

1989 Assembly Bill 305

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1989 WISCONSIN ACT 200

AN ACT *to renumber and amend* 880.33 (8); *to amend* 146.025 (2) (b) (intro.), 146.025 (2) (b) 1 and 3. a and b, 146.025 (3), 146.025 (5) (a) (intro.), 146.025 (5) (a) 1, 146.81 (5), 185.981 (4t), 185.983 (1) (intro.), 880.33 (3) and 880.33 (5); and *to create* 55.05 (5) (d), 243.07 (6m), chapter 155, 632.67, 632.775 and 880.33 (8) (b) of the statutes, relating to: creating a power of attorney for health care and providing penalties.

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

SECTION 1. 55.05 (5) (d) of the statutes is created to read:

55.05 (5) (d) The admission to a facility of a principal by a health care agent under the terms of a power of attorney for health care instrument and in accordance with ch. 155 is not a protective placement under this chapter.

SECTION 2. 146.025 (2) (b) (intro.) of the statutes, as affected by 1989 Wisconsin Act (Assembly Bill 400), is amended to read:

146.025 (2) (b) (intro.) The health care provider, blood bank, blood center or plasma center that subjects a person to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV under par. (a) shall, in instances under that paragraph in which consent is required, provide the potential test subject with an informed consent form for testing or disclosure that shall contain the following information and on the form shall obtain the potential test subject's signature ~~on the form~~ or may, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), instead obtain the signature of the health care agent:

SECTION 3. 146.025 (2) (b) 1. and 3. a and b. of the statutes are amended to read:

146.025 (2) (b) 1. The name of the potential test subject who is giving consent and whose test results may be

disclosed and, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the name of the health care agent.

3. a. The signature of the potential test subject or, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), of the health care agent, providing informed consent for the testing and the date on which the consent is signed.

b. The name of a person to whom the potential test subject or, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent, authorizes that disclosure of test results be made, if any, the date on which the consent to disclosure is signed, and the time period during which the consent to disclosure is effective.

SECTION 4. 146.025 (3) of the statutes, as affected by 1989 Wisconsin Act (Assembly Bill 400), is amended to read:

146.025 (3) WRITTEN CONSENT TO DISCLOSURE. A person who receives a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV under sub. (2) (b) or, if the person has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent may authorize in writing a health care provider, blood bank, blood center or plasma center to disclose ~~his or her~~ the person's test

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results to anyone at any time subsequent to providing informed consent for disclosure under sub. (2) (b) and a record of this consent shall be maintained by the health care provider, blood bank, blood center or plasma center so authorized.

SECTION 5. 146.025 (5) (a) (intro.) of the statutes, as affected by 1989 Wisconsin Act (Assembly Bill 400), is amended to read:

146.025 (5) (a) (intro.) The results of a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, except a test under sub. (2) (a) 5., may be disclosed only to the following persons or under the following circumstances, except that the person who receives a test or, if the person has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent may under sub. (2) (b) or (3) authorize disclosure to anyone:

SECTION 6. 146.025 (5) (a) 1. of the statutes is amended to read:

146.025 (5) (a) 1. To the subject of the test and, if the test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent.

SECTION 7. 146.81 (5) of the statutes is amended to read:

146.81 (5) "Person authorized by the patient" means the parent, guardian or legal custodian of a minor patient, as defined in s. 48.02 (8) and (11), the guardian of a patient adjudged incompetent, as defined in s. 880.01 (3) and (4), the personal representative or spouse of a deceased patient ~~or~~ any person authorized in writing by the patient or a health care agent designated by the patient as a principal under ch. 155 if the patient has been found to be incapacitated under s. 155.05 (2), except as limited by the power of attorney for health care instrument. If no spouse survives a deceased patient, "person authorized by the patient" also means an adult member of the deceased patient's immediate family, as defined in s. 632.895 (1) (d). A court may appoint a temporary guardian for a patient believed incompetent to consent to the release of records under this section as the person authorized by the patient to decide upon the release of records, if no guardian has been appointed for the patient.

