

1991 Senate Bill 415

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# 1991 WISCONSIN ACT 281

AN ACT to amend 154.03 (1) (d), 154.03 (2) (intro.), 155.10 (1) (c), 155.10 (2) (d), 155.20 (3) and (4), 155.30 (1) and 155.30 (3); and to create 154.13, 155.01 (2m), 155.20 (7), 155.65, 155.70 (9), 814.66 (1) (k) and 814.66 (1) (L) of the statutes, relating to: changes to powers of attorney for health care and living will witness requirements.

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

**SECTION 1.** 154.03 (1) (d) of the statutes, as created by 1991 Wisconsin Act 84, is amended to read:

154.03 (1) (d) An individual who is a health care provider, as defined in s. 155.01 (7), who is serving the declarant at the time of execution, an employe, other than a chaplain or a social worker, of the health care provider or an employe, other than a chaplain or a social worker, of an inpatient health care facility in which the declarant is a patient.

**SECTION 2.** 154.03 (2) (intro.) of the statutes, as affected by 1991 Wisconsin Act 84, is amended to read:

154.03 (2) The department shall prepare and provide copies of the declaration and accompanying information for distribution in quantities to health care professionals, hospitals, nursing homes, county clerks and local bar associations and individually to private persons. The department shall include, in information accompanying the declaration, at least the statutory definitions of terms used in the declaration, statutory restrictions on who may be witnesses to a valid declaration, a statement explaining that valid witnesses acting in good faith are statutorily immune from civil or criminal liability ~~and~~, an instruction to potential declarants to read and understand the information before completing the declaration and a statement explaining that an instrument may, but need not be, filed with the register in probate of the declarant's county of residence. The department may charge a reasonable fee for the cost of preparation and distribution.

The declaration distributed by the department of health and social services shall be in the following form:

**SECTION 3.** 154.13 of the statutes is created to read:

**154.13 Filing declaration.** (1) A declarant or an individual authorized by the declarant may, for a fee, file the declarant's declaration, for safekeeping, with the register in probate of the county in which the declarant resides.

(2) If a declarant or authorized individual has filed the declarant's declaration as specified in sub. (1), the following persons may have access to the declaration without first obtaining consent from the declarant:

(a) The individual authorized by the declarant.

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

(c) The court and all parties involved in proceedings for guardianship of the declarant under ch. 880, 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 declaration under sub. (1) creates no presumption about the intent of an individual with regard to his or her health care decisions.

**SECTION 4.** 155.01 (2m) of the statutes is created to read:

155.01 (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.

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**SECTION 5.** 155.10 (1) (c) of the statutes is amended to read:

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

**SECTION 6.** 155.10 (2) (d) of the statutes is amended to read:

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

**SECTION 7.** 155.20 (3) and (4) of the statutes are amended to read:

155.20 (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~~ a feeding tube 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.

**SECTION 8.** 155.20 (7) of the statutes is created to read:

155.20 (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.

**SECTION 9.** 155.30 (1) of the statutes is amended to read:

155.30 (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 ~~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~~ 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 MIND ABOUT WHETHER A PERSON SHOULD MAKE HEALTH CARE DECISIONS FOR YOU, OR ABOUT WHICH PERSON THAT SHOULD BE POWER OF ATTORNEY FOR HEALTH CARE, YOU MAY REVOKE THIS DOCUMENT AT ANY TIME BY DESTROYING ~~THE DOCUMENT OR IT, BY~~ DIRECTING ANOTHER PERSON TO DESTROY IT IN YOUR PRESENCE, ~~REVOKING IT IN~~ BY SIGNING A WRITTEN AND DATED STATEMENT WHICH YOU SIGN AND DATE OR BY STATING THAT IT IS REVOKED IN THE PRESENCE OF TWO WITNESSES. IF YOU REVOKE, YOU SHOULD NOTIFY ~~THE PERSON YOU HAD SPECIFIED~~ YOUR AGENT, YOUR HEALTH CARE PROVIDERS AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A COPY. ~~IF THE PERSON YOU HAVE SPECIFIED~~ YOUR AGENT 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.

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

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

155.30 (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

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

CREATION OF POWER OF  
ATTORNEY FOR HEALTH CARE

I, .... (print name and 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. ~~I expect,~~ despite ~~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 ~~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 .... (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 ~~the~~ my health care agent or ~~the~~ my 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,~~ unless 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, 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 ~~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~~ If I am unable, due to my incapacity, to make a health care decision ~~he or she shall,~~ my health care agent is instructed to make a the health care decision for me, ~~except that in exercising the authority given to him or her by this document 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 ~~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, 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" to admission to a nursing home or community-based residential facility for a purpose other than recuperative care or respite care immediately above, my health care agent may only admit me for short-term stays for recuperative care or respite care.~~

**PROVISION OF NUTRITION AND HYDRATION A FEEDING TUBE**

If I have checked "Yes" to the following, my health care agent may have ~~nonorally ingested nutrition and hydration~~ a feeding tube 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~~ 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 ~~nonorally ingested nutrition and hydration~~ a feeding tube — Yes.... No....

~~If I have not checked either "Yes" or "No" to withholding or withdrawing nonorally ingested nutrition and hydration immediately above, my health care agent may not have nonorally ingested nutrition and hydration 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" to permitting my health care agent to make health care decisions for me if I am known to be pregnant 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 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.

(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 and am not related to the principal by blood, marriage or adoption 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 employe of the health care provider, other than a chaplain or a social worker, or an employe, other than a chaplain or a social worker, of an inpatient inpatient health care facility in

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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.... (name, address, date) No. 1:  
 (print) Name .... Date ....  
Address ....  
Signature ....  
 Witness.... (name, address, date) 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.

Signed .... Address .... Agent's signature ....  
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 .... 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.

**SECTION 11.** 155.65 of the statutes is created to read:

**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 for guardianship of the principal under ch. 880, 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.

**SECTION 12.** 155.70 (9) of the statutes is created to read:

155.70 (9) A power of attorney for health care instrument under s. 155.30 (1), 1989 stats., that is executed before, on or after the effective date of this subsection ... [revisor inserts date], and that is not subsequently revoked is governed by the provisions of ch. 155, 1989 stats.

**SECTION 13.** 814.66 (1) (k) of the statutes is created to read:

814.66 (1) (k) For receiving a power of attorney for health care instrument for safekeeping, as provided under s. 155.65 (1), \$8.

**SECTION 14.** 814.66 (1) (L) of the statutes is created to read:

814.66 (1) (L) For receiving a declaration for safekeeping, as provided under s. 154.13 (1), \$8.

**SECTION 15. Initial applicability.** The treatment of sections 155.01 (2m), 155.10 (1) (c) and (2) (d), 155.20 (3), (4) and (7) and 155.30 (1) and (3) of the statutes first applies to power of attorney for health care instruments executed under chapter 155 of the statutes and declarations executed under chapter 154 of the statutes on the effective date of this SECTION.