

2017 WISCONSIN ACT 187

AN ACT *to repeal* 54.34 (3) (a) to (j) and 54.38 (1m); *to renumber and amend* 54.34 (3) (intro.); *to amend* 54.30 (1), 54.34 (1) (intro.) and 54.44 (1) (c) 1.; and *to create* chapter 53 and 54.30 (4) of the statutes; **relating to:** uniform adult guardianship jurisdiction.

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

SECTION 1. Chapter 53 of the statutes is created to read:

CHAPTER 53 UNIFORM ADULT GUARDIANSHIP JURISDICTION SUBCHAPTER I GENERAL PROVISIONS

53.01 Purpose; construction. This chapter applies to the process of determining jurisdiction over the person for the purpose of a guardianship proceeding or matter. The chapter is intended to supplement but not replace the procedure for petitioning for a guardianship under ch. 54 and for protective placement or services under ch. 55. The purpose of this chapter is to resolve potential conflicts regarding jurisdiction between states and to make uniform the laws with respect to this chapter among those states. To the extent there is a conflict in procedure between this chapter and the provisions of ch. 54 or 55, the procedures in ch. 54 or 55 supersede the conflicting provision of this chapter.

53.02 Definitions. In this chapter:

- (1) "Abuse" has the meaning given in s. 46.90 (1) (a).
- (2) "Financial exploitation" has the meaning given in s. 46.90 (1) (ed).
- (3) "Guardian of the estate" means a person appointed by the court of any state to administer the property of an adult on the basis of a finding of incapacity or incompetence or on the basis of being found to be a spendthrift, including a person appointed guardian of the estate under s. 54.10 (2) or (3) and including a conservator appointed in another state where that term is used for a role similar to that of a guardian of the estate under s. 54.10 (2) or (3). "Guardian of the estate" does not include a person appointed voluntary conservator under s. 54.76 (2).
- (4) "Guardian of the person" means a person appointed by the court to make decisions regarding the person of an adult, including a guardian of the person appointed under s. 54.10 (3).
- (5) "Guardianship of the person order" means an order appointing a guardian of the person.
- (6) "Guardianship of the person proceeding" means a judicial proceeding in which an order for the appointment of a guardian of the person is sought or has been issued.
- (7) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for an order appointing a guardian of the estate or the appointment of a guardian of the person; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months ending within the 6 months prior to the filing of the petition.
- (8) "Incapacity" has the meaning given in s. 54.01 (15).
- (9) "Neglect" has the meaning given in s. 46.90 (1) (f).
- (10) "Party" means the respondent, petitioner, guardian of the person, guardian of the estate, interested person, as defined in s. 54.01 (17), or any other person allowed by the court to participate in a guardianship of the person proceeding or proceeding for the appointment of a guardian of the estate.
- (11) "Person" has the meaning given in s. 990.01 (26).
- (12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (13) "Residence" has the meaning given in s. 55.01 (6t).

(14) "Respondent" means an adult for whom an order appointing a guardian of the estate or the appointment of a guardian of the person is sought.

(15) "Self-neglect" has the meaning given in s. 46.90 (1) (g).

(16) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence considering the factors in s. 53.21.

(17) "State," notwithstanding s. 990.01 (40), means a state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

53.03 International application. A court of this state may treat a foreign country as if it were a state for the purpose of applying this subchapter and subchs. II, III, and V.

53.04 Communication between courts. (1) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in sub. (2), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

53.05 Cooperation between courts. (1) In a guardianship of the person proceeding or proceeding for appointment of a guardian of the estate in this state, a court of this state may request the appropriate court of another state to do any of the following:

- (a) Hold an evidentiary hearing.
- (b) Order a person in that state to produce evidence or give testimony under procedures of that state.
- (c) Order that an evaluation or assessment be made of the respondent.
- (d) Order any appropriate investigation of a person involved in a proceeding.
- (e) Forward to the court of this state a certified copy of the transcript or other record of a hearing under par. (a) or any other proceeding, any evidence otherwise produced under par. (b), and any evaluation or assessment prepared in compliance with an order under par. (c) or (d).
- (f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the individual subject to a guardianship of the person or of the estate.

(g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in [45 CFR 160.103](#).

(2) If a court of another state in which a guardianship of the person proceeding or proceeding to appoint a guardianship of the estate is pending requests assistance of the kind provided in sub. (1), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

53.06 Taking testimony in another state. (1) In a guardianship of the person proceeding or proceeding for the appointment of a guardian of the estate, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship of the person proceeding or proceeding for the appointment of a guardian of the estate, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

SUBCHAPTER II JURISDICTION

53.21 Significant-connection factors. In determining under ss. 53.23 and 53.31 whether a respondent has a significant connection with a particular state, the court shall consider all of the following:

(1) The location of and strength of connection to the respondent's family, other significant social connections, and service providers.

(2) The location of other persons required to be notified of the guardianship of the person proceeding or proceeding to appoint a guardian of the estate and the location of substantial evidence relating to the respondent.

(3) The length of time the respondent at any time was physically present in the state, past or current status as a resident, and the duration of any absence.

(4) The location of the resident's property.

(5) The extent to which the respondent has ties to the state, such as voting registration, state or local tax return filing, vehicle registration, driver's license, work, social relationship, and receipt of services.

53.22 Exclusive basis. This subchapter provides the exclusive basis for personal jurisdiction for a court of this state to appoint a guardian of the person or issue an order appointing a guardian of the estate for an adult.

53.23 Jurisdiction. A court of this state has personal jurisdiction to appoint a guardian of the person or issue an order appointing a guardian of the estate for a respondent if any of the following is satisfied:

(1) This state is the respondent's home state.

(2) On the date the petition is filed, this state is a significant-connection state and any of the following is satisfied:

(a) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum.

(b) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and before the court makes the appointment or issues the order all of the following are satisfied:

1. A petition for an appointment or order is not filed in the respondent's home state.

2. An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding, or, if an objection has been made, the objector has not established that exercise of jurisdiction by the court would be contrary to the interests of the respondent.

3. The court in this state concludes that it is an appropriate forum under the factors set forth in s. 53.26.

(3) This state does not have jurisdiction under either sub. (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States.

(4) The requirements for special jurisdiction under s. 53.24 are met.

53.24 Special jurisdiction. (1) A court of this state lacking jurisdiction under s. 53.23 (1) to (3) has special jurisdiction to do any of the following:

(a) Appoint a temporary guardian of the person or guardian of the estate under s. 54.50 in accordance with the standards and procedures and for the time periods specified in s. 54.50.

(b) Issue an order with respect to real or tangible personal property located in this state.

(c) Appoint a guardian of the person or guardian of the estate for an individual subject to a guardianship of the person or of the estate for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to s. 53.31.

(2) If a petition for the appointment of a temporary guardian is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the appointment of a temporary guardian.

53.25 Exclusive and continuing jurisdiction. Except as otherwise provided in s. 53.24, a court that has appointed a guardian of the person or issued an order appointing a guardian of the estate consistent

with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

53.26 Appropriate forum. (1) A court of this state having jurisdiction under s. 53.23 to appoint a guardian of the person or issue an order appointing a guardian of the estate may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under sub. (1), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian of the person or issuance of an order appointing a guardian of the estate be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including all of the following:

(a) Any expressed preference of the respondent.

(b) Whether abuse, neglect, self-neglect, or financial exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, self-neglect, or financial exploitation.

(c) The length of time the respondent was physically present in or had established residence in this or another state.

(d) The distance of the respondent from the court in each state.

(e) The financial circumstances of the respondent's estate.

(f) The nature and location of the evidence.

(g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.

(h) The familiarity of the court of each state with the facts and issues in the proceeding.

(i) If an appointment is made, the court's ability to monitor the conduct of the guardian of the person or guardian of the estate.

53.27 Jurisdiction declined by reason of conduct. (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian of the person or issue an order appointing a guardian of the estate because of unjustifiable conduct, the court may do any of the following:

(a) Decline to exercise jurisdiction.

(b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or to prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian of the person or issuance of an order appointing a guardian of the estate is filed in a court of another state having jurisdiction.

(c) Continue to exercise jurisdiction after considering all of the following:

1. The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction.

2. Whether it is a more appropriate forum than the court of any other state under the factors set forth in s. 53.26.

3. Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of s. 53.23.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian of the person or issue an order appointing a guardian of the estate because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this chapter.

53.28 Notice of proceeding. If a petition for the appointment of a guardian of the person or issuance of an order appointing a guardian of the estate is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice

requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

53.29 Proceedings in more than one state. Except for a petition for the appointment of a temporary guardian or issuance of an order limited to property located in this state under s. 53.24 (1) (a) or (b), if a petition for the appointment of a guardian of the person or issuance of an order appointing a guardian of the estate is filed in this state and in another state and neither petition has been dismissed or withdrawn, all of the following rules apply:

(1) If the court in this state has jurisdiction under s. 53.23, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to s. 53.23 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under s. 53.23, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

SUBCHAPTER III TRANSFER OF GUARDIANSHIP

53.31 Transfer of guardianship to another state. (1) A guardian of the person or guardian of the estate appointed in this state may petition the court to transfer the guardianship to another state.

(2) Notice of a petition under sub. (1) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian under s. 54.38.

(3) On the court's own motion or on request of the guardian of the person or guardian of the estate, the individual subject to a guardianship of the person or of the estate, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed under sub. (1).

(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian of the person or guardian of the estate to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that all of the following are satisfied:

(a) The individual subject to the guardianship of the person or of the estate is physically present in or is reasonably expected to move permanently to the other state.

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the individual subject to the guardianship of the person or of the estate.

(c) For guardianship of the person, plans for care and services for the individual subject to the guardianship of the person in the other state are reasonable and sufficient.

(d) For guardianship of the estate, adequate arrangements will be made for management of the property of the individual subject to a guardianship of the estate.

(5) The court shall issue a final order confirming the transfer and terminating the guardianship upon its receipt of all of the following:

(a) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to s. 53.32.

(b) The documents required to terminate a guardianship in this state.

(6) The court may at any time appoint a guardian ad litem to represent the interests of the respondent. The court shall appoint a guardian ad litem if an objection is made under sub. (4) (b).

53.32 Accepting guardianship transferred from another state. (1) To confirm transfer of a guardianship of the person or of the estate transferred to this state under provisions similar to s. 53.31, the guardian of the person or guardian of the estate must petition the court in this state to accept the guardianship. The petition must include a certified copy of the other state's provisional order of transfer. The petition shall also include a proposed order specifying the powers to be granted in this state and a

sworn statement that, to the best of the petitioner's knowledge, the proposed order is consistent with the authority granted to the guardian in the other state.

(2) Notice of a petition under sub. (1) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian of the person or issuance of an order appointing a guardian of the estate in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(3) On the court's own motion or on request of the guardian of the person or guardian of the estate, the individual subject to a guardianship of the person or of the estate, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed under sub. (1).

(4) The court shall issue an order provisionally granting a petition filed under sub. (1) unless any of the following circumstances occurs:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the individual subject to a guardianship of the person or of the estate or that the proposed powers to be given to the guardian significantly expand the powers granted to the guardian in the other state.

(b) The guardian of the person or guardian of the estate is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing the guardian of the person or guardian of the estate as guardian in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to s. 53.31 transferring the proceeding to this state.

(6) Not later than 60 days after issuance of a final order accepting transfer of a guardianship of the person or of the estate, the court shall determine whether the guardianship needs to be modified to conform to the law of this state. If a petitioner requests the expansion of powers that were granted to a guardian in another state, a hearing shall be held that conforms to the requirements of s. 54.63.

(7) In granting a petition under this section, the court shall recognize a guardianship order from the other state, including the determination of incapacity of the individual subject to a guardianship of the person or of the estate and the appointment of the guardian of the person or guardian of the estate.

(8) The denial by a court of this state of a petition to accept a guardianship transferred from another state does not affect the ability of the guardian of the person or of the estate to seek appointment as guardian in this state under s. 54.10 or 54.76 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

(9) The court may at any time appoint a guardian ad litem to represent the interests of the respondent or to assist the court in conforming the order to the laws of this state. The court shall appoint a guardian ad litem if an objection is made under sub. (4) (a).

SUBCHAPTER IV REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

53.41 Registration of guardianship of the person orders. If a guardian of the person has been appointed in another state and a petition for the appointment of a guardian of the person is not pending in this state, the guardian of the person appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship of the person order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

53.42 Registration of guardianship of the estate orders. If a guardian of the estate has been appointed in another state and a petition for an order to appoint a guardian of the estate is not pending in this state, the guardian of the estate appointed in the other state, after giving notice to the appointing court of an intent to register, may register the order appointing the guardian of the estate in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the individual subject to the guardianship of the estate is located, certified copies of the order and letters of office and of any bond.

53.43 Effect of registration. (1) Upon registration of a guardianship order from another state, the guardian of the person or guardian of the estate may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian of the person or of the estate is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(2) A court of this state may grant any relief available under this chapter and other law of this state to enforce a registered order.

SUBCHAPTER V UNIFORMITY; FEDERAL LAW

53.51 Uniformity of application and construction. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

53.52 Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, [15 USC 7001](#) to [7031](#), but does not modify, limit, or supersede section 101 (c) of that act, [15 USC 7001](#) (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, [15 USC 7003](#) (b).

SECTION 2. 54.30 (1) of the statutes is amended to read:

54.30 **(1) JURISDICTION.** Except as provided in s. 54.38 (1), the circuit court has subject matter jurisdiction over all petitions for guardianship. A guardianship of the estate of any individual, once granted, shall extend to all of the ward's income and assets in this state and shall exclude the jurisdiction of every other circuit court, except as provided in ch. 786. Jurisdiction under this subsection also extends to the petition by a foreign guardian for the receipt and acceptance of a foreign guardianship, except as provided in ~~s. 54.38 (1m)~~ ch. 53 and, if the petition is granted, to the accepted guardianship. Personal jurisdiction is subject to ch. 53.

SECTION 3. 54.30 (4) of the statutes is created to read:

54.30 **(4) CONFLICTS OF JURISDICTION OR VENUE.** Before making a determination of jurisdiction or venue under this section, the circuit court shall first make any applicable determination of jurisdiction or venue under ch. 53. If any determination of jurisdiction or venue made under this section conflicts with a determination made under ch. 53, the court shall apply the determination made under ch. 53.

SECTION 4. 54.34 (1) (intro.) of the statutes is amended to read:

54.34 **(1) (intro.)** ~~Any~~ Subject to ch. 53, any person may petition for the appointment of a guardian for an individual. The petition shall state all of the following, if known to the petitioner:

SECTION 5. 54.34 (3) (intro.) of the statutes is renumbered 54.34 (3) and amended to read:

54.34 **(3)** A petition for the receipt and acceptance by this state of a foreign guardianship of a foreign ward who resides in or intends to move to this state may include other petitions related to the foreign guardianship, such as a petition to modify the terms of the foreign guardianship, ~~and shall include all of the following.~~

SECTION 6. 54.34 (3) (a) to (j) of the statutes are repealed.

SECTION 7. 54.38 (1m) of the statutes is repealed.

SECTION 8. 54.44 (1) (c) 1. of the statutes is amended to read:

54.44 **(1) (c) 1.** If a motion for a hearing on a petition for receipt and acceptance of a foreign guardianship is made by the foreign ward, by a person who has received notice under ~~s. 54.38 (1m) (a) 3.~~ 53.32 (2), or on the court's own motion, a hearing on the petition shall be heard within 90 days after the petition is filed.

SECTION 9. Initial applicability.

(1) This act first applies to guardianship proceedings initiated on the effective date of this subsection.

Adult Protective Services Training Curriculum

References

- Administration for Community Living . (2016). *Final national voluntary consensus guidelines for state adult protective services systems*. Washington DC: US Department of Health and Human Services.
- Barsky, A. (2010). *Ethics and values in social work: An integrated approach for a comprehensive curriculum*. NY: Oxford University Press.
- Boland Prom, K., Johnson, J. & Gunaganti, G.S. (2015). Sanctioning patterns of social work licensing boards: 2000-2009. *Journal of Human Behavior in the Social Environment*, 25, 126-136. DOI: 10.1080/10911359.2014.947464
- Bridges, D., Davidson, R., Soule-Odegard, P, Maki, I & Tomkowiak, J. (2011). Interprofessional collaboration: Three best practice models of interprofessional education. *Medical Education Online*, 16, 6035. DOI: 10.3402/meo.v16i0.6035
- Care and Service Residential Facilities, Wisconsin Statutes, § 50 (1993/2017)
- Congress, E. (2000). What social workers should know about ethics: Understanding and resolving practice dilemmas. *Advances in Social Work*, 1(1), 1-26.
- Cox, K. & Steiner, S. (2013). *Self-care in social work: A guide for practitioners, supervisors, and administrators*. Washington DC: NASW Press.
- Doel, M., Allmark, P., Conway, P., Cowburn, M., Flynn, M., Nelson, P. & Tod, A. (2010). Professional boundaries: Crossing a line or entering the shadows? *British Journal of Social Work*, 40, 1866-1889. DOI: 10.1093/bjsw/bcp106
- Dolgoff, R., Loewenberg, F. and Harrington, D. (2012). *Ethical decisions for social work practice* (9th Ed.): Belmont, Ca.: Brooks/Cole.
- Goleman, D. (1995/2006). *Emotional intelligence*. NY: Random House.
- Gough, J. & Spencer, E. (2014). Ethics in action: An exploratory survey of social worker's ethical decision-making and value conflicts. *Journal of Social Work Values and Ethics*, 11 (2), 23-40.
- Guardianships and Conservatorships, Wisconsin Statutes, § 54 (1971/2017)
- Horn, T. (2011) *Is it ethical? 101 scenarios in everyday social work practice*. Harrisburg, PA: White Hat Communications

- McEachern, A. (2012). Sexual abuse of individuals with disabilities: Prevention strategies for clinical practice. *Journal of Child Sexual Abuse*, 21, 386-398. DOI: 10.1080/10538712.2012.675425
- Naik, A., Teal, C., Pavlik, V. Dyer, C. & McCullough, L. (2008). Conceptual challenges and practical approaches to screening for capacity and self-care and protection in vulnerable older adults. *Journal of the American Geriatrics Society*, 56 (52), 5266- 5270. DOI: 10.1111/j.1532-5415.2008.01979.x
- National Adult Protective Services Association. (n.d.) *Code of ethics*. Retrieve from: <http://www.napsa-now.org/about-napsa/code-of-ethics/>
- National Adult Protective Services Association. (2007). *APS core curriculum: Ethics, values, and cultural competence in adult protective services*. Retrieved from: <https://theacademy.sdsu.edu/programs/master/core-curriculum/>
- National Adult Protective Services Association. (2015). *APS core curriculum: Working with self-neglecting clients*. Retrieved from: <https://theacademy.sdsu.edu/programs/master/core-curriculum/>
- National Adult Protective Services Association. (2010). *APS Core Curriculum: Adult protective services dynamics of elder abuse*. Retrieved from: <https://theacademy.sdsu.edu/programs/master/core-curriculum/>
- National Adult Protective Services Association. (2011). *APS Core Curriculum: Involuntary case planning and intervention process*. Retrieved from: <https://theacademy.sdsu.edu/programs/master/core-curriculum/>
- National Adult Protective Services Association. (2011/2017). *APS Core Curriculum: The initial investigation: Taking the first steps*. Retrieved from: <https://theacademy.sdsu.edu/programs/master/core-curriculum/>
- National Adult Protective Services Association. (2012). *Adult protective services in 2012: Increasingly vulnerable*. Washington DC: National Adult Protective Services Resource Center & National Association of States United for Aging and Disabilities.
- National Adult Protective Services Association. (2013). *APS Core Curriculum: Pieces of the puzzle: Collaboration in APS work*. Retrieved from: <https://theacademy.sdsu.edu/programs/master/core-curriculum/>
- National Adult Protective Services Association. (2015). *APS Core Curriculum: APS case documentation and report writing*. Retrieved from <https://theacademy.sdsu.edu/programs/master/core-curriculum/>

- National Adult Protective Services Association. (2015). *APS Core Curriculum: Overview of APS*. Retrieved from: <https://theacademy.sdsu.edu/programs/master/core-curriculum/>
- National Adult Protective Services Association. (2015). *APS Core Curriculum: Risk assessment of victims of elder abuse*. Retrieved from: <https://theacademy.sdsu.edu/programs/master/core-curriculum/>
- National Adult Protective Services Association. (2015). *APS Core Curriculum: Voluntary case planning in APS*. Retrieved from: <https://theacademy.sdsu.edu/programs/master/core-curriculum/>
- National Council on Crime and Delinquency. (2012). *Evidenced-based practice in adult protective services: Survey results*. Washington DC: National Adult Protective Services Resource Center.
- National Association of Social Workers. (2010). *NASW standards for social work practice with family caregivers of older adults*. Washington DC: Author.
- National Association of Social Workers. (2013). *Making interdisciplinary collaboration work*. Washington DC: Author.
- National Association of Social Workers. (2013). *Guidelines for social work safety in the workplace*. Washington DC: Author.
- National Association of Social Workers. (2013). *NASW standards for social work case management*. Washington DC: Author. Retrieve from: <https://www.socialworkers.org/LinkClick.aspx?fileticket=acrzqmEfhlo%3D&portalid=0>
- National Association of Social Workers. (2017) *Code of ethics*. Washington DC: Author.
- National Council on Aging. (n.d.). *Elder abuse facts*. Retrieve from: <https://www.ncoa.org/public-policy-action/elder-justice/elder-abuse-facts/>
- National Institute of Justice. (2015) *Financial exploitation of the elderly*. Retrieved from <https://www.nij.gov/topics/crime/elder-abuse/pages/financial-exploitation.aspx>
- O'Neil, M. & Hayton, A. (2015). *Aging, agency, and attribution of responsibility: Shifting the public discourse about older adults*. Washington DC: Frameworks Institute.
- Protective Services System, Wisconsin Statutes, § 55 (1973/2017)
- Reamer, F. (2006). *Ethical standards in social work: A review of the code of ethics*. (2nd ed.) Washington DC: NASW Press.
- Social Services, Wisconsin Statutes, § 46 (1977/2017)

- Sunderland, T., Hill, J.L., Mellow, A.M., Gundersheimer, J., Newhouse, P.A. & Grafman, J.H. (1989). Clock drawing in Alzheimer's disease: A novel measure of dementia severity. *Journal of the American Geriatrics Society*, 37, 725-729.
- Sweetland, J., Volmert, A. & O'Neil, M. (2017). *Finding the frame: An empirical approach to reframing aging and ageism*. Washington DC: Frameworks Institute.
- Volmert, A. & Lindland, E. (2016). "You only pray that somebody would step in": *Mapping the gaps between expert and public understandings of elder abuse in America*. Washington DC: Frameworks Institute.
- Wisconsin Board for People with Developmental Disabilities. (n.d.). *Keeping individuals with disabilities in charge of their lives: Guardianship alternatives*. Madison WI: Author.
- Wisconsin Department of Health Services, Division of Long Term Care. (2011). *Adult Protective Services*. Retrieve from: <https://www.dhs.wisconsin.gov/aps/index.htm>
- Wisconsin Department of Health Services, Division of Long Term Care. (2011). *Guardianship of Adults*. Retrieve from: <https://www.dhs.wisconsin.gov/publications/p2/p20460.pdf>
- Wisconsin Department of Health Services, Division of Long Term Care. (2015, September). *Wisconsin's aging population: Projections for the growing 65 and older population, 2015-2040*. Madison, WI: Author.
- Wisconsin Department of Health Services, Bureau of Aging and Disability Services. *Wisconsin's annual elder abuse and neglect report: 2016*. Madison, WI: Author.
- Wisconsin Department of Health Services, Bureau of Aging and Disability Services. *Wisconsin's annual report on abuse, neglect, and financial exploitation of adults at risk: 2016*. Madison, WI: Author.
- Wisconsin Department of Health Services. (2016). *Dementia Care System Redesign Population Demographics*. Madison, WI: Author. Retrieve from: <https://www.dhs.wisconsin.gov/dementia/demographics.htm>
- Wisconsin Department of Health Services, Division of Public Health; Bureau of Aging and Disability Resources (2016). *Demographics of disability in Wisconsin*. Madison, WI: Author. Retrieve from: <https://www.dhs.wisconsin.gov/disabilities/physical/demographics.htm>
- Zur, O. (2015). *The Google factor: Psychotherapists intentional and unwitting self-disclosure on the net*. [On-line]. Retrieved 5/13/2018 from <http://www.zurinstitute.com/onlinedisclosure.html>

46.90 Elder abuse reporting system.

(1) DEFINITIONS. In this section:

(a) "Abuse" means any of the following:

1. Physical abuse.
2. Emotional abuse.
3. Sexual abuse.
4. Treatment without consent.
5. Unreasonable confinement or restraint.

(ag) "Aging unit" has the meaning given under s. [46.82 \(1\) \(a\)](#).

(aj) "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

(an) "Caregiver" means a person who has assumed responsibility for all or a portion of an individual's care voluntarily, by contract, or by agreement, including a person acting or claiming to act as a legal guardian.

(ar) "Case management" means an assessment of need for direct services, development of a direct service plan and coordination and monitoring of the provision of direct services.

(bm) "Direct services" includes temporary shelter, relocation assistance, housing, respite care, emergency funds for food and clothing and legal assistance.

(br) "Elder adult at risk" means any person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.

(bt) "Elder-adult-at-risk agency" means the agency designated by the county board of supervisors under sub. [\(2\)](#) to receive, respond to, and investigate reports of abuse, neglect, self-neglect, and financial exploitation under sub. [\(4\)](#)

(cm) "Emotional abuse" means language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the individual to whom the conduct or language is directed.

(ed) "Financial exploitation" means any of the following:

1. Obtaining an individual's money or property by deceiving or enticing the individual, or by forcing, compelling, or coercing the individual to give, sell at less than fair market value, or in other ways convey money or property against his or her will without his or her informed consent.
2. Theft, as prohibited in s. [943.20](#).
3. The substantial failure or neglect of a fiscal agent to fulfill his or her responsibilities.
4. Unauthorized use of an individual's personal identifying information or documents, as prohibited in s. [943.201](#).
5. Unauthorized use of an entity's identifying information or documents, as prohibited in s. [943.203](#).
6. Forgery, as prohibited in s. [943.38](#).
7. Financial transaction card crimes, as prohibited in s. [943.41](#).

(eg) "Fiscal agent" includes any of the following:

1. A guardian of the estate appointed under s. [54.10](#).
2. A conservator appointed under s. [54.76](#).
3. An agent under a power of attorney under ch. [244](#).
4. A representative payee under [20 CFR 416.635](#).
5. A conservatorship under the U.S. Department of Veteran's Affairs.

(er) "Investigative agency" means a law enforcement or a city, town, village, county, or state governmental agency or unit with functions relating to protecting health, welfare, safety, or property, including an agency concerned with animal protection, public health, building code enforcement, consumer protection, or insurance or financial institution regulation.

(f) "Neglect" means the failure of a caregiver, as evidenced by an act, omission, or course of conduct, to endeavor to secure or maintain adequate care, services, or supervision for an individual, including food, clothing, shelter, or physical or mental health care, and creating significant risk or danger to the individual's physical or mental health. "Neglect" does not include a decision that is made to not seek medical care for an individual, if that decision is consistent with the individual's previously executed declaration or do-not-resuscitate order under ch. [154](#), a power of attorney for health care under ch. [155](#), or as otherwise authorized by law.

(fg) "Physical abuse" means the intentional or reckless infliction of bodily harm.

(g) "Self-neglect" means a significant danger to an individual's physical or mental health because the individual is responsible for his or her own care but fails to obtain adequate care, including food, shelter, clothing, or medical or dental care.

(gd) "Sexual abuse" means a violation of s. 940.225 (1), (2), (3), or (3m).

(gf) "State governmental agency" has the meaning given for "agency" in s. 16.417 (1) (a).

(gr) "State official" means any law enforcement officer employed by the state or an employee of one of the following:

1. The department of health services.
2. The department of justice.
3. The department of safety and professional services.
4. The board on aging and long-term care.
5. A state governmental agency other than those specified in subds. 1. to 4. with functions relating to protecting health and safety.

(h) "Treatment without consent" means the administration of medication to an individual who has not provided informed consent, or the performance of psychosurgery, electroconvulsive therapy, or experimental research on an individual who has not provided informed consent, with the knowledge that no lawful authority exists for the administration or performance.

(i) "Unreasonable confinement or restraint" includes the intentional and unreasonable confinement of an individual in a locked room, involuntary separation of an individual from his or her living area, use on an individual of physical restraining devices, or the provision of unnecessary or excessive medication to an individual, but does not include the use of these methods or devices in entities regulated by the department if the methods or devices are employed in conformance with state and federal standards governing confinement and restraint.

(2) ELDER-ADULT-AT-RISK AGENCY DESIGNATION. Each county board shall designate an agency in the county as the elder-adult-at-risk agency for the purposes of this section.

(3) ELDER-ADULT-AT-RISK AGENCY DUTIES. (a) Each elder-adult-at-risk agency shall develop a policy for notifying other investigative agencies, including law enforcement officials in appropriate cases, and shall establish an elder abuse reporting system to carry out the purposes of this section. Each elder-adult-at-risk agency shall enter into a memorandum of understanding regarding the operation of the system with the county department under s. 46.215 or 46.22 and with any private or public agency, including a county department under s. 51.42 or 51.437, within the county that is participating in the elder abuse reporting system. The memorandum of understanding shall, at a minimum, identify the agencies that are responsible for the investigation of reports of abuse, financial exploitation, neglect, or self-neglect of elder adults at risk and for the provision of specific direct services.

(b) Each elder-adult-at-risk agency shall receive reports of abuse, financial exploitation, neglect, or self-neglect of elder adults at risk.

(c) Each elder-adult-at-risk agency shall publicize the existence of an elder abuse reporting system in the county and shall provide a publicized telephone number that can be used by persons wishing to report suspected cases of abuse, financial exploitation, neglect, or self-neglect of elder adults at risk. Each elder-adult-at-risk agency shall also provide a telephone number that can be used to make reports after the elder-adult-at-risk agency's regular business hours.

(4) REPORTING. (ab) The following persons shall file reports as specified in par. (ad):

1. An employee of any entity that is licensed, certified, or approved by or registered with the department.
3. A health care provider, as defined in s. 155.01 (7).
4. A social worker, professional counselor, or marriage and family therapist certified under ch. 457.

(ad) Except as provided in par. (ae), a person specified in par.

(ab) who has seen an elder adult at risk in the course of the person's professional duties shall file a report with the county department, the elder-adult-at-risk agency, a state or local law enforcement agency, the department, or the board on aging and long-term care if the elder adult at risk has requested the person to make the report, or if the person has reasonable cause to believe that any of the following situations exist:

1. The elder adult at risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss and is unable to make an informed judgment about whether to report the risk.
2. An elder adult at risk other than the subject of the report is at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by a suspected perpetrator.
3. An elder adult at risk other than the subject of the report is at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by a suspected perpetrator.

(ae) A person specified in par. (ab) to whom any of the following applies is not required to file a report as provided in par. (ad):

1. If the person believes that filing a report would not be in the best interest of the elder adult at risk. If the person so believes, the person shall document the reasons for this belief in the case file that the person maintains on the elder adult at risk.

2. If a health care provider provides treatment by spiritual means through prayer for healing in lieu of medical care in accordance with his or her religious tradition and his or her communications with patients are required by his or her religious denomination to be held confidential.

(ar) Any person, including an attorney or a person working under the supervision of an attorney, may report to the county department, the elder-adult-at-risk agency, a state or local law enforcement agency, the department, or the board on aging and long-term care that he or she believes that abuse, financial exploitation, neglect, or self-neglect of an elder adult at risk has occurred if the person is aware of facts or circumstances that would lead a reasonable person to believe or suspect that abuse, financial exploitation, neglect, or self-neglect of an elder adult at risk has occurred. The person shall indicate the facts and circumstances of the situation as part of the report.

(b) 1. a. No person may discharge or otherwise retaliate or discriminate against any person for reporting in good faith under this subsection.

b. No person may discharge or otherwise retaliate or discriminate against any individual on whose behalf another person has reported in good faith under this subsection.

cm. Any discharge of a person or act of retaliation or discrimination that is taken against a person who makes a report under this subsection, within 120 days after the report is made, establishes a rebuttable presumption that the discharge or act is made in response to the report. This presumption may be rebutted by a preponderance of evidence that the discharge or act was not made in response to the report.

2. b. Any employee who is discharged or otherwise discriminated against may file a complaint with the department of workforce development under s. 106.54 (5).

c. Any person not described in subd. 2. b. who is retaliated or discriminated against in violation of subd. 1. a. or b. may commence an action in circuit court for damages incurred as a result of the violation.

(c) No person may be held civilly or criminally liable or be found guilty of unprofessional conduct for reporting in good faith under this subsection and within the scope of his or her authority, or for filing a report with an agency not listed in par. (ad) (intro.) or (ar) if the person had a good faith belief that the report was filed correctly with one of the listed agencies.

(d) If a report under par. (ad) or (ar) is made to a state official, the state official shall refer the report to the appropriate elder-adult-at-risk agency. The requirement under this paragraph does not apply to an employee of the board on aging and long-term care who determines that his or her referral would be in violation of 42 USC 3058g (d).

(e) Any person making a report under this subsection is presumed to have reported in good faith.

(5) RESPONSE AND INVESTIGATION. (a) 1. Except as otherwise provided, upon receiving a report of alleged abuse, financial exploitation, neglect, or self-neglect of an elder adult at risk, the elder-adult-at-risk agency shall either respond to the report including, if necessary, by conducting an investigation, or refer the report to another agency for investigation. Upon receiving a report of alleged abuse, financial exploitation, neglect, or self-neglect of a client, as defined in s. 50.065 (1) (b), of an entity, as defined in s. 50.065 (1) (c), if the person suspected of perpetrating the alleged abuse, financial exploitation, or neglect is a caregiver or a non-client resident of the entity, the elder-adult-at-risk agency shall refer the report within 24 hours after the report is received to the department for investigation. The department shall coordinate its investigatory efforts with other investigative agencies or authorities as appropriate. An elder-adult-at-risk agency's response to or another investigative agency's investigation of a report of alleged abuse, financial exploitation, neglect, or self-neglect that is not referred to the department shall be commenced within 24 hours after a report is received, excluding Saturdays, Sundays and legal holidays.

