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FOR IMMEDIATE RELEASE

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Long Term Care Ombudsman  
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(800) 815.0015

### **Whose Decision Is It, Anyway?**

There has been much confusion over the years regarding the right and authority of family members to access information and/or direct the care and treatment of loved ones living in long term care facilities. Some family members assume too much control too soon and some providers seem unwilling or unable to promote an appropriate balance between the resident and her/his family.

In Wisconsin, a family member does not automatically have the right or the authority to make health care decisions for a loved one unless the individual has previously named him/her as the Durable Power of Attorney for Health Care (DPOA-HC or health care agent). Even then, the decision making authority is "activated" only when the patient is not able to make and communicate health care decisions effectively as determined by two physicians or by one physician and one psychologist.

People do not lose their constitutional, civil, or human rights upon entering a long term care facility, however, they often need help in exercising their rights. That is the purpose of designating a trusted friend or relative to act as power of attorney. That is also the purpose of a court appointed guardian of person and/or estate for individuals who are disabled to the extent that they need an advocate to make decisions or to act in their best interest. To the extent possible, both a guardian and a power of attorney must consult with the individual on whose behalf they are acting.

Generally, a DPOA-HC document gives a health care agent authority to:

- Consent to or refuse medical or surgical treatment including diagnostic procedures;
- Communicate with and to contract or arrange services with medical providers;
- Access medical records and authorize release of such information to others.
- Make decisions based upon individual preferences stated in the document itself.

A health care agent does not have authority to make most financial decisions and a Durable Power of Attorney for Finances or fiscal agent does not have authority to make health care decisions. Most quality-of-life issues including daily decisions regarding schedules, activities, personal preferences about dress, diet, religion, smoking, room arrangement, choice of roommate and visitors remain with the individual resident. However, there is a difference between being informed and making decisions. Both the resident and involved family members (with the resident's permission) should be encouraged to participate in care conferences where such issues are discussed.

For a health care agent to carry out the patient's wishes, it is necessary for both to be adequately informed prior to any situation that would require a health care decision. Ideally, decisions should be discussed and mutually agreed upon. The Wisconsin statutory POA-HC form clearly states that the health care agent should try to discuss any specific proposed health care decisions with the patient if communication is at all possible, even by blinking one's eyes.

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The ability to communicate is a key point in determining a person's ability to make decisions. Communication involves more than the ability to hear and speak or to read and write. Effective communication involves the ability to process information and form opinions. This is especially important in matters that require informed consent, as do most health care decisions. Informed consent requires consideration of risks and benefits, of possible alternatives, of potential side effects, of consequences of doing nothing, and the possibility of changing or reversing the course of treatment once it has begun. Obviously, such decisions may be quite complex and ultimately may depend upon the patient's (not the agent's) moral and ethical values.

The Board on Aging and Long Term Care's Long Term Care Ombudsman Program is available to answer questions relating to making and working with Advance Directives such as the documents discussed above. Ombudsmen can also advocate for persons who live in nursing homes and most assisted living facilities. You can reach the Ombudsman Program at (800) 815.0015 .

*By: Martha Sanville  
Ombudsman*