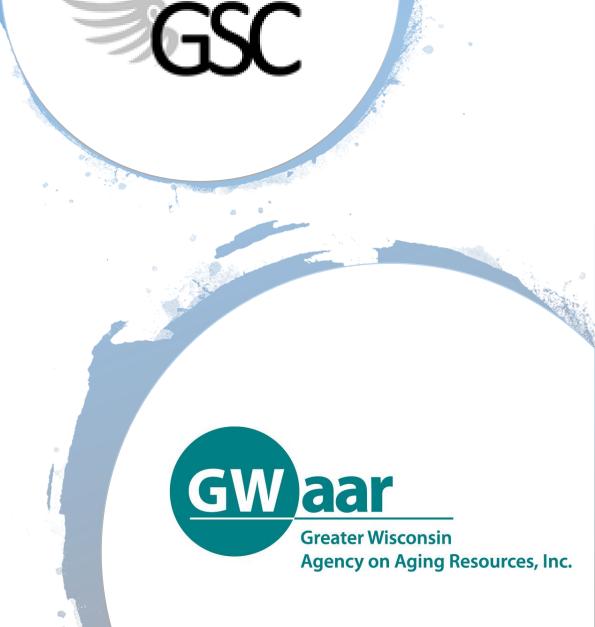


Polly Shoemaker, JD Guardianship Support Center Attorney Greater WI Agency on Aging Resources, Inc.

December 2020



## WI Guardianship Support Center

- Legal information provided to attys, guardians, APS, families, professionals, and vulnerable adults
- Guardianships, POA, Protective placement, DNR, Living wills
- Free quarterly newsletter
- Consumer publications
- No court representation or legal advice





#### Advance Directives

- Documents that allow you to tell family, friends, and/or care providers what you want if you are unable to communicate for yourself
- Types of advance directives:
  - Powers of attorney for health care and finance
  - Living wills
  - Authorizations for Final Disposition (burial/funeral instructions)



### Why advance directives matter

- Wisconsin isn't a next-of-kin state your family can't make decisions for you
- You have the power to decide what you want and make your wishes clear to family and friends
- You decide who you want to handle your care, financial affairs, and end-of-life matters and how much authority they should have
- The people you choose must follow your wishes if known
- If you don't have them and you can no longer make or communicate your decisions, a court will choose a guardian for you and decide what decisions they can make – and they do not have to follow your wishes

#### Power of Attorney

- Wisconsin separates into POA for Health Care and POA for Finances
- A power of attorney is a <u>legal contract</u> between a <u>principal</u> (that's you!) and an <u>agent</u> (the person you choose to act for you)
- State provides standard forms for both (available from DHS); not required to use these forms
- Agent <u>must</u> act according to <u>principal's</u> wishes if known if your wishes are not known, they must act in your best interest

#### Power of Attorney for Health Care

- Makes health care decisions on Principal's behalf
  - Health care is any care, treatment, service, or procedure to maintain, diagnose or treat a physical or mental condition
  - No authority to make other decisions (ex: who can visit)
  - Must follow Principal's wishes if ascertainable (even by nodding or blinking)
- Principal can designate an alternate agent no authority to act unless primary is unable/unwilling

#### Power of Attorney for Health Care

- End of life care
- Decide between treatment options
- Consent to surgery
- Admission to nursing home or CBRF

#### 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
- 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.

#### Power of Attorney for Health Care

- Valid signature
  - Principal is adult of sound mind
  - 2 disinterested witnesses (not related, not your care providers)
  - In writing, signed and dated
  - Principal can direct someone to sign for them in their presence
- Voluntary
- Typically activated on incapacity
  - Inability to receive/evaluate information and/or communicate decisions relating to health care decisions only
  - Determined by 2 physicians or physician and advanced practice clinician (psychologist, nurse practitioner, physician's assistant) OR as stated on POA document itself

#### Deactivation

- Regaining capacity
- No formal process required in the statutes
- Can be done in the opposite way, ex 2 physicians sign certification that individual has regained capacity to make decisions
- Some facilities use 1 provider and that is probably sufficient as there are no statutory requirements

### Power of Attorney Finances and Property

- AKA "durable" power of attorney
- Principal retains their own rights to manage property/finances
- Allows agent to manage property and finances
  - State law provides some limits/protections may wish to consult with attorney if any specific needs
- Typically active upon signing (but can be created to be active on incapacity or other specified event)
- Recommended to be notarized
- No witnesses required
- Principal can direct another to sign their name



# End of Agency

- An Agent may be in place until:
  - Capacity regained
  - Expiration of event for some POA-Fs
  - Revocation
  - Resignation
  - Removal by court
  - Death
  - Guardianship (possibly)

# Revocation of Power of Attorney

- Person can revoke at any time
- Revoke in writing
- Tear up/burn document
- Execute new POA-HC
  - But note: executing a new POA-F does not automatically revoke the previous one!
     You must specifically state in the new document that it revokes previous POA-Fs.

