

1       **AN ACT** *to amend* 46.90 (1) (f), 46.90 (5) (b) 2., 3., and 4., 46.90 (5) (br) 1. and 2. a.  
2           and b., 54.01 (17) (a) 4., 54.10 (3) (c) 3., 54.15 (3), 54.34 (1) (L), 54.38 (2) (b) 5.,  
3           54.40 (4) (d) 1., 54.46 (3) (a) 4., 54.63 (1) (b) 4., 54.76 (4), 55.043 (1r) (b) 2., 3., and  
4           4., 55.043 (1r) (c) 1. and 2. a. and (b) 2., 3., and 4., 55.05 (3), 55.055 (4), 55.075 (4)  
5           (a) 4., 55.09 (2) (b), 55.18 (1) (a) 3., 55.18 (3) (f) 2., 146.81 (5), 243.10 (6), 244.64,  
6           632.67, 632.775 (1) and (2) and 814.66 (1) (k); and *to create* 50.08 (3) (cr), 54.46 (2)  
7           (bm), 55.01 (1dm) and chapter 156 of the statutes; **relating to:** allowing an  
8           individual to execute a power of attorney for mental health care, granting  
9           rule-making authority, and providing a penalty.

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

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This bill was prepared for the Joint Legislative Council’s Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51.

The bill creates a new chapter of the statutes, ch. 156, stats., which allows an adult of sound mind to execute a power of attorney for mental health care. The new chapter is similar, in most respects, to ch. 155, stats., which allows an adult to execute a power of attorney for health care. Under the power of attorney for mental health care, the individual executing the document, called the “principal”, designates a mental health care agent to make mental health care decisions on behalf of the principal if the principal is incapacitated. The new chapter of the statutes specifies a procedure for activating the power of attorney for mental health care, requirements for executing the power of attorney for mental health care, powers and limitations of the mental health care agent, provisions regarding the form and revocation of the power of attorney for mental health care, duties and immunities, safeguards, provisions for filing the instrument, general provisions, and penalties. As noted above, many of these provisions are based on comparable provisions that currently apply to a power of attorney for health care.

Under the new chapter of the statutes, if a person has executed both a power of attorney for health care and a power of attorney for mental health care, and the agents under the 2 documents are not the same individuals, and both documents are activated, the health care agent may not make a mental health care decision.

The bill also modifies cross-references to the power of attorney for health care in chapters of the statutes dealing with guardianship and protective placement and other provisions of the statutes, to include references to the new power of attorney for mental health care.

A power of attorney for mental health care is often referred to as a “Ulysses contract”, for reasons described in a Wisconsin law review article as follows:

“The ‘Ulysses contract’ gets its name from the Homeric legend, *The Odyssey*. Before sailing past the bewitching Sirens, Ulysses commanded his crew to lash him to the mast and to disobey his orders to release him in order to avoid being lured to his own destruction by the creatures’ irresistibly beautiful songs. Types of illnesses that might justify this kind of contract are manic-depressive disorders, severe recurrent depression and some types of schizophrenia....” [*Jones v. Gerhardstein: The Involuntarily Committed Mental Patient’s Right to Refuse Treatment with Psychotropic Medication*, 1990 Wisconsin Law Review 1367, 1396, footnote 158.]

**COMMENT:** The committee should carefully review the provisions of this draft to determine whether or not statutory provisions that apply to a power of attorney for health care should apply to a power of attorney for mental health care. For example, see the COMMENT on p. 10 regarding the description of the principal’s condition that results in activation of the power of attorney for mental health care. It is not clear that this should be the same as the condition for activating a power of attorney for health care. Similarly, see the COMMENT on p. 17 regarding a delay in the revocation of a power of attorney for mental health care that is undertaken while the principal is incapacitated.

- 1           **SECTION 1.** 46.90 (1) (f) of the statutes is amended to read:
- 2           46.90 (1) (f) “Neglect” means the failure of a caregiver, as evidenced by an act,
- 3           omission, or course of conduct, to endeavor to secure or maintain adequate care, services, or
- 4           supervision for an individual, including food, clothing, shelter, or physical or mental health
- 5           care, and creating significant risk or danger to the individual’s physical or mental health.