SECTION 8. Chapter 155 of the statutes is created to read:

CHAPTER 155**POWER OF ATTORNEY FOR HEALTH CARE****155.01 Definitions.** In this chapter:

(1) "Department" means the department of health and social services.

(3) "Health care" means any care, treatment, service or procedure to maintain, diagnose or treat an individual's physical or mental condition.

(4) "Health care agent" means an individual designated by a principal to make health care decisions on

behalf of the principal or, if that individual is unable or unwilling to make those decisions, an alternate individual designated by the principal to do so.

(5) "Health care decision" means an informed decision in the exercise of the right to accept, maintain, discontinue or refuse health care.

(6) "Health care facility" means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community-based residential facility, county home, county infirmary, county hospital, county mental health center, tuberculosis sanatorium or other place licensed or approved by the department under s. 49.14, 49.16, 49.171, 50.02, 50.03, 50.35, 51.08, 51.09, 58.06, 149.01 or 149.02 or a facility under s. 45.365, 51.05, 51.06 or 149.06 or ch. 142.

(7) "Health care provider" means a nurse licensed or permitted under ch. 441, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447, a physician, podiatrist or physical therapist licensed or an occupational therapist or occupational therapy assistant certified under ch. 448, a person practicing Christian Science treatment, an optometrist licensed under ch. 449, a psychologist licensed under ch. 455, a partnership thereof, a corporation thereof that provides health care services, an operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility, or a home health agency, as defined in s. 141.15 (1) (a).

(8) "Incapacity" means the inability to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions.

(9) "Multipurpose senior center" means a facility that is the focal point for the delivery of services in a community to individuals aged 60 or older for purposes of the state plan under 42 USC 3027.

(10) "Power of attorney for health care" means the designation, by an individual, of another as his or her health care agent for the purpose of making health care decisions on his or her behalf if the individual cannot, due to incapacity.

(11) "Principal" means an individual who executes a power of attorney for health care.

(12) "Relative" has the meaning given in s. 242.01 (11).

155.05 Power of attorney for health care. (1) An individual who is of sound mind and has attained age 18 may voluntarily execute a power of attorney for health care. An individual for whom an adjudication of incompetence and appointment of a guardian of the person is in effect under ch. 880 is presumed not to be of sound mind for purposes of this subsection.

(2) Unless otherwise specified in the power of attorney for health care instrument, an individual's power of attorney for health care takes effect upon a finding of

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incapacity by 2 physicians, as defined in s. 448.01 (5), or one physician and one licensed psychologist, as defined in s. 455.01 (4), who personally examine the principal and sign a statement specifying that the principal has incapacity. Mere old age, eccentricity or physical disability, either singly or together, are insufficient to make a finding of incapacity. Neither of the individuals who make a finding of incapacity may be a relative of the principal or have knowledge that he or she is entitled to or has a claim on any portion of the principal's estate. A copy of the statement, if made, shall be appended to the power of attorney for health care instrument.

(3) No health care provider for an individual, employe of that health care provider or employe of a health care facility in which an individual is a patient or resides, or a spouse of any of those providers or employes, may be designated by the individual as a health care agent unless the health care provider, employe or spouse of the provider or employe is a relative of the individual.

(4) The desires of a principal who does not have incapacity supersede the effect of his or her power of attorney for health care at all times.

(5) A principal may designate an alternate individual to serve as his or her health care agent in the event that the health care agent first designated is unable or unwilling to do so.

155.10 Power of attorney for health care instrument; execution; witnesses. (1) A valid power of attorney for health care instrument shall be all of the following:

(a) In writing.

(b) Dated and signed by the principal or by an individual who has attained age 18, at the express direction and in the presence of the principal.

(c) Signed in the presence of at least 2 witnesses who meet the requirements of sub. (2).

(d) Voluntarily executed.

(2) A witness to the execution of a valid power of attorney for health care instrument shall be an individual who has attained age 18. No witness to the execution of the power of attorney for health care instrument may, at the time of the execution, be any of the following:

(a) Related to the principal by blood, marriage or adoption.

