

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 psychologist.

(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 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 or dental therapist licensed under subch. I of ch. 447, a physician, physician assistant, perfusionist, podiatrist, physical therapist, physical therapist assistant, occupational therapist, occupational therapy assistant, or genetic counselor licensed under ch. 448, a naturopathic doctor licensed under ch. 466, a person practicing Christian Science treatment, an optometrist licensed under ch. 449, a psychologist who is licensed under ch. 455, who is exercising the temporary authorization to practice, as defined in s. 455.50 (2) (o), in this state, or who is practicing under the authority to practice interjurisdictional telepsychology, as defined in s. 455.50 (2) (b), a dentist who holds a compact privilege under subch. II of ch. 447, a physical therapist or physical therapist assistant who holds a compact privilege under subch. XI of ch. 448, an occupational therapist or occupational therapy assistant who holds a compact privilege under subch. XII of ch. 448, a physician assistant who holds a compact privilege under subch. XIII 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).

NOTE: Sub. (7) is shown as amended by 2023 Wis. Acts 81, 87, and 88 and as merged by the legislative reference bureau under s. 13.92 (2) (i). The cross-reference to subch. XI of ch. 448 was changed from subch. X of ch. 448 and the cross-reference to subch. XII of ch. 448 was changed from subch. XI of ch. 448 by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of subchs. X and XI of ch. 448.

(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; 2021 a. 22; 2021 a. 23 s. 71; 2021 a. 123, 130, 131, 251; 2023 a. 81, 87, 88; s. 13.92 (1) (bm) 2.; s. 13.92 (2) (i).

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

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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.

(3) For purposes of sub. (1) (c), "in the presence of" includes the simultaneous remote appearance by 2-way, real-time audiovisual communication technology if all of the following conditions are satisfied:

(a) The signing is supervised by an attorney in good standing licensed by this state. The supervising attorney may serve as one of the remote witnesses.

(b) The principal attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(c) Each remote witness attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(d) The principal and each of the remote witnesses identify themselves. If the principal and remote witnesses are not personally known to each other and to the supervising attorney, the principal and each of the remote witnesses display photo identification.

(e) The principal identifies anyone else present in the same physical location as the principal and, if possible, the principal makes a visual sweep of the principal's physical surroundings so that the supervising attorney and each remote witness can confirm the presence of any other person.

(f) The principal displays the power of attorney for health care, confirms the total number of pages and the page number of the page on which the principal's signature will be affixed, and declares to the remote witnesses and the supervising attorney all of the following:

1. That the principal is 18 years of age or older.

2. That the document is the principal's power of attorney for health care.

3. That the document is being executed as a voluntary act.

(g) The principal, or an individual 18 years of age or older at the express direction and in the physical presence of the principal, dates and signs the power of attorney for health care in a manner that allows each of the remote witnesses and the supervising attorney to see the execution.

(h) The audiovisual communication technology used allows communication by which a person is able to see, hear, and communicate in an interactive way with another person in real time using electronic means, except that if the principal, a remote witness, or the supervising attorney has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that person to actively participate in the signing in real time.

(i) The power of attorney for health care indicates that it is being executed pursuant to this subsection.

(j) One of the following occurs:

1. The principal, or another person at the direction of the principal, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original power of attorney for health care to the supervising attorney within a reasonable time after execution. The supervising attorney then personally delivers or transmits by U.S. mail or commercial courier service the entire signed original power of attorney for health care to the remote witnesses within a reasonable time. The first remote witness to receive the original power of attorney for health care signs and dates the original power of attorney for health care as a witness and forwards the entire signed original power of attorney for health care by personal delivery or U.S. mail or commercial courier service within a reasonable time to the 2nd remote witness, who signs and dates it as a witness and forwards the entire signed original power of attorney for health care by personal delivery or U.S. mail or commercial courier service within a reasonable time to the supervising attorney.

2. The principal, or another person at the direction of the principal, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original power of attorney for health care to the supervising attorney within a reasonable time after execution and transmits by facsimile or electronic means a legible copy of the entire signed power of attorney for health care directly to each remote witness within a reasonable time after execution. Each remote witness then signs the transmitted copy of the power of attorney for health care as a witness and personally delivers or transmits by U.S. mail or commercial courier service the entire signed copy of the power of attorney for health care to the supervising attorney within a reasonable time after witnessing. The signed original and signed copies together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving the signed original and signed copies, compiles the signed original and signed copies into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the principal, in which case the compiled document shall constitute the original.

3. The principal and each of the remote witnesses sign identical copies of the original. The principal, or another person at the direction of the principal, and each of the remote witnesses

3 Updated 23-24 Wis. Stats.**POWER OF ATTORNEY FOR HEALTH CARE****155.10**

personally deliver or transmit by U.S. mail or commercial courier service the signed originals to the supervising attorney within a reasonable time after execution. All of the signed originals together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving all signed originals, compiles the originals into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the principal, in which case the compiled document shall constitute the original.

