
Wisconsin Legislative Council



Anne Sappenfield
Director

TO: REPRESENTATIVE PATRICK SNYDER

FROM: Amber Otis, Senior Staff Attorney

RE: Comparison of 2023 Assembly Bill 1088 and 2025 Assembly Bill 598 and Description of Draft Amendment to 2025 Assembly Bill 598

DATE: December 11, 2025

Current law, codified at s. 50.06, Stats., allows certain family members and others, based on a hierarchical order of priority, to consent to an incapacitated individual's admission to a nursing home or a community based residential facility (collectively referred to in this memorandum as a "facility") directly from a hospital when various circumstances apply, including the incapacitated individual not having a power of attorney for health care.

At your request, this memorandum compares two bills that would modify various aspects of this law, and also a draft amendment to one of those bills. Specifically, this memorandum describes: (1) current law under s. 50.06, Stats.; (2) 2023 Assembly Bill 1088, as amended by the Assembly (referred to as "Assembly Bill 1088"), in relevant part; (3) 2025 Assembly Bill 598, as it compares to Assembly Bill 1088; and (4) 2025 LRBa0702/P1, a draft amendment to 2025 Assembly Bill 598.

In short, Assembly Bill 1088 and Assembly Bill 598 contain very similar provisions relating to next-of-kin consent authority, in that both create an alternative procedure under which a patient's representative may consent to an incapacitated individual's discharge from a hospital and admission at a facility without being subject to two current law provisions: (1) the requirement that a guardianship or protective placement petition be filed; and (2) the maximum 90-day time limit on the exercise of decision-making authority.

That said, Assembly Bill 598 contains additional provisions that are not in Assembly Bill 1088, which are described in greater detail below and may be generally summarized as follows:

- A physician or advanced practice clinician must: sign a written statement as to the determination that an individual is, or no longer is, incapacitated; provide certain specified information in that written statement; and send the written statement to the corporation counsel and adult-at-risk agency for the county in which the incapacitated, or formerly incapacitated, individual resides.
- The patient's representative must sign a declaration under oath and submit the signed declaration to all of the following: the discharging hospital; the accepting facility; the corporation counsel and adult-at-risk agency for the county in which the incapacitated individual resides; and all of the incapacitated individual's family members that can be reasonably contacted.
- Each corporation counsel must receive, maintain, and provide copies of the written statements and signed declarations in certain circumstances.

- Though not required, if a guardianship proceeding is commenced regarding the incapacitated individual, certain stages of guardianship proceedings require review or consideration of the written statements and signed declarations.

CURRENT LAW

Current law allows certain family members and others, based on a hierarchical order of priority,¹ to consent to an incapacitated individual's discharge from a hospital and admission to a facility. To be deemed "incapacitated," two physicians, or one physician and one psychologist, must personally examine the individual and sign a statement that the individual is incapacitated.² [s. 50.06, Stats.]

Specifically, an individual may provide such consent if all of the following apply:

- The incapacitated individual does not have a valid power of attorney for health care.
- The incapacitated individual has not been adjudicated incompetent in this state.
- No person who is listed in the same order of priority, or higher priority, disagrees with the proposed admission.
- No person in any level of priority who resides with the incapacitated individual disagrees with the proposed admission, unless the person consenting also resides with, or is the spouse or domestic partner of, the incapacitated individual.
- 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.
- A petition for guardianship and a petition for a protective placement of the individual are filed prior to the proposed admission.
- The incapacitated individual does not verbally object to or otherwise actively protest the admission.³

[s. 50.06 (2), Stats.]

Under current law, an individual who consents to an admission may, for the incapacitated individual, make health care decisions to the same extent as a guardian of the person and authorize expenditures related to health care to the same extent as a guardian of the estate, unless the incapacitated individual has an agent under a durable power of attorney who is authorized to make expenditures for health care. Current law allows this authority to remain in effect until the earliest of the following occurs:

- Sixty days have passed since the incapacitated individual's admission to the facility, though if no guardian has been appointed, the authority may be extended for another 30 days to allow the facility to initiate discharge planning for the incapacitated individual.

¹ An incapacitated individual's family member (or adult close friend) may consent to an admission in the following order of priority: (a) spouse or domestic partner; (b) adult son or daughter; (c) parent; (d) adult brother or sister; (e) grandparent; (f) adult grandchild; or (g) adult close friend. [s. 50.06 (3), Stats.]

