

Wisconsin's New Patient Representative Legislation

The Wisconsin Nursing Home Social Workers Association, Inc. Fall Conference
Thursday, October 1, 2026

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On March 20, 2026, Governor Evers signed into law Wisconsin's new 'Patient Representative' Legislation, otherwise known as the 'Next of Kin' law, which went into effect on June 1. The stroke of his pen immediately eradicated statutory protections that have been in place in Wisconsin for decades. Prior to the enactment of 2025 Wisconsin Act 115, the kin proposing admission to a long-term care facility of an incapacitated patient without a health care power of attorney faced a judicial review process designed to protect the patient's rights and autonomy. Following the enactment of Wis. Act-115, if a patient is incapacitated and does not have a health care power of attorney granting the agent the authority to admit the patient to a long-term care facility, a "Patient Representative" may be appointed to admit the patient from the hospital to the long-term care facility using a more expedited and simplified process. The question remains whether Wisconsin's Patient Representative Legislation's administrative efficiency will sacrifice too many patient protections and procedural safeguards for incapacitated individuals.

GUARDIANS

1. The Old Rules – Guardianship and Protective Placement. Prior to the enactment of the Patient Representative Legislation, a person could only be admitted to a long-term care facility, such as a nursing home or community-based residential facility, for any reason other than a short-term stay for recuperative care or respite care, in one of three ways:

- (a) they could agree to the admission themselves;
- (b) the agent under their activated HCPOA agreed to the admission (so long as the principal authorized it in the document); or
- (c) a petition for guardianship and protective placement was filed.



If these three options are not available at the time of a proposed admission to a long-term care facility, the law requires significant judicial oversight in order to protect the patient's rights and autonomy.

a. Filing Petitions for Guardianship and Protective Placement. Section 50.06 of the Wisconsin Statutes had read that certain people could consent to the admission of an incapacitated individual to a long-term care facility directly from a hospital if the person did not have a valid power of attorney for health care, was not adjudicated incompetent, or was diagnosed as developmentally disabled or as having a mental illness.

The people given the authority to do this, in order of priority, included a spouse or domestic partner, an adult child, a parent, a sibling, a grandparent, a grandchild, or finally, a close friend of the incapacitated individual. Admission to the facility could occur if no person in the same order of priority as, or higher in priority than, the individual who is consenting to the proposed admission disagreed with the proposed admission, or none of these people who resided with the incapacitated individual disagreed with the proposed admission.



However, the statute further required that a petition for guardianship for the individual under s. 54.34 and a petition under s. 55.075 for protective placement of the individual were filed *prior* to the proposed admission.

If the incapacitated individual verbally objected to or otherwise actively protested the admission, they could be admitted to the facility, but the facility's director was required to immediately notify the county under Section 55.02(2). Representatives from the county then needed to visit the individual as soon as possible, but no 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 was not withdrawn and the individual did not satisfy all of the criteria under Sections 55.08(1) or 55.135(1), and provide assistance in identifying appropriate alternative living arrangements.

3. Commence an emergency protective placement proceeding if the representative believes it appears probable that the individual “is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious physical harm to himself or herself or others as a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities if not immediately placed in that facility.” The court, with the permission of the facility, could order the incapacitated individual to remain in the facility pending the outcome of the protective placement proceedings.

b. A Hearing on Petitions. Section 55.10(1) states that “a petition for protective placement or protective services shall be heard within 60 days after it is filed unless an extension of this time is requested by the petitioner, the individual sought to be protected or the individual’s guardian ad litem, or the county department, in which case the court may extend the date for hearing by up to 45 days.”

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Under Section 55.09(1), notice of the petition “shall be served upon the individual sought to be protected, by personal service, at least 10 days before the time set for a hearing.” The person serving the notice shall inform the individual sought to be protected of the complete contents of the notice and shall return a certificate to the circuit judge verifying that the petition has been delivered and notice given. The notice shall include the names of all petitioners.

Prior to the hearing, the person consenting to the admission to the facility under Section 50.06 could make health care decisions for the incapacitated individual to the same extent as a guardian of the person may. If the individual did not have a durable financial power of attorney, the person could also authorize expenditures related to health care to the same extent as a guardian of the estate may. Further, the person could request a functional screening and a financial and cost-sharing screening to determine if the incapacitated individual was eligible for Family Care.

The person’s authority ended, however, upon the earliest of sixty days after the admission to the facility of the incapacitated individual, which may be extended by another 30 days, discharge of the incapacitated individual from the facility, or the appointment of a guardian for the incapacitated individual.



At the hearing, Section 55.08(1) states that a court may order protective placement for an individual who needs residential care and custody, who has been determined incompetent by the court, the individual is incapable of caring for themselves for the reasons stated in the statute, and the individual’s disability is permanent or likely to be permanent. If ordered, the protective placement is judicially reviewed each yet to ensure it is still necessary.

