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Senate passes bill that lets hospital pick a decision maker, puts patient's rights at risk

Today the state Senate passed [AB 598](#), which lets hospitals pick a decision-maker based on a list set in statute (called a Patient's Representative) if a patient does not have a Power of Attorney for Health Care and becomes unable to make medical decisions.

This bill is broader, and grants much more expansive powers than any other state's Next of Kin laws. Wisconsin has deliberately designed its statutes and regulations to safeguard the rights of individuals; this bill bypasses those protections.

Patient advocates are [concerned](#) the bill will put patients at risk of exploitation and abuse and will [create new legal and operational issues](#).

“Current health care decision-making 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 know from experience that need policies/oversight mechanisms that protect individuals from relationships that go awry are needed,” said Janet Zander, member of the Wisconsin Aging Advocacy Network.

“Hospitals say they want to be able to move people out of hospital beds to somewhere else, and they want to pick someone to make that happen,” said Tami Jackson, Survival Coalition Co-Chair. “We are very concerned about what happens to people once they are no longer in the hospital.”

Under the bill, the Patient Representative gets broad powers over where the person lives and their money and assets that may continue indefinitely, with limited recourse for patients. Unlike Guardianship, the courts do not have oversight over Patient Representatives. Adult Protective Services is not required to act if complaints are received.

It is unknown how many incapacitated people are in hospital beds solely because they do not have a legal decision maker to authorize transfer. Under current law at Wis. Stat. 50.06, individuals can transfer incapacitated patients from hospitals to facilities and hospitals can petition for guardianship to facilitate transfers. [Staffing shortages in nursing homes](#) and rehabilitation facilities are a major reason for hospital discharge delays, nationally and in Wisconsin.

While the bill expires in three years, the data being collected is limited to the number of times hospitals pick a Patient Representative; what happens to patients, including whether Patient Representative are taking advantage of their powers over finances and placements, will likely remain unknown.

“Faster hospital discharge can occur without sidestepping patients' civil rights or putting them at risk for abuse,” said Tami Jackson, Survival Co-Chair. “Patient advocates have proposals to reduce the number of medically incapacitated patients without Powers of Attorney for Health Care, identify and support temporary decision makers, and make sure there is enough staffing capacity to support incapacitated patients in facilities or at home. We look forward to working with legislative members next session on solutions that protect patients.”

Summary of concerns about the bill:

- The Patient's Representative gets broad authority over the person and their money, where they live, and their medical care, without court oversight.
- The Patient Representative's authority continues indefinitely.
- The bill does not say the patient has to be re-evaluated to see if they can make their own medical decisions.
- It is unclear how the financial powers granted to the Patient Representative interact when there are other people with the same decision-making authority or are equal owners of money/assets.
- Courts do not have adequate oversight authority to prevent or respond to abuse, and cannot remove Patient Representatives.
- If a Patient Representative no longer wants the role or becomes unable to do it (becomes incapacitated, dies, etc.) the bill does not say what happens.
- While the bill expires in three years, there not enough data being collected to evaluate the impact of the law on patients and families.
- AB 598 is broader, and grants much more expansive powers than any other state's Next of Kin laws.

Patient advocates have repeatedly communicated concerns about the bill to the legislature and Governor in meetings, public hearings, and formal memos ([core concerns](#), [additional concerns](#) on amended bill).