² For this purpose, "incapacitated" means the individual is "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." Mere old age, eccentricity, or physical disability are insufficient to make a finding that an individual is incapacitated. [s. 50.06 (1) and (4), Stats.]

³ If such an objection or protest occurs, the individual may be admitted to the facility, but notice to and an investigation by a county department must be commenced using a procedure specified in current law. [s. 50.06 (2) (d), Stats.]

- The incapacitated individual is discharged from the facility.
- A court has appointed a guardian for the incapacitated individual.

[s. 50.06 (5), Stats.]

2023 ASSEMBLY BILL 1088, AS AMENDED BY THE ASSEMBLY

Assembly Bill 1088 creates the term “patient’s representative,” defined to mean the individual who may consent to an admission to a facility using the same hierarchical order of priority that exists under current law. The bill maintains the authority for a patient’s representative to consent to an incapacitated individual’s discharge from a hospital and admission to a facility using the same requirements under current law.

However, the bill further creates an alternative procedure for a patient’s representative to consent to such an admission. The alternative procedure: (1) does not require that a petition for guardianship or protective placement be filed, as required under current law; and (2) allows the patient’s representative to maintain authority until one of three specified events occurs, rather than such authority ending after a maximum of 90 days, as specified under current law.

Requirements for Consent Authority Under Alternative Procedure

For a patient’s representative to consent to an incapacitated individual’s admission to a facility without a petition for guardianship or protective placement being filed, the bill requires all of the other requirements under s. 50.06 (2), Stats., listed above, to apply, and further requires all of the following:

- The incapacitated individual must be admitted directly from a hospital inpatient unit.
- The patient’s representative must acknowledge in writing: (1) that the patient’s representative does not have an activated power of attorney for health care and has not been adjudicated incompetent; (2) an agreement to make health care decisions regarding admission, care and treatment at the accepting facility on the incapacitated individual’s behalf; (3) an agreement to authorize expenditures related to the incapacitated individual’s health care; (4) an agreement to exercise the degree of care, diligence, and good faith that an ordinary prudent person exercises in his or her own affairs; and (5) an understanding of a patient’s representative’s role and responsibilities.
- The patient’s representative must, in writing, promptly notify the incapacitated individual and all of his or her family members that can be readily contacted that the representative may make decisions or authorize expenditures as provided in the bill.
- The patient’s representative must provide a written statement to the discharging hospital and the accepting facility stating: (1) to his or her best knowledge, a family member in a higher priority class 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; (2) to his or her best knowledge, the incapacitated individual does not have a health care agent or guardian of the person; and (3) the family members who have received notice as provided under the bill.
- The admitting facility must notify a representative of the Board on Aging and Long-Term Care (BALTC) of the admission within 72 hours of admission.

The bill also requires that the discharging hospital and accepting facility include a copy of the written acknowledgement and written statement in the incapacitated individual’s health care record.

Scope and Duration of Authority Under Alternative Procedure

If the requirements of this alternative procedure are met, a patient's representative generally has the same authority as provided under current law, that being the authority to make health care decisions to the same extent as a guardian of the person and to authorize expenditures related to health care to the same extent as a guardian of the estate. The bill further specifies that a patient's representative's authority to make health care decisions to the same extent as a guardian of the person includes enrolling the incapacitated individual in the Medical Assistance program.⁴

A patient's representative's authority under the bill's alternative procedure does not end after a specific time period, but rather ends upon any of the following events:

- A court appoints a guardian to make such decisions for the incapacitated individual.
- The incapacitated individual is discharged to a setting that is not a nursing home or facility.
- A health care power of attorney that was not identified when the patient's representative was established is identified.
- The incapacitated individual is determined to no longer be incapacitated.

