

February 24, 2026

Sen. LeMahieu
Wisconsin State Capitol, Rm 211 S
Madison WI 53707

Sen. Hesselbein
Wisconsin State Capitol, Rm 206 S
Madison WI 53707

Re: Patient's Representative/Admissions Consent bill (AB 598/SB 578)

Distinguished members of the State Senate:

Last Friday, [AB 598](#) passed the State Assembly after being amended four times, including two [sub-amendments](#) that were introduced the same day the bill was scheduled for a vote. Rapid introduction of multiple sub-amendments in the waning hours of the Assembly session demonstrates this bill continues to have many unresolved issues. The second sub amendment also adds language unrelated to the original topic of the bill.

AB 598 is broader, and grants much more expansive powers than any other state's Next of Kin laws (see attached Advocate's Analysis of other States Next-of-Kin Statutes). Wisconsin has deliberately designed its statutes and regulations to safeguard the rights of individuals; this bill bypasses those protections.

The four **amendments do not address the core issues that patient advocates feel put patients at risk of exploitation and abuse or resolve any of the practical issues that the bill creates, and the sub-amendments raise additional questions.** Patient advocates do not believe this legislation will resolve the issue it seeks to address.

Patient advocates laid out concerns in a [November 4th memo to the legislature](#). **These concerns remain unaddressed. We have analyzed the sub-amendments. Patient advocates have identified additional concerns** and believe AB 598 will be problematic to implement for the following reasons:

- **Under the bill the Patient Representative (Patient Rep.) is responsible for filing the signed Patient Rep. declaration** with the entity identified to receive the forms and notifying all other members of the incapacitated individual's family that can be reasonably contacted. The bill does not specify a timeframe whereby the Patient Rep. must submit the signed declaration to the appropriate Register in Probate (RIP), or any consequences if they fail to do so. The self-reporting/filing component creates a pathway for a less scrupulous Patient Rep. to not notify others of the authority they are using and attempt to act as a Patient Rep. without any record.

The sub-amendment requires a statement of incapacity to be filed with the RIP within 72 hours after the person is admitted to a facility, however the bill does not specify whether the hospital or the Patient Rep. is responsible for filing. It appears the statement of incapacity is a separate document from the signed Declaration form a Patient Rep. is supposed to submit. It is unclear whether the Statement of incapacity form will indicate that a Patient Rep. has been chosen or if a Power of Attorney for Health Care or other decision-maker is making decisions on behalf of the incapacitated patient.

- **It will be difficult to confirm whether someone is an individual's Patient Rep.** There is no expiration timeframe for Patient Rep. declarations. It will be possible to know when a declaration

was filed, but it is unclear how a third party verifies whether a declaration is still in effect. It is also unclear when a record is changed or removed if a patient's status changes (regains capacity, a POA has been found, a guardian has been appointed, etc.). Certain third parties can request copies of the declaration. Financial institutions are not among them. Often, especially when applying for Medicaid, there are many documents needed to assess assets and financial eligibility (including retirement accounts, investments, property, life insurance policies etc.).

The bill specifies four conditions in which a Patient's Rep. authority ends. The sub amendment references the existing procedures in Wis. Stats Ch 50.06, however if the new Patient Rep. option is used there is no time limit on the authority of the Patient Rep. There are no time limits on the authority of the Patient Rep. or requirements for guardianship petitions to be initiated after a set amount of time.

There is no requirement that the patient get copies of the clinician statements or Patient Rep. declaration. The patient will get notice if a petition is filed to review the actions of the Patient Rep., but that's the only place where they're specified to get notice at all. The patient is not on the list of people who are allowed access to the file with the RIP.

- **The bill is silent on what happens if a current Patient Rep.** no longer wants the role or becomes unable to fulfil the role (becomes incapacitated, dies, etc.). It is unclear how the Patient Rep. or RIP records this or how their authority will be handled when the bill sunsets.
- **The sub-amendment requires any medical professionals who re-evaluate the patient and find they have regained capacity, to file their determination with the RIP within 72 hours.** This is an improvement and provides a record of regaining capacity which is one of four ways the bill specifies when the authority of a Patient Rep. ends. It is unclear if receipt of the finding prompts a change in status automatically and how entities that have been interacting with a Patient Rep. are notified that decision-making authority has been transferred back to the patient.

Patient advocates note it is currently difficult for patients in facilities to advocate—especially if they do not have access to their phone, internet, don not have facility staff or family members willing to assist them, or are not eligible for or aware of long term care Ombudsman services—to get the required professionals to facilitate an evaluation in a timely way.

- The sub-amendment references existing Wis. Stat. § 50.06 which would prevent a Patient Rep. from making decisions if there is a financial Power of Attorney, however **the bill does not reference other legal arrangements—including a Conservatorship or Guardian of the Estate—that have authority to manage financial decisions.** It is unclear how the financial powers granted to the Patient Rep. would intersect with jointly held assets or accounts that have a joint holder who is not the Patient Rep.

Advocates note several places in the bill does not consistently itemize all potential decision makers (Power of Attorney for Finances, Conservator, Guardian of the Person, Guardian of the Estate) that may already have health care or financial decision making powers for the patient.

