



**A GUIDE FOR
SUBSTITUTE DECISION MAKING
IN IOWA**

Letter from
THE OFFICE OF SUBSTITUTE DECISION MAKER

Dear Reader,

Thank you for taking the time to read through this very important information regarding substitute decision making.

Every day, individuals throughout the state of Iowa are faced with making difficult health care and financial decisions for someone in their lives. A daughter thinks about her mother and wonders if she wants life-sustaining treatments in the final stages of her fight with Alzheimer’s Disease. A brother struggles to determine if his sister should undergo a risky surgery that doctors claim could change her long-term prognosis. A nephew tries to decide if his aunt’s home should be sold to pay for her medical care. These are personal decisions and difficult choices for loved ones to make, but these decisions don’t have to be made solely by our loved ones.

Planning with advance directives can ensure that our most personal health care and financial decisions are honored and can guide our loved ones through difficult times. Everyone should have advance directives and it is our hope that you will review this booklet and develop your own personal roadmap for handling long-term health care and financial decisions.

Sincerely,

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REPRESENTATIVE PAYEE

Margaret lives in a small rural community. She is 89 years old and recently widowed. Her husband had sole responsibility for managing their finances. Margaret has a mild form of dementia but is able to live independently in the home she and her husband shared. Margaret and her husband had three sources of income: social security retirement, investment income, and income from craft carpentry.

With her husband gone, Margaret will no longer have income from her husband's carpentry work, which will affect her lifestyle and financial situation greatly.

Margaret has two grown children living in Arizona and California, and because of the distance, they are unable to help her with her finances on a monthly basis. They have notified the Social Security Administration that she needs a representative payee.

DEFINITION

A representative payee is an individual, agency, organization, or institution appointed by a government entity to receive funds on behalf of a beneficiary. A beneficiary is a person who receives a federal benefit check such as Social Security. The Social Security Administration (SSA) will appoint a payee when a beneficiary is determined incapable of managing his or her benefits and it is in the person's best interest. Need is determined by SSA through an interview with the beneficiary and/or a physician's determination.

RESPONSIBILITIES

A payee must first meet the beneficiary's essential needs:

- food
- shelter
- clothing
- medical care
- personal comfort items

After these are met, the payee prepares for future needs by:

- managing and conserving funds and budgeting for supplemental security income (SSI) and/or Medicaid resource limitations
- satisfying previous debts
- setting aside funds for personal needs

ADVANTAGES

A representative payee is a less restrictive alternative to a conservatorship. The payee only manages the federal income or benefit received by a beneficiary and allows that person to otherwise control any other income or property.

DISADVANTAGES

Once a representative payee is appointed, the beneficiary can no longer make decisions or direct the use of the federal benefit. There is no other way to manage federal income or benefits for an incapable beneficiary. A person who can no longer manage federal income or benefits must have a representative payee appointed.

When Bob passes away after thirty years of marriage, his wife, Mary, knows she needs to sign a Power of Attorney. Mary has a stroke and becomes incapacitated before she takes care of the paperwork. Without a Power of Attorney, Mary's financial future is decided by a court appointed conservator.

If Mary had contacted the Office of Substitute Decision Maker, she would have been directed to obtain a Durable Financial Power of Attorney that would have saved her from a conservatorship, under which her wishes might not be carried out.

DEFINITION

A financial power of attorney is a written document in which one person (principal) gives another person (attorney-in-fact) the authority to act on the first person's behalf in financial matters. A financial power of attorney can be durable, which means it becomes effective or remains effective upon the disability of the principal.

RESPONSIBILITIES

The relationship between the attorney-in-fact and principal requires a strict standard of behavior and highest standard of care. The goal of the attorney-in-fact should be to empower the life of the principal to the fullest extent and carry out the wishes of the principal, even if he or she does not agree with those wishes.

The power of attorney can grant the attorney-in-fact any of the following powers:

- Open, maintain or close bank accounts or brokerage accounts;
- Sell, lease, or maintain real estate;
- Access safe deposit boxes and their contents;
- Make financial investments
- Borrow money, mortgage property, or renew or extend debts;
- Prepare and file federal and state income tax returns;
- Vote at corporate meetings;
- Purchase insurance for the principal;
- Initiate, defend, prosecute, or settle lawsuits;
- Start/carry on a business, including employing professional assistants such as lawyers, accountants, real estate agents, etc;

- Apply for benefits and participate in governmental programs;
- Transfer to a trustee any and all property, and disclaim part or all of an inheritance

ADVANTAGES

A financial power of attorney is a less restrictive alternative to a conservatorship. It allows an individual to maintain control over his or her financial decisions by providing direction in advance as to how financial decisions should be made. The attorney-in-fact must adhere to the principal's wishes as outlined in the power of attorney document.