1 “Neglect” does not include a decision that is made to not seek medical care for an individual,  
2 if that decision is consistent with the individual’s previously executed declaration or  
3 do-not-resuscitate order under ch. 154, a power of attorney for health care under ch. 155, a  
4 power of attorney for mental health care or as otherwise authorized by law.

5 **SECTION 2.** 46.90 (5) (b) 2., 3., and 4. of the statutes are amended to read:

6 46.90 (5) (b) 2. Observation of the elder adult at risk, with or without consent of his or  
7 her guardian or agent under an activated power of attorney for health care or a power of  
8 attorney for mental health care, if any.

9 3. An interview with the elder adult at risk, in private to the extent practicable, and with  
10 or without the consent of his or her guardian or agent under an activated power of attorney for  
11 health care or a power of attorney for mental health care, if any.

12 4. An interview with the guardian or agent under an activated power of attorney for  
13 health care or a power of attorney for mental health care, if any, and with any caregiver of the  
14 elder adult at risk.

15 **SECTION 3.** 46.90 (5) (br) 1. and 2. a. and b. of the statutes are amended to read:

16 46.90 (5) (br) 1. The elder adult at risk or his or her guardian or agent under an activated  
17 power of attorney for health care or a power of attorney for mental health care, if any, consents  
18 to the examination.

19 2. a. The elder adult at risk has no guardian or agent under an activated power of attorney  
20 for health care or a power of attorney for mental health care.

21 b. The elder adult at risk has a guardian or an agent under an activated power of attorney  
22 for health care or a power of attorney for mental health care, but that guardian or agent is the  
23 person suspected of abusing, neglecting, or financially exploiting the elder adult at risk.

24 **SECTION 4.** 50.08 (3) (cr) of the statutes is created to read:

1           50.08 (3) (cr) If a mental health care agent is acting on behalf of a resident, the mental  
2 health care agent shall give informed consent in accordance with the desires of the resident  
3 as expressed in the power of attorney for mental health care instrument under ch. 156 or, if  
4 the resident's desires are unknown, in accordance with s. 156.20 (3).

5           **SECTION 5.** 54.01 (17) (a) 4. of the statutes is amended to read:

6           54.01 (17) (a) 4. Any individual who is nominated as guardian, any individual who is  
7 appointed to act as guardian or fiduciary for the proposed ward by a court of any state, any  
8 trustee for a trust established by or for the proposed ward, any person appointed as agent under  
9 a power of attorney for health care, as defined in s. 155.01 (4), or under a power of attorney  
10 for mental health care, as defined in s. 156.01 (7), or any person appointed as agent under a  
11 durable power of attorney under ch. 244.

12           **SECTION 6.** 54.10 (3) (c) 3. of the statutes is amended to read:

13           54.10 (3) (c) 3. Whether the proposed ward has engaged in any advance planning for  
14 financial and health and mental health care decision making that would avoid guardianship,  
15 including by executing a durable power of attorney under ch. 244, a power of attorney for  
16 health care, as defined in s. 155.01 (10), a power of attorney for mental health care, as defined  
17 in s. 156.01 (7), a trust, or a jointly held account.

18           **SECTION 7.** 54.15 (3) of the statutes is amended to read:

19           54.15 (3) AGENT UNDER A POWER OF ATTORNEY FOR HEALTH CARE OR MENTAL HEALTH CARE.  
20 The court shall appoint as guardian of the person the agent under a proposed ward's power of  
21 attorney for health care, or the mental health care agent under a proposed ward's power of  
22 attorney for mental health care, unless the court finds that the appointment of the agent is not  
23 in the best interests of the proposed ward.

24           **SECTION 8.** 54.34 (1) (L) of the statutes is amended to read:

1           54.34 (1) (L) The agent under any current, valid power of attorney for health care or  
2 durable power of attorney or the mental health care agent under a current, valid power of  
3 attorney for mental health care that the proposed ward has executed.

