



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1608/1
KP:ahe

2019 ASSEMBLY BILL 745

January 16, 2020 - Introduced by Representatives DOYLE, BILLINGS, EMERSON, ZAMARRIPA, POPE, ANDERSON, SPREITZER, CONSIDINE, STUBBS, SUBECK, VRUWINK, OHNSTAD and BOWEN, cosponsored by Senators SHILLING, L. TAYLOR and SCHACHTNER. Referred to Committee on Judiciary.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber and amend* 154.03 (1) (d) and 155.10 (2) (d); *to amend*
2 154.02 (1), 154.03 (1) (intro.), 154.03 (2), 154.07 (1) (b) 1., 154.07 (1) (b) 2., 155.10
3 (title), 155.10 (1) (c), 155.10 (2) (intro.) and 155.30 (3); and *to create* 154.03 (1)
4 (d) 4. and 155.10 (2) (d) 4. of the statutes; **relating to:** notarial officers taking
5 acknowledgments of health care powers of attorney and declarations to
6 physicians.

Analysis by the Legislative Reference Bureau

Under this bill, a power of attorney for health care instrument is validly executed if an individual who grants authority to a health care agent makes an acknowledgment of the instrument before an authorized notarial officer. Current law requires two witnesses in order to execute a health care power of attorney instrument. Additionally, the bill allows an authorized notarial officer who is employed by an individual's health care provider or inpatient health care facility to take an acknowledgement of the individual's health care power of attorney instrument if the notarial officer satisfies all of the following: 1) is not related by blood, marriage, adoption, or domestic partnership to the individual executing the instrument; 2) does not have knowledge of being entitled to a portion of the individual's estate; 3) is not directly financially responsible for the individual's health care; and 4) is not a finance or billing officer of the individual's inpatient health care facility. Under current law, a witness to a health care power of attorney

ASSEMBLY BILL 745

instrument must meet those requirements, and also may not be an employee, other than a chaplain or a social worker, of the individual's health care provider or inpatient health care facility. A health care power of attorney designates another person as an agent to make health care decisions on behalf of an individual who is incapable of making those decisions.

The bill also allows an individual to execute a declaration to physicians, also known as a living will, if the individual makes an acknowledgement of the declaration before an authorized notarial officer. Current law requires two witnesses in order to execute a declaration to physicians. The bill allows an authorized notarial officer who is employed by the individual's health care provider or inpatient health care facility to take an acknowledgement of the individual's declaration to physicians if the notarial officer satisfies all of the following: 1) is not related by blood, marriage, adoption, or domestic partnership to the individual executing the declaration; 2) does not have knowledge of being entitled to a portion of the individual's estate; 3) is not directly financially responsible for the individual's health care; and 4) is not a finance or billing officer of the individual's inpatient health care facility. Under current law, a witness to a declaration to physicians must meet those requirements, and also may not be an employee, other than a chaplain or a social worker, of the individual's health care provider or inpatient health care facility. If an individual has executed a declaration, and is certified to have a terminal condition or to be in a persistent vegetative state, in certain situations the declaration authorizes the withholding or withdrawal of life-sustaining procedures or of feeding tubes from the individual.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 154.02 (1) of the statutes is amended to read:

2 154.02 (1) "Declaration" means a written, ~~witnessed~~ document voluntarily
3 executed by the declarant and witnessed or acknowledged under s. 154.03 (1), but
4 is not limited in form or substance to that provided in s. 154.03 (2).

5 **SECTION 2.** 154.03 (1) (intro.) of the statutes is amended to read:

6 154.03 (1) (intro.) Any person of sound mind and 18 years of age or older may
7 at any time voluntarily execute a declaration, which shall take effect on the date of
8 execution, authorizing the withholding or withdrawal of life-sustaining procedures
9 or of feeding tubes when the person is in a terminal condition or is in a persistent

ASSEMBLY BILL 745

1 vegetative state. A declarant may not authorize the withholding or withdrawal of
2 any medication, life-sustaining procedure or feeding tube if the declarant's
3 attending physician advises that, in his or her professional judgment, the
4 withholding or withdrawal will cause the declarant pain or reduce the declarant's
5 comfort and the pain or discomfort cannot be alleviated through pain relief
6 measures. A declarant may not authorize the withholding or withdrawal of nutrition
7 or hydration that is administered or otherwise received by the declarant through
8 means other than a feeding tube unless the declarant's attending physician advises
9 that, in his or her professional judgment, the administration is medically
10 contraindicated. A declaration must be signed by the declarant in the presence of 2
11 witnesses or the declarant must make an acknowledgment of the declaration before
12 a notarial officer authorized under s. 706.07 to take acknowledgments. If the
13 declarant is physically unable to sign a declaration, the declaration must be signed
14 in the declarant's name by one of the witnesses witness or some other person at the
15 declarant's express direction and in his or her presence; such a proxy signing shall
16 either take place or be acknowledged by the declarant in the presence of 2 witnesses
17 or be acknowledged by the declarant before a notarial officer authorized under s.
18 706.07 to take acknowledgments. The declarant is responsible for notifying his or
19 her attending physician of the existence of the declaration. An attending physician
20 who is so notified shall make the declaration a part of the declarant's medical records.
21 No witness to the execution of the declaration or notarial officer who takes an
22 acknowledgment of the declaration may, at the time of the execution, be any of the
23 following:

