



A GUIDE TO **SUBSTITUTE DECISION-MAKING** IN IOWA

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Every day, individuals throughout the state of Iowa are faced with making difficult financial and health care decisions for someone they care about:

- » A son tries to decide whether his mother's house should be sold to help pay for her medical care.
- » A daughter thinks about her father and wonders whether he wants life-sustaining treatments during the final stages of his fight against Alzheimer's disease.
- » A brother struggles to determine if his sister should undergo a risky surgery that doctors say could change her prognosis.

These are personal decisions and difficult choices to make, but there are ways to plan for others to make decisions that reduce the stress of trying to determine what their loved one would want while simultaneously honoring his/her wishes.

This guide provides older Iowans, Iowans with disabilities, family members, caregivers and service providers an overview of the substitute decision-making options available in the state of Iowa to inform the planning process regarding financial and health care decisions. Information and knowledge about these tools and supports can contribute to protecting an individual's autonomy and rights, and may reduce the risk of dependent adult abuse.

For more information, please contact the Office of Substitute Decision Maker or visit www.iowaaging.gov.



REPRESENTATIVE PAYEE



Margaret lives in a small rural community. She is 77 years old and recently widowed. Her husband had sole responsibility for managing the couple's finances. While the couple had some investments, their primary source of income was Social Security.

Margaret has a mild form of dementia, but is able to live independently in the home that she and her husband shared. She has two grown children who live out of state, but because of the distance, they are unable to help her with her finances on a monthly basis.

After contacting the Office of Substitute Decision Maker, they decided to notify the Social Security Administration (SSA) that their mother 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. For this purpose, a beneficiary is a person who receives a federal benefit check, such as Social Security. The SSA will appoint a Representative Payee when a beneficiary is determined incapable of managing his/her benefits and it is in the person's best interest. Need is determined by the SSA through an interview with the beneficiary and/or a physician's determination. A Representative Payee has no legal authority to manage non-federal benefit income or medical matters.

RESPONSIBILITIES

A Representative Payee must first meet the beneficiary's essential needs of food, shelter, clothing, medical care and personal comfort items. After those needs are met, the Representative Payee saves any money left in an interest-bearing account or savings bonds for the beneficiary's future needs. The Representative Payee is also responsible for reporting any changes or events that could affect the beneficiary's eligibility for benefits or payment amount; keeping records of all payments received and how they are spent and/or saved; providing benefit information to social service agencies or medical facilities that serve the beneficiary; helping the beneficiary get medical treatment, when necessary; notifying the SSA of any changes in his/her circumstances that would affect his/her performance or continuing as Representative Payee; completing written reports accounting for the use of funds; and returning any payments to which the beneficiary is not entitled to the issuing government agency.

ADVANTAGES

A Representative Payee is a less restrictive alternative to a conservatorship. The Representative Payee only manages the federal income or benefit received by the 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 about 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.

FINANCIAL POWER OF ATTORNEY



When his wife passed away suddenly after 30 years of marriage, Bob wanted to make sure his affairs were in order and decided to create a Financial Power of Attorney. Unfortunately, before Bob could take care of the paperwork, he had a stroke and became incapacitated. Without the Financial Power of Attorney, Bob's financial decisions will now be made by a court-appointed conservator instead of his eldest daughter, as he had hoped.

If Bob had contacted the Office of Substitute Decision Maker, he would have been directed to draft a durable Financial Power of Attorney, which would have enabled him to provide direction in advance as to how financial decisions should be made and name his daughter as his agent, knowing she would adhere to his wishes as outlined in the document.

DEFINITION

A Financial Power of Attorney is a written document in which one person (the principal) gives another person (the attorney-in-fact, or agent) authority to act on his/her behalf in financial matters. A Financial Power of Attorney can be durable, meaning it can become effective or remain effective upon the disability of the principal. Under the [Iowa Uniform Power of Attorney Act](#), a Financial Power of Attorney document may give an agent the authority to: create, amend, revoke, or terminate an inter vivos trust; make a gift; create or change rights of survivorship; create or change a beneficiary designation; delegate authority granted under the Power of Attorney; waive the principal's right to be a beneficiary of a joint and survivor annuity; exercise fiduciary powers that the principal has authority to delegate; disclaim property.

RESPONSIBILITIES

The relationship between the agent and the principal requires a strict standard of behavior and the highest standard of care. The goal of the agent should be to empower the life of the principal to the fullest extent and carry out the wishes of the principal, even if he/she does not agree with those wishes. The duties of an agent include, but are not limited to: acting in accordance with the principal's reasonable expectations to the extent actually known, or otherwise in the principal's best interests; acting in good faith; acting only within the scope and authority granted in the Power of Attorney; keeping a record of all receipts, disbursements and transactions made on behalf of the principal; cooperating with any person who has the authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known, or otherwise in the principal's best interest; and attempting to preserve the principal's estate plan to the extent actually known, if preserving the plan is consistent with the principal's best interest.

