

## REQUIREMENTS FOR A VALID POWER OF ATTORNEY FOR HEALTH CARE

05/2011, Reviewed & Updated 12/2014; 07/2017

In order to be valid, Wisconsin<sup>1</sup> Powers of Attorney for Health Care must follow the requirements set forth in Chapter 155 of Wisconsin Statutes. These documents must:

- A. Be in writing.<sup>2</sup>
- B. Be voluntarily executed<sup>3</sup> by an individual who is 18 or older and who is “of sound mind.”<sup>4</sup>
- C. Be dated and signed by the principal (or by someone else who is at least 18 at the express direction and in the presence of the principal).<sup>5</sup>
  - If the state form is used, the date on the top of page 2 should be the same date that the principal signed.
- D. Be signed by the principal in the presence of two disinterested<sup>6</sup> witnesses.<sup>7</sup>
  - The dates the witnesses sign must be the same date that the principal signed.

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<sup>1</sup> Documents from other states are subject to different requirements.

<sup>2</sup> Section 155.10 (1) (a) of Wisconsin Statutes.

<sup>3</sup> Section 155.10 (1) (d) of Wisconsin Statutes.

<sup>4</sup> Section 155.05 (1) of Wisconsin Statutes. The statute does not define the term “of sound mind.” Commonly, the standard for testamentary capacity is used to determine soundness of mind.

<sup>5</sup> Section 155.10 (1) (b) of Wisconsin Statutes.

<sup>6</sup> A witness must be at least 18. A witness at the time of execution cannot be: a) related to the principal by blood, marriage or adoption; b) have knowledge that she or he is entitled to or has a claim on any portion of the principal’s estate; c) be directly financially responsible for the principal’s health care; d) be a “health care provider” serving the principal at the time of execution, or an employee of the “provider,” other than a chaplain or social worker; e) the principal’s health care agent; f) an employee, other than a chaplain or social worker, of an inpatient “health care facility” in which the principal is a patient. Section 155.10 (2) of Wisconsin Statutes.

<sup>7</sup> Section 155.10 (1) (c) of Wisconsin Statutes.



- E. Include the exact notice provisions contained in the state form<sup>8</sup> or a certificate signed by the principal's lawyer stating: "I am a lawyer authorized to practice law in Wisconsin. I have advised my client concerning his or her rights in connection with this Power of Attorney for Health Care and the applicable law."<sup>9</sup>
- F. Include specific authorization for long-term nursing home and/or CBRF admission if the principal wishes the agent to have these powers.<sup>10</sup>
- Even without this authorization, the agent has the authority to admit the principal for certain short-term stays.<sup>11</sup>
  - Without this authorization, a guardianship and protective placement order will need to be obtained if long-term placement is needed.
- G. Include authorization for withholding or withdrawing tube feedings if the principal wishes the agent to have these powers.<sup>12</sup>
- H. Include authorization for the agent to make health care decisions if the agent knows the principal is pregnant, if the principal wishes the agent to have this power.<sup>13</sup>

**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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<sup>8</sup> Section 155.30 (1) of Wisconsin Statutes.

<sup>9</sup> Section 155.30 (2) of Wisconsin Statutes.

<sup>10</sup> A health care agent may consent to the admission of a principal to a nursing home or a CBRF for purposes other than the short-term purposes mentioned in footnote 12 below "if the Power of Attorney for Health Care instrument specifically so authorizes and if the principal is not diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission." Section 155.20 (2) (c) 2. c. of Wisconsin Statutes.

<sup>11</sup> A health care agent may consent to the admission of a principal to a nursing home for recuperative care for a period not to exceed 3 months, if the principal is admitted directly from a hospital inpatient unit, unless the hospital admission was for psychiatric care. Section 155.20 (2) (c) 2. a. A health care agent may consent to the admission of a principal to a nursing home or CBRF, if the principal lives with the agent, as a temporary placement not to exceed 30 days, in order to provide the agent with a vacation or to release the agent for a family emergency. Section 155.20 (2) (c) 2. b. of Wisconsin Statutes.

<sup>12</sup> Section 155.20 (4) of Wisconsin Statutes.

<sup>13</sup> Section 155.20 (6) of Wisconsin Statutes.