So, if an incapacitated individual had no health care power of attorney, a loved one could admit them to a long-term care facility to get the care they required, but that admission would later have to be reviewed by a court to determine it was absolutely necessary and was in the least restrictive environment that met the person’s needs. Many counties also require the proposed guardian to provide a credit report and submit to a criminal background check before being appointed.

2. The New Rules – Patient Representative. Wis. Act 115, the Patient Representative Legislation, leaves the prior process in place, however, it adds one more avenue for a patient to be admitted from a hospital to a long-term care facility.

a. Finding of Incapacity. Just like with a health care power of attorney, when the new Patient Representative Legislation is used, two health care providers must first find the patient is incapacitated. The two health care providers may include two physicians, or a physician and an advanced care clinician, which includes a psychologist, nurse practitioner, or physician's assistant. (See Wis. Act 115 at Sec. 7)



If the patient is incapacitated and does not have a health care power of attorney, or the health care power of attorney does not grant the agent the authority to admit the principal to a long-term care facility, the Patient Representative Legislation states that a “Patient Representative” may be appointed to admit the patient from the hospital to the long-term care facility. (*Id.* at Sec. 16)



The two health care providers will document this incapacity on form F-03435, a new document developed by Wisconsin's Department of Health Services (DHS), called the Medical Certification of Capacity for Determining a Patient's Representative Authority to Act (attached as Exhibit A). There is no requirement that the patient is notified of the finding of incapacity or the existence of their Patient Representative at this stage. (*Id.*)

b. Signing a Declaration. The Patient Representative is identified based on the same list as stated above found in Section 50.06(3), which is spouse or domestic partner, adult son or daughter, parent, adult brother or sister, grandparent, adult grandchild, or adult close friend. Once the Patient Representative is selected (based on the hierarchy created in Section 50.06(3) and the person identified agrees to serve) that person is required to sign form F-03436, the Patient's Representative Declaration (attached as Exhibit B), and declare under oath the following information:



1. A written acknowledgement that the patient's representative may make decisions or authorize expenditures.
2. A written statement that the patient's representative agrees to make health care decisions regarding the admission to and care and treatment at the accepting facility on the incapacitated individual's behalf and agrees to authorize expenditures related to health care received at the accepting facility on the incapacitated individual's behalf.
3. A written statement that, to the best knowledge of the patient's representative, the incapacitated individual does not have a health care agent, or guardian of the person.
4. A written statement that, to the best knowledge of the patient's representative, the patient's representative does not have an activated power of attorney for health care and has not been adjudicated incompetent in this state.

5. A written statement that, when acting on behalf of the incapacitated individual, the patient's representative agrees to exercise the degree of care, diligence, and good faith that an ordinarily prudent person exercises in his or her own affairs.
6. A written statement that the patient's representative understands his or her role and responsibilities as the patient's representative.
7. A written statement that, to the best knowledge of the patient's representative, a family member in a higher priority class under [Section 50.06(3)] does not exist or no family member in a higher priority class is willing to make health care decisions on the incapacitated individual's behalf.
8. A list of all of the incapacitated individual's family members to whom the patient's representative will send the signed declaration under this subdivision.

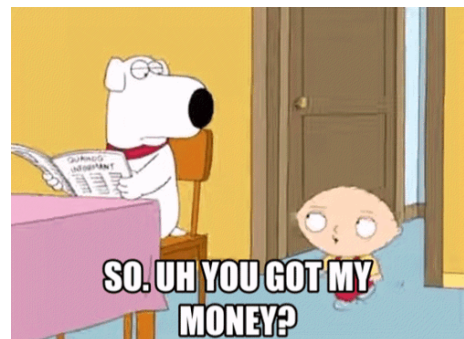


The Patient Representative has to provide a copy of the declaration to the hospital, to the accepting long-term care facility, to the adult-at-risk agency for the county in which the incapacitated individual resides, to all the incapacitated individual's family members that can be reasonably contacted following the admission,

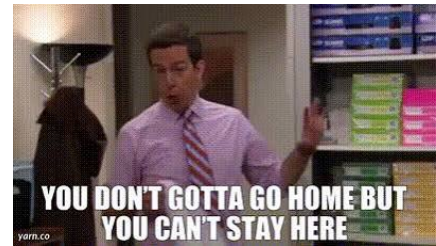
and to the register in probate for the county in which the incapacitated individual resides for filing. The adult-at-risk agency and the register in probate does not have any obligation to do anything with the declaration once it is filed.

