

Memo

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

The focus of the Office of the State Long-Term Care Ombudsman (OSLTCO) is to advocate for the rights and wishes of residents and tenants residing in Iowa's long-term care facilities. In fact, residents' rights are guaranteed by the federal Nursing Home Reform Law of 1987¹ that 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 residents and tenants of nursing facilities, residential care facilities, assisted living programs and elder group homes².

The OSLTCO 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 OSLTCO 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. Residents' and Tenants' Rights

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

- *Residents* have the right and long-term care facilities must provide access to any resident by immediate family, other relatives or other visitors, subject to a resident's right to withdraw consent at any time³.
- *Tenants* have the right to associate and communicate privately and without restriction with persons and groups of their choice, including the tenant advocate or long-term care ombudsman, on a tenant's initiative or on the initiative of the persons or groups at any reasonable hour⁴.
- *Limitations* to access are provided for in Iowa law⁵. A visitor may be restricted *by the facility* if:
 - a) The resident refuses to see the visitor;
 - b) The resident's physician documents specific reasons why such a visit would be harmful to the resident's health; or
 - c) The visitor's behavior is unreasonably disruptive to the functioning of the facility.

¹42 U.S.C. 1396r; 42 C.F.R. 483.10

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

³42 C.F.R. 483.10(j)

⁴481 IAC 67.3(6)

⁵481 IAC 58.47(2)

2. Durable Power of Attorney for Health Care

As discussed below, an attorney-in-fact is appointed only for the purpose of making health care decisions for the principal and the decision to allow or deny access to a resident is not a “health care” decision as defined by law⁶. 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 care⁷.

- A durable power of attorney for health care is a document that 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.
- An attorney-in-fact is an individual who is designated by a durable power of attorney for health care to act as the agent and make health care decisions on behalf of the principal. The attorney-in-fact has consented to act in that capacity and 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 wish to limit visits.
- A principal is an individual who is 18 or older who has executed a durable power of attorney for health care.
- Since an attorney-in-fact is designated to make health care decisions, it is important to understand the definition of a “health care” decision as stated in Iowa law⁸:
 - a) A health care decision means the consent, refusal of consent or withdrawal of consent to health care.
 - b) Health care is defined as any care, treatment, service or procedure to maintain, diagnose or treat an individual’s physical or mental condition.

An attorney-in-fact’s authority is over health care decisions and visitation and access to a resident or tenant is not a health care decision. The law does not specifically set out restrictions on visitation as a right that an attorney-in-fact can exercise. Therefore, it is the position of the OSLTCO that an attorney-in-fact does not have any authority to determine visitation. As such, that right remains with the resident or tenant.

For more information on the Long-Term Care Ombudsman Program or to reach a Local Long-Term Care Ombudsman, please call 866.236.1430.

⁶Iowa Code 144B (2013)

⁷42 C.F.R. 483.10(a) (4). *This states that, in the case of a resident who has not be 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.*

⁸Iowa Code 144B.1 (2013)