CHUCK WICHGERS

STATE REPRESENTATIVE • 82nd ASSEMBLY DISTRICT

Assembly Committee on Family Law
January 11, 2024
Assembly Bill 653

Good morning Chair Rozar and Committee Members,

Thank you for hearing my testimony today on Assembly Bill 653 relating to surrogate decision making or "next of kin." Currently in the state of Wisconsin, an incapacitated person who receives care in a hospital cannot be moved to another facility for rehab or long term care without a power of attorney for health care. Since less than 30% of adults have a POA for health care, a patient must stay in the hospital until a court can appoint a guardian to make the decision of where the incapacitated person will go. This can take up to 6 to 8 weeks or longer. Most courts eventually appoint the spouse, close family member, or loved one as guardian.

This bill allows a spouse, adult child, or other loved one to decide the best place for care for the person without the costly, time-consuming, and stressful addition of a legal process. The bill is helpful for the patient who will get appropriate care or rehab more quickly, for families, and for hospitals that will no longer need to keep a patient long past hospital level care. The bill also lightens the load of our courts by eliminating unnecessary guardianship cases.

This gap in Wisconsin law was brought to our attention last year by a neurosurgeon, Dr. Hirad Hedeyat, who worked in several other states and has seen the benefits of having "next of kin" laws in place. This is a simple concept.

Following discussion with the Wisconsin Hospital Association, I offered an amendment that provides a bridge for post-acute care facilities (nursing home and inpatient rehabilitation hospital's only) to accept a patient from hospital acute care. So, notwithstanding provisions in current law in chapter 50.06, the amendment specifies this bill covers decisions during a hospital stay and then decisions relating to admissions at a facility from a hospital, but no more than that. Current state statute is sufficient in this regard – our intent here is to allow for decision making for a person at the hospital and through admission to another facility. This bill and the amendment do not address decision making at a facility, except with respect to admissions.

Establishing "next of kin" protocol will be of huge benefit for Wisconsinites in a time of crisis, and we would do well to enact it. The bill has strong bi-partisan support, thanks to the work of my Democratic colleague, and I urge you to support it.

Thank you for listening, and for your consideration.

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WISCONSIN STATE SENATE
DAN KNODL
STATE SENATOR • 8TH DISTRICT

Assembly Bill 653
Public Testimony
Assembly Committee on Family Law
January 11, 2024

Thank you, Chairperson Rozar and members of the committee for holding this hearing on Assembly Bill 653.

This bill establishes a "next of kin" mechanism in our state law to ensure that incapacitated Wisconsin residents without a health care power of attorney can receive timely release from the hospital and proper continuing care in a rehabilitation facility or nursing home.

Currently, the only way for this release to occur is to establish a power of attorney, which is a process that can take weeks. This bill guarantees that all patients will have the right to appropriate medical decision making by setting in place the process for identifying the patient's surrogate decision maker. It is important to note that this provision addresses the proper procedure for a specific situation, and will not replace the value of a power of attorney.

Passing this legislation will help patients get the appropriate level of care they need, resulting in better health outcomes and fewer wasted resources at our hospitals.

I'd like to thank Representative Wichgers and Ortiz-Velez for their work on this issue. We would be happy to answer any of your questions.

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TO: **Assembly Committee on Family Law**

FROM: **Jon Hoelter, VP Federal & State Relations**
Laura Leitch, WHA Policy Counsel
Kyle O'Brien, SVP Government Relations

DATE: **Jan 11, 2024**

RE: **AB 653: Relating to Surrogate Decision-Making**

WHA appreciates the opportunity to comment on Assembly Bill 653, relating to surrogate decision-making. This issue has been a top priority for WHA in recent years and was one of the main issues our members discussed with legislators during WHA's 2023 Advocacy Day.

The surrogate decision-making issue is part of a broader concern related to access to post-acute care. Hospitals are dealing with a severe shortage of post-acute care options for some of their patients – a challenge that was both highlighted and exacerbated by the COVID pandemic but continues. The lack of post-acute care options for patients who are ready for discharge creates a backlog of patients in hospitals, affecting the hospital's capacity to care for other patients who need hospital-level care. Currently, around 500 patients a day remain in hospitals across the state awaiting a post-acute care placement.

While exploring public policy options to reduce the number of delayed discharges, it became clear that many discharges were delayed because, under Wisconsin law, some incapacitated patients could not be admitted to a nursing home or certain CBRFs for needed care without a court appointed guardian and protective placement. The court process takes weeks to months, during which the patient remains in the hospital not receiving needed post-acute care and occupying a hospital bed that is then not available for a patient who needs hospital-level care. We heard from members with hospitals in other states that, unlike Wisconsin, recognize family members, the "next-of-kin," as surrogate decision makers who can consent to the admission of their loved one to a nursing home for needed care. We learned that 45 other states are "next-of-kin" states that recognize family members as surrogate decision makers for a loved one who has been determined by physicians to lack capacity to make health care decisions.

We believe the Wisconsin Legislature tried to address the delayed discharges related to incapacitated patients waiting for nursing home care previously when they passed s. 50.06, Wis. Stats., which allows an incapacitated patient's next-of-kin to consent to an admission to a nursing home from a hospital. The provision, however, is limited to 60 days and requires a petition for guardianship and protective placement to be filed prior to admission. Nursing homes are reluctant to rely on this provision for the admission of a patient because of the uncertainty related to the time limitation and the guardianship process.

Because of this, patients who no longer need hospital care remain in the hospital and the patients and their families will often undergo a financially costly and emotionally exhausting court-based guardianship process to determine who can make health care decisions and consent to the admission to a nursing home. Again, this process can take weeks or months during which the patient remains in a hospital even if the patient would be better served in another setting. In some cases, the process becomes so technical and confusing for family members, that the court might order an unrelated corporate guardian to make decisions instead of a family member, further distancing the family from the loved one's care.

As previously mentioned, delayed discharges caused by the current system not only negatively impact the patients and their families, but can also lead to delays for other patients seeking care from hospitals. Many hospitals have been running at or near capacity – sometimes requiring hospitals to "board" patients in their emergency departments while they wait for an inpatient bed to become available. Just one bed unnecessarily occupied by a patient who has been waiting weeks or months to be discharged to a nursing home could serve 4 to 16 patients in need of hospital-level care in the same amount of time.

From what we understand, the authors of this legislation intend to address the delayed discharge issues related to the reliance on the guardianship process for admissions to nursing homes and we wholeheartedly support the intended goal the authors of this legislation.

We have met with the authors of AB 653 and communicated the need to change certain language in this legislation to help ensure it addresses these issues. Specifically, we support language that would clarify that surrogate decision-making extends to admissions from hospitals and care at the facilities described in 50.06: nursing homes and community-based residential facilities, but without the time restrictions or the required filing of a petition for guardianship or protective placement in s. 50.06, while also maintaining the protections in current law.

We look forward to continuing working with the legislature on a solution that works for the entire health care system in Wisconsin and above all, the patients we serve.