS A

4 INS 3-8 ✓

1 x SECTION 1. 154.03 (1) (d) of the statutes is amended to read:

2 154.03 (1) (d) An individual who is a health care provider, as defined in s.
3 155.01 (7), who is serving the declarant at the time of execution, an employee, other
4 than a chaplain, or a social worker, or an employee authorized as a notarial officer
5 under s. 706.07, of the health care provider or an employee, other than a chaplain, or
6 a social worker, or an employee authorized as a notarial officer under s. 706.07, of an
7 inpatient health care facility in which the declarant is a patient.

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).

8 END INS 3-8

9 INS 5-22 ✓

10 Notarial officer:

11 (print) Name....

12 State of

13 County of

14 This document was acknowledged before me on (date), by (name of
15 principal).

16 (Seal, if any)

17 Signature of notary

18 My commission expires:

19 END INS 5-22

20 INS 6-20

INS
2 d →

21 x SECTION 2. 155.10 (1) (c) of the statutes is amended to read:

22 155.10 (1) (c) Signed in the presence of 2 witnesses who meet the requirements
23 of sub. (2) or the principal makes an acknowledgment of the instrument before a

1 notarial officer authorized under s. 706.07 to take acknowledgments who meets the
2 requirements of sub. (2).

History: 1989 a. 200; 1991 a. 281; 2009 a. 28.

IWS
2b

3 SECTION 3. 155.10 (2) (d) of the statutes is amended to read:

4 155.10 (2) (d) An individual who is a health care provider who is serving the
5 principal at the time of execution, an employee, other than a chaplain ^{plain} or a social
6 worker ^{or} ~~or an employee authorized as a notarial officer under s. 706.07~~, of the health
7 care provider or an employee, other than a chaplain ^{plain} or a social worker ^{or} ~~or an~~
8 employee authorized as a notarial officer under s. 706.07 of an inpatient health care
9 facility in which the principal is a patient.

History: 1989 a. 200; 1991 a. 281; 2009 a. 28.

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

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

1

POWER OF ATTORNEY FOR HEALTH CARE

2

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

center

3

CREATION OF POWER OF ATTORNEY

4

FOR HEALTH CARE

5

I,... (print name, address and date of birth), being of sound mind, intend by this

6

document to create a power of attorney for health care. My executing this power of

7

attorney for health care is voluntary. Despite the creation of this power of attorney

8

for health care, I expect to be fully informed about and allowed to participate in any

9

health care decision for me, to the extent that I am able. For the purposes of this

10

document, "health care decision" means an informed decision to accept, maintain,

11

discontinue or refuse any care, treatment, service or procedure to maintain, diagnose

12

or treat my physical or mental condition.

13

In addition, I may, by this document, specify my wishes with respect to making

14

an anatomical gift upon my death.

15

DESIGNATION OF HEALTH CARE AGENT - center

16

If I am no longer able to make health care decisions for myself, due to my

17

incapacity, I hereby designate.... (print name, address and telephone number) to be

18

my health care agent for the purpose of making health care decisions on my behalf.

19

If he or she is ever unable or unwilling to do so, I hereby designate.... (print name,

20

address and telephone number) to be my alternate health care agent for the purpose

21

of making health care decisions on my behalf. Neither my health care agent nor my

22

alternate health care agent whom I have designated is my health care provider, an

23

employee of my health care provider, an employee of a health care facility in which

24

I am a patient or a spouse of any of those persons, unless he or she is also my relative.

25

For purposes of this document, "incapacity" exists if 2 physicians or a physician and

1 a psychologist who have personally examined me sign a statement that specifically
 2 expresses their opinion that I have a condition that means that I am unable to receive
 3 and evaluate information effectively or to communicate decisions to such an extent
 4 that I lack the capacity to manage my health care decisions. A copy of that statement
 5 must be attached to this document.

6 GENERAL STATEMENT OF AUTHORITY GRANTED - center

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

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

23 LIMITATIONS ON MENTAL HEALTH TREATMENT - center

24 My health care agent may not admit or commit me on an inpatient basis to an
 25 institution for mental diseases, an intermediate care facility for persons with an

1 intellectual disability, a state treatment facility or a treatment facility. My health
2 care agent may not consent to experimental mental health research or
3 psychosurgery, electroconvulsive treatment or drastic mental health treatment
4 procedures for me.