ADVANTAGES

A Financial Power of Attorney is a less restrictive alternative to a Conservatorship. It allows an individual to provide direction in advance as to how financial decisions should be made. The agent must adhere to the principal's wishes as outlined in the Financial Power of Attorney document. Because the document is flexible, the principal can designate when and how the document will take effect and how long it will remain in effect. A Financial Power of Attorney may be revoked or amended at any time.

DISADVANTAGES

Agents in Iowa have no court supervision, registration or annual accounting requirements. There is no oversight of the agent. Additionally, an agent named in a Financial Power of Attorney cannot handle federal income or benefits, without applying to become a Representative Payee. 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.

CONSERVATORSHIP



Jeff and Andrea, who are brother and sister, were named co-conservators of their mother, Judith. As conservators, the siblings should act in the best interest of their mother regarding financial matters.

Unfortunately, Jeff and Andrea have taken advantage of Judith's incapacity by living in her home and using her Social Security funds to supplement their incomes. They also have refused to pay for the home health services their mother needs and have failed to file annual reports with the court, as required.

In cases like Judith's, the Office of Substitute Decision Maker can intervene or be appointed as Conservator.

DEFINITION

A Conservatorship is established when the court appoints an individual (the conservator) to have custody and control of the property of another individual (the ward) under provisions set by the probate code. Individuals served include minor children and adults whose decision-making capacity is so impaired that they are unable to make, communicate or carry out important decisions concerning financial affairs. Under a General or Full Conservatorship, the conservator has the authority to make all financial management decisions on behalf of the ward, except those that require prior court approval. Under a Limited Conservatorship, the conservator has only those specific powers set by the court. A Standby Conservatorship may be established if an individual is currently able to handle his/her own financial affairs, but anticipates a time where a conservator may be necessary and chooses a specific person to serve as conservator if the need arises. Standby Conservatorships only take effect upon the occurrence of an event specified in the petition.

RESPONSIBILITIES

It is the duty of the conservator to protect and preserve the ward's estate, to invest it prudently, to account for it, to perform all other duties required and to deliver the assets of the ward to the entitled person(s) at the termination of the Conservatorship. If the ward is enrolled in Medicaid, the conservator must report the ward's assets and income to the Department of Human Services. If, at any point, the conservator obtains a copy of the ward's will, he/she must immediately deliver it to the probate clerk of court for safekeeping. Unless otherwise limited by the documents establishing the Conservatorship, a conservator has the authority to review financial records and broker statements; manage bank accounts and use accounts to receive payments and make deposits; balance account ledgers and maintain a complete and accurate record of all funds flowing through the accounts; file income tax returns; and locate and maintain deeds and insurance policies. With prior court approval, the conservator may also invest funds; execute leases on behalf of the ward; make payments for nursing facilities, maintenance, welfare, education or to the legal guardian or anyone having custody of the ward; make payments for the support of any person for whom the ward is legally liable; compromise or settle legal claims by or against the ward or conservator; make an election for the ward who is a surviving spouse; exercise the right to disclaim on behalf of the ward; make gifts on behalf of the ward; or breach contracts of the ward.

ADVANTAGES

The conservator is an officer of the court and must file an inventory of the ward's property to the district court in the county where the Conservatorship is established within 60 days of the date of appointment. The conservator must also file an annual report within 90 days of the close of the reporting period (the anniversary of the date of appointment), as well as any supplemental reports, as required. Upon court approval, a Conservatorship may terminate if the conservator is removed or resigns, or when the ward reaches the age of majority, is determined to no longer need a conservator, dies, or has an estate whose assets no longer exceed the amount of charges and claims against it.

DISADVANTAGES

Because a Conservatorship is a legally established relationship, it can be a complicated and expensive process. A Conservatorship is also very intrusive and often results in a complete loss of the ward's ability to make financial decisions, including his/her ability to execute a Financial Power of Attorney. A Conservatorship cannot be revoked or amended by the ward; a court order is required.

HEALTH CARE POWER OF ATTORNEY



Edward still has the ability to make some health care decisions for himself, but his adult children feel he's not making good choices. Edward does not have a Health Care Power of Attorney.

After filing a petition for guardianship, his children are granted control over his health care decisions. By executing a durable Health Care Power of Attorney document, Edward would have retained control over his health care decisions.

