CHAPTER 155

POWER OF ATTORNEY FOR HEALTH CARE

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155.01 Definitions. In this chapter:

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

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

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

(c) A physician assistant licensed under ch. 448 who a physician responsible for overseeing the physician assistant's practice affirms is competent to conduct evaluations of the capacity of patients to manage health care decisions.

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

(2m) "Feeding tube" means a medical tube through which nutrition or hydration is administered into the vein, stomach, nose, mouth or other body opening of a declarant.

(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 or other place licensed or approved by the department 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, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(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, physician assistant, perfusionist, podiatrist, physical therapist, physical therapist assistant, occupational therapist, or occupational therapy assistant licensed under ch. 448, a person practicing Christian Science treatment, an optometrist licensed under ch. 449, a psychologist licensed under ch. 455, a physical therapist or physical therapist assistant who holds a compact privilege under subch. IX of ch. 448, a partnership thereof, a corporation or limited liability company thereof that provides health care services, a cooperative health care association organized under s. 185.981 that directly provides services through salaried employees in its own facility, or a home health agency, as defined in s. 50.49 (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" means an individual related by blood within the 3rd degree of kinship as computed under s. 990.001 (16); a spouse, domestic partner under ch. 770, or an individual related to a spouse or domestic partner within the 3rd degree as so computed; and includes an individual in an adoptive relationship within the 3rd degree.

History: 1989 a. 200; 1991 a. 281; 1993 a. 27, 105, 112, 490; 1995 a. 27 ss. 4395, 9126 (19); 1997 a. 35, 67; 1999 a. 9, 180; 2001 a. 70, 89, 105; 2005 a. 22; 2007 a. 20 s. 9121 (6) (a); 2009 a. 28, 165; 2019 a. 90, 100.

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 in this state is presumed not to be of sound mind for purposes of this subsection executing a power of attorney for health care.

(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 incapacity by 2 physicians, as defined in s. 448.01 (5), or one physician and one licensed advanced practice clinician, 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, employee of that health care provider or employee of a health care facility in which an individual is a patient or resides, or a spouse of any of those providers or employees, may be designated by the individual as a health care agent unless the health care provider, employee or spouse of the provider or employee 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.

History: 1989 a. 200; 2005 a. 387; 2019 a. 90.

Wisconsin's Power of Attorney for Health Care. Sweet. Wis. Law. Sept. 1990.

Planning Ahead for Incapacity. Shapiro. Wis. Law. Aug. 1991.

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 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, or the domestic partner under ch. 770 of the individual.

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

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

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

(e) The principal's health care agent.

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

Wisconsin statutes provide three instruments through which an individual may state healthcare wishes in the event of incapacitation: a "declaration to physicians," a "do–not–resuscitate order," and a "health care power of attorney." These statutory instruments apply under specific circumstances, have their own signature requirements, and may be limited in the extent of authorization they afford. A form will trigger no statutory immunities for healthcare providers when it lacks the features of these statutory documents. A court might conclude, however, that such a form is relevant in discerning a person's intent. OAG 10–14

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 persons with an intellectual disability, as defined in s. 46.278 (1m) (am).

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 drastic mental health treatment procedures for the principal.

(4) A health care agent may consent to the withholding or withdrawal of a feeding tube for the principal if the power of attorney for health care instrument so authorizes, unless the principal's attending health care professional, as defined in s. 154.01 (1r), 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 subch. II of ch. 154, except that the provisions of a principal's valid power of attorney for health care instrument supersede any directly conflicting provisions of a valid declaration executed by the principal under subch. II of 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.

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

(8) A health care agent may make an anatomical gift of all or a part of the principal's body as provided under s. 157.06 (4) (b) or (9) (a) 1.

History: 1989 a. 200; 1991 a. 84, 269, 281; 1995 a. 200; 1997 a. 206; 2007 a. 106, 153; 2011 a. 126; 2019 a. 90.

Misunderstanding POAs: Advocating for Your Client's Statutory Autonomy. Resch [nka Juel] & Bennett. Wis. Law. Feb. 2020.

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 MAY NOT HAVE 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. 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 YOUR AGENT 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 WISH TO CHANGE YOUR POWER OF ATTORNEY FOR HEALTH CARE, YOU MAY REVOKE THIS DOCUMENT AT ANY TIME BY DESTROYING IT, BY DIRECTING ANOTHER PERSON TO DESTROY IT IN YOUR PRESENCE, BY SIGNING A WRITTEN AND DATED STATEMENT OR BY STATING THAT IT IS REVOKED IN THE PRESENCE OF TWO WITNESSES. IF YOU REVOKE, YOU SHOULD NOTIFY YOUR AGENT, YOUR HEALTH CARE PROVIDERS AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A COPY. IF YOUR AGENT IS YOUR SPOUSE OR DOMESTIC PARTNER AND YOUR MARRIAGE IS ANNULLED OR YOU ARE DIVORCED OR THE DOMESTIC PARTNERSHIP IS TERMINATED AFTER SIGNING THIS DOCUMENT, THE DOCUMENT IS INVALID.

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

DO NOT SIGN THIS DOCUMENT UNLESS YOU CLEARLY UNDERSTAND IT.

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

(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 and accompanying information 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 shall include, in information accompanying the copy of the instrument, at least the statutory definitions of terms used in the instrument, statutory restrictions on who may be witnesses to a valid instrument, a statement explaining that valid witnesses acting in good faith are statutorily immune from civil or criminal liability and a statement explaining that an instrument may, but need not, be filed with the register in probate of the principal's county of residence. 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

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

CREATION OF POWER OF ATTORNEY FOR HEALTH CARE

I,.... (print name, address and date of birth), 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. Despite the creation of this power of attorney for health care, I expect 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 to accept, maintain, discontinue or refuse any care, treatment, service or procedure to maintain, diagnose or treat my physical or mental condition.