50.065 Criminal history and patient abuse record search.

(1) In this section:

(b) "Client" means a person who receives direct care or treatment services from an entity.

(c) "Entity" means a facility, organization or service that is licensed or certified by or registered with the department to provide direct care or treatment services to clients; or an agency that employs or contracts with an individual to provide personal care services. "Entity" includes a hospital, a home health agency licensed under s. 50.49, a temporary employment agency that provides caregivers to another entity, and the board on aging and long-term care. "Entity" does not include any of the following:

1. Licensed or certified child care under ch. 48.
2. Kinship care under s. 48.57 (3m) or long-term kinship care under s. 48.57 (3n).
3. A person certified as a medical assistance provider, as defined in s. 49.43 (10), who is not otherwise approved under s. 50.065 (1) (cm), licensed or certified by or registered with the department.
4. An entity, as defined in s. 48.685 (1) (b).
6. A public health dispensary established under s. 252.10.

2. If an agent or employee of an elder-adult-at-risk agency required to respond under this subsection is the subject of a report, or if the elder-adult-at-risk agency or an agency under contract with the county department determines that the relationship between the elder-adult-at-risk agency and the agency under contract with the county department would not allow for an unbiased response, the elder-adult-at-risk agency shall, after taking any action necessary to protect the elder adult at risk, notify the department. Upon receipt of the notice, the department or a

county department under s. [46.215](#), [46.22](#), [51.42](#), or [51.437](#) designated by the department shall conduct an independent investigation. The powers and duties of a county department making an independent investigation are those given to an elder-adult-at-risk agency under pars. (b) to (f) and sub. (6).

46.215 County department of social services in populous counties.
46.22 County social services.
51.42 Community mental health, developmental disabilities, alcoholism and drug abuse services
51.437 Developmental disabilities services.

(b) The elder-adult-at-risk agency's response or another investigative agency's investigation may include one or more of the following:

1. A visit to the residence of the elder adult at risk.
2. Observation of the elder adult at risk, with or without consent of his or her guardian or agent under an activated power of attorney for health care, if any.
3. An interview with the elder adult at risk, in private to the extent practicable, and with or without the consent of his or her guardian or agent under an activated power of attorney for health care, if any.
4. An interview with the guardian or agent under an activated power of attorney for health care, if any, and with any caregiver of the elder adult at risk.
5. A review of the treatment and patient health care records of the elder adult at risk.
6. A review of any financial records of the elder adult at risk that are maintained by a financial institution, as defined in s. [705.01 \(3\)](#); by an entity, as defined in s. [50.065](#); by any caregiver of the elder adult at risk; or by a member of the immediate family of the elder adult at risk or caregiver. The records shall be released without informed consent in either of the following circumstances:
 - a. To an elder-adult-at-risk agency or other investigative agency under this section. The financial record holder may release financial record information by initiating contact with the elder-adult-at-risk agency or other investigative agency without first receiving a request for release of the information from the elder-adult-at-risk agency or other investigative agency.
 - b. Under a lawful order of a court of record.

705.01 (3) "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan associations and credit unions.
50.065 Criminal history and patient abuse record search

(br) The elder-adult-at-risk agency or other investigative agency may transport the elder adult at risk for performance of a medical examination by a physician if any of the following applies:

1. The elder adult at risk or his or her guardian or agent under an activated power of attorney for health care, if any, consents to the examination.
2. The elder adult at risk is incapable of consenting to the examination and one of the following applies:
 - a. The elder adult at risk has no guardian or agent under an activated power of attorney for health care.
 - b. The elder adult at risk has a guardian or an agent under an activated power of attorney for health care, but that guardian or agent is the person suspected of abusing, neglecting, or financially exploiting the elder adult at risk.
 - c. The examination is authorized by order of a court.

(c) The elder-adult-at-risk agency may request a sheriff or police officer to accompany the elder-adult-at-risk agency investigator or worker during visits to the residence of the elder adult at risk or request other assistance as needed. If the request is made, a sheriff or police officer shall accompany the elder-adult-at-risk agency investigator or worker to the residence of the elder adult at risk and shall provide other assistance as requested or necessary.

(d) If a person interferes with the response or investigation under this subsection or interferes with the delivery of protective services under ch. [55](#) to the elder adult at risk, the elder-adult-at-risk agency investigator or worker may apply for an order under s. [813.123](#) prohibiting the interference.

813.123 Restraining orders and injunctions for individuals at risk

(f) If the elder-adult-at-risk agency worker or investigator or other agency investigator has reason to believe that substantial physical harm, irreparable injury, or death may occur to an elder adult at risk, the worker or investigator shall request immediate assistance in either initiating a protective services action under ch. [55](#) or contact law enforcement or another public agency, as appropriate.

(h) No person may be held civilly or criminally liable or be found guilty of unprofessional conduct for responding to a report or for participating in or conducting an investigation under this subsection, including the taking of photographs or the conducting of a medical examination, if the response or investigation was performed in good faith and within the scope of his or her authority.

(5m) OFFER OF SERVICES AND REFERRAL OF CASES. (a) Upon responding to a report, the elder-adult-at-risk agency or the investigative agency shall determine whether the elder adult at risk or any other individual involved in the alleged abuse, financial exploitation, neglect, or self-neglect is in need of services under this chapter or ch. [47](#), [49](#), [51](#), [54](#), or [55](#). From the appropriation under s. [20.435 \(7\) \(dh\)](#), the department shall allocate to selected counties not less than

\$25,000 in each fiscal year, and within the limits of these funds and of available state and federal funds and of county funds appropriated to match the state and federal funds, the elder-adult-at-risk agency shall provide the necessary direct services to the elder adult at risk or other individual or arrange for the provision of the direct services with other agencies or individuals. Those direct services provided shall be rendered under the least restrictive conditions necessary to achieve their objective.

(b) If the elder-adult-at-risk agency is not the aging unit, the elder-adult-at-risk agency in each county shall consult with and accept advice from the aging unit with respect to the distribution of the funds for direct services that are allocated under par. (a).

(br) If, after responding to a report, the elder-adult-at-risk agency has reason to believe that the elder adult at risk has been the subject of abuse, financial exploitation, neglect, or self-neglect, the elder-adult-at-risk agency may do any of the following:

1. Request immediate assistance in initiating a protective services action under ch. 55 or contact an investigative agency, as appropriate.
2. Take appropriate emergency action, including emergency protective placement under s. 55.135, if the elder-adult-at-risk agency determines that the emergency action is in the best interests of the elder adult at risk and the emergency action is the least restrictive appropriate intervention.
3. Refer the case to law enforcement officials, as specified in sub. (3) (a), for further investigation or to the district attorney, if the elder-adult-at-risk agency has reason to believe that a crime has been committed.
4. Refer the case to the licensing, permitting, registration, or certification authorities of the department or to other regulatory bodies if the residence, facility, or program for the elder adult at risk is or should be licensed, permitted, registered, or certified or is otherwise regulated.
5. Refer the case to the department of safety and professional services if the financial exploitation, neglect, self-neglect, or abuse involves an individual who is required to hold a credential, as defined in s. 440.01 (2) (a), under chs. 440 to 460.
- 5g. Refer the case to the department of financial institutions if the financial exploitation, neglect, self-neglect, or abuse involves an individual who is required to be registered under s. 202.13 or 202.14.
202.13: Regulation of fund-raising counsel; 202.14: Regulation of professional fund-raisers.
6. Bring a petition for a guardianship and protective services or protective placement under ch. 55 or a review of an existing guardianship if necessary to prevent financial exploitation, neglect, self-neglect, or abuse and if the elder adult at risk would otherwise be at risk of serious harm because of an inability to arrange for necessary food, clothing, shelter, or services.

(c) An elder adult at risk may refuse to accept services unless a guardian authorizes the services. The older-adult-at-risk agency or other provider agency shall notify the elder adult at risk of this right to refuse before providing services.

(6) RECORDS; CONFIDENTIALITY. (ac) In this subsection: 1. "Departmental report form" includes documentation of an elder-adult-at-risk agency's response to or investigation of a report made under sub. (5) and is the information required to be submitted to the department.

2. "Record" includes any document relating to the response, investigation, assessment, and disposition of a report made under this section.

(am) The elder-adult-at-risk agency shall prepare a departmental report form of its response under sub. (5) to a report of suspected abuse, financial exploitation, neglect, or self-neglect. If the elder-adult-at-risk agency refers the report to an investigative agency, the investigative agency shall advise the elder-adult-at-risk agency in writing of its response to the report. The elder-adult-at-risk agency shall maintain records of suspected abuse, financial exploitation, neglect, or self-neglect.

(b) Departmental report forms are confidential and may not be released by the elder-adult-at-risk agency or other investigative agency, except under the following circumstances:

1. To the elder adult at risk, any person named in a departmental report form who is suspected of abusing, neglecting, or financially exploiting an elder adult at risk, and the suspect's attorney. These persons may inspect the departmental report form, except that information identifying the person who initially reported the suspected abuse, financial exploitation, neglect, or self-neglect, or any other person whose safety might be endangered through disclosure, may not be released.
2. To the agency or other entity from which assistance is requested under sub. (5) (f). Information obtained under this subdivision shall remain confidential.
3. To an individual, organization, or agency designated by the department or as required by law for the purposes of management audits or program monitoring and evaluation. Information obtained under this subdivision shall remain confidential and may not be used in any way that discloses the names of or other identifying information about the individuals involved.
4. For purposes of research, if the research project has been approved by the department or the elder-adult-at-risk agency and the researcher has provided assurances that the information will be used only for the purposes for which it was provided to the researcher, the information will not be released to a person not

connected with the study under consideration, and the final product of the research will not reveal information that may serve to identify the individuals involved. The information shall remain confidential. In approving the use of information under this subdivision, the department shall impose any additional safeguards needed to prevent unwarranted disclosure of information.

5. Under a lawful order of a court of record.

6. To any agency or individual that provides direct services under sub. (5m), including an attending physician for purposes of diagnosis and treatment, and within the department to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of individuals committed to or under the supervision of the department. Information obtained under this subdivision shall remain confidential.

7. To the guardian of the elder adult at risk or the guardian of any person named in a report who is suspected of abusing, neglecting, or financially exploiting an elder adult at risk. These persons may inspect the departmental report form, except that information identifying the person who initially reported the suspected abuse, financial exploitation, neglect, or self-neglect, or any other person whose safety might be endangered through disclosure, may not be released.

8. To law enforcement officials in accordance with the policy developed under sub. (3) (a).

9. To a federal agency, state governmental agency, agency of any other state, or local governmental unit in this state or any other state that has a need for a departmental report form in order to carry out its responsibility to protect elder adults at risk from abuse, financial exploitation, neglect, or self-neglect.

10. To the reporter who made a report in his or her professional capacity, regarding action to be taken to protect or provide services to the alleged victim of abuse, financial exploitation, neglect, or self-neglect.

(bd) If a person requesting a departmental report form is not one of the persons or entities specified in par. (b), the elder-adult-at-risk agency may release information indicating only whether or not a report was received and whether or not statutory responsibility was fulfilled.

(br) Notwithstanding par. (b) 1. to 10., an elder-adult-at-risk agency or an investigative agency may not release departmental report forms under this section if any of the following applies:

1. The elder-adult-at-risk agency determines that the release would be contrary to the best interests of the elder adult at risk who is the subject of the departmental report form or of another person residing with the subject of the departmental report form, or the release is likely to cause mental, emotional, or physical harm to the subject of the departmental report form or to any other individual.

2. The district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial.

3. The elder-adult-at-risk agency determines that disclosure would jeopardize ongoing or future civil investigations or proceedings or would jeopardize the fairness of such a legal proceeding.

(bt) Subject to pars. (b), (bd), (br), (bv), and (bw), records under this subsection are confidential and may not be released by the elder-adult-at-risk agency or other investigative agency, except under the following circumstances, upon request:

1. To the elder adult at risk who is the alleged victim named in the record.

2. To the legal guardian, conservator, or other legal representative of the elder adult at risk who is the alleged victim named in the record, if the legal guardian, conservator, or other legal representative of the alleged victim is not the alleged perpetrator of the abuse, financial exploitation, or neglect.

3. To law enforcement officials and agencies in accordance with the policy developed under sub. (3) (a) or with investigations conducted under sub. (5), or a district attorney, for purposes of investigation or prosecution.

4. To the department, under s. 51.03 (2), or for death investigations under s. 50.04 (2t) or 50.035 (5); or to a sheriff, police department, or district attorney for death investigations under s. 51.64 (2) (a).

5. To an employee of a county department under s. 51.42 or 51.437 that is providing services either to the elder adult at risk who is the alleged victim named in the record or to the alleged perpetrator of abuse, to determine whether the alleged victim should be transferred to a less restrictive or more appropriate treatment modality or facility.

6. To a court, tribal court, or state governmental agency for a proceeding relating to the licensure or regulation of an individual or entity regulated or licensed by the state governmental agency, that was an alleged perpetrator of abuse, financial exploitation, or neglect.

7. To the department, for management, audit, program monitoring, evaluation, billing, or collection purposes.

8. To the attorney or guardian ad litem for the elder adult at risk who is the alleged victim named in the record, to assist in preparing for any proceeding under ch. 48, 51, 54, 55, 813, 971, or 975 pertaining to the alleged victim.

9. To a coroner, medical examiner, pathologist, or other physician investigating the cause of death of an elder adult at risk that is unexplained or unusual or is associated with unexplained or suspicious circumstances.

10. To staff members of the protection and advocacy agency designated under s. 51.62 and the board on aging and long-term care under s. 16.009.

11. To an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, neglect, or financial exploitation of an elder adult at risk.

12. To a grand jury, if it determines that access to specified records is necessary for the conduct of its official business.

13. Under a lawful order of a court of record.

(bv) The identity of a person making a report of alleged abuse, neglect, self-neglect, or financial exploitation shall be deleted from any record prior to its release under par. (bt) or from any departmental report form prior to its release under par. (b). The identity of any reporter may only be released with the written consent of the reporter or under a lawful order of a court of record.

(bw) A person to whom a departmental report form or a record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this subsection.

(by) A custodian of records or departmental report forms incurs no civil or criminal liability under this subsection and may not be found guilty of unprofessional conduct for the release or non-release of records or departmental report forms in accordance with this subsection while acting in good faith and within the scope of his or her authority.

(d) Any person who requests or obtains confidential information under this subsection under false pretenses may be fined not more than \$500 or imprisoned not more than one year in the county jail or both.

(e) Any employee who violates this subsection may be subject to discharge or suspension without pay.

(7) EXCEPTION. Nothing in this section may be construed to mean that a person is abused, financially exploited, neglected or in need of direct or protective services solely because he or she consistently relies upon treatment by spiritual means through prayer for healing in lieu of medical care in accordance with his or her religious tradition.

(8) DEPARTMENT DUTIES. (a) The department shall develop a plan to assist elder-adult-at-risk agencies in determining appropriate responses to reports of abuse, financial exploitation, neglect, or self-neglect.

(b) The department shall prepare and distribute sample departmental report forms for use by elder-adult-at-risk agencies.

(c) The department shall collect statistical information from each county pertaining to each reported case of abuse, financial exploitation, neglect, or self-neglect. The department may require elder-adult-at-risk agency workers or investigators to submit departmental report forms to the department that summarize the information being reported. These departmental report forms may not name or otherwise identify individuals. The department shall use this information to review the effectiveness of this section, to plan program changes, and to formulate reports.

(d) The department shall develop and disseminate information on elder-adult-at-risk abuse and the elder abuse reporting system under this section. The department shall also develop informational materials to be used by elder-adult-at-risk agencies regarding abuse of elder adults at risk and regarding the elder abuse reporting system. The department shall solicit contributions of labor, materials, and expertise from private sources to assist in developing the informational materials.

(9) PENALTIES. (a) Any person, including the state or any political subdivision of the state, violating sub. (6) is liable to any person damaged as a result of the violation for such damages as may be proved, together with exemplary damages of not less than \$100 nor more than \$500 for each violation and the costs and reasonable actual attorney fees that are incurred by the person damaged.

(b) In any action brought under par. (a) in which the court determines that the violator acted in a manner that was knowing and willful, the violator shall be liable for such damages as may be proved together with exemplary damages of not less than \$500 nor more than \$1,000 for each violation, together with costs and reasonable actual attorney fees as may be incurred. It is not a prerequisite to an action under par. (a) that the plaintiff suffer or be threatened with actual damages.

(c) An individual may bring an action to enjoin any violation of sub. (6) or to compel compliance with sub. (6), and may in the same action seek damages as provided in this subsection. The individual may recover costs and reasonable actual attorney fees incurred in the action, if he or she prevails.

(d) Any person who violates sub. (4) (b) 1. may be fined not more than \$10,000 or imprisoned for not more than 6 months or both.

(e) Whoever intentionally violates sub. (4) (ad) by failure to report as required may be fined not more than \$500 or imprisoned not more than 6 months or both.

History: 1983 a. 398, 1985 a. 176; 1989 a. 31; 1991 a. 39, 235; 1993 a. 27; 1995 a. 27 ss. 2334, 9130 (4); 1995 a. 225; 1997 a. 3, 131; 1999 a. 82; 2003 a. 33; 2005 a. 264, 388; 2007 a. 20 s. 9121 (6) (a); 2007 a. 45; 2009 a. 319; 2011 a. 32; 2013 a. 20. Failure of a defamation plaintiff to assert any facts to support a finding of bad faith on the part of a person who reported possible material abuse resulted in a concession that the reporter was acting in good faith at the time he made the elder abuse report and thus his statements were entitled to protection or privilege under sub. (4) (c). A ruling finding good faith did not resolve a counterclaim under sub. (4) (b) 2. c. that the lawsuit was retaliatory. Attorney fees are not recoverable as damages resulting from the statutory tort of retaliation. *Schau v. Kordell*, 2009 WI App 135, 321 Wis. 2d 105, 773 N.W.2d 454, 08-2571. Abuse and Neglect in Long-term Care Facilities: The Civil Justice System's Response. Studinski. Wis. Law. Aug. 2004. Preventing Abuse and Neglect in Health Care Settings: The Regulatory Agency's Responsibility. Dawson. Wis. Law. Aug. 2004. Seeking Justice in Death's Waiting Room: Barriers to Effectively Prosecuting Crime in Long-term Care Facilities. Hanrahan. Wis. Law. Aug. 2004. A Response: Issues Affecting Long-term Care. Purtell. Wis. Law. Oct. 2004.

CHAPTER 154

ADVANCE DIRECTIVES

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SUBCHAPTER I

DEFINITIONS

154.01 Definitions. In this chapter:

(1) “Attending physician” means a physician licensed under ch. 448 who has primary responsibility for the treatment and care of the patient.

(2g) “Department” means the department of health services.

(3) “Health care professional” means a person licensed, certified or registered under ch. 441, 448 or 455.

(4) “Inpatient health care facility” has the meaning provided under s. 50.135 (1) and includes community-based residential facilities, as defined in s. 50.01 (1g).

(5) “Life-sustaining procedure” means any medical procedure or intervention that, in the judgment of the attending physician, would serve only to prolong the dying process but not avert death when applied to a qualified patient. “Life-sustaining procedure” includes assistance in respiration, artificial maintenance of blood pressure and heart rate, blood transfusion, kidney dialysis and other similar procedures, but does not include:

(a) The alleviation of pain by administering medication or by performing any medical procedure.

(b) The provision of nutrition or hydration.

(5m) “Persistent vegetative state” means a condition that reasonable medical judgment finds constitutes complete and irreversible loss of all of the functions of the cerebral cortex and results in a complete, chronic and irreversible cessation of all cognitive functioning and consciousness and a complete lack of behavioral responses that indicate cognitive functioning, although autonomic functions continue.

(8) “Terminal condition” means an incurable condition caused by injury or illness that reasonable medical judgment finds would cause death imminently, so that the application of life-sustaining procedures serves only to postpone the moment of death.

History: 1983 a. 202; 1985 a. 199; 1987 a. 161 s. 13m; 1991 a. 84; 1993 a. 27; 1995 a. 27 s. 9126 (19); 1995 a. 168, 200; 2007 a. 20 s. 9121 (6) (a).

SUBCHAPTER II

DECLARATION TO PHYSICIANS

154.02 Definitions. In this subchapter:

(1) “Declaration” means a written, witnessed document voluntarily executed by the declarant under s. 154.03 (1), but is not limited in form or substance to that provided in s. 154.03 (2).

(2) “Feeding tube” means a medical tube through which nutrition or hydration is administered into the vein, stomach, nose, mouth or other body opening of a qualified patient.

(3) “Qualified patient” means a declarant who has been diagnosed and certified in writing to be afflicted with a terminal condition or to be in a persistent vegetative state by 2 physicians, one of whom is the attending physician, who have personally examined the declarant.

History: 1995 a. 200.

154.03 Declaration to physicians. (1) Any person of sound mind and 18 years of age or older may at any time voluntarily execute a declaration, which shall take effect on the date of execution, authorizing the withholding or withdrawal of life-sustaining procedures or of feeding tubes when the person is in a terminal condition or is in a persistent vegetative state. A declarant may not authorize the withholding or withdrawal of any medication, life-sustaining procedure or feeding tube if the declarant’s attending physician advises that, in his or her professional judgment, the withholding or withdrawal will cause the declarant pain or reduce the declarant’s comfort and the pain or discomfort cannot be alleviated through pain relief measures. A declarant may not authorize the withholding or withdrawal of nutrition or hydration that is administered or otherwise received by the declarant through means other than a feeding tube unless the declarant’s attending physician advises that, in his or her professional judgment, the administration is medically contraindicated. A declaration must be signed by the declarant in the presence of 2 witnesses. If the declarant is physically unable to sign a declaration, the declaration must be signed in the declarant’s name by one of the witnesses or some other person at the declarant’s express direction and in his or her presence; such a proxy signing shall either take place or be acknowledged by the declarant in the presence of 2 witnesses. The declarant is responsible for notifying his or her attending physician of the existence of the declaration. An attending physician who is so notified shall make the declaration a part of the declarant’s medical records. No witness to the execution of the declaration may, at the time of the execution, be any of the following:

(a) Related to the declarant by blood, marriage or adoption.

(b) Have knowledge that he or she is entitled to or has a claim on any portion of the declarant’s estate.

(c) Directly financially responsible for the declarant’s health care.

(d) An individual who is a health care provider, as defined in s. 155.01 (7), who is serving the declarant at the time of execution, an employee, other than a chaplain or a social worker, of the health care provider or an employee, other than a chaplain or a social

worker, of an inpatient health care facility in which the declarant is a patient.

(2) The department shall prepare and provide copies of the declaration and accompanying information for distribution in quantities to health care professionals, hospitals, nursing homes, county clerks and local bar associations and individually to private persons. The department shall include, in information accompanying the declaration, at least the statutory definitions of terms used in the declaration, statutory restrictions on who may be witnesses to a valid declaration, a statement explaining that valid witnesses acting in good faith are statutorily immune from civil or criminal liability, an instruction to potential declarants to read and understand the information before completing the declaration and a statement explaining that an instrument may, but need not be, filed with the register in probate of the declarant's county of residence. The department may charge a reasonable fee for the cost of preparation and distribution. The declaration distributed by the department of health services shall be easy to read, the type size may be no smaller than 10 point, and the declaration shall be in the following form, setting forth on the first page the wording before the ATTENTION statement and setting forth on the 2nd page the ATTENTION statement and remaining wording:

DECLARATION TO PHYSICIANS
(WISCONSIN LIVING WILL)

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

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

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

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

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

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

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

.... NO, I do not want life-sustaining procedures used if I am in a persistent vegetative state.

If you have not checked either box, life-sustaining procedures will be used.

3. If I am in a **PERSISTENT VEGETATIVE STATE**, as determined by 2 physicians who have personally examined me, the following are my directions regarding the use of feeding tubes:

.... YES, I want feeding tubes used if I am in a persistent vegetative state.

.... NO, I do not want feeding tubes used if I am in a persistent vegetative state.

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

If you are interested in more information about the significant terms used in this document, see section 154.01 of the Wisconsin Statutes or the information accompanying this document.

ATTENTION: You and the 2 witnesses must sign the document at the same time.

Signed	Date
Address	Date of birth

I believe that the person signing this document is of sound mind. I am an adult and am not related to the person signing this document by blood, marriage or adoption. I am not entitled to and do not have a claim on any portion of the person's estate and am not otherwise restricted by law from being a witness.

Witness signature	Date signed
Print name	

Witness signature	Date signed
Print name	

DIRECTIVES TO ATTENDING PHYSICIAN

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

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

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

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

* * * * *

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:

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

History: 1983 a. 202; 1985 a. 199; 1991 a. 84, 281; 1995 a. 27 s. 9126 (19); 1995 a. 168; 2007 a. 20 s. 9121 (6) (a).

Wisconsin statutes provide 3 instruments through which an individual may state healthcare wishes in the event of incapacitation: a "declaration to physicians," a "do-not-resuscitate order," and a "health care power of attorney." These statutory instruments apply under specific circumstances, have their own signature requirements, and may be limited in the extent of authorization they afford. A form will trigger no statutory immunities for healthcare providers when it lacks the features of these statutory documents. A court might conclude, however, that such a form is relevant in discerning a person's intent. **OAG 10-14**

Living will statutes: The first decade. Gelfand. 1987 WLR 737.

Planning Ahead for Incapacity. Shapiro. Wis. Law. Aug. 1991.

Wisconsin's New Living Will Act. Gilbert. Wis. Law. March 1992.

154.05 Revocation of declaration. (1) METHOD OF REVOCATION. A declaration may be revoked at any time by the declarant by any of the following methods:

(a) By being canceled, defaced, obliterated, burned, torn or otherwise destroyed by the declarant or by some person who is directed by the declarant and who acts in the presence of the declarant.

(b) By a written revocation of the declarant expressing the intent to revoke, signed and dated by the declarant.

(c) By a verbal expression by the declarant of his or her intent to revoke the declaration. This revocation becomes effective only if the declarant or a person who is acting on behalf of the declarant notifies the attending physician of the revocation.

(d) By executing a subsequent declaration.

(2) RECORDING THE REVOCATION. The attending physician shall record in the patient's medical record the time, date and place

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of the revocation and the time, date and place, if different, that he or she was notified of the revocation.

History: 1983 a. 202; 1995 a. 168.

154.07 Duties and immunities. (1) LIABILITY. (a) No physician, inpatient health care facility or health care professional acting under the direction of a physician may be held criminally or civilly liable, or charged with unprofessional conduct, for any of the following:

1. Participating in the withholding or withdrawal of life-sustaining procedures or feeding tubes under this subchapter.

2. Failing to act upon a revocation unless the person or facility has actual knowledge of the revocation.

3. Failing to comply with a declaration, except that failure by a physician to comply with a declaration of a qualified patient constitutes unprofessional conduct if the physician refuses or fails to make a good faith attempt to transfer the qualified patient to another physician who will comply with the declaration.

(b) 1. No person who acts in good faith as a witness to 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.

2. Subdivision 1. does not apply to a person who acts as a witness in violation of s. 154.03 (1).

(c) Pars. (a) and (b) apply to acts or omissions in connection with a provision of a document that is executed in another jurisdiction if the provision is valid and enforceable under s. 154.11 (9).

(2) EFFECT OF DECLARATION. The desires of a qualified patient who is competent supersede the effect of the declaration at all times. If a qualified patient is adjudicated incompetent at the time of the decision to withhold or withdraw life-sustaining procedures or feeding tubes, a declaration executed under this subchapter is presumed to be valid. The declaration of a qualified patient who is diagnosed as pregnant by the attending physician has no effect during the course of the qualified patient's pregnancy. For the purposes of this subchapter, a physician or inpatient health care facility may presume in the absence of actual notice to the contrary that a person who executed a declaration was of sound mind at the time.

History: 1983 a. 202; 1991 a. 84; 1995 a. 200; 2003 a. 290; 2005 a. 387.

154.11 General provisions. (1) SUICIDE. The withholding or withdrawal of life-sustaining procedures or feeding tubes from a qualified patient under this subchapter does not, for any purpose, constitute suicide. Execution of a declaration under this subchapter does not, for any purpose, constitute attempted suicide.

(2) LIFE INSURANCE. Making a declaration under s. 154.03 may not be used to impair in any manner the procurement of any policy of life insurance, and may not be used to modify the terms of an existing policy of life insurance. No policy of life insurance may be impaired in any manner by the withholding or withdrawal of life-sustaining procedures or feeding tubes from an insured qualified patient.

(3) HEALTH INSURANCE. No person may be required to execute a declaration as a condition prior to being insured for, or receiving, health care services.

(4) OTHER RIGHTS. This subchapter does not impair or supersede any of the following:

(a) A person's right to withhold or withdraw life-sustaining procedures or feeding tubes.

(b) The right of any person who does not have a declaration in effect to receive life-sustaining procedures or feeding tubes.

(5) INTENT. Failure to execute a declaration under this subchapter creates no presumption that the person consents to the use or withholding of life-sustaining procedures or feeding tubes in the event that the person suffers from a terminal condition or is in a persistent vegetative state.

(5m) VALID DECLARATION. A declaration that is in its original form or is a legible photocopy or electronic facsimile copy is presumed to be valid.

(6) CONSTRUCTION. Nothing in this subchapter condones, authorizes or permits any affirmative or deliberate act to end life other than to permit the natural process of dying.

(7) APPLICABILITY. (a) A declaration under s. 154.03 (2), 1983 stats., that is executed before April 22, 1986, and that is not subsequently revoked or has not subsequently expired is governed by the provisions of ch. 154, 1983 stats.

(b) A declaration under s. 154.03 (2), 1983 stats., that is executed after April 22, 1986, is void.

(c) A declaration under s. 154.03 (2), 1989 stats., that is executed before, on or after December 11, 1991, and that is not subsequently revoked or has not subsequently expired is governed by the provisions of ch. 154, 1989 stats.

(d) Nothing in this chapter, except par. (b), may be construed to render invalid a declaration that was validly executed under this chapter before April 6, 1996.

(8) INCLUSION IN MEDICAL RECORD. Upon receipt of a declaration, a health care facility, as defined in s. 155.01 (6), or a health care provider, as defined in s. 155.01 (7), shall, if the declarant is a patient of the health care facility or health care provider, include the declaration in the medical record of the declarant.

(9) DECLARATION FROM OTHER JURISDICTION. A valid document that authorizes the withholding or withdrawal of life-sustaining procedures or of feeding tubes and that is executed in another state or jurisdiction in compliance with the law of that state or jurisdiction is valid and enforceable in this state to the extent that the document is consistent with the laws of this state.

History: 1983 a. 202; 1985 a. 199; 1991 a. 84; 1995 a. 168, 200.

154.13 Filing declaration. (1) A declarant or an individual authorized by the declarant may, for a fee, file the declarant's declaration, for safekeeping, with the register in probate of the county in which the declarant resides.

(2) If a declarant or authorized individual has filed the declarant's declaration as specified in sub. (1), the following persons may have access to the declaration without first obtaining consent from the declarant:

(a) The individual authorized by the declarant.

(b) A health care provider who is providing care to the declarant.

(c) The court and all parties involved in proceedings in this state for adjudication of incompetency and appointment of a guardian for the declarant, for emergency detention under s. 51.15, for involuntary commitment under s. 51.20, or for protective placement or protective services under ch. 55.

(d) Any person under the order of a court for good cause shown.

(3) Failure to file a declaration under sub. (1) creates no presumption about the intent of an individual with regard to his or her health care decisions.

History: 1991 a. 281; 2005 a. 387.

154.15 Penalties. (1) Any person who intentionally conceals, cancels, defaces, obliterates or damages the declaration of another without the declarant's consent may be fined not more than \$500 or imprisoned not more than 30 days or both.

(2) Any person who, with the intent to cause a withholding or withdrawal of life-sustaining procedures or feeding tubes contrary to the wishes of the declarant, illegally falsifies or forges the declaration of another or conceals a declaration revoked under s. 154.05 (1) (a) or (b) or any person who intentionally withholds actual knowledge of a revocation under s. 154.05 is guilty of a Class F felony.

History: 1983 a. 202; 1985 a. 199; 1991 a. 84; 1995 a. 168; 1997 a. 283; 2001 a. 109.

SUBCHAPTER III

DO–NOT–RESUSCITATE ORDERS

154.17 Definitions. In this subchapter:

(1) “Do–not–resuscitate bracelet” means a standardized identification bracelet that meets the specifications established under s. 154.27 (1), or that is approved by the department under s. 154.27 (2), that bears the inscription “Do Not Resuscitate” and signifies that the wearer is a qualified patient who has obtained a do–not–resuscitate order and that the order has not been revoked.

(2) “Do–not–resuscitate order” means a written order issued under the requirements of this subchapter that directs emergency medical services practitioners, emergency medical responders, and emergency health care facilities personnel not to attempt cardiopulmonary resuscitation on a person for whom the order is issued if that person suffers cardiac or respiratory arrest.

(2r) “Emergency medical responder” has the meaning given under s. 256.01 (4p).

(3) “Emergency medical services practitioner” has the meaning given under s. 256.01 (5).

(4) “Qualified patient” means a person who has attained the age of 18 and to whom any of the following conditions applies:

(a) The person has a terminal condition.

(b) The person has a medical condition such that, were the person to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful in restoring cardiac or respiratory function or the person would experience repeated cardiac or pulmonary failure within a short period before death occurs.

(c) The person has a medical condition such that, were the person to suffer cardiac or pulmonary failure, resuscitation of that person would cause significant physical pain or harm that would outweigh the possibility that resuscitation would successfully restore cardiac or respiratory function for an indefinite period of time.