The Office of Substitute Decision Maker could have worked with Edward and his family to educate them about the Health Care Power of Attorney, which would have been the least restrictive alternative for him.

DEFINITION

A Health Care Power of Attorney is a written document by which one person (the principal) gives another person (the attorney-in-fact) the authority to act on his/her behalf in health care matters. Health care is defined as any care, treatment, service or procedure to diagnose, treat or maintain an individual's physical or mental condition. A Health Care Power of Attorney can be durable, meaning it can become effective or remain 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 and carry out the wishes of the principal, even if he/she does not agree with those wishes. The duties of an attorney-in-fact include, but are not limited to: acting in accordance with the principal's reasonable expectations to the extent actually known, or otherwise in the principal's best interests; and respecting and carrying out the health care decisions of the principal when he/she cannot, including choosing a health or long-term care facility; employing home care providers; admitting an individual to hospice care; consenting to or refusing treatments; obtaining or releasing medical records; and deciding the course of treatment given a terminal illness. In determining whether the attorney-in-fact has the authority to make a specific decision, it is important to look to the Health Care Power of Attorney document to see whether the authority has been granted.

ADVANTAGES

A Health Care Power of Attorney is a less restrictive alternative to a Guardianship. It allows an individual to provide direction in advance as to how health care decisions should be made. The attorney-in-fact must adhere to the principal's wishes as outlined in the Health Care Power of Attorney document. Because the document is flexible, the principal can designate when and how the document will take effect and how long it will remain in effect. A Health Care Power of Attorney may be revoked or amended at any time.

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 that the attorney-in-fact is someone the principal trusts and has talked to in detail about his/her health care wishes. Copies of the Health Care Power of Attorney should be provided to the principal's attorney-in-fact and alternate(s), as well as his/her health care providers, human services providers, family members and friends.

GUARDIANSHIP



The long-term care facility at which Lydia has lived for the past three years is closing. Like Lydia, many of the residents do not have the ability to identify other housing options, make placement decisions or consent to a Health Care Power of Attorney, and have no one in their lives who is willing or able to serve as a substitute decision maker.

The Office of Substitute Decision Maker can be appointed by the court to serve as Lydia's substitute decision maker of last resort and establish a Guardianship to make personal care decisions on her behalf.

DEFINITION

A Guardianship is established when the court appoints an individual (the guardian) to have custody of another individual (the ward) under provisions set by the probate code. A General (or Full) Guardianship gives the guardian the 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; in all other personal care situations, the ward can make his/her own decisions.

RESPONSIBILITIES

It is the duty of the guardian to consider the ward's wishes and handle the ward's urgent needs first (e.g., living situation, meals, personal effects, health care decisions not covered by a durable Health Care Power of Attorney document). The guardian should then consider other needs (e.g., education, recreation, counseling, other services, visitation). Personal care decisions that require a court order include 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 or any non-emergency major medical procedure, including sterilization; consenting to or withholding of life-sustaining procedures; denying all communication, visitation or interaction with an individual who seeks to communicate, visit or interact with the ward.

ADVANTAGES

The guardian is an officer of the court and must file an initial report to the district court in the county where the Guardianship is established within 60 days of the date of appointment. The guardian must also file an annual report within 90 days of the close of the reporting period (the anniversary of the date of appointment), as well as any supplemental reports, as required. Upon court approval, a Guardianship may terminate if the guardian is removed or resigns, or when the ward reaches the age of majority, is determined to no longer need a guardian or dies.

DISADVANTAGES

Because a Guardianship is a legally established relationship, it can be a complicated and expensive process. A Guardianship is also very intrusive and often results in a complete loss of the ward's ability to make personal care decisions, including his/her ability to execute a Health Care Power of Attorney. A Guardianship cannot be revoked or amended by the ward; a court order is required.

LIVING WILL



Anna has executed a Health Care Power of Attorney, but has not discussed end-of-life care with her attorney-in-fact. When Anna is in a car accident and left in a state of permanent unconsciousness, the attorney-in-fact does not know what Anna's wishes are.

Anna's son, Michael, says his mother once told him that she would want life-sustaining procedures to be used if she were ever in need. However, her daughter, Mercedes, says that after recently witnessing her aunt's battle with cancer, Anna changed her mind and did not want any procedure that could prolong the dying process.

Thankfully, Anna addressed her change of mind regarding life-sustaining procedures in a Living Will. This allows her attorney-in-fact to honor her wishes and takes the stress of making difficult decisions off her children.