24 **SECTION 3.** 154.03 (1) (d) of the statutes is renumbered 154.03 (1) (d) (intro.)
25 and amended to read:

ASSEMBLY BILL 745**SECTION 3**

1 154.03 (1) (d) (intro.) An individual who is ~~a~~ any of the following:

2 1. A health care provider, as defined in s. 155.01 (7), who is serving the
3 declarant at the time of execution, ~~an~~.

4 2. An employee, other than an employee authorized as a notarial officer under
5 s. 706.07, a chaplain, or a social worker, of ~~the a~~ health care provider ~~or an~~ who is
6 serving the declarant at the time of execution.

7 3. An employee, other than an employee authorized as a notarial officer under
8 s. 706.07, a chaplain, or a social worker, of an inpatient health care facility in which
9 the declarant is a patient.

10 **SECTION 4.** 154.03 (1) (d) 4. of the statutes is created to read:

11 154.03 (1) (d) 4. A finance or billing officer of an inpatient health care facility
12 in which the declarant is a patient.

13 **SECTION 5.** 154.03 (2) of the statutes is amended to read:

14 154.03 (2) The department shall prepare and provide copies of the declaration
15 and accompanying information for distribution in quantities to health care
16 professionals, hospitals, nursing homes, county clerks and local bar associations and
17 individually to private persons. The department shall include, in information
18 accompanying the declaration, at least the statutory definitions of terms used in the
19 declaration, statutory restrictions on who may be ~~witnesses~~ a witness to or be a
20 notarial officer that takes an acknowledgment of a valid declaration, a statement
21 explaining that valid witnesses or notarial officers acting in good faith are statutorily
22 immune from civil or criminal liability, an instruction to potential declarants to read
23 and understand the information before completing the declaration and a statement
24 explaining that an instrument may, but need not be, filed with the register in probate
25 of the declarant's county of residence. The department may charge a reasonable fee

ASSEMBLY BILL 745**SECTION 5**

1 for the cost of preparation and distribution. The declaration distributed by the
2 department of health services shall be easy to read, the type size may be no smaller
3 than 10 point, and the declaration shall be in the following form, setting forth on the
4 first page the wording before the ATTENTION statement and setting forth on the
5 2nd page the ATTENTION statement and remaining wording:

6 DECLARATION TO PHYSICIANS

7 (WISCONSIN LIVING WILL)

8 I,...., being of sound mind, voluntarily state my desire that my dying not be
9 prolonged under the circumstances specified in this document. Under those
10 circumstances, I direct that I be permitted to die naturally. If I am unable to give
11 directions regarding the use of life-sustaining procedures or feeding tubes, I intend
12 that my family and physician honor this document as the final expression of my legal
13 right to refuse medical or surgical treatment.

14 1. If I have a **TERMINAL CONDITION**, as determined by 2 physicians who
15 have personally examined me, I do not want my dying to be artificially prolonged and
16 I do not want life-sustaining procedures to be used. In addition, the following are
17 my directions regarding the use of feeding tubes:

18 YES, I want feeding tubes used if I have a terminal condition.

19 NO, I do not want feeding tubes used if I have a terminal condition.

20 If you have not checked either box, feeding tubes will be used.

21 2. If I am in a **PERSISTENT VEGETATIVE STATE**, as determined by 2
22 physicians who have personally examined me, the following are my directions
23 regarding the use of life-sustaining procedures:

24 YES, I want life-sustaining procedures used if I am in a persistent
25 vegetative state.

ASSEMBLY BILL 745

1 Notarial officer:

2 (print) Name....

3 State of

4 County of

5 This document was acknowledged before me on (date), by (name of
6 principal).

7 (Seal, if any)

8 Signature of notary

9 My commission expires:

DIRECTIVES TO ATTENDING PHYSICIAN

11 1. This document authorizes the withholding or withdrawal of life-sustaining
12 procedures or of feeding tubes when 2 physicians, one of whom is the attending
13 physician, have personally examined and certified in writing that the patient has a
14 terminal condition or is in a persistent vegetative state.