4           **SECTION 9.** 54.38 (2) (b) 5. of the statutes is amended to read:

5           54.38 (2) (b) 5. The agent under any durable power of attorney or power of attorney for  
6 health care of the ward and the mental health care agent under any power of attorney for mental  
7 health care of the ward.

8           **SECTION 10.** 54.40 (4) (d) 1. of the statutes is amended to read:

9           54.40 (4) (d) 1. Review any power of attorney for health care under ch. 155, any power  
10 of attorney for mental health care under ch. 156, any durable power of attorney under ch. 244  
11 executed by the proposed ward, and any other advance planning for financial and health care  
12 or mental health care decision making in which the proposed ward had engaged.

13           **SECTION 11.** 54.46 (2) (bm) of the statutes is created to read:

14           54.46 (2) (bm) *Power of attorney for mental health care.* If the ward executed a power  
15 of attorney for mental health care under ch. 156 before a finding of incompetency and  
16 appointment of a guardian is made for the ward under this chapter, the power of attorney for  
17 mental health care remains in effect, except that the court may, only for good cause shown,  
18 revoke the power of attorney for mental health care or limit the authority of the agent under  
19 the terms of the power of attorney for mental health care instrument. Unless the court makes  
20 this revocation or limitation, the ward's guardian may not make mental health care decisions  
21 for the ward that may be made by the mental health care agent, unless the guardian is the  
22 mental health care agent.

23           **SECTION 12.** 54.46 (3) (a) 4. of the statutes is amended to read:

1           54.46 (3) (a) 4. Whether the ward had executed a durable power of attorney under ch.  
2           244 ~~or~~ a power of attorney for health care under s. 155.05 or had engaged in other advance  
3           planning for financial and health care decision making, or a power of attorney for mental  
4           health care under s. 156.05.

5           **SECTION 13.** 54.63 (1) (b) 4. of the statutes is amended to read:

6           54.63 (1) (b) 4. The agent under the ward's power of attorney for health care under ch.  
7           155, ~~if any~~ or power of attorney for mental health care under ch. 156, and the agent under the  
8           ward's durable power of attorney under ch. 244, ~~if any.~~

9           **SECTION 14.** 54.76 (4) of the statutes is amended to read:

10          54.76 (4) Any person, including an individual whose income and assets are under  
11          conservatorship, may apply to the court at any time for termination of the conservatorship.  
12          Upon receipt of the application, the court shall fix a time and place for hearing and may direct  
13          that 10 days' notice by mail be given to the individual's guardian of the person or agent under  
14          a power of attorney for health care or under a power of attorney for mental health care, the  
15          conservator, any standby conservator, and the presumptive adult heirs of the individual whose  
16          income and assets are under conservatorship. A potential recipient of the notice may waive  
17          its receipt. At the hearing, the court shall, unless it is clearly shown that the individual whose  
18          income and assets are under conservatorship is incompetent, remove the conservator and order  
19          the income and assets restored to the individual. If, however, the court determines at the  
20          hearing that the individual whose income and assets are administered by a conservator is  
21          incapable of handling his or her income and assets, the court shall order the conservatorship  
22          continued, or, if the applicant so desires and a nominee is suitable, appoint a successor  
23          conservator. A conservatorship may only be terminated under a hearing under this subsection.

24          **SECTION 15.** 55.01 (1dm) of the statutes is created to read:

1           55.01 **(1dm)** “Activated power of attorney for mental health care” means a power of  
2 attorney for mental health care that has taken effect in the manner specified in s. 156.05 (2).

3           **SECTION 16.** 55.043 (1r) (b) 2., 3., and 4. of the statutes are amended to read:

4           55.043 **(1r)** (b) 2. Observation of or an interview with the adult at risk, in private to the  
5 extent practicable, and with or without consent of his or her guardian or agent under an  
6 activated power of attorney for health care or activated power of attorney for mental health  
7 care, if any.

8           3. An interview with the adult at risk, in private to the extent practicable, and with or  
9 without consent of his or her guardian or agent under an activated power of attorney for health  
10 care or activated power of attorney for mental health care, if any.