Other Provisions Relevant to the Alternative Procedure

Assembly Bill 1088 creates other provisions specific to the alternative procedure, including:

- A sunset provision stating that, after three years from the bill's effective date, a patient's representative may not consent to a facility admission under the alternative procedure.
- A judicial remedy under which any interested party may petition a court to review whether the patient's representative is acting in accordance with the incapacitated individual's known wishes or best interest, and is exercising the degree of care, diligence, and good faith when acting on behalf of the incapacitated individual that an ordinarily prudent person exercises in his or her own affairs.⁵
- The ability for an incapacitated individual, patient's representative, or any facility staff to request a reevaluation of the incapacity determination, which may result in the patient's representative's authority terminating if the individual is determined to no longer be incapacitated, as noted above.
- Immunity from civil and criminal liability and findings of unprofessional conduct for certain actions by a health care facility, health care provider, or patient's representative relating to the authority created in the bill, with exceptions, which are similar to certain immunity provisions under current laws governing a power of attorney for health care. [See, s. 155.50, Stats.]
- A requirement that the BALTC report to the Joint Committee on Finance (JCF) by April 1, 2025, and annually thereafter, on the number of patients admitted into a facility with the consent of a patient's representative under the alternative procedure.

⁴ The bill maintains the caveat in current law that the ability to authorize expenditures does not apply if the incapacitated individual has an agent under a durable power of attorney authorized to make health care expenditures.

⁵ Under this remedy, a court may issue orders that the court determines necessary to protect the incapacitated individual, including a non-exhaustive list of potential remedies, such as ordering periodic status reports to the court or directing the patient's representative not to make certain decisions or authorize certain expenditures.

2025 ASSEMBLY BILL 598

As an overview, Assembly Bill 598 (referred to as “the bill” hereinafter unless otherwise indicated) contains very similar provisions creating an alternative procedure that, until it sunsets three years after taking effect, allows a patient’s representative to consent to an incapacitated individual’s discharge from a hospital and admission at a facility without the requirement that a guardianship or protective placement petition be filed and without a maximum 90-day time limit governing that authority.

However, Assembly Bill 598 differs from Assembly Bill 1088 in that it also: (1) authorizes one physician and one advanced practice clinician to determine that an individual is incapacitated, rather than one physician and one psychologist, as provided under current law; (2) requires a physician or advanced practice clinician to prepare a written statement as to the determination that an individual is incapacitated or no longer incapacitated; (3) requires a patient’s representative to sign a declaration, under oath, on a single form provided to a broader list of recipients; (4) requires the corporation counsel of the county in which the incapacitated individual resides to receive, provide, and maintain those written statements and signed declarations in certain circumstances; and (5) modifies certain stages of guardianship proceedings to require review or consideration of the written statements and signed declarations, in the event a guardianship proceeding is commenced.

Medical Professionals Authorized to Determine Incapacity

Current law specifies standards for a determination that an individual is incapacitated for purposes of hospital discharges and facility admissions under s. 50.06, Stats. To be deemed “incapacitated,” two physicians, or one physician and one psychologist, must personally examine the individual and sign a statement that the individual is incapacitated. [s. 50.06 (4), Stats.]

The bill maintains the option for two physicians to determine incapacity, but modifies the other option of one physician and one psychologist making that determination to instead allow for one physician and one advanced practice clinician⁶ to determine whether an individual is incapacitated. This change applies to all determinations of incapacity under s. 50.06, Stats., regardless of whether the patient’s representative’s consent to discharge and admission of the incapacitated individual is given pursuant to the current law procedure or the alternate procedure created by the bill.⁷

Physician or Advanced Practice Clinician’s Written Statement

If an incapacitated individual is admitted to a facility under the bill’s alternative procedure, the physician or advanced practice clinician who determines that an individual is incapacitated must prepare a written statement on a form prescribed by the Department of Health Services (DHS) that contains all of the following information:

- The physician or advanced practice clinician personally examined the incapacitated individual.
- The date and location that the physician or advanced practice clinician determined the individual is incapacitated.

⁶ The bill defines an “advanced practice clinician” using the current law definition under s. 155.01 (1g), Stats., which specifies that the term means any of the following: a psychologist; a registered nurse who is currently certified as a nurse practitioner by a national certifying body approved by the Board of Nursing; or a physician assistant who a physician responsible for overseeing the physician assistant’s practice affirms is competent to conduct evaluations of the capacity of patients to manage health care decisions.

⁷ The bill affects only the types of medical professionals authorized to make the incapacity determination. The bill maintains the current law definition of “incapacitated” and the requirement that such professionals personally examine the individual and sign a statement specifying that the individual is incapacitated. [s. 50.06 (1) and (4), Stats.]