15 2. The choices in this document were made by a competent adult. Under the
16 law, the patient’s stated desires must be followed unless you believe that withholding
17 or withdrawing life-sustaining procedures or feeding tubes would cause the patient
18 pain or reduced comfort and that the pain or discomfort cannot be alleviated through
19 pain relief measures. If the patient’s stated desires are that life-sustaining
20 procedures or feeding tubes be used, this directive must be followed.

21 3. If you feel that you cannot comply with this document, you must make a good
22 faith attempt to transfer the patient to another physician who will comply. Refusal
23 or failure to make a good faith attempt to do so constitutes unprofessional conduct.

24 4. If you know that the patient is pregnant, this document has no effect during
25 her pregnancy.

ASSEMBLY BILL 745

SECTION 5

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The person making this living will may use the following space to record the names of those individuals and health care providers to whom he or she has given copies of this document:

.....
.....
.....

SECTION 6. 154.07 (1) (b) 1. of the statutes is amended to read:

154.07 (1) (b) 1. No person who acts in good faith as a witness to a declaration or takes an acknowledgment of a declaration under this subchapter may be held civilly or criminally liable for participating in the withholding or withdrawal of life-sustaining procedures or feeding tubes under this subchapter.

SECTION 7. 154.07 (1) (b) 2. of the statutes is amended to read:

154.07 (1) (b) 2. Subdivision 1. does not apply to a person who acts as a witness or takes an acknowledgment in violation of s. 154.03 (1).

SECTION 8. 155.10 (title) of the statutes is amended to read:

155.10 (title) **Power of attorney for health care instrument; execution; witnesses and notarial officers.**

SECTION 9. 155.10 (1) (c) of the statutes is amended to read:

155.10 (1) (c) Signed in the presence of 2 witnesses who meet the requirements of sub. (2) or the principal makes an acknowledgment of the instrument before a notarial officer authorized under s. 706.07 to take acknowledgments who meets the requirements of sub. (2).

SECTION 10. 155.10 (2) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 745**SECTION 10**

1 155.10 (2) (intro.) A witness to the execution of a valid power of attorney for
2 health care instrument shall be an individual who has attained age 18. No witness
3 to the execution or notarial officer who takes an acknowledgment of the power of
4 attorney for health care instrument may, at the time of the execution, be any of the
5 following:

6 **SECTION 11.** 155.10 (2) (d) of the statutes is renumbered 155.10 (2) (d) (intro.)
7 and amended to read:

8 155.10 (2) (d) (intro.) An individual who is ~~a~~ any of the following:

9 1. A health care provider who is serving the principal at the time of execution,
10 an

11 2. An employee, other than an employee authorized as a notarial officer under
12 s. 706.07, a chaplain, or a social worker, of the a health care provider or an who is
13 serving the principal at the time of execution.

14 3. An employee, other than an employee authorized as a notarial officer under
15 s. 706.07, a chaplain, or a social worker, of an inpatient health care facility in which
16 the principal is a patient.

17 **SECTION 12.** 155.10 (2) (d) 4. of the statutes is created to read:

18 155.10 (2) (d) 4. A finance or billing officer of an inpatient health care facility
19 in which the principal is a patient.

20 **SECTION 13.** 155.30 (3) of the statutes is amended to read:

21 155.30 (3) The department shall prepare and provide copies of a power of
22 attorney for health care instrument and accompanying information for distribution
23 in quantities to health care professionals, hospitals, nursing homes, multipurpose
24 senior centers, county clerks, and local bar associations and individually to private
25 persons. The department shall include, in information accompanying the copy of the

ASSEMBLY BILL 745**SECTION 13**

1 instrument, at least the statutory definitions of terms used in the instrument,
2 statutory restrictions on who may be witnesses to or be a notarial officer that takes
3 an acknowledgment of a valid instrument, a statement explaining that valid
4 witnesses or notarial officers acting in good faith are statutorily immune from civil
5 or criminal liability and a statement explaining that an instrument may, but need
6 not, be filed with the register in probate of the principal's county of residence. The
7 department may charge a reasonable fee for the cost of preparation and distribution.
8 The power of attorney for health care instrument distributed by the department
9 shall include the notice specified in sub. (1) and shall be in the following form:

10 **POWER OF ATTORNEY FOR HEALTH CARE**

11 Document made this.... day of.... (month),.... (year).

12 **CREATION OF POWER OF ATTORNEY**

13 **FOR HEALTH CARE**

14 I,.... (print name, address and date of birth), being of sound mind, intend by this
15 document to create a power of attorney for health care. My executing this power of
16 attorney for health care is voluntary. Despite the creation of this power of attorney
17 for health care, I expect to be fully informed about and allowed to participate in any
18 health care decision for me, to the extent that I am able. For the purposes of this
19 document, "health care decision" means an informed decision to accept, maintain,
20 discontinue or refuse any care, treatment, service or procedure to maintain, diagnose
21 or treat my physical or mental condition.