11           4. An interview with the guardian or agent under an activated power of attorney for  
12 health care or activated power of attorney for mental health care, if any, and with any caregiver  
13 of the adult at risk.

14           **SECTION 17.** 55.043 (1r) (c) 1. and 2. a. and (b) 2., 3., and 4. of the statutes are amended  
15 to read:

16           55.043 **(1r)** (c) 1. The adult at risk or his or her guardian or agent under an activated  
17 power of attorney for health care or activated power of attorney for mental health care, if any,  
18 consents to the examination.

19           2. a. The adult at risk has no guardian or agent under an activated power of attorney for  
20 health care or activated power of attorney for mental health care.

21           2. b. Observation of or an interview with the adult at risk, in private to the extent  
22 practicable, and with or without consent of his or her guardian or agent under an activated  
23 power of attorney for health care or activated power of attorney for mental health care, if any.

1           3. An interview with the adult at risk, in private to the extent practicable, and with or  
2 without consent of his or her guardian or agent under an activated power of attorney for health  
3 care or activated power of attorney for mental health care, if any.

4           4. An interview with the guardian or agent under an activated power of attorney for  
5 health care or activated power of attorney for mental health care, if any, and with any caregiver  
6 of the adult at risk.

7           **SECTION 18.** 55.05 (3) of the statutes is amended to read:

8           55.05 (3) VOLUNTARY PROTECTIVE SERVICES PREFERRED. An individual shall receive  
9 protective services voluntarily unless ordered by the court under s. 55.12, requested by the  
10 individual's guardian or agent under an activated power of attorney for health care or activated  
11 power of attorney for mental health care, or provided on an emergency basis in accordance  
12 with s. 55.13.

13           **SECTION 19.** 55.055 (4) of the statutes is amended to read:

14           55.055 (4) The admission to a health care facility, as defined in s. 155.01 (6), of a  
15 principal by a health care agent under the terms of a power of attorney for health care  
16 instrument and in accordance with ch. 155 or by a mental health care agent under a power of  
17 attorney for mental health care in accordance with ch. 156 or the admission of an individual  
18 to a nursing home or community-based residential facility under the requirements of s. 50.06  
19 is not a protective placement under this chapter.

20           **SECTION 20.** 55.075 (4) (a) 4. of the statutes is amended to read:

21           55.075 (4) (a) 4. Whether the individual sought to be protectively placed or protectively  
22 served had executed a durable power of attorney for finances and property under ch. 244 ~~or~~  
23 a power of attorney for health care under s. 155.05, or a power of attorney for mental health



1 care under s. 156.05 or had provided advance consent to nursing home admission or engaged  
2 in other advance planning to avoid protective placement or protective services.

3 **SECTION 21.** 55.09 (2) (b) of the statutes is amended to read:

4 55.09 (2) (b) The agent under an activated power of attorney for health care or activated  
5 power of attorney for mental health care, if any, of the individual sought to be protected.

6 **SECTION 22.** 55.18 (1) (a) 3. of the statutes is amended to read:

7 55.18 (1) (a) 3. Provide the report under subd. 1. to the individual and the guardian of  
8 the individual, and to the individual's agent under an activated power of attorney for health  
9 care or activated power of attorney for mental health care, if any.

10 **SECTION 23.** 55.18 (3) (f) 2. of the statutes is amended to read:

11 55.18 (3) (f) 2. The individual's guardian, guardian ad litem, and legal counsel, if any,  
12 and the individual's agent under an activated power of attorney for health care or activated  
13 power of attorney for mental health care, if any.