5 **ADMISSION TO NURSING HOMES OR — center**
6 **COMMUNITY-BASED RESIDENTIAL FACILITIES**

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

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

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

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

16 **PROVISION OF A FEEDING TUBE — center**

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

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

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

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

3 HEALTH CARE DECISIONS FOR - center
4 PREGNANT WOMEN

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

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

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

13 STATEMENT OF DESIRES, - center
14 SPECIAL PROVISIONS OR LIMITATIONS

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

19 1) -

20 2) -

21 3) -

22 INSPECTION AND DISCLOSURE OF - center
23 INFORMATION RELATING TO MY PHYSICAL
24 OR MENTAL HEALTH

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

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

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

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

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

9 SIGNATURE OF PRINCIPAL - center

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

11 Signature.... Date....

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

14 STATEMENT OF WITNESSES - center

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

1 Witness No. 1:
 2 (print) Name.... Date....
 3 Address....
 4 Signature....

5 Witness No. 2:
 6 (print) Name.... Date....
 7 Address....
 8 Signature....

9 ACKNOWLEDGMENT OF NOTARIAL OFFICER - center

10 I am at least 18 years of age, am not related to the principal by blood, marriage,
 11 or adoption, am not the domestic partner under ch. 770 of the principal, and am not
 12 directly financially responsible for the principal's health care. I am not a health care
 13 provider who is serving the principal at this time. I am not the principal's health care
 14 agent. To the best of my knowledge, I am not entitled to and do not have a claim on
 15 the principal's estate.

16 (print) Name....
 17 State of
 18 County of

19 This instrument ^{a document} was acknowledged before me on (date), by (name of
 20 principal).

21 (Seal, if any)
 22 Signature of notary
 23 My commission expires:

24 STATEMENT OF HEALTH CARE AGENT AND - center

25 ALTERNATE HEALTH CARE AGENT

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

5 Agent's signature....

6 Address....

7 Alternate's signature....

8 Address....

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

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

14 ANATOMICAL GIFTS (optional)

15 Upon my death:

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

18 I wish to donate any needed organ or part.

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

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

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

1 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.

2 **END INS 6-20**

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1608/P2ins2
KP:...

sa ✓
aref ✓

1 Ins2 2-1 ✓

2 ✓ SECTION 1. 154.02 (1) of the statutes is amended to read:

3 154.02 (1) "Declaration" means a written, ~~witnessed~~ document voluntarily
4 executed by the declarant and witnessed or acknowledged under s. 154.03 (1), but
5 is not limited in form or substance to that provided in s. 154.03 (2).

History: 1995 a. 200.

6 End Ins2 2-1

7 Ins2 3-8 ✓

8 SECTION 2. 154.07 (1) (b) 1. of the statutes is amended to read:

9 154.07 (1) (b) 1. No person who acts in good faith as a witness to a declaration
10 or takes an acknowledgment of a declaration under this subchapter may be held
11 civilly or criminally liable for participating in the withholding or withdrawal of
12 life-sustaining procedures or feeding tubes under this subchapter.

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

13 ✓ SECTION 3. 154.07 (1) (b) 2. of the statutes is amended to read:

14 154.07 (1) (b) 2. Subdivision 1. does not apply to a person who acts as a witness
15 or takes an acknowledgment in violation of s. 154.03 (1).

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

16 End Ins2 3-8

17 Ins2 6-20 ✓

18 SECTION 4. 155.10 (title) of the statutes is amended to read:

19 **155.10 (title) Power of attorney for health care instrument; execution;**
20 **witnesses and notarial officers.**

INS
2a

History: 1989 a. 200; 1991 a. 281; 2009 a. 28.

21 SECTION 5. 155.10 (2) (intro.) of the statutes is amended to read:

INS
2b

1 155.10 (2) (intro.) A witness to the execution of a valid power of attorney for
2 health care instrument shall be an individual who has attained age 18. No witness
3 to the execution or notarial officer who takes an acknowledgment of the power of
4 attorney for health care instrument may, at the time of the execution, be any of the
5 following:

History: 1989 a. 200; 1991 a. 281; 2009 a. 28.

6 End Ins2 6-20

7

Paczuski, Konrad

From: Macken, James <James.Macken@legis.wisconsin.gov>
Sent: Friday, October 11, 2019 10:23 AM
To: Paczuski, Konrad <Konrad.Paczuski@legis.wisconsin.gov>
Subject: LRB 1608 - Rep. Doyle bill

Hello Konrad,

After shopping this around a bit we had two quick edits I was hoping you could help me out with:

- 1.) A hospital or clinic finance or billing officer can't be the notary.
- 2.) A statement must be included that the notary believes the signer is mentally competent to sign.

