

## **ARE OUT-OF-STATE POWERS OF ATTORNEY FOR HEALTH CARE EFFECTIVE IN WISCONSIN?**

### **CAN THEY BE USED FOR NURSING HOME ADMISSION?**

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Section 155.70 (10) of Wisconsin Statutes answers the question of whether Powers of Attorney for Health Care created under the laws of other states are valid in Wisconsin. Section 155.70 (10) clarifies what is required for out-of-state Powers of Attorney for Health Care (POA-HC) to be valid in Wisconsin.

The law recognizes a POA-HC created in another state, as long as the POA-HC is valid under the law of the state in which it was executed. The law requires, however, that the authority granted to the health care agent comply with Wisconsin law.

The statute also extends the duties and immunities that apply to valid provisions in Wisconsin documents to provisions in out-of-state documents, as long as the provisions are valid and enforceable in Wisconsin.

Section 155.70 (10) states:

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 Wisconsin law.

In other words, if the document was validly executed under the law of another state, it is valid in Wisconsin. For example, another state might only require one witness, while Wisconsin law requires two. A document from that other state with only one witness would be valid in Wisconsin, even though Wisconsin law requires two witnesses.

However, the types of decisions that the health care agent can make in Wisconsin are covered by Wisconsin law, regardless of what the law of the other state authorizes. For example, Wisconsin law requires that specific authorization be included in the POA-HC document to allow the health care agent to admit the principal to a nursing home or community-based residential facility (CBRF) for long-term care. An out-of-state POA-HC that does not specifically address admission to a nursing home or CBRF would not be effective in Wisconsin to allow the agent to admit the principal to a nursing home or CBRF for long-term care. The out-of-state POA-HC would be valid for other health care decisions, as long as those decisions were authorized by Wisconsin law.



Wisconsin law permits a health care agent to admit a principal to a nursing home or CBRF for up to three months for recuperative care if the principal is admitted directly from a hospital inpatient unit, unless the hospital admission was for psychiatric care. Wisconsin law also permits an agent to admit a principal to a nursing home or a CBRF to provide a temporary (30 day) placement to give the agent a respite when the agent and principal live together. Thus, an agent acting under an out-of-state POA-HC can admit their principal to a Wisconsin facility for these purposes and time periods even if the document does not specifically authorize the agent to do so.

For any other kind of admission, that is, an admission for longer than these periods or for long-term care, the agent under a valid POA-HC has no authority to consent to admission unless the document “specifically so authorizes.” See Section 155.20 (2) (c) 2. c.

Therefore, one needs to determine whether an out-of-state document contains language that specifically authorizes admission to a nursing home (or CBRF) for a longer period of time or for long-term care. The statute does not clarify what is meant by “specific authorization.” It is clear, however, that the document must include language that clearly indicates that the principal contemplated the use of the document for nursing home (or CBRF) admission.

Examples of what the Wisconsin Guardianship Support Center believes to be acceptable language under Wisconsin law include:

- My agent may admit me to a rest home.
- My agent may admit me to a nursing home or community-based residential facility for any length of time for any purpose.

Examples of what the Wisconsin Guardianship Support Center believes to be unacceptable language under Wisconsin law include:

- My agent may make any health care decision for me.
- My agent may contract for any health care services for me.
- My agent can do anything I could do.

Nursing homes or CBRF with questions about the authority granted under an out-of-state POA-HC should seek the advice of their own legal counsel and of the Division of Quality Assurance. These examples do not constitute legal advice to readers and are not assurances or guarantees that state surveyors will consider a document sufficient.



QUESTIONS? Call the Wisconsin Guardianship Support Center at 1-855-409-9410 or email at [guardian@gwaar.org](mailto:guardian@gwaar.org).

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