

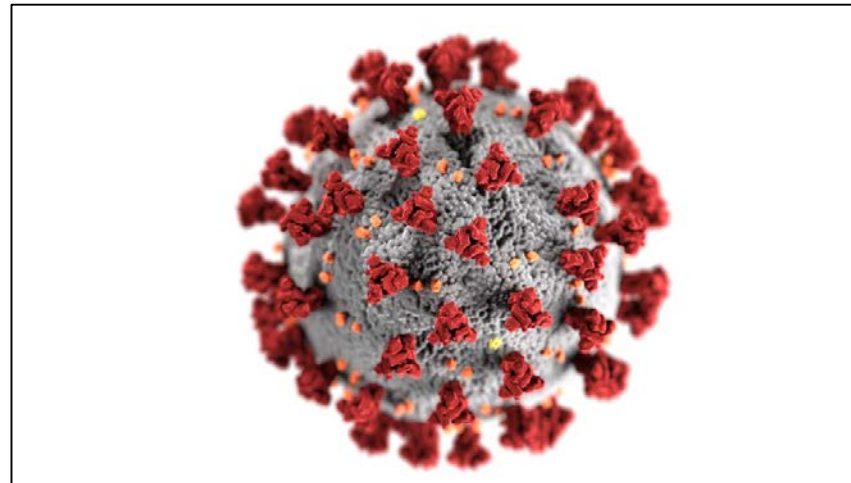
Institute on Guardianship and Conservatorship

LIVE WEBINAR

COVID-19 Impact on Guardians and Protected Persons in Long-term Care Facilities

Institute on Guardianship and Conservatorship and National Health Law and Policy Resource Center

May 12, 2020



LIVE WEBINAR
Iowa CLE 1 Credit Approved
Activity Number 348014

ROADMAP

- I. Nature and Extent of Problem**
- II. Federal and State Regulations and Guidance RE COVID-19 and LTC Facilities**
- III. Guardian Communication with Protected Person and Facility Staff**
- IV. Guardian Health Care and End of Life Decision-making**
- V. Guardian Access to Court and Reporting to Court**
- VI. State Agency Oversight of Care and Protection of Residents of Long Term Care Facilities**

PRESENTERS

Professor Josephine Gittler, JD

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Judge Kathleen Kilnoski, JD

RESOURCE MATERIALS

Resource materials are posted on the website of the Institute on Guardianship and Conservatorship

<https://nhlp.law.uiowa.edu/>

QUESTIONS

1. Email any questions during webinar to law-GCInstitute@uiowa.edu
2. Presenters will answer questions from 1:00-1:15 pm
3. Frequently asked questions and responses will be posted on Institute website

I. Nature and Extent of Problem

Vulnerability of Protected Persons in LTC Facilities

Protected persons in LTC facilities are at high risk for COVID-19 infection, serious illness and death

- They are older
- They often have chronic health conditions
- LTC facilities are high density congregate settings
- Asymptomatic, atypical presentations
- Insufficient PPE, testing

Prevalence of COVID-19 in Iowa LTC Facilities

CAVEATS

- Data constantly changes
- Data is incomplete
- DPH requires LTC facilities to report only if 3 or more confirmed cases

Prevalence of COVID-19 in Iowa LTC Facilities, cont'd

- As of May 11 there were COVID-19 outbreaks (3 or more cases of residents or staffs) in 32 LTC facilities involving 1100 cases in 12 counties.*

*COVID-19 in Iowa, current cases at <https://coronavirus.iowa.gov/>.

Prevalence of COVID-19 in Iowa LTC Facilities, cont'd

- As of May 5 the Governor's Office reported that COVID-19 deaths in LTC facilities accounted for 56% of all COVID-19 deaths.*

*WHOTV.com at <https://whotv.com/news/coronavirus/virus-outbreaks-leave-946-sick-so-far-at-iowa-long-term-facilities/>.

II. Federal and State Regulations and Guidance RE COVID-19 and LTC Facilities

Guidelines for COVID-19 Prevention and Control

The Federal Centers for Medicare & Medicaid Services (CMS) have issued guidelines for preventing and controlling the spread of COVID-19 in LTC facilities.*

- Infection control policies and procedures in LTC facilities
- Testing for COVID-19 in LTC facilities
- Designation of separate facilities/units for coronavirus positive residents
- In-person visitor restrictions

*See Institute website for CMS Guidance

In-Person Visitor Restrictions

- CMS Guidance and CDC Guidance provides that facilities “should restrict visitation of all visitors and non-essential health care personnel, except for certain compassionate care situations such as end of life situations.”*
- Similarly the Iowa Department of Public Health Checklist provides that “ [n]o visitors should be allowed in the facility (unless end of life situation per CMS guidance).”*
- CMS Guidance states that facilities “are expected to notify potential visitors to defer visitation until further notice.”