Let me know if either of those are unclear or if you have any questions.

Thank you,
Jimmy

Jimmy Macken
Research Assistant
Office of Representative Steve Doyle
94th Assembly District
124 North, State Capitol
(608) 237-9274
James.Macken@legis.wisconsin.gov



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERT

IN: 10/21
OUT: Today, please

save
regen

1 AN ACT *to amend* 154.02 (1), 154.03 (1) (intro.), 154.03 (1) (d), 154.03 (2), 154.07
 2 (1) (b) 1., 154.07 (1) (b) 2., 155.10 (title), 155.10 (1) (c), 155.10 (2) (intro.), 155.10
 3 (2) (d) and 155.30 (3) of the statutes; **relating to:** notarial officers taking
 4 acknowledgments of health care powers of attorney and declarations to
 5 physicians.

Analysis by the Legislative Reference Bureau

Under this bill, a power of attorney for health care instrument is validly executed if an individual who grants authority to a health care agent makes an acknowledgment of the instrument before an authorized notarial officer. Current law requires two witnesses in order to execute a health care power of attorney instrument. Additionally, the bill allows an authorized notarial officer who is employed by an individual's health care provider or inpatient health care facility to take an acknowledgement of the individual's health care power of attorney instrument if the notarial officer satisfies all of the following: 1) is not related by blood, marriage, adoption, or domestic partnership to the individual executing the instrument; 2) does not have knowledge of being entitled to a portion of the individual's estate; or 3) is not directly financially responsible for the individual's health care. Under current law, a witness to a health care power of attorney instrument must meet those requirements, and also may not be an employee, other than a chaplain or a social worker, of the individual's health care provider or inpatient health care facility. A health care power of attorney designates another

↓
 ; and 4) is
 not a finance or
 billing officer of
 the individual's
 inpatient health
 care facility

person as an agent to make health care decisions on behalf of an individual who is incapable of making those decisions.

The bill also allows an individual to execute a declaration to physicians, also known as a living will, if the individual makes an acknowledgement of the declaration before an authorized notarial officer. Current law requires two witnesses in order to execute a declaration to physicians. The bill allows an authorized notarial officer who is employed by the individual's health care provider or inpatient health care facility to take an acknowledgement of the individual's declaration to physicians if the notarial officer satisfies all of the following: 1) is not related by blood, marriage, adoption, or domestic partnership to the individual executing the declaration; 2) does not have knowledge of being entitled to a portion of the individual's estate; ~~or~~ 3) is not directly financially responsible for the individual's health care. Under current law, a witness to a declaration to physicians must meet those requirements, and also may not be an employee, other than a chaplain or a social worker, of the individual's health care provider or inpatient health care facility. If an individual 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 individual.

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

2 154.02 (1) "Declaration" means a written, ~~witnessed~~ document voluntarily
3 executed by the declarant and witnessed or acknowledged under s. 154.03 (1), but
4 is not limited in form or substance to that provided in s. 154.03 (2).

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

6 154.03 (1) (intro.) Any person of sound mind and 18 years of age or older may
7 at any time voluntarily execute a declaration, which shall take effect on the date of
8 execution, authorizing the withholding or withdrawal of life-sustaining procedures
9 or of feeding tubes when the person is in a terminal condition or is in a persistent
10 vegetative state. A declarant may not authorize the withholding or withdrawal of
11 any medication, life-sustaining procedure or feeding tube if the declarant's

✓
j and 4) is
not a finance
or billing officer
of the
individual's
inpatient health
care facility

1 attending physician advises that, in his or her professional judgment, the
2 withholding or withdrawal will cause the declarant pain or reduce the declarant's
3 comfort and the pain or discomfort cannot be alleviated through pain relief
4 measures. A declarant may not authorize the withholding or withdrawal of nutrition
5 or hydration that is administered or otherwise received by the declarant through
6 means other than a feeding tube unless the declarant's attending physician advises
7 that, in his or her professional judgment, the administration is medically
8 contraindicated. A declaration must be signed by the declarant in the presence of 2
9 witnesses or the declarant must make an acknowledgment of the declaration before
10 a notarial officer authorized under s. 706.07 to take acknowledgments. If the
11 declarant is physically unable to sign a declaration, the declaration must be signed
12 in the declarant's name by one of the witnesses witness or some other person at the
13 declarant's express direction and in his or her presence; such a proxy signing shall
14 either take place or be acknowledged by the declarant in the presence of 2 witnesses
15 or be acknowledged by the declarant before a notarial officer authorized under s.
16 706.07 to take acknowledgments. The declarant is responsible for notifying his or
17 her attending physician of the existence of the declaration. An attending physician
18 who is so notified shall make the declaration a part of the declarant's medical records.
19 No witness to the execution of the declaration or notarial officer who takes an
20 acknowledgment of the declaration may, at the time of the execution, be any of the