(k) The supervising attorney completes an affidavit of compliance that contains the following information:

1. The name and residential address of the principal.
2. The name and residential or business address of each remote witness.
3. The address within this state where the principal was physically located at the time the principal signed the power of attorney for health care.
4. The address within this state where each remote witness was physically located at the time the remote witness witnessed the principal's execution of the power of attorney for health care.
5. A statement that the principal and remote witnesses were all known to each other and the supervising attorney or a description of the form of photo identification used to confirm the identity of the principal and each remote witness.
6. Confirmation that the principal declared that the principal is 18 years of age or older, that the document is the principal's power of attorney for health care, and that the document was being executed as the principal's voluntary act.
7. Confirmation that each of the remote witnesses and the supervising attorney were able to see the principal, or an individual 18 years of age or older at the express direction and in the physical presence of the principal, sign, and that the principal appeared to be 18 years of age or older and acting voluntarily.
8. A description of the audiovisual technology used for the signing process.
9. If the power of attorney for health care was not signed in counterpart, a description of the method used to forward the power of attorney for health care to each remote witness for signing and to the supervising attorney after signing.
10. If the power of attorney for health care was signed in counterpart, a description of the method used to forward each counterpart to the supervising attorney and, if applicable, how and when the supervising attorney physically compiled the signed paper counterparts into a single document containing the power of attorney for health care, the signature of the principal, and the signatures of the remote witnesses.
11. The name, state bar number, and business or residential address of the supervising attorney.
12. Any other information that the supervising attorney considers to be material with respect to the principal's capacity to sign a valid power of attorney for health care, the principal's and witnesses' compliance with this section, or any other information that the supervising attorney deems relevant to the execution of the power of attorney for health care.

(L) The affidavit of compliance is attached to the power of attorney for health care.

(m) An affidavit of compliance described in this subsection shall be substantially in the following form:

AFFIDAVIT OF COMPLIANCE

State of

County of

The undersigned, being first duly sworn under oath, states as follows:

This Affidavit of Compliance is executed pursuant to Wis.

Stat. § 155.10 (3) to document the execution of the power of attorney for health care of [name of principal] via remote appearance by 2-way, real-time audiovisual communication technology on [date].

1. The name and residential address of the principal is
2. The name and [residential or business] address of remote witness 1 is
3. The name and [residential or business] address of remote witness 2 is
4. The address within the state of Wisconsin where the principal was physically located at the time the principal signed the power of attorney for health care is
5. The address within the state of Wisconsin where remote witness 1 was physically located at the time the remote witness witnessed the principal's execution of the power of attorney for health care is
6. The address within the state of Wisconsin where remote witness 2 was physically located at the time the remote witness witnessed the principal's execution of the power of attorney for health care is
7. The principal and remote witnesses were all known to each other and to the supervising attorney. - OR - The principal and remote witnesses were not all known to each other and to the supervising attorney. Each produced the following form of photo identification to confirm his or her identity:

....

8. The principal declared that the principal is 18 years of age or older, that the document is the principal's power of attorney for health care, and that the document was being executed as the principal's voluntary act.

9. Each of the remote witnesses and the supervising attorney were able to see the principal, or an individual 18 years of age or older at the express direction and in the physical presence of the principal, sign. The principal appeared to be 18 years of age or older and acting voluntarily.

10. The audiovisual technology used for the signing process was

11. The power of attorney for health care was not signed in counterpart. The following methods were used to forward the power of attorney for health care to each remote witness for signing and to the supervising attorney after signing. - OR - The power of attorney for health care was signed in counterpart. The following methods were used to forward each counterpart to the supervising attorney. [If applicable] - The supervising attorney physically compiled the signed paper counterparts into a single document containing the power of attorney for health care, the signature of the principal, and the signatures of the remote witnesses on [date] by [e.g., attaching page 7 from each counterpart signed by a remote witness to the back of the power of attorney for health care signed by the principal].

12. The name, state bar number, and business or residential address of the supervising attorney is

13. [Optional] Other information that the supervising attorney considers to be material is as follows:

.... (signature of supervising attorney)

Subscribed and sworn to before me on (date) by (name of supervising attorney).

.... (signature of notarial officer)

Stamp

.... (Title of office)

[My commission expires:]

History: 1989 a. 200; 1991 a. 281; 2009 a. 28; 2023 a. 130.

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 instru-

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ments 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, discon-

tinue 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....

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Updated 23-24 Wis. Stats. 6

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 un-

der 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.

Sub. (1) merely sets out standard language that must be included on health care power of attorney (HCPOA) forms that are distributed or sold in Wisconsin for use by persons who lack legal counsel. That language serves informative and instructive functions. It does not define “health care decisions” in terms of the right to demand any health care that the patient desires. Nothing in the plain language of sub. (1) or the definition of a health care decision under s. 155.01 (5) requires a health care provider to act on a HCPOA’s requests or demands for specific treatment that is below the standard of care. *Gahl ex rel. Zingsheim v. Aurora Health Care, Inc.*, 2022 WI App 29, 403 Wis. 2d 539, 977 N.W.2d 756, 21-1787. Affirmed on other grounds. 2023 WI 35, ___ Wis. 2d ___, 989 N.W.2d 561, 21-1787.

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 oth-

erwise 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 safe-

keeping, 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.