14 **SECTION 24.** 146.81 (5) of the statutes is amended to read:

15 146.81 (5) "Person authorized by the patient" means the parent, guardian, or legal  
16 custodian of a minor patient, as defined in s. 48.02 (8) and (11), the person vested with  
17 supervision of the child under s. 938.183 or 938.34 (4d), (4h), (4m), or (4n), the guardian of  
18 a patient adjudicated incompetent in this state, the personal representative, spouse, or  
19 domestic partner under ch. 770 of a deceased patient, any person authorized in writing by the  
20 patient or a health care agent designated by the patient as a principal under ch. 155 if the patient  
21 has been found to be incapacitated under s. 155.05 (2), except as limited by the power of  
22 attorney for health care instrument or a mental health care agent designated by the patient who  
23 is a principal under ch. 156 if the patient has been found to be incapacitated under s. 156.05  
24 (2), except as limited by the power of attorney for mental health care instrument. If no spouse

1 or domestic partner survives a deceased patient, “person authorized by the patient” also means  
2 an adult member of the deceased patient’s immediate family, as defined in s. 632.895 (1) (d).  
3 A court may appoint a temporary guardian for a patient believed incompetent to consent to  
4 the release of records under this section as the person authorized by the patient to decide upon  
5 the release of records, if no guardian has been appointed for the patient.

6 **SECTION 25.** Chapter 156 of the statutes is created to read:

7 **CHAPTER 156**

8 **POWER OF ATTORNEY FOR MENTAL HEALTH CARE**

9 **156.01 Definitions.** In this chapter:

10 (1) “Department” means the department of health services.

11 (2) “Health care facility” means a facility, as defined in s. 647.01 (4), or any hospital,  
12 nursing home, community–based residential facility, county home, county infirmary, county  
13 hospital, county mental health center, or other place licensed or approved by the department  
14 under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.35, 51.08, or 51.09, or a facility under s. 45.50,  
15 51.05, 51.06, 233.40, 233.41, 233.42, or 252.10.

16 (3) “Incapacitated” means unable to receive and evaluate information effectively or to  
17 communicate decisions to such an extent that the individual lacks the capacity to manage his  
18 or her mental health care decisions.

**COMMENT:** This definition is based on the definition of “incapacity” that  
activates a power of attorney for health care under ch. 155, stats.  
However, the committee should consider whether there is more  
appropriate language to use to activate a power of attorney for mental  
health care.

19 (4) “Mental health care agent” means an individual designated by a principal to make  
20 mental health care decisions on behalf of the principal or, if that individual is unable or

1 unwilling to make those decisions, an alternate individual designated by the principal to do  
2 so.

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

5 (6) "Mental health care provider" means a nurse licensed under ch. 441, a physician or  
6 a physician assistant licensed under ch. 448, a person practicing Christian Science treatment,  
7 a psychologist licensed under ch. 455, a social worker, advanced practice social worker,  
8 independent social worker, clinical social worker, marriage and family therapist, or  
9 professional counselor licensed or certified under ch. 457, a partnership thereof, a corporation  
10 or limited liability company thereof that provides mental health care services, an operational  
11 cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides  
12 services through salaried employes in its own facility, or a home health agency, as defined in  
13 s. 50.49 (1) (a).

14 (7) "Power of attorney for mental health care" means the designation, by an individual,  
15 of another as his or her mental health care agent for the purpose of making mental health care  
16 decisions on his or her behalf if the individual cannot because the individual is incapacitated.

17 (8) "Principal" means an individual who executes a power of attorney for mental health  
18 care.

19 (9) "Relative" has the meaning given in s. 155.01 (12).

20 **156.05 Power of attorney for mental health care. (1)** An individual who is of sound  
21 mind and has attained age 18 may voluntarily execute a power of attorney for mental health  
22 care. An individual for whom an adjudication of incompetence and appointment of a guardian  
23 of the person is in effect under ch. 54 is presumed not to be of sound mind for purposes of this  
24 subsection.

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

11           (3) No mental health care provider for an individual, employee of that mental health care  
12 provider, or employee of a mental health care facility in which an individual is a patient or  
13 resides, or a spouse of any of those providers or employees, may be designated by the  
14 individual as a mental health care agent unless the mental health care provider, employee or  
15 spouse of the provider or employee is a relative of the individual.

16           (4) The desires of a principal who is not incapacitated supersede the effect of his or her  
17 power of attorney for mental health care at all times.

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

21           **156.10 Power of attorney for mental health care instrument; execution; witnesses.**

22           (1) A valid power of attorney for mental health care instrument shall be all of the following:

23           (a) In writing.