22 In addition, I may, by this document, specify my wishes with respect to making
23 an anatomical gift upon my death.

24 **DESIGNATION OF HEALTH CARE AGENT**

ASSEMBLY BILL 745**SECTION 13**

1 agent should try to discuss with me any specific proposed health care if I am able to
2 communicate in any manner, including by blinking my eyes. If this communication
3 cannot be made, my health care agent shall base his or her decision on any health
4 care choices that I have expressed prior to the time of the decision. If I have not
5 expressed a health care choice about the health care in question and communication
6 cannot be made, my health care agent shall base his or her health care decision on
7 what he or she believes to be in my best interest.

8 **LIMITATIONS ON MENTAL HEALTH TREATMENT**

9 My health care agent may not admit or commit me on an inpatient basis to an
10 institution for mental diseases, an intermediate care facility for persons with an
11 intellectual disability, a state treatment facility or a treatment facility. My health
12 care agent may not consent to experimental mental health research or
13 psychosurgery, electroconvulsive treatment or drastic mental health treatment
14 procedures for me.

15 **ADMISSION TO NURSING HOMES OR**

16 **COMMUNITY-BASED RESIDENTIAL FACILITIES**

17 My health care agent may admit me to a nursing home or community-based
18 residential facility for short-term stays for recuperative care or respite care.

19 If I have checked “Yes” to the following, my health care agent may admit me for
20 a purpose other than recuperative care or respite care, but if I have checked “No” to
21 the following, my health care agent may not so admit me:

- 22 1. A nursing home — Yes.... No....
23 2. A community-based residential facility — Yes.... No....

24 If I have not checked either “Yes” or “No” immediately above, my health care
25 agent may admit me only for short-term stays for recuperative care or respite care.

ASSEMBLY BILL 745

1 I know the principal personally and I believe him or her to be of sound mind and
 2 at least 18 years of age. I believe that his or her execution of this power of attorney
 3 for health care is voluntary. I am at least 18 years of age, am not related to the
 4 principal by blood, marriage, or adoption, am not the domestic partner under ch. 770
 5 of the principal, and am not directly financially responsible for the principal's health
 6 care. I am not a health care provider who is serving the principal at this time, an
 7 employee of the health care provider, other than a chaplain or a social worker, or an
 8 employee, other than a chaplain or a social worker, of an inpatient health care facility
 9 in which the declarant principal is a patient. I am not the principal's health care
 10 agent. To the best of my knowledge, I am not entitled to and do not have a claim on
 11 the principal's estate.

12 Witness No. 1:
 13 (print) Name.... Date....
 14 Address....
 15 Signature....

16 Witness No. 2:
 17 (print) Name.... Date....
 18 Address....
 19 Signature....

ACKNOWLEDGMENT OF NOTARIAL OFFICER

20
 21 I know the principal personally and I believe him or her to be of sound mind and
 22 at least 18 years of age. I am at least 18 years of age, am not related to the principal
 23 by blood, marriage, or adoption, am not the domestic partner under ch. 770 of the
 24 principal, and am not directly financially responsible for the principal's health care.
 25 I am not a health care provider who is serving the principal at this time. I am not

ASSEMBLY BILL 745

SECTION 13

1 a finance or billing officer of an inpatient health care facility in which the principal
 2 is a patient. I am not the principal's health care agent. To the best of my knowledge,
 3 I am not entitled to and do not have a claim on the principal's estate.

4 (print) Name....

5 State of

6 County of

7 This document was acknowledged before me on (date), by (name of
 8 principal).

9 (Seal, if any)

10 Signature of notary

11 My commission expires:

12 STATEMENT OF HEALTH CARE AGENT AND
 13 ALTERNATE HEALTH CARE AGENT

14 I understand that.... (name of principal) has designated me to be his or her
 15 health care agent or alternate health care agent if he or she is ever found to have
 16 incapacity and unable to make health care decisions himself or herself. (name of
 17 principal) has discussed his or her desires regarding health care decisions with me.

18 Agent's signature....

19 Address....

20 Alternate's signature....

21 Address....

22 Failure to execute a power of attorney for health care document under chapter
 23 155 of the Wisconsin Statutes creates no presumption about the intent of any
 24 individual with regard to his or her health care decisions.