The financial power of attorney is a very flexible document. The principal can designate when and how the document will take effect and how long it will remain in effect. Although forms have been developed to assist with drafting a financial power of attorney, it is recommended that a lawyer be consulted to draft this type of agreement.

A financial power of attorney can be revoked or amended at any time. The revocation must be done in writing.

DISADVANTAGES

Attorneys-in-fact in Iowa have no court supervision, registration or annual accounting requirements. There is no oversight of the attorney-in-fact.

A financial power of attorney cannot handle federal income or benefits, without applying to become a representative payee (see the representative payee section of this handbook).

CONSERVATOR

Tom and Mary, who are brother and sister, were named co-conservators of their mother. As conservator, the siblings should act in the best interest of their mother regarding financial matters. Unfortunately, Tom and Mary took advantage of their mother's incapacity by living in her home and using her social security funds to supplement their incomes. They also refused to pay for home health care services that their mother needed. No annual reports have been filed with the court.

The Office of Substitute Decision Maker can intervene or be appointed as conservator.

DEFINITION

A conservator is a person appointed by the court to have the custody and control of the property of a ward under the provisions of the probate code.

Individuals served are minor children and individuals whose decision making capacity is so impaired that they are unable to make, communicate, or carry out important decisions concerning financial affairs.

A general or full conservatorship gives the conservator the authority to make all financial decisions on behalf of the ward except those that require prior court approval. A limited conservatorship has only those specific duties set out by the court. For all else, the ward can make his or her own decisions.

RESPONSIBILITIES

- Reviewing financial records
- Managing bank accounts and use accounts to receive all payments and make deposits
- Maintaining a complete and accurate record that shows all funds going through the account
- Reviewing broker statements
- Filing income tax returns
- Balancing account ledgers
- Locating and maintaining deeds and insurance policies
- Making payments for nursing homes, maintenance, welfare and education, or to the legal guardian or anyone having custody and care of the ward
- Investing funds
- Executing leases on behalf of the ward
- Settling legal claims

ADVANTAGES

The conservator is an officer of the court and must file an inventory, and initial, annual, and supplemental reports with the district court in the county where the conservatorship was established.

DISADVANTAGES

A conservatorship is very intrusive and often results in a complete loss of the ward's ability to make financial decisions. The ward retains very minimal rights.

Once a conservatorship is ordered by the court, the ward loses the ability to direct financial decisions and can no longer execute a financial power of attorney.

A conservatorship cannot be revoked or amended by the ward. A court order is required to revoke or amend a conservatorship. Conservatorship is a legally created relationship and can be a complicated and expensive process.

Mr. Brown still has the ability to make some health care decisions for himself, but his children feel he's not making good choices. Mr. Brown does not have a health care power of attorney.

After filing a guardianship petition, Mr. Brown's children are granted control over his health care decisions. The least restrictive alternative, such as a durable power of attorney for health care, would have allowed Mr. Brown the right to direct his own health care decisions.

The Office of Substitute Decision Maker could have worked with Mr. Brown's family to educate them on alternatives to guardianship and advocate for the least restrictive alternatives for Mr. Brown.

DEFINITION

A health care power of attorney is a written document by which one person (principal) gives another person (attorney-in-fact) the authority to act on the first person's behalf in health care matters. Health care is any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

A health care power of attorney can be durable, which means it becomes effective or remains effective upon the disability of the principal.

RESPONSIBILITIES

The goal of the attorney-in-fact should be to:

- empower the life of the principal to the fullest extent
- make all health care decisions according to the principal's wishes. If those wishes are unknown, the attorney-in-fact must make decisions that are in the best interests of the principal.
- respect and carry out the health care decisions of the principal when he or she cannot, including choosing a health or long-term care facility, employing home care providers, admitting an individual to a hospice provider, consenting to or refusing treatments, obtaining or releasing medical records, and deciding the course of treatment given a terminal illness.

ADVANTAGES

A health care power of attorney is a less restrictive alternative to a guardianship. It allows an individual to maintain control over his or her health care decisions by providing direction in advance as to how health care decisions should be made.

An attorney-in-fact must adhere to the principal's wishes as outlined in the power of attorney document.

The decisions made by an attorney-in-fact under the health care power of attorney will be honored over decisions made by a guardian.

A health care power of attorney can be revoked or amended any time. It can be revoked orally – in other words, the principal merely needs to state that he or she is exercising his or her right to revoke the power of attorney and it is considered revoked.

