

1 **AN ACT** *to amend* 155.20 (2) (a), 155.20 (2) (b) and 155.30 (3); and *to create* 155.25
2 of the statutes; **relating to:** authorization of an agent under a power of attorney for
3 health care to consent to the admission of a principal with dementia to an inpatient
4 facility.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council's Special Committee on Legal Interventions for Persons with Alzheimer's Disease and Related Dementias.

Currently, any person at least 18 years of age and of sound mind may voluntarily execute a power of attorney for health care. If the person who executes the power of attorney for health care (the "principal") is later found, by 2 physicians, or by one physician and one licensed psychologist, to be incapacitated, the power of attorney for health care instrument is activated and the person's designated health care agent (the "agent") may make health care decisions on behalf of the principal, as specified in the power of attorney for health care instrument. "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.

Currently, under ch. 155, an agent under a power of attorney for health care may not consent to the admission of the principal on an inpatient basis to any of the following facilities:

- An institution for mental diseases.
- An intermediate care facility for persons with an intellectual disability.
- Any of the institutions operated by DHS for the purpose of providing diagnosis, care or treatment for mental or emotional disturbance, developmental disability, alcoholism or drug dependency including, but not limited to, mental health institutes.
- Any publicly or privately operated facility or unit thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient

treatment programs, community support programs, and rehabilitation programs.

Currently, a principal may be admitted on an inpatient basis to these facilities only under the applicable requirements of ch. 51 or 55, stats.

The draft creates an exception to this limitation on an agent's power by allowing an agent to consent to the admission of a principal, for purposes of care or treatment of dementia, or any condition or behavior substantially related to dementia, to certain facilities which are specified in a separate bill draft prepared for the Special Committee. That draft, WLC: 0061/1, relating to inpatient psychiatric treatment of, and involuntary administration of psychotropic medication to, individuals with dementia, creates s. 55.55, stats. That section would require each county to designate at least one "inpatient facility", which means a public or private facility that has been designated by a county department as qualified and equipped to provide, and competent in providing, diagnosis, evaluation, and treatment of dementia and medical, psychiatric, and behavioral care to individuals with dementia, and that has a unit or part of a unit that provides a therapeutic environment that is appropriate for, and designed to prevent harm to, individuals with dementia. Medical facilities need not be located on premises.

The draft provides that an agent may consent to an admission to an inpatient facility only if the power of attorney for health care (POAHC) instrument specifically authorizes the agent to do so. The agent must consult with appropriate care providers and consider the principal's prognosis and acceptable alternatives for care and treatment of dementia, or any condition or behavior substantially related to dementia. In addition, an agent may not consent to admission to an inpatient facility unless a qualified representative of the facility has:

- Advised the principal of the prognosis and acceptable alternatives for care and treatment of dementia, or any condition or behavior substantially related to dementia; the principal's right to the least restrictive form of care or treatment appropriate to his or her needs; and the responsibility of the facility to provide the principal with this care or treatment.
- Advised the principal both orally and in writing of the right of a principal to revoke his or her POAHC under ch. 155.
- Certified in writing that reasonable efforts have been made to address or accommodate the behaviors or conditions for which an inpatient admission is sought, and that the proposed admission will allow the principal to receive care or treatment more appropriate to the principal's needs.

A “qualified representative of the facility” means the director or manager of the facility; an individual under the supervision of the director or manager to whom he or she has delegated his or her responsibilities under the draft; a physician identified by the facility as providing or having provided medical services to the principal when he or she is residing at the facility; or a physician’s assistant, nurse practitioner, or registered nurse under the physician’s supervision.

In most cases, the draft will apply only to powers of attorney for health care executed after the draft becomes law, because a specific authorization in the instrument is required in order for the provision to apply. However, the draft provides that a specific reference to the statutory section is not required for an authorization to be included in a power of attorney for health care instrument. As a result, it is possible that some pre-existing power of attorney for health care instruments may contain language adequate to provide the required authorization. In those cases, the authorization of an agent to consent to the admission of the principal to an inpatient facility will apply on the date that the draft becomes law.

The draft includes amendments to the power of attorney for health care form provided in ch. 155, stats., to reflect the changes made in the draft.

1 **SECTION 1.** 155.20 (2) (a) of the statutes is amended to read:

2 155.20 (2) (a) A health care agent may not consent to admission of the principal on an
3 inpatient basis to any of the following, except as provided in s. 155.25 (3):

4 **SECTION 2.** 155.20 (2) (b) of the statutes is amended to read:

5 155.20 (2) (b) A principal may be admitted or committed on an inpatient basis to a
6 facility specified in par. (a) 1. to 4. only as provided in s. 155.25 (3) or under the applicable
7 requirements of ch. 51 or 55.