- The medical conditions of the individual, if any, that led the physician or advanced practice clinician to conclude that the individual is incapacitated.
- The physician's or advanced practice clinician's office address and contact information.
- Any other information identified by DHS.

Similarly, if an individual who was admitted to a facility under the bill's alternative procedure is determined to no longer be incapacitated, the bill requires the physician or advanced practice clinician who makes that determination to prepare a written statement containing all of the following information:

- The physician or advanced practice clinician personally examined the individual.
- The date and location that the physician or advanced practice clinician determined the individual is no longer incapacitated.
- The medical conditions of the individual, if any, that led the physician or advanced practice clinician to conclude that the individual is no longer incapacitated.
- The physician's or advanced practice clinician's office address and contact information.
- Any other information identified by DHS.

The bill requires that a copy of any written statements be included in the individual's patient health care records and, within 72 hours of the determination, be sent to the corporation counsel and adult-at-risk agency⁸ for the county in which the individual resides. The bill also includes an exception to the state's patient health care record confidentiality law to explicitly allow for written statements to be sent to a corporation counsel.

Patient's Representative's Signed Declaration

For a patient's representative to have authority to consent to an incapacitated individual's facility admission without a petition for guardianship or protective placement being filed, the bill requires similar requirements as provided in Assembly Bill 1088, in that: (1) all of the remaining requirements under s. 50.06 (2), Stats., must apply; (2) the incapacitated individual must be admitted directly from a hospital inpatient unit; (3) the patient's representative must provide certain information in writing; and (4) the admitting facility must notify a government agency⁹ of the admission within 72 hours.

However, as for the third item listed above, the bill contains different requirements with respect to the specific type of written product signed by the patient's representative. Specifically, the bill consolidates the various written statements and acknowledgments required under Assembly Bill 1088 (as described on page 3 of this memo) into one form that must be signed as a declaration under oath.¹⁰ In addition,

⁸ Like current law, the bill defines an "adult-at-risk agency" to mean the agency designated by the county board of supervisors to receive, respond to, and investigate reports of abuse, neglect, self-neglect, and financial exploitation of any adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation. [ss. 55.01 (1e) and (1f) and 55.043, Stats.]

⁹ Assembly Bill 598 and Assembly Bill 1088 differ as to the specific recipient of this notice, as explained on page 9 of this memo.

¹⁰ State law specifies the types of officials authorized to administer an oath, such as a notary public, among many others. Any person who takes an oath or affirmation in the "usual forms" is deemed to have been lawfully sworn. State law also allows certain types of signed declarations, such as affidavits or statements, that are not sworn under oath to have that same effect, if the declaration is instead given under the penalty of false swearing. [See ss. 887.01, 887.015, 887.03, and 946.32, Stats.]

the bill requires the patient's representative to submit the signed declaration to all of the potential recipients of the various individual writings contemplated under Assembly Bill 1088.

Specifically, under the bill, a patient's representative must sign a declaration under oath on a form prescribed by DHS and promptly submit the signed declaration to all of the following recipients following the incapacitated individual's facility admission: (1) the discharging hospital and the accepting facility; (2) the corporation counsel for the county in which the incapacitated individual resides; (3) the adult-at-risk agency for the county in which the incapacitated individual resides; and (4) all of the incapacitated individual's family members that can be reasonably contacted.¹¹

As mentioned, a "signed declaration" under Assembly Bill 598 must include nearly identical written statements or acknowledgments as are required under Assembly Bill 1088, but consolidates them into one form. Under the bill, the signed declaration must include all of the following:

- A written acknowledgment of the patient's representative's authority, and 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, as provided under the bill.
- 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.
- 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.
- 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.
- A written statement that the patient's representative understands his or her role and responsibilities as the patient's representative.
- A written statement that, to the best knowledge of the patient's representative, a family member in a higher priority class 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.
- A list of all of the incapacitated individual's family members to whom the patient's representative will send the signed declaration.¹²

The bill requires the discharging hospital and the accepting facility to include a copy of the signed declaration in the incapacitated individual's health care record.

Use of a Written Statement or Signed Declaration in Guardianship Proceedings

Assembly Bill 598 creates two new requirements in guardianship proceedings relating to the written statements and signed declarations described above.