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

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

4 (d) Voluntarily executed.

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

9 (a) Related to the principal by blood, marriage or adoption, or the domestic partner  
10 under ch. 770 of the individual.

11 (b) Have knowledge that he or she is entitled to or has a claim on any portion of the  
12 principal's estate.

13 (c) Directly financially responsible for the principal's mental health care.

14 (d) An individual who is a mental health care provider who is serving the principal at  
15 the time of execution, an employee, other than a chaplain, of the mental health care provider  
16 or an employee, other than a chaplain, of an inpatient health care facility in which the principal  
17 is a patient.

18 (e) The principal's mental health care agent.

19 **156.20 Mental health care agent; powers; limitations.** (1) Unless the power of  
20 attorney for mental health care instrument otherwise provides and except as specified in s.  
21 156.60 (2), the mental health care agent who is known to the mental health care provider to  
22 be available to make mental health care decisions for the principal has priority over any  
23 individual other than the principal to make these mental health care decisions.

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

**COMMENT:** These restrictions are placed on a health care agent under a  
          power of attorney for health care. The committee should consider  
          whether they should also apply to a mental health care agent.

4           (3) The mental health care agent shall act in good faith consistently with the desires of  
5 the principal as expressed in the power of attorney for mental health care instrument. In the  
6 absence of a specific directive by the principal or if the principal's desires are unknown, the  
7 mental health care agent shall, in good faith, act in the best interests of the principal in  
8 exercising his or her authority.

9           (4) (a) In this subsection, "health care agent" has the meaning given in s. 155.01 (4)  
10 and "power of attorney for health care" has the meaning given in s. 155.01 (10).

11           (b) If an individual has executed both a power of attorney for health care and a power  
12 of attorney for mental health care, and the health care agent and mental health care agent are  
13 not the same individuals, and both documents are activated as provided in ss. 155.05 (2) and  
14 156.05 (2), the health care agent may not make a mental health care decision.

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

19           **156.30 Power of attorney for mental health care instrument; form.** The department  
20 shall prepare, by rule, a form of a power of attorney for mental health care for distribution to  
21 individuals on request and for posting on the department's Web site. The department may  
22 charge a reasonable fee for the cost of preparation and distribution. The department shall

1 include questions about the types of mental health care services to which the mental health care  
2 agent may consent, with the presumption that the mental health care agent may not consent  
3 to services that the principal does not affirmatively authorize.

4 **156.40 Revocation of power of attorney for mental health care. (1)** A principal may  
5 revoke his or her power of attorney for mental health care and invalidate the power of attorney  
6 for mental health care instrument at any time by doing any of the following:

7 (a) Canceling, defacing, obliterating, burning, tearing or otherwise destroying the  
8 power of attorney for mental health care instrument or directing another in the presence of the  
9 principal to so destroy the power of attorney for mental health care instrument.

10 (b) Executing a statement, in writing, that is signed and dated by the principal,  
11 expressing the principal's intent to revoke the power of attorney for mental health care.

12 (c) Verbally expressing the principal's intent to revoke the power of attorney for mental  
13 health care, in the presence of 2 witnesses.

14 (d) Executing a subsequent power of attorney for mental health care instrument.

15 **(2)** If the mental health care agent is the principal's spouse or domestic partner under  
16 ch. 770 and, subsequent to the execution of a power of attorney for mental health care  
17 instrument, the marriage is annulled or divorce from the spouse is obtained or the domestic  
18 partnership under ch. 770 is terminated, the power of attorney for mental health care is revoked  
19 and the power of attorney for mental health care instrument is invalid.

**COMMENT:** This provision is drafted to be parallel to a similar provision regarding the power of attorney for health care. However, the committee could consider keeping the power of attorney for mental health care in effect if there is an alternate agent.

20 **(2m)** If a principal, after executing a power of attorney for mental health care, is  
21 adjudicated incompetent in this state, the power of attorney for mental health care remains in

1 effect, except that a court may under s. 54.46 (2) (b), for good cause shown, revoke the power  
2 of attorney for mental health care and invalidate the power of attorney for mental health care  
3 instrument, or limit the authority of the agent under the terms of the power of attorney for  
4 mental health care instrument.