8 **SECTION 3.** 155.25 of the statutes is created to read:

9 **155.25 Admission to inpatient facility for care and treatment of dementia.** In this
10 section:

11 (a) “Dementia” means deterioration or loss of intellectual faculties, reasoning power,
12 memory, and will due to organic brain disease characterized by confusion, disorientation,

1 apathy, or stupor of varying degrees that is not capable of being reversed and from which
2 recovery is impossible. Dementia includes, but is not limited to, Alzheimer's disease.

NOTE: This definition of "dementia" is the same as the definition for
 "irreversible dementia" used in s. Ins 3.46 (3) (i), Wis. adm. code,
 pertaining to standards for certain insurance coverage.

3 (b) "Qualified representative of the facility" means the director or manager of a facility
4 to which admission of the principal on an inpatient basis is sought under sub. (3); an individual
5 under the supervision of the director or manager to whom he or she has delegated his or her
6 responsibilities under this section; a physician identified by the facility as providing or having
7 provided medical services to the principal when he or she is residing at the facility; or a
8 physician's assistant, nurse practitioner, or registered nurse under the supervision of a
9 physician identified by the facility as providing or having provided medical services to the
10 principal when he or she is residing at the facility.

11 (2) This section shall apply to a power of attorney for health care only if specifically
12 so authorized in the power of attorney for health care instrument. Specific reference to this
13 section is not required in the power of attorney for health care instrument in order for the
14 instrument to contain an authorization under this subsection.

15 (3) If the principal has been diagnosed with dementia, a health care agent acting under
16 a power of attorney for health care instrument containing the required authorization under sub.
17 (2) may, for purposes of care or treatment of dementia, or any condition or behavior
18 substantially related to dementia, consent to admission of the principal on an inpatient basis
19 to a public or private facility that has been designated by a county department as an inpatient
20 facility under s. 55.55, stats. [as created by WLC: 0061/1]. This subsection shall apply to a
21 decision made by a health care agent only after consultation with appropriate care providers
22 and consideration of the principal's prognosis and acceptable alternatives for care and

1 treatment of dementia, or any condition or behavior substantially related to dementia. An
2 agent may not consent to an admission under this subsection unless a qualified representative
3 of the facility has done all of the following:

4 (a) Advised the principal of all of the following:

5 1. His or her prognosis and acceptable alternatives for care and treatment of dementia,
6 or any condition or behavior substantially related to dementia.

7 2. His or her right to the least restrictive form of care or treatment appropriate to his or
8 her needs.

9 3. The responsibility of the facility to provide the principal with the least restrictive form
10 of care or treatment appropriate to his or her needs.

11 (b) Advised the principal both orally and in writing of the rights of a principal to revoke
12 his or her power of attorney for health care under ch. 155.

13 (c) Certified in writing that reasonable efforts have been made to address or
14 accommodate the behaviors or conditions for which care or treatment in the facility is sought
15 and that the proposed admission will allow the principal to receive care or treatment more
16 appropriate to the principal's needs.

17 **SECTION 4.** 155.30 (3) of the statutes is amended to read:

18 155.30 (3) The department shall prepare and provide copies of a power of attorney for
19 health care instrument and accompanying information for distribution in quantities to health
20 care professionals, hospitals, nursing homes, multipurpose senior centers, county clerks, and
21 local bar associations and individually to private persons. The department shall include, in
22 information accompanying the copy of the instrument, at least the statutory definitions of
23 terms used in the instrument, statutory restrictions on who may be witnesses to a valid
24 instrument, a statement explaining that valid witnesses acting in good faith are statutorily

1 immune from civil or criminal liability and a statement explaining that an instrument may, but
2 need not, be filed with the register in probate of the principal's county of residence. The
3 department may charge a reasonable fee for the cost of preparation and distribution. The
4 power of attorney for health care instrument distributed by the department shall include the
5 notice specified in sub. (1) and shall be in the following form:

6 POWER OF ATTORNEY FOR HEALTH CARE

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

8 CREATION OF POWER OF ATTORNEY

9 FOR HEALTH CARE

10 I,.... (print name, address and date of birth), being of sound mind, intend by this
11 document to create a power of attorney for health care. My executing this power of attorney
12 for health care is voluntary. Despite the creation of this power of attorney for health care, I
13 expect to be fully informed about and allowed to participate in any health care decision for
14 me, to the extent that I am able. For the purposes of this document, "health care decision"
15 means an informed decision to accept, maintain, discontinue or refuse any care, treatment,
16 service or procedure to maintain, diagnose or treat my physical or mental condition.