(5) “Resuscitation” means cardiopulmonary resuscitation or any component of cardiopulmonary resuscitation, including cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, defibrillation, administration of cardiac resuscitation medications and related procedures. “Resuscitation” does not include the Heimlich maneuver or similar procedure used to expel an obstruction from the throat.

History: 1995 a. 200; 1997 a. 27; 1999 a. 9; 2007 a. 130; 2017 a. 12.

154.19 Do–not–resuscitate order. (1) No person except an attending physician may issue a do–not–resuscitate order. An attending physician may issue a do–not–resuscitate order to a patient only if all of the following apply:

(a) The patient is a qualified patient.

(b) Except as provided in s. 154.225 (2), the patient requests the order.

(bm) Except as provided in s. 154.225 (2), the patient consents to the order after being provided the information specified in sub. (2) (a).

(c) The order is in writing.

(d) Except as provided in s. 154.225 (2), the patient signs the order.

(e) The physician does not know the patient to be pregnant.

(2) (a) The attending physician, or a person directed by the attending physician, shall provide the patient with written information about the resuscitation procedures that the patient has chosen to forego and the methods by which the patient may revoke the do–not–resuscitate order.

(b) After providing the information under par. (a), the attending physician, or the person directed by the attending physician, shall document in the patient’s medical record the medical condition that qualifies the patient for the do–not–resuscitate order,

shall make the order in writing and shall do one of the following, as requested by the qualified patient:

1. Affix to the wrist of the patient a do–not–resuscitate bracelet that meets the specifications established under s. 154.27 (1).

2. Provide an order form from a commercial vendor approved by the department under s. 154.27 (2) to permit the patient to order a do–not–resuscitate bracelet from the commercial vendor.

(3) (a) Except as provided in par. (b), emergency medical services practitioners, as defined in s. 256.01 (5), emergency medical responders, as defined in s. 256.01 (4p), and emergency health care facilities personnel shall follow do–not–resuscitate orders. The procedures used in following a do–not–resuscitate order shall be in accordance with any procedures established by the department by rule.

(b) Paragraph (a) does not apply under any of the following conditions:

1. The order is revoked under s. 154.21 or 154.225 (2).

2. The do–not–resuscitate bracelet appears to have been tampered with or removed.

3. The emergency medical services practitioner, emergency medical responder or member of the emergency health care facility knows that the patient is pregnant.

History: 1995 a. 200; 1997 a. 27; 1999 a. 9; 2017 a. 12.

Cross-reference: See also ch. DHS 125, Wis. adm. code.

Wisconsin statutes provide 3 instruments through which an individual may state healthcare wishes in the event of incapacitation: a “declaration to physicians,” a “do–not–resuscitate order,” and a “health care power of attorney.” These statutory instruments apply under specific circumstances, have their own signature requirements, and may be limited in the extent of authorization they afford. A form will trigger no statutory immunities for healthcare providers when it lacks the features of these statutory documents. A court might conclude, however, that such a form is relevant in discerning a person’s intent. *OAG 10–14*

Wisconsin’s Do Not Resuscitate Bracelet Law Raises Legal and Medical Issues. Mandel. Wis. Law. Dec. 1997.

154.21 Revocation of do–not–resuscitate order.

(1) **METHOD OF REVOCATION.** A patient may revoke a do–not–resuscitate order at any time by any of the following methods:

(a) The patient expresses to an emergency medical services practitioner, to an emergency medical responder, or to a person who serves as a member of an emergency health care facility’s personnel the desire to be resuscitated. The emergency medical services practitioner, emergency medical responder, or the member of the emergency health care facility shall promptly remove the do–not–resuscitate bracelet.

(b) The patient defaces, burns, cuts or otherwise destroys the do–not–resuscitate bracelet.

(c) The patient removes the do–not–resuscitate bracelet or another person, at the patient’s request, removes the do–not–resuscitate bracelet.

(2) **RECORDING THE REVOCATION.** The attending physician shall be notified as soon as practicable of the patient’s revocation and shall record in the patient’s medical record the time, date and place of the revocation, if known, and the time, date and place, if different, that he or she was notified of the revocation. A revocation under sub. (1) is effective regardless of when the attending physician has been notified of that revocation.

History: 1995 a. 200; 2017 a. 12.

154.225 Guardians and health care agents. (1) In this section:

(a) “Guardian” has the meaning given in s. 51.40 (1) (f).

(b) “Health care agent” has the meaning given in s. 155.01 (4).

(c) “Incapacitated” has the meaning given in s. 50.06 (1).

(2) The guardian or health care agent of an incapacitated qualified patient may request a do–not–resuscitate order on behalf of that incapacitated qualified patient and consent to the order and sign it after receiving the information specified in s. 154.19 (2) (a). The guardian or health care agent of an incapacitated qualified patient may revoke a do–not–resuscitate order on behalf of the incapacitated qualified patient by any of the following methods:

(a) The guardian or health care agent directs an emergency medical services practitioner, an emergency medical responder, or a person who serves as a member of an emergency health care facility's personnel to resuscitate the patient. The emergency medical services practitioner, the emergency medical responder, or the member of the emergency health care facility shall promptly remove the do-not-resuscitate bracelet.

(b) The guardian or health care agent defaces, burns, cuts or otherwise destroys the do-not-resuscitate bracelet.

(c) The guardian or health care agent removes the do-not-resuscitate bracelet.

History: 1997 a. 27; 2017 a. 12.

154.23 Liability. No physician, emergency medical services practitioner, emergency medical responder, health care professional, or emergency health care facility may be held criminally or civilly liable, or charged with unprofessional conduct, for any of the following:

(1) Under the directive of a do-not-resuscitate order, withholding or withdrawing, or causing to be withheld or withdrawn, resuscitation from a patient.

(2) Failing to act upon the revocation of a do-not-resuscitate order unless the person or facility had actual knowledge of the revocation.

(3) Failing to comply with a do-not-resuscitate order if the person or facility did not have actual knowledge of the do-not-resuscitate order or if the person or facility in good faith believed that the order had been revoked.

History: 1995 a. 200; 2017 a. 12.

154.25 General provisions. (1) **SUICIDE.** Under this subchapter, the withholding or withdrawing of resuscitation from a patient wearing a valid do-not-resuscitate bracelet does not, for any purpose, constitute suicide. Requesting a do-not-resuscitate order under this subchapter does not, for any purpose, constitute attempted suicide.

(2) **LIFE INSURANCE.** Requesting a do-not-resuscitate order under s. 154.19 may not be used to impair in any manner the procurement of any policy of life insurance, and may not be used to modify the terms of an existing policy of life insurance. No policy of life insurance may be impaired in any manner by the withholding or withdrawal of resuscitation from a qualified patient.

(3) **HEALTH INSURANCE.** No person may be required to request a do-not-resuscitate order as a condition prior to being admitted to a health care facility or being insured for, or receiving, health care services.

(4) **OTHER RIGHTS.** This subchapter does not impair or supersede any of the following:

(a) A person's right to withhold or withdraw resuscitation.

(b) The right of any person who does not have a do-not-resuscitate order in effect to receive resuscitation.

(5) **INTENT.** Failure to request a do-not-resuscitate order creates no presumption that the person consents to the use or withholding of resuscitation in the event that the person suffers from a condition that renders the person a qualified patient.

(6) **VALID DO-NOT-RESUSCITATE BRACELET.** A do-not-resuscitate bracelet that has not been removed, altered, or tampered with in any way shall be presumed valid, unless the patient, the patient's guardian, or the patient's health care agent expresses to the emergency medical services practitioner, emergency medical responder, or emergency health care facility personnel the patient's desire to be resuscitated.

(6m) **DESIRE OF THE PATIENT.** The desire of a patient to be resuscitated supersedes the effect of that patient's do-not-resuscitate order at all times.

(7) **CONSTRUCTION.** Nothing in this subchapter condones, authorizes or permits any affirmative or deliberate act to end life other than to permit the natural process of dying.

History: 1995 a. 200; 1997 a. 27; 2017 a. 12.

154.27 Specifications and distribution of do-not-resuscitate bracelet. (1) The department shall establish by rule a uniform standard for the size, color, and design of all do-not-resuscitate bracelets. Except as provided in sub. (2), the rules shall require that the do-not-resuscitate bracelets include the inscription "Do Not Resuscitate"; the name, address, date of birth and gender of the patient; and the name, business telephone number and signature of the attending physician issuing the order.

(2) The department may approve a do-not-resuscitate bracelet developed and distributed by a commercial vendor if the bracelet contains an emblem that displays an internationally recognized medical symbol on the front and the words "Wisconsin Do-Not-Resuscitate-EMS" and the qualified patient's first and last name on the back. The department may not approve a do-not-resuscitate bracelet developed and distributed by a commercial vendor if the vendor does not require a doctor's order for the bracelet prior to distributing it to a patient.

History: 1995 a. 200; 1999 a. 9.

Cross-reference: See also ch. DHS 125, Wis. adm. code.

154.29 Penalties. (1) Any person who willfully conceals, defaces or damages the do-not-resuscitate bracelet of another person without that person's consent may be fined not more than \$500 or imprisoned for not more than 30 days or both.

(2) Any person who, with the intent to cause the withholding or withdrawal of resuscitation contrary to the wishes of any patient, falsifies, forges or transfers a do-not-resuscitate bracelet to that patient or conceals the revocation under s. 154.21 of a do-not-resuscitate order or any responsible person who withholds personal knowledge of a revocation under s. 154.21 is guilty of a Class F felony.

(3) Any person who directly or indirectly coerces, threatens or intimidates an individual so as to cause the individual to sign or issue a do-not-resuscitate order shall be fined not more than \$500 or imprisoned for not more than 30 days or both.

History: 1995 a. 200; 1997 a. 283; 2001 a. 109.

SUBCHAPTER IV

AUTHORIZATION FOR FINAL DISPOSITION

154.30 Control of final disposition of certain human remains. (1) **DEFINITIONS.** (a) "Authorization for final disposition" means a document that satisfies the conditions under sub. (8) (d) or (dm), and that is voluntarily executed by a declarant under sub. (8), but is not limited in form or substance to that provided in sub. (8).

(b) "Cemetery authority" has the meaning given in s. 157.061 (2).

(c) "Credential" has the meaning given in s. 440.01 (2) (a).

(d) "Crematory authority" has the meaning given in s. 440.70 (9).

(e) "Declarant" means an individual who executes an authorization for final disposition.

(f) "Estranged" means being physically and emotionally alienated for a period of time, at the time of the decedent's death, and clearly demonstrating an absence of due affection, trust, and regard.

(g) "Final disposition" means disposition of a decedent's remains, including any of the following:

1. Arrangements for a viewing.

2. A funeral ceremony, memorial service, graveside service, or other last rite.

3. A burial, cremation and burial, or other disposition, or donation of the decedent's body.

(h) "Funeral director" has the meaning given in s. 445.01 (5).

(i) "Health care provider" means any individual who has a credential to provide health care.

(L) “Representative” means an individual specifically designated in an authorization for final disposition or, if that individual is unable or unwilling to carry out the declarant’s decisions and preferences, a successor representative designated in the authorization for final disposition to do so.

(m) “Social worker” has the meaning given in s. 252.15 (1) (er).

(2) INDIVIDUALS WITH CONTROL OF FINAL DISPOSITION; ORDER.

(a) Notwithstanding s. 445.14 and except as provided in par. (b) and sub. (3), any of the following, as prioritized in the following order, who is at least 18 years old and has not been adjudicated incompetent under ch. 54 or ch. 880, 2003 stats., may control final disposition, including the location, manner, and conditions of final disposition:

1. Subject to sub. (8) (e), a representative of the decedent acting under the decedent’s authorization for final disposition that conveys to the representative the control of final disposition, or a successor representative.

2. The surviving spouse of the decedent.

3. The surviving child of the decedent, unless more than one child of the decedent survives. In such an instance, the majority of the surviving children has control of the final disposition, except that fewer than the majority of the surviving children may control the final disposition if that minority has used reasonable efforts to notify all other surviving children and is not aware of opposition by the majority to the minority’s intended final disposition.

4. The surviving parent or parents of the decedent or a surviving parent who is available if the other surviving parent is unavailable after the available surviving parent has made reasonable efforts to locate him or her.

5. The surviving sibling of the decedent, unless more than one sibling of the decedent survives. In such an instance, the majority of the surviving siblings has control of the final disposition, except that fewer than the majority of the surviving siblings may control the final disposition if that minority has used reasonable efforts to notify all other surviving siblings and is not aware of opposition by the majority to the minority’s intended final disposition.

6. In descending order, an individual in the class of the next degree of kinship specified in s. 990.001 (16).

7. The guardian of the person, if any, of the decedent.

8. Any individual other than an individual specified under subds. 1. to 7. who is willing to control the final disposition and who attests in writing that he or she has made a good-faith effort, to no avail, to contact the individuals under subds. 1. to 7.

(b) Control of final disposition under par. (a), in the order of priority specified in par. (a), is restored to an individual specified in sub. (3) (b) 1. for whom charges under sub. (3) (b) 1. a. to d. are dismissed or who is found not guilty of the offense. Subject to s. 69.18 (4), the control of final disposition under this paragraph, with respect to a decedent for whom disposition has already been made of his or her remains, is limited, as appropriate, to any of the following:

1. A funeral ceremony, memorial service, graveside service, or other last rite.

2. Disinterment.

3. Reinterment, cremation and reinterment, or other disposition of the decedent’s body.

(3) EXCEPTIONS. (a) All of the following are exceptions to any control conferred under sub. (2):

1. The disposition of any unrevoked anatomical gift made by the decedent under s. 157.06 or made by an individual other than the decedent under s. 157.06.

2. Any power or duty of a coroner, medical examiner, or other physician licensed to perform autopsies with respect to the reporting of certain deaths, performance of autopsies, and inquests under ch. 979.

(b) None of the following is authorized under sub. (2) to control the final disposition:

1. Unless sub. (2) (b) applies, an individual who is otherwise authorized to control final disposition under the order of priority of individuals specified in sub. (2) (a) but who has been charged with any of the following in connection with the decedent’s death and the charges are known to the funeral director, crematory authority, or cemetery authority:

a. First-degree intentional homicide under s. 940.01 (1).

b. First-degree reckless homicide under s. 940.02.

c. Second-degree intentional homicide under s. 940.05.

d. Second-degree reckless homicide under s. 940.06.

2. An individual who is otherwise authorized to control final disposition under the order of priority of individuals specified in sub. (2) (a) but who fails to exercise this authorization within 2 days after he or she is notified of the decedent’s death or who cannot be located after reasonable efforts to do so has been made.

3. The decedent’s spouse, if an action under ch. 767 to terminate the marriage of the spouse and the decedent was pending at the time of the decedent’s death.

4. An individual for whom a determination is made by the probate court under par. (c) 2. b. that the individual and the decedent were estranged at the time of death.

(c) If the individuals on the same level of priority specified in sub. (2) (a) are unable to agree on the final disposition, the probate court that has jurisdiction for the county in which the decedent resided at the time of his or her death may designate an individual as most fit and appropriate to control the final disposition. All of the following apply to a designation made under this paragraph:

1. After the decedent’s death, a petition regarding control of the final disposition shall be filed with the probate court by any of the following:

a. A relative of the decedent.

b. An individual seeking control of the final disposition who claims a closer personal relationship to the decedent than the decedent’s next of kin and who was not in the employ of the decedent or the decedent’s family.

c. If 2 or more individuals on the same level of priority in sub. (2) (a) cannot, by majority vote, decide concerning the final disposition, any of those individuals or the funeral director, crematory authority, or cemetery authority that possesses the decedent’s remains.

2. The probate court may consider all of the following:

a. The reasonableness and practicality of the proposed final disposition.

b. The degree of the personal relationship between the decedent and each of the individuals claiming the right of final disposition, including whether the decedent was estranged from any of the individuals.

c. Except as provided in subd. 3., the desires of the individual or individuals who are ready, able, and willing to pay the cost of the final disposition.

d. The express written desires of the decedent.

e. The degree to which any proposed final disposition would permit maximum participation by family members, friends, and others who wish to pay final respects to the decedent.

3. An individual’s payment or agreement to pay for all or part of the costs of final disposition, or the fact that an individual is the personal representative of the decedent, does not, by itself, provide the individual any greater opportunity to control the final disposition than the individual otherwise has under this section.

(4) DECLINING TO EXERCISE CONTROL OR RESIGNING CONTROL. An individual who is otherwise authorized to control final disposition under the order of priority of individuals specified in sub. (2) (a) or who is designated under sub. (3) (c) may accept the control, may decline to exercise the control, or may, after accepting the control, resign it.

(5) **LIABILITY OF FUNERAL DIRECTOR, CREMATORY AUTHORITY, OR CEMETERY AUTHORITY.** (a) If inability to agree exists among any individuals, as specified in sub. (3) (c) (intro.), no funeral director, crematory authority, or cemetery authority is civilly or criminally liable for his or her refusal to accept the decedent's remains, to inter or otherwise dispose of the decedent's remains, or to complete the arrangements for the final disposition unless specifically directed to do so under an order of the probate court or unless the individuals in disagreement present the funeral director, crematory authority, or cemetery authority with a written agreement, signed by the individuals, that specifies the final disposition.

(b) A funeral director, crematory authority, or cemetery authority that retains the remains of a decedent for final disposition before individuals specified in sub. (3) (c) (intro.) reach agreement or before the probate court makes a final decision under sub. (3) (c) may embalm the remains, unless the authorization for final disposition forbids embalming, or may refrigerate and shelter the remains while awaiting the agreement or the probate court's decision and may add the cost of embalming or refrigeration and shelter, as appropriate, to the final disposition costs.

(c) If a funeral director, crematory authority, or cemetery authority files a petition under sub. (3) (c) 1., the funeral director, crematory authority, or cemetery authority may add to the cost of final disposition reasonable legal fees and costs associated with the court's review of the petition.

(d) This subsection may not be construed to require or otherwise impose a duty upon a funeral director, crematory authority, or cemetery authority to file a petition under sub. (3) (c) 1., and a funeral director, crematory authority, or cemetery authority may not be held criminally or civilly liable for failing or omitting to file the petition.

(e) In the absence of written notice to the contrary from an individual who claims control of the final disposition because of precedence under the order of priority of individuals specified under sub. (2) (a), no funeral director, crematory authority, or cemetery authority, who relies in good faith on instructions concerning the final disposition from another individual who first claims control of the final disposition but has less precedence under the order of priority of individuals specified in sub. (2) (a), and who acts or omits to act in accordance with these instructions, is civilly or criminally liable or may be found guilty of unprofessional conduct for the action or omission.

(6) **LIABILITY FOR COSTS OF FINAL DISPOSITION.** Notwithstanding s. 445.14, liability for the reasonable costs of the final disposition is from the declarant decedent's estate, as specified under s. 859.25 (1).

(7) **JURISDICTION.** The probate court for the county in which the decedent last resided has exclusive jurisdiction over matters that arise under this section.

(8) **AUTHORIZATION FOR FINAL DISPOSITION.** (a) An individual who is of sound mind and has attained age 18 may voluntarily execute an authorization for final disposition, which shall take effect on the date of execution. An individual for whom an adjudication of incompetence and appointment of a guardian of the person is in effect under ch. 54 or ch. 880, 2003 stats., is presumed not to be of sound mind for purposes of this subsection.

(b) An authorization for final disposition may express the declarant's special directions, instructions concerning religious observances, and suggestions concerning any of the following:

1. Arrangements for a viewing.
2. Funeral ceremony, memorial service, graveside service, or other last rite.
3. Burial, cremation and burial, or other disposition, or donation of the declarant's body after death.

(c) An authorization for final disposition requires a representative and one or more named successor representatives to carry out the directions, instructions, and suggestions of the declarant, as expressed in the declarant's authorization for final disposition,

unless the directions, instructions, and suggestions exceed available resources from the decedent's estate or are unlawful or unless there is no realistic possibility of compliance.

(d) Except as provided in par. (dm), an authorization for final disposition shall meet all of the following requirements:

1. List the name and last-known address, as of the date of execution of the authorization for final disposition, of each representative and each successor representative named, and be signed by each representative and each successor representative named.

2. Be signed and dated by the declarant, with the signature witnessed by 2 witnesses who each have attained age 18 and who are not related by blood, marriage, or adoption to the declarant, or acknowledged before a notary public. If the declarant is physically unable to sign an authorization for final disposition, the authorization shall be signed in the declarant's name by an individual at the declarant's express direction and in his or her presence; such a proxy signing shall take place or be acknowledged by the declarant in the presence of 2 witnesses or a notary public.

(dm) A document executed by a member of the U.S. armed forces in the manner and on a form provided by the federal department of defense that designates a person to direct the disposition of the member's remains is a valid authorization for final disposition under this section.

(e) If any of the following has a direct professional relationship with or provides professional services directly to the declarant and is not related to the declarant by blood, marriage, or adoption, that person may not serve as a representative under the requirements of this subsection:

1. A funeral director.
2. A crematory authority.
3. A cemetery authority.
4. An employee of a funeral director, crematory authority, or cemetery authority.
6. A health care provider.
8. A social worker.

(f) The department shall prepare and provide copies of the authorization for final disposition form and accompanying information for distribution in quantities to funeral directors, crematory authorities, cemetery authorities, hospitals, nursing homes, county clerks, and local bar associations and individually to private persons. The department shall include, in information accompanying the authorization for final disposition form, at least the statutory definitions of terms used in the form, and an instruction to potential declarants to read and understand the information before completing the form. The department may charge a reasonable fee for the cost of preparation and distribution. The authorization for final disposition form distributed by the department shall be easy to read, in not less than 10-point type, and in the following form:

AUTHORIZATION FOR FINAL DISPOSITION

I, (print name and address), being of sound mind, willfully and voluntarily make known by this document my desire that, upon my death, the final disposition of my remains be under the control of my representative under the requirements of section 154.30, Wisconsin statutes, and, with respect to that final disposition only, I hereby appoint the representative and any successor representative named in this document. All decisions made by my representative or any successor representative with respect to the final disposition of my remains are binding.

Name of representative

Address

Telephone number

If my representative dies, becomes incapacitated, resigns, refuses to act, ceases to be qualified, or cannot be located within the time necessary to control the final disposition of my remains, I hereby appoint the following individuals, each to act alone and

154.30 ADVANCE DIRECTIVES

Updated 15–16 Wis. Stats. 8

successively, in the order specified, to serve as my successor representative:

1. Name of first successor representative
Address
Telephone number
2. Name of second successor representative
Address
Telephone number

SUGGESTED SPECIAL DIRECTIONS
SUGGESTED INSTRUCTIONS CONCERNING RELIGIOUS
OBSERVANCES
SUGGESTED SOURCE OF FUNDS FOR
IMPLEMENTING FINAL DISPOSITION
DIRECTIONS AND INSTRUCTIONS

This authorization becomes effective upon my death.

I hereby revoke any prior authorization for final disposition that I may have signed before the date that this document is signed.

I hereby agree that any funeral director, crematory authority, or cemetery authority that receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to a funeral director, crematory authority, or cemetery authority until the funeral director, crematory authority, or cemetery authority receives actual notice of the modification or revocation. No funeral director, crematory authority, or cemetery authority may be liable because of reliance on a copy of this document.

The representative and any successor representative, by accepting appointment under this document, assume the powers and duties specified for a representative under section 154.30, Wisconsin statutes.

Signed this day of
Signature of declarant

I hereby accept appointment as representative for the control of final disposition of the declarant's remains.

Signed this day of
Signature of representative

I hereby accept appointment as successor representative for the control of final disposition of the declarant's remains.

Signed this day of
Signature of first successor representative
Signed this day of
Signature of second successor
representative

I attest that the declarant signed or acknowledged this authorization for final disposition in my presence and that the declarant appears to be of sound mind and not subject to duress, fraud, or undue influence. I further attest that I am not the representative or the successor representative appointed under this document,

that I am aged at least 18, and that I am not related to the declarant by blood, marriage, or adoption.

Witness (print name)
Signature
Address
Date
Witness (print name)
Signature
Address
Date

State of Wisconsin

County of

On (date), before me personally appeared (name of declarant), known to me or satisfactorily proven to be the individual whose name is specified in this document as the declarant and who has acknowledged that he or she executed the document for the purposes expressed in it. I attest that the declarant appears to be of sound mind and not subject to duress, fraud, or undue influence.

Notary public
My commission expires

(9) REVOCATION OF AUTHORIZATION FOR FINAL DISPOSITION. A declarant may revoke an authorization for final disposition at any time by any of the following methods:

(a) Cancelling, defacing, obliterating, burning, tearing, or otherwise destroying the authorization for final disposition or directing some other person to cancel, deface, obliterate, burn, tear, or otherwise destroy the authorization for final disposition in the presence of the declarant. In this paragraph, "cancelling" includes a declarant's writing on a declaration of final disposition, "I hereby revoke this declaration of final disposition," and signing and dating that statement.

(b) Revoking in writing the authorization for final disposition. The declarant shall sign and date any written revocation under this subsection.

(c) Executing a subsequent authorization for final disposition.

(10) PENALTY. Any person who intentionally conceals, cancels, defaces, obliterates, or damages the authorization for final disposition of another without the declarant's consent may be fined not more than \$500 or imprisoned not more than 30 days or both.

History: 2007 a. 58; 2009 a. 180, 197.

A family's interest in the remains of its deceased loved ones is simply too contingent to constitute a protected property interest. Sub. (3) (a) 2. provides that the next-of-kin's right to control final disposition of a loved one's remains is subject to the medical examiner's powers and duties under ch. 979. A medical examiner's discretion to order autopsies and to retain specimens is extremely broad. Accordingly, a family's right to dispose of the remains of its deceased loved ones is not "securely and durably" theirs, and thus it does not rise to the level of a constitutionally protected property interest. *Olejnuk v. England*, 147 F. Supp. 3d 763 (2015).

CHAPTER 155

POWER OF ATTORNEY FOR HEALTH CARE

155.01	Definitions.	155.50	Duties and immunities.
155.05	Power of attorney for health care.	155.60	Safeguards.
155.10	Power of attorney for health care instrument; execution; witnesses.	155.65	Filing power of attorney instrument.
155.20	Health care agent; powers; limitations.	155.70	General provisions.
155.30	Power of attorney for health care instrument; form.	155.80	Penalties.
155.40	Revocation of power of attorney for health care.		

155.01 Definitions. In this chapter:

- (1) “Department” means the department of health services.
- (2m) “Feeding tube” means a medical tube through which nutrition or hydration is administered into the vein, stomach, nose, mouth or other body opening of a declarant.
- (3) “Health care” means any care, treatment, service or procedure to maintain, diagnose or treat an individual’s physical or mental condition.
- (4) “Health care agent” means an individual designated by a principal to make health care decisions on behalf of the principal or, if that individual is unable or unwilling to make those decisions, an alternate individual designated by the principal to do so.
- (5) “Health care decision” means an informed decision in the exercise of the right to accept, maintain, discontinue or refuse health care.
- (6) “Health care facility” means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community-based residential facility, county home, county infirmary, county hospital, county mental health center or other place licensed or approved by the department under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.35, 51.08 or 51.09 or a facility under s. 45.50, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.
- (7) “Health care provider” means a nurse licensed or permitted under ch. 441, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447, a physician, physician assistant, perfusionist, podiatrist, physical therapist, physical therapist assistant, occupational therapist, or occupational therapy assistant licensed under ch. 448, a person practicing Christian Science treatment, an optometrist licensed under ch. 449, a psychologist licensed under ch. 455, a partnership thereof, a corporation or limited liability company thereof that provides health care services, a cooperative health care association organized under s. 185.981 that directly provides services through salaried employees in its own facility, or a home health agency, as defined in s. 50.49 (1) (a).
- (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.
- (9) “Multipurpose senior center” means a facility that is the focal point for the delivery of services in a community to individuals aged 60 or older for purposes of the state plan under 42 USC 3027.
- (10) “Power of attorney for health care” means the designation, by an individual, of another as his or her health care agent for the purpose of making health care decisions on his or her behalf if the individual cannot, due to incapacity.
- (11) “Principal” means an individual who executes a power of attorney for health care.
- (12) “Relative” means an individual related by blood within the 3rd degree of kinship as computed under s. 990.001 (16); a spouse, domestic partner under ch. 770, or an individual related to a spouse or domestic partner within the 3rd degree as so com-

puted; and includes an individual in an adoptive relationship within the 3rd degree.

History: 1989 a. 200; 1991 a. 281; 1993 a. 27, 105, 112, 490; 1995 a. 27 ss. 4395, 9126 (19); 1997 a. 35, 67; 1999 a. 9, 180; 2001 a. 70, 89, 105; 2005 a. 22; 2007 a. 20 s. 9121 (6) (a); 2009 a. 28, 165.

155.05 Power of attorney for health care. (1) An individual who is of sound mind and has attained age 18 may voluntarily execute a power of attorney for health care. An individual for whom an adjudication of incompetence and appointment of a guardian of the person is in effect in this state is presumed not to be of sound mind for purposes of this subsection executing a power of attorney for health care.

(2) Unless otherwise specified in the power of attorney for health care instrument, an individual’s power of attorney for health care takes effect upon a finding of incapacity by 2 physicians, as defined in s. 448.01 (5), or one physician and one licensed psychologist, as defined in s. 455.01 (4), who personally examine the principal and sign a statement specifying that the principal has incapacity. Mere old age, eccentricity or physical disability, either singly or together, are insufficient to make a finding of incapacity. Neither of the individuals who make a finding of incapacity may be a relative of the principal or have knowledge that he or she is entitled to or has a claim on any portion of the principal’s estate. A copy of the statement, if made, shall be appended to the power of attorney for health care instrument.

(3) No health care provider for an individual, employee of that health care provider or employee of a health care facility in which an individual is a patient or resides, or a spouse of any of those providers or employees, may be designated by the individual as a health care agent unless the health care provider, employee or spouse of the provider or employee is a relative of the individual.

(4) The desires of a principal who does not have incapacity supersede the effect of his or her power of attorney for health care at all times.

(5) A principal may designate an alternate individual to serve as his or her health care agent in the event that the health care agent first designated is unable or unwilling to do so.

History: 1989 a. 200; 2005 a. 387.

Power of Attorney for Health Care. Sweet. Wis. Law. Sept. 1990.

Planning Ahead for Incapacity. Shapiro. Wis. Law. Aug. 1991.

155.10 Power of attorney for health care instrument; execution; witnesses. (1) A valid power of attorney for health care instrument shall be all of the following:

- In writing.
 - Dated and signed by the principal or by an individual who has attained age 18, at the express direction and in the presence of the principal.
 - Signed in the presence of 2 witnesses who meet the requirements of sub. (2).
 - Voluntarily executed.
- (2) A witness to the execution of a valid power of attorney for health care instrument shall be an individual who has attained age

18. No witness to the execution of the power of attorney for health care instrument may, at the time of the execution, be any of the following:

- (a) Related to the principal by blood, marriage, or adoption, or the domestic partner under ch. 770 of the individual.
- (b) Have knowledge that he or she is entitled to or has a claim on any portion of the principal's estate.
- (c) Directly financially responsible for the principal's health care.
- (d) An individual who is a health care provider who is serving the principal at the time of execution, an employee, other than a chaplain or a social worker, of the health care provider or an employee, other than a chaplain or a social worker, of an inpatient health care facility in which the principal is a patient.
- (e) The principal's health care agent.

History: 1989 a. 200; 1991 a. 281; 2009 a. 28.

Wisconsin statutes provide 3 instruments through which an individual may state healthcare wishes in the event of incapacitation: a "declaration to physicians," a "do-not-resuscitate order," and a "health care power of attorney." These statutory instruments apply under specific circumstances, have their own signature requirements, and may be limited in the extent of authorization they afford. A form will trigger no statutory immunities for healthcare providers when it lacks the features of these statutory documents. A court might conclude, however, that such a form is relevant in discerning a person's intent. **OAG 10-14**

155.20 Health care agent; powers; limitations.

(1) Unless the power of attorney for health care instrument otherwise provides and except as specified in subs. (2) (a) and (b), (3) and (4) and s. 155.60 (2), the health care agent who is known to the health care provider to be available to make health care decisions for the principal has priority over any individual other than the principal to make these health care decisions.

(2) (a) A health care agent may not consent to admission of the principal on an inpatient basis to any of the following:

- 1. An institution for mental diseases, as defined in s. 49.43 (6m).
- 2. An intermediate care facility for persons with an intellectual disability, as defined in s. 46.278 (1m) (am).
- 3. A state treatment facility, as defined in s. 51.01 (15).
- 4. A treatment facility, as defined in s. 51.01 (19).

(b) A principal may be admitted or committed on an inpatient basis to a facility specified in par. (a) 1. to 4. only under the applicable requirements of ch. 51 or 55.

(c) 1. In this paragraph:

a. "Community-based residential facility" has the meaning given in s. 50.01 (1g).

b. "Nursing home" has the meaning given in s. 50.01 (3).

2. A health care agent may consent to the admission of a principal to the following facilities, under the following conditions:

a. 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.

b. If the principal lives with his or her health care agent, to a nursing home or a community-based residential facility, as a temporary placement not to exceed 30 days, in order to provide the health care agent with a vacation or to release temporarily the health care agent for a family emergency.

c. To a nursing home or a community-based residential facility, for purposes other than those specified in subd. 2. a. and b., 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.

(3) A health care agent may not consent to experimental mental health research or to psychosurgery, electroconvulsive treatment or drastic mental health treatment procedures for the principal.

(4) A health care agent may consent to the withholding or withdrawal of a feeding tube for the principal if the power of attorney for health care instrument so authorizes, unless the principal's attending physician advises that, in his or her professional judgment, the withholding or withdrawal will cause the principal pain or reduce the principal's comfort. A health care agent may not consent to the withholding or withdrawal of orally ingested nutrition or hydration unless provision of the nutrition or hydration is medically contraindicated.

(5) The health care agent shall 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. The health care agent shall act in good faith consistently with any valid declaration executed by the principal under subch. II of ch. 154, except that the provisions of a principal's valid power of attorney for health care instrument supersede any directly conflicting provisions of a valid declaration executed by the principal under subch. II of ch. 154. In the absence of a specific directive by the principal or if the principal's desires are unknown, the health care agent shall, in good faith, act in the best interests of the principal in exercising his or her authority.

