



State of Wisconsin
2023 - 2024 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 653**

January 23, 2024 - Offered by Representative SNYDER.

1 **AN ACT** *to renumber and amend* 50.06 (1); *to amend* 50.06 (2) (b), 50.06 (2) (c),
2 50.06 (5) (a) (intro.), 50.06 (5) (b), 50.06 (6) and 50.06 (7); and *to create* 50.06
3 (1) (b), 50.06 (5) (am) and 50.06 (8) of the statutes; **relating to:** consent to
4 admissions to certain health care facilities by patient representatives and
5 authority of patient representatives to make health care decisions and
6 authorize expenditures related to health care.

Analysis by the Legislative Reference Bureau

This bill allows a patient's representative to consent to an admission of an incapacitated individual from a hospital to a nursing home or community-based residential facility without a petition for guardianship or protective placement and allows a patient's representative to make health care decisions and authorize expenditures related to health care on behalf of an incapacitated individual without certain time limitations that are imposed under current law if certain conditions are met. Under current law, an individual who is either related to an incapacitated individual as provided under current law or is an adult close friend of an incapacitated individual may consent to admission, directly from a hospital to a nursing home or community-based residential facility, of the incapacitated

individual who does not have a valid power of attorney for health care and who has not been adjudicated incompetent in this state if certain conditions apply, including that the individual for whom admission is sought is not diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission, that the incapacitated individual does not verbally object to or otherwise actively protest the admission, and that petitions for guardianship for the individual and for protective placement of the individual are filed prior to the proposed admission. An individual who consents to admission of an incapacitated individual may make health care decisions to the same extent as a guardian of the person and authorize expenditures related to health care to the same extent as a guardian of the estate until 60 days after the admission to the facility, discharge of the incapacitated individual from the facility, or appointment of a guardian for the incapacitated individual, whichever occurs first. The bill allows a patient's representative to consent to an admission of an incapacitated individual from a hospital to a nursing home or community-based residential facility as provided under current law without petitions for guardianship or protective placement of the incapacitated individual being filed if certain conditions apply, including that the patient's representative promptly notifies all of the incapacitated individual's family members that can be readily contacted that the patient's representative may make decisions or authorize expenditures on the incapacitated individual's behalf, that the patient's representative provides a written statement to the discharging hospital that contains certain information, and that the facility to which the incapacitated individual is admitted notifies a representative of the Board on Aging and Long Term Care of the admission. Further, the bill allows a patient's representative to make health care decisions and authorize expenditures related to health care without the time limitations that apply to other direct admissions under current law if the patient's representative satisfies the conditions for admission provided under the bill. The authority of a patient's representative to make health care decisions and authorize expenditures related to health care under the bill ends if a court appoints a guardian to make such decisions or authorize such expenditures for the incapacitated individual.

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

1 **SECTION 1.** 50.06 (1) of the statutes is renumbered 50.06 (1) (intro.) and
2 amended to read:

3 50.06 (1) (intro.) In this section, “~~incapacitated~~”:

4 (a) “Incapacitated” means unable to receive and evaluate information
5 effectively or to communicate decisions to such an extent that the individual lacks

1 the capacity to manage his or her health care decisions, including decisions about his
2 or her post-hospital care.

3 **SECTION 2.** 50.06 (1) (b) of the statutes is created to read:

4 50.06 (1) (b) "Patient's representative" means the individual described under
5 sub. (3) who may consent to an admission of an incapacitated individual under sub.
6 (2).

7 **SECTION 3.** 50.06 (2) (b) of the statutes is amended to read:

8 50.06 (2) (b) The individual for whom admission is sought is not diagnosed as
9 developmentally disabled or as having a mental illness, as defined in s. 51.01 (13) (a),
10 at the time of the proposed admission.

11 **SECTION 4.** 50.06 (2) (c) of the statutes is amended to read:

12 50.06 (2) (c) ~~A- Unless the incapacitated individual is admitted to a facility~~
13 under sub. (8), a petition for guardianship for the individual under s. 54.34 and a
14 petition under s. 55.075 for protective placement of the individual are filed prior to
15 the proposed admission.

16 **SECTION 5.** 50.06 (5) (a) (intro.) of the statutes is amended to read:

17 50.06 (5) (a) (intro.) Except as otherwise provided in ~~par.~~ pars. (am) and (b), an
18 individual ~~who consents to an admission under this section~~ a patient's
19 representative may, for the incapacitated individual, make health care decisions to
20 the same extent as a guardian of the person may and authorize expenditures related
21 to health care to the same extent as a guardian of the estate may, until the earliest
22 of the following:

23 **SECTION 6.** 50.06 (5) (am) of the statutes is created to read:

24 50.06 (5) (am) Except as otherwise provided in par. (b), a patient's
25 representative may, for the incapacitated individual, make health care decisions to

1 the same extent as a guardian of the person may and authorize expenditures related
2 to health care to the same extent as a guardian of the estate may if the patient's
3 representative consents to admission for the incapacitated individual in the manner
4 provided in sub. (8). The authority of a patient's representative to make health care
5 decisions or authorize expenditures under this paragraph ends if a court appoints a
6 guardian to make such decisions or authorize such expenditures for the
7 incapacitated individual.

