

1 **AN ACT** *to amend* 155.20 (2) (a), 155.20 (2) (b), 155.20 (2) (c) 2. a., 155.20 (5) and
 2 155.40 (1); and *to create* 155.25 of the statutes; **relating to:** authorization of an
 3 agent under a power of attorney for health care to make certain decisions related to
 4 care and treatment of dementia.

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 to be incapacitated, the person’s designated health care agent (the “agent”) may make health care decisions on behalf of the principal.

The draft changes Wisconsin law dealing with powers of attorney for health care, as follows:

Admission to Nursing Home for Recuperative Care

Currently, 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.

This draft removes the exception for a hospital admission for psychiatric care, so that 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 any hospital inpatient unit.

Care and Treatment of Dementia

Currently, an agent must act in good faith consistently with the desires of the principal as expressed in the power of attorney for health care instrument, or as otherwise specifically directed by the principal to the health care agent *at any time*. Under this standard, a principal’s protest

to certain care or treatment, even if the principal has incapacity, can be interpreted as a specific direction to the principal that conflicts with the authority granted to the agent in the power of attorney for health care.

Currently, a power of attorney for health care may be revoked by the principal *at any time*.

This draft creates a new option for decisions regarding care and treatment of dementia, or any conditions or behaviors substantially related to dementia, made by an agent under a power of attorney for health care. The draft provides that—if the power of attorney for health care includes a specific authorization to that effect—with regard to any decision related to care or treatment of dementia, or any conditions or behaviors substantially related to dementia, a health care agent must act in good faith consistently with the desires of the principal as expressed in the power of attorney for health care instrument or as otherwise specifically directed by the principal to the health care agent *at a time when the principal does not have incapacity*. “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. The draft requires an agent acting under this provision to consult with appropriate care providers and consider the prognosis and acceptable alternatives for care and treatment of dementia, or any condition or behavior substantially related to dementia.

This draft also provides that if a power of attorney for health care instrument contains the authorization regarding care and treatment of dementia and related conditions and behaviors referred to above, the instrument may only be revoked by the principal *at a time when he or she does not have incapacity*.

Admission to Certain Inpatient Facilities

Currently, 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 any of these facilities only under the applicable requirements of ch. 51 or 55, stats.

This draft creates a new option for the admission of a principal to some of these facilities under certain circumstances. Under the draft, if the power of attorney for health care instrument specifically authorizes the agent to do so, a health care agent may, for purposes of care or treatment of dementia, or any condition or behavior substantially related to dementia, consent to admission of the principal on an inpatient basis to [an “inpatient facility” under WLC: 0017/3], provided that a physician of the facility submits a signed request and certifies in writing that, after reasonable efforts have been made in the principal’s current location to address or accommodate the behaviors or conditions for which an inpatient admission is sought, the proposed admission will allow the principal to receive care or treatment more appropriate to the principal’s needs. The draft requires an agent acting under this provision to consult with appropriate care providers and consider the prognosis and acceptable alternatives for care and treatment of dementia, or any condition or behavior substantially related to dementia.

COMMENT: In addition to the changes reflected here, and unless the committee determines otherwise, the next version of this draft, which will be prepared for the committee’s review, will include amendments to the power of attorney for health care form provided in s. 155.30, 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 (4):

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 (4) or under the applicable
7 requirements of ch. 51 or 55.

1 **SECTION 3.** 155.20 (2) (c) 2. a. of the statutes is amended to read:

2 155.20 (2) (c) 2. a. To a nursing home, for recuperative care for a period not to exceed
3 3 months, if the principal is admitted directly from a hospital inpatient unit, ~~unless the hospital~~
4 ~~admission was for psychiatric care.~~

COMMENT: In the above provision, which does not require a specific
 authorization in the instrument, should the change be applied only to
 powers of attorney for health care executed on or after the effective date
 of the act?

5 **SECTION 4.** 155.20 (5) of the statutes is amended to read:

6 155.20 (5) The health care agent shall act in good faith consistently with the desires of
7 the principal as expressed in the power of attorney for health care instrument or as otherwise
8 specifically directed by the principal to the health care agent at any time, except as provided
9 in s. 155.25 (3). The health care agent shall act in good faith consistently with any valid
10 declaration executed by the principal under subch. II of ch. 154, except that the provisions of
11 a principal's valid power of attorney for health care instrument supersede any directly
12 conflicting provisions of a valid declaration executed by the principal under subch. II of ch.
13 154. In the absence of a specific directive by the principal or if the principal's desires are
14 unknown, the health care agent shall, in good faith, act in the best interests of the principal in
15 exercising his or her authority.

16 **SECTION 5.** 155.25 of the statutes is created to read:

17 **155.25 Care and treatment of dementia. (1)** This section shall apply only to a
18 decision made by a health care agent after consultation with appropriate care providers
19 regarding the principal's prognosis and acceptable alternatives for care or treatment of
20 dementia, or any condition or behavior substantially related to dementia. Subsections (3) and
21 (4) shall apply only to a power of attorney for health care to the extent authorized in the power

1 of attorney for health care instrument by specific reference to this section or its provisions or
2 by description of the authority conferred.

3 (2) In this section, “dementia” means deterioration or loss of intellectual faculties,
4 reasoning power, memory, and will due to organic brain disease characterized by confusion,
5 disorientation, apathy, or stupor of varying degrees that is not capable of being reversed and
6 from which recovery is impossible. Dementia includes, but is not limited to, Alzheimer’s
7 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.

8 (3) With regard to any decision related to care or treatment of dementia, or any condition
9 or behavior substantially related to dementia, made by a health care agent acting under a power
10 of attorney for health care instrument containing the required authorization under sub. (1), the
11 health care agent shall act in good faith consistently with the desires of the principal as
12 expressed in the power of attorney for health care instrument or as otherwise specifically
13 directed by the principal to the health care agent at a time when the principal does not have
14 incapacity.

NOTE: “Incapacity,” for purposes of ch. 155, is defined in s. 155.01 (8),
stats., as follows:

155.01 (8) “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.

15 (4) A health care agent acting under an instrument containing the required authorization
16 under sub. (1) may, for purposes of care or treatment of dementia, or any condition or behavior
17 substantially related to dementia, consent to admission of the principal on an inpatient basis
18 to [an “inpatient facility” under WLC: 0017/3], provided that a physician of the facility

1 submits a signed request and certifies in writing that, after reasonable efforts have been made
2 in the principal's current location to address or accommodate the behaviors or conditions for
3 which behavioral or psychiatric evaluation, diagnosis, services, or treatment in an inpatient
4 facility is sought, the proposed admission will allow the principal to receive care or treatment
5 more appropriate to the principal's needs.

COMMENT: Is it appropriate to limit this provision to an "inpatient facility" as defined in SECTION 3 of WLC: 0017/3? Should the effective date of this provision be tied to passage of WLC: 0017/3?

6 (5) With respect to a power of attorney for health care under an instrument containing
7 an authorization under sub. (1) for the provisions of sub. (3) to apply in the circumstances
8 described in that subsection, the principal may only revoke his or her power of attorney for
9 health care and invalidate the power of attorney instrument only at a time when he or she does
10 not have incapacity.

11 **SECTION 6.** 155.40 (1) of the statutes is amended to read:

12 155.40 (1) A Except as specified in s. 155.25 (5), a principal may revoke his or her
13 power of attorney for health care and invalidate the power of attorney for health care
14 instrument at any time by doing any of the following:

15 (END)