(6) If the principal is known to be pregnant, the health care agent may make a health care decision on behalf of the principal that the power of attorney for health care instrument authorizes.

(7) If necessary to implement the health care decisions that a health care agent is authorized to make, in accordance with the desires of the principal, the health care agent may sign or otherwise execute any documents, waivers or releases related to the principal's care or treatment.

(8) A health care agent may make an anatomical gift of all or a part of the principal's body as provided under s. 157.06 (4) (b) or (9) (a) 1.

History: 1989 a. 200; 1991 a. 84, 269, 281; 1995 a. 200; 1997 a. 206; 2007 a. 106, 153; 2011 a. 126.

155.30 Power of attorney for health care instrument; form.

(1) A printed form of a power of attorney for health care instrument that is sold or otherwise distributed for use by an individual in this state who does not have the advice of legal counsel shall provide no authority other than the authority to make health care decisions on behalf of the principal and shall contain the following statement in not less than 10-point boldface type:

"NOTICE TO PERSON MAKING THIS DOCUMENT

YOU HAVE THE RIGHT TO MAKE DECISIONS ABOUT YOUR HEALTH CARE. NO HEALTH CARE MAY BE GIVEN TO YOU OVER YOUR OBJECTION, AND NECESSARY HEALTH CARE MAY NOT BE STOPPED OR WITHHELD IF YOU OBJECT.

BECAUSE YOUR HEALTH CARE PROVIDERS IN SOME CASES MAY NOT HAVE HAD THE OPPORTUNITY TO ESTABLISH A LONG-TERM RELATIONSHIP WITH YOU, THEY ARE OFTEN UNFAMILIAR WITH YOUR BELIEFS AND VALUES AND THE DETAILS OF YOUR FAMILY RELATIONSHIPS. THIS POSES A PROBLEM IF YOU BECOME PHYSICALLY OR MENTALLY UNABLE TO MAKE DECISIONS ABOUT YOUR HEALTH CARE.

IN ORDER TO AVOID THIS PROBLEM, YOU MAY SIGN THIS LEGAL DOCUMENT TO SPECIFY THE PERSON WHOM YOU WANT TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU ARE UNABLE TO MAKE THOSE DECISIONS PERSONALLY. THAT PERSON IS KNOWN AS YOUR HEALTH CARE AGENT. YOU SHOULD TAKE SOME TIME TO DISCUSS YOUR THOUGHTS AND BELIEFS ABOUT MEDICAL TREATMENT WITH THE PERSON OR PERSONS WHOM YOU HAVE SPECIFIED. YOU MAY STATE IN THIS DOCUMENT ANY TYPES OF HEALTH CARE THAT YOU DO OR DO NOT DESIRE, AND YOU MAY LIMIT THE AUTHORITY OF YOUR HEALTH CARE AGENT. IF YOUR HEALTH CARE AGENT IS UNAWARE OF YOUR DESIRES WITH RESPECT TO A PARTICULAR HEALTH CARE DECISION,

SION, HE OR SHE IS REQUIRED TO DETERMINE WHAT WOULD BE IN YOUR BEST INTERESTS IN MAKING THE DECISION.

THIS IS AN IMPORTANT LEGAL DOCUMENT. IT GIVES YOUR AGENT BROAD POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. IT REVOKES ANY PRIOR POWER OF ATTORNEY FOR HEALTH CARE THAT YOU MAY HAVE MADE. IF YOU WISH TO CHANGE YOUR POWER OF ATTORNEY FOR HEALTH CARE, YOU MAY REVOKE THIS DOCUMENT AT ANY TIME BY DESTROYING IT, BY DIRECTING ANOTHER PERSON TO DESTROY IT IN YOUR PRESENCE, BY SIGNING A WRITTEN AND DATED STATEMENT OR BY STATING THAT IT IS REVOKED IN THE PRESENCE OF TWO WITNESSES. IF YOU REVOKE, YOU SHOULD NOTIFY YOUR AGENT, YOUR HEALTH CARE PROVIDERS AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A COPY. IF YOUR AGENT IS YOUR SPOUSE OR DOMESTIC PARTNER AND YOUR MARRIAGE IS ANNULLED OR YOU ARE DIVORCED OR THE DOMESTIC PARTNERSHIP IS TERMINATED AFTER SIGNING THIS DOCUMENT, THE DOCUMENT IS INVALID.

YOU MAY ALSO USE THIS DOCUMENT TO MAKE OR REFUSE TO MAKE AN ANATOMICAL GIFT UPON YOUR DEATH. IF YOU USE THIS DOCUMENT TO MAKE OR REFUSE TO MAKE AN ANATOMICAL GIFT, THIS DOCUMENT REVOKES ANY PRIOR RECORD OF GIFT THAT YOU MAY HAVE MADE. YOU MAY REVOKE OR CHANGE ANY ANATOMICAL GIFT THAT YOU MAKE BY THIS DOCUMENT BY CROSSING OUT THE ANATOMICAL GIFTS PROVISION IN THIS DOCUMENT.

DO NOT SIGN THIS DOCUMENT UNLESS YOU CLEARLY UNDERSTAND IT.

IT IS SUGGESTED THAT YOU KEEP THE ORIGINAL OF THIS DOCUMENT ON FILE WITH YOUR PHYSICIAN."

(2) A power of attorney for health care instrument that is other than that specified in sub. (1) or (3) shall include either the notice specified in sub. (1) 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."

(3) The department shall prepare and provide copies of a power of attorney for health care instrument and accompanying information for distribution in quantities to health care professionals, hospitals, nursing homes, multipurpose senior centers, county clerks, and local bar associations and individually to private persons. The department shall include, in information accompanying the copy of the instrument, at least the statutory definitions of terms used in the instrument, statutory restrictions on who may be witnesses to a valid instrument, a statement explaining that valid witnesses acting in good faith are statutorily immune from civil or criminal liability and a statement explaining that an instrument may, but need not, be filed with the register in probate of the principal's county of residence. The department may charge a reasonable fee for the cost of preparation and distribution. The power of attorney for health care instrument distributed by the department shall include the notice specified in sub. (1) and shall be in the following form:

POWER OF ATTORNEY FOR HEALTH CARE

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

CREATION OF POWER OF ATTORNEY FOR HEALTH CARE

I,.... (print name, address and date of birth), being of sound mind, intend by this document to create a power of attorney for health care. My executing this power of attorney for health care is voluntary. Despite the creation of this power of attorney for health care, I expect to be fully informed about and allowed to participate in any health care decision for me, to the extent that I am able. For the purposes of this document, "health care decision"

means an informed decision to accept, maintain, discontinue or refuse any care, treatment, service or procedure to maintain, diagnose or treat my physical or mental condition.

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

DESIGNATION OF HEALTH CARE AGENT

If I am no longer able to make health care decisions for myself, due to my incapacity, I hereby designate.... (print name, address and telephone number) to be my health care agent for the purpose of making health care decisions on my behalf. If he or she is ever unable or unwilling to do so, I hereby designate.... (print name, address and telephone number) to be my alternate health care agent for the purpose of making health care decisions on my behalf. Neither my health care agent nor my alternate health care agent whom I have designated is my health care provider, an employee of my health care provider, an employee of a health care facility in which I am a patient or a spouse of any of those persons, unless he or she is also my relative. For purposes of this document, "incapacity" exists if 2 physicians or a physician and a psychologist who have personally examined me sign a statement that specifically expresses their opinion that I have a condition that means that I am unable to receive and evaluate information effectively or to communicate decisions to such an extent that I lack the capacity to manage my health care decisions. A copy of that statement must be attached to this document.

GENERAL STATEMENT OF AUTHORITY GRANTED

Unless I have specified otherwise in this document, if I ever have incapacity I instruct my health care provider to obtain the health care decision of my health care agent, if I need treatment, for all of my health care and treatment. I have discussed my desires thoroughly with my health care agent and believe that he or she understands my philosophy regarding the health care decisions I would make if I were able. I desire that my wishes be carried out through the authority given to my health care agent under this document.

If I am unable, due to my incapacity, to make a health care decision, my health care agent is instructed to make the health care decision for me, but my health care agent should try to discuss with me any specific proposed health care if I am able to communicate in any manner, including by blinking my eyes. If this communication cannot be made, my health care agent shall base his or her decision on any health care choices that I have expressed prior to the time of the decision. If I have not expressed a health care choice about the health care in question and communication cannot be made, my health care agent shall base his or her health care decision on what he or she believes to be in my best interest.

LIMITATIONS ON MENTAL HEALTH TREATMENT

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

ADMISSION TO NURSING HOMES OR COMMUNITY-BASED RESIDENTIAL FACILITIES

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

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

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

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

PROVISION OF A FEEDING TUBE

If I have checked “Yes” to the following, my health care agent may have a feeding tube withheld or withdrawn from me, unless my physician has advised that, in his or her professional judgment, this will cause me pain or will reduce my comfort. If I have checked “No” to the following, my health care agent may not have a feeding tube withheld or withdrawn from me.

My health care agent may not have orally ingested nutrition or hydration withheld or withdrawn from me unless provision of the nutrition or hydration is medically contraindicated.

Withhold or withdraw a feeding tube — Yes.... No....

If I have not checked either “Yes” or “No” immediately above, my health care agent may not have a feeding tube withdrawn from me.

HEALTH CARE DECISIONS FOR PREGNANT WOMEN

If I have checked “Yes” to the following, my health care agent may make health care decisions for me even if my agent knows I am pregnant. If I have checked “No” to the following, my health care agent may not make health care decisions for me if my health care agent knows I am pregnant.

Health care decision if I am pregnant — Yes.... No....

If I have not checked either “Yes” or “No” immediately above, my health care agent may not make health care decisions for me if my health care agent knows I am pregnant.

STATEMENT OF DESIRES, SPECIAL PROVISIONS OR LIMITATIONS

In exercising authority under this document, my health care agent shall act consistently with my following stated desires, if any, and is subject to any special provisions or limitations that I specify. The following are specific desires, provisions or limitations that I wish to state (add more items if needed):

- 1) –
- 2) –
- 3) –

INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH

Subject to any limitations in this document, my health care agent has the authority to do all of the following:

(a) Request, review and receive any information, oral or written, regarding my physical or mental health, including medical and hospital records.

(b) Execute on my behalf any documents that may be required in order to obtain this information.

(c) Consent to the disclosure of this information.

(The principal and the witnesses all must sign the document at the same time.)

SIGNATURE OF PRINCIPAL

(person creating the power of attorney for health care)

Signature.... Date....

(The signing of this document by the principal revokes all previous powers of attorney for health care documents.)

STATEMENT OF WITNESSES

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

Witness No. 1:

(print) Name.... Date....

Address....

Signature....

Witness No. 2:

(print) Name.... Date....

Address....

Signature....

STATEMENT OF HEALTH CARE AGENT AND ALTERNATE HEALTH CARE AGENT

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

Agent’s signature....

Address....

Alternate’s signature....

Address....

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

This power of attorney for health care is executed as provided in chapter 155 of the Wisconsin Statutes.

ANATOMICAL GIFTS (optional)

Upon my death:

.... I wish to donate only the following organs or parts: (specify the organs or parts).

.... I wish to donate any needed organ or part.

.... I wish to donate my body for anatomical study if needed.

.... I refuse to make an anatomical gift. (If this revokes a prior commitment that I have made to make an anatomical gift to a designated donee, I will attempt to notify the donee to which or to whom I agreed to donate.)

Failing to check any of the lines immediately above creates no presumption about my desire to make or refuse to make an anatomical gift.

Signature.... Date....

History: 1989 a. 200; 1991 a. 281; 1993 a. 213, 491; 1997 a. 206; 2007 a. 106, 153; 2009 a. 28; 2011 a. 126.

155.40 Revocation of power of attorney for health care. (1) A principal may revoke his or her power of attorney for health care and invalidate the power of attorney for health care instrument at any time by doing any of the following:

(a) Canceling, defacing, obliterating, burning, tearing or otherwise destroying the power of attorney for health care instrument or directing another in the presence of the principal to so destroy the power of attorney for health care instrument.

(b) Executing a statement, in writing, that is signed and dated by the principal, expressing the principal’s intent to revoke the power of attorney for health care.

(c) Verbally expressing the principal’s intent to revoke the power of attorney for health care, in the presence of 2 witnesses.

(d) Executing a subsequent power of attorney for health care instrument.

(2) If the health care agent is the principal’s spouse or domestic partner under ch. 770 and, subsequent to the execution of a power of attorney for health care instrument, the marriage is annulled or divorce from the spouse is obtained or the domestic partnership under ch. 770 is terminated, the power of attorney for health care is revoked and the power of attorney for health care instrument is invalid.

(2m) If a principal, after executing a power of attorney for health care, is adjudicated incompetent in this state, the power of attorney for health care remains in effect, except that a court may

under s. 54.46 (2) (b), for good cause shown, revoke the power of attorney for health care and invalidate the power of attorney for health care instrument, or limit the authority of the agent under the terms of the power of attorney for health care instrument.

(3) If an individual knows that the power of attorney for health care that named him or her as health care agent has been revoked, he or she shall communicate this fact to any health care provider for the principal that he or she knows has a copy of the power of attorney for health care instrument.

(4) The principal's health care provider shall, upon notification of revocation of the principal's power of attorney for health care instrument, record in the principal's medical record the time, date and place of the revocation and the time, date and place, if different, of the notification to the health care provider of the revocation.

History: 1989 a. 200; 2005 a. 387; 2009 a. 28.

155.50 Duties and immunities. (1) No health care facility or health care provider may be charged with a crime, held civilly liable or charged with unprofessional conduct for any of the following:

(a) Certifying incapacity under s. 155.05 (2), if the certification is made in good faith based on a thorough examination of the principal.

(b) Failing to comply with a power of attorney for health care instrument or the decision of a health care agent, except that failure of a physician to comply constitutes unprofessional conduct if the physician refuses or fails to make a good faith attempt to transfer the principal to another physician who will comply.

(c) Complying, in the absence of actual knowledge of a revocation, with the terms of a power of attorney for health care instrument that is in compliance with this chapter or the decision of a health care agent that is made under a power of attorney for health care that is in compliance with this chapter.

(d) Acting contrary to or failing to act on a revocation of a power of attorney for health care, unless the health care facility or health care provider has actual knowledge of the revocation.

(e) Failing to obtain the health care decision for a principal from the principal's health care agent, if the health care facility or health care provider has made a reasonable attempt to contact the health care agent and obtain the decision but has been unable to do so.

(2) In the absence of actual notice to the contrary, a health care facility or health care provider may presume that a principal was authorized to execute the principal's power of attorney for health care under the requirements of this chapter and that the power of attorney for health care instrument is valid.

(3) No health care agent may be charged with a crime or held civilly liable for making a decision in good faith under a power of attorney for health care instrument that is in compliance with this chapter. No health care agent who is not the spouse of the principal may be held personally liable for any goods or services purchased or contracted for under a power of attorney for health care instrument.

(4) Subsections (1), (2), and (3) apply to acts or omissions in connection with a provision of a power of attorney for health care that is executed in another jurisdiction if the provision is valid and enforceable under s. 155.70 (10).

History: 1989 a. 200; 2003 a. 290.

155.60 Safeguards. (1) Nothing in this chapter prohibits an individual from petitioning a court in this state for a determination of incompetency and for appointment of a guardian for an individual who is a principal under this chapter.

(2) If an individual who is a principal is adjudicated incompetent in this state and a guardian is appointed for him or her, the power of attorney for health care executed under this chapter by the principal remains in effect, except that the court may under s. 54.46 (2) (b), for good cause shown, revoke the power of attorney

for health care and invalidate the power of attorney for health care instrument, or limit the authority of the agent under the terms of the power of the power of attorney for health care instrument. Unless the court makes this revocation or limitation, the guardian for the individual may not make health care decisions for the ward that may be made by the health care agent, unless the guardian is the health care agent.

(3) Upon receipt of a power of attorney for health care instrument or a statement of incapacity under s. 155.05 (2), a health care facility or health care provider shall acknowledge this receipt in writing and, if the principal is a patient of the health care provider, the health care provider shall include the instrument or the statement in the medical record of the principal.

(4) (a) Any interested party may petition the court assigned to exercise probate jurisdiction for the county where a principal is present or the county of the principal's legal residence to review whether the health care agent is performing his or her duties in accordance with the terms of the power of attorney for health care instrument executed by the principal. If the court finds after a hearing that the health care agent has not been performing in accordance with the terms of the instrument, the court may do any of the following:

1. Direct the health care agent to act in accordance with the terms of the principal's power of attorney for health care instrument.

2. Require the health care agent to report to the court concerning performance of the health care agent's duties at periods of time established by the court.

3. Rescind all powers of the health care agent to act under the power of attorney for health care and the power of attorney for health care instrument.

(b) If the principal has designated an alternate health care agent and if the powers of the first-designated health care agent are rescinded under par. (a) 3., the alternate health care agent is the health care agent and par. (a), except par. (a) 3., applies.

History: 1989 a. 200; 2005 a. 387.

155.65 Filing power of attorney instrument. (1) A principal or a principal's health care agent may, for a fee, file the principal's power of attorney for health care instrument, for safekeeping, with the register in probate of the county in which the principal resides.

(2) If a principal or health care agent has filed the principal's power of attorney for health care instrument as specified in sub. (1), the following persons may have access to the instrument without first obtaining consent from the principal:

(a) The health care agent for the principal.

(b) A health care provider who is providing care to the principal.

(c) The court and all parties involved in proceedings in this state for adjudication of incompetency and appointment of a guardian for the principal, for emergency detention under s. 51.15, for involuntary commitment under s. 51.20, or for protective placement or protective services under ch. 55.

(d) Any person under the order of a court for good cause shown.

(3) Failure to file a power of attorney for health care instrument under sub. (1) creates no presumption about the intent of an individual with regard to his or her health care decisions.

History: 1991 a. 281; 2005 a. 387.

155.70 General provisions. (1) (a) The making of a health care decision on behalf of a principal under the principal's power of attorney for health care instrument does not, for any purpose, constitute suicide. Execution of a power of attorney for health care instrument under this chapter does not, for any purpose, constitute attempted suicide.

(b) Paragraph (a) does not prohibit an insurer from making a determination that a principal has attempted suicide or committed

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suicide based on the principal's action to do so, apart from the power of attorney for health care instrument.

(2) No individual may be required to execute a power of attorney for health care as a condition for receipt of health care or admission to a health care facility. The designation by a principal of a health care agent under a power of attorney for health care instrument is not a bar to the receipt of health care or admission to a health care facility.

(3) This chapter does not apply to the provisions of a valid declaration executed under subch. II of ch. 154, except that the provisions of a principal's valid power of attorney for health care instrument supersede any directly conflicting provisions of a valid declaration executed under subch. II of ch. 154 for a declarant who is that principal.

(4) (a) Nothing in this chapter may be construed to render invalid a durable power of attorney that is executed under s. 243.07, 2007 stats., prior to April 28, 1990.

(b) A health care decision made under the authority of a durable power of attorney specified in par. (a) is valid.

(5) No insurer may refuse to pay for goods or services covered under a principal's insurance policy solely because the decision to use the goods or services was made by the principal's health care agent.

(6) A power of attorney for health care instrument that is in its original form or is a legible photocopy or electronic facsimile copy is presumed to be valid.

(7) Nothing in this chapter may be construed to condone, authorize, approve or permit any affirmative or deliberate act to end life other than the withholding or withdrawing of health care under a power of attorney for health care so as to permit the natural process of dying. In making health care decisions under a power of attorney for health care, an attempted suicide by the principal may not be construed to indicate a desire of the principal that health care treatment be restricted or inhibited.

(8) Failure to execute a power of attorney for health care document under this chapter creates no presumption about the intent of any individual with regard to his or her health care decisions.

(9) A power of attorney for health care instrument under s. 155.30 (1), 1989 stats., that is executed before, on or after May 14,

1992, and that is not subsequently revoked is governed by the provisions of ch. 155, 1989 stats.

(10) A valid document granting a health care agent authority to make health care decisions for a principal that is executed in another state or jurisdiction in compliance with the law of that state or jurisdiction is valid and enforceable in this state to the extent that the document authorizes the health care agent to make decisions for the principal that a health care agent may make for a principal under this chapter.

History: 1989 a. 200; 1991 a. 84, 281; 1995 a. 200; 2003 a. 290; 2009 a. 319.

155.80 Penalties. (1) Whoever directly or indirectly coerces, threatens or intimidates an individual so as to cause the individual to execute a power of attorney for health care instrument shall be fined not more than \$500 or imprisoned for not more than 30 days or both.

(2) Whoever intentionally conceals, cancels, defaces, obliterates, damages or destroys a power of attorney for health care instrument without the consent of the principal for that instrument may be fined not more than \$500 or imprisoned for not more than 30 days or both.

(3) Whoever knowingly conceals, falsifies or forges a power of attorney for health care instrument with intent to create the false impression that a person other than the health care agent has been so designated shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

(4) Whoever intentionally withholds actual knowledge of the revocation of a power of attorney for health care or of the falsification or forgery of a power of attorney for health care instrument shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

(5) Whoever acts or attempts to act as a health care agent based on a power of attorney for health care that the individual knows has been executed without the voluntary consent of the principal, that the individual knows has been forged or substantially altered without the authorization of the principal, or that the individual knows has been revoked, shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

History: 1989 a. 200.

CHAPTER 244

UNIFORM POWER OF ATTORNEY FOR FINANCES AND PROPERTY

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SUBCHAPTER I

GENERAL PROVISIONS

244.01 Short title. This chapter may be cited as the Uniform Power of Attorney for Finances and Property Act.

History: 2009 a. 319.

Procedural Gray Areas: New Power of Attorney for Finances. Beermann & Johnson. Wis. Law. Oct. 2011.

244.02 Definitions. In this chapter:

(1) “Agent” means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise.

(2) “Domestic partner” has the meaning given in s. 770.01 (1).

(3) “Durable power of attorney” means a power of attorney that is not terminated by the principal’s incapacity.

(4) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) “Genuine” means free of forgery or counterfeiting.

(6) “Good faith” means honesty in fact.

(7) “Incapacity” means inability of an individual to manage property, finances, or business affairs because the individual meets one of the following criteria:

(a) Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance.

(b) Is missing.

(c) Is detained, including incarceration in a correctional facility.

(d) Is outside the United States and unable to return.

(8) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) “Power of attorney” means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.

(10) “Presently exercisable general power of appointment,” with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal’s estate, the principal’s creditors, or the creditors of the principal’s estate. The term does not include a power exercisable in a fiduciary capacity or only by will. The term includes a power of appointment that is exercisable only when one of the following circumstances exists:

(a) The occurrence of a specified event.

(b) The satisfaction of an ascertainable standard.

(c) The passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period.

(11) “Principal” means an individual who grants authority to an agent in a power of attorney.

(12) “Property” means anything that may be the subject of ownership, including real or personal property, digital property, as defined in s. 711.03 (10), or any interest or right in that property.

(13) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) “Sign” means, with present intent to authenticate or adopt a record, any of the following:

(a) To execute or adopt a tangible symbol.

(b) To attach to or logically associate with the record an electronic sound, symbol, or process.

(15) “Stocks and bonds” means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

History: 2009 a. 319; 2015 a. 300.

244.03 Applicability. This chapter applies to all powers of attorney except for the following:

(1) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction.

(2) A power to make health-care decisions.

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(3) A proxy or other delegation to exercise voting rights or management rights with respect to an entity.

(4) A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

History: 2009 a. 319.

Offering Clarity and Guidance: New Uniform Power of Attorney for Finances and Property. Collins, Hatch & Wilcox. Wis. Law. June 2010.

244.04 Power of attorney is durable. A power of attorney created under this chapter is durable unless it expressly provides that it is terminated by the incapacity of the principal.

History: 2009 a. 319.

244.05 Execution of power of attorney. To execute a power of attorney the principal must sign the power of attorney or another individual, in the principal's conscious presence and directed by the principal, must sign the principal's name on the power of attorney. A signature of the principal on a power of attorney is presumed to be genuine if the principal makes an acknowledgment of the power of attorney before a notarial officer authorized under s. 706.07 to take acknowledgments.

History: 2009 a. 319.

244.06 Validity of power of attorney. (1) A power of attorney executed in this state on or after September 1, 2010, is valid if its execution complies with s. 244.05.

(2) A power of attorney executed in this state before September 1, 2010, is valid if its execution complied with the law of this state as it existed at the time of execution.

(3) A power of attorney executed outside this state is valid in this state if, when the power of attorney was executed, the execution complied with one of the following:

(a) The law of the jurisdiction that determines the meaning and effect of the power of attorney, as provided under s. 244.07.

(b) The requirements for a military power of attorney under 10 USC 1044b.

(4) A photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

History: 2009 a. 319.

244.07 Meaning and effect of power of attorney.

(1) The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction in the power of attorney, by the law of the jurisdiction in which the power of attorney was executed.

(2) Unless specifically stated, a power of attorney does not authorize gifting, self-dealing, or oral amendment of the power of attorney, and any such specific authority shall be strictly construed.

History: 2009 a. 319.

244.08 Nomination of guardian; relation of agent to court-appointed fiduciary. (1) In a power of attorney, a principal may nominate a guardian of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney.

(2) If, after a principal executes a power of attorney, a court appoints a conservator or guardian of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court.

History: 2009 a. 319.

244.09 When a power of attorney is effective. (1) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a

future date or upon the occurrence of a future event or contingency.

(2) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine that the event or contingency has occurred.

(3) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person so authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by one of the following:

(a) A physician licensed under ch. 448 or a psychologist licensed under ch. 455 that the principal is incapacitated within the meaning of s. 244.02 (7) (a).

(b) An attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of s. 244.02 (7) (b), (c), or (d).

(c) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative under 42 USC 1320d, the Health Insurance Portability and Accountability Act, and applicable regulations, to obtain access to the principal's health-care information and communicate with the principal's health care provider.

History: 2009 a. 319.

244.10 Termination of power of attorney or agent's authority. (1) A power of attorney terminates when any of the following occurs:

(a) The principal dies.

(b) The principal becomes incapacitated, if the power of attorney so provides.

(c) The principal revokes the power of attorney.

(d) The power of attorney provides that it terminates.

(e) The purpose of the power of attorney is accomplished.

(f) The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

(2) An agent's authority terminates when any of the following occurs:

(a) The principal revokes the authority.

(b) The agent dies, becomes incapacitated, or resigns.

(c) An action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides.

(d) The power of attorney terminates.

(e) The domestic partnership of the principal and agent under ch. 770 is terminated unless the power of attorney otherwise provides.

(3) Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under sub. (2), notwithstanding a lapse of time since the execution of the power of attorney.

(4) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(5) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(6) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

History: 2009 a. 319.

244.11 Coagents and successor agents. (1) A principal may designate in a power of attorney 2 or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

(2) A principal may designate in a power of attorney one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent is subject to all of the following:

(a) Has the same authority as that granted to the original agent.
(b) May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

(3) Except as otherwise provided in the power of attorney and sub. (4), an agent who does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(4) An agent who has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any other action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent who fails to take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken other action.

History: 2009 a. 319.

244.12 Reimbursement and compensation of agent. Except as otherwise provided in the power of attorney, an agent is entitled to reimbursement of any expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

History: 2009 a. 319.

244.13 Agent's acceptance. Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

History: 2009 a. 319.

244.14 Agent's duties. (1) Notwithstanding any provisions to the contrary in the power of attorney, an agent who has accepted appointment shall do all of the following:

(a) Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, if those expectations are not known, in the principal's best interest.

(b) Act in good faith.

(c) Act only within the scope of authority granted in the power of attorney.

(2) Except as otherwise provided in the power of attorney, an agent who has accepted an appointment shall do all of the following:

(a) Act loyally for the principal's benefit.

(b) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest.

(c) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances.

(d) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal.

(e) Cooperate with a person that has authority to make health-care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, if those expectations are not known, act in the principal's best interest.

(f) Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including all of the following:

1. The value and nature of the principal's property.
2. The principal's foreseeable obligations and need for maintenance.

3. The minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes.

4. Eligibility for a benefit, a program, or assistance under a statute, rule, or regulation.

(3) An agent who acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(4) An agent who acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(5) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(6) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(7) An agent who exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(8) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by one of the following:

(a) The principal.

(b) A guardian, a conservator, or another fiduciary acting for the principal.

(c) A governmental agency having regulatory authority to protect the welfare of the principal.

(d) Upon the death of the principal, by the personal representative or successor in interest of the principal's estate.

(9) If ordered or requested to disclose information under sub. (8), the agent shall comply with the request within 30 days or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

History: 2009 a. 319.

244.15 Exoneration of agent. A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent that the provision does any of the following:

(1) Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal.

(2) Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

History: 2009 a. 319.

244.16 Judicial relief. (1) The following persons may petition the circuit court of the county where the principal is present or of the county of the principal's legal residence to construe a

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power of attorney or review the agent's conduct, and grant appropriate relief:

- (a) The principal or the agent.
- (b) A guardian, conservator, or other fiduciary acting for the principal.
- (c) A person authorized to make health-care decisions for the principal.
- (d) The principal's spouse, parent, or descendant.
- (e) The principal's domestic partner.
- (f) An individual who would qualify as a presumptive heir of the principal.
- (g) A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate.
- (h) A governmental agency having regulatory authority to protect the welfare of the principal.
- (i) The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare.
- (j) A person asked to accept the power of attorney.

(2) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

History: 2009 a. 319.

The relief granted under sub. (1) must fit the purpose of the action; it is not a broad invitation to the court to wade into the private attorney-client arrangements of the parties unless it is within the realm of construing a power of attorney or reviewing the conduct of an agent. The circuit court exceeded its authority under sub. (1) because the court's order limiting attorneys' fees was not aimed at remedying the attorney-in-fact's actions as attorney-in-fact. *Kelly v. Brown*, 2016 WI App 31, ___ Wis. 2d ___, ___ N.W.2d ___, 15-0777.

244.17 Agent's liability. An agent who violates this chapter is liable to the principal or the principal's successors in interest for the amount required to do all of the following:

- (1) Restore the value of the principal's property to what it would have been had the violation not occurred.
- (2) Reimburse the principal or the principal's successors in interest for the attorney fees and costs paid on the agent's behalf.

History: 2009 a. 319.

244.18 Agent's resignation; notice. Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated, to any of the following:

- (1) To the guardian, if one has been appointed for the principal, and a coagent or successor agent.
- (2) If there is no person described in sub. (1), to any of the following:
 - (a) The principal's caregiver.
 - (b) Another person reasonably believed by the agent to have sufficient interest in the principal's welfare.
 - (c) A governmental agency having regulatory authority to protect the welfare of the principal.

History: 2009 a. 319.

244.19 Protection of persons that accept and rely upon an acknowledged power of attorney. (1) For purposes of this section and s. 244.20, "acknowledged" means the taking of an acknowledgment before a notarial officer authorized to take acknowledgements under s. 706.07.

(2) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under s. 244.05 that the signature is genuine.

(3) (a) A person that in good faith accepts an acknowledged power of attorney without actual knowledge of any of the following may act as provided in par. (b):

- 1. That the power of attorney is void, invalid, or terminated.

2. That the purported agent's authority is void, invalid, or terminated.

3. That the agent is exceeding or improperly exercising the agent's authority.

(b) A person described in par. (a) may rely upon the power of attorney as if the power of attorney were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority.

(4) A person who is asked to accept an acknowledged power of attorney may request and rely upon, without further investigation, all of the following:

(a) An agent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney.

(b) An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English.

(c) An opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

(5) An English translation or an opinion of counsel requested under this section must be provided at the principal's expense.

(6) For purposes of this section, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

History: 2009 a. 319.

244.20 Refusal to accept acknowledged power of attorney. (1) A person may, in good faith, refuse to accept an acknowledged power of attorney within 10 business days of presentment if any of the following applies:

(a) The person is not otherwise required to engage in a transaction with the principal in the same circumstances.

(b) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal or state law.

(c) The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power of attorney.

(d) A request for a certification, a translation, or an opinion of counsel under s. 244.19 (4) is refused.

(e) The person believes that the power of attorney is not valid, that the agent does not have the authority to perform the act requested, or that the person presenting the power of attorney is not the agent named in the power of attorney, whether or not a certification, a translation, or an opinion of counsel under s. 244.19 (4) has been requested or provided.

(f) The person makes, or has actual knowledge that another person has made, a report to the designated adult at risk or elder adult at risk agency, or to a law enforcement agency, stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(g) The person brought, or has actual knowledge that another person has brought, an action under s. 244.16 for construction of a power of attorney or review of the agent's conduct.

(h) The power of attorney becomes effective upon the occurrence of an event or contingency, and neither a certification nor evidence of the occurrence of the event or contingency is presented to the person being asked to accept the power of attorney.

(i) The person has any other reasonable belief that the power of attorney is illegal or unenforceable and should be refused.

(2) A person may not refuse to accept an acknowledged power of attorney if any of the following applies:

- (a) The person's reason for refusal is based exclusively on the date the power of attorney was executed.

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(b) The person's reason for refusal is based exclusively on a mandate that an additional or different power of attorney form must be used.

(c) The person has no good faith basis for refusal under sub. (1).

(3) If a person requests a certification, a translation, or an opinion of counsel under s. 244.19 (4), the person shall accept the power of attorney no later than 5 business days after receipt of the certification, translation, or opinion of counsel, provided that there is no other good faith reason to refuse under sub. (1).

(4) It is not a refusal to accept an acknowledged power of attorney if any of the following applies:

(a) The person requests but does not require that an additional or different power of attorney form be used.

(b) The person has requested but has not received a certification, a translation, or an opinion of counsel under s. 244.19 (4).

(5) If a person refuses to accept an acknowledged power of attorney in violation of this section, the person requesting the acceptance may request that a court order all of the following:

(a) Acceptance of the power of attorney.

(b) In any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney, payment of reasonable attorney fees, notwithstanding s. 814.04 (1), and costs by the person who refuses to accept the power of attorney.

