

Date: March 7, 2024

To: Sen. Devin LeMahieu, Senate Majority Leader
State Capitol, Rm 211 S
Madison, WI 53707

Sen. Diane Hesselbein, Senate Minority Leader
State Capitol, Rm 206 S
Madison, WI 53707

cc: Members of the State Senate

Re: **WAAN urges State Senators to take no further action on SB 1027/ AB 1088**

Dear Sen. LeMahieu and Sen. Hesselbein;

The Wisconsin Aging Advocacy Network (WAAN) is writing to inform you of our deep concerns about and opposition to SB 1027/AB 1088, which modifies existing law to allow certain next of kin (referred to as a Patient's Representative) **to consent to an admission directly from a hospital to nursing home or community-based residential facility (CBRF)** for a hospital patient who has been determined to be incapacitated to make health care decisions **without a petition for guardianship or protective placement being filed**. Additionally, this legislation allows a Patient's Representative **to make health care decisions and to authorize health care expenditures for the incapacitated individual without the specific time limitations in place under current law ([§ 50.06](#))**.

WAAN understands hospitals do not want patients remaining in the hospital once they no longer require hospital care. Similarly, older adults who no longer require hospitalization, do not wish to remain in the hospital. WAAN believes (based upon the experiences of the older adults, family caregivers, and ADRC/aging network experiences) these discharge delays have less to do with the absence of a decision-maker and more to do with the lack of direct care workers available in residential long-term care settings, as well as in home and community-based services. The lack of staff has made it very difficult for older adults and family caregivers to find in-home and residential care anywhere near their home communities. Staffing shortages are forcing providers to turn people away, as they are unable to meet their care needs without adequate staffing. People with complex care needs or who are Medicaid eligible often have an even harder time finding an available provider. **We do not believe the proposed legislation will address the underlying causes of discharge delays, and further, we are very concerned these changes to state law (even on a pilot basis of three years) will put some people in potentially dangerous or abusive/neglectful situations and creates serious civil rights concerns and operational issues for patients and families.**

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Every year, Adult Protective Services (APS), the Board on Aging and Long Term Care (BOALTC), and the Guardianship Support Center (GSC) receive many complaints and reports of abuse/neglect and misconduct against older adults and people with disabilities.

Current law defines appropriate conduct for guardians and agents and provides recourse for the individual if conduct is outside what the statute allows. **SB 1027/AB 1088 does not provide the same clear roles and conduct expectations for Patient's Representatives, nor does it provide the individual with direct recourse to stop a Patient's Representative's authority.** Many common complaints would be difficult or impossible to resolve if an individual were under the decision-making authority of a Patient's Representative.

Below are some of most recent abuse and neglect data, information, and complaints:

Adult protective services

In 2022, Wisconsin Adult Protective services received [reports of abuse and neglect](#) against more than 10,600 older adults and 2,800 people ages 18-59.

Over a 10-year period reports of abuse and neglect have increased 69% for older adults and 30% for people age 18-59.

- 22% of reports for older adults are allegations of financial exploitation
 - **In calls where the identity of the alleged abuser is known, 73.3% were family members.** More than half of those were adult children (36.4% of the total known alleged abusers); 14.2% were the spouse
 - In 33% of cases where the information is documented, the alleged abuser was also a caregiver
 - In 58%, the alleged abuser was not a legal decision-maker
- For adults under 60
 - **74.3% of the reports where the alleged abuser identity was known had a family member as the alleged abuser**
 - More than half of alleged abusers were also caregivers
 - Just under half of those for whom living situation was known lived with the alleged abuser

Board on Aging and Long Term Care (BOALTC)

- BOALTC operates the Long Term Care Ombudsman program for 89,000+ adults age 60 and over living in the state's 6,000+ regulated long term care facilities.
- They receive about 1,500 complaints per year from adults age 60 and older and their family members, about the status and actions of decision-makers. BOALTC also receives complaints regarding abuse, neglect, and financial exploitation of older adults in long-term care settings.

