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To: Assembly Committee on Health, Aging and Long-Term Care

**From: Jon Hoelter, WHA VP Federal Affairs & Advocacy
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Subject: WHA Testimony in Support of Assembly Bill 598 “Next-of-Kin” Legislation

WHA asks for your support for AB 598, bipartisan legislation introduced by Representatives Snyder and Subeck and Senator Wimberger designed to address one segment of the many post-acute care challenges facing Wisconsin’s health care system.

The legislation is designed to address problems with WI State Statute 50.06 which currently limits the rights of family members to acquire appropriate post-acute care for their loved ones when they become incapacitated in the hospital. Currently, if someone has not filled out a power-of-attorney for health care that specifically designates the ability of a loved one to make health care decisions that include authorizing care in a nursing home or community-based-residential-facility (CBRF), their family members generally must go through an expensive and lengthy court-ordered guardianship process prior to a nursing home or CBRF agreeing to admit them.

Wisconsin already has next-of-kin authority for decisions like organ donation (s. 157.06) and hospice care (s. 50.94). SB 578 would expand the next-of-kin authority to help make these limited decisions without requiring every case to go through the courts. According to a 2023 report from the American Bar Association, this would allow Wisconsin to join the 46 other states that empower family members to help their loved ones gain access to post-acute care in a similar manner. Importantly, this legislation would preserve the option of going through the courts if there is disagreement among family members. It also includes a requirement that the next-of-kin (known as the patient’s representative in the bill) notify family members prior to activating the next-of-kin.

This legislation is nearly identical to legislation that passed the Assembly unanimously last session, but was not scheduled for a vote in the Senate prior to the session ending. The main addition to the legislation compared to last session is that it also affords family members the opportunity to file for an expedited temporary guardianship through the courts if they believe there is a need to help their loved ones with decisions that extend beyond the limited health care decisions granted to the next-of-kin.

The current process is a burden on families, providers and patients and delays appropriate treatment in the correct setting. For instance, a patient who has suffered a traumatic brain injury may wait longer in a hospital bed without receiving more intensive therapy that would otherwise be provided in a community-based residential facility for traumatic brain injuries. Not only do patients then delay more intensive non-hospital care, these patients also take up staffed hospital beds that could better serve other patients who truly need inpatient care.

To put this into perspective, the average length of stay for a normal inpatient at a hospital is around 5 days. It is not uncommon for incapacitated patients to stay in the hospital for 60 days or longer while the guardianship process plays out in an already overburdened court system. This means that one hospital bed could have served 12 patients during the time it was caring for a patient who didn't need to be in it, if not for the current statutory barrier. If you extrapolate this to the more than 150 hospitals across the state, each of which provide care for these types of patients, it's not hard to see how much of a difference this small statutory change could make in improving Wisconsin's overall health care system.

This legislation includes extensive patient protections, both under current law and the additional guardrails established in the bill, such as the explicit exemption of individuals with developmental disabilities or significant mental illness and a 3-year sunset on the next-of-kin authority created under the bill.

Like last session, we applaud the bipartisan cooperation between the legislative authors and Governor Evers in developing this legislation and ask for your support to get it passed this session.