



## 2019 SENATE BILL 93

March 15, 2019 - Introduced by Senators FEYEN, BEWLEY, CARPENTER, COWLES, MARKLEIN, NASS, OLSEN, WANGGAARD and WIRCH, cosponsored by Representatives HORLACHER, MEYERS, BROOKS, EDMING, HUTTON, MACCO, MURPHY, MURSAU, NOVAK, RODRIGUEZ, SKOWRONSKI, SNYDER, SPIROS, SPREITZER, STEFFEN, SUBECK, C. TAYLOR, VANDERMEER, WICHGERS and TUSLER. Referred to Committee on Government Operations, Technology and Consumer Protection.

1     **AN ACT** *to amend* subchapter I (title) of chapter 154 [precedes 154.01], 154.03  
2           (2) (intro.), 154.13 (title), 154.13 (1), 154.13 (2) (intro.), 154.13 (3), 155.30 (3)  
3           (intro.), 155.65 (title), 155.65 (1), 155.65 (2) (intro.) and 155.65 (3); and **to**  
4           **create** 154.015, 154.13 (1m) and 155.65 (1m) of the statutes; **relating to:**  
5           authorizing creation and implementation of an advance directive registry and  
6           granting rule-making authority.

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### *Analysis by the Legislative Reference Bureau*

This bill authorizes the Department of Health Services to develop and implement a registry for power of attorney for health care instruments, declarations to physicians, do-not-resuscitate orders, authorizations for final disposition, and any other advance directives included by DHS. If DHS develops a registry, DHS may promulgate rules to implement the registry.

Also, if a registry is established, DHS may determine whether to incorporate advance directives previously filed with the county registers in probate. If DHS decides to incorporate these advance directives, DHS must request the documents from the registers in probate and the registers in probate must transfer a copy of the documents to DHS. If DHS requests copies of any previously filed advance directives, the registers in probate may not accept for filing new advance directives.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** Subchapter I (title) of chapter 154 [precedes 154.01] of the statutes  
2 is amended to read:

3   **CHAPTER 154**

4   **SUBCHAPTER I**

5   **DEFINITIONS AND**

6   **GENERAL PROVISIONS**

7           **SECTION 2.** 154.015 of the statutes is created to read:

8           **154.015 Advance directive registry. (1)** In this section:

9           (a) “Advance directive” has the meaning given in 42 CFR 489.100.

10           (b) “Authorization for final disposition” has the meaning given in s. 154.30 (1)

11           (a).

12           (c) “Declaration” has the meaning given in s. 154.02 (1).

13           (d) “Do-not-resuscitate order” has the meaning given in s. 154.17 (2).

14           (e) “Power of attorney for health care instrument” means an instrument  
15 designating a power of attorney for health care executed under ch. 155.

16           **(2)** The department may develop and implement a registry for power of  
17 attorney for health care instruments, declarations to physicians, do-not-resuscitate  
18 orders, authorizations for final disposition, and any other advance directives  
19 included by the department. If the department establishes a registry under this  
20 section, the department may incorporate advance directives previously filed with a  
21 county register in probate into the registry. If the department determines

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1 incorporation of advance directives is appropriate, the department shall request and  
2 the county registers in probate shall complete the transfer of a copy of any advance  
3 directives filed under s. 154.13 (1) or 155.65 (1) for inclusion by the department in  
4 the registry. The department shall notify the subject of the advance directive within  
5 14 days of the transfer of a copy of the advance directive and provide information  
6 regarding the registry and access to advance directives included in the registry.

7 (3) (a) Registration of a document or failure to register a document with a  
8 registry maintained by the department under this section does not affect the validity  
9 of the document. Failure to notify the department of the revocation of a document  
10 included on a registry under this section does not affect the validity of a revocation  
11 that otherwise meets the statutory requirements for revocation.

12 (b) The department is not required to review a document submitted for  
13 inclusion on a registry under this section to determine whether the document  
14 complies with statutory requirements applicable to that document.

15 (4) If an individual or a person authorized by that individual has submitted a  
16 copy of an advance directive to any registry established by the department under this  
17 section, the following persons may have access to that advance directive without first  
18 obtaining consent from the individual:

19 (a) The person authorized by the individual who is the subject of the advance  
20 directive.

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

22 (c) The court and all parties involved in proceedings in this state for  
23 adjudication of incompetency and appointment of a guardian for the individual, for  
24 emergency detention under s. 51.15, for involuntary commitment under s. 51.20, or  
25 for protective placement or protective services under ch. 55.

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

2 (5) The department may promulgate rules to implement any registry  
3 established under this section.

4 (6) All data and information submitted to or contained in a registry under this  
5 section shall remain confidential and is not subject to public inspection or copying  
6 under s. 19.35 (1).

7 (7) The department and its employees and agents are immune from liability  
8 for any act or omission, in good faith, relating to the creation, installation,  
9 implementation, operation, maintenance, or use of any registry established by the  
10 department under this section. This subsection does not limit immunity otherwise  
11 available under s. 893.80 (4).