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

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.... (print 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.... (print name, address and telephone number) to be my alternate health care agent for the purpose of making health care decisions on my behalf. Neither my health care agent nor my alternate health care agent whom I have designated is my health care provider, an employee of my health care provider, an employee of a health care facility in which I am a patient or a spouse of any of those persons, unless he or she is also my relative. For purposes of this document, "incapacity" exists if 2 physicians or a physician and a psychologist, nurse practitioner, or physician assistant 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 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, if I need treatment, for all of my health care and treatment. 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 able. I desire that my wishes be carried out through the authority given to my health care agent under this document.

If I am unable, due to my incapacity, to make a health care decision, my health care agent is instructed to make the health care decision for me, but 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 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 persons with an intellectual disability, 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 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 have checked "Yes" to the following, my health care agent may admit me for a purpose other than recuperative care or respite care, but if I have checked "No" to the following, my health care agent may not so admit me:

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

If I have not checked either "Yes" or "No" immediately above, my health care agent may admit me only for short–term stays for recuperative care or respite care.

PROVISION OF A FEEDING TUBE

If I have checked "Yes" to the following, my health care agent may have a feeding tube withheld or withdrawn from me, unless my physician, physician assistant, or nurse practitioner 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 a feeding tube 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 a feeding tube — Yes.... No....

If I have not checked either "Yes" or "No" immediately above, my health care agent may not have a feeding tube 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" immediately above, 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 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, oral 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.

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

SIGNATURE OF PRINCIPAL

(person creating the power of attorney for health care)

Signature.... Date....

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

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, am not related to the principal by blood, marriage, or adoption, am not the domestic partner under ch. 770 of the principal, and am not directly financially responsible for the principal's health care. I am not a health care provider who is serving the principal at this time, an employee of the health care provider, other than a chaplain or a social worker, or an employee, other than a chaplain or a social worker, of an inpatient health care facility in which the declarant is a patient. I am not the principal's health care agent. To the best of my knowledge, I am not entitled to and do not have a claim on the principal's estate.

Witness No. 1:

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

Address....

Signature....

Witness No. 2:

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

Address....

Signature....

STATEMENT OF HEALTH CARE AGENT AND ALTERNATE HEALTH CARE AGENT

I understand that.... (name of principal) has designated me to be his or her health care agent or alternate 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.

Agent's signature....

Address....

Alternate's signature....

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.

ANATOMICAL GIFTS (optional)

Upon my death:

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

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

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

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

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

Signature.... Date....

History: 1989 a. 200; 1991 a. 281; 1993 a. 213, 491; 1997 a. 206; 2007 a. 106, 153; 2009 a. 28; 2011 a. 126; 2019 a. 90.

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 or domestic partner under ch. 770 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 or the domestic partnership under ch. 770 is terminated, the power of attorney for health care is revoked and the power of attorney for health care instrument is invalid.

(2m) If a principal, after executing a power of attorney for health care, is adjudicated incompetent in this state, the power of attorney for health care remains in effect, except that a court may under s. 54.46 (2) (b), for good cause shown, revoke the power of attorney for health care and invalidate the power of attorney for health care instrument, or limit the authority of the agent under the terms of the power of attorney for health care instrument.

(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.

History: 1989 a. 200; 2005 a. 387; 2009 a. 28.

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 health care professional, as defined in s. 154.01 (3), to comply constitutes unprofessional conduct if the health care professional refuses or fails to make a good faith attempt to transfer the principal to another health care professional 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.

(4) Subsections (1), (2), and (3) apply to acts or omissions in connection with a provision of a power of attorney for health care that is executed in another jurisdiction if the provision is valid and enforceable under s. 155.70 (10).

History: 1989 a. 200; 2003 a. 290; 2019 a. 90.

155.60 Safeguards. (1) Nothing in this chapter prohibits an individual from petitioning a court in this state for a determination of incompetency and for appointment of a guardian for an individual who is a principal under this chapter.

(2) If an individual who is a principal is adjudicated incompetent in this state and a guardian is appointed for him or her, the power of attorney for health care executed under this chapter by the principal remains in effect, except that the court may under s. 54.46 (2) (b), for good cause shown, revoke the power of attorney for health care and invalidate the power of attorney for health care instrument, or limit the authority of the agent under the terms of the power of the power of attorney for health care instrument. Unless the court makes this revocation or limitation, 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.

History: 1989 a. 200; 2005 a. 387.

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

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

(a) The health care agent for the principal.

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

(c) The court and all parties involved in proceedings in this state for adjudication of incompetency and appointment of a guardian for the principal, for emergency detention under s. 51.15,

for involuntary commitment under s. 51.20, or for protective placement or protective services under ch. 55.

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

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

History: 1991 a. 281; 2005 a. 387.

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 the provisions of a valid declaration executed under subch. II of ch. 154, except that the provisions of a principal's valid power of attorney for health care instrument supersede any directly conflicting provisions of a valid declaration executed under subch. II of ch. 154 for a declarant who is that principal.

(4) (a) Nothing in this chapter may be construed to render invalid a durable power of attorney that is executed under s. 243.07, 2007 stats., prior to April 28, 1990.

(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.

(9) A power of attorney for health care instrument under s. 155.30 (1), 1989 stats., that is executed before, on or after May 14, 1992, and that is not subsequently revoked is governed by the provisions of ch. 155, 1989 stats.

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

History: 1989 a. 200; 1991 a. 84, 281; 1995 a. 200; 2003 a. 290; 2009 a. 319.

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.

History: 1989 a. 200.