DHS developed this declaration to use when a Patient Representative is identified and agrees to serve in the role. The Patient Representative may then proceed with admitting the patient from the hospital to the long-term care facility. The Patient Representative Legislation also allows the Patient Representative to “authorize expenditures” from the patient's assets to pay for the patient's expenses at the long-term care facility.

c. Possible Review of Conduct. Although there is no prerequisite that the Patient Representative be qualified or trustworthy, if someone believes that the Patient Representative has done something inappropriate in that role, that person may file for a review of the Patient Representative's conduct. The patient is entitled to notice of this review being filed with the court. At that stage, the judge has a few options to address the conduct in question. The judge may order that the Patient Representative act in the best interest of the patient, that the Patient Representative account for how the expenditures were used out of the patient's assets, or that a guardian ad litem be appointed on behalf of the patient.



3. The Balancing Act: Administrative Efficiency vs. Patient Protections. The goal of the Patient Representative Legislation is to make it easier to get a patient from a hospital to a long-term care facility, so they can start receiving the treatment and care that they need.



a. Pre-Discharge. While this new law seemingly makes it easier to admit someone from the hospital to the long-term care facility, it is limited in that it only allows the Patient Representative to admit the patient from the hospital to the long-term care facility and make decisions within the long-term care facility, but it does not allow the Patient Representative to make in-hospital medical decisions for the patient. Additionally, it leaves a number of gaps that may jeopardize a person's rights.

b. Stripped Rights. As explained above, during the guardianship proceeding, the individual has their rights protected throughout that process. The individual is entitled to notice of the guardianship proceeding to be aware that it's been filed. The court appoints a guardian ad litem to protect the individual's best interest. The individual still has the right to object to the guardianship or the choice of guardian. If the individual objects, the court will appoint a state public defender to advocate for the individual.



None of these rights are afforded to the patient when a Patient Representative is appointed. When the Patient Representative gives notice of the declaration, the Patient Representative does not have to give notice to the patient themselves. Not only is the patient not required to be notified of who is making their decisions, they do not have the opportunity to object or to have a guardian ad litem to protect their best interests or an attorney to advocate for their rights.

c. Recognition of Authority. Another practical issue with this new Legislation is how expenditures are authorized out of patient's assets. It can be difficult at times to get a financial institution to accept a durable financial power of attorney, which has well-settled statutes and processes to allow an agent to manage the financial matters of the principal. These financial institutions argue that they are not going to accept a durable financial power of attorney because of the date it was signed, because it was not notarized at that particular bank, because it is not on their internal form, along with many other reasons.

None of these are valid reasons to deny a durable financial power of attorney in Wisconsin and the issue can usually be resolved after some discussions and explanations of the laws in Chapter 244, but it still causes more headaches for the principal and the agent. Given that financial institutions are hesitant to accept a durable financial power of attorney to allow an agent to act, it seems like it will be more difficult to get the financial institution to accept a declaration to allow a Patient Representative to withdraw money out of the accounts. The liability for the financial institutions seems too high.



So, if the Patient Representative is struggling to authorize expenditures out of the patient's assets due to the financial institutions not honoring the declaration, how will the patient be able to pay for their care at the long-term care facility? It seems unlikely that the long-term care facility will admit the patient to live at the facility without the ability to pay. Even before this Patient Representative law passed, some facilities would try to get a family member to personally guarantee payment of the cost of care, which is not wise for other family members to sign, but it seems possible that this practice may increase.

d. No Long-Term Care Beds.

There is one other big problem that this new law does nothing to address: the number of beds available at long-term care facilities where patients can be admitted. Prior to the Patient Representative law being passed, when someone was in a hospital and needed to be admitted to a long-term care facility, it could be difficult to find a long-term care facility that had an opening to provide the necessary care.



It was difficult even with a valid health care power of attorney or guardian appointed. Having a Patient Representative sign a declaration and authorizing them to admit the patient to a long-term care facility does not change the fact that there may not be a facility that can care for that patient.

4. Conclusion. Ultimately, Wisconsin's new Patient Representative Legislation represents a significant shift in how incapacitated individuals may be admitted to long-term care facilities — one that prioritizes speed and administrative efficiency over procedural safeguards.

While the intent behind the law is understandable, particularly in reducing hospital backlogs and expediting access to needed care, it does so by removing longstanding protections that ensured judicial oversight and meaningful participation by the individual whose liberty and autonomy are at stake. As this Legislation takes effect, it will be critical for practitioners, health care providers, and families to understand both its utility and its risks. Just as importantly, policymakers and courts must remain attentive to how the law operates in real-world situations.

If the balance between efficiency and individual rights has tilted too far, further legislative refinement may be necessary to ensure that Wisconsin's most vulnerable residents are not only cared for, but also adequately protected. It is more important now than ever that Wisconsin residents complete a health care power of attorney to appoint the person they want to make their health care decisions and have their wishes outlined rather than opening themselves up to these risks.