8 **SECTION 7.** 50.06 (5) (b) of the statutes is amended to read:

9 50.06 (5) (b) ~~An individual who consents to an admission under this section A~~
10 patient's representative may not authorize expenditures related to health care if the
11 incapacitated individual has an agent under a durable power of attorney, as defined
12 in s. 244.02 (3), who may authorize expenditures related to health care.

13 **SECTION 8.** 50.06 (6) of the statutes is amended to read:

14 50.06 (6) ~~If~~ Unless the incapacitated individual was admitted to a facility under
15 sub. (8), if the incapacitated individual is in the facility after 60 days after admission
16 and a guardian has not been appointed, the authority of the ~~person who consented~~
17 ~~to the admission~~ patient's representative to make decisions and, if sub. (5) (a) applies,
18 to authorize expenditures is extended for 30 days for the purpose of allowing the
19 facility to initiate discharge planning for the incapacitated individual.

20 **SECTION 9.** 50.06 (7) of the statutes is amended to read:

21 50.06 (7) ~~An individual who consents to an admission under this section A~~
22 patient's representative may request a functional screening and a financial and
23 cost-sharing screening to determine eligibility for the family care benefit under s.
24 46.286 (1). If admission is sought on behalf of the incapacitated individual or if the
25 incapacitated individual is about to be admitted on a private pay basis, the ~~individual~~

1 ~~who consents to the admission~~ patient's representative may waive the requirement
2 for a financial and cost-sharing screening under s. 46.283 (4) (g), unless the
3 incapacitated individual is expected to become eligible for medical assistance within
4 6 months.

5 **SECTION 10.** 50.06 (8) of the statutes is created to read:

6 50.06 (8) (a) A patient's representative may consent to an admission of an
7 incapacitated individual under sub. (2) without a petition for guardianship or
8 protective placement of the incapacitated individual being filed if all of the following
9 apply:

10 1. The patient's representative acknowledges in writing that he or she agrees
11 to make health care decisions on the incapacitated individual's behalf under this
12 subsection and provides the acknowledgment to the discharging hospital and the
13 accepting facility.

14 2. The patient's representative promptly notifies all of the incapacitated
15 individual's family members that can be readily contacted that the patient's
16 representative may make decisions or authorize expenditures under sub. (5) (am).

17 3. The patient's representative provides a written statement to the discharging
18 hospital and the accepting facility that states all of the following:

19 a. To the best knowledge of the patient's representative, a family member in a
20 higher priority class under sub. (3) does not exist or no family member in a higher
21 priority class is willing to make health care decisions on the incapacitated
22 individual's behalf under this subsection.

23 b. To the best knowledge of the patient's representative, the incapacitated
24 individual does not have a health care agent, as defined in s. 155.01 (4), or guardian
25 of the person, as defined in s. 54.01 (12).

1 c. The incapacitated individual's family members who have received notice as
2 provided under subd. 2.

3 4. The facility to which the incapacitated individual is admitted under this
4 subsection notifies a representative of the board on aging and long-term care of the
5 admission no later than 72 hours after the admission.

6 (b) A hospital discharging an incapacitated patient to a facility under this
7 subsection shall be in compliance with 42 CFR 482.13 (b) (3) or 42 CFR 485.608 (a)
8 regarding the implementation of the patient's rights to formulate advanced
9 directives. A nursing home admitting the incapacitated individual shall be in
10 compliance with the requirements under 42 CFR 483.10 (b) (3) to (6) that a resident
11 be afforded the right to designate a representative, including the requirement that
12 if the nursing home has reason to believe that a resident representative is making
13 decisions or taking actions that are not in the best interests of the resident then the
14 nursing home shall report such concerns as required by state law.

15 (c) Nothing in this subsection may be construed to preclude the administration
16 of health care treatment in accordance with accepted standards of medical practice
17 and as otherwise provided by law.

18 (d) The discharging hospital and the accepting facility shall include a copy of
19 the written acknowledgment under par. (a) 1. and a copy of the written statement
20 under par. (a) 3. in the incapacitated individual's health care record.

21 (e) Any interested party may petition the court to review whether the patient's
22 representative is acting in accordance with the known wishes or in the best interest
23 of the incapacitated individual and is exercising the degree of care, diligence, and
24 good faith when acting on behalf of the incapacitated individual that an ordinarily
25 prudent person exercises in his or her own affairs. The court may issue orders that

1 the court determines necessary to protect the incapacitated individual, including
2 any of the following:

3 1. Directing the patient's representative to act in the best interest of the
4 incapacitated individual.

5 2. Requiring the patient's representative to report to the court periodically on
6 the incapacitated individual's status. The court may require that the report include
7 a financial accounting of expenditures made under sub. (5) (am) within 72 hours of
8 the court's order.

9 3. Directing the patient's representative not to make certain decisions or
10 authorize certain expenditures under sub. (5) (am).

11 (END)