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

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

13 (5) (a) A revocation under sub. (1) takes effect immediately if the principal is not  
14 incapacitated at the time he or she takes the action in sub. (1).

15 **OPTION 1:** (b) A revocation under sub. (1) may not be made while a principal is  
16 incapacitated.

17 **OPTION 2:** (b) A revocation under sub. (1) that is done while a principal is  
18 incapacitated takes effect \_\_ days after the action in sub. (1).

19 **OPTION 3:** (b) A revocation under sub. (1) that is done while a principal is  
20 incapacitated takes effect on the number of days after the action in sub. (1) specified in the  
21 power of attorney for mental health care instrument. If the power of attorney for mental health  
22 care instrument does not specify a number of days, [the power of attorney for mental health  
23 care may not be revoked if the principal is incapacitated] [the revocation takes effect \_\_ days  
24 after the action in sub. (1)].



**COMMENT:** The 3 options above provide for a delay in a revocation if the principal is incapacitated. In most other respects, a power of attorney for mental health care is like a power of attorney for health care, except that revocation of a power of attorney for health care takes effect immediately.

1           **156.50 Duties and immunities.** (1) No health care facility or mental health care  
2 provider may be charged with a crime, held civilly liable or charged with unprofessional  
3 conduct for any of the following:

4           (a) Certifying that an individual is incapacitated under s. 156.05 (2), if the certification  
5 is made in good faith based on a thorough examination of the principal.

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

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

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

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

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

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

10           **156.60 Safeguards.** (1) Nothing in this chapter prohibits an individual from petitioning  
11 a court under ch. 54 for a determination of incompetency and for appointment of a guardian  
12 for an individual who is a principal under this chapter.

13           (2) If an individual who is a principal is adjudicated incompetent in this state and a  
14 guardian is appointed for him or her, the power of attorney for mental health care executed  
15 under this chapter by the principal remains in effect, except that the court may under s. 54.46  
16 (2) (b), for good cause shown, revoke the power of attorney for mental health care and  
17 invalidate the power of attorney for mental health care instrument, or limit the authority of the  
18 agent under the terms of the power of the power of attorney for mental health care instrument.  
19 Unless the court makes this revocation or limitation, the guardian for the individual may not  
20 make mental health care decisions for the ward that may be made by the mental health care  
21 agent, unless the guardian is the mental health care agent.

22           (3) Upon receipt of a power of attorney for mental health care instrument or a statement  
23 that a principal is incapacitated under s. 156.05 (2), a health care facility or mental health care

1 provider shall, if the principal is a patient of the facility or mental health care provider, include  
2 the instrument or the statement in the medical record of the principal.

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

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

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

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

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

19 **156.65 Filing power of attorney for mental health care instrument.** (1) A principal  
20 or a principal's mental health care agent may, for a fee, file the principal's power of attorney  
21 for mental health care instrument, for safekeeping, with the register in probate of the county  
22 in which the principal resides.

1           (2) If a principal or mental health care agent has filed the principal's power of attorney  
2 for mental health care instrument as specified in sub. (1), the following persons may have  
3 access to the instrument without first obtaining consent from the principal:

4           (a) The mental health care agent for the principal.

5           (b) A mental health care provider who is providing care to the principal.

6           (c) The court and all parties involved in proceedings in this state for adjudication of  
7 incompetency and appointment of a guardian for the principal, for emergency detention under  
8 s. 51.15, for involuntary commitment under s. 51.20, or for protective placement or protective  
9 services under ch. 55.

10          (d) Any person under the order of a court for good cause shown.

11          (3) Failure to file a power of attorney for mental health care instrument under sub. (1)  
12 creates no presumption about the intent of an individual with regard to his or her mental health  
13 care decisions.

14          **156.70 General provisions.** (1) No individual may be required to execute a power of  
15 attorney for mental health care as a condition for receipt of mental health care or admission  
16 to a health care facility. The designation by a principal of a mental health care agent under  
17 a power of attorney for mental health care instrument is not a bar to the receipt of mental health  
18 care or admission to a health care facility.

