

## Responsibilities of a Health Care Agent: Wisconsin Power of Attorney for Health Care

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### I. Introduction

A friend or loved one (the **principal**) has chosen you to serve as their health care **agent** under a Power of Attorney for Health Care (POA-HC). By agreeing to serve, you've taken on an important role. If the principal ever becomes unable to make their own health care decisions, you step in to speak and act on their behalf. They chose you because they trust you to carry out their health care wishes.

Many people think family members, like spouses or adult children, can automatically make health care decisions for each other. For the most part, that's not the case in Wisconsin.<sup>1</sup> Only a legally authorized representative – either an agent named in a valid POA-HC or a court-appointed guardian of the person – can make medical decisions for another adult. Your role as health care agent is defined in [Chapter 155](#) of the Wisconsin Statutes. This guide walks you through your duties and how to carry them out effectively.

### II. When does an agent's authority to make decisions begin?

Most POA-HC documents are activated (go into effect) when two physicians or one physician and one advanced practice clinician (a psychologist, a physician assistant, or a nurse practitioner) personally examine the principal and sign a statement saying the principal is incapacitated. "Incapacitated" means that the person can't effectively understand or communicate decisions about their health care. See [Wis. Stat. § 155.01\(08\)](#). This statement of incapacity must be attached to the POA-HC document or stored with it in the principal's electronic medical record.

Some POA-HC documents provide for a different method of activation. For example, an agent may have authority to make medical decisions on behalf of the principal when the principal has been determined incapacitated by only one physician. A POA-HC can also be drafted so it is active immediately, although the desires of a principal without incapacity will always supersede the effect of the Power of Attorney document. Check your principal's document to determine when your authority to make decisions begins.

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<sup>1</sup> WI allows next-of-kin decision-making in limited circumstances, primarily for admissions to hospice and admissions to post-inpatient rehab or long-term care. For more information about the latter, see the GSC's [Patient Representative FAQ](#).

### III. What types of decisions may an agent make?

As an agent, you may only make “health care decisions.” That means informed decisions accepting, maintaining, diagnosing, or treating the principal’s physical or mental condition. Depending on the exact language in the document, this includes choosing medical professionals and care facilities; consenting to or refusing surgery, medication, or therapies; and making certain end-of-life decisions if the POA-HC gives that authority. Keep in mind your job isn’t limited to end-of-life decisions. If the principal has a long-term illness, disability, or mental health condition, you may be helping make decisions for a long time.

**Note:** you do not have authority to decide non-medical issues, such as who may visit the principal at a care facility, whether the principal may smoke or what they must eat unless it is directly tied to a health care decision. For example, instructions could be given for the individual not to eat after a certain time due to fasting lab work but could not be given to restrict types of food in general. An incapacity to make health care decisions does not mean the individual has legally lost other decision-making abilities; it simply means that the individual is not capable of informed consent for health care.

### IV. What standard should an agent use to make health care decisions?

As agent, you must act in good faith consistently with the wishes of the principal. These may be written in the POA-HC or expressed directly to you at any time – even after they become incapacitated. You may not base medical decisions on your own personal religious or moral beliefs.

The law provides specific guidance on how you make medical decisions on behalf of a principal, as follows:

- **Ask the principal.** Determine what the principal’s current wishes are regarding treatment, if the principal can express those wishes. You are obligated to follow the treatment wishes of the principal as expressed at any time, *even after the principal has been determined incapacitated*. This is true even if the principal can only express their wishes by nodding their head or blinking their eyes.
- **Rely on past instructions.** If the principal is currently unable to express their wishes, you may rely on the principal’s previously expressed treatment wishes. These wishes may be contained in the POA-HC itself or may have been expressed verbally to you or other family and friends.
- **Use your best judgment.** If the principal has never expressed their wishes regarding the treatment and is currently unable to express those wishes, you may make the medical decision based on what you feel would be in the principal’s best interests. You should consider the principal’s values and beliefs when making this decision.

**Important!** If you haven’t talked to the principal yet about their wishes, do it now. Ask about:

- Their preferences for treatment, procedures, or medications
- Providers and hospitals or facilities they prefer
- Any values or beliefs that guide medical care
- Their wishes for end-of-life care
- Whether they've completed a Living Will/Declaration to Health Care Professionals (if they've completed one, obtain a copy of it, and review it with them)

If they can't talk with you about these topics, ask family or friends who may have had those conversations with them.

V. Are there medical decisions an agent cannot ever make, under any circumstances?

Yes. Under Wisconsin law, you may not:

- Consent to the admission of the principal to a mental health institution or facility (including an inpatient psych unit in a hospital), an intermediate care facility for persons with an intellectual disability, a state treatment facility, or other kinds of mental health or AODA treatment facilities.
- Consent to experimental mental health research.
- Consent to procedures like psychosurgery, electroconvulsive treatment (ECT), or drastic mental health treatment procedures for the principal.

VI. Can an agent make every health care decision?

Not automatically. Certain health care decisions require specific permission in the POA-HC. These include:

- Admitting the principal to a community-based residential facility (CBRF) or nursing home for long-term placement.
- Consenting to the withholding or withdrawal of feeding tubes.
- Making health care decisions if you know the principal is pregnant.