21 following:

INS 3-27
22 **SECTION 3.** 154.03 (1) (d) of the statutes is amended to read:

23 154.03 (1) (d) An individual who is a health care provider, as defined in s.
24 155.01 (7), who is serving the declarant at the time of execution, an employee, other
25 than an employee authorized as a notarial officer under s. 706.07, a chaplain, or a

1 social worker, of the health care provider or an employee, other than an employee
2 authorized as a notarial officer under s. 706.07, a chaplain, or a social worker, of an
3 inpatient health care facility in which the declarant is a patient.

4 SECTION 4. 154.03 (2) of the statutes is amended to read:

5 154.03 (2) The department shall prepare and provide copies of the declaration
6 and accompanying information for distribution in quantities to health care
7 professionals, hospitals, nursing homes, county clerks and local bar associations and
8 individually to private persons. The department shall include, in information
9 accompanying the declaration, at least the statutory definitions of terms used in the
10 declaration, statutory restrictions on who may be witnesses a witness to or be a
11 notarial officer that takes an acknowledgment of a valid declaration, a statement
12 explaining that valid witnesses or notarial officers acting in good faith are statutorily
13 immune from civil or criminal liability, an instruction to potential declarants to read
14 and understand the information before completing the declaration and a statement
15 explaining that an instrument may, but need not be, filed with the register in probate
16 of the declarant's county of residence. The department may charge a reasonable fee
17 for the cost of preparation and distribution. The declaration distributed by the
18 department of health services shall be easy to read, the type size may be no smaller
19 than 10 point, and the declaration shall be in the following form, setting forth on the
20 first page the wording before the ATTENTION statement and setting forth on the
21 2nd page the ATTENTION statement and remaining wording:

22 DECLARATION TO PHYSICIANS

23 (WISCONSIN LIVING WILL)

24 I,...., being of sound mind, voluntarily state my desire that my dying not be
25 prolonged under the circumstances specified in this document. Under those

1 circumstances, I direct that I be permitted to die naturally. If I am unable to give
2 directions regarding the use of life-sustaining procedures or feeding tubes, I intend
3 that my family and physician honor this document as the final expression of my legal
4 right to refuse medical or surgical treatment.

5 1. If I have a **TERMINAL CONDITION**, as determined by 2 physicians who
6 have personally examined me, I do not want my dying to be artificially prolonged and
7 I do not want life-sustaining procedures to be used. In addition, the following are
8 my directions regarding the use 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 who have personally examined me, the following are my directions
14 regarding the use of life-sustaining procedures:

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

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

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

20 3. If I am in a **PERSISTENT VEGETATIVE STATE**, as determined by 2
21 physicians who have personally examined me, the following are my directions
22 regarding the use of feeding tubes:

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

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

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

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

4 ATTENTION: You and the 2 witnesses or a notarial officer must sign the
5 document at the same time.

6 Signed Date

7 Address Date of birth

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

12 Witness signature Date signed

13 Print name

15 Witness signature Date signed

16 Print name

17 Notarial officer:

18 (print) Name....

19 State of

20 County of

21 This document was acknowledged before me on (date), by (name of
22 principal).

23 (Seal, if any)

24 Signature of notary

25 My commission expires:

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DIRECTIVES TO ATTENDING PHYSICIAN

1. This document authorizes the withholding or withdrawal of life-sustaining procedures or of feeding tubes when 2 physicians, one of whom is the attending physician, 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 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:

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

SECTION 5. 154.07 (1) (b) 1. of the statutes is amended to read:

1 154.07 (1) (b) 1. No person who acts in good faith as a witness to a declaration
2 or takes an acknowledgment of a declaration under this subchapter may be held
3 civilly or criminally liable for participating in the withholding or withdrawal of
4 life-sustaining procedures or feeding tubes under this subchapter.

