

**From:** Rep.Snyder  
**Sent:** Tuesday, May 14, 2019 9:30 AM  
**To:** \*Legislative All Assembly, \*Legislative All Senate  
**Subject:** Co-sponsorship of LRB-1737-relating to certifications for advance directives and findings of incapacity related to powers of attorney for healthcare

### **CO-SPONSORSHIP MEMORANDUM**

**To:** All Legislators

**From:** Representatives Snyder and Doyle  
Senators Marklein and Ringhand

**Date:** May 14th, 2019

**Re:** Co-sponsorship of LRB-1737-relating to certifications for advance directives and findings of incapacity related to powers of attorney for healthcare

**DEADLINE: Thursday, May 23<sup>rd</sup>, 2019**

Wisconsin health care facilities are facing a dire workforce shortage from medical assistants to physicians. This issue, coupled with an aging population and antiquated statutes, has created challenges for health care providers, patients, and their families. By introducing LRB 1737, we are seeking to ease that burden by enabling additional members of the health care workforce – advanced practice registered nurses and physician assistants – to act under Wisconsin’s Advanced Directives and health care Power of Attorney (POA) statutes *consistent with their existing licensed scope of practice*.

Advanced Directives and health care POA instruments allow individuals to express, and health care providers act upon, one’s wishes regarding their health care if the individual becomes incapable of making health care decisions. LRB 1737 updates Wisconsin’s Advanced Directives and health care POA laws to recognize the ability of advanced practice registered nurses (APRNs) and physician assistants (PAs) to make professional, medical determinations required under those statutes.

Under their existing scope of practice, APRNs and PAs are permitted to make the professional, medical decisions made under the Advanced Directive and POA statutes. However, current law refers only to physicians and has not been updated to recognize APRN and PA practice. This bill updates statute to reflect current scope of practice, thus removing a regulatory burden impacting individuals that have specified their wishes through Advanced Directives or health care POA instruments, and their families and providers.

Under current law, either two physicians, or one physician and one psychologist, may make determinations of incapacity to activate the patient’s health care POA. Additionally under current

law, only a physician may issue Do-Not-Resuscitate orders requested by a patient, and activation of a patient's living will must be made by two physicians. Limiting who can make these determinations to physicians is problematic for two reasons: (1) Particularly in rural Wisconsin, requiring a second physician to examine a patient can create an unnecessary and time consuming obstacle when a trained and experienced PA or APRN is immediately available to examine the patient; and (2) many patients have built a trusting relationship with a PA or an APRN as their primary care provider who, under current statute, cannot act on Advanced Directives or health care POAs of that patient.

To mitigate this situation, LRB-1737:

1. Allows a PA or APRN to make findings of incapacity, persistent vegetative state, or terminal illness for purposes of activating a patient's wishes under his or her advanced directive or health care POA. *An additional physician must also reach the same conclusion for the directive or POA to activate.*
2. Allows a health care professional, defined as a person licensed as a physician, physician assistant, or advanced practice registered nurse, to issue a Do-Not-Resuscitate order following a request from the patient that conforms with the advanced directive statute.

The bill also has several provisions in place to preserve high quality care, including that PAs and APRNs must be licensed by the state of Wisconsin to act under these statutes; their licensing boards may take action against their license for acting under the advanced directive and health care POA statutes without having sufficient education, training and experience to make determinations under those statutes; that the physician who oversees the PA's practice affirms that the physician assistant is competent to make these determinations; and requiring that at least one of the health care professionals making determinations under the Advanced Directive or health care POA statute be a physician. Lastly, the legislation continues the current law practice of allowing a POA instrument or Advanced Directive to be written uniquely to express the wishes of the patient—meaning the patient could still require two physicians to make the activations addressed in this bill.

Wisconsin's population is projected to continue aging and the workforce shortage will likely continue to steepen as we age. It is critical that we update statute now to reflect the current scope of practice of PAs and APRNs to get ahead of future challenges.

*To cosponsor this legislation, please reply to this e-mail or contact Representative Snyder's office (266-0654) or Senator Marklein's office (266-0703). Members will be added to both the Senate & Assembly versions unless otherwise specified.*