17 In addition, I may, by this document, specify my wishes with respect to making an
18 anatomical gift upon my death.

19 DESIGNATION OF HEALTH CARE AGENT

20 If I am no longer able to make health care decisions for myself, due to my incapacity,
21 I hereby designate.... (print name, address and telephone number) to be my health care agent
22 for the purpose of making health care decisions on my behalf. If he or she is ever unable or
23 unwilling to do so, I hereby designate.... (print name, address and telephone number) to be
24 my alternate health care agent for the purpose of making health care decisions on my behalf.

1 Neither my health care agent nor my alternate health care agent whom I have designated is
2 my health care provider, an employee of my health care provider, an employee of a health care
3 facility in which I am a patient or a spouse of any of those persons, unless he or she is also my
4 relative. For purposes of this document, "incapacity" exists if 2 physicians or a physician and
5 a psychologist who have personally examined me sign a statement that specifically expresses
6 their opinion that I have a condition that means that I am unable to receive and evaluate
7 information effectively or to communicate decisions to such an extent that I lack the capacity
8 to manage my health care decisions. A copy of that statement must be attached to this
9 document.

10 GENERAL STATEMENT OF AUTHORITY GRANTED

11 Unless I have specified otherwise in this document, if I ever have incapacity I instruct
12 my health care provider to obtain the health care decision of my health care agent, if I need
13 treatment, for all of my health care and treatment. I have discussed my desires thoroughly with
14 my health care agent and believe that he or she understands my philosophy regarding the
15 health care decisions I would make if I were able. I desire that my wishes be carried out
16 through the authority given to my health care agent under this document.

17 If I am unable, due to my incapacity, to make a health care decision, my health care agent
18 is instructed to make the health care decision for me, but my health care agent should try to
19 discuss with me any specific proposed health care if I am able to communicate in any manner,
20 including by blinking my eyes. If this communication cannot be made, my health care agent
21 shall base his or her decision on any health care choices that I have expressed prior to the time
22 of the decision. If I have not expressed a health care choice about the health care in question
23 and communication cannot be made, my health care agent shall base his or her health care
24 decision on what he or she believes to be in my best interest.

1 LIMITATIONS ON MENTAL HEALTH TREATMENT

2 My health care agent may not admit or commit me on an inpatient basis to an institution
3 for mental diseases, an intermediate care facility for persons with an intellectual disability, a
4 state treatment facility or a treatment facility, except as provided in this paragraph. If I have
5 checked "Yes" to the following, then, if I am diagnosed with dementia, my health care agent
6 may, for purposes of care or treatment of dementia, or any condition or behavior substantially
7 related to dementia, consent to my admission on an inpatient basis to a public or private facility
8 that has been designated by a county department as qualified and equipped to provide, and
9 competent in providing, diagnosis, evaluation, and treatment of dementia and medical,
10 psychiatric, and behavioral care to individuals with dementia. My health care agent may not
11 consent to my admission to the facility until after he or she has consulted with appropriate care
12 providers and considered my prognosis and acceptable alternatives for my care or treatment.
13 My health care agent may not consent to my admission to the facility unless a qualified
14 representative of the facility has advised me of my prognosis and acceptable alternatives for
15 care and treatment of dementia, or any condition or behavior substantially related to dementia;
16 my right to the least restrictive form of care or treatment appropriate to my needs; and the
17 responsibility of the facility to provide me with this care or treatment. In addition, my health
18 care agent may not consent to my admission to the facility unless a qualified representative
19 of the facility has advised me both orally and in writing of my right to revoke this power of
20 attorney for health care under ch. 155. In addition, my health care agent may not consent to
21 my admission to the facility unless a qualified representative of the facility has certified in
22 writing that reasonable efforts have been made to address or accommodate the behaviors or
23 conditions for which care or treatment in the facility is sought, and that the proposed admission
24 will allow me to receive care or treatment more appropriate to my needs.

1 Admission to an inpatient facility qualified and equipped to provide care and treatment
2 of dementia? Yes? No?

3 If I have checked “No” immediately above, or if I have not checked either “Yes” or “No”
4 immediately above, my health care agent may not consent to my admission on an inpatient
5 basis to the facility.

6 My health care agent may not consent to experimental mental health research or
7 psychosurgery, electroconvulsive treatment or drastic mental health treatment procedures for
8 me.

9 ADMISSION TO NURSING HOMES OR
10 COMMUNITY–BASED RESIDENTIAL FACILITIES

11 My health care agent may admit me to a nursing home or community–based residential
12 facility for short–term stays for recuperative care or respite care.

13 If I have checked “Yes” to the following, my health care agent may admit me for a
14 purpose other than recuperative care or respite care, but if I have checked “No” to the
15 following, my health care agent may not so admit me:

16 1. A nursing home — Yes.... No....

17 2. A community–based residential facility — Yes.... No....