5 **SECTION 6.** 154.07 (1) (b) 2. of the statutes is amended to read:

6 154.07 (1) (b) 2. Subdivision 1. does not apply to a person who acts as a witness
7 or takes an acknowledgment in violation of s. 154.03 (1).

8 **SECTION 7.** 155.10 (title) of the statutes is amended to read:

9 **155.10 (title) Power of attorney for health care instrument; execution;**
10 **witnesses and notarial officers.**

11 **SECTION 8.** 155.10 (1) (c) of the statutes is amended to read:

12 155.10 (1) (c) Signed in the presence of 2 witnesses who meet the requirements
13 of sub. (2) or the principal makes an acknowledgment of the instrument before a
14 notarial officer authorized under s. 706.07 to take acknowledgments who meets the
15 requirements of sub. (2).

16 **SECTION 9.** 155.10 (2) (intro.) of the statutes is amended to read:

17 155.10 (2) (intro.) A witness to the execution of a valid power of attorney for
18 health care instrument shall be an individual who has attained age 18. No witness
19 to the execution or notarial officer who takes an acknowledgment of the power of
20 attorney for health care instrument may, at the time of the execution, be any of the

21 following:

22 **SECTION 10.** 155.10 (2) (d) of the statutes is amended to read:

23 155.10 (2) (d) An individual who is a health care provider who is serving the
24 principal at the time of execution, an employee, other than an employee authorized
25 as a notarial officer under s. 706.07, a chaplain, or a social worker, of the health care

INS 8-21 1

1 provider or an employee, other than an employee authorized as a notarial officer
2 under s. 706.07, a chaplain, or a social worker, of an inpatient health care facility in
3 which the principal is a patient.

4 **SECTION 11.** 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 or be a notarial officer that takes
12 an acknowledgment of a valid instrument, a statement explaining that valid
13 witnesses or notarial officers acting in good faith are statutorily immune from civil
14 or criminal liability and a statement explaining that an instrument may, but need
15 not, be filed with the register in probate of the principal's county of residence. The
16 department may charge a reasonable fee for the cost of preparation and distribution.
17 The power of attorney for health care instrument distributed by the department
18 shall include the notice specified in sub. (1) and shall be in the following form:

19 **POWER OF ATTORNEY FOR HEALTH CARE**

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

21 **CREATION OF POWER OF ATTORNEY**

22 **FOR HEALTH CARE**

23 I,.... (print name, address and date of birth), being of sound mind, intend by this
24 document to create a power of attorney for health care. My executing this power of
25 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 who have personally examined me sign a statement that specifically
20 expresses their opinion that I have a condition that means that I am unable to receive
21 and evaluate information effectively or to communicate decisions to such an extent
22 that I lack the capacity to manage my health care decisions. A copy of that statement
23 must be attached to this document.

24 GENERAL STATEMENT OF AUTHORITY GRANTED

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

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

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

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

22 HEALTH CARE DECISIONS FOR

23 PREGNANT WOMEN

24 If I have checked “Yes” to the following, my health care agent may make health
25 care decisions for me even if my agent knows I am pregnant. If I have checked “No”

1 to the following, my health care agent may not make health care decisions for me if
2 my health care agent knows I am pregnant.

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

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

7 STATEMENT OF DESIRES,

8 SPECIAL PROVISIONS OR LIMITATIONS

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

13 1) -

14 2) -

15 3) -

16 INSPECTION AND DISCLOSURE OF

17 INFORMATION RELATING TO MY PHYSICAL

18 OR MENTAL HEALTH

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

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

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

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

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

2 **SIGNATURE OF PRINCIPAL**

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

4 Signature.... Date....

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

7 **STATEMENT OF WITNESSES**

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

19 Witness No. 1:

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

21 Address....

22 Signature....

23 Witness No. 2:

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

25 Address....

1 Signature....

2 **ACKNOWLEDGMENT OF NOTARIAL OFFICER**

3 I know the principal personally and I believe him or her to be of sound mind and at least 18 years of age.
 4 I am at least 18 years of age, am not related to the principal by blood, marriage,
 5 or adoption, am not the domestic partner under ch. 770 of the principal, and am not
 6 directly financially responsible for the principal's health care. I am not a health care
 7 provider who is serving the principal at this time. I am not the principal's health care
 8 agent. To the best of my knowledge, I am not entitled to and do not have a claim on
 9 the principal's estate.

9 (print) Name....