(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) A health care provider who is serving the principal at the time of the execution.

(e) The principal's health care agent.

155.20 Health care agent; powers; limitations. (1) Unless the power of attorney for health care instrument otherwise provides and except as specified in subs. (2) (a) and (b), (3) and (4) and s. 155.60 (2), the health care agent

who is known to the health care provider to be available to make health care decisions for the principal has priority over any individual other than the principal to make these health care decisions.

(2) (a) A health care agent may not consent to admission of the principal on an inpatient basis to any of the following:

1. An institution for mental diseases, as defined in s. 49.43 (6m).

2. An intermediate care facility for the mentally retarded, as defined in s. 46.278 (1m) (a).

3. A state treatment facility, as defined in s. 51.01 (15).

4. A treatment facility, as defined in s. 51.01 (19).

(b) A principal may be admitted or committed on an inpatient basis to a facility specified in par. (a) 1. to 4. only under the applicable requirements of ch. 51 or 55.

(c) 1. In this paragraph:

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

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

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

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

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

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

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

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

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

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

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

“NOTICE TO PERSON
MAKING THIS DOCUMENT

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

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

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

DECISION, HE OR SHE IS REQUIRED TO DETERMINE WHAT WOULD BE IN YOUR BEST INTERESTS IN MAKING THE DECISION.

THIS IS AN IMPORTANT LEGAL DOCUMENT. IT GIVES THE PERSON WHOM YOU SPECIFY BROAD POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. IT REVOKES ANY PRIOR POWER OF ATTORNEY FOR HEALTH CARE THAT YOU MAY HAVE MADE. IF YOU CHANGE YOUR MIND ABOUT WHETHER A PERSON SHOULD MAKE HEALTH CARE DECISIONS FOR YOU, OR ABOUT WHICH PERSON THAT SHOULD BE, YOU MAY REVOKE THIS DOCUMENT AT ANY TIME BY DESTROYING THE DOCUMENT OR DIRECTING ANOTHER PERSON TO DESTROY IT IN YOUR PRESENCE, REVOKING IT IN A WRITTEN STATEMENT WHICH YOU SIGN AND DATE OR STATING THAT IT IS REVOKED IN THE PRESENCE OF TWO WITNESSES. IF YOU REVOKE, YOU SHOULD NOTIFY THE PERSON YOU HAD SPECIFIED, YOUR HEALTH CARE PROVIDERS AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A COPY. IF THE PERSON YOU HAVE SPECIFIED IS YOUR SPOUSE AND YOUR MARRIAGE IS ANNULLED OR YOU ARE DIVORCED AFTER SIGNING THIS DOCUMENT, THE DOCUMENT IS INVALID.

DO NOT SIGN THIS DOCUMENT UNLESS YOU CLEARLY UNDERSTAND WHAT IT MEANS.

IT IS SUGGESTED THAT YOU KEEP THE ORIGINAL OF THIS DOCUMENT ON FILE WITH YOUR PHYSICIAN.”.

(2) A power of attorney for health care instrument that is other than that specified in sub. (1) or (3) shall include either the notice specified in sub. (1) or a certificate signed by the principal's lawyer stating: “I am a lawyer authorized to practice law in Wisconsin. I have advised my client concerning his or her rights in connection with this power of attorney for health care and the applicable law.”

(3) The department shall prepare and provide copies of a power of attorney for health care instrument for distribution in quantities to health care professionals, hospitals, nursing homes, multipurpose senior centers, county clerks and local bar associations and individually to private persons. The department may charge a reasonable fee for the cost of preparation and distribution. The power of attorney for health care instrument distributed by the department shall include the notice specified in sub. (1) and shall be in the following form:

