

Wisconsin Q and A

Ten commonly asked questions about PAD's for Wisconsin

Please note: the following 10 FAQs are designed to provide a quick and accessible guide to what your state's Statutes say – or do not say – about PADs. The FAQs do not attempt to provide a complete picture of the law in your state, nor can they take the place of legal advice. The answers were accurate when written in November 2006.

1. Can I write a legally-binding psychiatric advance directive (PAD)?

Yes, by appointing an agent. Wisconsin's Power of Attorney for Health Care statute allows you to appoint an agent (called a "health care agent") to make healthcare decisions for you if you become incompetent to make those decisions yourself. "Health care" may include mental health care. You must use the state's standard form, available with instructions here . Further information is available from the Disability Rights Wisconsin (formerly the Wisconsin Coalition for Advocacy): [click here](#) for contact information.

2. Can I write advance instructions regarding psychiatric medications and/or hospitalization?

The Wisconsin statute does not allow you to write advance instructions for your psychiatric care in a freestanding document. However, if you fill out a Power of Attorney for Health Care, you may wish to specify how you would like your health care agent to make decisions for you. If there are particular matters that you wish your health care agent to make clear to your treating physicians, it is advisable to discuss them with him/her and document them on page 5 of the standard form , attaching further pages if necessary.

3. Does anyone have to approve my advance instructions at the time I make them?

No. However, you must comply with the following formalities for your Power of Attorney for Health Care to be valid. (1) It must be in writing, on the standard form ; (2) it must be witnessed and signed by two adult witnesses. Your relatives, those directly financially responsible for your health care, your health care agent, employees of your inpatient health care facility (not including chaplains or social workers) and/or beneficiaries of your estate may not serve as witnesses.

4. Can I appoint an agent to make mental health decisions for me if I become incompetent?

Yes, as outlined above. Your health care agent must be someone other than your health care provider, an employee of your health care facility, or a spouse of such a person.

5. If I become incompetent, can my agent make decisions for me about medications, and/or hospitalization?

Your health care agent may consent to or refuse medication on your behalf. However, the statute does not allow a health care agent to consent to mental health research, to psychosurgery, electroconvulsive therapy (ECT) or other "drastic" mental health treatment on your behalf.

6. Does my agent have to make decisions as he/she thinks I would make them (known as "substituted judgment"), or does he/she have to make them in my "best interests"?

Your health care agent must act in accordance with your wishes as far as you have documented them in your form, or as far as he/she otherwise knows them. If your health care agent does not know your wishes, he/she must act in your best interests.

7. Is there any rule that says that I can only make advanced instructions, only appoint an agent, or that I must do both?

Yes. As explained above, it is not possible to write advance instructions only. If you wish to create a PAD, you must use a Health Care Power of Attorney form; the extent to which you also document your decisions is up to you.

8. Before following my PAD, would my mental health care providers need a court to determine I am not competent to make a certain decision?

No. All that is required is that two physicians, or one physician and one psychologist, believe you are unable to receive,

process or communicate treatment information well enough to be able to manage your own health care decisions. The physicians must document their decision in your medical records.

9. Does the statute say anything about when my mental health providers may decline to follow my PAD?

No. However, a health care provider is likely to be able to override your health care agent's instructions if you are considered a danger to yourself or others, or otherwise in an emergency.

10. How long does my PAD remain valid?

Your Power of Attorney remains valid until revoked, or until you create a new one. You may revoke your document at any time. If you name your spouse as your health care agent and subsequently undergo a divorce or legal separation, you are advised to amend your document to make it clear who should act as your health care agent.