12 **SECTION 3.** 154.03 (2) (intro.) of the statutes is amended to read:

13 154.03 (2) (intro.) The department shall prepare and provide copies of the  
14 declaration and accompanying information for distribution in quantities to health  
15 care professionals, hospitals, nursing homes, county clerks, and local bar  
16 associations and individually to private persons. The department shall include, in  
17 information accompanying the declaration, at least the statutory definitions of terms  
18 used in the declaration, statutory restrictions on who may be witnesses to a valid  
19 declaration, a statement explaining that valid witnesses acting in good faith are  
20 statutorily immune from civil or criminal liability, an instruction to potential  
21 declarants to read and understand the information before completing the  
22 declaration, and a statement explaining that an instrument may, but need not be,  
23 filed with the register in probate of the declarant's county of residence or submitted  
24 to any registry established by the department under s. 154.015. The department  
25 may charge a reasonable fee for the cost of preparation and distribution. The

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1 declaration distributed by the department of health services shall be easy to read,  
2 the type size may be no smaller than 10 point, and the declaration shall be in the  
3 following form, setting forth on the first page the wording before the ATTENTION  
4 statement and setting forth on the 2nd page the ATTENTION statement and  
5 remaining wording:

6 **SECTION 4.** 154.13 (title) of the statutes is amended to read:

7 **154.13** (title) **Filing or registering declaration.**

8 **SECTION 5.** 154.13 (1) of the statutes is amended to read:

9 154.13 (1) A declarant or an individual authorized by the declarant may, for  
10 a fee, file the declarant's declaration, for safekeeping, with the register in probate of  
11 the county in which the declarant resides. If the department establishes an advance  
12 directive registry under s. 154.015 and determines under s. 154.015 (2) that  
13 incorporation of advance directives previously filed with the register in probate is  
14 appropriate, upon request from the department, the register in probate shall  
15 transfer a copy of any declarations filed under this subsection to the department and  
16 may not accept for filing any declarations after the request from the department is  
17 received.

18 **SECTION 6.** 154.13 (1m) of the statutes is created to read:

19 154.13 (1m) A declarant or an individual authorized by the declarant may  
20 submit a copy of the declarant's declaration to any registry established by the  
21 department under s. 154.015.

22 **SECTION 7.** 154.13 (2) (intro.) of the statutes is amended to read:

23 154.13 (2) (intro.) If a declarant or authorized individual has filed the  
24 declarant's declaration as specified in sub. (1) or submitted a copy of the declaration

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1 under sub. (1m), the following persons may have access to the declaration without  
2 first obtaining consent from the declarant:

3 **SECTION 8.** 154.13 (3) of the statutes is amended to read:

4 154.13 (3) Failure to file a declaration under sub. (1) or submit a declaration  
5 under sub. (1m) creates no presumption about the intent of an individual with regard  
6 to his or her health care decisions.

7 **SECTION 9.** 155.30 (3) (intro.) of the statutes is amended to read:

8 155.30 (3) (intro.) The department shall prepare and provide copies of a power  
9 of attorney for health care instrument and accompanying information for  
10 distribution in quantities to health care professionals, hospitals, nursing homes,  
11 multipurpose senior centers, county clerks, and local bar associations and  
12 individually to private persons. The department shall include, in information  
13 accompanying the copy of the instrument, at least the statutory definitions of terms  
14 used in the instrument, statutory restrictions on who may be witnesses to a valid  
15 instrument, a statement explaining that valid witnesses acting in good faith are  
16 statutorily immune from civil or criminal liability, and a statement explaining that  
17 an instrument may, but need not, be filed with the register in probate of the  
18 principal's county of residence or submitted to any registry established by the  
19 department under s. 154.015. The department may charge a reasonable fee for the  
20 cost of preparation and distribution. The power of attorney for health care  
21 instrument distributed by the department shall include the notice specified in sub.  
22 (1) and shall be in the following form:

23 **SECTION 10.** 155.65 (title) of the statutes is amended to read:

24 **155.65 (title) Filing or registering power of attorney instrument.**

25 **SECTION 11.** 155.65 (1) of the statutes is amended to read:

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1           155.65 (1) A principal or a principal’s health care agent may, for a fee, file the  
2           principal’s power of attorney for health care instrument, for safekeeping, with the  
3           register in probate of the county in which the principal resides. If the department  
4           establishes an advance directive registry under s. 154.015 and determines under s.  
5           154.015 (2) that incorporation of advance directives previously filed with the register  
6           in probate is appropriate, upon request from the department, the register in probate  
7           shall transfer a copy of any power of attorney for health care instrument filed under  
8           this subsection to the department and may not accept for filing any power of attorney  
9           health care instrument after the request from the department is received.

10           **SECTION 12.** 155.65 (1m) of the statutes is created to read:

11           155.65 (1m) A principal or a principal’s health care agent may submit a copy  
12           of the principal’s power of attorney for health care instrument to any registry  
13           established by the department under s. 154.015.

14           **SECTION 13.** 155.65 (2) (intro.) of the statutes is amended to read:

15           155.65 (2) (intro.) If a principal or health care agent has filed the principal’s  
16           power of attorney for health care instrument as specified in sub. (1) or submitted a  
17           copy of the power of attorney for health care instrument in sub. (1m), the following  
18           persons may have access to the instrument without first obtaining consent from the  
19           principal:

20           **SECTION 14.** 155.65 (3) of the statutes is amended to read:

21           155.65 (3) Failure to file a power of attorney for health care instrument under  
22           sub. (1) or to submit a power of attorney for health care instrument under sub. (1m)  
23           creates no presumption about the intent of an individual with regard to his or her  
24           health care decisions.

25           (END)