

MEMORANDUM

TO: Long-Term Care Partners
FROM: Deanna Clingan-Fischer, JD
State Long-Term Care Ombudsman
SUBJECT: Visitation and Powers of Attorney
DATE: February 25, 2013

The focus of the Long-Term Care Ombudsman's Office is to advocate for the rights and wishes of residents and tenants in long-term care. In fact, resident's rights are guaranteed by the federal 1987 Nursing Home Reform Law.¹ This law requires nursing facilities to promote and protect the rights of each resident and places a strong emphasis on individual dignity and self-determination. Iowa has incorporated these rights into state law for nursing facility residents, assisted living and elder group home tenants.²

The Office of State Long-Term Care Ombudsman receives inquiries on a regular basis as to whether an attorney-in-fact, under a durable power of attorney for health care, can limit or deny visitation to a resident or tenant. For the following reasons, the position of the Office is that an attorney-in-fact acting under a durable power of attorney for health care cannot limit visitation or access to a resident or tenant.

1. Resident's and Tenant's Rights

All residents and tenants are guaranteed access and visitation rights. These rights are essential to a meaningful quality of life.

- a. The *resident* has the right and the facility must provide immediate access to any resident by immediate family, other relatives, or other visitors, subject to the resident's right to withdraw consent at any time.³
- b. The *tenant* has the right to associate and communicate privately and without restriction with persons and groups of the tenant's choice, including the tenant advocate, on the tenant's initiative or on the initiative of the persons or groups at any reasonable hour.⁴
- c. *Limitations* to access are provided for in Iowa law.⁵ A visitor may be restricted *by the facility* for the following reasons:
 1. The resident refuses to see the visitor;
 2. The resident's physician documents specific reasons why such a visit would be harmful to the resident's health;
 3. The visitor's behavior is unreasonably disruptive to the functioning of the facility.

¹ 42 U.S.C. 1396r; 42 C.F.R. 483.10

² Iowa Code 135C.14(8) (2013); 481 IAC 67.3

³ 42 C.F.R. 483.10(j)

⁴ 481 IAC 67.3(6)

⁵ 481 IAC 58.47(2)

As discussed below, an attorney-in-fact is appointed only for the purpose of making health care decisions, and the decision to allow access to a resident is not a “health care decision” as defined by law.⁶ Therefore, the resident’s right to receive or refuse a visitor does not transfer to an attorney-in-fact pursuant to a durable power of attorney for health care.⁷

2. Durable Power of Attorney for Health Care

- a. A durable power of attorney for health care is a document which authorizes 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.
- b. An attorney-in-fact is the individual who is designated by a durable power of attorney for health care to act as agent to make health care decisions on behalf of the principal and has consented to act in that capacity. The attorney-in-fact must act consistently with the principal’s desires as stated in the document or otherwise made known. If the principal has not refused visits in the past, a presumption should be made that he/she would not now want to limit visits.
- c. A principal is the person age 18 or older who has executed a durable power of attorney for health care.
- d. Since an attorney-in-fact is designated to make health care decisions, it is important to understand the definition of “health care decisions”. This is defined under Iowa law⁸ as:
 - *Health Care Decision* means the consent, refusal of consent, or withdrawal of consent to health care.
 - *Health care* is defined as any care, treatment, service, or procedure to maintain, diagnose, or treat an individual’s physical or mental condition.

The attorney-in-fact’s authority is over health care decisions and visitation and access to a resident is not a health care decision. The law does not specifically set out restrictions on visitation as a right that the attorney-in-fact can exercise. Therefore, it is the position of the Office of State Long-Term Care Ombudsman that the attorney-in-fact does not have authority to determine visitation. As such, that right remains with the resident.

For more information on the Long-Term Care Ombudsman Program or to reach a Local Long-Term Care Ombudsman, please call 866-236-1430.

⁶ Iowa Code 144B (2013)

⁷ 42 C.F.R. 483.10(a) (4). This states that in the case of a resident who has not been adjudged incompetent by the state court, any legal surrogate designated in accordance with state law may exercise the resident’s rights to the extent provided by State Law.

⁸ Iowa Code 144B.1 (2013)