¹¹ Assembly Bill 598 requires the signed declaration to be submitted to all "family members that can be reasonably contacted," while Assembly Bill 1088 requires written notice to the incapacitated individual as well as to all "family members that can be readily contacted."

¹² In contrast, Assembly Bill 1088 requires that the patient representative's written statement to the discharging hospital and accepting facility state the incapacitated individual's family members who have received notice of the patient's representative's authority to make decisions or authorize expenditures.

First, as part of guardianship proceedings under current law, a physician or psychologist, or both, must examine the proposed ward and furnish a written report stating his or her professional opinion regarding the presence and likely duration of any medical or other condition causing the proposed ward to have incapacity or to be a spendthrift. [s. 54.36, Stats.] The bill requires that, prior to furnishing that written report, any physician or psychologist who examines the proposed ward must request and review any written statements prepared for the proposed ward by a physician or advanced practice clinician with respect to incapacity and received by the corporation counsel. The physician or psychologist may also request and review any declaration signed by the patient's representative and received by the corporation counsel.

Second, if the proposed ward in a guardianship proceeding has been admitted to a facility under the bill's alternative procedure, the petitioner for a temporary guardianship must, as soon as practicable after filing the petition and before the temporary guardianship hearing, request from the corporation counsel for the county in which the proposed ward resided prior to the facility admission a copy of any written statement it received regarding a determination that the individual is, or no longer is, incapacitated.¹³ The petitioner must submit to the court one of the following: (1) a copy, under seal, of any written statement determining that the individual is, or no longer is, incapacitated that was sent to the relevant corporation counsel, for *in camera* inspection by the court; or (2) a statement to the court that the petitioner requested any such written statements that were sent to the relevant corporation counsel but no such written statement was located.

The bill requires the court to inspect, *in camera*, any submitted written statement. Unless the court determines that the proposed ward's circumstances have changed from those described in the written statement, the submitted written statement: constitutes a prima facie showing that the proposed ward's particular situation requires immediate appointment of a temporary guardian of the person or estate, regardless of the fact that the document may be uncorroborated hearsay; must be regarded as self-authenticating; and does not require any foundational or other testimony for its admissibility.¹⁴

Role of County Personnel in Alternative Procedure

Assembly Bill 598 involves corporation counsel and adult-at-risk agencies at various points throughout the alternative procedure for a patient's representative to consent to an incapacitated individual's admission from a hospital to a facility. Specifically, as part of the alternative procedure, the bill requires each corporation counsel to do all of the following:

- Accept receipt of each submitted written statement containing a determination that an individual is, or no longer is, incapacitated, as well as any signed declaration submitted by a patient's representative.
- In guardianship proceedings, provide a copy of: (1) any submitted written statement to any petitioner seeking a temporary guardianship, upon the petitioner's request; and (2) any submitted written statements or signed declarations, to any physician or psychologist examining the incapacitated individual as a proposed ward in a guardianship proceeding.

¹³ Relatedly, the bill requires the corporation counsel for the county in which the proposed ward resided prior to the facility admission to provide to the petitioner, upon request, a copy of any written statement sent to the corporation counsel relating to the proposed ward.

¹⁴ However, the bill specifies that the prima facie evidence presented through the submitted written statement may be rebutted by information that affirmatively indicates a lack of trustworthiness in the document or information that the proposed ward's circumstances have changed. The bill also specifies that a patient's evidentiary health care privilege under s. 905.04, Stats., does not apply to a written statement submitted for this purpose.

- Provide a copy of any submitted written statements or signed declarations to any family member of the incapacitated individual who meets one of the categories of relationships listed in the hierarchal list under current law, other than an adult close friend.
- Maintain each record received under the bill and purge only such records after the death of the incapacitated individual that is the subject of the records.