DEFINITION

A Living Will is a document in which an individual (the declarant) can direct his/her physician to withhold or withdraw life-sustaining procedures that could prolong the dying process, and may also cover issues such as pain management or organ donation. This advance directive becomes effective only at the point when, in the written opinion of the physician (and confirmed by a second physician), the declarant is expected to die soon and is unable to make health care decisions for himself/herself, either because he/she is unconscious and therefore unable to think and reason, or because he/she is in a permanent state of unconsciousness (e.g., irreversible coma or persistent vegetative state).

RESPONSIBILITIES

An individual may execute a Living Will if he/she is over the age of 18, competent and signs voluntarily in front of a public notary with two adult witnesses (witnesses should not be family members of the declarant nor a health care provider of the declarant). In general, health care providers are duty-bound to comply with the declarant's recorded wishes should he/she become incapacitated.

ADVANTAGES

A Living Will is an official legal document that allows an individual to maintain control over and direct end-of-life health care decisions while providing direction and peace of mind to loved ones in a time of medical crisis. A Living Will is an easy, inexpensive way to plan for future health care decisions and can be changed or revoked by the declarant at any time.

DISADVANTAGES

Living Wills are often written in vague terms because the declarant is trying to cover a variety of circumstances that are unknown when the document is drafted. In addition, because a Living Will only becomes active when the declarant is deemed terminally ill. In addition, a Living Will is often not enacted until a person is deemed terminally ill. Physicians may disagree on when the declarant's condition falls into this category, meaning on rare occasions, the declarant may receive treatment that goes against his/her values as outlined in the Living Will. One of the more common downsides to a Living Will is that it is not readily accessible to health care providers. Some people choose to keep their Living Will locked up in a safety deposit box or secured in another safe location. However, individuals who fail to provide their doctor with a copy of their Living Will and become unable to communicate will be treated as if they do not have a Living Will.

RESOURCES



The following links are intended to provide access to agencies and advocacy groups that specialize in working closely with older adults, adults with disabilities, caregivers and others who may benefit from the substitute decision-making options available in Iowa.

To learn more about local resources, contact LifeLong Links, Iowa's network of Aging and Disability Resource Centers. It is staffed by employees of Iowa's six Area Agencies on Aging who can help you identify which substitute decision-making options best fit your situation and connect you with professionals who can assist you in planning for the future.



866.468.7887 | www.lifelonglinks.org

Area Agencies on Aging
<https://www.iowaaging.gov/about/area-agencies-aging>

Alliance for the Mentally Ill of Iowa
www.namiiowa.com

ASK Family Resource Center
<http://askresource.org/>

The ARC of Iowa
<http://www.thearcofiowa.org/>

Autism Society of Iowa
<http://autismia.com/>

Brain Injury Alliance of Iowa
<http://www.biaia.org/>

Disability Rights Iowa
<http://disabilityrightsiowa.org/>

Iowa ABLE Foundation
<http://iowaable.org/>

Iowa Compass
<http://www.iowacompass.org/>

Iowa Department for the Blind
<http://blind.iowa.gov/>

Iowa Department on Aging
www.iowaaging.gov

Iowa Department of Human Rights – Office of Deaf Services
<http://humanrights.iowa.gov/cas/ds>

Iowa Department of Human Rights – Office of Persons with Disabilities
<http://humanrights.iowa.gov/cas/pd>

Iowa Department of Human Services – Division of Mental Health and Disability Services
<http://dhs.iowa.gov/mhds>

Iowa Developmental Disabilities Council
<http://iddcouncil.idaction.org/>

Iowa Legal Aid
<http://www.iowalegalaid.org/>

Iowa Respite and Crisis Care Coalition
<https://www.caregiver.org/>

Iowa Statewide Independent Living Council
<http://www.iowasilc.org/>

Iowa State Bar Association
<http://www.iowabar.org/>

Iowa State University Extension Publications Store
<http://www.extension.iastate.edu/communities/publications>

Iowa Vocational Rehabilitation Services
<http://www.ivrs.iowa.gov/>

University Center for Disabilities and Development
<https://uihc.org/ucedd/>

U.S. Social Security Administration
<https://www.ssa.gov/>

» A glossary of substitute decision-making terms used throughout this publication is available at:

<https://www.iowaaging.gov/programs-services/elder-justice-adult-protective-services/office-substitute-decision-maker>



ABOUT US

The Office of Substitute Decision Maker (OSDM) is established in Iowa Code (Chapter 231E) within the Iowa Department on Aging and strives to enhance the quality of life for Iowans who are not capable of making their own decisions about legal, financial or health care matters. The mission of the OSDM is to preserve individual independence through a person-centered process by:

- Providing education;
- Providing assistance to public and private substitute decision makers;
- When necessary, assisting in substitute decision-making proceedings; and
- Providing substitute decision-making services in the least restrictive manner.

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