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TO: Members of the Senate Committee on Health and Human Services

FROM: Matthew Stanford – General Counsel
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DATE: November 20, 2019

RE: WHA Supports SB 254 – Bipartisan Legislation Recognizing Advanced Practice Nurse and Physician Assistant Diagnoses in the Advance Directive Statutes

Issue in Brief

- *Patients, hospitals, nursing homes, and hospices in rural and urban Wisconsin rely every day on advanced practice nurses and physician assistants to make independent and critical health care diagnoses.*
- *SB 254 removes barriers to fulfilling a patient’s wishes in their Power of Attorney or Living Will document by recognizing the modern education, training and licensure of an advanced practice nurse or physician assistant to make the independent health care diagnoses necessary to activate the patient’s advance directive.*
- *The bill maintains the requirement that a physician independently examine and concur with the advanced practice nurse’s or physician assistant’s independent diagnosis to activate the patient’s wishes under their Living Will or Power of Attorney document.*
- *Like physicians, making such a diagnosis without sufficient education, training, and experience will subject an advanced practice nurse or physician assistant to licensure discipline.*

WHA is pleased to support SB 254, bipartisan legislation co-authored by Representatives Snyder and Doyle and Senators Marklein and Ringhand to update Wisconsin’s Power of Attorney and Living Will (advance directives) statutes to recognize the ability of advanced practice nurses (APRNs) and physician assistants (PAs) to make the professional, medical diagnoses required under those statutes. Wisconsin’s Power of Attorney and Living Will statutes enable individuals to express and have health care providers act upon the individual’s wishes regarding their health care.

This legislation is necessary to address outdated statutory language that does not recognize modern APRN and PA education and training, resulting in delays in fulfilling patients’ expressed advance directives.

Patients throughout Wisconsin now rely on APRNs and PAs as primary and specialty care providers that work within care teams in diverse health care settings, including hospitals, clinics, nursing homes and hospices. Over the years, as the education and training of APRNs and PAs has evolved so too has the practice of APRNs and PAs in team-based care delivery settings.

However, in some cases Wisconsin law has not similarly evolved, creating an unnecessary regulatory bottleneck on Wisconsin’s health care workforce – particularly in rural and other areas of the state that heavily rely on care teams that include APRNs and PAs to provide care in their communities.

This bill removes a regulatory burden impacting individuals that have specified their wishes through a Living Will or health care Power of Attorney instrument, as well as their families and health care providers, by updating those laws to reflect the current licensed scope of practice of the APRN and PA professions. Although their existing licensed scope of practice can include the types of professional, medical diagnoses made under the Living Will and Power of Attorney

statutes, those statutes currently refer only to physicians and have never been updated to recognize the APRN and PA professions. This bill makes those updates to Wisconsin law.

Under the bill, what is the role of an APRN or PA in activating a patient's wishes stated in their advance directive?

- **Activation of an individual's wishes under the individual's Living Will.** Under current law, an individual's treatment wishes under a living will can only be acted upon following a determination by two physicians that the individual has a terminal condition or is in a persistent vegetative state. The bill modifies current law to require that the determination be made by one physician plus one physician, PA, or APRN, if the individual PA or APRN has sufficient education, training, and experience to make that diagnosis.
- **Activation of an individual's health care Power of Attorney.** Under current law, an individual may create a health care Power of Attorney instrument that authorizes an agent to make health care decisions for the individual should he/she become incapacitated. Also under current law, the agent's authority is only activated under the Power of Attorney document when two physicians or one physician and one psychologist examine the individual and determine that the individual is incapacitated. The bill modifies current law to require that the exam and determination be made by one physician plus one physician, psychologist, nurse practitioner, or physician assistant, if the individual nurse practitioner or PA has sufficient education, training, and experience to make that diagnosis.
- **Do-not-resuscitate orders for emergency medical personnel.** Chapter 154 of the state statutes currently authorizes a statutorily-recognized do-not-resuscitate bracelet that a patient may use to direct emergency medical personnel to not perform CPR. Subject to several conditions, a patient can request that his/her attending physician issue the do-not-resuscitate order bracelet. For purposes of issuing a DNR order bracelet, the bill changes "attending physician" to include PAs and APRNs serving as the "attending health care professional," *if the individual APRN or PA has sufficient education, training, and experience to make that order.*

The bill addresses competency and redundancy to ensure quality evaluations under the advance directive statutes.

- **Pursuant to the bill, APRNs and PAs cannot activate a Power of Attorney or Living Will without having the education, training and experience to make the statutorily required diagnosis.** Sections 35 and 36 of the bill explicitly amend the nursing and physician assistant licensure statutes to make clear that an APRN or PA must have sufficient education, training, and experience to perform the diagnoses required under the Power of Attorney and Living Will statutes. Like other critical diagnoses currently made by these licensed professionals, it is a violation of their licensure statute to perform such actions without the education, training, and experience to do so as determined by their licensing board.
- **Unlike other critical diagnoses made by APRNs and PAs, the bill requires a physician to personally examine the individual and agree with the APRN's or PA's independent evaluation and diagnosis in order for the patient's Power of Attorney or Living Will wishes to be effectuated.** APRNs and PAs have independent medical judgment under Wisconsin law and their diagnoses and actions are independent medical determinations. The bill recognizes the independent medical evaluation of APRNs and PAs; however, the bill provides redundancy by requiring a physician to independently examine the patient and reach the same medical conclusion as the APRN or PA in order for the patient's Power of Attorney or Living Will wishes to be fulfilled.
- **The bill does not change individuals' existing advance directive documents and preserves the ability of an individual to continue to require two physicians to activate the individual's advance directive wishes.** At the individual's direction, the bill gives an option to individuals to utilize an APRN or PA to activate their Power of Attorney or Living Will document.

WHA is pleased to support this targeted and meaningful statutory change that preserves high quality, team-based care in Wisconsin while removing an unnecessary regulatory bottleneck on Wisconsin's health care workforce impacting patients.

If you have any questions, contact Kyle O'Brien, Senior Vice President Government Relations, at kobrien@wha.org or (608) 274-1820.