The health care power of attorney is a very flexible document. The principal can designate when and how the document will take and remain in effect.

DISADVANTAGES

Attorneys-in-fact in Iowa have no court supervision, registration or annual accounting requirements. There is no oversight of the attorney-in-fact.

It is important to make sure the attorney-in-fact is someone you trust and have talked with in detail about your medical care wishes. It is important to provide copies of your health care power of attorney to your attorney-in-fact and alternates, doctors, health care and human service providers, friends and family.

A long-term care facility is closing and needs to place the residents elsewhere. Many of the residents do not have the ability to make placement decisions or consent to a power of attorney and have no one in their lives who can serve as a substitute decision maker.

The Office of Substitute Decision Maker can be appointed as attorney-in-fact or as an emergency guardian to assist with paperwork to ensure continued housing and care for residents.

DEFINITION

A guardian is the person appointed by the court to have custody of the ward under the provisions of the probate code. The ward is the individual for whom guardianship has been established.

A general or full guardianship (plenary) gives the guardian authority to make all personal care decisions on behalf of the ward, except those that require prior court approval. A limited guardianship allows the guardian specific powers that are set out in a court order and for all else, the ward can make his or her own decisions.

RESPONSIBILITIES

Plan for your ward's needs by handling urgent needs first:

- Living situations
- Meals
- Personal effects
- Health care decisions*
* Attorney-in-fact under a durable power of attorney for health care takes priority in health care decision making unless the guardianship petition terminates the durable power of attorney document.
- Consider the ward's wishes

Other needs to consider:

- Education
- Recreation
- Counseling treatment
- Services as needed
- Visitation

Personal care decisions that require a court order:

- Changing the ward's permanent residence if the proposed residence is more restrictive than the current residence

- Arranging for the provision of major elective surgery and any non-emergency major medical procedure, including sterilization.
- Consenting to withholding or withdrawal of life-sustaining procedures

ADVANTAGES

A guardian is an officer of the court and must file annual reports with the district court in the county where the guardianship was established.

DISADVANTAGES

A guardianship is very intrusive and often results in a complete loss of the ward's ability to make personal care decisions.

Once a guardianship is ordered by the court, the ward loses the ability to direct personal care decisions and can no longer execute a health care power of attorney.

A guardianship cannot be revoked or amended by the ward. A court order is required to revoke or amend a guardianship.

Guardianship is a legally created relationship and can be a complicated and expensive process.

Mrs. Smith has a power of attorney, but has not discussed life-sustaining procedures with her attorney-in-fact. When Mrs. Smith is hospitalized and diagnosed with a terminal condition, the attorney-in-fact is unsure what Mrs. Smith's wishes are. Her children explain that their mother has indicated she would want all life-sustaining technology utilized. The attorney-in-fact realizes her instructions regarding life-sustaining procedures have been addressed in a living will, and her wishes are honored.

DEFINITION

A living will is a document directing the declarant's doctor to withhold or withdraw life-sustaining procedures that could prolong the dying process. This advance directive becomes effective only at the point when, in the written opinion of the doctor (confirmed by a second doctor), the declarant is expected to die soon and is unable to make health decisions for him or herself (because he/she is unconscious or unable to think and reason) or because of permanent unconsciousness (irreversible coma or persistent vegetative state).

Without a living will, others will be responsible for making life-sustaining decisions.

TO CREATE A LIVING WILL

- You must be competent and over the age of 18
- You must sign voluntarily
- You must sign and date the document in front of a notary public or two adult witnesses
- Family members should not serve as the witnesses if at all possible
- Neither witness can be your health care provider or its employees

ADVANTAGES

A living will allows an individual to maintain control over and direct end-of-life health care decisions. It provides direction and peace of mind to loved ones in a time of medical crisis.

A living will is an easy and inexpensive way to plan for future medical care decisions. The Iowa State Bar Association has developed a form for living wills, which can be found at www.iowabar.org or www.state.ia.us/elderaffairs

Advance Directives

Legal documents stating a person's wishes for medical treatments in case he or she is not able to make his or her own decisions.

Attorney-in-Fact

Individual designated in a power of attorney document to make decisions on behalf of the principal.

Beneficiary

Person receiving a federal benefit check, e.g., social security, social security disability insurance.

Best Interests

Course of action which is the least intrusive, most normalizing and least restrictive course of action possible given the needs of the individual principal, ward, or beneficiary.

Capacity

Ability to understand the nature and effects of one's acts.