POWER OF ATTORNEY
FOR HEALTH CARE

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

CREATION OF POWER OF
ATTORNEY FOR HEALTH CARE

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

DESIGNATION OF HEALTH CARE AGENT

If I am no longer able to make health care decisions for myself, due to my incapacity, I hereby designate (name, address and telephone number) to be my health care agent for the purpose of making health care decisions on my behalf. If he or she is ever unable or unwilling to do so, I hereby designate (name, address and telephone number) to be my alternate health care agent for the purpose of making health care decisions on my behalf. Neither the health care agent or the alternate health care agent whom I have designated is my health care provider, an employe of my health care provider or an employe of a health care facility in which I reside or am a patient or a spouse of any of those persons, or, if he or she is that health care provider or employe or spouse of that health care provider or employe, he or she is also my relative. For purposes of this document, “incapacity” exists if 2 physicians or a physician and a psychologist who have personally examined me sign a statement that specifically expresses their opinion that I have a condition that means that I am unable to receive and evaluate information effectively or to communicate decisions to such an extent that I lack the capacity to manage my health care decisions. A copy of that statement, if made, must be attached to this document.

**GENERAL STATEMENT OF
AUTHORITY GRANTED**

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

My health care agent is instructed that if I am unable, due to my incapacity, to make a health care decision he or she shall make a health care decision for me, except that in exercising the authority given to him or her by this document my health care agent should try to discuss with me any specific proposed health care if I am able to communicate in any manner, including by blinking my eyes. If this communication cannot be made, my health care

agent shall base his or her health care decision on any health care choices that I have expressed prior to the time of the decision. If I have not expressed a health care choice about the health care in question and communication cannot be made, my health care agent shall base his or her health care decision on what he or she believes to be in my best interest.

**LIMITATIONS ON
MENTAL HEALTH TREATMENT**

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

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

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

If I am diagnosed as mentally ill or developmentally disabled, my health care agent may not admit me to a nursing home or community-based residential facility for a purpose other than recuperative care or respite care.

If I am not diagnosed as mentally ill or developmentally disabled, and if I have checked “Yes” to the following, however, my health care agent may admit me for a purpose other than recuperative care or respite care to:

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

No....

If I have not checked either “Yes” or “No” to admission to a nursing home or community-based residential facility for a purpose other than recuperative care or respite care, my health care agent may only admit me for short-term stays for recuperative care or respite care.

**PROVISION OF NUTRITION
AND HYDRATION**

If I have checked “Yes” to the following, my health care agent may have nonorally ingested nutrition and hydration withheld or withdrawn from me, unless my physician has advised that, in his or her professional judgment, this will cause me pain or will reduce my comfort. If I have checked “No” to the following, my health care agent may not have nonorally ingested nutrition and hydration withheld or withdrawn from me.

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

Withhold or withdraw nonorally ingested nutrition and hydration — Yes.... No....

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If I have not checked either "Yes" or "No" to withholding or withdrawing nonorally ingested nutrition and hydration, my health care agent may not have nonorally ingested nutrition and hydration withdrawn from me.

HEALTH CARE DECISIONS FOR PREGNANT WOMEN

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

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

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

STATEMENT OF DESIRES, SPECIAL PROVISIONS OR LIMITATIONS

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

- 1)
2)
3)

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

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

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

SIGNING DOCUMENTS, WAIVERS AND RELEASES

Where necessary to implement the health care decisions that my health care agent is authorized by this document to make, my health care agent has the authority to execute on my behalf any of the following:

- (a) Documents titled or purporting to be a "Consent to Permit Treatment", "Refusal to Permit Treatment" or "Leaving Hospital Against Medical Advice".
(b) A waiver or release from liability required by a hospital or physician.

STATEMENT OF WITNESSES

I know the principal personally and I believe him or her to be of sound mind and at least 18 years of age. I believe that his or her execution of this power of attorney for health care is voluntary. I am at least 18 years of age

and am not related to the principal by blood, marriage or adoption. I am not a health care provider who is serving the principal at this time. To the best of my knowledge, I am not entitled to and do not have a claim on the principal's estate.