Other Differences Between Assembly Bill 598 and Assembly Bill 1088

Beyond the additional requirements contained in Assembly Bill 598 described above, Assembly Bill 1088 and Assembly Bill 598 also differ as follows:

- **Clarification on Scope of Authority:** Assembly Bill 1088 states that, under the alternative procedure, a patient’s representative’s authority to make health care decisions to the same extent as a guardian of the person includes enrolling the incapacitated individual in the Medical Assistance program. Assembly Bill 598 clarifies that a patient’s representative is authorized to enroll the incapacitated individual in the Medical Assistance program to the same extent that a guardian of the estate is authorized to do so, rather than a guardian of the person.¹⁵
- **Who May Request Re-Evaluation:** Assembly Bill 598 allows “any person, including the adult-at-risk agency for the county in which the incapacitated individual resides, the corporation counsel for the county in which the incapacitated individual resides, or any facility staff” to request a reevaluation of the incapacity determination after an incapacitated individual has been admitted to a facility under the alternative procedure. In contrast, Assembly Bill 1088 states that “the incapacitated individual, the patient’s representative, or any facility staff” may make such a request.
- **Petitioners for Judicial Remedy:** Assembly Bill 598 provides the same judicial remedy provided in Assembly Bill 1088, but states that any person, including the adult-at-risk agency or corporation counsel for the county in which the incapacitated individual resides, may petition the court for review. In contrast, Assembly Bill 1088 states that “any interested party” may file the petition.
- **Government Agency Notified of Admissions:** Under the alternative procedure in Assembly Bill 598, the admitting facility must, within 72 hours of admission, provide notice of the admission to the corporation counsel for the county in which the individual resides. In contrast, Assembly Bill 1088 requires such notice be provided to the BALTC.
- **Legislative Reporting Requirements:** Assembly Bill 598 requires that each corporation counsel annually submit to DHS, upon DHS’s request, the number of patients admitted to a facility under the alternative procedure, and also requires that, by April 1, 2027, and annually thereafter, DHS submit a report to the appropriate legislative standing committees on the number of patients admitted to a facility under the alternative procedure. In contrast, Assembly Bill 1088 requires that the BALTC report annually to JCF on the number of patients admitted into a facility under the alternative procedure.

¹⁵ Assembly Bill 598 also makes this clarification for a patient’s representative acting under the current law procedure maintained by the bill.

LRBa0702/P1, A DRAFT AMENDMENT TO ASSEMBLY BILL 598

The draft amendment to Assembly Bill 598 generally requires a county's register in probate,¹⁶ rather than a county's corporation counsel, to perform certain functions with respect to any written statement prepared by a physician or advanced practice clinician when determining that an individual is, or no longer is, incapacitated, and any signed declaration submitted by a patient's representative for an incapacitated individual to be admitted to a facility under the alternative procedure.

Specifically, the draft amendment requires the register of probate to do all of the following:

- Accept receipt for filing and safekeeping each written statement by a physician or advanced practice clinician¹⁷ and each signed declaration submitted by a patient's representative.
- In guardianship proceedings, provide a copy of: (1) any submitted written statement, to any petitioner seeking a temporary guardianship for the incapacitated individual, upon the petitioner's request; and (2) any submitted written statements or signed declarations, to any physician or psychologist examining the incapacitated individual as a proposed ward in a guardianship proceeding.
- Provide copies of any submitted written statements or signed declarations to any family member of the incapacitated individual who meets one of the categories of relationships in the hierarchal list under current law, other than an adult close friend.
- Provide a copy of any submitted written statement or any signed declaration related to an incapacitated individual to any court or corporation counsel, upon request.
- Maintain each record received and purge such records only after the death of the incapacitated individual who is the subject of the records and in accordance with protocols established by DHS for verifying the death of an individual and destruction of written statements and signed declarations.

The draft amendment maintains the bill's other references to a corporation counsel unrelated to the acts of receiving, maintaining, and providing the various documents described above. For example, the draft amendment maintains the bill's requirements that the admitting facility notify the corporation counsel for the county in which the incapacitated individual resides of the admission no later than 72 hours after the admission, and that each corporation counsel submit annually to DHS the number of patients admitted into a facility under the alternative procedure. The draft amendment also maintains the bill's references to corporation counsel where included as an example of "any person" who may petition the court under the bill's remedy or who may request that an incapacitated individual be reevaluated.

Please let me know if I can provide any further assistance.

AO:kp:jal

¹⁶ Current law requires the judges of each county to appoint a register in probate. After taking a constitutional oath of office, the register in probate has various duties and powers, including keeping all papers "properly deposited with him or her" and maintaining a record of probate court proceedings. [See ss. 851.71 to 851.73, Stats.]

¹⁷ The draft amendment also modifies the bill's exception to the state's patient health care record confidentiality law to explicitly allow for written statements to be sent to a register of probate instead of a corporation counsel.