10 State of

11 County of

12 This document was acknowledged before me on (date), by (name of
13 principal).

14 (Seal, if any)

15 Signature of notary

16 My commission expires:

17 **STATEMENT OF HEALTH CARE AGENT AND**

18 **ALTERNATE HEALTH CARE AGENT**

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

23 Agent's signature....

24 Address....

25 Alternate's signature....

1 Address....

2 Failure to execute a power of attorney for health care document under chapter
3 155 of the Wisconsin Statutes creates no presumption about the intent of any
4 individual with regard to his or her health care decisions.

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

7 ANATOMICAL GIFTS (optional)

8 Upon my death:

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

11 I wish to donate any needed organ or part.

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

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

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

18 Signature....

Date....

19 (END)

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1608/P3
KP...

1 INS 3-21 /

5a✓

2 ✦ **SECTION 1.** 154.03 (1) (d) of the statutes is renumbered 154.03 (1) (d) (intro.)
3 and amended to read:

4 154.03 (1) (d) (intro.) An individual who is ~~a~~ any of the following:

5 1. A health care provider, as defined in s. 155.01 (7), who is serving the
6 declarant at the time of execution, ~~an~~.

7 2. An employee, other than an employee authorized as a notarial officer under
8 s. 706.07, a chaplain, or a social worker, of ~~the~~ a health care provider or an who is
9 serving the declarant at the time of execution.

10 3. An employee, other than an employee authorized as a notarial officer under
11 s. 706.07, a chaplain, or a social worker, of an inpatient health care facility in which
12 the declarant is a patient.

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).

13 **SECTION 2.** 154.03 (1) (d) 4. of the statutes is created to read:

14 154.03 (1) (d) 4. A finance or billing officer of an inpatient health care facility
15 in which the declarant is a patient.

16 END INS 3-21

17 INS 8-21

18 ✦ **SECTION 3.** 155.10 (2) (d) of the statutes is renumbered 155.10 (2) (d) (intro.)
19 and amended to read:

20 155.10 (2) (d) (intro.) An individual who is ~~a~~ any of the following:

21 1. A health care provider who is serving the principal at the time of execution,

22 ~~an~~.

1 2. An employee, other than an employee authorized as a notarial officer under
2 s. 706.07, a chaplain, or a social worker, of the a health care provider ~~or an~~ who is
3 serving the principal at the time of execution.

4 3. An employee, other than an employee authorized as a notarial officer under
5 s. 706.07, a chaplain, or a social worker, of an inpatient health care facility in which
6 the principal is a patient.

History: 1989 a. 200; 1991 a. 281; 2009 a. 28.

7 ✓ **SECTION 4.** 155.10 (2) (d) 4. of the statutes is created to read:

8 155.10 (2) (d) 4. A finance or billing officer of an inpatient health care facility
9 in which the principal is a patient.

10 END INS 8-21



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1608/P3
KP:ahe

11
No
changes

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to renumber and amend** 154.03 (1) (d) and 155.10 (2) (d); **to amend**
2 154.02 (1), 154.03 (1) (intro.), 154.03 (2), 154.07 (1) (b) 1., 154.07 (1) (b) 2., 155.10
3 (title), 155.10 (1) (c), 155.10 (2) (intro.) and 155.30 (3); and **to create** 154.03 (1)
4 (d) 4. and 155.10 (2) (d) 4. of the statutes; **relating to:** notarial officers taking
5 acknowledgments of health care powers of attorney and declarations to
6 physicians.

Analysis by the Legislative Reference Bureau

Under this bill, a power of attorney for health care instrument is validly executed if an individual who grants authority to a health care agent makes an acknowledgment of the instrument before an authorized notarial officer. Current law requires two witnesses in order to execute a health care power of attorney instrument. Additionally, the bill allows an authorized notarial officer who is employed by an individual's health care provider or inpatient health care facility to take an acknowledgement of the individual's health care power of attorney instrument if the notarial officer satisfies all of the following: 1) is not related by blood, marriage, adoption, or domestic partnership to the individual executing the instrument; 2) does not have knowledge of being entitled to a portion of the individual's estate; 3) is not directly financially responsible for the individual's health care; and 4) is not a finance or billing officer of the individual's inpatient health care facility. Under current law, a witness to a health care power of attorney

Barman, Mike

From: Macken, James
Sent: Monday, December 30, 2019 8:49 AM
To: LRB.Legal
Subject: Draft Review: LRB -1608/1

Please Jacket LRB -1608/1 for the ASSEMBLY.