(6) If a court determines that a proceeding to mandate acceptance of an acknowledged power of attorney was brought other than in good faith, the court may award reasonable attorney fees and costs to the prevailing party.

History: 2009 a. 319.

244.21 Laws applicable to financial institutions and entities. This chapter does not supersede any other law applicable to financial institutions or insurance companies, and the other law controls if in conflict with this chapter.

History: 2009 a. 319.

SUBCHAPTER II

AUTHORITY

244.41 Authority that requires specific grant, grant of general authority. (1) An agent under a power of attorney may do any of the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and the exercise of that authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(a) Create, amend, revoke, or terminate an inter vivos trust.

(b) Make a gift.

(c) Create or change rights of survivorship.

(d) Create or change a beneficiary designation.

(e) Delegate authority granted under the power of attorney.

(f) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.

(g) Exercise fiduciary powers that the principal has authority to delegate.

(h) Disclaim property, including a power of appointment.

(i) Access the content of an electronic communication, as defined in s. 711.03 (6), sent or received by the principal.

(2) Notwithstanding a grant of authority to do an act described in sub. (1), unless the power of attorney otherwise provides, an agent who is not a spouse or domestic partner of the principal, may not do any of the following:

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(a) Exercise authority under a power of attorney to create in the agent an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(b) Exercise authority under a power of attorney to create in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(3) Subject to subs. (1), (2), (4), and (5), if a power of attorney grants to an agent the authority to do all acts that a principal could do, the agent has the general authority described in ss. 244.44 to 244.56.

(4) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to s. 244.57.

(5) Subject to subs. (1), (2), and (4), if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(6) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(7) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

History: 2009 a. 319; 2015 a. 300.

244.42 Incorporation of authority. (1) An agent has the authority described in this subchapter if the power of attorney refers to general authority as indicated by section titles for ss. 244.44 to 244.56 or cites the section in which the authority is described.

(2) A reference in a power of attorney to general authority with respect to the descriptive term for a subject in ss. 244.44 to 244.56 or a citation to any of ss. 244.44 to 244.56 incorporates the entire section as if it were set out in full in the power of attorney.

(3) A principal may modify authority incorporated by reference.

History: 2009 a. 319.

244.43 Construction of authority generally. Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in ss. 244.44 to 244.56 or that grants to an agent authority to do all acts that a principal could do under s. 244.41 (3), a principal authorizes the agent, with respect to that subject, to do all of the following:

(1) Demand, receive, and obtain by any lawful means, money or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended.

(2) Contract with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal.

(3) Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating a schedule listing some or all of the principal's property and attaching it to the power of attorney.

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim.

(5) Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney.

(6) Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor.

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(7) Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute, rule, or regulation.

(8) Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal.

(9) Access communications intended for, and communicate on behalf of, the principal by any means.

(10) Do any lawful act with respect to a subject described in ss. 244.44 to 244.56 and all property related to that subject.

History: 2009 a. 319.

244.44 Real property. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to do all of the following:

(1) Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property.

(2) Sell; exchange; convey with or without covenants, representations, or warranties; quit claim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property.

(3) Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.

(4) Release, assign, satisfy, or enforce by any lawful means a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property which exists or is asserted.

(5) Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including by doing any of the following:

(a) Insuring against liability or casualty or other loss.

(b) Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise.

(c) Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments.

(d) Purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property.

(6) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right.

(7) Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including by doing any of the following:

(a) Selling or otherwise disposing of the stocks, bonds, or property.

(b) Exercising or selling an option, right of conversion, or similar right with respect to the stocks, bonds, or property.

(c) Exercising any voting rights in person or by proxy.

(8) Change the form of title of an interest in or right incident to real property.

(9) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

History: 2009 a. 319.

244.445 Digital property. Unless the power of attorney otherwise provides, language in a power of attorney granting general

authority with respect to digital property authorizes the agent, subject to s. 711.06 (1), to do all of the following:

(1) Find, access, manage, protect, distribute, dispose of, transfer, transfer ownership rights in, or otherwise control digital devices, and any digital property stored thereon, with digital devices to include desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar digital device, either currently in existence or that may exist as technology develops.

(2) Access, manage, distribute, delete, terminate, transfer, transfer ownership rights in, or otherwise control [my] digital accounts, other than the content of electronic communications, as defined in s. 711.03 (6), with digital accounts to include [my] bank or other financial institution accounts, electronic mail accounts, blogs, software licenses, social network accounts, social media accounts, file-sharing and storage accounts, financial management accounts, domain registration accounts, domain name service accounts, Web hosting accounts, tax preparation service accounts, online store accounts, and affiliated programs currently in existence or that may exist as technology develops.

NOTE: The word in brackets is unnecessary. Corrective legislation is pending.

(3) Access, manage, distribute, delete, transfer, transfer ownership rights in, or otherwise control any digital property the principal may own or otherwise possess rights to, other than the content of electronic communications, as defined in s. 711.03 (6), regardless of the ownership of the digital device on which the digital property is stored or the ownership of the digital account within which the digital property is stored.

History: 2015 a. 300.

244.45 Tangible personal property. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to do all of the following:

(1) Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property.

(2) Sell; exchange; convey with or without covenants, representations, or warranties; quit claim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property.

(3) Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.

(4) Release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property.

(5) Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including by doing any of the following:

(a) Insuring against liability or casualty or other loss.

(b) Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise.

(c) Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments.

(d) Moving the property from place to place.

(e) Storing the property for hire or under a gratuitous bailment.

(f) Using and making repairs, alterations, or improvements to the property.

(6) Change the form of title of an interest in tangible personal property.

History: 2009 a. 319.

244.46 Stocks and bonds. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to do all of the following:

- (1) Buy, sell, and exchange stocks and bonds.
- (2) Establish, continue, modify, or terminate an account with respect to stocks and bonds.
- (3) Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal.
- (4) Receive certificates and other evidences of ownership with respect to stocks and bonds.
- (5) Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.
- (6) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds.
- (7) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds.

History: 2009 a. 319.

244.47 Commodities and options. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to do all of the following:

- (1) Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange.
- (2) Establish, continue, modify, and terminate option accounts.

History: 2009 a. 319.

244.48 Banks and other financial institutions. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to do all of the following:

- (1) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal.
- (2) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent.
- (3) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault.
- (4) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution.
- (5) Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them.
- (6) Enter a safe deposit box or vault and withdraw or add to the contents.
- (7) Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.
- (8) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order; transfer money, receive the cash or other proceeds of those transactions; and accept a draft drawn by a person upon the principal and pay it when due.
- (9) Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument.

(10) Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit.

(11) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

History: 2009 a. 319.

244.49 Operation of entity or business. Subject to the terms of a document or an agreement governing an entity or business or an entity or business ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to do all of the following:

- (1) Operate, buy, sell, enlarge, reduce, or terminate an ownership interest.
- (2) Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have.
- (3) Enforce the terms of an ownership agreement.
- (4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest.
- (5) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds.
- (6) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds.
- (7) With respect to an entity or business owned solely by the principal, do all of the following:
 - (a) Continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney.
 - (b) Determine all of the following:
 1. The location of its operation.
 2. The nature and extent of its business.
 3. The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation.
 4. The amount and types of insurance carried.
 5. The mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors.
 - (c) Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business.
 - (d) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business.
- (8) Put additional capital into an entity or business in which the principal has an interest.
- (9) Join in a plan of reorganization, consolidation, conversion, interest exchange, domestication, or merger of the entity or business.
- (10) Sell or liquidate all or part of an entity or business.
- (11) Establish the value of an entity or business under a buy-out agreement to which the principal is a party.
- (12) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments.
- (13) Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover,

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in any manner permitted by law, money paid before or after the execution of the power of attorney.

History: 2009 a. 319; 2015 a. 295.

244.50 Insurance and annuities. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to do all of the following:

(1) Continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract.

(2) Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse or domestic partner, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment.

(3) Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent.

(4) Apply for and receive a loan secured by a contract of insurance or annuity.

(5) Surrender and receive the cash surrender value on a contract of insurance or annuity.

(6) Exercise an election.

(7) Exercise investment powers available under a contract of insurance or annuity.

(8) Change the manner of paying premiums on a contract of insurance or annuity.

(9) Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section.

(10) Apply for and procure a benefit or assistance under a statute, rule, or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal.

(11) Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity.

(12) Select the form and timing of the payment of proceeds from a contract of insurance or annuity.

(13) Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

History: 2009 a. 319.

244.51 Estates, trusts, and other beneficial interests.

(1) In this section, “estates, trusts, and other beneficial interests” means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be, entitled to a share or payment.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to do all of the following:

(a) Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or beneficial interest.

(b) Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of an estate, trust, or beneficial interest, by litigation or otherwise.

(c) Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal.

(d) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal.

(e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary.

(f) Conserve, invest, disburse, or use anything received for an authorized purpose.

(g) Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor.

(h) Sign a waiver or consent in a probate matter.

(i) Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or beneficial interest.

History: 2009 a. 319.

244.52 Claims and litigation. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to do all of the following:

(1) Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief.

(2) Bring an action to determine adverse claims or intervene or otherwise participate in litigation.

(3) Seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use any available procedure to effect or satisfy a judgment, order, or decree.

(4) Make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation.

(5) Submit to alternative dispute resolution, settle, and propose or accept a compromise.

(6) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation.

(7) Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value.

(8) Pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation.

(9) Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

History: 2009 a. 319.

244.53 Personal and family maintenance. (1) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to do all of the following:

(a) Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse or the principal's domestic partner, and the following individuals, whether living when the power of attorney is executed or later born:

1. The principal's children.

2. Other individuals legally entitled to be supported by the principal.

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3. The individuals whom the principal has customarily supported or indicated the intent to support.

(b) Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party.

(c) Provide living quarters for the individuals described in par. (a) by doing any of the following:

1. Purchasing, leasing, or entering into a contract.

2. Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals.

(d) Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in par. (a).

(e) Pay expenses for necessary health care and custodial care on behalf of the individuals described in par. (a).

(f) Act as the principal's personal representative under [42 USC 1320d](#), the Health Insurance Portability and Accountability Act, and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal.

(g) Continue any provision made by the principal for motor vehicles or other means of transportation, including registering, licensing, insuring, and replacing the vehicles, for the individuals described in par. (a).

(h) Maintain credit and debit accounts for the convenience of the individuals described in par. (a) and open new accounts.

(i) Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations.

(2) Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this chapter.

History: 2009 a. 319.

244.54 Benefits from governmental programs or civil or military service. (1) In this section, “benefits from governmental programs or civil or military service” means any benefit, program or assistance provided under a statute, rule, or regulation, including social security, medicare, and medicaid.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to do all of the following:

(a) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in [s. 244.53 \(1\) \(a\)](#), and for shipment of their household effects.

(b) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose.

(c) Enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program.

(d) Prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute, rule, or regulation.

(e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute, rule, or regulation.

(f) Receive the financial proceeds of a claim described in par. (d) and conserve, invest, disburse, or use for a lawful purpose anything so received.

History: 2009 a. 319.

244.55 Retirement plans. (1) In this section, “retirement plan” means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including the following plans or accounts:

(a) An individual retirement account under section [408](#) of the Internal Revenue Code.

(b) A Roth individual retirement account under section [408A](#) of the Internal Revenue Code.

(c) A deemed individual retirement account under section [408](#) (q) of the Internal Revenue Code.

(d) An annuity or mutual fund custodial account under section [403](#) (b) of the Internal Revenue Code.

(e) A pension, profit-sharing, stock bonus, or other retirement plan qualified under section [401](#) (a) of the Internal Revenue Code.

(f) A plan under section [457](#) (b) of the Internal Revenue Code.

(g) A nonqualified deferred compensation plan under section [409A](#) of the Internal Revenue Code.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to do all of the following:

(a) Select the form and timing of payments under a retirement plan and withdraw benefits from a plan.

(b) Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another.

(c) Establish a retirement plan in the principal's name.

(d) Make contributions to a retirement plan.

(e) Exercise investment powers available under a retirement plan.

(f) Borrow from, sell assets to, or purchase assets from a retirement plan.

History: 2009 a. 319.

244.56 Taxes. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to do all of the following:

(1) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under section [2032A](#) of the Internal Revenue Code, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years.

(2) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority.

(3) Exercise any election available to the principal under federal, state, local, or foreign tax law.

(4) Act for the principal in all tax matters for all periods before the Internal Revenue Service, or other taxing authority.

History: 2009 a. 319; s. 35.17 correction in (1).

244.57 Gifts. (1) In this section, a gift “for the benefit of” a person includes a gift to a trust, an account under [ss. 54.854 to 54.898](#), and a tuition savings account or prepaid tuition plan as defined under section [529](#) of the Internal Revenue Code.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent to do all of the following:

(a) Make outright to, or for the benefit of, a person, a gift of any of the principal's property, including by the exercise of a presently

exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under section 2503 (b) of the Internal Revenue Code, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift under section 2513 of the Internal Revenue Code, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit.

(b) Consent, under section 2513 of the Internal Revenue Code, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(c) Make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including all of the following:

1. The value and nature of the principal's property.
2. The principal's foreseeable obligations and need for maintenance.
3. Minimization of taxes, including income, estate, inheritance, generation skipping transfer, and gift taxes.
4. Eligibility for a benefit, a program, or assistance under a statute, rule, or regulation.
5. The principal's personal history of making or joining in making gifts.

History: 2009 a. 319.

244.61 Statutory Form Power of Attorney for Finances and Property. A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this chapter. An appendix shall be attached to this form that includes the text of ss. 244.44 to 244.56. The appendix is for definitions only. The agent has powers only regarding the subjects initialed on the form.

**WISCONSIN STATUTORY FORM
POWER OF ATTORNEY
FOR FINANCES AND PROPERTY
IMPORTANT INFORMATION**

THIS POWER OF ATTORNEY AUTHORIZES ANOTHER PERSON (YOUR AGENT) TO MAKE DECISIONS CONCERNING YOUR PROPERTY FOR YOU (THE PRINCIPAL). YOUR AGENT WILL BE ABLE TO MAKE DECISIONS AND ACT WITH RESPECT TO YOUR PROPERTY (INCLUDING YOUR MONEY) WHETHER OR NOT YOU ARE ABLE TO ACT FOR YOURSELF. THE MEANING OF AUTHORITY OVER SUBJECTS LISTED ON THIS FORM IS EXPLAINED IN THE UNIFORM POWER OF ATTORNEY FOR FINANCES AND PROPERTY ACT IN CHAPTER 244 OF THE WISCONSIN STATUTES.

THIS POWER OF ATTORNEY DOES NOT AUTHORIZE THE AGENT TO MAKE HEALTH-CARE DECISIONS FOR YOU.

YOU SHOULD SELECT SOMEONE YOU TRUST TO SERVE AS YOUR AGENT. UNLESS YOU SPECIFY OTHERWISE, GENERALLY THE AGENT'S AUTHORITY WILL CONTINUE UNTIL YOU DIE OR REVOKE THE POWER OF ATTORNEY OR THE AGENT RESIGNS OR IS UNABLE TO ACT FOR YOU.

YOUR AGENT IS ENTITLED TO REASONABLE COMPENSATION UNLESS YOU STATE OTHERWISE IN THE SPECIAL INSTRUCTIONS.

THIS FORM PROVIDES FOR DESIGNATION OF ONE AGENT. IF YOU WISH TO NAME MORE THAN ONE AGENT YOU MAY NAME A COAGENT IN THE SPECIAL INSTRUCTIONS. COAGENTS ARE NOT REQUIRED TO ACT TOGETHER UNLESS YOU INCLUDE THAT REQUIREMENT IN THE SPECIAL INSTRUCTIONS.

IF YOUR AGENT IS UNABLE OR UNWILLING TO ACT FOR YOU, YOUR POWER OF ATTORNEY WILL END UNLESS YOU HAVE NAMED A SUCCESSOR AGENT. YOU MAY ALSO NAME A 2ND SUCCESSOR AGENT.

THIS POWER OF ATTORNEY BECOMES EFFECTIVE IMMEDIATELY UNLESS YOU STATE OTHERWISE IN THE SPECIAL INSTRUCTIONS. THIS POWER OF ATTORNEY DOES NOT REVOKE ANY POWER OF ATTORNEY EXECUTED PREVIOUSLY UNLESS YOU SO PROVIDE IN THE SPECIAL INSTRUCTIONS.

IF YOU REVOKE THIS POWER OF ATTORNEY, YOU SHOULD NOTIFY YOUR AGENT AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A COPY. IF YOUR AGENT IS YOUR SPOUSE OR DOMESTIC PARTNER AND YOUR MARRIAGE IS ANNULLED OR YOU ARE DIVORCED OR LEGALLY SEPARATED OR THE DOMESTIC PARTNERSHIP IS TERMINATED AFTER SIGNING THIS DOCUMENT, THE DOCUMENT IS INVALID.

IF YOU HAVE QUESTIONS ABOUT THE POWER OF ATTORNEY OR THE AUTHORITY YOU ARE GRANTING TO YOUR AGENT, YOU SHOULD SEEK LEGAL ADVICE BEFORE SIGNING THIS FORM.

DESIGNATION OF AGENT

I (name of principal) name the following person as my agent:

Name of agent:

Agent's address:

Agent's telephone number:

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of successor agent:

Successor agent's address:

Successor agent's telephone number:

If my successor agent is unable or unwilling to act for me, I name as my 2nd successor agent:

Name of 2nd successor agent:

Second successor agent's address:

Second successor agent's telephone number:

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney for Finances and Property Act in chapter 244 of the Wisconsin statutes:

INITIAL each subject you want to include in the agent's general authority.

.... Real property

.... Tangible personal property

.... Digital property

.... Stocks and bonds

.... Commodities and options

.... Banks and other financial institutions

.... Operation of entity or business

.... Insurance and annuities

.... Estates, trusts, and other beneficial interests

.... Claims and litigation

.... Personal and family maintenance

.... Benefits from governmental programs or civil or military service

.... Retirement plans

.... Taxes

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An agent who is not my spouse or domestic partner MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the special instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions in the following space

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the special instructions.

NOMINATION OF GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a guardian of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of nominee for guardian of my estate:

Nominee's address:

Nominee's telephone number:

Name of nominee for guardian of my person:

Nominee's address:

Nominee's telephone number:

RELiance ON THIS POWER OF ATTORNEY FOR FINANCES AND PROPERTY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows that the power of attorney has been terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

Your signature Date

Your name printed

Your address

Your telephone number

State of

County of

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

(Seal, if any)

Signature of notary

My commission expires:

This document prepared by:

IMPORTANT INFORMATION FOR AGENT AGENT'S DUTIES

WHEN YOU ACCEPT THE AUTHORITY GRANTED UNDER THIS POWER OF ATTORNEY, A SPECIAL LEGAL RELATIONSHIP IS CREATED BETWEEN YOU AND THE PRINCIPAL. THIS RELATIONSHIP IMPOSES UPON YOU LEGAL DUTIES THAT CONTINUE UNTIL YOU RESIGN OR THE POWER OF ATTORNEY IS TERMINATED OR REVOKED. YOU MUST DO ALL OF THE FOLLOWING:

(1) DO WHAT YOU KNOW THE PRINCIPAL REASONABLY EXPECTS YOU TO DO WITH THE PRINCIPAL'S PROPERTY OR, IF YOU DO NOT KNOW THE PRINCIPAL'S EXPECTATIONS, ACT IN THE PRINCIPAL'S BEST INTEREST.

(2) ACT IN GOOD FAITH.

(3) DO NOTHING BEYOND THE AUTHORITY GRANTED IN THIS POWER OF ATTORNEY.

(4) DISCLOSE YOUR IDENTITY AS AN AGENT WHENEVER YOU ACT FOR THE PRINCIPAL BY WRITING OR PRINTING THE NAME OF THE PRINCIPAL AND SIGNING YOUR OWN NAME AS "AGENT" IN THE FOLLOWING MANNER:

.... (principal's name) by (your signature) as agent

UNLESS THE SPECIAL INSTRUCTIONS IN THIS POWER OF ATTORNEY STATE OTHERWISE, YOU MUST ALSO DO ALL OF THE FOLLOWING:

(1) ACT LOYALLY FOR THE PRINCIPAL'S BENEFIT.

(2) AVOID CONFLICTS THAT WOULD IMPAIR YOUR ABILITY TO ACT IN THE PRINCIPAL'S BEST INTEREST.

(3) ACT WITH CARE, COMPETENCE, AND DILIGENCE.

(4) KEEP A RECORD OF ALL RECEIPTS, DISBURSEMENTS, AND TRANSACTIONS MADE ON BEHALF OF THE PRINCIPAL.

(5) COOPERATE WITH ANY PERSON THAT HAS AUTHORITY TO MAKE HEALTH-CARE DECISIONS FOR THE PRINCIPAL TO DO WHAT YOU KNOW THE PRINCIPAL REASONABLY EXPECTS OR, IF YOU DO NOT KNOW THE PRINCIPAL'S EXPECTATIONS, TO ACT IN THE PRINCIPAL'S BEST INTEREST.

(6) ATTEMPT TO PRESERVE THE PRINCIPAL'S ESTATE PLAN IF YOU KNOW THE PLAN AND PRESERVING THE PLAN IS CONSISTENT WITH THE PRINCIPAL'S BEST INTEREST.

TERMINATION OF AGENT'S AUTHORITY

YOU MUST STOP ACTING ON BEHALF OF THE PRINCIPAL IF YOU LEARN OF ANY EVENT THAT TERMINATES THIS POWER OF ATTORNEY OR YOUR AUTHORITY UNDER THIS POWER OF ATTORNEY. EVENTS THAT TERMINATE A POWER OF ATTORNEY OR YOUR AUTHORITY TO ACT UNDER A POWER OF ATTORNEY INCLUDE ALL OF THE FOLLOWING:

(1) DEATH OF THE PRINCIPAL.

(2) THE PRINCIPAL'S REVOCATION OF THE POWER OF ATTORNEY OR YOUR AUTHORITY.

(3) THE OCCURRENCE OF A TERMINATION EVENT STATED IN THE POWER OF ATTORNEY.

(4) THE PURPOSE OF THE POWER OF ATTORNEY IS FULLY ACCOMPLISHED.

(5) IF YOU ARE MARRIED TO THE PRINCIPAL, A LEGAL ACTION IS FILED WITH A COURT TO END YOUR MARRIAGE, OR FOR YOUR LEGAL SEPARATION, UNLESS THE SPECIAL INSTRUCTIONS IN THIS POWER OF ATTORNEY STATE THAT SUCH AN ACTION WILL NOT TERMINATE YOUR AUTHORITY.

(6) IF YOU ARE THE PRINCIPAL'S DOMESTIC PARTNER AND YOUR DOMESTIC PARTNERSHIP IS TERMINATED, UNLESS THE SPECIAL INSTRUCTIONS IN THIS POWER OF ATTORNEY STATE THAT SUCH AN ACTION WILL NOT TERMINATE YOUR AUTHORITY.

LIABILITY OF AGENT

THE MEANING OF THE AUTHORITY GRANTED TO YOU IS DEFINED IN THE UNIFORM POWER OF ATTORNEY FOR FINANCES AND PROPERTY ACT IN CHAPTER 244 OF THE WISCONSIN STATUTES. IF YOU VIOLATE THE UNIFORM POWER OF ATTORNEY FOR FINANCES AND PROPERTY ACT IN CHAPTER 244 OF THE WISCONSIN STATUTES OR ACT OUTSIDE THE AUTHORITY GRANTED, YOU MAY BE LIABLE FOR ANY DAMAGES CAUSED BY YOUR VIOLATION.

IF THERE IS ANYTHING ABOUT THIS DOCUMENT OR YOUR DUTIES THAT YOU DO NOT UNDERSTAND, YOU SHOULD SEEK LEGAL ADVICE.

OPTIONAL SIGNATURE OF AGENT

I HAVE READ AND ACCEPT THE DUTIES AND LIABILITIES OF THE AGENT AS SPECIFIED IN THIS POWER OF ATTORNEY.

Agent's signature Date

(APPENDIX FOLLOWS)

History: 2009 a. 319; 2011 a. 260 s. 81; 2015 a. 300.

Offering Clarity and Guidance: New Uniform Power of Attorney for Finances and Property. Collins, Hatch & Wilcox. Wis. Law. June 2010.

244.62 Agent's certification. The following optional form may be used by an agent to certify facts concerning a power of attorney for finances and property:

244.62 UNIFORM POWER OF ATTORNEY

Updated 15–16 Wis. Stats. 12

**AGENT'S CERTIFICATION AS TO THE VALIDITY OF
POWER OF ATTORNEY FOR FINANCES AND
PROPERTY AND AGENT'S AUTHORITY**

State of

County of

I, (name of agent), certify under penalty of perjury that
(name of principal) granted me authority as an agent or successor
agent in a power of attorney dated

I further certify that to my knowledge:

(1) The principal is alive and has not revoked the power of
attorney or my authority to act under the power of attorney, and
the power of attorney and my authority to act under the power of
attorney have not terminated.

(2) If the power of attorney was drafted to become effective
upon the happening of an event or contingency, the event or con-
tingency has occurred.

(3) If I was named as a successor agent, the prior agent is no
longer able or willing to serve.

(4) (insert other relevant statements).

SIGNATURE AND ACKNOWLEDGMENT

Agent's signature

Date

Agent's name printed

Agent's address

Agent's telephone number

This document was acknowledged before me on (date), by
.... (name of agent).

(Seal, if any)

Signature of notary

My commission expires:

This document prepared by:

History: 2009 a. 319.

244.63 Distribution of forms. The department of health ser-
vices shall prepare and provide copies of the Wisconsin statutory
form power of attorney for finances and property for distribution
in quantities to financial institutions, health care professionals,
hospitals, nursing homes, multipurpose senior centers, county
clerks and local bar associations and individually to private per-
sons. The department of health services may charge a reasonable
fee for the cost of preparation and distribution of the forms.

History: 2009 a. 319.

244.64 Relation to power of attorney for health care.

The execution of a Wisconsin statutory form power of attorney for
finances and property under this chapter does not confer on the
agent any of the powers or duties conferred on a health care agent
by the power of attorney for health care under ch. 155.

History: 2009 a. 319.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Chapter MPSW 20

CONDUCT

MPSW 20.01 Definition.

MPSW 20.02 Unprofessional conduct.

Note: Chapter SFC 20 was created as an emergency rule effective April 26, 1993.

Note: Chapter SFC 20 was renumbered ch. MPSW 20 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register October 2002 No. 562.

MPSW 20.01 Definition. “Gross negligence” in the practice of social work, or marriage and family therapy, or professional counseling means the performance of professional services that does not comply with an accepted standard of practice that has a significant relationship to the protection of the health, safety or welfare of a patient, client, or the public, and that is performed in a manner indicating that the person performing the services knew or should have known, but acted with indifference to or disregard of, the accepted standard of practice.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93.

MPSW 20.02 Unprofessional conduct. Unprofessional conduct related to the practice under a credential issued under ch. 457, Stats., includes, but is not limited to, engaging in, attempting to engage in, or aiding or abetting the following conduct:

- (1) Performing or offering to perform services for which the credential holder is not qualified by education, training or experience.
- (2) Violating a law of any jurisdiction, the circumstances of which substantially relate to the practice under the credential.
- (3) Undertaking or continuing performance of professional services after having been adjudged incompetent by any court of law.
- (4) Using fraud or deception in the application for a credential.
- (5) Using false, fraudulent, misleading or deceptive advertising, or maintaining a professional relationship with one engaging in such advertising.
- (6) Engaging in false, fraudulent, deceptive or misleading billing practices.
- (7) Reporting distorted, false, or misleading information or making false statements in practice.
- (8) Discriminating on the basis of age, race, color, sex, religion, creed, national origin, ancestry, disability or sexual orientation by means of service provided or denied.
- (9) Practicing or attempting to practice while the credential holder is impaired due to the utilization of alcohol or other drugs, or as a result of an illness which impairs the credential holder's ability to appropriately carry out the functions delineated under the credential in a manner consistent with the safety of a client, patient, or the public.
- (10) Revealing facts, data, information, records or communication received from a client in a professional capacity, except in the following circumstances:
 - (a) With the informed consent of the client or the client's authorized representative;
 - (b) With notification to the client prior to the time the information was elicited of the use and distribution of the information; or
 - (c) If necessary to prevent injury to the client or another person;
 - (d) Pursuant to a lawful order of a court of law;
 - (e) Use of case history material for teaching, therapeutic or research purposes, or in textbooks or other literature, provided

that proper precautions are taken to conceal the identity of the client; or

(f) When required pursuant to federal or state statute.

(11) Engaging in sexual contact, sexual conduct, or any other behavior with a client which could reasonably be construed as seductive. For purposes of this rule, a person shall continue to be a client for 2 years after the termination of professional services.

(12) Failing to provide the client or client's authorized representative a description of what may be expected in the way of tests, consultation, reports, fees, billing, therapeutic regimen or schedule.

(13) Failing to avoid dual relationships or relationships that may impair the credentialed person's objectivity or create a conflict of interest. Dual relationships prohibited to credentialed persons include the credentialed person treating the credentialed person's employers, employees, supervisors, supervisees, close friends or relatives, and any other person with whom the credentialed person shares any important continuing relationship.

(14) Failing to conduct an assessment, evaluation, or diagnosis as a basis for treatment consultation.

(15) Employing or claiming to have available secret techniques or procedures that the credential holder refuses to divulge.

(16) In the conduct of research, failing to inform study participants of all features of the research that might reasonably be expected to influence willingness to participate; failure to ensure as soon as possible participants' understanding of the reasons and justification for methodological requirements of concealment or deception in the study; failure to protect participants from physical or mental discomfort, harm or danger, or to notify the participant of such danger; and failure to detect and remove any undesirable consequences to the participants resulting from research procedures.

(17) Failing to inform the client of financial interests which are not obvious and which might accrue to the credential holder for referral to or for any use of service, product or publication.

(18) Failing to maintain adequate records relating to services provided a client in the course of a professional relationship. A credential holder providing clinical services to a client shall maintain records documenting an assessment, a diagnosis, a treatment plan, progress notes, and a discharge summary. All clinical records shall be prepared in a timely fashion. Absent exceptional circumstances, clinical records shall be prepared not more than one week following client contact, and a discharge summary shall be prepared promptly following closure of the client's case. Clinical records shall be maintained for at least 7 years after the last service provided, unless otherwise provided by federal law.

(19) Violating any of the provisions of ch. 457, Stats.

(20) Failing to notify the board that a license, certificate or registration for the practice of any profession previously issued to the credential holder has been revoked, suspended, limited or denied, or subject to any other disciplinary action by the authorities of any jurisdiction.

(21) Failing to make reasonable efforts to notify a client or a client's authorized representative when professional services will be interrupted or terminated by the credential holder.

(22) Gross negligence in practice in a single instance, or negligence in practice in more than one instance.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

(23) Having a license, registration, or certificate permitting the practice of marriage and family therapy, professional counseling, or social work, or authorizing the use of the title “marriage and family therapist,” “professional counselor,” “social worker”, or similar terms revoked, suspended, limited, or subjected to any other discipline, by any other jurisdiction.

History: Cr. Register, November, 1993, No. 455, eff. 12-1-93; CR 01-026: am. (13), Register December 2001 No. 552, eff. 1-1-02; CR 02-105: am. (intro.) (1), (4), (9), (15), (17), (20), (21) and (23), Register October 2002 No. 562, eff. 11-1-02; **CR 05-043: am. (18) Register December 2005 No. 600, eff. 1-1-06.**

NASW Code of Ethics (1996, r2017)

Preamble

The primary mission of the social work profession is to enhance human well-being and help meet the basic human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, oppressed, and living in poverty. A historic and defining feature of social work is the profession's focus on individual well-being in a social context and the well-being of society. Fundamental to social work is attention to the environmental forces that create, contribute to, and address problems in living.

Social workers promote social justice and social change with and on behalf of clients. "Clients" is used inclusively to refer to individuals, families, groups, organizations, and communities. Social workers are sensitive to cultural and ethnic diversity and strive to end discrimination, oppression, poverty, and other forms of social injustice. These activities may be in the form of direct practice, community organizing, supervision, consultation, administration, advocacy, social and political action, policy development and implementation, education, and research and evaluation. Social workers seek to enhance the capacity of people to address their own needs. Social workers also seek to promote the responsiveness of organizations, communities, and other social institutions to individuals' needs and social problems.

The mission of the social work profession is rooted in a set of core values. These core values, embraced by social workers throughout the profession's history, are the foundation of social work's unique purpose and perspective:

- service
- social justice
- dignity and worth of the person
- importance of human relationships
- integrity
- competence.

This constellation of core values reflects what is unique to the social work profession. Core values, and the principles that flow from them, must be balanced within the context and complexity of the human experience.

Purpose of the NASW Code of Ethics

Professional ethics are at the core of social work. The profession has an obligation to articulate its basic values, ethical principles, and ethical standards. The *NASW Code of Ethics* sets forth these values, principles, and standards to guide social workers' conduct. The *Code* is relevant to all social workers and social work students, regardless of their professional functions, the settings in which they work, or the populations they serve.

The *NASW Code of Ethics* serves six purposes:

1. The *Code* identifies core values on which social work's mission is based.
2. The *Code* summarizes broad ethical principles that reflect the profession's core values and establishes a set of specific ethical standards that should be used to guide social work practice.

3. The *Code* is designed to help social workers identify relevant considerations when professional obligations conflict or ethical uncertainties arise.
4. The *Code* provides ethical standards to which the general public can hold the social work profession accountable.
5. The *Code* socializes practitioners new to the field to social work's mission, values, ethical principles, and ethical standards.
6. The *Code* articulates standards that the social work profession itself can use to assess whether social workers have engaged in unethical conduct. NASW has formal procedures to adjudicate ethics complaints filed against its members.* In subscribing to this *Code*, social workers are required to cooperate in its implementation, participate in NASW adjudication proceedings, and abide by any NASW disciplinary rulings or sanctions based on it.