- **Courts have more oversight authority under the sub-amendment, but it is inadequate to prevent or respond to abuse.** Advocates note the court does not have authority unless there is a petition, in other words there must be a party that suspects an issue exists before oversight is possible. The court has limited oversight options. It can require a Patient Rep. to account for spending, which is an improvement although it unclear where those accounts are reported, evaluated, and what happens if spending appears to be suspicious or beyond the scope of expenditures a Patient Rep. is authorized to make. It is unclear how the court enforces directions it has given a Patient Rep. that are not followed. The bill does not give Courts the ability to remove a Patient Rep.
- **While the bill expires in three years, there is not enough data being collected to evaluate the impact of the law.** The sub-amendment requires reporting on how many times hospitals have used the Patients Rep. option. We will not know whether Patient Rep. files declarations correctly, how many patients are able to be successfully transferred to a facility or how many are readmitted to the hospital, whether there are Patient Reps. who are taking advantage of their powers over finances and placements, what happens to the patients after a Patient Rep. is appointed including whether they are ever re-evaluated, whether other decision makers are found after a Patient Rep has been appointed, whether families are ending up in guardianship proceedings, etc.
- **Like previous versions, the bill does not have any exclusions that would prevent individuals from being appointed a Patient Rep.** There are many circumstances—like a spouse in active divorce proceeding or separation, individuals with a history of abuse of the patient or others, people with conditions that impair their decision-making, estranged family members, etc.—where the person selected would not know the patient well or make the decisions that the patient would want. Representatives of hospitals have stated in public hearings that if they believed a particular family member wasn't in the person's best interest or if the person objected, they would not go with that family member and/or they would treat the patient objection to the Patient's Rep. as an objection to the admission. There is no language in the bill to support this stance. Under the bill, the hospital does not have the discretion to decide who the Patient Rep. should be or take action if the individual objects to the hospital's choice of Patient Rep.

Family members, friends, and legal representatives are common people involved in allegations of financial exploitation or abuse (APS, BOALTC data) and in complaints regarding care quality and rights violations ([BAL State of Assisted Living - Source of Complaint CY 2024](#)). While the family involvement can be protective, that closeness gives them power. When that power goes unchecked, it risks causing significant harm, especially to vulnerable individuals. We know the system already depends heavily on families, and while we can take proactive steps to help families understand patient rights, their roles, and responsibilities as representatives, we also need policies/oversight mechanisms that protect individuals from relationships that go awry.

The bill does not address root causes of Hospital discharge delays.

[A recent national study from JAMA](#) supports the direct experience patient advocates have in Wisconsin. Staffing shortages are a limiting factor in nursing home capacity; **a major reason for hospital discharge delays is limited availability of appropriately staffed beds.** Giving hospitals the ability to pick a decision-maker in the event a patient is incapacitated (as proposed in AB 598/SB 578) does not address

this core reason that an unknown number of incapacitated patients are unable to be discharged as expediently as hospitals would like.

Patient advocates note, another important strategy to speed up hospital discharges is bolstering the Home and Community Based workforce and increased support for unpaid family caregivers so that more discharges can be managed at home. The article does not discuss the impact of how inadequate staff in the Home and Community based side increases pressure on limited nursing home beds.

Speeding up hospital discharge needs a comprehensive legislative approach

Patient advocates want to work with the legislature on a comprehensive approach to addressing hospital discharge delays. We do not believe AB 598/SB 578 as proposed will address the issue it seeks to solve and increases risk of financial and other abuse to patients as well as operational problems. Over the session, **patient advocates have developed proposals and added to the list of policy approaches that we believe would improve the expediency of hospital discharges.**

Early in this session aging, disability, and legal advocates collaborated on a proposal to expediate hospital discharge for patients without an identified decision-maker by **reforming the temporary guardianship statute**. We strongly believe reforming the existing statute so that it is uniformly implemented across counties and within a statutory timeframe is a needed policy change and would ensure court oversight, review, and a path to restoring rights or moving toward permanent guardianship if necessary.

In addition to reforming temporary guardianship, advocates believe a comprehensive package is needed to address this issue. Ideas include:

- **Strategies to increase the number of people who have advance directives in place.** Continual outreach, education, and assistance is needed to increase the number of adults who have decision-making documents in place, and to facilitate routine future planning discussions to help people update their decision-making documents and plans as life circumstances change.
- **Tools to help hospitals quickly identify whether patients have a Power of Attorney for Health Care or another advanced directive in place.** Patients may have Powers of Attorney for Health and/or finances, Conservatorships, an appointed Guardian of the Estate and/or Person, Living Wills, and/or Advance Directives. Often patients may have documents on file at their local health care clinic but end up being treated elsewhere—often out of their home county and even regionally. A searchable repository that can be used by health care providers to ascertain potential existing decision makers is valuable, and can help avoid delay in activating existing Powers of Attorney for health care or other individuals who have been appointed decision-making roles.
- Many nursing homes and rehabilitation facilities have beds but do not have sufficient staffing capacity to be able to provide the care that may be needed by discharged patients. Patient advocates have policy ideas and **models to build staffing capacity of dedicated professionals who can go where needed to make sure patients can be supported in facilities or in their homes.**
- **Building Hospital at Home capacity.**
- **Improving discharge planning and supports for unpaid caregivers** so more people can be supported at home and diverted from facilities.

This legislation would benefit from bringing together all stakeholders, including patient advocates, to ensure any new decision-making process addresses hospital discharge concerns without doing any harm to medically incapacitated persons.

Sincerely,

AARP

Aging and Disability Professionals Association of Wisconsin

Alzheimer's Association

Wisconsin Chapter Corporate Guardians, Inc.

Disability Rights Wisconsin

Greater Wisconsin Agency on Aging Resources

InControl Wisconsin

Survival Coalition of Wisconsin Disability Organizations

Wisconsin Aging Advocacy Network

Wisconsin Board for People with Developmental Disabilities

Wisconsin Board on Aging and Long Term Care

Wisconsin Coalition of Independent Living Centers

Wisconsin Guardianship Association

Wisconsin Guardianship Support Center

Wisconsin Personal Services Association

WINGS Wisconsin