If the principal has not given you specific authority to admit them a nursing home or CBRF for long-term placement, you will need to ask a court to appoint you as guardian and issue a protective placement order to have this authority.

VII. When can an agent admit the principal to a residential or long-term care facility?

As agent, you may admit to a nursing home or CBRF for *long-term care* only if the POA-HC gives you that specific authority and the principal is not diagnosed with a developmental disability or mental illness at the time of the proposed admission.

You may admit a principal to a nursing home or CBRF for a *short-term stay* (up to 3 months) for recuperative care, as long as they are being transferred directly from a hospital inpatient unit and the hospital admission wasn't for psychiatric care. This is allowed even if the POA-HC doesn't give you the authority to admit them for long-term care.

You may also admit the principal to a nursing home or CBRF for respite for up to 30 days if you live with the principal and need a temporary break due to a family emergency or vacation.

**However, none of this applies if the principal objects.** If they don't want to be admitted and you still believe it is necessary to place them in a nursing home or CBRF, you must go to court to obtain a guardianship and protective placement order.

## VIII. How can an agent best advocate for the principal in making medical decisions?

You play a key role in ensuring the principal receives proper care. Here are some ways to advocate effectively:

- **Research care options.** Before choosing a nursing home or other facility, explore all possible options to determine the best residential setting for them. Look for places that provide the least restrictions on their liberty and provide activities and amenities. Look into staff ratios, qualifications, and the facility's general reputation for quality and compassionate care.
- **Know their rights.** When admitted to a facility, you and the principal should receive a copy of their resident rights. Speak up if you believe their rights are being violated or if they are not receiving proper care.
- **Stay informed.** Visit or contact the principal regularly – ideally at least once a month. If their health is changing quickly, you should communicate with the principal and medical providers much more often.
- **Stay involved.** Attend meetings with the principal and the care team to discuss care options. Ensure that the principal's wishes are represented and respected when developing care plans. Ensure that the principal is not suffering abuse or neglect in their incapacitated state, whether they live at home or in a facility.
- **Give or deny consent.** Provide informed consent or refusal for all the principal's health care needs once the POA-HC becomes activated. Learn about the principal's conditions and diagnoses. Research possible treatment options, risks and benefits of various treatments, and side effects of medication. Review the principal's medical records and get second medical opinions if needed.
- **Release medical records.** Release medical information to appropriate professionals when needed.

## IX. When do my duties as agent end?

Your role as agent ends:

- When the principal dies,
- If the principal revokes the POA-HC,
- If a court removes you,
- If you resign or become unable to serve.

A principal may revoke a POA-HC at any time, even after incapacity, by doing any of the following:

- Destroying all the copies of the existing document.
- Signing and dating a written revocation.
- Orally revoking the document in the presence of two witnesses.
- Signing a new POA-HC.

If you are the principal's spouse or domestic partner and your marriage or domestic partnership ends (legal annulment, divorce, termination), your authority is automatically revoked unless the POA-HC says otherwise. If the POA-HC is revoked, you must notify all the principal's health care providers.

If you become **unwilling or unable to serve** because of death, disability or another reason, the alternate agent named in the POA-HC takes over. If there is no alternative agent, the principal will need a court appointed legal guardian.

## X. What Is the role of the alternate agent?

An alternate agent steps in **only** when the primary agent can't or won't serve. Having one person at a time serve as agent helps promote continuity of care for the principal through consistent and informed decision making and avoids family conflict, possibly resulting in guardianship. In temporary situations (like illness or travel), the alternate may act while you step aside. There's no formal procedure for making this switch, so it's a good idea to put it in writing.

## XI. What is the relationship between guardianship and a POA-HC?

Many people complete a POA-HC to avoid the need for guardianship. Still, family or others may seek guardianship of the person and/or estate anyway. For example, if a family member of the principal feels, rightly or wrongly, that the agent is not fulfilling their duties as the agent, the family member could file a petition to become the principal's guardian.

Guardianship might also be necessary when:

- The agent is unable or unwilling to act, and there are no alternates who are willing and able to act.

- The POA-HC doesn't grant authority for a needed decision, such as admission to a long-term care facility.
- The principal objects to any of the agent's decisions, even if the POA-HC gives the agent that power.

**Note** – being a health care agent does **not** give you control over the principal's finances. A separate financial POA is required. If the principal hasn't appointed one, a guardian may be needed to handle financial or other non-medical matters.

If a guardianship petition is filed, the court must appoint the agent as guardian unless it is not in the proposed ward's best interests. If the principal is adjudicated legally incompetent, the POA-HC remains valid unless the court revokes it. If the court does not revoke or limit the POA-HC, the POA-HC takes priority. The guardian may not make health care decisions that would be covered by the POA-HC unless the guardian is also the health care agent. The POA-HC will continue to guide those decisions.

## XII. What is my liability as health care agent?

You are **not** personally liable for the principal's medical costs, including the cost of a nursing home or other facility, *unless* you are the spouse of the principal. No health care agent may be charged with a crime or held civilly liable for making a decision in good faith under a POA-HC document. When you are signing legal documents, be sure to indicate you are signing as the agent.

If someone petitions the court to review the conduct of the agent, you could be directed by the court to act in accordance with the POA document, be required to report to court regarding your performance or the court could rescind your duties if it finds you have not been performing in accordance with the power of attorney document.

### QUESTIONS?

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

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