The *Code* offers a set of values, principles, and standards to guide decision making and conduct when ethical issues arise. It does not provide a set of rules that prescribe how social workers should act in all situations. Specific applications of the *Code* must take into account the context in which it is being considered and the possibility of conflicts among the *Code*'s values, principles, and standards. Ethical responsibilities flow from all human relationships, from the personal and familial to the social and professional.

Further, the *NASW Code of Ethics* does not specify which values, principles, and standards are most important and ought to outweigh others in instances when they conflict. Reasonable differences of opinion can and do exist among social workers with respect to the ways in which values, ethical principles, and ethical standards should be rank ordered when they conflict. Ethical decision making in a given situation must apply the informed judgment of the individual social worker and should also consider how the issues would be judged in a peer review process where the ethical standards of the profession would be applied.

Ethical decision making is a process. In situations when conflicting obligations arise, social workers may be faced with complex ethical dilemmas that have no simple answers. Social workers should take into consideration all the values, principles, and standards in this *Code* that are relevant to any situation in which ethical judgment is warranted. Social workers' decisions and actions should be consistent with the spirit as well as the letter of this *Code*.

In addition to this *Code*, there are many other sources of information about ethical thinking that may be useful. Social workers should consider ethical theory and principles generally, social work theory and research, laws, regulations, agency policies, and other relevant codes of ethics, recognizing that among codes of ethics social workers should consider the *NASW Code of Ethics* as their primary source. Social workers also should be aware of the impact on ethical decision making of their clients' and their own personal values and cultural and religious beliefs and practices. They should be aware of any conflicts between personal and professional values and deal with them responsibly. For additional guidance social workers should consult the relevant literature on professional ethics and ethical decision making and seek appropriate consultation when faced with ethical dilemmas. This may involve consultation with an agency-based or social work organization's ethics committee, a regulatory body, knowledgeable colleagues, supervisors, or legal counsel.

Instances may arise when social workers' ethical obligations conflict with agency policies or relevant laws or regulations. When such conflicts occur, social workers must make a responsible effort to resolve the conflict in a manner that is consistent with the values, principles, and standards expressed in this *Code*. If a reasonable resolution of the conflict does not appear possible, social workers should seek proper consultation before making a decision.

The *NASW Code of Ethics* is to be used by NASW and by individuals, agencies, organizations, and bodies (such as licensing and regulatory boards, professional liability insurance providers, courts of law, agency boards of directors, government agencies, and other professional groups) that choose to adopt it or use it as a frame of reference. Violation of standards in this *Code* does not automatically imply legal liability or violation of the law. Such determination can only be made in the context of legal and judicial proceedings. Alleged violations of the *Code* would be subject to a peer review process. Such processes are generally separate from legal or administrative procedures and insulated from legal review or proceedings to allow the profession to counsel and discipline its own members.

A code of ethics cannot guarantee ethical behavior. Moreover, a code of ethics cannot resolve all ethical issues or disputes or capture the richness and complexity involved in striving to make responsible choices within a moral community. Rather, a code of ethics sets forth values, ethical principles, and ethical standards to which professionals aspire and by which their actions can be judged. Social workers' ethical behavior should result from their personal commitment to engage in ethical practice. The *NASW Code of Ethics* reflects the commitment of all social workers to uphold the profession's values and to act ethically. Principles and standards must be applied by individuals of good character who discern moral questions and, in good faith, seek to make reliable ethical judgments.

With growth in the use of communication technology in various aspects of social work practice, social workers need to be aware of the unique challenges that may arise in relation to the maintenance of confidentiality, informed consent, professional boundaries, professional competence, record keeping, and other ethical considerations. In general, all ethical standards in this *Code of Ethics* are applicable to interactions, relationships, or communications, whether they occur in person or with the use of technology. For the purposes of this *Code*, “technology-assisted social work services” include any social work services that involve the use of computers, mobile or landline telephones, tablets, video technology, or other electronic or digital technologies; this includes the use of various electronic or digital platforms, such as the Internet, online social media, chat rooms, text messaging, e-mail, and emerging digital applications. Technology-assisted social work services encompass all aspects of social work practice, including psychotherapy; individual, family, or group counseling; community organization; administration; advocacy; mediation; education; supervision; research; evaluation; and other social work services. Social workers should keep apprised of emerging technological developments that may be used in social work practice and how various ethical standards apply to them.

Ethical Principles

The following broad ethical principles are based on social work's core values of service, social justice, dignity and worth of the person, importance of human relationships, integrity, and competence. These principles set forth ideals to which all social workers should aspire.

Value: *Service*

Ethical Principle: *Social workers' primary goal is to help people in need and to address social problems.*

Social workers elevate service to others above self-interest. Social workers draw on their knowledge, values, and skills to help people in need and to address social problems. Social workers are encouraged to volunteer some portion of their professional skills with no expectation of significant financial return (pro bono service).

Value: *Social Justice*

Ethical Principle: *Social workers challenge social injustice.*

Social workers pursue social change, particularly with and on behalf of vulnerable and oppressed individuals and groups of people. Social workers' social change efforts are focused primarily on issues of poverty, unemployment, discrimination, and other forms of social injustice. These activities seek to promote sensitivity to and knowledge about oppression and cultural and ethnic diversity. Social workers strive to ensure access to needed information, services, and resources; equality of opportunity; and meaningful participation in decision making for all people.

Value: *Dignity and Worth of the Person*

Ethical Principle: *Social workers respect the inherent dignity and worth of the person.*

Social workers treat each person in a caring and respectful fashion, mindful of individual differences and cultural and ethnic diversity. Social workers promote clients' socially responsible self-determination. Social workers seek to enhance clients' capacity and opportunity to change and to address their own needs. Social workers are cognizant of their dual responsibility to clients and to the broader society. They seek to resolve conflicts between clients' interests and the broader society's interests in a socially responsible manner consistent with the values, ethical principles, and ethical standards of the profession.

Value: *Importance of Human Relationships*

Ethical Principle: *Social workers recognize the central importance of human relationships.*

Social workers understand that relationships between and among people are an important vehicle for change. Social workers engage people as partners in the helping process. Social workers seek to strengthen relationships among people in a purposeful effort to promote, restore, maintain, and enhance the well-being of individuals, families, social groups, organizations, and communities.

Value: *Integrity*

Ethical Principle: *Social workers behave in a trustworthy manner.*

Social workers are continually aware of the profession's mission, values, ethical principles, and ethical standards and practice in a manner consistent with them. Social workers act honestly and responsibly and promote ethical practices on the part of the organizations with which they are affiliated.

Value: *Competence*

Ethical Principle: *Social workers practice within their areas of competence and develop and enhance their professional expertise.*

Social workers continually strive to increase their professional knowledge and skills and to apply them in practice. Social workers should aspire to contribute to the knowledge base of the profession.

Ethical Standards

The following ethical standards are relevant to the professional activities of all social workers. These standards concern (1) social workers' ethical responsibilities to clients, (2) social workers' ethical responsibilities to colleagues, (3) social workers' ethical responsibilities in practice settings, (4) social workers' ethical responsibilities as professionals, (5) social workers' ethical responsibilities to the social work profession, and (6) social workers' ethical responsibilities to the broader society.

Some of the standards that follow are enforceable guidelines for professional conduct, and some are aspirational. The extent to which each standard is enforceable is a matter of professional judgment to be exercised by those responsible for reviewing alleged violations of ethical standards.

1. Social Workers' Ethical Responsibilities to Clients

1.01 Commitment to Clients

Social workers' primary responsibility is to promote the well-being of clients. In general, clients' interests are primary. However, social workers' responsibility to the larger society or specific legal obligations may on limited occasions supersede the loyalty owed clients, and clients should be so advised. (Examples include when a social worker is required by law to report that a client has abused a child or has threatened to harm self or others.)

1.02 Self-Determination

Social workers respect and promote the right of clients to self-determination and assist clients in their efforts to identify and clarify their goals. Social workers may limit clients' right to self-determination when, in the social workers' professional judgment, clients' actions or potential actions pose a serious, foreseeable, and imminent risk to themselves or others.

1.03 Informed Consent

(a) Social workers should provide services to clients only in the context of a professional relationship based, when appropriate, on valid informed consent. Social workers should use clear and understandable language to inform clients of the purpose of the services, risks related to the services, limits to services because of the requirements of a third-party payer, relevant costs, reasonable alternatives, clients' right to refuse or withdraw consent, and the time frame covered by the consent. Social workers should provide clients with an opportunity to ask questions.

(b) In instances when clients are not literate or have difficulty understanding the primary language used in the practice setting, social workers should take steps to ensure clients' comprehension. This may include providing clients with a detailed verbal explanation or arranging for a qualified interpreter or translator whenever possible.

(c) In instances when clients lack the capacity to provide informed consent, social workers should protect clients' interests by seeking permission from an appropriate third party, informing clients consistent with the clients' level of understanding. In such instances social workers should seek to ensure that the third party acts in a manner consistent with clients' wishes and interests. Social workers should take reasonable steps to enhance such clients' ability to give informed consent.

(d) In instances when clients are receiving services involuntarily, social workers should provide information about the nature and extent of services and about the extent of clients' right to refuse service.

(e) Social workers should discuss with clients the social workers' policies concerning the use of technology in the provision of professional services.

(f) Social workers who use technology to provide social work services should obtain informed consent from the individuals using these services during the initial screening or interview and prior to initiating services. Social workers should assess clients' capacity to provide informed consent and, when using technology to communicate, verify the identity and location of clients.

(g) Social workers who use technology to provide social work services should assess the clients' suitability and capacity for electronic and remote services. Social workers should consider the clients' intellectual, emotional, and physical ability to use technology to receive services and the clients' ability to understand the potential benefits, risks, and limitations of such services. If clients do not wish to use services provided through technology, social workers should help them identify alternate methods of service.

(h) Social workers should obtain clients' informed consent before making audio or video recordings of clients or permitting observation of service provision by a third party.

(i) Social workers should obtain client consent before conducting an electronic search on the client. Exceptions may arise when the search is for purposes of protecting the client or other people from serious, foreseeable, and imminent harm, or for other compelling professional reasons.

1.04 Competence

(a) Social workers should provide services and represent themselves as competent only within the boundaries of their education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.

(b) Social workers should provide services in substantive areas or use intervention techniques or approaches that are new to them only after engaging in appropriate study, training, consultation, and supervision from people who are competent in those interventions or techniques.

(c) When generally recognized standards do not exist with respect to an emerging area of practice, social workers should exercise careful judgment and take responsible steps (including appropriate education, research, training, consultation, and supervision) to ensure the competence of their work and to protect clients from harm.

(d) Social workers who use technology in the provision of social work services should ensure that they have the necessary knowledge and skills to provide such services in a competent manner. This includes an understanding of the special communication challenges when using technology and the ability to implement strategies to address these challenges.

(e) Social workers who use technology in providing social work services should comply with the laws governing technology and social work practice in the jurisdiction in which they are regulated and located and, as applicable, in the jurisdiction in which the client is located.

1.05 Cultural Awareness and Social Diversity

(a) Social workers should understand culture and its function in human behavior and society, recognizing the strengths that exist in all cultures.

(b) Social workers should have a knowledge base of their clients' cultures and be able to demonstrate competence in the provision of services that are sensitive to clients' cultures and to differences among people and cultural groups.

(c) Social workers should obtain education about and seek to understand the nature of social diversity and oppression with respect to race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, and mental or physical ability.

(d) Social workers who provide electronic social work services should be aware of cultural and socioeconomic differences among clients and how they may use electronic technology. Social workers should assess cultural, environmental, economic, mental or physical ability, linguistic, and other issues that may affect the delivery or use of these services.

1.06 Conflicts of Interest

(a) Social workers should be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment. Social workers should inform clients when a real or potential conflict of interest arises and take reasonable steps to resolve the issue in a manner that makes the clients' interests primary and protects clients' interests to the greatest extent possible. In some cases, protecting clients' interests may require termination of the professional relationship with proper referral of the client.

(b) Social workers should not take unfair advantage of any professional relationship or exploit others to further their personal, religious, political, or business interests.

(c) Social workers should not engage in dual or multiple relationships with clients or former clients in which there is a risk of exploitation or potential harm to the client. In instances when dual or multiple relationships are unavoidable, social workers should take steps to protect clients and are responsible for setting clear, appropriate, and culturally sensitive boundaries. (Dual or multiple relationships occur when social workers relate to clients in more than one relationship, whether professional, social, or business. Dual or multiple relationships can occur simultaneously or consecutively.)

(d) When social workers provide services to two or more people who have a relationship with each other (for example, couples, family members), social workers should clarify with all parties which individuals will be considered clients and the nature of social workers' professional obligations to the various individuals who are receiving services. Social workers who anticipate a conflict of interest among the individuals receiving services or who anticipate having to perform in potentially conflicting roles (for example, when a social worker is asked to testify in a child custody dispute or divorce proceedings involving clients) should clarify their role with the parties involved and take appropriate action to minimize any conflict of interest.

(e) Social workers should avoid communication with clients using technology (such as social networking sites, online chat, e-mail, text messages, telephone, and video) for personal or non-work-related purposes.

(f) Social workers should be aware that posting personal information on professional Web sites or other media might cause boundary confusion, inappropriate dual relationships, or harm to clients.

(g) Social workers should be aware that personal affiliations may increase the likelihood that clients may discover the social worker's presence on Web sites, social media, and other forms of

technology. Social workers should be aware that involvement in electronic communication with groups based on race, ethnicity, language, sexual orientation, gender identity or expression, mental or physical ability, religion, immigration status, and other personal affiliations may affect their ability to work effectively with particular clients.

(h) Social workers should avoid accepting requests from or engaging in personal relationships with clients on social networking sites or other electronic media to prevent boundary confusion, inappropriate dual relationships, or harm to clients.

1.07 Privacy and Confidentiality

(a) Social workers should respect clients' right to privacy. Social workers should not solicit private information from or about clients except for compelling professional reasons. Once private information is shared, standards of confidentiality apply.

(b) Social workers may disclose confidential information when appropriate with valid consent from a client or a person legally authorized to consent on behalf of a client.

(c) Social workers should protect the confidentiality of all information obtained in the course of professional service, except for compelling professional reasons. The general expectation that social workers will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or others. In all instances, social workers should disclose the least amount of confidential information necessary to achieve the desired purpose; only information that is directly relevant to the purpose for which the disclosure is made should be revealed.

(d) Social workers should inform clients, to the extent possible, about the disclosure of confidential information and the potential consequences, when feasible before the disclosure is made. This applies whether social workers disclose confidential information on the basis of a legal requirement or client consent.

(e) Social workers should discuss with clients and other interested parties the nature of confidentiality and limitations of clients' right to confidentiality. Social workers should review with clients circumstances where confidential information may be requested and where disclosure of confidential information may be legally required. This discussion should occur as soon as possible in the social worker-client relationship and as needed throughout the course of the relationship.

(f) When social workers provide counseling services to families, couples, or groups, social workers should seek agreement among the parties involved concerning each individual's right to confidentiality and obligation to preserve the confidentiality of information shared by others. This agreement should include consideration of whether confidential information may be exchanged in person or electronically, among clients or with others outside of formal counseling sessions. Social workers should inform participants in family, couples, or group counseling that social workers cannot guarantee that all participants will honor such agreements.

(g) Social workers should inform clients involved in family, couples, marital, or group counseling of the social worker's, employer's, and agency's policy concerning the social worker's disclosure of confidential information among the parties involved in the counseling.

(h) Social workers should not disclose confidential information to third-party payers unless clients have authorized such disclosure.

- (i) Social workers should not discuss confidential information, electronically or in person, in any setting unless privacy can be ensured. Social workers should not discuss confidential information in public or semipublic areas such as hallways, waiting rooms, elevators, and restaurants.
- (j) Social workers should protect the confidentiality of clients during legal proceedings to the extent permitted by law. When a court of law or other legally authorized body orders social workers to disclose confidential or privileged information without a client's consent and such disclosure could cause harm to the client, social workers should request that the court withdraw the order or limit the order as narrowly as possible or maintain the records under seal, unavailable for public inspection.
- (k) Social workers should protect the confidentiality of clients when responding to requests from members of the media.
- (l) Social workers should protect the confidentiality of clients' written and electronic records and other sensitive information. Social workers should take reasonable steps to ensure that clients' records are stored in a secure location and that clients' records are not available to others who are not authorized to have access.
- (m) Social workers should take reasonable steps to protect the confidentiality of electronic communications, including information provided to clients or third parties. Social workers should use applicable safeguards (such as encryption, firewalls, and passwords) when using electronic communications such as e-mail, online posts, online chat sessions, mobile communication, and text messages -
- (n) Social workers should develop and disclose policies and procedures for notifying clients of any breach of confidential information in a timely manner.
- (o) In the event of unauthorized access to client records or information, including any unauthorized access to the social worker's electronic communication or storage systems, social workers should inform clients of such disclosures, consistent with applicable laws and professional standards.
- (p) Social workers should develop and inform clients about their policies, consistent with prevailing social work ethical standards, on the use of electronic technology, including Internet-based search engines, to gather information about clients.
- (q) Social workers should avoid searching or gathering client information electronically unless there are compelling professional reasons, and when appropriate, with the client's informed consent.
- (r) Social workers should avoid posting any identifying or confidential information about clients on professional websites or other forms of social media.
- (s) Social workers should transfer or dispose of clients' records in a manner that protects clients' confidentiality and is consistent with applicable laws governing records and social work licensure.
- (t) Social workers should take reasonable precautions to protect client confidentiality in the event of the social worker's termination of practice, incapacitation, or death.
- (u) Social workers should not disclose identifying information when discussing clients for teaching or training purposes unless the client has consented to disclosure of confidential information.

(v) Social workers should not disclose identifying information when discussing clients with consultants unless the client has consented to disclosure of confidential information or there is a compelling need for such disclosure.

(w) Social workers should protect the confidentiality of deceased clients consistent with the preceding standards.

1.08 Access to Records

(a) Social workers should provide clients with reasonable access to records concerning the clients. Social workers who are concerned that clients' access to their records could cause serious misunderstanding or harm to the client should provide assistance in interpreting the records and consultation with the client regarding the records. Social workers should limit clients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client. Both clients' requests and the rationale for withholding some or all of the record should be documented in clients' files.

(b) Social workers should develop and inform clients about their policies, consistent with prevailing social work ethical standards, on the use of technology to provide clients with access to their records.

(c) When providing clients with access to their records, social workers should take steps to protect the confidentiality of other individuals identified or discussed in such records.

1.09 Sexual Relationships

(a) Social workers should under no circumstances engage in sexual activities, inappropriate sexual communications through the use of technology or in person, or sexual contact with current clients, whether such contact is consensual or forced.

(b) Social workers should not engage in sexual activities or sexual contact with clients' relatives or other individuals with whom clients maintain a close personal relationship when there is a risk of exploitation or potential harm to the client. Sexual activity or sexual contact with clients' relatives or other individuals with whom clients maintain a personal relationship has the potential to be harmful to the client and may make it difficult for the social worker and client to maintain appropriate professional boundaries. Social workers--not their clients, their clients' relatives, or other individuals with whom the client maintains a personal relationship--assume the full burden for setting clear, appropriate, and culturally sensitive boundaries.

(c) Social workers should not engage in sexual activities or sexual contact with former clients because of the potential for harm to the client. If social workers engage in conduct contrary to this prohibition or claim that an exception to this prohibition is warranted because of extraordinary circumstances, it is social workers--not their clients--who assume the full burden of demonstrating that the former client has not been exploited, coerced, or manipulated, intentionally or unintentionally.

(d) Social workers should not provide clinical services to individuals with whom they have had a prior sexual relationship. Providing clinical services to a former sexual partner has the potential to be harmful to the individual and is likely to make it difficult for the social worker and individual to maintain appropriate professional boundaries.

1.10 Physical Contact

Social workers should not engage in physical contact with clients when there is a possibility of psychological harm to the client as a result of the contact (such as cradling or caressing clients). Social workers who engage in appropriate physical contact with clients are responsible for setting clear, appropriate, and culturally sensitive boundaries that govern such physical contact.

1.11 Sexual Harassment

Social workers should not sexually harass clients. Sexual harassment includes sexual advances; sexual solicitation; requests for sexual favors; and other verbal, written, electronic, or physical contact of a sexual nature.

1.12 Derogatory Language

Social workers should not use derogatory language in their written, verbal, or electronic communications to or about clients. Social workers should use accurate and respectful language in all communications to and about clients.

1.13 Payment for Services

(a) When setting fees, social workers should ensure that the fees are fair, reasonable, and commensurate with the services performed. Consideration should be given to clients' ability to pay.

(b) Social workers should avoid accepting goods or services from clients as payment for professional services. Bartering arrangements, particularly involving services, create the potential for conflicts of interest, exploitation, and inappropriate boundaries in social workers' relationships with clients. Social workers should explore and may participate in bartering only in very limited circumstances when it can be demonstrated that such arrangements are an accepted practice among professionals in the local community, considered to be essential for the provision of services, negotiated without coercion, and entered into at the client's initiative and with the client's informed consent. Social workers who accept goods or services from clients as payment for professional services assume the full burden of demonstrating that this arrangement will not be detrimental to the client or the professional relationship.

(c) Social workers should not solicit a private fee or other remuneration for providing services to clients who are entitled to such available services through the social workers' employer or agency.

1.14 Clients Who Lack Decision-Making Capacity

When social workers act on behalf of clients who lack the capacity to make informed decisions, social workers should take reasonable steps to safeguard the interests and rights of those clients.

1.15 Interruption of Services

Social workers should make reasonable efforts to ensure continuity of services in the event that services are interrupted by factors such as unavailability, disruptions in electronic communication, relocation, illness, mental or physical ability, or death.

1.16 Referral for Services

(a) Social workers should refer clients to other professionals when the other professionals' specialized knowledge or expertise is needed to serve clients fully or when social workers believe that they are not being effective or making reasonable progress with clients and that other services are required.

(b) Social workers who refer clients to other professionals should take appropriate steps to facilitate an orderly transfer of responsibility. Social workers who refer clients to other professionals should disclose, with clients' consent, all pertinent information to the new service providers.

(c) Social workers are prohibited from giving or receiving payment for a referral when no professional service is provided by the referring social worker.

1.17 Termination of Services

(a) Social workers should terminate services to clients and professional relationships with them when such services and relationships are no longer required or no longer serve the clients' needs or interests.

(b) Social workers should take reasonable steps to avoid abandoning clients who are still in need of services. Social workers should withdraw services precipitously only under unusual circumstances, giving careful consideration to all factors in the situation and taking care to minimize possible adverse effects. Social workers should assist in making appropriate arrangements for continuation of services when necessary.

(c) Social workers in fee-for-service settings may terminate services to clients who are not paying an overdue balance if the financial contractual arrangements have been made clear to the client, if the client does not pose an imminent danger to self or others, and if the clinical and other consequences of the current nonpayment have been addressed and discussed with the client.

(d) Social workers should not terminate services to pursue a social, financial, or sexual relationship with a client.

(e) Social workers who anticipate the termination or interruption of services to clients should notify clients promptly and seek the transfer, referral, or continuation of services in relation to the clients' needs and preferences.

(f) Social workers who are leaving an employment setting should inform clients of appropriate options for the continuation of services and of the benefits and risks of the options.

2. Social Workers' Ethical Responsibilities to Colleagues

2.01 Respect

(a) Social workers should treat colleagues with respect and should represent accurately and fairly the qualifications, views, and obligations of colleagues.

(b) Social workers should avoid unwarranted negative criticism of colleagues in verbal, written, and electronic communications with clients or with other professionals. Unwarranted negative criticism may include demeaning comments that refer to colleagues' level of competence or to individuals' attributes such as race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, and mental or physical ability.

(c) Social workers should cooperate with social work colleagues and with colleagues of other professions when such cooperation serves the well-being of clients.

2.02 Confidentiality

Social workers should respect confidential information shared by colleagues in the course of their professional relationships and transactions. Social workers should ensure that such

colleagues understand social workers' obligation to respect confidentiality and any exceptions related to it.

2.03 Interdisciplinary Collaboration

(a) Social workers who are members of an interdisciplinary team should participate in and contribute to decisions that affect the well-being of clients by drawing on the perspectives, values, and experiences of the social work profession. Professional and ethical obligations of the interdisciplinary team as a whole and of its individual members should be clearly established.

(b) Social workers for whom a team decision raises ethical concerns should attempt to resolve the disagreement through appropriate channels. If the disagreement cannot be resolved, social workers should pursue other avenues to address their concerns consistent with client well-being.

2.04 Disputes Involving Colleagues

(a) Social workers should not take advantage of a dispute between a colleague and an employer to obtain a position or otherwise advance the social workers' own interests.

(b) Social workers should not exploit clients in disputes with colleagues or engage clients in any inappropriate discussion of conflicts between social workers and their colleagues.

2.05 Consultation

(a) Social workers should seek the advice and counsel of colleagues whenever such consultation is in the best interests of clients.

(b) Social workers should keep themselves informed about colleagues' areas of expertise and competencies. Social workers should seek consultation only from colleagues who have demonstrated knowledge, expertise, and competence related to the subject of the consultation.

(c) When consulting with colleagues about clients, social workers should disclose the least amount of information necessary to achieve the purposes of the consultation.

2.06 Sexual Relationships

(a) Social workers who function as supervisors or educators should not engage in sexual activities or contact (including verbal, written, electronic, or physical contact) with supervisees, students, trainees, or other colleagues over whom they exercise professional authority.

(b) Social workers should avoid engaging in sexual relationships with colleagues when there is potential for a conflict of interest. Social workers who become involved in, or anticipate becoming involved in, a sexual relationship with a colleague have a duty to transfer professional responsibilities, when necessary, to avoid a conflict of interest.

2.07 Sexual Harassment

Social workers should not sexually harass supervisees, students, trainees, or colleagues. Sexual harassment includes sexual advances; sexual solicitation; requests for sexual favors; and other verbal, written, electronic, or physical contact of a sexual nature.

2.08 Impairment of Colleagues

(a) Social workers who have direct knowledge of a social work colleague's impairment that is due to personal problems, psychosocial distress, substance abuse, or mental health difficulties and that interferes with practice effectiveness should consult with that colleague when feasible and assist the colleague in taking remedial action.

(b) Social workers who believe that a social work colleague's impairment interferes with practice effectiveness and that the colleague has not taken adequate steps to address the impairment

should take action through appropriate channels established by employers, agencies, NASW, licensing and regulatory bodies, and other professional organizations.

2.09 Incompetence of Colleagues

- (a) Social workers who have direct knowledge of a social work colleague's incompetence should consult with that colleague when feasible and assist the colleague in taking remedial action.
- (b) Social workers who believe that a social work colleague is incompetent and has not taken adequate steps to address the incompetence should take action through appropriate channels established by employers, agencies, NASW, licensing and regulatory bodies, and other professional organizations.

2.10 Unethical Conduct of Colleagues

- (a) Social workers should take adequate measures to discourage, prevent, expose, and correct the unethical conduct of colleagues, including unethical conduct using technology.
- (b) Social workers should be knowledgeable about established policies and procedures for handling concerns about colleagues' unethical behavior. Social workers should be familiar with national, state, and local procedures for handling ethics complaints. These include policies and procedures created by NASW, licensing and regulatory bodies, employers, agencies, and other professional organizations.
- (c) Social workers who believe that a colleague has acted unethically should seek resolution by discussing their concerns with the colleague when feasible and when such discussion is likely to be productive.
- (d) When necessary, social workers who believe that a colleague has acted unethically should take action through appropriate formal channels (such as contacting a state licensing board or regulatory body, the NASW National Ethics Committee, or other professional ethics committees).
- (e) Social workers should defend and assist colleagues who are unjustly charged with unethical conduct.

3. Social Workers' Ethical Responsibilities in Practice Settings

3.01 Supervision and Consultation

- (a) Social workers who provide supervision or consultation (whether in-person or remotely) should have the necessary knowledge and skill to supervise or consult appropriately and should do so only within their areas of knowledge and competence.
- (b) Social workers who provide supervision or consultation are responsible for setting clear, appropriate, and culturally sensitive boundaries.
- (c) Social workers should not engage in any dual or multiple relationships with supervisees in which there is a risk of exploitation of or potential harm to the supervisee, including dual relationships that may arise while using social networking sites or other electronic media.
- (d) Social workers who provide supervision should evaluate supervisees' performance in a manner that is fair and respectful.

3.02 Education and Training

- (a) Social workers who function as educators, field instructors for students, or trainers should provide instruction only within their areas of knowledge and competence and should provide instruction based on the most current information and knowledge available in the profession.

- (b) Social workers who function as educators or field instructors for students should evaluate students' performance in a manner that is fair and respectful.
- (c) Social workers who function as educators or field instructors for students should take reasonable steps to ensure that clients are routinely informed when services are being provided by students.
- (d) Social workers who function as educators or field instructors for students should not engage in any dual or multiple relationships with students in which there is a risk of exploitation or potential harm to the student, including dual relationships that may arise while using social networking sites or other electronic media. Social work educators and field instructors are responsible for setting clear, appropriate, and culturally sensitive boundaries.

3.03 Performance Evaluation

Social workers who have responsibility for evaluating the performance of others should fulfill such responsibility in a fair and considerate manner and on the basis of clearly stated criteria.

3.04 Client Records

- (a) Social workers should take reasonable steps to ensure that documentation in electronic and paper records is accurate and reflects the services provided.
- (b) Social workers should include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to clients in the future.
- (c) Social workers' documentation should protect clients' privacy to the extent that is possible and appropriate and should include only information that is directly relevant to the delivery of services.
- (d) Social workers should store records following the termination of services to ensure reasonable future access. Records should be maintained for the number of years required by relevant laws, agency policies, and contracts.

3.05 Billing

Social workers should establish and maintain billing practices that accurately reflect the nature and extent of services provided and that identify who provided the service in the practice setting.

3.06 Client Transfer

- (a) When an individual who is receiving services from another agency or colleague contacts a social worker for services, the social worker should carefully consider the client's needs before agreeing to provide services. To minimize possible confusion and conflict, social workers should discuss with potential clients the nature of the clients' current relationship with other service providers and the implications, including possible benefits or risks, of entering into a relationship with a new service provider.
- (b) If a new client has been served by another agency or colleague, social workers should discuss with the client whether consultation with the previous service provider is in the client's best interest.

3.07 Administration

- (a) Social work administrators should advocate within and outside their agencies for adequate resources to meet clients' needs.

(b) Social workers should advocate for resource allocation procedures that are open and fair. When not all clients' needs can be met, an allocation procedure should be developed that is nondiscriminatory and based on appropriate and consistently applied principles.

(c) Social workers who are administrators should take reasonable steps to ensure that adequate agency or organizational resources are available to provide appropriate staff supervision.

(d) Social work administrators should take reasonable steps to ensure that the working environment for which they are responsible is consistent with and encourages compliance with the NASW Code of Ethics. Social work administrators should take reasonable steps to eliminate any conditions in their organizations that violate, interfere with, or discourage compliance with the Code.

3.08 Continuing Education and Staff Development

Social work administrators and supervisors should take reasonable steps to provide or arrange for continuing education and staff development for all staff for whom they are responsible.

Continuing education and staff development should address current knowledge and emerging developments related to social work practice and ethics.

3.09 Commitments to Employers

(a) Social workers generally should adhere to commitments made to employers and employing organizations.

(b) Social workers should work to improve employing agencies' policies and procedures and the efficiency and effectiveness of their services.

(c) Social workers should take reasonable steps to ensure that employers are aware of social workers' ethical obligations as set forth in the NASW Code of Ethics and of the implications of those obligations for social work practice.

(d) Social workers should not allow an employing organization's policies, procedures, regulations, or administrative orders to interfere with their ethical practice of social work. Social workers should take reasonable steps to ensure that their employing organizations' practices are consistent with the NASW Code of Ethics.

(e) Social workers should act to prevent and eliminate discrimination in the employing organization's work assignments and in its employment policies and practices.

(f) Social workers should accept employment or arrange student field placements only in organizations that exercise fair personnel practices.

(g) Social workers should be diligent stewards of the resources of their employing organizations, wisely conserving funds where appropriate and never misappropriating funds or using them for unintended purposes.

3.10 Labor-Management Disputes

(a) Social workers may engage in organized action, including the formation of and participation in labor unions, to improve services to clients and working conditions.

(b) The actions of social workers who are involved in labor-management disputes, job actions, or labor strikes should be guided by the profession's values, ethical principles, and ethical standards. Reasonable differences of opinion exist among social workers concerning their primary obligation as professionals during an actual or threatened labor strike or job action.

Social workers should carefully examine relevant issues and their possible impact on clients before deciding on a course of action.

4. Social Workers' Ethical Responsibilities as Professionals

4.01 Competence

(a) Social workers should accept responsibility or employment only on the basis of existing competence or the intention to acquire the necessary competence.

(b) Social workers should strive to become and remain proficient in professional practice and the performance of professional functions. Social workers should critically examine and keep current with emerging knowledge relevant to social work. Social workers should routinely review the professional literature and participate in continuing education relevant to social work practice and social work ethics.

(c) Social workers should base practice on recognized knowledge, including empirically based knowledge, relevant to social work and social work ethics.

4.02 Discrimination

Social workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, or mental or physical ability.

4.03 Private Conduct

Social workers should not permit their private conduct to interfere with their ability to fulfill their professional responsibilities.

4.04 Dishonesty, Fraud, and Deception

Social workers should not participate in, condone, or be associated with dishonesty, fraud, or deception.

4.05 Impairment

(a) Social workers should not allow their own personal problems, psychosocial distress, legal problems, substance abuse, or mental health difficulties to interfere with their professional judgment and performance or to jeopardize the best interests of people for whom they have a professional responsibility.

(b) Social workers whose personal problems, psychosocial distress, legal problems, substance abuse, or mental health difficulties interfere with their professional judgment and performance should immediately seek consultation and take appropriate remedial action by seeking professional help, making adjustments in workload, terminating practice, or taking any other steps necessary to protect clients and others.

4.06 Misrepresentation

(a) Social workers should make clear distinctions between statements made and actions engaged in as a private individual and as a representative of the social work profession, a professional social work organization, or the social worker's employing agency.