*See Institute website for links to relevant CMS, CDC and IDPH materials.

Exception to In-Person Visit Restrictions for Compassionate Situations

- In person visits may be permitted in compassionate situations such as end of life.
- Facilities are to make decisions about visitation during an end of life situation on a cases by cases basis which includes screening for fever or respiratory symptoms.
- Visitors that are permitted must perform hand hygiene, use personal protective equipment and are limited to a specific room.

Responsibility of Guardian for Maintenance of Contact

- The Iowa Code section 633.635(2)(h) provides that guardian's responsibilities include; "maintaining contact, including through regular visitation with the protected person if the protected person does not reside with the guardian."
- A guardian has a continuing responsibility to maintain contact with a protected person in a LTC facility despite COVID-19 in-person visitation restrictions.
- Due to restrictions of in-person visits with protected persons in LTC facilities, the guardian should attempt to communicate with the protected person through other means and to stay informed his or her health and well-being.
- The guardian should inform the court of visitation restrictions in the initial care plan and annual reports.

III. Guardian Communication with Protected Person and Facility Staff

Communication with Protected Person: Methods

- Prohibition of in-person visits due to COVID-19 necessitates alternative communication methods
- Remote access technology at facility (challenge for PWD)
 - Determine availability of landline, cell phone, computer, laptop or tablet with internet access, microphone and webcam, etc.
 - Ask staff to schedule meeting and to assist protected person in using technology
 - Church, community groups, libraries
 - CMP to obtain equipment
- Communicate outside of facility, e.g. through window-use resident response as barometer for best contact method

Communication with Protected Person: Adjusting your Approach

- Accommodate sensory (vision and hearing) impairments of protected person: glasses, hearing aids, amplifiers
- Consider the environment: light, noise, distractions::
- Accommodate receptive abilities (comprehension) of protected person
- Accommodate expressive abilities of protective person
- Cues and nonverbals

Communication with Protected Person: Use of Language (especially important for PWD)

- Slow down & listen: allow time for responses
- ID yourself by name and call person by name
- Use understandable, familiar language
 - Avoid legal jargon, slang terms
 - Break info into smaller, manageable segments
 - Avoid long, wordy, vague language. Talk slowly and distinctly. Short sentences, one issue/question at a time. Complicated by masks.
 - Use terms & phrases that the older person uses – one that are familiar to him/her

Privacy of Communications with Protected Person

- Confidentiality concerns with respect to communications between the guardian and the protected person may arise if a staff person is present to assist the protected persons. In such cases the guardian may need to ask for some time to speak privately with the protected person.

Communication with Facility Staff

- Facility staff is coping with multiple challenges as result of COVID-19.
- Identify staff member(s) with whom you can communicate regarding protected person (someone who knows them).
- Explain your legal responsibilities as guardian and need for information about status of protected person. Provide a copy of court order.
- Participate in care planning meetings.

Communication with Facility Staff con'td

- Ask for electronic records to review.
- Request facility share memos/documents re: infection safety. Ask ?
- Establish collaborative rather than adversarial relations with staff to extent possible.
- If dissatisfied with care, contact the Director of Nursing or Administrator. Request a response. Use facility complaint procedures.

IV. Guardian Health Care and End of Life Decision-making

Health Care and End of Life Decision-making

- Under Iowa Code, section 633.699(2), when the court appoints a guardian, the court may grant the guardian the general power to consent to and arrange for “medical ... and other health care and services” which may be exercised without prior court approval..
- Iowa Code, section 633.635(3)(b)(1) requires a guardian to obtain prior court approval to consent to the withholding or withdrawal of life sustaining treatment.
- If a protected person becomes infected with COVID-19 the facility must obtain the consent of the guardian for treatment.

Standards and Best Practices Relevant to Health Care and End of Life Decision-making

- The Iowa Supreme Court Guardianship and Conservatorship Reform Task Force made the following recommendations that are relevant to health care and end of life decision-making:
 - The guardian in making health care decisions for an adult subject to guardianship, or in seeking court approval for such decisions, should involve the protected person to the extent reasonably feasible.
 - The guardian should first make the decision that he or she knows, or reasonably believes, the protected person would make if able to do so, unless such a decision would unreasonably harm or endanger the welfare or interests of the protected persons.
 - If the guardian does not know, or cannot reasonably ascertain the decision that the protected person would make if able to do so, or if making such a decision would unreasonably harm or endanger the welfare or interests of the protected person, the guardian should make the decision that is in the protected person's best interests.

