

# Activation and De-Activation of POAHC and Implications on Surrogate Decision Making

Paul E. David  
Assistant General Counsel  
September 28, 2017



ONE FOCUS  
ONE FUTURE  
*Empower. Unite. Care.*

## Disclosures

- None to disclose



ONE FOCUS  
ONE FUTURE  
*Empower. Unite. Care.*

## Purpose of Presentation

### Objectives

- Define and discuss applicable state law regarding activation and de-activation of POAHCs
- Discuss best practices for documenting activation and de-activation of POAHCs
- Discuss best practices for procedurally affecting changes to a patient's POAHC status



ONE FOCUS  
ONE FUTURE  
*Empower. Unite. Care.*

## Power of Attorney Health Care how activated

Michigan: The patient's attending physician and another physician or licensed psychologist shall determine upon examination of the patient whether the patient is unable to participate in medical treatment decisions, shall put the determination in writing, shall make the determination part of the patient's medical record, and shall review the determination not less than annually (MCL 700.5508)



ONE FOCUS  
ONE FUTURE  
*Empower. Unite. Care.*

## Power of Attorney Health Care how activated

Wisconsin: An individual's power of attorney for health care takes effect upon a finding of incapacity by 2 physicians, . . . or one physician and one licensed psychologist, . . . who personally examine the principal and sign a statement specifying that the principal has incapacity. . . . (Wis. Stat. § 155.05)



ONE FOCUS  
ONE FUTURE  
*Empower. Unite. Care.*

## Incapacity - Wisconsin

Wis. Stat. § 155.01

(8) "Incapacity" means the inability to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions.

155.01

(5) "Health care decision" means an informed decision in the exercise of the right to accept, maintain, discontinue or refuse health care.



ONE FOCUS  
ONE FUTURE  
*Empower. Unite. Care.*

## “Incapacity”? - Michigan

- Does not use the term “Incapacity” to define the standard necessary to invoke or activate the POAHC.
- When the patient is “unable to participate” in medical treatment decisions.
- No further definition in the statutes.



ONE FOCUS  
ONE FUTURE  
*Empower. Unite. Care.*

## De-Activation

Michigan: A patient advocate designation is suspended when the patient regains the ability to participate in decisions regarding medical treatment or mental health treatment, or applicable. The suspension is effective as long as the patient is able to participate in those decisions.



ONE FOCUS  
ONE FUTURE  
*Empower. Unite. Care.*

## De-Activation

Wisconsin: The desires of a principal who does not have incapacity supersede the effect of his or her power of attorney for health care at all times (Wis. Stat. § 155.05(4))



ONE FOCUS  
ONE FUTURE  
*Empower. Unite. Care.*

## Revocation by Principal After Activation?

Michigan: "...even if the patient is unable to participate in medical treatment decisions, a patient may revoke a patient advocate designation at any time and in any manner by which he or she is able to communicate an intent to revoke the patient advocate designation.



ONE FOCUS  
ONE FUTURE  
*Empower. Unite. Care.*

## Revocation by Principal After Activation?

### Wisconsin: Statute not directly on point

- Board on Aging and Long Term Care has interpreted Wisconsin statutes to provide for such revocation.
- “A principal may revoke a POAHC at any time” (Wis. Stat. § 155.40(1)).
- Express ways defined for how revocation can be effected.



ONE FOCUS  
ONE FUTURE  
*Empower. Unite. Care.*

## Questions?



ONE FOCUS  
ONE FUTURE  
*Empower. Unite. Care.*