- **Conflicts involving family discord or competing priorities between the patient and their loved ones dominate these reported complaints.**
 - In the Ombudsman’s experience it is not uncommon for families with disputes to attempt to hide or move family members frequently to avoid the ability of other family members to visit.
 - Similar situations arise related to the management of financial matters, particularly in families where there might be a presumption of inherited property or other wealth.
 - Providers call the Ombudsman Program with complaints about decision-makers who over-reach their powers, who intentionally restrict or seek to deprive residents of their rights, who intentionally withhold information or visits from other family members or friends.
- Some providers already deny admissions or attempt to discharge residents based on insufficient or inappropriate decision-maker actions.
- **Facility residents who regain capacity or competency already experience great challenges (under existing laws) in having their status reviewed, and their decision-maker appointments reversed, largely due to difficulty accessing the court system or accessing a medical provider to reverse the determination.**
- **Under SB 1027, many of the common complaints received by the Ombudsman program would not be resolved by residents having a patient representative. In many situations, this could increase the number of complaints and complexity of complaints to the program regarding family conflict and legal decision-makers.**

Guardianship Support Center (GSC)

- In 2022 Wisconsin’s Guardian Support Center (GSC) received contacts from 2,846 contacts about 1,672 unique issues—a 15% increase from 2021—from people across the state.
- **Calls come from professionals, persons under guardianship as well as friends and family members of the person under guardianship when they have concerns about the conduct of the current guardian, either exceeding their role and legal authority (ex. prohibiting visitation) or abusing the person under guardianship.**
- **The GSC receives many calls about estranged family members who appear suddenly when there is a new dementia diagnosis and convince the patient to sign new Power of Attorney (POA) documents naming them, and then start spending all the person’s money and isolating them from the rest of the family.**
- GSC has received multiple calls about spousal abuse/medical neglect where one spouse will not let the other get needed care and will not let anyone else take them to the doctor.
- In a recent case two parents have activated POAs with different agents for each parent. Both parents live at home. The agent for one parent moved into the house and now will

not let the agent for the other or any other family into the house and will not let the parents see each other.

SB 1027/AB 1088 rely on the Patient's Representative to self-attest that no health care POA or guardian exists (which would prevent the Patient's Representative from exercising powers that have already been given to another individual by the patient or a court); unfortunately, not all who serve as a Patient's Representatives will be well-informed about existing documents and some may not have the best interests of the patient in mind. Full medical records may not be available, especially if a patient is being treated by an out of network provider, and many people keep advanced directives filed in places that are not accessible to all family members or friends.

Further, we are concerned the statutory hierarchy does not exclude individuals who have conflicts of interest, competing motives, ongoing legal conflicts, or a history of abuse or crimes against the incapacitated patient from serving as a Patient's Representative. A Patient's Representative is given power and control over where an individual lives, their health care, and their health care financing; when a Patient's Representative's motives and priorities are different than the patient's, the impacts could be devastating and are often irreversible.

WAAN believes it is imperative to protect the rights of patients and to prioritize their needs over the needs of institutions. **With more time, we believe a solution to the hospital discharge problem can be rectified without risking additional harm to patients.** A great place to start would be additional outreach and education regarding the importance of advance directives and, in the absence of completed advance directives, including the identification of a care coordinator (identified by the patient during routine health care visits) in the patient's medical record who could make emergency and immediate health care decisions on behalf of a patient for a time-limited period. **We urge the Senate to take no further action on SB 1027/AB 1088 this session.**

Contact:

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Core member organizations

Aging and Disability Professionals Association of Wisconsin (ADPAW) • Alzheimer's Association Wisconsin Chapter Board on Aging and Long Term Care (BOALTC) • Wisconsin Adult Day Services Association (WADSA) Wisconsin Association of Area Agencies on Aging (W4A) • Wisconsin Association of Benefit Specialists (WABS) Wisconsin Association of Nutrition Directors (WAND) • Wisconsin Association of Senior Centers (WASC) Wisconsin Family and Caregiver Support Alliance (WFACSA) • Wisconsin Institute for Healthy Aging (WIHA) Wisconsin Senior Advocates • Wisconsin Senior Corps Association (WISCA) • Wisconsin Tribal Aging Unit Association

Mission

The Wisconsin Aging Advocacy Network (WAAN) works with and for all older adults by educating community members and policy makers on priority issues while advocating for meaningful change. Learn more at <https://gwaar.org/waan>.