#### Top issues I see with POAs:

- Incorrect dates
- Didn't actually give agent authority
- POA-HC and POA-F agent not getting along
- Didn't list alternates or alternates unable, unwilling or have passed away
- Missing pages
- Not picking someone trustworthy
- Family issues
- Crossing things out after execution
- Agent exceeds authority

# Living Will

- Directive to a health care provider physician, PA, NP
- What the patient's wishes are
- Circumstances must fit exactly the question asked
- No agents designated
- If also have a POA, choices must match
- (POA-HC provides much broader authority)
- Requires two witnesses



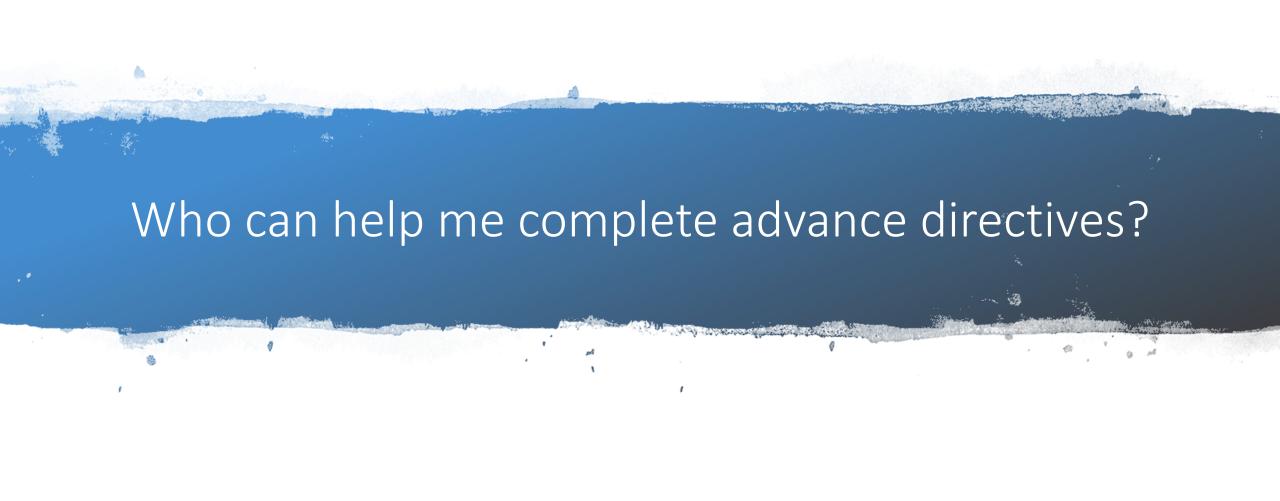
#### Authorization for Final Disposition

- Allows you to state your wishes for burial/cremation/funeral, including who you want to handle matters
- Designate special requests for religious observances, source of funds, etc.
- Requires two witnesses or a notary



#### What happens with completed forms

- Copies are as good as the original
- Keep your originals in a safe place or deposit with probate court for a small fee
- Care providers should get copies of HC POA and/or living will
- Financial institutions should get copies of F POA
- Can give to agents or let them know where they are if/when needed
- Don't send to DHS they'll send them back!



#### Where to get assistance

- Forms available from Dep't of Health Services
- Health care provider may have HC POA and/or living will forms
- Senior centers
- Attorneys, especially if you have specific needs for F POA
- Auth for final disposition: funeral homes may be able to help
- Aging & Disability Resource Center (ADRC)
- Guardianship Support Center
- American Bar Association Free Legal Answers, https://wi.freelegalanswers.org/

#### DHS forms

Online at:

https://www.dhs.wisconsin.gov/forms/advdirectives/adformspoa.htm

- By mail:
  - Send a self-addressed stamped envelope with your request to DHS at:

**Division of Public Health** 

ATTN: POA

PO Box 2659

Madison, WI 53701

 One stamp = one health care POA + one living will; financial POA needs at least \$0.69 postage at current rates

### WI Guardianship Support Center

Contact us:

Polly Shoemaker, Managing Attorney

Phone: 855-409-9410

Email: guardian@gwaar.org

Website: gwaar.org/gsc

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