Witness (name, address, date)
Witness (name, address, date)

STATEMENT OF HEALTH CARE AGENT

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

Signed Address

STATEMENT OF ALTERNATE HEALTH CARE AGENT

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

Signed Address

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

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

155.40 Revocation of power of attorney for health care. (1) A principal may revoke his or her power of attorney for health care and invalidate the power of attorney for health care instrument at any time by doing any of the following:

- (a) Canceling, defacing, obliterating, burning, tearing or otherwise destroying the power of attorney for health care instrument or directing another in the presence of the principal to so destroy the power of attorney for health care instrument.
(b) Executing a statement, in writing, that is signed and dated by the principal, expressing the principal's intent to revoke the power of attorney for health care.
(c) Verbally expressing the principal's intent to revoke the power of attorney for health care, in the presence of 2 witnesses.
(d) Executing a subsequent power of attorney for health care instrument.

(2) If the health care agent is the principal's spouse and, subsequent to the execution of a power of attorney for health care instrument, the marriage is annulled or divorce from the spouse is obtained, the power of attorney for health care is revoked and the power of attorney for health care instrument is invalid.

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(3) If an individual knows that the power of attorney for health care that named him or her as health care agent has been revoked, he or she shall communicate this fact to any health care provider for the principal that he or she knows has a copy of the power of attorney for health care instrument.

(4) The principal's health care provider shall, upon notification of revocation of the principal's power of attorney for health care instrument, record in the principal's medical record the time, date and place of the revocation and the time, date and place, if different, of the notification to the health care provider of the revocation.

155.50 Duties and immunities. (1) No health care facility or health care provider may be charged with a crime, held civilly liable or charged with unprofessional conduct for any of the following:

(a) Certifying incapacity under s. 155.05 (2), if the certification is made in good faith based on a thorough examination of the principal.

(b) Failing to comply with a power of attorney for health care instrument or the decision of a health care agent, except that failure of a physician to comply constitutes unprofessional conduct if the physician refuses or fails to make a good faith attempt to transfer the principal to another physician who will comply.

(c) Complying, in the absence of actual knowledge of a revocation, with the terms of a power of attorney for health care instrument that is in compliance with this chapter or the decision of a health care agent that is made under a power of attorney for health care that is in compliance with this chapter.

(d) Acting contrary to or failing to act on a revocation of a power of attorney for health care, unless the health care facility or health care provider has actual knowledge of the revocation.

(e) Failing to obtain the health care decision for a principal from the principal's health care agent, if the health care facility or health care provider has made a reasonable attempt to contact the health care agent and obtain the decision but has been unable to do so.

(2) In the absence of actual notice to the contrary, a health care facility or health care provider may presume that a principal was authorized to execute the principal's power of attorney for health care under the requirements of this chapter and that the power of attorney for health care instrument is valid.

(3) No health care agent may be charged with a crime or held civilly liable for making a decision in good faith under a power of attorney for health care instrument that is in compliance with this chapter. No health care agent who is not the spouse of the principal may be held personally liable for any goods or services purchased or contracted for under a power of attorney for health care instrument.

155.60 Safeguards. (1) Nothing in this chapter prohibits an individual from petitioning a court under ch. 880

for a determination of incompetency and for appointment of a guardian for an individual who is a principal under this chapter.

(2) If a court under s. 880.33 determines that an individual who is a principal is incompetent or makes a finding of limited incompetency under s. 880.33 (3) and appoints a guardian for the individual, the power of attorney for health care executed under this chapter by the principal is revoked and the power of attorney for health care instrument is invalid, unless the court finds that the power of attorney for health care and power of attorney for health care instrument should remain in effect. If the court makes this finding, the guardian for the individual may not make health care decisions for the ward that may be made by the health care agent, unless the guardian is the health care agent.

(3) Upon receipt of a power of attorney for health care instrument or a statement of incapacity under s. 155.05 (2), a health care facility or health care provider shall acknowledge this receipt in writing and, if the principal is a patient of the health care provider, the health care provider shall include the instrument or the statement in the medical record of the principal.