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

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

1           (4) Failure to execute a power of attorney for mental health care instrument under this  
2 chapter creates no presumption about the intent of any individual with regard to his or her  
3 mental health care decisions.

4           (5) A valid document granting a mental health care agent authority to make mental  
5 health care decisions for a principal that is executed in another state or jurisdiction in  
6 compliance with the law of that state or jurisdiction is valid and enforceable in this state to the  
7 extent that the document authorizes the mental health care agent to make decisions for the  
8 principal that a mental health care agent may make for a principal under this chapter.

9           **156.80 Penalties.** (1) Whoever directly or indirectly coerces, threatens or intimidates  
10 an individual so as to cause the individual to execute a power of attorney for mental health care  
11 instrument shall be fined not more than \$500 or imprisoned for not more than 30 days or both.

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

16           (3) Whoever knowingly conceals, falsifies or forges a power of attorney for mental  
17 health care instrument with intent to create the false impression that a person other than the  
18 mental health care agent has been so designated shall be fined not more than \$1,000 or  
19 imprisoned for not more than 9 months or both.

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

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

6           **SECTION 26.** 243.10 (6) of the statutes is amended to read:

7           243.10 **(6) RELATION TO POWER OF ATTORNEY FOR HEALTH CARE.** The execution of a  
8 Wisconsin basic power of attorney for finances and property under this section does not confer  
9 on the agent any of the powers or duties conferred on a health care agent by the power of  
10 attorney for health care under ch. 155 or any of the powers and duties conferred on a mental  
11 health care agent by the power of attorney for mental health care under ch. 156.

12           **SECTION 27.** 244.64 of the statutes is amended to read:

13           **244.64 Relation to power of attorney for health care.** The execution of a Wisconsin  
14 statutory form power of attorney for finances and property under this chapter does not confer  
15 on the agent any of the powers or duties conferred on a health care agent by the power of  
16 attorney for health care under ch. 155 or any of the powers and duties conferred on a mental  
17 health care agent by the power of attorney for mental health care under ch. 156.

18           **SECTION 28.** 632.67 of the statutes is amended to read:

19           **632.67 Effect of power of attorney for health care or mental health care.** Executing  
20 a power of attorney for health care under ch. 155 or a power of attorney for mental health care  
21 under ch. 156 may not be used to impair in any manner the procurement of a life insurance  
22 policy or to modify the terms of an existing life insurance policy. A life insurance policy may  
23 not be impaired or invalidated in any manner by the exercise of a health care decision by a  
24 health care agent or a mental health care decision by a mental health care agent on behalf of

1 a person whose life is insured under the policy and who has authorized the health care agent  
2 under ch. 155 or the mental health care agent under ch. 156.

3 **SECTION 29.** 632.775 (1) and (2) of the statutes are amended to read:

4 632.775 (1) INSURER MAY NOT REQUIRE. An insurer may not require an individual to  
5 execute a power of attorney for health care under ch. 155 or a power of attorney for mental  
6 health care under ch. 156 as a condition of coverage under a disability insurance policy.

7 (2) EFFECT ON DISABILITY POLICIES. Executing a power of attorney for health care under  
8 ch. 155 or a power of attorney for mental health care under ch. 156 may not be used to impair  
9 in any manner the procurement of a disability insurance policy or to modify the terms of an  
10 existing disability insurance policy. A disability insurance policy may not be impaired or  
11 invalidated in any manner by the exercise of a health care decision by a health care agent or  
12 a mental health care decision by a mental health care agent on behalf of a person who is insured  
13 under the policy and who has authorized the health care agent under ch. 155 or the mental  
14 health care agent under ch. 156.

15 **SECTION 30.** 814.66 (1) (k) of the statutes is amended to read:

16 814.66 (1) (k) For receiving a power of attorney for health care instrument or a power  
17 of attorney for mental health care instrument for safekeeping, as provided under s. 155.65 (1)  
18 or 156.65 (1), §8.

19 (END)