



State of Wisconsin
2023 - 2024 LEGISLATURE

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**ASSEMBLY AMENDMENT 3,
TO ASSEMBLY BILL 1088**

February 22, 2024 - Offered by Representative SNYDER.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 5, line 4: delete “par. (b)” and substitute “pars. (ar) and (b)”.

3 **2.** Page 5, line 6: after “may” insert “, including enrolling the incapacitated
4 individual in the medical assistance program under subch. IV of ch. 49,”.

5 **3.** Page 5, line 10: delete lines 10 and 11 and substitute “decisions or authorize
6 expenditures under this paragraph ends if any of the following occur:

7 1. A court appoints a guardian to make such decisions for the incapacitated
8 individual.

9 2. The incapacitated individual is discharged to a setting that is not a facility.

10 3. A health care power of attorney that was not identified at the time that the
11 patient’s representative was established is identified.”.

12 **4.** Page 5, line 11: after that line insert:

13 “**SECTION 6m.** 50.06 (5) (ar) of the statutes is created to read:

1 50.06 (5) (ar) No patient’s representative may consent to admission for an
2 incapacitated individual in the manner provided in sub. (8) after the date that is 3
3 years after the effective date of this paragraph [LRB insert date].”.

4 **5.** Page 6, line 15: delete lines 15 to 18 and substitute:

5 “1g. The incapacitated individual is admitted directly from a hospital inpatient
6 unit.

7 1r. The patient’s representative acknowledges in writing to a discharging
8 hospital and accepting facility that he or she agrees to all of the following:

9 a. The patient’s representative does not have an activated power of attorney
10 for health care and has not been adjudicated incompetent in this state.

11 b. The patient’s representative agrees to make health care decisions regarding
12 the admission to and care and treatment at the accepting facility on the
13 incapacitated individual’s behalf under this subsection.

14 c. The patient’s representative agrees to authorize expenditures related to
15 health care received at the accepting facility on the incapacitated individual’s behalf
16 under this subsection.

17 d. When acting on behalf of the incapacitated individual under this subsection,
18 the patient’s representative agrees to exercise the degree of care, diligence, and good
19 faith that an ordinarily prudent person exercises in his or her own affairs.

20 e. The patient’s representative understands his or her role and responsibilities
21 as the patient’s representative under this subsection.”.

22 **6.** Page 6, line 19: after “notifies” insert “, in writing, the incapacitated
23 individual and”.

24 **7.** Page 8, line 15: after that line insert:

1 “(fm) If an incapacitated individual is admitted to a facility pursuant to this
2 subsection, the incapacitated individual, the patient’s representative, or any facility
3 staff may request that the incapacitated individual be reevaluated under s. 50.06 (4).
4 The authority of a patient’s representative to make health care decisions or authorize
5 expenditures under this subsection ends if the individual is determined to no longer
6 be incapacitated.

7 (g) 1. In this paragraph:

8 a. “Health care facility” has the meaning given in s. 155.01 (6).

9 b. “Health care provider” has the meaning given in s. 155.01 (7).

10 2. No health care facility or health care provider may be charged with a crime,
11 held civilly liable, or found guilty of unprofessional conduct for any of the following:

12 a. Certifying incapacity under s. 50.06 (4) if the certification is made in good
13 faith based on a thorough examination of the individual.

14 b. Failing to comply with a decision of a patient’s representative except that
15 failure of a health care professional, as defined in s. 154.01 (3), to comply constitutes
16 unprofessional conduct if the health care professional refuses or fails to make a good
17 faith attempt to transfer the incapacitated patient to another health care
18 professional who will comply.

19 c. Complying, in the absence of actual knowledge of a limitation or revocation
20 of decision-making authority under par. (e), with the decisions of a patient’s
21 representative that is made in compliance with this subsection.

22 d. Acting contrary to or failing to act pursuant to any orders issued under par.
23 (e), unless the health care facility or health care provider has actual knowledge of the
24 order.

1 e. Failing to obtain a health care decision for a patient from a patient's
2 representative if the health care facility or health care provider has made a
3 reasonable attempt to contact the patient's representative and obtain the health care
4 decision but has been unable to do so.

5 3. In the absence of actual notice to the contrary, a health care facility or health
6 care provider may presume that a patient's representative is authorized to make
7 decisions on behalf of the incapacitated patient if the patient's representative has
8 provided the written statement required under par. (a) 3.

9 4. No patient's representative may be charged with a crime or held civilly liable
10 for making a decision in good faith that is in compliance with this subsection, except
11 where the patient's representative has acted in bad faith or has used the
12 incapacitated patient's funds for the benefit of a person other than the incapacitated
13 patient. No patient's representative who is not the spouse of the incapacitated
14 patient may be held personally liable for any goods or services purchased or
15 contracted for pursuant to the patient's representative's authority under this
16 subsection.”.

17 **8.** Page 8, line 15: after that line insert:

18 “(f) By April 1, 2025, and annually thereafter, the board on aging and long-term
19 care shall report to the joint committee on finance on the number of patients
20 admitted into a facility under this subsection.”.

21 **9.** Page 8, line 18: delete the material beginning with “(a) *Definitions.*” and
22 ending with “program.” on page 11, line 15, and substitute:

23 “(a) No later than January 1, 2025, the department of health services shall
24 submit a plan to the joint committee on finance to make available licensed nursing

1 home beds under subch. II of ch. 150 to ensure an adequate number of beds are
2 available to serve patients with complex needs and conditions statewide, including
3 patients with mental health and behavioral needs, serious wound care needs,
4 bariatrics, substance use disorder, nonambulatory disability, intravenous therapy
5 needs, or dialysis needs. To assess demand for additional licensed nursing home beds
6 in the state, the department of health services shall consult with hospitals and
7 nursing homes. The maximum number of licensed nursing home beds statewide may
8 be increased by 250 beds.”.

9 **10.** Page 14, line 5: delete lines 5 and 6.

10 **11.** Page 14, line 12: after that line insert:

11 “(f) Upon completion of the evaluation required under par. (e) 2., the
12 independent organization contracted by the department to complete the evaluation
13 shall provide the evaluation to the department. The department shall promptly
14 submit the evaluation to the joint committee on finance.

15 (g) No later than April 1, 2025, the department shall submit to the chief clerk
16 of each house of the legislature, for distribution to the appropriate standing
17 committees of the legislature in the manner required under s. 13.172 (3), a report on
18 the performance of the program under this subsection, including the total number
19 of patients served, the complex conditions addressed, the number of patients served
20 and the number of patient days for each complex condition, and any cost savings
21 associated with the program.”.

22 (END)