(4) (a) Any interested party may petition the court assigned to exercise probate jurisdiction for the county where a principal is present or the county of the principal's legal residence to review whether the health care agent is performing his or her duties in accordance with the terms of the power of attorney for health care instrument executed by the principal. If the court finds after a hearing that the health care agent has not been performing in accordance with the terms of the instrument, the court may do any of the following:

1. Direct the health care agent to act in accordance with the terms of the principal's power of attorney for health care instrument.

2. Require the health care agent to report to the court concerning performance of the health care agent's duties at periods of time established by the court.

3. Rescind all powers of the health care agent to act under the power of attorney for health care and the power of attorney for health care instrument.

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

155.70 General provisions. (1) (a) The making of a health care decision on behalf of a principal under the principal's power of attorney for health care instrument does not, for any purpose, constitute suicide. Execution of a power of attorney for health care instrument under this chapter does not, for any purpose, constitute attempted suicide.

(b) Paragraph (a) does not prohibit an insurer from making a determination that a principal has attempted

suicide or committed suicide based on the principal's action to do so, apart from the power of attorney for health care instrument.

(2) No individual may be required to execute a power of attorney for health care as a condition for receipt of health care or admission to a health care facility. The designation by a principal of a health care agent under a power of attorney for health care instrument is not a bar to the receipt of health care or admission to a health care facility.

(3) This chapter does not apply to, and may not be considered to supersede, the provisions of a valid declaration executed under ch. 154.

(4) (a) Nothing in this chapter may be construed to render invalid a durable power of attorney that is executed under s. 243.07 prior to the effective date of this paragraph [revisor inserts date].

(b) A health care decision made under the authority of a durable power of attorney specified in par. (a) is valid.

(5) No insurer may refuse to pay for goods or services covered under a principal's insurance policy solely because the decision to use the goods or services was made by the principal's health care agent.

(6) A power of attorney for health care instrument that is in its original form or is a legible photocopy or electronic facsimile copy is presumed to be valid.

(7) Nothing in this chapter may be construed to condone, authorize, approve or permit any affirmative or deliberate act to end life other than the withholding or withdrawing of health care under a power of attorney for health care so as to permit the natural process of dying. In making health care decisions under a power of attorney for health care, an attempted suicide by the principal may not be construed to indicate a desire of the principal that health care treatment be restricted or inhibited.

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

155.80 Penalties. (1) Whoever directly or indirectly coerces, threatens or intimidates an individual so as to cause the individual to execute a power of attorney for health care instrument shall be fined not more than \$500 or imprisoned for not more than 30 days or both.

(2) Whoever intentionally conceals, cancels, defaces, obliterates, damages or destroys a power of attorney for health care instrument without the consent of the principal for that instrument may be fined not more than \$500 or imprisoned for not more than 30 days or both.

(3) Whoever knowingly conceals, falsifies or forges a power of attorney for health care instrument with intent to create the false impression that a person other than the health care agent has been so designated shall be fined not

more than \$1,000 or imprisoned for not more than 9 months or both.

(4) Whoever intentionally withholds actual knowledge of the revocation of a power of attorney for health care or of the falsification or forgery of a power of attorney for health care instrument shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

(5) Whoever acts or attempts to act as a health care agent based on a power of attorney for health care that the individual knows has been executed without the voluntary consent of the principal, that the individual knows has been forged or substantially altered without the authorization of the principal, or that the individual knows has been revoked, shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

SECTION 9. 185.981 (4t) of the statutes, as affected by 1989 Wisconsin Act (Assembly Bill 400), is amended to read:

185.981 (4t) A sickness care plan operated by a cooperative association is subject to ss. 146.024 (2) and 632.87 (2m) and (3) and ch. 155.

