

Comparison of Wisconsin Power of Attorney for Health Care and Patient Representative Proposal

Power of Attorney for Health Care, Ch. 155, Wis. Stats.

Patient Representative as Proposed in SB 578/AB 598

What it is	Document signed by the individual designating an agent of their choice to make health care decisions for the individual.	Individual chosen by a hospital to consent to a patient's transfer to a post-inpatient care facility and make health care decisions and financial decisions related to the person's care at the facility.
When it becomes effective	When two physicians (or one physician and one advanced practice clinician – a nurse practitioner, physician assistant, or psychologist) personally examine the patient and sign statement that they are incapacitated (not able to make health care decisions). No requirement to provide notice of activation to the individual, although the individual has chosen their decision-maker in advance through the POA.	When two physicians (or one physician and one advanced practice clinician – a nurse practitioner, physician assistant, or psychologist) personally examine patient and sign statement that they are incapacitated (not able to make health care decisions or decisions relating to post-inpatient care). Patient representative must also sign a statement. Notice must be provided to county APS and corporation counsel. No requirement to provide notice to the patient.
Who makes decisions	Individual's choice. May not be a current health care provider or employee of provider/facility, or spouse of provider or health care employee, unless related to the individual. Individual may select one or more alternates to make decisions in the event their first choice is unable or unwilling to act.	A family member or close friend who is willing; individual's wishes are not considered and individual has no right to object. No provision to ensure hospital consults with others in the listed hierarchy. No provision regarding spouse as representative if divorce or legal separation is pending or finalized while acting as PR. No provision to prevent individuals with financial motives or history of abuse from being appointed as PR. No provision for alternates if chosen PR is later unable or unwilling to act.
Decision-making standard	Must follow wishes of individual as expressed in the document or at any time, even after activation. If wishes are not known, make decisions in the person's best interest.	Best interests of the individual. No requirement to make an attempt to discuss decisions with the individual or follow their wishes. If individual objects to admission to SNF/CBRF, individual may be admitted but facility must contact APS and review whether discharge is possible or pursue guardianship/protective placement.
Limits on authority	Agent may not make decisions about involuntary mental health treatment (including psychotropic medication). Agent may not make decisions over individual's objection.	Grants the same authority as a guardian of person. A guardian of person may typically consent to any voluntary or involuntary care and treatment in the person's best interest except for involuntary mental health treatment and psychotropic medications, which require a Ch. 51 or 55 order.

	Agent must have specific authority to: • Admit to long-term care (admissions from the community or post-inpatient care that will last more than three months) • Withdraw/withhold feeding tubes • Make any decisions for a pregnant patient • Any other limits the individual specified in the POA.	However, a guardian of person is required by statute to make a good-faith attempt to discuss proposed care with the individual prior to making a decision. This proposal includes no stated requirement that the PR make the same attempt to discuss or consider the patient's wishes. Ch. 54 does not include any statutory limitations on a guardian's ability to make end-of-life decisions and this proposal likewise makes no mention of whether the PR may make a decision to withdraw or withhold feeding tubes or other life-sustaining treatment.
When does authority end	Authority ends when: • Individual regains capacity; • Agent resigns; • POA is revoked; • Court removes agent. Note: there is no process in Ch. 155 for determining whether an individual has regained capacity; providers/facilities often determine their own policy on how many providers must sign.	Authority ends when: • Individual regains capacity; • Individual is discharged to non-facility setting; • Guardian is appointed; • Previously unidentified POA-HC is identified. Note: "Any person," including corporation counsel, APS, and the receiving facility may request redetermination of capacity. There is no requirement for periodic review of incapacity, no requirement that it be completed within a certain timeframe after the request is made, and no information on who must ensure a request for redetermination is completed. There is no remedy if the redetermination is not made. The bill is silent about whether a PR may resign.
Revocation	Individual may revoke at any time, even after incapacity.	Individual may request redetermination of incapacity or court review of PR's actions; however, individual may not revoke the PR's authority. Individual has no right to counsel or appointment of a guardian <i>ad litem</i> for any court review.
Court review/remedies	Interested persons may request that a court: • Determine validity of POA • Review agent's decisions and request that the POA document be followed • Remove agent and appoint authorize listed alternate(s) to act instead.	"Any person," including corporation counsel, APS, and the receiving facility may request that a court: • Order PR to act in the patient's best interests • Require PR to report to the court periodically • Require a financial accounting • Direct PR not to make certain decisions. While court may review whether PR is acting in accordance with known wishes, no option to require PR to make certain decisions or to remove PR.