Applicability of Anti-discrimination Laws and Regulations for COVID-19 Health Services

- In response to the public health emergency due to COVID-19, the Federal Office of Civil Rights issued a bulletin offering guidance to states and health providers concerning the applicability of existing laws and regulations prohibiting discrimination on an impermissible basis including age and disability are applicable to treatment for COVID-19.*

*U.S. Dept Health and Human Services, Office for Civil Rights, Bulletin: Civil Rights, HIPPA and the Coronavirus Disease 2019 (March 28,2020). See Institute website for link to this document.

Effect of Health Care Power of Attorney

- Prior to the establishment of a guardianship for a protected person, the protected person (the principal) may have executed a valid power of attorney authorizing another person (the attorney in fact) to make health care decisions on his or her behalf.
- Iowa Code section 144B(6) provides: “Unless the district court ... finds that the attorney in fact is acting in a manner contrary to the wishes of the principal or the durable power of attorney for health care provides otherwise, an attorney in fact who is known to the health care provider to be available and willing to make health care decisions has priority over any other person, including a guardian appointed pursuant to chapter 633, to act for the principal in all matters of health care decision.”

V. Guardian Access to Court and Reporting to Court

Guardianship Hearings on Petition & Motions

- The Supreme Court's April 2, 2020 supervisory order provides that the District Court shall continue to conduct in-person hearings for "[e]mergency matters that cannot be conducted by videoconference or telephone." It further states that emergency and essential services "encompass.. [t]he protection of vulnerable people, such as the elderly ... and persons with disabilities." Guardianship proceedings involving elderly protected persons and protected persons with disabilities in LTC facilities would fall within this category.
- Most guardianship hearings presently are being held via telephone or videoconference, so check with the clerk of court or court administration.

Filing of Guardianship Petitions, Motions & Reports

- Persons who are already registered EDMS filers must continue to file all court documents through the EDMS system as usual.
- The Supreme Court's April 2, 2020 order authorizes filing by email "(a) for all self-represented persons who have not already registered for EDMS and (b) for all persons excused from EDMS registration and electronic filing requirements ... who have not already registered for EDMS filing."
- The self-represented or exempt person filing by email must contact the appropriate clerk of court to obtain the email address to be used for filing, and then email the filing to the clerk in PDF format.

Guardian's Initial Care Plan and Annual Report

- Iowa Code, section 633.669(1)(a), which was effective January 1, 2020, requires a guardian appointed by the court to file an initial care plan with the court for review and approval within 60 days of appointment.
- Iowa Code, section 633.669(1)(b), which was effective January 1, 2020 requires a guardian to file an annual report and to file the annual report with the court for review and approval. within 60 days of the close of the reporting period.
- The Supreme Court's November 21, 2019 order provide that for guardianships established prior to January 1, 2020 the initial care plan must be filed with the previously scheduled annual report. The order further provided that guardians appointed prior to January 1 have continuing authority to perform acts concerning the protected person that were authorized prior to January 1, 2020, through the date of the guardian's previously scheduled annual report.

Guardian's Initial Care Plan and Annual Report, cont'd

- During the current state public health emergency due to COVID-19, guardians must continue to comply with the statutory requirements to file an initial care plan and an annual report for protected persons in LTC facilities.

Communication with Court Regarding Problems and Concerns

- If a guardian believes the protected person is not receiving proper care and protection, the guardian should bring that to attention of the court through the filing of a motion and request for hearing.
- If a guardian contracts COVID-19 and is unable to fulfill his or her statutory responsibility to establish and to maintain contact with a protected person in a LTC facility, the guardian should so inform the court. In such cases guardians may consider requesting the court to appoint a court visitor.

VI. State Agency Oversight of Care and Protection of Residents of Long Term Care Facilities

Contact Information for State Agencies

- The Iowa Attorney General's Office has provided the following contact information for state agencies applicable to complaints about status of residents in long-term care facilities.
 - “If you suspect that an older adult is being mistreated, contact the Iowa Department of Human Services Dependent Adult Abuse hotline at 1-800-362-2178, 24 hours a day, seven days a week.”
 - “If suspected dependent adult abuse is occurring in a health-related facility, contact the Iowa Department of Inspections and Appeals Nursing Home and Home Health Complaint Hotline at 1-877-686-0027 or email hfd_complaint@dia.iowa.gov.”
 - “If you have concerns about your quality of care, quality of life or rights as a resident/tenant, or if you have concerns on behalf of your loved one who is living in one of Iowa's long-term care facilities, contact the Office of the State Long-Term Care Ombudsman at 1-866-236-1430.”

Conclusion

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QUESTION AND ANSWER PERIOD