SECTION 10. 185.983 (1) (intro.) of the statutes, as affected by 1987 Wisconsin Act 325 and 1989 Wisconsin Acts 23, section 3, (Assembly Bill 116) and (Assembly Bill 400), is amended to read:

185.983 (1) (intro.) Every such voluntary nonprofit sickness care plan shall be exempt from chs. 600 to 646, with the exception of ss. 601.04, 601.13, 601.31, 601.41, 601.42, 601.43, 601.44, 601.45, 611.67, 619.04, 628.34 (10), 631.93, 632.775, 632.79, 632.795, 632.87 (2m) and (3) and 632.895 (5) and (8), subch. II of ch. 619 and chs. 609, 630, 645 and 646, but the sponsoring association shall:

SECTION 11. 243.07 (6m) of the statutes is created to read:

243.07 (6m) **RELATIONSHIP TO POWER OF ATTORNEY FOR HEALTH CARE.** If a portion of a durable power of attorney that is executed under this section after the effective date of this subsection [revisor inserts date], specifically authorizes the attorney-in-fact to make health care decisions on behalf of the principal, that portion of the durable power of attorney has no force or effect and that portion of the durable power of attorney instrument that is so executed and makes these authorizations is invalid, unless that portion of the durable power of attorney instrument conforms to the requirements of ch. 155.

SECTION 12. 632.67 of the statutes is created to read:

632.67 Effect of power of attorney for health care. Executing a power of attorney for health care under ch. 155 may not be used to impair in any manner the procurement of a life insurance policy or to modify the terms of an existing life insurance policy. A life insurance policy may not be impaired or invalidated in any manner by the exercise of a health care decision by a health care agent

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on behalf of a person whose life is insured under the policy and who has authorized the health care agent under ch. 155.

SECTION 13. 632.775 of the statutes is created to read:

632.775 Effect of power of attorney for health care. (1) **INSURER MAY NOT REQUIRE.** An insurer may not require an individual to execute a power of attorney for health care under ch. 155 as a condition of coverage under a disability insurance policy.

(2) **EFFECT ON DISABILITY POLICIES.** Executing a power of attorney for health care under ch. 155 may not be used to impair in any manner the procurement of a disability insurance policy or to modify the terms of an existing disability insurance policy. A disability insurance policy may not be impaired or invalidated in any manner by the exercise of a health care decision by a health care agent on behalf of a person who is insured under the policy and who has authorized the health care agent under ch. 155.

SECTION 14. 880.33 (3) of the statutes is amended to read:

880.33 (3) In a finding of limited incompetency, guardianship of the person shall be limited in accordance with the order of the court accompanying the finding of incompetence. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian. The court shall make a specific finding as to which legal rights the person is competent to exercise. Such rights include but are not limited to the right to vote, to marry, to obtain a motor vehicle operator's license or other state license, to testify in any judicial or administrative proceeding, to hold or convey property and the right to contract. The findings of incompetence must be based upon clear and convincing evidence. The court shall determine if additional medical or psychological testimony is necessary for the court to make an informed decision respecting competency to exercise legal rights and may obtain assistance in the manner provided in s. 55.06 (8) whether or not protective placement is made.

The guardian, ward or any interested person may at any time file a petition with the court requesting a restoration of any such legal right, and specifying the reasons therefor. Such petition may request that a guardianship of the person be terminated and a guardianship of property be established.

SECTION 15. 880.33 (5) of the statutes is amended to read:

880.33 (5) In appointing a guardian, the court shall take into consideration the opinions of the alleged incompetent and of the members of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family are in conflict with the clearly appropriate decision. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian.

SECTION 16. 880.33 (8) of the statutes is renumbered 880.33 (8) (intro.) and amended to read:

880.33 (8) (intro.) At the time of determination of incompetency under this section, ~~application~~ the court may:

(a) Hear application for the appointment of a conservator or limited guardian of property ~~may be heard by the court.~~

SECTION 17. 880.33 (8) (b) of the statutes is created to read:

880.33 (8) (b) If the proposed incompetent has executed a power of attorney for health care under ch. 155, find that the power of attorney for health care instrument should remain in effect. If the court so finds, the court shall so order and shall limit the power of the guardian to make those health care decisions for the ward that are not to be made by the health care agent under the terms of the power of attorney for health care instrument, unless the guardian is the health care agent under those terms.