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The information contained in this document expresses the understanding of the law being discussed and the position of the agency respecting that law. This position has been drafted by the legal and program staff of the agency and adopted by the appointed members of the Board on Aging and Long Term Care.

BOALTC Position on Revocation and Re-Execution of POA-HC Documents

The Board on Aging and Long Term Care holds to a position that applies a literal reading to the statute (ch. 155, *stats*.) governing the execution and revocation of powers of attorney for health care (POA-HC).

As a beginning point, it should be noted that the decision to execute or revoke a Power of Attorney for Health Care document is not, in itself, a "health care decision" within the definition provided in Chapter 155 of the Statutes.

The statute (at § 155.40(1), *stats*.) permits a principal to revoke a valid POA-HC "at any time." The statute does not indicate that the POA-HC document may be revoked only if it has *not* been activated, nor does the law require that the principal have any particular reason for revocation or that the principal be in any particular state of mind. The document is there because the principal wants it to be a means for her or his wishes to be put into effect and the principal is free to change her or his mind whenever he or she wants to and for whatever reason. The opinions of any third parties are irrelevant. If the Legislature, when creating Ch. 155, had wanted to make a POA-HC irrevocable after activation, they could easily have done so by changing a few words in section 155.40. The Legislature chose to leave the wording as it currently reads and we are left with no alternative other than to believe that the plain language of the statute says precisely what the Legislators intended.

It is further the position of this agency that the mere fact that a revoked POA-HC had been activated before its revocation will not prohibit the principal from executing another POA document at some time in the future. All that is necessary (aside from the requirement of age) for a POA-HC to be effectively executed is that two witnesses are willing to attest to the fact that the principal is "of sound mind" when the document is signed. Essentially, this means that the person who is creating the new POA-HC knows the effect of the document and is satisfied that the new agent is someone that the principal trusts to give effect to her or his wishes concerning health care.

There is no bright line legal definition in Ch. 155 that specifies what a person needs to demonstrate in order to be "of sound mind." A prior declaration by two physicians (or an MD and a psychologist) that the principal cannot make a "health care decision" does not necessarily mean that the person is of "unsound" mind. Neither does it mean that the person cannot understand the concept of allowing another to make those decisions or that he or she is incapable naming a trusted individual to be the agent in a new document. "Soundness of mind" is a judgment call by the witnesses.