(b) Social workers who speak on behalf of professional social work organizations should accurately represent the official and authorized positions of the organizations.

(c) Social workers should ensure that their representations to clients, agencies, and the public of professional qualifications, credentials, education, competence, affiliations, services provided, or

results to be achieved are accurate. Social workers should claim only those relevant professional credentials they actually possess and take steps to correct any inaccuracies or misrepresentations of their credentials by others.

4.07 Solicitations

(a) Social workers should not engage in uninvited solicitation of potential clients who, because of their circumstances, are vulnerable to undue influence, manipulation, or coercion.

(b) Social workers should not engage in solicitation of testimonial endorsements (including solicitation of consent to use a client's prior statement as a testimonial endorsement) from current clients or from other people who, because of their particular circumstances, are vulnerable to undue influence.

4.08 Acknowledging Credit

(a) Social workers should take responsibility and credit, including authorship credit, only for work they have actually performed and to which they have contributed.

(b) Social workers should honestly acknowledge the work of and the contributions made by others.

5. Social Workers' Ethical Responsibilities to the Social Work Profession

5.01 Integrity of the Profession

(a) Social workers should work toward the maintenance and promotion of high standards of practice.

(b) Social workers should uphold and advance the values, ethics, knowledge, and mission of the profession. Social workers should protect, enhance, and improve the integrity of the profession through appropriate study and research, active discussion, and responsible criticism of the profession.

(c) Social workers should contribute time and professional expertise to activities that promote respect for the value, integrity, and competence of the social work profession. These activities may include teaching, research, consultation, service, legislative testimony, presentations in the community, and participation in their professional organizations.

(d) Social workers should contribute to the knowledge base of social work and share with colleagues their knowledge related to practice, research, and ethics. Social workers should seek to contribute to the profession's literature and to share their knowledge at professional meetings and conferences.

(e) Social workers should act to prevent the unauthorized and unqualified practice of social work.

5.02 Evaluation and Research

(a) Social workers should monitor and evaluate policies, the implementation of programs, and practice interventions.

(b) Social workers should promote and facilitate evaluation and research to contribute to the development of knowledge.

(c) Social workers should critically examine and keep current with emerging knowledge relevant to social work and fully use evaluation and research evidence in their professional practice.

- (d) Social workers engaged in evaluation or research should carefully consider possible consequences and should follow guidelines developed for the protection of evaluation and research participants. Appropriate institutional review boards should be consulted.
- (e) Social workers engaged in evaluation or research should obtain voluntary and written informed consent from participants, when appropriate, without any implied or actual deprivation or penalty for refusal to participate; without undue inducement to participate; and with due regard for participants' well-being, privacy, and dignity. Informed consent should include information about the nature, extent, and duration of the participation requested and disclosure of the risks and benefits of participation in the research.
- (f) When using electronic technology to facilitate evaluation or research, social workers should ensure that participants provide informed consent for the use of such technology. Social workers should assess whether participants are able to use the technology and, when appropriate, offer reasonable alternatives to participate in the evaluation or research.
- (g) When evaluation or research participants are incapable of giving informed consent, social workers should provide an appropriate explanation to the participants, obtain the participants' assent to the extent they are able, and obtain written consent from an appropriate proxy.
- (h) Social workers should never design or conduct evaluation or research that does not use consent procedures, such as certain forms of naturalistic observation and archival research, unless rigorous and responsible review of the research has found it to be justified because of its prospective scientific, educational, or applied value and unless equally effective alternative procedures that do not involve waiver of consent are not feasible.
- (i) Social workers should inform participants of their right to withdraw from evaluation and research at any time without penalty.
- (j) Social workers should take appropriate steps to ensure that participants in evaluation and research have access to appropriate supportive services.
- (k) Social workers engaged in evaluation or research should protect participants from unwarranted physical or mental distress, harm, danger, or deprivation.
- (l) Social workers engaged in the evaluation of services should discuss collected information only for professional purposes and only with people professionally concerned with this information.
- (m) Social workers engaged in evaluation or research should ensure the anonymity or confidentiality of participants and of the data obtained from them. Social workers should inform participants of any limits of confidentiality, the measures that will be taken to ensure confidentiality, and when any records containing research data will be destroyed.
- (n) Social workers who report evaluation and research results should protect participants' confidentiality by omitting identifying information unless proper consent has been obtained authorizing disclosure.
- (o) Social workers should report evaluation and research findings accurately. They should not fabricate or falsify results and should take steps to correct any errors later found in published data using standard publication methods.
- (p) Social workers engaged in evaluation or research should be alert to and avoid conflicts of interest and dual relationships with participants, should inform participants when a real or

potential conflict of interest arises, and should take steps to resolve the issue in a manner that makes participants' interests primary.

(q) Social workers should educate themselves, their students, and their colleagues about responsible research practices.

6. Social Workers' Ethical Responsibilities to the Broader Society

6.01 Social Welfare

Social workers should promote the general welfare of society, from local to global levels, and the development of people, their communities, and their environments. Social workers should advocate for living conditions conducive to the fulfillment of basic human needs and should promote social, economic, political, and cultural values and institutions that are compatible with the realization of social justice.

6.02 Public Participation

Social workers should facilitate informed participation by the public in shaping social policies and institutions.

6.03 Public Emergencies

Social workers should provide appropriate professional services in public emergencies to the greatest extent possible.

6.04 Social and Political Action

(a) Social workers should engage in social and political action that seeks to ensure that all people have equal access to the resources, employment, services, and opportunities they require to meet their basic human needs and to develop fully. Social workers should be aware of the impact of the political arena on practice and should advocate for changes in policy and legislation to improve social conditions in order to meet basic human needs and promote social justice.

(b) Social workers should act to expand choice and opportunity for all people, with special regard for vulnerable, disadvantaged, oppressed, and exploited people and groups.

(c) Social workers should promote conditions that encourage respect for cultural and social diversity within the United States and globally. Social workers should promote policies and practices that demonstrate respect for difference, support the expansion of cultural knowledge and resources, advocate for programs and institutions that demonstrate cultural competence, and promote policies that safeguard the rights of and confirm equity and social justice for all people.

(d) Social workers should act to prevent and eliminate domination of, exploitation of, and discrimination against any person, group, or class on the basis of race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, or mental or physical ability.

*For information on NASW adjudication procedures, see *NASW Procedures for the Adjudication of Grievances*.

45 CFR 164.512 - Uses and disclosures for which an authorization or opportunity to agree or object is not required.

45 C.F.R. § 164.512(a), (c).

§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

(c)Standard: Disclosures about victims of abuse, neglect or domestic violence -

(1)Permitted disclosures. Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this section, a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:

(i) To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;

(ii) If the individual agrees to the disclosure; or

(iii) To the extent the disclosure is expressly authorized by statute or regulation and:

(A) The covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or

(B) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.

(2) Informing the individual. A covered entity that makes a disclosure permitted by paragraph

(c)(1) of this section must promptly inform the individual that such a report has been or will be made, except if:

(i) The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or

(ii) The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

WI Statute 46.90

(5) RESPONSE AND INVESTIGATION.

(b) The elder-adult-at-risk agency's response or another investigative agency's investigation may include one or more of the following:

1. A visit to the residence of the elder adult at risk.
2. Observation of the elder adult at risk, with or without consent of his or her guardian or agent under an activated power of attorney for health care, if any.
3. An interview with the elder adult at risk, in private to the extent practicable, and with or without the consent of his or her guardian or agent under an activated power of attorney for health care, if any.
4. An interview with the guardian or agent under an activated power of attorney for health care, if any, and with any caregiver of the elder adult at risk.
5. A review of the treatment and patient health care records of the elder adult at risk.
6. A review of any financial records of the elder adult at risk that are maintained by a financial institution, as defined in s. 705.01 (3); by an entity, as defined in s. 50.065; by any caregiver of the elder adult at risk; or by a member of the immediate family of the elder adult at risk or caregiver. The records shall be released without informed consent in either of the following circumstances:
 - a. To an elder-adult-at-risk agency or other investigative agency under this section. The financial record holder may release financial record information by initiating contact with the elder-adult-at-risk agency or other investigative agency without first receiving a request for release of the information from the elder-adult-at-risk agency or other investigative agency.
 - b. Under a lawful order of a court of record.

943.20 Theft.

(1) ACTS. Whoever does any of the following may be penalized as provided in sub. [\(3\)](#):

- (a)** Intentionally takes and carries away, uses, transfers, conceals, or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of such property.
- (b)** By virtue of his or her office, business or employment, or as trustee or bailee, having possession or custody of money or of a negotiable security, instrument, paper or other negotiable writing of another, intentionally uses, transfers, conceals, or retains possession of such money, security, instrument, paper or writing without the owner's consent, contrary to his or her authority, and with intent to convert to his or her own use or to the use of any other person except the owner. A refusal to deliver any money or a negotiable security, instrument, paper or other negotiable writing, which is in his or her possession or custody by virtue of his or her office, business or employment, or as trustee or bailee, upon demand of the person entitled to receive it, or as required by law, is prima facie evidence of an intent to convert to his or her own use within the meaning of this paragraph.
- (c)** Having a legal interest in movable property, intentionally and without consent, takes such property out of the possession of a pledgee or other person having a superior right of possession, with intent thereby to deprive the pledgee or other person permanently of the possession of such property.
- (d)** Obtains title to property of another person by intentionally deceiving the person with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes a promise made with intent not to perform it if it is a part of a false and fraudulent scheme.
- (e)** Intentionally fails to return any personal property which is in his or her possession or under his or her control by virtue of a written lease or written rental agreement after the lease or rental agreement has expired. This paragraph does not apply to a person who returns personal property, except a motor vehicle, which is in his or her possession or under his or her control by virtue of a written lease or written rental agreement, within 10 days after the lease or rental agreement expires.

(2) DEFINITIONS. In this section:

- (ac)** "Adult at risk" has the meaning given in s. [55.01 \(1e\)](#).
- (ad)** "Elder adult at risk" has the meaning given in s. [46.90 \(1\) \(br\)](#).
- (ae)** "Individual at risk" means an elder adult at risk or an adult at risk.
- (ag)** "Movable property" is property whose physical location can be changed, without limitation including electricity and gas, documents which represent or embody intangible rights, and things growing on, affixed to or found in land.
- (am)** "Patient" has the meaning given in s. [940.295 \(1\) \(L\)](#).
- (b)** "Property" means all forms of tangible property, whether real or personal, without limitation including electricity, gas and documents which represent or embody a chose in action or other intangible rights.
- (c)** "Property of another" includes property in which the actor is a co-owner and property of a partnership of which the actor is a member, unless the actor and the victim are husband and wife.
- (cm)** "Resident" has the meaning given in s. [940.295 \(1\) \(p\)](#).
- (d)** Except as otherwise provided in this paragraph, "value" means the market value at the time of the theft or the cost to the victim of replacing the property within a reasonable time after the theft, whichever is less. If the property stolen is a document evidencing a chose in action or other intangible right, "value" means either the market value of the chose in action or other right or the intrinsic value of the document, whichever is greater. If the property stolen is scrap metal, as defined in s. [134.405 \(1\) \(f\)](#), or "plastic bulk merchandise container" as defined in s. [134.405 \(1\) \(em\)](#), "value" also includes any costs that would be incurred in repairing or replacing any property damaged in the theft or removal of the scrap metal or plastic bulk merchandise container. If the thief

gave consideration for, or had a legal interest in, the stolen property, the amount of such consideration or value of such interest shall be deducted from the total value of the property.

(3) PENALTIES. Whoever violates sub. [\(1\)](#):

- (a)** If the value of the property does not exceed \$2,500, is guilty of a Class A misdemeanor.
- (bf)** If the value of the property exceeds \$2,500 but does not exceed \$5,000, is guilty of a Class I felony.
- (bm)** If the value of the property exceeds \$5,000 but does not exceed \$10,000, is guilty of a Class H felony.
- (c)** If the value of the property exceeds \$10,000 but does not exceed \$100,000, is guilty of a Class G felony.
- (cm)** If the value of the property exceeds \$100,000, is guilty of a Class F felony.
- (d)** If any of the following circumstances exists, is guilty of a Class H felony:
 - 1. The property is a domestic animal.
 - 3. The property is taken from a building which has been destroyed or left unoccupied because of physical disaster, riot, bombing or the proximity of battle.
 - 4. The property is taken after physical disaster, riot, bombing or the proximity of battle has necessitated its removal from a building.
 - 5. The property is a firearm.
 - 6. The property is taken from a patient or resident of a facility or program under s. [940.295 \(2\)](#) or from an individual at risk.
- (e)** If the property is taken from the person of another or from a corpse, is guilty of a Class G felony.

(4) USE OF PHOTOGRAPHS AS EVIDENCE. In any action or proceeding for a violation of sub. [\(1\)](#), a party may use duly identified and authenticated photographs of property which was the subject of the violation in lieu of producing the property.

943.201 Unauthorized use of an individual's personal identifying information or documents.

(1) In this section:

- (a)** "Personal identification document" means any of the following:
 - 1. A document containing personal identifying information.
 - 2. An individual's card or plate, if it can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value or benefit, or if it can be used to initiate a transfer of funds.
 - 3. Any other device that is unique to, assigned to, or belongs to an individual and that is intended to be used to access services, funds, or benefits of any kind to which the individual is entitled.
- (b)** "Personal identifying information" means any of the following information:
 - 1. An individual's name.
 - 2. An individual's address.
 - 3. An individual's telephone number.
 - 4. The unique identifying driver number assigned to the individual by the department of transportation under s. [343.17 \(3\) \(a\) 4.](#)
 - 5. An individual's social security number.
 - 6. An individual's employer or place of employment.
 - 7. An identification number assigned to an individual by his or her employer.
 - 8. The maiden name of an individual's mother.
 - 9. The identifying number of a depository account, as defined in s. [815.18 \(2\) \(e\)](#), of an individual.
 - 10. An individual's taxpayer identification number.

11. An individual's deoxyribonucleic acid profile, as defined in s. [939.74 \(2d\) \(a\)](#).
 12. Any of the following, if it can be used, alone or in conjunction with any access device, to obtain money, goods, services, or any other thing of value or benefit, or if it can be used to initiate a transfer of funds:
 - a. An individual's code or account number.
 - b. An individual's electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier.
 - c. Any other means of account access.
 13. An individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation.
 14. Any other information or data that is unique to, assigned to, or belongs to an individual and that is intended to be used to access services, funds, or benefits of any kind to which the individual is entitled.
 15. Any other information that can be associated with a particular individual through one or more identifiers or other information or circumstances.
- (2) Whoever, for any of the following purposes, intentionally uses, attempts to use, or possesses with intent to use any personal identifying information or personal identification document of an individual, including a deceased individual, without the authorization or consent of the individual and by representing that he or she is the individual, that he or she is acting with the authorization or consent of the individual, or that the information or document belongs to him or her is guilty of a Class H felony:
- (a) To obtain credit, money, goods, services, employment, or any other thing of value or benefit.
 - (b) To avoid civil or criminal process or penalty.
 - (c) To harm the reputation, property, person, or estate of the individual.
- (3) It is an affirmative defense to a prosecution under this section that the defendant was authorized by law to engage in the conduct that is the subject of the prosecution. A defendant who raises this affirmative defense has the burden of proving the defense by a preponderance of the evidence.
- (4) If an individual reports to a law enforcement agency for the jurisdiction which is the individual's residence that personal identifying information or a personal identifying document belonging to the individual reasonably appears to be in the possession of another in violation of this section or that another has used or has attempted to use it in violation of this section, the agency shall prepare a report on the alleged violation. If the law enforcement agency concludes that it appears not to have jurisdiction to investigate the violation, it shall inform the individual which law enforcement agency may have jurisdiction. A copy of a report prepared under this subsection shall be furnished upon request to the individual who made the request, subject to payment of any reasonable fee for the copy.

943.203 Unauthorized use of an entity's identifying information or documents.

- (1) In this section:
- (a) "Entity" means a person other than an individual.
 - (b) "Identification document" means any of the following:
 1. A document containing identifying information.
 2. An entity's card or plate, if it can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value or benefit, or if it can be used to initiate a transfer of funds.
 3. Any other device that is unique to, assigned to, or belongs to an entity and that is intended to be used to access services, funds, or benefits of any kind to which the entity is entitled.
 - (c) "Identifying information" means any of the following information:
 1. An entity's name.

2. An entity's address.
 3. An entity's telephone number.
 4. An entity's employer identification number.
 5. The identifying number of an entity's depository account, as defined in s. [815.18 \(2\) \(e\)](#).
 6. Any of the following, if it can be used, alone or in conjunction with any access device, to obtain money, goods, services, or any other thing of value or benefit, or if it can be used to initiate a transfer of funds:
 - a. An entity's code or account number.
 - b. An entity's electronic serial number, mobile identification number, entity identification number, or other telecommunications service, equipment, or instrument identifier.
 - c. Any other means of account access.
 7. Any other information or data that is unique to, assigned to, or belongs to an entity and that is intended to be used to access services, funds, or benefits of any kind to which the entity is entitled.
 8. Any other information that can be associated with a particular entity through one or more identifiers or other information or circumstances.
- (2) Whoever, for any of the following purposes, intentionally uses, attempts to use, or possesses with intent to use any identifying information or identification document of an entity without the authorization or consent of the entity and by representing that the person is the entity or is acting with the authorization or consent of the entity is guilty of a Class H felony:
- (a) To obtain credit, money, goods, services, or anything else of value or benefit.
 - (b) To harm the reputation or property of the entity.
- (3) It is an affirmative defense to a prosecution under this section that the defendant was authorized by law to engage in the conduct that is the subject of the prosecution. A defendant who raises this affirmative defense has the burden of proving the defense by a preponderance of the evidence.
- (4) If an entity reports to a law enforcement agency for the jurisdiction in which the entity is located that identifying information or an identification document belonging to the entity reasonably appears to be in the possession of another in violation of this section or that another has used or has attempted to use it in violation of this section, the agency shall prepare a report on the alleged violation. If the law enforcement agency concludes that it appears not to have jurisdiction to investigate the violation, it shall inform the entity which law enforcement agency may have jurisdiction. A copy of a report prepared under this subsection shall be furnished upon request to the entity that made the request, subject to payment of any reasonable fee for the copy.

943.39 Fraudulent writings. Whoever, with intent to injure or defraud, does any of the following is guilty of a Class H felony:

- (1) Being a director, officer, manager, agent or employee of any corporation or limited liability company falsifies any record, account or other document belonging to that corporation or limited liability company by alteration, false entry or omission, or makes, circulates or publishes any written statement regarding the corporation or limited liability company which he or she knows is false; or
- (2) By means of deceit obtains a signature to a writing which is the subject of forgery under s. [943.38 \(1\)](#); or
- (3) Makes a false written statement with knowledge that it is false and with intent that it shall ultimately appear to have been signed under oath.

943.41 Financial transaction card crimes.

(1) DEFINITIONS. In this section:

- (a) "Alter" means add information to, change information on or delete information from.

- (am)** "Automated financial service facility" means a machine activated by a financial transaction card, personal identification code or both.
- (b)** "Cardholder" means the person to whom or for whose benefit a financial transaction card is issued.
- (c)** "Counterfeit" means to manufacture, produce or create by any means a financial transaction card or purported financial transaction card without the issuer's consent or authorization.
- (e)** "Expired financial transaction card" means a financial transaction card which is no longer valid because the term shown thereon has elapsed.
- (em)** "Financial transaction card" means an instrument or device issued by an issuer for the use of the cardholder in any of the following:
 - 1. Obtaining anything on credit.
 - 2. Certifying or guaranteeing the availability of funds sufficient to honor a draft or check.
 - 3. Gaining access to an account.
- (f)** "Issuer" means the business organization or financial institution which issues a financial transaction card or its duly authorized agent.
- (fm)** "Personal identification code" means a numeric, alphabetic or alphanumeric code or other means of identification required by an issuer to permit a cardholder's authorized use of a financial transaction card.
- (g)** "Receives" or "receiving" means acquiring possession or control or accepting as security for a loan.
- (h)** "Revoked financial transaction card" means a financial transaction card which is no longer valid because permission to use it has been suspended or terminated by the issuer.
- (2)** FALSE STATEMENTS. No person shall make or cause to be made, whether directly or indirectly, any false statements in writing, knowing it to be false and with intent that it be relied upon, respecting the person's identity or that of any other person or the person's financial condition or that of any other person or other entity for the purpose of procuring the issuance of a financial transaction card.
- (3)** THEFT BY TAKING CARD.
 - (a)** No person shall acquire a financial transaction card from the person, possession, custody or control of another without the cardholder's consent or, with knowledge that it has been so acquired, receive the financial transaction card with intent to use it or sell it or to transfer it to a person other than the issuer. Acquiring a financial transaction card without consent includes obtaining it by conduct defined as statutory theft. If a person has in his or her possession or under his or her control financial transaction cards issued in the names of 2 or more other persons it is prima facie evidence that the person acquired them in violation of this subsection.
 - (b)** No person shall receive a financial transaction card that the person knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and retain possession thereof with intent to sell it, or to transfer it to a person other than the issuer or the cardholder, or to use it. The possession of such a financial transaction card for more than 7 days by a person other than the issuer or the cardholder is prima facie evidence that such person intended to sell, transfer or use it in violation of this subsection.
 - (c)** No person other than the issuer shall sell a financial transaction card. No person shall buy a financial transaction card from a person other than the issuer.
 - (d)** No person shall, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value, or any other person, obtain control over a financial transaction card as security for debt.
 - (e)** No person other than the issuer may receive a financial transaction card issued in the name of another person which he or she has reason to know was taken or retained in violation of this subsection or sub. [\(2\)](#). Either of the following is prima facie evidence of a violation of this paragraph:

1. Possession of 3 or more financial transaction cards with reason to know that the financial transaction cards were taken or retained in violation of this subsection or sub. [\(2\)](#).
2. Possession of a financial transaction card with knowledge that the financial transaction card was taken or retained in violation of this subsection or sub. [\(2\)](#).

(4) FORGERY OF FINANCIAL TRANSACTION CARD.

- (a)** No person shall, with intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value or any other person, alter or counterfeit a financial transaction card or purported financial transaction card or possess a financial transaction card or purported financial transaction card with knowledge that it has been altered or counterfeited. The possession by a person other than the purported issuer of 2 or more financial transaction cards which have been altered or counterfeited is prima facie evidence that the person intended to defraud or that the person knew the financial transaction cards to have been so altered or counterfeited.
- (b)** No person other than the cardholder or a person authorized by the cardholder shall, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value or any other person, sign a financial transaction card. Possession by a person other than the intended cardholder or one authorized by the intended cardholder of a financial transaction card signed by such person is prima facie evidence that such person intended to defraud in violation of this subsection.

(5) FRAUDULENT USE.

- (a)**
 1. No person shall, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value or any other person:
 - a. Use, for the purpose of obtaining money, goods, services or anything else of value, a financial transaction card obtained or retained in violation of sub. [\(3\)](#) or a financial transaction card which the person knows is forged, expired or revoked; or
 - b. Obtain money, goods, services or anything else of value by representing without the consent of the cardholder that the person is the holder of a specified card or by representing that the person is the holder of a card and such card has not in fact been issued.
 2. Knowledge of revocation shall be presumed to have been received by a cardholder 4 days after it has been mailed to the cardholder at the address set forth on the financial transaction card or at the cardholder's last-known address by registered or certified mail, return receipt requested, and if the address is more than 500 miles from the place of mailing, by air mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone and Canada, notice shall be presumed to have been received 10 days after mailing by registered or certified mail.
- (b)** No cardholder shall use a financial transaction card issued to the cardholder or allow another person to use a financial transaction card issued to the cardholder with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value or any other person.
- (c)** No person may deposit a stolen or forged instrument by means of an automated financial service facility with knowledge of the character of the instrument.
- (d)** No person may, with intent to defraud anyone:
 1. Introduce information into an electronic funds transfer system.
 2. Transmit information to or intercept or alter information from an automated financial service facility.
- (e)** No person may knowingly receive anything of value from a violation of par. [\(c\)](#) or [\(d\)](#).

(6) FRAUDULENT USE; OTHER PERSONS.

- (a)** No person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a financial transaction card by the cardholder, or any agent or employee of such

person, shall, with intent to defraud the issuer or the cardholder, furnish money, goods, services or anything else of value upon presentation of a financial transaction card obtained or retained under circumstances prohibited by sub. (3) or a financial transaction card which the person knows is forged, expired or revoked.

- (b) No person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a financial transaction card by the cardholder, or any agent or employee of such person, shall, with intent to defraud, fail to furnish money, goods, services or anything else of value which the person represents in writing to the issuer that the person has furnished.
- (c) No person other than the cardholder shall possess an incomplete financial transaction card with intent to complete it without the consent of the issuer. A financial transaction card is "incomplete" if part of the matter, other than the signature of the cardholder, which an issuer requires to appear on the financial transaction card before it can be used by a cardholder has not yet been stamped, embossed, imprinted or written on it.
- (d) No person shall receive money, goods, services or anything else of value obtained under circumstances prohibited by this section, knowing or believing that it was so obtained. Any person who obtains at a discount price a ticket issued by an airline, railroad, steamship or other transportation company which was acquired under circumstances prohibited by this section without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know that such ticket was acquired under circumstances prohibited by this section.

(6m) FACTORING PROHIBITED.

- (a) Except as provided in par. (b), a person authorized to furnish money, goods, services or anything else of value upon presentation of a financial transaction card may not deposit, assign, endorse or present for payment to an issuer or to any other person authorized to acquire transaction records for presentation to an issuer a financial transaction card transaction record if the person did not furnish or agree to furnish the money, goods, services or anything else of value represented to be furnished by the transaction record.
- (b) Paragraph (a) does not apply to any of the following:
 - 1. A franchisor, as defined in s. 553.03 (6), who presents for payment a financial transaction card transaction record of a franchisee, as defined in s. 553.03 (5), if the franchisor is authorized to present the transaction record on behalf of the franchisee and the franchisee furnished or agreed to furnish the money, goods, services or anything else of value represented to be furnished by the transaction record.
 - 2. A general merchandise retailer who presents for payment a financial transaction card transaction record of a person who furnishes money, goods, services or anything else of value on the business premises of the general merchandise retailer if the general merchandise retailer is authorized to present the transaction record on behalf of the person and the person furnished or agreed to furnish the money, goods, services or anything else of value represented to be furnished by the transaction record.
 - 3. An issuer or an organization of issuers who present a financial transaction card transaction record for the interchange and settlement of the transaction.

(7) DEFENSES NOT AVAILABLE. In any prosecution for violation of this section, it is not a defense:

- (a) That a person other than the defendant has not been convicted, apprehended or identified; or
- (b) That some of the acts constituting the crime did not occur in this state or were not a crime or elements of a crime where they did occur.

(8) PENALTIES.

- (a) Any person violating any provision of sub. (2), (3) (a) to (d) or (4) (b) is guilty of a Class A misdemeanor.

- (b)** Any person violating any provision of sub. [\(3\) \(e\)](#), [\(4\) \(a\)](#), [\(6\) \(c\)](#) or [\(6m\)](#) is guilty of a Class I felony.
- (c)** Any person violating any provision of sub. [\(5\)](#) or [\(6\) \(a\)](#), [\(b\)](#), or [\(d\)](#), if the value of the money, goods, services, or property illegally obtained does not exceed \$2,500 is guilty of a Class A misdemeanor; if the value of the money, goods, services, or property exceeds \$2,500 but does not exceed \$5,000, in a single transaction or in separate transactions within a period not exceeding 6 months, the person is guilty of a Class I felony; if the value of the money, goods, services, or property exceeds \$5,000 but does not exceed \$10,000, in a single transaction or in separate transactions within a period not exceeding 6 months, the person is guilty of a Class H felony; or if the value of money, goods, services, or property exceeds \$10,000, in a single transaction or in separate transactions within a period not exceeding 6 months, the person is guilty of a Class G felony.

Selections from
CH 50: CARE AND SERVICE RESIDENTIAL FACILITIES

50.06 Certain admissions to facilities.

(1) In this section, “incapacitated” means unable 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, including decisions about his or her post-hospital care.

(2) An individual under sub. (3) may consent to admission, directly from a hospital to a facility, of an incapacitated individual who does not have a valid power of attorney for health care and who has not been adjudicated incompetent in this state, if all of the following apply:

(a) No person who is listed under sub. (3) in the same order of priority as, or higher in priority than, the individual who is consenting to the proposed admission disagrees with the proposed admission.

(am) 1. Except as provided in subd. 2., no person who is listed under sub. (3) and who resides with the incapacitated individual disagrees with the proposed admission.

2. Subdivision 1. does not apply if any of the following applies:

a. The individual who is consenting to the proposed admission resides with the incapacitated individual.

b. The individual who is consenting to the proposed admission is the spouse or domestic partner under ch. 770 of the incapacitated person.

(b) The individual for whom admission is sought is not diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission.

(c) A petition for guardianship for the individual under s. 54.34 and a petition under s. 55.075 for protective placement of the individual are filed prior to the proposed admission.

(d) The incapacitated individual does not verbally object to or otherwise actively protest the admission. If he or she makes such an objection or protest, he or she may be admitted to the facility, but the person in charge of the facility shall immediately notify the county department under s. 55.02 (2) for the county in which the individual is living or the agency with which the county department contracts. Representatives of the county department or agency shall visit the individual as soon as possible, but not later than 72 hours after notification, and do all of the following:

1. Determine whether the protest persists or has been voluntarily withdrawn and consult with the person who consented to the admission regarding the reasons for the admission.

2. Attempt to have the incapacitated individual released within 72 hours if the protest is not withdrawn and the individual does not satisfy all of the criteria under s. 55.08 (1) or 55.135 (1), and provide assistance in identifying appropriate alternative living arrangements.

3. Comply with s. 55.135 if the requirements of s. 55.135 (1) are met and emergency protective placement in that facility or another facility is necessary. The court, with the permission of the facility, may order the incapacitated individual to remain in the facility pending the outcome of the protective placement proceedings.

(3) The following individuals, in the following order of priority, may consent to an admission under sub. (2):

(a) The spouse or domestic partner under ch. 770 of the incapacitated individual.

(b) An adult son or daughter of the incapacitated individual.

(c) A parent of the incapacitated individual.

(d) An adult brother or sister of the incapacitated individual.

(e) A grandparent of the incapacitated individual.

(f) An adult grandchild of the incapacitated individual.

(g) An adult close friend of the incapacitated individual.

(4) A determination that an individual is incapacitated for purposes of sub. (2) shall be made by 2 physicians, as defined in s. 448.01 (5), or by one physician and one licensed psychologist, as defined in s. 455.01 (4), who personally examine the individual and sign a statement specifying that the individual is incapacitated. Mere old age, eccentricity or physical disability, either singly or together, are insufficient to make a finding that an individual is incapacitated. Neither of the individuals who make a finding that an individual is incapacitated may be a relative, as defined in s. 242.01 (11), of the individual or have knowledge that he or she is entitled to or has a claim on any portion of the individual's estate. A copy of the statement shall be included in the individual's records in the facility to which he or she is admitted.

(5) (a) Except as provided in par. (b), an individual who consents to an admission under this section may, for the incapacitated individual, make health care decisions to the same extent as a guardian of the person may and authorize expenditures related to health care to the same extent as a guardian of the estate may, until the earliest of the following:

1. Sixty days after the admission to the facility of the incapacitated individual.
2. Discharge of the incapacitated individual from the facility.
3. Appointment of a guardian for the incapacitated individual.

(b) An individual who consents to an admission under this section may not authorize expenditures related to health care if the incapacitated individual has an agent under a durable power of attorney, as defined in s. 244.02 (3), who may authorize expenditures related to health care.

(6) If the incapacitated individual is in the facility after 60 days after admission and a guardian has not been appointed, the authority of the person who consented to the admission to make decisions and, if sub. (5) (a) applies, to authorize expenditures is extended for 30 days for the purpose of allowing the facility to initiate discharge planning for the incapacitated individual.

(7) An individual who consents to an admission under this section may request that an assessment be conducted for the incapacitated individual under the long-term support community options program under s. 46.27 (6) or, if the secretary has certified under s. 46.281 (3) that a resource center is available for the individual, a functional screening and a financial and cost-sharing screening to determine eligibility for the family care benefit under s. 46.286 (1). If admission is sought on behalf of the incapacitated individual or if the incapacitated individual is about to be admitted on a private pay basis, the individual who consents to the admission may waive the requirement for a financial and cost-sharing screening under s. 46.283 (4) (g), unless the incapacitated individual is expected to become eligible for medical assistance within 6 months.

History: 1993 a. 187; 1999 a. 9; 2005 a. 264, 387; 2007 a. 20, 45; 2009 a. 28, 319.

50.94 Admission to and care in a hospice for certain incapacitated persons

(1) In this section:

(a) "Hospice care" means palliative care, respite care, short-term care or supportive care.

(b) "Incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that a person lacks the capacity to manage his or her health care decisions.

(c) "Physician" means a person licensed to practice medicine and surgery under ch. 448.

(d) "Terminal condition" means an incurable condition caused by injury, disease or illness that according to reasonable medical judgment will produce death within 6 months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

(2) A person who is determined to be incapacitated under the requirements of sub. (8), does not have a valid living will or valid power of attorney for health care, and has not been adjudicated incompetent in this state may be admitted to a hospice under this section only if all of the following requirements are met:

(a) An individual who is specified in sub. (3) signs all of the following:

1. On behalf of the person who is incapacitated, an informed consent for the receipt of hospice care by the person who is incapacitated.

2. A statement certifying that it is his or her belief, to the best of his or her knowledge, that, if able to do so, the person who is incapacitated would have selected hospice care.

(b) A physician certifies that the person who is incapacitated has a terminal condition and that the physician believes that the individual under par. (a) is acting in accordance with the views or beliefs of the person who is incapacitated.

(3) The following individuals, in the following order of priority, may act under sub. (2) (a):

(a) The spouse or domestic partner under ch. 770 of the person who is incapacitated.

(b) An adult child of the person who is incapacitated.