18 If I have not checked either “Yes” or “No” immediately above, my health care agent may
19 admit me only for short–term stays for recuperative care or respite care.

20 PROVISION OF A FEEDING TUBE

21 If I have checked “Yes” to the following, my health care agent may have a feeding tube
22 withheld or withdrawn from me, unless my physician has advised that, in his or her
23 professional judgment, this will cause me pain or will reduce my comfort. If I have checked

1 “No” to the following, my health care agent may not have a feeding tube withheld or
2 withdrawn from me.

3 My health care agent may not have orally ingested nutrition or hydration withheld or
4 withdrawn from me unless provision of the nutrition or hydration is medically
5 contraindicated.

6 Withhold or withdraw a feeding tube — Yes.... No....

7 If I have not checked either “Yes” or “No” immediately above, my health care agent may
8 not have a feeding tube withdrawn from me.

9 HEALTH CARE DECISIONS FOR
10 PREGNANT WOMEN

11 If I have checked “Yes” to the following, my health care agent may make health care
12 decisions for me even if my agent knows I am pregnant. If I have checked “No” to the
13 following, my health care agent may not make health care decisions for me if my health care
14 agent knows I am pregnant.

15 Health care decision if I am pregnant — Yes.... No....

16 If I have not checked either “Yes” or “No” immediately above, my health care agent may
17 not make health care decisions for me if my health care agent knows I am pregnant.

18 STATEMENT OF DESIRES,
19 SPECIAL PROVISIONS OR LIMITATIONS

20 In exercising authority under this document, my health care agent shall act consistently
21 with my following stated desires, if any, and is subject to any special provisions or limitations
22 that I specify. The following are specific desires, provisions or limitations that I wish to state
23 (add more items if needed):

24 1) –

1 2) –

2 3) –

3 INSPECTION AND DISCLOSURE OF
4 INFORMATION RELATING TO MY PHYSICAL
5 OR MENTAL HEALTH

6 Subject to any limitations in this document, my health care agent has the authority to
7 do all of the following:

8 (a) Request, review and receive any information, oral or written, regarding my physical
9 or mental health, including medical and hospital records.

10 (b) Execute on my behalf any documents that may be required in order to obtain this
11 information.

12 (c) Consent to the disclosure of this information.

13 (The principal and the witnesses all must sign the document at the same time.)

14 SIGNATURE OF PRINCIPAL

15 (person creating the power of attorney for health care)

16 Signature.... Date....

17 (The signing of this document by the principal revokes all previous powers of attorney
18 for health care documents.)

19 STATEMENT OF WITNESSES

20 I know the principal personally and I believe him or her to be of sound mind and at least
21 18 years of age. I believe that his or her execution of this power of attorney for health care
22 is voluntary. I am at least 18 years of age, am not related to the principal by blood, marriage,
23 or adoption, am not the domestic partner under ch. 770 of the principal, and am not directly
24 financially responsible for the principal's health care. I am not a health care provider who is

1 serving the principal at this time, an employee of the health care provider, other than a chaplain
2 or a social worker, or an employee, other than a chaplain or a social worker, of an inpatient
3 health care facility in which the declarant is a patient. I am not the principal's health care agent.
4 To the best of my knowledge, I am not entitled to and do not have a claim on the principal's
5 estate.

6 Witness No. 1:

7 (print) Name.... Date....

8 Address....

9 Signature....

10 Witness No. 2:

11 (print) Name.... Date....

12 Address....

13 Signature....

14 STATEMENT OF HEALTH CARE AGENT AND

15 ALTERNATE HEALTH CARE AGENT

16 I understand that.... (name of principal) has designated me to be his or her health care
17 agent or alternate health care agent if he or she is ever found to have incapacity and unable
18 to make health care decisions himself or herself. (name of principal) has discussed his or
19 her desires regarding health care decisions with me.

20 Agent's signature....

21 Address....

22 Alternate's signature....

23 Address....

1 Failure to execute a power of attorney for health care document under chapter 155 of
2 the Wisconsin Statutes creates no presumption about the intent of any individual with regard
3 to his or her health care decisions.

4 This power of attorney for health care is executed as provided in chapter 155 of the
5 Wisconsin Statutes.

6 ANATOMICAL GIFTS (optional)

7 Upon my death:

8 I wish to donate only the following organs or parts: (specify the organs or parts).

9 I wish to donate any needed organ or part.

10 I wish to donate my body for anatomical study if needed.

11 I refuse to make an anatomical gift. (If this revokes a prior commitment that I have
12 made to make an anatomical gift to a designated donee, I will attempt to notify the donee to
13 which or to whom I agreed to donate.)

14 Failing to check any of the lines immediately above creates no presumption about my
15 desire to make or refuse to make an anatomical gift.

16 Signature.... Date....

17 (END)