Cognitive Capacity

Mental process of comprehension, judgment, memory, and reasoning.

Competency

Legal finding determined by a review of medical capacity, functional limitations, cognitive and functional abilities.

Conservator

Person appointed by the court to have custody and control of the property of a ward under provisions of probate code.

Custody

The control, supervision, and care of another or the assets of another.

Dependency

Reliance upon another for support or aid. Does not equate to lack of capacity or incompetence.

Dependent Adult

Person 18 years old and up who is unable to adequately perform or obtain services necessary to meet essential needs as a result of a physical or mental condition which requires assistance from another.

Durable

Document becomes effective or remains effective upon the disability of the principal.

Durable Power of Attorney for Health Care

Document authorizing an attorney-in-fact to make health care decisions for the principal if the principal is unable, in the judgment of the attending physician, to make health care decisions.

Estate

Real and personal property of a decedent, a ward, or a trust.

Fiduciary

Responsibility of acting in confidence and trust. Includes representative payee, personal representative, attorney-in-fact, guardian, conservator, and trustee.

Financial Power of Attorney

Written document in which one person (principal) gives another (attorney-in-fact) the authority to act on the principal's behalf in financial matters.

Functional Capacity

Capability of performing tasks and activities. Characterized by ability to perform "activities of daily living" (ADL's) and the ability to perform "instrumental activities of daily living" (IADL's). ADL's are the most basic of self-care functions such as bathing and dressing. IADL's are functions that may be needed for independence such as cooking, cleaning, or laundry.

Functional Limitations

Behavior or condition of a person that impairs the person's ability to care for his or her personal safety or to attend to or provide for necessities.

Guardian

Person appointed by the court to have the custody of the ward under provisions of the probate code.

Guardian Ad Litem

Individual who is appointed to provide independent advice to the court (as compared to the attorneys advocating for one side or the other in the action) bringing balance to the decision-making process. May conduct interviews and investigations, make reports to the court, and participate in court hearings and mediation sessions.

Health Care

Any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

Impairment

A person's diagnosed disability or medical condition that may affect a person's decision making skills.

Incompetent

Condition of any person who has been adjudicated by a court to meet at least one of the following conditions:

- to have decision-making capacity that is so impaired that the person is unable to care for his or her personal safety or to attend to or provide for necessities for him or herself such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.
- to have decision-making capacity that is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.

Interested Person

Adult relative or friend of the ward or beneficiary or an official or representative of a public or private agency, corporation, or association concerned with the person's welfare.

Least Intrusive

Mechanism of action, or environment that allows the principal, ward or beneficiary to live, learn, and work in a setting that places as few limits as possible on the principal's, ward's or beneficiary's rights and personal freedoms and is appropriate to meet the needs of the principal, ward or beneficiary.

Limited Guardianship/Conservatorship

Guardian or conservator has only those specific powers set out in a court order.

Living Will

Document directing the declarant's doctor to withhold or withdraw certain treatments (life-sustaining procedures) that serve only to prolong the dying process.

Natural Person

A human being as distinguished from a corporation.

Petition

Formal written request made to the court.

Power of Attorney

Legal instrument authorizing one to act as the attorney-in-fact or agent of the grantor (principal).

Principal

Individual (age 18 and older) who has put the power of attorney document in place and authorized the attorney-in-fact to act on his or her behalf.

Probate Code

Chapter (633) of the Iowa Code that has jurisdiction chiefly over the probate of wills and administration of deceased persons' estates, guardianship, conservatorship, and trusts.

Probate Court

Court that has jurisdiction chiefly over the probate of wills and administration of deceased persons' estates, guardianship, conservatorship, and trusts.

Property

Real and personal, tangible and intangible property that includes anything that may be the subject of ownership.

Representative Payee

Individual appointed by a government entity to receive funds on behalf of a beneficiary.

Self-Determination

Combination of attitudes and abilities that lead people to set goals for themselves and to take initiative to reach these goals.

Social Security Retirement, Survivors, and Disability Insurance

An earned benefit that provides income for qualified workers who retire or become disabled and their dependents.

Standby**Guardianship/Conservatorship**

Takes on guardian/conservator role upon the occurrence of a specific event.

Substitute Decision Maker

Guardian, conservator, representative payee, attorney-in-fact under power of attorney, or personal representative.

Substitute Decision Making

Provision of services of a guardian, conservator, representative payee, attorney-in-fact under a power of attorney, or personal representative.

Supplemental Security Income (SSI)

Needs-based program providing income for aged, blind, and disabled persons with little or no income or resources.

Ward

Individual for which a guardianship or conservatorship is established.