(c) A parent of the person who is incapacitated.

(d) An adult sibling of the person who is incapacitated.

(e) A close friend or a relative of the person who is incapacitated, other than as specified in pars. (a) to (d), to whom all of the following apply:

1. The close friend or other relative is aged at least 18 and has maintained sufficient regular contact with the person who is incapacitated to be familiar with the person's activities, health and beliefs.

2. The close friend or other relative has exhibited special care and concern for the incapacitated person.

(4) The individual who acts under sub. (2) (a) may make all health care decisions related to receipt of hospice care by the person who is incapacitated.

(5) The person who is incapacitated or the individual under sub. (4) may object to or revoke the election of hospice care at any time.

(6) A person who disagrees with a hospice decision made under this section may apply under s. 54.50 for temporary guardianship of the person who is incapacitated. In applying for the temporary guardianship, such a person has the burden of proving that the person who is incapacitated would not have consented to admission to a hospice or hospice care.

(7) The individual who acts under sub. (2) (a) shall, if feasible, provide to all other individuals listed under sub. (3) notice of the proposed admission of the person who is incapacitated to a hospice and of the right to apply for temporary guardianship under sub. (6). If it is not feasible for the individual to provide this notice before admission of the person who is incapacitated to a hospice, the individual who acts under sub. (2)

(a) shall exercise reasonable diligence in providing the notice within 48 hours after the admission.

(8) A determination that a person is incapacitated may be made only by 2 physicians or by one physician and one licensed psychologist, as defined in s. 455.01 (4), who personally examine the person and sign a statement specifying that the person is incapacitated. Mere old age, eccentricity or physical disabilities, singly or together, are insufficient to determine that a person is incapacitated. Whoever determines that the person is incapacitated may not be a relative, as defined in s. 242.01 (11), of the person or have knowledge that he or she is entitled to or has claim on any portion of the person's estate. A copy of the statement shall be included in the records of the incapacitated person in the hospice to which he or she is admitted.

History: 1999 a. 9; 2005 a. 387; 2009 a. 28.

Statute Resource

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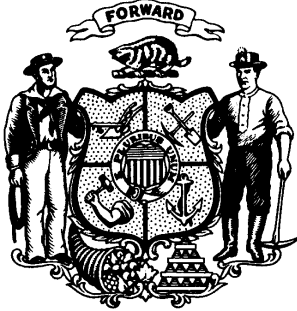
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State of Wisconsin



2017 Assembly Bill 655

Date of enactment: April 16, 2018
Date of publication*: April 17, 2018

2017 WISCONSIN ACT 345

AN ACT *to amend* 54.10 (3) (a) 4. and 54.10 (3) (b); and *to create* chapter 53, 54.10 (2) (b) 9m. and 115.807 (4) of the statutes; **relating to:** supported decision-making agreements.

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

SECTION 1. Chapter 53 of the statutes is created to read:

CHAPTER 53 SUPPORTED DECISION-MAKING AGREEMENTS SUBCHAPTER I DEFINITIONS AND GENERAL PROVISIONS

53.01 Definitions. In this chapter:

- (1) "Abuse" has the meaning given in s. 46.90 (1) (a).
- (2) "Functional impairment" means any of the following:
 - (a) A physical, developmental, or mental condition that substantially limits one or more of an individual's major life activities, including any of the following:
 1. Capacity for independent living.
 2. Self direction.
 3. Self care.
 4. Mobility.
 5. Communication.
 6. Learning.
 - (b) Impairment as defined under s. 54.01 (14).
 - (c) Other like incapacities as defined under s. 54.01 (22).
- (3) "Financial exploitation" has the meaning given in s. 46.90 (1) (ed).

(4) "Health care provider" has the meaning given in s. 155.01 (7).

(5) "Neglect" has the meaning given in s. 46.90 (1) (f).

(6) "Supported decision-making" means a process of supporting and accommodating an adult with a functional impairment to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult.

(7) "Supported decision-making agreement" is an agreement between an adult with a functional impairment and a supporter entered into under this chapter.

(8) "Supporter" means an adult who is willing to enter into an agreement with an adult with a functional impairment to provide supported decision-making.

53.03 Agreement not evidence of incapacity or incompetency. Execution of a supported decision-making agreement may not be used as evidence of incapacity or incompetency and does not preclude an adult with a functional impairment who has entered into such an agreement from acting independently of the agreement.

SUBCHAPTER II SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

53.10 Scope. (1) If an adult with a functional impairment decides voluntarily, without coercion, to enter into a supported decision-making agreement with a supporter, that adult may, in the agreement, authorize the supporter to do any of the following:

(a) Provide supported decision-making to the adult with a functional impairment, including assistance in understanding the options, responsibilities, and consequences of that person's life decisions, without making those decisions on behalf of that person.

(b) Assist the adult with a functional impairment in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records, from any person.

(c) Assist the adult with a functional impairment in understanding the information described in par. (b).

(d) Assist the adult with a functional impairment in communicating the adult's decisions to appropriate persons.

(2) A supporter is not a surrogate decision maker for the adult with a functional impairment and does not have the authority to sign legal documents on behalf of the adult with a functional impairment or bind the adult with a functional impairment to a legal agreement.

53.12 Authority of supporter. A supporter may exercise the authority granted to the supporter in the supported decision-making agreement.

53.14 Term of agreement; revocation. (1) Except as otherwise provided in this section, a supported decision-making agreement extends until terminated by either party or by the terms of the agreement.

(2) A supported decision-making agreement is terminated if any of the following are true:

(a) County adult protective services substantiated an allegation of neglect or abuse by the supporter.

(b) The supporter is found criminally liable for conduct described under par. (a).

(c) There is a restraining order against the supporter as described under s. 813.123.

(3) An adult with a functional impairment may revoke his or her supported decision-making agreement and invalidate the supported decision-making agreement at any time by doing any of the following:

(a) Canceling, defacing, obliterating, burning, tearing, or otherwise destroying the supported decision-making agreement or directing another in the presence of the adult with a functional impairment to so destroy the supported decision-making agreement.

(b) Executing a statement, in writing, that is signed and dated by the adult with a functional impairment, expressing his or her intent to revoke the supported decision-making agreement.

(c) Verbally expressing the intent of the adult with a functional impairment to revoke the supported decision-making agreement, in the presence of 2 witnesses.

(4) Unless the supported decision-making agreement provides a different method for the supporter's resignation, a supporter may resign by giving notice to the adult with a functional impairment.

53.16 Access to personal information. (1) A supporter is only authorized to assist the adult with a functional impairment in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.

(2) A supporter may assist with accessing or obtaining any information that will help the adult with a functional impairment make health care decisions, including medical, psychological, financial, education, or treatment records or research under ss. 51.30 and 146.83 and the federal Health Insurance Portability and Accountability Act of 1996, [45 CFR 164.502](#). A supporter may only access or obtain patient health care records, as defined under s. 146.81 (4), if the adult with a functional impairment has signed a release allowing the supporter to see protected health information, as defined under s. 146.816 (1) (f).

(3) A supporter may assist with accessing or obtaining any information on education records under the federal Family Educational Rights and Privacy Act of 1974, [20 USC 1232g](#), if the adult with a functional impairment has signed a release allowing the supporter to access information under this subsection.

(4) The supporter shall ensure the information under this section is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use, or disclosure.

(5) Notwithstanding the existence of a supported decision-making agreement, an adult with a functional impairment continues to have unrestricted access to personal information without the assistance of a supporter.

(6) Notwithstanding the existence of a supported decision-making agreement, an adult with a functional impairment is able to request and receive assistance on any decision that is not covered under the supported decision-making agreement at any time.

53.18 Authorization and witnesses. (1) An adult with a functional impairment and his or her supporter entering into a supported decision-making agreement must sign and date the agreement in the presence of 2 or more subscribing witnesses or a notary public.

(2) If the adult with a functional impairment and his or her supporter choose to sign and date the supported decision-making agreement before witnesses, the attesting witnesses must be at least 18 years of age.

53.20 Supported decision-making agreement instrument; form. (1) A supported decision-making agreement is valid if it is in writing, entered into voluntarily as described under s. 53.10, signed and dated as described under s. 53.18, and in substantially the following form:

SUPPORTED
DECISION-MAKING AGREEMENT
APPOINTMENT OF SUPPORTER

I, (insert name), make this agreement voluntarily and of my own free will.

I agree and designate that

Name of supporter

Address of supporter

E-mail address of supporter

Phone number(s) of supporter

is my supporter. For the following everyday life decisions, if I have checked "Yes," my supporter may help me with that type of decision, but if I have checked "No," my supporter may not help me with that type of decision:

Obtaining food, clothing, and shelter — Yes.... No....

Taking care of my physical health — Yes.... No....

Managing my financial affairs — Yes.... No....

Taking care of my mental health — Yes.... No....

Applying for public benefits — Yes.... No....

Assistance with seeking vocational rehabilitation services and other vocational supports — Yes.... No....

The following are other decisions I have specifically identified that I would like assistance with

If I have not checked either "Yes" or "No" or specifically identified and listed a decision immediately above, my supporter may not help me with that type of decision.

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may do any of the following, if I have checked "Yes":

1. Help me access, collect, or obtain information, including records, relevant to a decision. If I have checked "Yes," my supporter may help me access, collect, or obtain the type of information specified, including relevant records, but if I have checked "No," or I have not checked either "Yes" or "No," my supporter may not help me access, collect, or obtain that type of information:

Medical — Yes.... No....

Psychological — Yes.... No....

Financial — Yes.... No....

Education — Yes.... No....

Treatment — Yes.... No....

Other — Yes.... No.... (If "Yes," specify the other type(s) of information with which the supporter may assist)

2. Help me understand my options so I can make an informed decision.

Yes.... No....

3. Help me communicate my decision to appropriate persons.

Yes.... No....

4. Help me access appropriate personal records, including protected health information under the Health Insurance Portability and Accountability Act, the Family Educational Rights and Privacy Act, and other records that may or may not require a release for specific deci-

sions I want to make.

Yes.... No....

EFFECTIVE DATE OF SUPPORTED
DECISION-MAKING AGREEMENT

This supported decision-making agreement is effective immediately and will continue until (insert date), or until the agreement is terminated by my supporter or me or by operation of law.

(print) Name of person designating a supporter

Signature

Date

CONSENT OF SUPPORTER

I know (name of person) personally or I have received proof of his or her identity and I believe him or her to be at least 18 years of age and entering this agreement knowingly and voluntarily. I am at least 18 years of age.

I, (name of supporter), consent to act as a supporter under this agreement.

Supporter:

(print) Name

Address

E-mail address

Phone number(s)

Signature

Date

STATEMENT AND SIGNATURE
OF WITNESSES OR
SIGNATURE OF NOTARY

(This agreement must be signed either by 2 witnesses who are at least 18 years of age or by a notary public.)

OPTION I: WITNESSES

I know (name of person) personally or I have received proof of his or her identity and I believe him or her to be at least 18 years of age and entering this agreement knowingly and voluntarily. I am at least 18 years of age.

Witness No. 1:

(print) Name

Address

Phone number(s)

Signature

Date

Witness No. 2:

(print) Name

Address

Phone number(s)

Signature

Date

OPTION II: NOTARY PUBLIC

State of

County of

This document was acknowledged before me on (date), by (name of adult with a functional impairment) and (name of supporter).

Signature of notary

(Seal, if any, of notary)

Printed name

My commission expires:

(2) The department of health services shall prepare and provide access to a supported decision-making agreement instrument and accompanying information for adults with functional impairments, family members of adults with functional impairments, education professionals and school districts, health care and social service professionals, county clerks, and local bar associations. The department may charge a reasonable fee for the cost of preparation and distribution.

SUBCHAPTER III

DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

53.30 Reliance on agreement; limitation of liability. (1) A person who receives the original or a copy of a supported decision-making agreement shall rely on the agreement, except if the person has cause to believe that the adult with a functional impairment is being abused, neglected, unduly influenced, or financially exploited by the supporter as described under s. 53.32.

(2) A person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decision-making agreement.

(3) Any health care provider that respects and acts consistently with the authority given to a supporter by a duly executed supported decision-making agreement shall be immune from any action alleging that the agreement was invalid unless the entity, custodian, or organization had actual knowledge or notice that the adult with a functional impairment had revoked such authorization, that the agreement was invalid, or that the supporter had committed abuse, neglect, or financial exploitation as described in s. 53.14 (2) (a).

(4) Any health care provider that provides health care based on the consent of an adult with a functional impairment, made with supports and services provided through a duly executed supported decision-making agreement, shall be immune from any action alleging that the adult with a functional impairment lacked capacity to provide informed consent unless the entity, custodian, or organization had actual knowledge or notice that the adult with a functional impairment had revoked such authorization, that the agreement was invalid, or that the supporter had committed abuse, neglect, or financial exploitation as described in s. 53.14 (2) (a).

(5) Any public or private entity, custodian, or organization that discloses personal information about an adult with a functional impairment to a supporter who is authorized to access, collect, or obtain or assist the adult with a functional impairment in accessing, collecting, or obtaining that information shall be immune from any action alleging that it improperly or unlawfully disclosed such information to the supporter unless the entity, custo-

dian, or organization had actual knowledge that the adult with a functional impairment had revoked such authorization.

(6) This section may not be construed to provide immunity from actions alleging that a health care provider has done any of the following:

(a) Caused personal injury as a result of a negligent, reckless, or intentional act.

(b) Acted inconsistently with the expressed wishes of an adult with a functional impairment.

(c) Failed to provide information to either an adult with a functional impairment or his or her supporter that would be necessary for informed consent.

(d) Otherwise acted inconsistently with applicable law.

(7) The existence or availability of a supported decision-making agreement does not relieve a health care provider of any legal obligation to provide services to individuals with disabilities, including the obligation to provide reasonable accommodations or auxiliary aids and services, including interpretation services and communication supports to individuals with disabilities under the federal Americans with Disabilities Act.

(8) A supporter acting in the context of a valid supported decision-making agreement is immune from civil liability for his or her acts or omissions in performing duties as the supporter if he or she performs the duties in good faith, in conformance with the supported decision-making agreement or document of the adult with a functional impairment, and with the degree and prudence that an ordinarily prudent person exercises in his or her own affairs.

53.32 Reporting of suspected abuse, neglect, or financial exploitation. (1) If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that the adult with a functional impairment is being abused, neglected, or financially exploited by the supporter, the person may report under s. 46.90 or 55.043 the alleged abuse, neglect, or financial exploitation.

(2) Nothing in this section may be construed as eliminating or limiting a person's requirement to report under any other statute or regulation.

SECTION 2. 54.10 (2) (b) 9m. of the statutes is created to read:

54.10 (2) (b) 9m. Whether any alternatives to guardianship, including supported decision-making under ch. 53, have been attempted, and, if applicable, the degree to which they have been attempted, the length of time they have been attempted, and whether they have been attempted in a manner sufficient to demonstrate that alternatives to guardianship are insufficient to enable the individual to adequately exercise the right or rights in question.

SECTION 3. 54.10 (3) (a) 4. of the statutes is amended to read:

54.10 (3) (a) 4. The individual's need for assistance in decision making or communication is unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, a supported decision-making agreement under ch. 53, or other means that the individual will accept.

SECTION 4. 54.10 (3) (b) of the statutes is amended to read:

54.10 (3) (b) Unless the proposed ward is unable to

communicate decisions effectively in any way, the determination under par. (a) may not be based on mere old age, eccentricity, poor judgment, or physical disability, or the existence of a supported decision-making agreement.

SECTION 5. 115.807 (4) of the statutes is created to read:

115.807 (4) The local educational agency shall provide the individual and the individual's parents with information on supported decision-making under ch. 53, other alternatives to guardianship, and strategies to remain engaged in the individual's secondary education.

813.123 Restraining orders and injunctions for individuals at risk.

(1) DEFINITIONS. In this section:

- (a)** "Abuse" has the meaning given in s. 46.90 (1) (a).
- (ae)** "Adult at risk" has the meaning given in s. 55.01 (1e).
- (am)** "Adult-at-risk agency" has the meaning given in s. 55.01 (1f).
- (b)** "Bodily harm" has the meaning given in s. 46.90 (1) (aj).
- (br)** "Caregiver" has the meaning given in s. 46.90 (1) (an).
- (cg)** "Elder adult at risk" has the meaning given in s. 46.90 (1) (br).
- (d)** "False representation" includes a promise that is made with the intent not to fulfill the promise.
- (dm)** "Financial exploitation" has the meaning given in s. 46.90 (1) (ed).
- (e)** "Great bodily harm" has the meaning given in s. 939.22 (14).
- (eg)** "Harassment" has the meaning given in s. 813.125 (1) (am).
- (ek)** "Household pet" means a domestic animal that is not a farm animal, as defined in s. 951.01 (3), that is kept, owned, or cared for by an individual at risk or an elder adult at risk or by a family member or a household member of an individual at risk or an elder adult at risk.
- (ep)** "Individual at risk" means an elder adult at risk or an adult at risk.
- (fm)** "Mistreatment of an animal" means cruel treatment of any animal owned by or in service to an individual at risk.
- (g)** "Neglect" has the meaning given in s. 46.90 (1) (f).
- (gr)** "Self-neglect" has the meaning given in s. 46.90 (1) (g).
- (gs)** "Stalking" means engaging in a course of conduct, as defined in s. 940.32 (1) (a).

(2) COMMENCEMENT OF ACTION AND RESPONSE.

- (a)** No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. The individual at risk, any person acting on behalf of an individual at risk, an elder-adult-at-risk agency, or an adult-at-risk agency may be a petitioner under this section. If the petition is filed by a person other than the individual at risk, the petitioner shall serve a copy of the petition on the individual at risk. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing. The court shall inform the petitioner in writing that, if the petitioner chooses to have the documents in the action served by the sheriff, the petitioner should contact the sheriff to verify the proof of service of the petition.
- (b)** The court may go forward with a petition filed under sub. (6) if the individual at risk has been adjudicated incompetent under ch. 880, 2003 stats., or ch. 54, notwithstanding an objection by an individual at risk who is the subject of the petition, or an objection by the guardian of the individual at risk.

(3) GENERAL PROCEDURE.

- (a)** Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the court or circuit court commissioner shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or circuit court commissioner issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court or circuit court commissioner does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.
- (b)** The court or circuit court commissioner, on its or his or her own motion or the motion of any party, shall order that a guardian ad litem be appointed for the individual at risk, if the petition under sub. (6) was filed by a person other than the individual at risk, and may order that a guardian ad litem be appointed in other instances when justice so requires.
- (c)** The court or circuit court commissioner, on its or his or her own motion or the motion of any party, may order any of the following:
 - 1.** That all persons, other than the individual at risk, the parties, their attorneys, a representative of the adult-at-risk agency or elder-adult-at-risk agency, witnesses, court personnel, and any guardian or any guardian ad litem, be excluded from any hearing under this section.

2. That access to any record of an action under this section be available only to the individual at risk, the parties, their attorneys, any guardian or any guardian ad litem, the adult-at-risk agency or elder-adult-at-risk agency, court personnel, and, upon appeal, any applicable court.

(4) TEMPORARY RESTRAINING ORDER.

- (a)** Unless the individual at risk, guardian, or guardian ad litem consents in writing and the judge or circuit court commissioner agrees that the contact is in the best interests of the individual at risk, a judge or circuit court commissioner shall issue a temporary restraining order, as specified in par. (ar), if all of the following occur:
 1. The petitioner submits to the judge or circuit court commissioner a petition alleging the elements set forth under sub. (6).
 2. The judge or circuit court commissioner finds reasonable grounds to believe any of the following:
 - a. That the respondent has interfered with or, based on prior conduct of the respondent, may interfere with an investigation of the individual at risk, the delivery of protective services to or a protective placement of the individual at risk under ch. 55, or the delivery of services to an elder adult at risk under s. 46.90 (5m); and that the interference complained of, if continued, would make it difficult to determine whether abuse, financial exploitation, neglect, or self-neglect has occurred, is occurring, or may recur.
 - b. That the respondent engaged in or threatened to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal.
- (ar)** A temporary restraining order issued under par. (a) shall order the respondent to do one or more of the following:
 1. Avoid interference with an investigation of the elder adult at risk under s. 46.90 or the adult at risk under s. 55.043, the delivery of protective services to or a protective placement of the individual at risk under ch. 55, or the delivery of services to the elder adult at risk under s. 46.90 (5m).
 2. Cease engaging in or threatening to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or mistreatment of an animal.
 - 2m. Refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet and allow the individual at risk or a guardian, guardian ad litem, family member, or household member of the individual at risk acting on his or her behalf to retrieve a household pet.
 3. Avoid the residence of the individual at risk or any other location temporarily occupied by the individual at risk, or both.
 4. Avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the individual at risk.
 5. Engage in any other appropriate remedy not inconsistent with the remedies requested in the petition.
- (b)** Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.
- (c)** The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (5), except that the court may extend the temporary restraining order under s. 813.1285. A judge shall hold a hearing on issuance of an injunction within 14 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties, extended under s. 801.58 (2m), or extended once for 14 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence. A judge or court commissioner may not extend the temporary restraining order in lieu of ruling on the issuance of an injunction.

(5) INJUNCTION.

- (a)** Unless the individual at risk, guardian, or guardian ad litem consents in writing to a contact and the judge agrees that the contact is in the best interests of the individual at risk, a judge may grant an injunction ordering the respondent as specified in par. (ar), if all of the following occur:
 1. The petitioner files a petition alleging the elements set forth under sub. (6).
 2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction. The notice served under this subdivision shall inform the respondent that, if the judge or circuit court commissioner issues an injunction, the judge or circuit court commissioner may also order the respondent not to possess a firearm while the injunction is in effect. The person who serves the respondent with the notice shall also provide the respondent with all of the following information:

- a. Notice of the requirements and penalties under s. 941.29 and notice of any similar applicable federal laws and penalties.
 - b. An explanation of s. 813.1285, including the procedures for surrendering a firearm and the circumstances listed under s. 813.1285 under which a respondent must appear at a hearing to surrender firearms.
 - c. A firearm possession form developed under s. 813.1285 (5) (a), with instructions for completing and returning the form.
- 3. After hearing, the judge finds reasonable cause to believe any of the following:
 - a. That the respondent has interfered with or, based upon prior conduct of the respondent, may interfere with an investigation of the elder adult at risk under s. 46.90 or the adult at risk under s. 55.043 and that the interference complained of, if continued, would make it difficult to determine if abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or mistreatment of an animal is occurring or may recur.
 - b. That the respondent has interfered with the delivery of protective services to or a protective placement of the individual at risk under ch. 55 after the offer of protective services or protective placement has been made and the individual at risk or his or her guardian, if any, has consented to receipt of the protective services or protective placement; or that the respondent has interfered with the delivery of services to an elder adult at risk under s. 46.90 (5m).
 - c. That the respondent has engaged in or threatened to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal.
- (ar) An injunction granted under par. (a) shall order the respondent to do one or more of the following:
 - 1. Avoid interference with an investigation of the elder adult at risk under s. 46.90 or the adult at risk under s. 55.043, the delivery of protective services to or a protective placement of the individual at risk under ch. 55, or the delivery of services to the elder adult at risk under s. 46.90 (5m).
 - 2. Cease engaging in or threatening to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal.
 - 2m. Refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet and allow the individual at risk or a guardian, guardian ad litem, family member, or household member of the individual at risk acting on his or her behalf to retrieve a household pet.
 - 3. Avoid the residence of the individual at risk or any other location temporarily occupied by the individual at risk, or both.
 - 4. Avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the individual at risk.
 - 5. Any other appropriate remedy not inconsistent with the remedies requested in the petition.
- (b) The injunction may be entered only against the respondent named in the petition.
- (c)
 - 1. An injunction under this subsection is effective according to its terms, but for not more than 4 years, except as provided in par. (d).
 - 2. When an injunction expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the individual at risk. This extension shall remain in effect until 6 months after the date on which the court first entered the injunction, except as provided in par. (d).
 - 3. If the petitioner states that an extension is necessary to protect the individual at risk, the court may extend the injunction for not more than 2 years, except as provided in par. (d).
 - 4. Notice need not be given to the respondent before extending an injunction under subd. 2. or 3. The clerk of courts shall notify the respondent after the court extends an injunction under subd. 2. or 3.
- (d)
 - 1. A judge may, upon issuing an injunction or granting an extension of an injunction issued under this subsection, order that the injunction is in effect for not more than 10 years, if the court finds, by a preponderance of the evidence stated on the record, that any of the following is true:
 - a. There is a substantial risk that the respondent may commit first-degree intentional homicide under s. 940.01, or 2nd-degree intentional homicide under s. 940.05, against the person at risk.
 - b. There is a substantial risk that the respondent may commit sexual assault under s. 940.225 (1), (2), or (3), or under s. 948.02 (1) or (2), against the person at risk.

2. This paragraph does not prohibit a petitioner from requesting a new temporary restraining order under sub. (4) or injunction under this subsection before or at the expiration of a previously entered order or injunction.

(5c) ORDER; TELEPHONE SERVICES.

- (a) Unless a condition described in par. (b) exists, a judge or circuit court commissioner who issues an injunction under sub. (5) may, upon request by the petitioner, order a wireless telephone service provider to transfer to the petitioner the right to continue to use a telephone number or numbers indicated by the petitioner and the financial responsibility associated with the number or numbers, as set forth in par. (c). The petitioner may request transfer of each telephone number he or she, or a minor child in his or her custody, uses. The order shall contain all of the following:
 1. The name and billing telephone number of the account holder.
 2. Each telephone number that will be transferred.
 3. A statement that the provider transfers to the petitioner all financial responsibility for and right to the use of any telephone number transferred under this subsection. In this subdivision, "financial responsibility" includes monthly service costs and costs associated with any mobile device associated with the number.
- (b) A wireless telephone service provider shall terminate the respondent's use of, and shall transfer to the petitioner use of, the telephone number or numbers indicated in par. (a) unless it notifies the petitioner, within 72 hours after it receives the order, that one of the following applies:
 1. The account holder named in the order has terminated the account.
 2. A difference in network technology would prevent or impair the functionality of a device on a network if the transfer occurs.
 3. The transfer would cause a geographic or other limitation on network or service provision to the petitioner.
 4. Another technological or operational issue would prevent or impair the use of the telephone number if the transfer occurs.
- (c) The petitioner assumes all financial responsibility for and right to the use of any telephone number transferred under this subsection. In this paragraph, "financial responsibility" includes monthly service costs and costs associated with any mobile device associated with the number.
- (d) A wireless telephone service provider may apply to the petitioner its routine and customary requirements for establishing an account or transferring a number, including requiring the petitioner to provide proof of identification, financial information, and customer preferences.
- (e) A wireless telephone service provider is immune from civil liability for its actions taken in compliance with a court order issued under this subsection.

(5g) CONFIDENTIALITY OF ADDRESSES. The petition under sub. (6) and the court order under sub. (4), (5), or (5c) may not disclose the address of the petitioner or of the individual at risk. The petitioner shall provide the clerk of circuit court with the address of the petitioner and of the individual at risk when he or she files a petition under this section. The clerk shall maintain the addresses in a confidential manner.

(5m) RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS.

- (a) If a judge or circuit court commissioner issues an injunction under sub. (5) and the judge or circuit court commissioner determines, based on clear and convincing evidence presented at the hearing on the issuance of the injunction, that the respondent may use a firearm to cause physical harm to another or to endanger public safety, the judge or circuit court commissioner may prohibit the respondent from possessing a firearm.
- (b) An order prohibiting a respondent from possessing a firearm issued under par. (a) remains in effect until the expiration of the injunction issued under sub. (5).
- (c) An order issued under par. (a) that prohibits a respondent from possessing a firearm shall do all of the following:
 1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29 and any similar applicable federal laws and penalties.
 2. Except as provided in par. (d), require in writing the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this section was commenced, to the sheriff of the county in which the respondent resides, or to another person

designated by the respondent and approved by the judge or circuit court commissioner, in accordance with s. 813.1285.

- (d) If the respondent is a peace officer, an order issued under par. (a) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

(6) PETITION. The petition shall allege facts sufficient to show the following:

- (a) The name of the petitioner and the individual at risk.
- (b) The name of the respondent and that the respondent is an adult.
- (c) That the respondent interfered with or, based on prior conduct of the respondent, may interfere with an investigation of the elder adult at risk under s. 46.90 (5), an investigation of the adult at risk under s. 55.043, the delivery of protective services to or a protective placement of the individual at risk under ch. 55, or the delivery of services to the elder adult at risk under s. 46.90 (5m); or that the respondent engaged in, or threatened to engage in, the abuse, financial exploitation, neglect, stalking, or harassment of an individual at risk or mistreatment of an animal.
- (d) If the petitioner knows of any other court proceeding in which the petitioner is a person affected by a court order or judgment that includes provisions regarding contact with the respondent, any of the following that are known by the petitioner:
 - 1. The name or type of the court proceeding.
 - 2. The date of the court proceeding.
 - 3. The type of provisions regarding contact between the petitioner and respondent.

(7) INTERFERENCE ORDER. Any order under sub. (4) (ar) 1. or 2. or (5) (ar) 1. or 2. also shall prohibit the respondent from intentionally preventing a representative or employee of the county protective services agency from meeting, communicating, or being in visual or audio contact with the adult at risk, except as provided in the order.

(8) ENFORCEMENT ASSISTANCE.

- (a)
 - 1. The clerk of the circuit court shall forward to the sheriff any temporary restraining order, injunction, or other document or notice that must be served on the respondent under this section and the sheriff shall assist the petitioner in executing or serving the temporary restraining order, injunction, or other document or notice on the respondent. The petitioner may, at his or her expense, elect to use a private server to effect service.
 - 2. If the petitioner elects service by the sheriff, the clerk of circuit court shall provide a form supplied by the sheriff to the petitioner that allows the petitioner to provide information about the respondent that may be useful to the sheriff in effecting service. The clerk shall forward the completed form to the sheriff. The clerk shall maintain the form provided under this subdivision in a confidential manner.
- (b) Within one business day after an order or injunction is issued, extended, modified or vacated under this section, the clerk of circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any other local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the vulnerable adult's premises.
- (c) The sheriff or other appropriate local law enforcement agency under par. (b) shall enter the information received under par. (b) concerning an order or injunction issued, extended, modified or vacated under this section into the transaction information for management of enforcement system no later than 24 hours after receiving the information and shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect.
- (d) A law enforcement agency and a clerk of circuit court may use electronic transmission to facilitate the exchange of documents under this section. Any person who uses electronic transmission shall ensure that the electronic transmission does not allow unauthorized disclosure of the documents transmitted.

(8m) NOTICE TO DEPARTMENT OF JUSTICE.

- (a) If an order prohibiting a respondent from possessing a firearm is issued under sub. (5m), the clerk of the circuit court shall notify the department of justice of the existence of the order prohibiting a respondent from possessing a firearm and shall provide the department of justice with information concerning the period during which the order is in effect and information necessary to identify the respondent for purposes of

responding to a request under s. 165.63 or for purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

- (b) Except as provided in par. (c), the department of justice may disclose information that it receives under par. (a) only to respond to a request under s. 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).
- (c) The department of justice shall disclose any information that it receives under par. (a) to a law enforcement agency when the information is needed for law enforcement purposes.

(9) ARREST.

(am) A law enforcement officer shall arrest and take a person into custody if all of the following occur:

1. A petitioner presents the law enforcement officer with a copy of an order issued under sub. (4) or an injunction issued under sub. (5), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.
2. The law enforcement officer has probable cause to believe that the person has violated the order issued under sub. (4) or the injunction issued under sub. (5).

(c) A respondent who does not appear at a hearing at which the court orders an injunction under sub. (5) but who has been served with a copy of the petition and notice of the time for hearing under sub. (5) (a) 2. that includes the information required under sub. (5) (a) 2. a., b., and c. has constructive knowledge of the existence of the injunction and may be arrested for violation of the injunction regardless of whether he or she has been served with a copy of the injunction.

(10) PENALTY. Whoever intentionally violates a temporary restraining order or injunction issued under this section shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

(12) NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (4) or (5) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

History: 1993 a. 445; 1995 a. 71, 306; 1997 a. 27; 2001 a. 61; 2005 a. 264, 387, 388; 2007 a. 45, 96, 124; 2009 a. 262; 2013 a. 223, 311, 321, 322; 2015 a. 109, 195, 253, 349, 353; s. 35.17 correction in (8) (a) 2.

The First 30 Months: Wisconsin's Individual-at-Risk Restraining Order. Abramson, Mansfield, & Raymond. Wis. Law. Nov. 2010.

940.225 Sexual assault.

(1) FIRST DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class B felony:

- (a)** Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.
- (b)** Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.
- (c)** Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class C felony:

- (a)** Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.
 - (b)** Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.
 - (c)** Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition.
 - (cm)** Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent.
 - (d)** Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.
 - (f)** Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.
 - (g)** Is an employee of a facility or program under s. [940.295 \(2\) \(b\)](#), [\(c\)](#), [\(h\)](#) or [\(k\)](#) and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.
 - (h)** Has sexual contact or sexual intercourse with an individual who is confined in a correctional institution if the actor is a correctional staff member. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section.
 - (i)** Has sexual contact or sexual intercourse with an individual who is on probation, parole, or extended supervision if the actor is a probation, parole, or extended supervision agent who supervises the individual, either directly or through a subordinate, in his or her capacity as a probation, parole, or extended supervision agent or who has influenced or has attempted to influence another probation, parole, or extended supervision agent's supervision of the individual. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section.
 - (j)** Is a licensee, employee, or nonclient resident of an entity, as defined in s. [48.685 \(1\) \(b\)](#) or [50.065 \(1\) \(c\)](#), and has sexual contact or sexual intercourse with a client of the entity.
- (3) THIRD DEGREE SEXUAL ASSAULT.** Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony. Whoever has sexual contact in the manner described in sub. [\(5\) \(b\) 2.](#) or [3.](#) with a person without the consent of that person is guilty of a Class G felony.
- (3m) FOURTH DEGREE SEXUAL ASSAULT.** Except as provided in sub. [\(3\)](#), whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor.