

# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

***The Iowa Governor's  
Developmental  
Disabilities  
Council***

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# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**Guardianship and conservatorship are court cases that make a person or sometimes a corporation (called the guardian or conservator) a decision-maker for another person (called the ward).**

### **What Is Guardianship and Conservatorship?**

#### **General Overview**

Guardianship and conservatorship are court cases that arrange for a person, or sometimes a company (called a guardian or a conservator), to make certain decisions for another person (called the ward). A guardianship or conservatorship can be set up for a person when his or her decision making capacity is so impaired that the person is unable to care for his or her own personal safety or to provide for his or her “necessities.” The person must be at risk of physical injury or illness.

#### **Why Not Guardianship or Conservatorship?**

In our country, when we become adults we are generally able to make decisions for ourselves. We can even make decisions that others think are “wrong.” Because our right to make decisions for ourselves is such a basic freedom, it can only be taken away for a very good reason. And if there is a very good reason, the court can only take away the smallest amount of decision making necessary. The court must consider the “least restrictive alternative” or the least intrusive option when taking away a person’s rights to make decisions.

Guardianship or conservatorship is only needed if the person’s decision making is a major threat to his or her welfare. Guardianship or conservatorship should not be used simply because a person makes a decision that other people do not understand or agree with. Guardianship or conservatorship should not be used simply because the person has a certain disability or diagnosis.

The burden of proof is on the person asking the court to appoint a guardian or conservator. The person asking the court is called the petitioner. The burden of proof is the duty to prove that the person is incompetent. The court, the petitioner, and the guardian or conservator must try to strike a balance between areas where the ward just needs some assistance in doing things for him/herself and areas where the ward actually needs someone else to make decisions for him or her.

#### **What Does Incompetency Mean?**

Incompetency is when the proposed ward is unable to make decisions about care for himself or herself and there is a real risk of harm to the proposed ward. In the case of a guardianship of the person, an incompetent person is one who has:

*“a decision making capacity which is so impaired that the person is unable to care for the person’s personal safety or to attend to or provide for necessities of the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.”*

In the case of a conservatorship of the estate, an incompetent person is a person who has:

*“a decision making capacity which is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person’s financial affairs.”*

## **What is the Difference Between Conservatorship and Guardianship?**

In a conservatorship, a person or corporation (the conservator) is appointed by the court to make decisions about the property (or estate) of a ward. In a guardianship, a person or corporation (the guardian) is appointed by the court to make personal decisions for the ward. A conservatorship deals with the person’s financial decisions and a guardianship deals with non-financial decisions such as where the ward lives and what type of medical care the ward gets.

It is important to know that the words “guardian” and “conservator” have different meanings in different states. The person who is called a guardian in Iowa is sometimes referred to in other states as a “conservator of the person.” A person who is called the conservator in Iowa might be called the “guardian of the estate” some place else.

It is possible for one person to be both guardian and conservator. Guardianship and conservatorship proceedings may be combined into one court action.

## **Guardianship**

In order to set up a guardianship, the court must decide that the ward is incompetent to make personal decisions. This must be

based on facts which are proven by “clear and convincing” evidence, more and/or better proof than is needed in many civil cases. The person appointed is called the “guardian” and the person under guardianship is called the “ward.”

In a “plenary” or full guardianship, the guardian makes decisions about all of the ward’s basic needs. This is the broadest and most restrictive form of guardianship. It should be sought only when no less restrictive alternative exists.

Under Iowa law, a full or plenary guardianship is only to be set up when needed. Iowa law requires that the court decide, in all cases, whether the guardianship should be limited. This means that the guardian only gets the right to make some decisions for the ward. A guardianship can take away the ward’s right to choose where to live, the right to consent to or refuse medical treatment, and other important rights. The court has to make a separate decision about the ward’s right to vote. The court may also decide that the ward cannot marry.

The guardian has the duty to make decisions in some or all of these areas of the ward’s life. The guardian may be responsible for doing many things. The guardian may need to take reasonable care of the ward’s personal property. The guardian should assist the ward in developing maximum self-reliance and independence. The guardian may also need to make sure that the ward receives necessary emergency medical services and other professional care, counseling, and treatment. Other responsibilities may be given as well. Some things can only be done with court approval. These include moving a ward to a more restrictive residence, arranging for most major elective or non-emergency medical procedures, or consenting to withholding or withdrawal of life-sustaining procedures.

## **Conservatorship**

In order to set up a conservatorship, the court must decide that the ward is incompetent to make financial decisions. This must be based on facts that show the person is incompetent

by “clear and convincing” evidence. The person appointed is called the “conservator” and the person under the conservatorship is called the “ward.”

The conservator has the duty to protect and preserve the estate. The conservator must invest the ward’s money prudently and account for it as provided by law. To the extent the court directs, the conservator will also have the power to collect income, sell and transfer personal property, vote at corporate meetings, and receive additional property. A conservator must have court approval to do things such as invest the funds of the ward, execute leases, make certain payments, transfer real estate, compromise or settle any claim, or apply any portion of the ward’s assets to the support of any person for whom the ward is legally liable.

### **Who Acts As Petitioner?**

There are two types of conservatorship and guardianship petitions:

**Voluntary** - “Voluntary” means the proposed ward is the petitioner and asks the court to have a conservator or guardian appointed.

**Involuntary** - “Involuntary” means the petitioner is someone other than the proposed ward who feels that the proposed ward needs help.

### **Powers of a Conservator or Guardian.**

The court should only grant a guardian or a conservator the powers necessary to provide for the needs of the ward. The guardian or conservator must use the specific authority granted by the court in a manner which limits the ward’s rights and restricts his or her personal freedoms only to the extent necessary to provide needed care and services.

Neither guardians nor conservators can make decisions, or limit the ward’s freedoms, in areas which the court has not specifically granted them the authority to act. This makes sure that a guardian’s or conservator’s decisions will not

be overly protective or restrictive of the person’s rights.

A guardian or conservator does not need to pay for any service for the ward from his or her own funds. The guardian or conservator uses funds from the ward’s estate or gets federal, state, or county services to which the ward is entitled.

### **Limited Guardianship and Conservatorship.**

A limited guardianship or conservatorship is one where the conservator or guardian is given limited power. The ward retains some decision making ability. The court is required, in all cases, to consider if a limited guardianship or conservatorship is appropriate. The court is to make findings of fact to support the powers given to the guardian or conservator.

### **Standby Guardianship and Conservatorship.**

A standby petition is a type of voluntary petition. This means that a person can say in advance who should be a guardian or conservator. The person filing such a petition must be competent. The petition must state when the guardianship or conservatorship will start. The petition can do this by describing the event or condition that will trigger the need for a guardian or conservator. The petition must also say how the occurrence of these events or conditions should be proven.

### **Public vs. Private Guardianship or Conservatorship.**

A family member, friend, interested party, a non-profit corporation, or an agency may be appointed guardian or conservator for an incompetent person. Banks or trust companies can be appointed as conservators.

The court’s decision about who will be appointed as guardian depends in part on what the proposed ward wants (or would most likely have wanted), and who is available and willing to be guardian or conservator. In the case of standby petitions, the court appoints the person chosen in advance. When it comes to guardianships and



conservatorships of minors, parents are preferred over all others. If qualified parents are not available, then preference is given to a person designated in the will of parent who had custody of the minor or to any suitable and qualified person that a minor requests, if the minor is at least 14 years old.

**Public.** A public guardianship or conservatorship is any guardianship or conservatorship where the court appoints a state or county government agency to act as guardian or conservator. Iowa does not have public guardians. However, some counties hire a person who acts as a conservator or guardian for wards who have no other options. There is no Iowa law regarding how many wards can have the same guardian or the kind of contact that a guardian must have with a ward.

**Private.** A private guardianship or conservatorship is any guardianship or conservatorship where the court has appointed a private citizen, such as a family member, close friend, professional guardian or conservator, or a private agency to act as guardian or conservator.

***These materials are a general summary of the law. They are not meant to completely explain all that you should know about guardianship and conservatorship. You should see a lawyer to get complete, correct and up-to-date legal advice.***

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# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**Guardianship and conservatorship can be the most restrictive and costly options for substitute decision making. Other alternatives may work as well or better.**

### **Alternatives to Guardianship and Conservatorship**

#### **Why Not Guardianship or Conservatorship?**

Guardianship and conservatorship may take away all of someone's decision making authority. Also, they can be ended only by a court order. For these two reasons, guardianships and conservatorships are very restrictive kinds of substitute decision making tools. They can also be more costly than alternative methods, since court review is required and regular reports must be filed.

American society values independence, freedom, and the right of an individual to make his or her own decisions. Because of these values, the "least restrictive alternative" should always be considered before a guardianship or conservatorship. A guardianship or conservatorship should not be required, or used, simply because a person makes a decision that other people do not understand or like. The fact that a person has a disability or a certain diagnosis does not, mean a guardianship or conservatorship is needed.

#### **What Does "Least Restrictive Alternative" Mean?**

A least restrictive alternative is one that allows a person to make as many decisions and be as independent as possible. Some examples of alternatives are: representative payees for government benefits, joint bank accounts, advance directives for health care, or financial powers of attorney.

#### **Can Alternatives Be Planned Ahead?**

There are a number of formal and informal ways to make sure that a person's own wishes about the future are followed. No adult is too young or healthy to plan for "incapacity." Incapacity means being unable to do one or more things we normally take for granted, such as paying our bills or making our own health care decisions. Even when a plan has not been established for meeting the future needs of a person, alternatives that are less restrictive than guardianship or conservatorship should be considered. Some people may have difficulty talking about these things. However, people who are facing incapacity are often relieved to learn that there are ways for them to retain some control over their lives and to ensure their wishes will be followed.

#### **What Alternative Planning Tools are Available?**

The alternative tools include voluntary, where the person facing incapacity agrees to the arrangement. There are also involuntary tools, where another person makes the

arrangements on behalf of the person with the incapacity.

The voluntary and involuntary planning tools discussed on the following pages are generally considered to be less restrictive alternatives to a guardianship or conservatorship. If they are put in place, a guardianship or conservatorship may not be needed at all. Of course, the best choice of alternatives, including a guardianship or conservatorship, depends on individual needs and preferences.

## How Are The Tools Used?

It is wise to thoroughly understand a tool before trying to use it. The descriptions below provide a general summary of the tools. They are not a substitute for legal advice. An attorney should be consulted before making any decisions.

## Voluntary Alternatives For Personal Needs

### Community Based Services

A person may be eligible for a wide variety of community based services that would permit the person to continue meeting personal needs. The services include home nursing, home health aides, homemakers, “Meals on Wheels” (home-delivered meals), “Lifeline”(telephone service assistance), mental health services, transportation, work activity, and many others.

### Case Management

Case management can be used to assess needs, and to coordinate and monitor services for persons with many needs. Case management is available for some people with disabilities, including persons with mental retardation or mental illness and some elderly persons. Through the use of case management services, persons with more complex needs may be able to stay in their own homes.. For information on case management programs for older Iowans, contact the Iowa Department of Elder Affairs at 1-800-532-3213 or [www.state.ia.us/elderaffairs](http://www.state.ia.us/elderaffairs). For information on case management for others (for example, persons with brain injuries, mental retardation or chronic mental illness), contact the Iowa Department of Human Services.

## Health Care Facility

Sometimes a person’s needs can only be met by moving to a nursing home, residential care facility, or similar place. If a person voluntarily decides to move, a guardianship may not be needed.

## Living Will

A competent adult may sign a “living will” directing that life-sustaining procedures be withheld or withdrawn. The living will is only effective if the signer’s condition becomes terminal and if the signer is not able to make treatment decisions.

## Durable Power of Attorney for Health Care

A person can name another person (called the attorney-in-fact) to make health care decisions using a durable power of attorney for health care. This paper gives the attorney-in-fact the authority to make decisions regarding care, treatment, and health care services. A living will is limited to situations of terminal illness. A durable power of attorney for health care covers a broad range of future medical decisions.

A person appointed to act under a durable power of attorney for health care has priority over any other person, including a court appointed guardian, to make health care decisions. The attorney-in-fact has authority to make decisions only if the person is unable to make health care decisions (in the judgment of the attending physician).

## Standby Guardianship

The Iowa Code sets out a procedure for a competent adult to plan for a court-supervised guardianship. In a written petition, the person can specify that a guardian shall be appointed when certain conditions have been met. These could include particular events or the occurrence of a physical or mental condition. The petition also says how the occurrence of these events or conditions must be proven.

## Voluntary Alternatives for Financial Needs

### Banking Options

There are some simple banking options that, in some cases, can be used as alternatives to conservatorships. A person may be able to control his or her own affairs with the help of automatic payments to creditors (utilities, mortgages, and others can be routinely paid in this manner), direct deposits, or banking by mail, phone, or the Internet.

These may be useful and appropriate for some people. The person should have the ability to understand what is being done each month. This would not work for people who may become confused when their Social Security no longer arrives in the mail or who think they still have to pay creditors even though the bills are paid automatically.

Another method often used is joint bank accounts where the name of a trusted friend or family member is added to the account. Trustworthiness is very important because the joint owner has control over the money in the bank. Care must also be taken in establishing the account so that it is clear who will get the money if one person dies.

These informal options provide some useful means to handle financial needs, but provide little in the way of third-party supervision.

### Financial Powers of Attorney

This kind of power of attorney deals only with finances. A power of attorney is signed voluntarily by a competent adult (the principal) authorizing another person (the attorney-in-fact or agent) to act on his or her behalf.

A financial power of attorney can be a general document used for all authorized transactions and affairs related to property owned by the principal. It can also be limited, for example, to only cover transactions at one bank or even a single transaction. The document should also specify how long it lasts.

A competent principal can revoke or end a power of attorney at any time. It should usually be revoked in writing. Any bank, brokerage firm, or other third party who may be relying on the power of attorney should be immediately notified of the revocation.

A financial power of attorney will usually end at the time the principal becomes incompetent unless it specifically states otherwise. A power of attorney that stays in effect even if the principal becomes incompetent is called a Durable Power of Attorney. If the power of attorney is supposed to last through a time when the principal is no longer able to make decisions, then a durable power of attorney is needed.

The drawback of a financial power of attorney is that it is not supervised by a court and there are no surety, bonding, or annual accounting requirements. This creates a risk of theft or mismanagement.

### Trusts

A trust is a legal relationship in which one person (a “trustee”) holds property for the benefit of another (the “beneficiary”). The property can be any kind of real or personal property: money, real estate, stocks, bonds, collections, business interests, personal possessions, and other assets. Trusts can be useful planning tools for incapacity because they can be established and controlled by a competent person and later continue under the control of a successor trustee if the person who established the trust becomes unable to manage his/her affairs.

One person often establishes a trust for the benefit of another. This type of trust involves at least three people: the grantor or trustor (the person who creates the trust); the trustee (the person or financial institution who holds and manages the property); and the beneficiary or beneficiaries (the person(s) who receives the benefits from the trust). Trusts that can be changed or terminated at any time by the grantor are called revocable. Trusts that cannot be changed or terminated before the time specified in the trust itself are called irrevocable.

The trustee holds “legal title” to the property transferred to the trust and has the legal duty to use the property as provided in the trust agreement and as permitted by law. The beneficiaries have “equitable title,” which is the right to benefit from the property as specified in the trust.

There are several types of trusts that are used to plan for one’s own incapacity or the incapacity of another. There are also many other kinds of trusts that are used for different purposes. It is important to talk to a knowledgeable trust attorney.

### **Social Security Representative Payee**

This alternative can be voluntary on the part of a person who gets Social Security. It can also be used without the person’s consent in some cases, making it involuntary. This is discussed below under non-voluntary alternatives.

### **Standby Conservatorship**

The Iowa Code sets out a procedure for a court-supervised conservatorship. In a written petition, the person can specify that a conservator shall be appointed when certain conditions have been met. These could include particular events or the occurrence of a physical or mental condition. The petition also says how the occurrence of these events or conditions must be proved.

### **Minors**

A person having physical and legal custody of a minor child may establish a standby conservatorship on behalf of the minor. The person can specify that a conservator shall be appointed when certain conditions have been met. These could include particular events or the occurrence of a physical or mental condition. The petition can also say how the occurrence of these events or conditions should be established.

If a conservator has not been appointed, up to \$10,000 in money or property may be paid to a custodian under the *Iowa Uniform Transfers to Minors Act* (See Iowa Code Chapter 565B) . If more money is involved, a conservatorship may need to be established.

### **Voluntary Conservatorship**

An adult may ask the court to have a conservator appointed to make financial decisions. This results in a court supervised process over some or all of that person’s financial affairs.

### **Non-voluntary Alternatives For Financial Needs**

#### **Social Security Representative Payee**

Unlike the voluntary alternatives to conservatorship, a representative payee (for Social Security and SSI benefits) can be set up after the person becomes incapacitated. Representative payees might be an appropriate alternative to conservatorship if Social Security is a person’s only income and there is no need to protect other assets.

The Social Security Administration (SSA) has an application process to establish a representative payee. Even if a conservator has been appointed, the conservator must apply to become the representative payee in order to receive the checks directly.

A representative payee is appointed by the SSA for a recipient who is unable to receive and manage their own benefits due to mental or physical impairments. It can be done with or without the consent of the recipient. The recipient has several opportunities to challenge an unwanted payeeship. Once established, the payeeship can be terminated by showing that the beneficiary has regained the ability to manage the benefits.

Representative payees are to use the benefits in the recipient’s best interest. Representative payees are personally liable for misuse of funds. It may be quite difficult to prove misconduct or even locate a payee who misuses funds. Using caution in choosing a representative payee is important. It may be best to have a trustworthy relative, friend, or residential facility (nursing home or group home where the person resides) as payee. Some communities may have programs that provide volunteer representative payees through a program sponsored by AARP. These arrangements can be changed as needed.

The SSA may require periodic accountings for the benefits. The SSA may remove payees for a breach of their duties, but there is no careful oversight. A payee only has authority to handle matters relating to the Social Security benefits. The payee has no authority to handle property or income other than Social Security benefits.

Under other SSA requirements for representative payees, a payee must:

- keep records of how benefits were spent,
- submit a report of such expenditures at the request of SSA,
- report to SSA any event affecting eligibility for or amount of benefits,
- register bank accounts and investments in a manner clearly indicating that the funds belong to the beneficiary,
- monitor and report savings and investment income as countable income for SSI recipients,
- notify SSA of any change of address of the recipient,
- notify SSA if he or she is no longer able or willing to serve as payee, and
- disburse all accumulated funds and interest as directed by SSA at the termination of the payeeship.

## **Arrangements for Veterans and Railroad Retirement Benefits**

For Railroad Retirement Benefits or Veterans Benefits, payees may be used. like those for Social Security. The process for substitute payment arrangements is established by each agency. The Veterans Administration or the Railroad Retirement Board should be contacted for details and procedures to follow. As with Social Security representative payees, these arrangements should be carefully considered based on individual needs and preferences.

## **General Relief Benefits**

General relief benefits may be paid directly to a vendor (for example, rent to a landlord) if the county rules require. A person's ability to manage the grant may not matter in the county's decision.

***These materials are a general summary of the law. They are not meant to completely explain all that you should know about guardianship and conservatorship. You should see a lawyer to get complete, correct and up-to-date legal advice.***

Written November 2006 by  
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on the web at [iowalegalaid.org](http://iowalegalaid.org)  
***Funding was provided by the  
Iowa Governor's Developmental  
Disabilities Council.***

# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**It may be very difficult to decide if a guardianship or conservatorship is needed. The questions and points to consider set out in this article may help in making that decision.**

### **Determining if Guardianship or Conservatorship is Necessary**

Family members often take on informal decision making roles for a person before he or she becomes incompetent. A common example would be an adult son who assists his elderly father with personal care or financial matters. If the father's mental "capacity" is called into question due to Alzheimer's or other diseases affecting the father's decision making ability, a court order appointing the son as guardian or conservator may be needed. This would legally allow him to make decisions on behalf of his father. Other times the need for a guardian or conservator may come about very quickly, for example, as a result of a severe head injury from an accident.

### **Who Needs a Guardian or Conservator?**

Those who may need a guardian or conservator include many different types of people such as:

- a person with a developmental disability;
- a person who is mentally ill;
- a person who has experienced a stroke or a head injury which may have resulted in a mental disability;
- a person who has a disease such as Alzheimer's which affects decision making ability.

It is important to know that a person may fit into one of these categories, but not be in need of a guardian or conservator. A person's need for decision making support or for a substitute decision maker will vary. It will depend on the person's ability to make reasonable decisions about health, safety, and personal needs. There may be formal and informal support from family or friends or other resources. There may have been adequate planning to make sure that his or her needs are met.

### **Assessing the Need**

The need for support in decision making has to be assessed for each person individually. This article and the attached tool focus primarily on needs of the "person," meaning the needs for health, safety, and daily living. However, issues of the "estate," meaning how property is managed are also included.

### **What are the Criteria for Establishing a Guardianship or Conservatorship?**

To establish a guardianship or conservatorship, the court must find clear and convincing evidence that:

- The person is incompetent;
- The person needs the supervision and protection of a guardian or conservator;
- The appointment of a guardian or conservator is in the best interest of the proposed ward;

If evidence of the availability of third-party assistance is provided, then the court can consider the effect of such assistance in meeting the needs of the person and in determining whether the person is incompetent.

## How is Incompetency Determined?

Under Iowa law, an incompetent person is one who has “a decision making capacity which is so impaired that the person is unable to care for the person’s personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care without which physical injury or illness may occur.”

Under this definition, functional limitations are important in determining incompetence.

Iowa law specifically requires that the functional limitations of the proposed ward be considered.

Under Iowa law, “functional limitations” is defined as “the behavior or condition of a person which impairs the person’s ability to care for the person’s personal safety or to attend to or provide for necessities for the person.”

There are three important factors in determining incompetence:

- Decisional Capacity
- Impairment
- Functional Capacity

**Decisional Capacity.** “Decisional capacity” means a person’s ability to understand and make decisions about his or her needs.

- Is the person aware of an unmet need or inability in managing personal needs?
- Has the person been informed about, and does the person understand, the variety of alternatives available to meet these needs?
- Does the person understand and appreciate the choice made, and the potential risks and the benefits?

**Impairment.** “Impairment” generally refers to a person’s diagnosed disability or medical condition which affects the person’s decision making skills.

**Functional Capacity.** “Functional capacity” means a person’s practical ability to meet personal needs, or take necessary action to have needs met. It must be determined whether and how well the individual can perform activities to meet personal needs and how much assistance is needed with decision making.

## Using This Assessment Tool

### Purpose

This document was developed to assist in the often difficult task of deciding whether a person needs a guardian or conservator to help him or her maintain a better quality of life. The attached assessment instrument is not a test and is not a required form of the Iowa Department of Human Services or of the court. Instead, it is an informal tool to use when gathering information about a person’s capacity for making decisions to meet his or her personal needs.

The information gathered for this assessment process can be used to support the need for supervision of the proposed ward.

### Using This Assessment to Determine Functional Capacity

The assessment tool should help to weigh the quality and quantity of information received in the process of trying to protect the health and welfare of the person in need. The results of this tool may aid in deciding whether to recommend the appointment of a guardian or conservator. The aim of this tool is to assist in making sure the decision to take away the legal rights of a proposed ward is done as carefully and confidentially as possible. It is important to meet with the person more than once to properly determine functional capacity.

### Review of Related Information

In order to make sure there is sufficient information to properly complete any assessment, the following must be obtained and reviewed:



- **Social History** - Obtain a written report from social worker or interview family/friends.
- **Medical Assessment** - Obtain from person's primary physician. It should state what effect, if any, the person's medical condition and medications have on his or her decision making abilities.
- **Current Service or Care Plans** - Obtain from social worker or health or home care provider.
- Cautions When Assessing or Interpreting Assessment Results

### **Qualifying Statement for the Use of This or Any Other Assessment Tool**

- The goal in making decisions about a person's capacity should be to allow a person to make decisions for himself or herself to the fullest extent possible, even if others disagree with those decisions.
- An assessment may help you in making decisions about the use of guardianship/conservatorship in cases where no other resources exist.
- Be cautious about confusing dependency on physical assistance to perform or complete certain functions with the need for a guardian or conservator. The two are not the same.
- Look for alternatives to guardianship/conservatorship, such as: Power of Attorney (for finances), Durable Power of Attorney for Health Care Decisions, Social Security Representative Payees, and community people who might provide volunteer care if no family exists or is unwilling or unable to get involved.
- Guardianship or conservatorship affects the rights of wards. Remember that you would not freely allow others to make your decisions for you.
- Try to stand in the other person's shoes. Would you want a guardian or conservator if you were in the same situation?
- Generally, guardianship/conservatorship should not be used to control persons who choose to behave in a disruptive or uncontrolled manner.

### **Basic Considerations When Performing and Interpreting Assessments**

Keep these points in front of you as you complete each section of the assessment. Consider these points when evaluating the person's decision making abilities in each area.

- Be specific when listing or assessing an ability or skill, and needs or conditions, particularly with respect to self-sufficiency. Describe examples of the person's decision making as it relates to the specific area.
- Determine how each affects the person's functional capacity, meaning the person's ability to reasonably make sure that his or her needs and rights are met and protected to sufficiently avoid or prevent neglect/abuse/maltreatment/exploitation.
- Don't take anything for granted. Question the decisions of persons providing information to you, including doctors, social workers, lawyers, and others who make judgments about those they do not know well.
- Determine possible need for second opinions regarding medical/mental/emotional conditions/diagnoses and treatment recommendations as they affect functional capacity.
- Document clearly defines what reasonable means of formal/informal support or adaptations have been attempted to increase or maintain the person's functional capacity. Document what formal or informal supports may be necessary to assure the person achieves and maintains optimal functional capacity.

### **Final Analysis**

If, after completing this assessment, the information supports a need for guardianship or conservatorship, careful planning should occur to make sure it is the least restrictive possible. A guardianship or conservatorship plan should be developed which includes specific reasons for each power to be granted to the guardian or conservator and how services and supports will be used to help eventually restore the ward's capacity, if possible.

## Acknowledgments

The Minnesota Department of Human Services has graciously allowed this assessment tool to be used with some minor modifications.

## Assessment Tool

Name:

DOB:

Address:

Date of Assessment:

Name of Assessor:

Title/Relationship:

Names of others consulted for completion of this assessment:

Title/Relationship:

Additional evaluations/assessments reviewed as part of this assessment:

Date completed:

- Current legal status:
- Minor (age 17 or younger)
- Parent is legal guardian
- State is legal guardian
- Other person is legal guardian; name
- Other, explain

Adult (age 18 or older)

- Own legal representative
- Has valid Power of Attorney (for finances)
- Has valid Life-Sustaining Procedures Declaration (Living Will)
- Has valid Durable Power of Attorney for Health Care Decisions
- Has Social Security Representative Payee

- Has Court Appointed Guardian
- Has Court Appointed Conservator
- Other, please describe other formal or informal supports in place which this person relies on in order to meet personal or financial responsibilities

## Point to Consider

Many conditions which will affect the need for a guardianship or conservatorship are episodic in nature. It may therefore be necessary to visit the person several times.

Open Ended Comments Regarding:

Describe how the person's abilities in these areas affects his or her self-sufficiency and functional ability to make reasonable decisions to assure that his or her needs are met, rights are protected, and abuse, neglect, or exploitation are avoided. Be specific, give examples.

## A. Physical/Mental Status

### 1. Communication

Can the person speak or communicate his or her wants and needs in any manner?

Primary Language  
Secondary Language

## Expressive

### Expressive Communication is:

- Functional, understood by strangers
- Understood by familiar listeners
- Difficult to understand even by familiar listeners
- Unintelligible even to familiar listeners

### Mode of Expressive Communication:

- Spoken language
- Combination of spoken language and signs and/or gestures
- Combinations of signs and/or gestures
- Single signs and/or gestures
- Adaptive or augmentative communication aid

### Level of expressive communication:

- \_\_\_ Uses complex conversation to express abstract ideas & wants/needs
- \_\_\_ Uses simple conversation to express routine wants/needs/preferences
- \_\_\_ Uses simple two to three word phrases to communicate wants/needs/preferences: e.g. come here, give me
- \_\_\_ Uses simple single words to express needs/wants: e.g. yes, no, stop
- \_\_\_ Is able to talk but conversation or responses to questions are irrelevant or off topic
- \_\_\_ Does not have functional expressive communication

## Point to Consider

When evaluating communication skills remember that expressive skills are not a sole indicator of comprehensive skills. Consider the various options for adaptive communication aids and note why the aids have been used or cannot be used by the individual.

## Receptive

### Level of comprehension:

- \_\_\_ Comprehends complex conversation involving abstract ideas; remembers tasks/directions for 5-7 days
- \_\_\_ Comprehends simple conversation involving routine matters; remembers compound directions for at least 24 hours
- \_\_\_ Comprehends phrases, two to three words:

- come here, sit down; remembers simple two-step directions at least for an hour
- \_\_\_ Comprehends simple phrases or single words: yes, no, sit, stop; requires frequent verbal prompts to remember directions
- \_\_\_ Comprehends only with modeling prompts/gestures; requires frequent verbal & physical prompts to remember directions
- \_\_\_ Does not comprehend verbal, visual, or gestural communication; does not remember directions, requires hand-over-hand assistance to participate in activity.

## Reading/Writing Skills

### Level of literacy:

- \_\_\_ Can read complex instructions and follow through, e.g. can follow medications prescriptions instructions
- \_\_\_ Can read simple instructions and follow through, e.g. can read and/or recognizes warning labels/signs in home and community and takes appropriate action, can self-administer medications with minimal assistance
- \_\_\_ Recognizes by sight, but can't read signs/warnings in home and community, takes appropriate action, e.g. obeys stop lights and street signs, warning signs/danger signs, cannot self-administer medication – requires physical and/or verbal prompts
- \_\_\_ Has no functional reading or recognition skills

## 2. Medical

### Physical Evaluation

What are the areas of medical need? What are the known medical diagnoses/condition, if any? Are they chronic (long-term, possibly treatable, but not curable) or acute (short-term, treatable and curable)?

Be specific and list each separately based upon known diagnosis by a physician.

## Medications

What prescription medications does the person take?

If any, for what diagnosis or symptom are they prescribed? How is the medication supposed to affect that diagnosis or symptom? What is the current dose? How long has the person been on this medication? When was the last medication review? Are there are other possible treatment options to medications which could be used?

Is there regular use of non-prescription medications?

If yes, what?

## 3. Emotional/Mental Condition Orientation

### Awareness of time, date, place, persons:

- Can function independently within home, work, and community environment
- Is independently oriented to time, place, date, self, others
- Is oriented to a set daily routine and environment (bed time, meal times, work time, etc.)
- Needs occasional reminders about daily routine and environment
- Needs frequent reminders about daily routine and environment
- Needs continual assistance to function within daily routine and familiar environment
- Distinguishes between strangers, acquaintances, friends, family
- Knows which people to ask for help/ assistance

- Recognizes familiar people and remembers their names
- Responds to own name
- Is unresponsive to routine/environment/ persons

## Alcohol/Substance Abuse

Is there indication of alcohol or drug abuse? If yes, is the frequency and intensity of use known?

## Mental/Emotional Impairment

Is there a mental or emotional impairment or condition which appears to limit mental functioning and self-sufficiency? If so, how?

## 4. Behavior

Is there the ability to avoid life-threatening behavior? Be specific, list each behavior, the intensity and frequency.

- Understands own vulnerabilities to others and takes precautions
- Demonstrates, but does not identify behavior which make self vulnerable to others—can still make informed consent
- Behavior interferes with ability to make informed consent or act in own best interest—how?

## Type of behavior

Repetitive and/or Self-Stimulation. Describe.

**Verbal aggression:**

- Yells or hollers, to no specific person
- Yells and hollers towards others
- Threatens others
- Threatens to harm self

**Physical aggression towards others:**

- Physically threatening, but no contact
- Physical contact without injury
- Physical contact with minor injury
- Physical contact with major injury

**Self-injurious behavior:**

- No injury
- Minor injury
- Severe injury

**Intensity of Behavior**

- Interferes with no one
- Interferes with self only and can be ignored, may require some redirection, minor disruption
- Interferes with others, requires intervention to redirect or block behavior, major disruption
- Disrupts entire environment, requires immediate intervention, may cause serious injury (skin or tissue damage)

**Frequency of Behavior**

- 1 x/day
- 2-3 x/day
- 4-6 x/day
- 7-12 x/day
- 13+ x/day

**Point to Consider**

Remember that dependency itself is not indicative of incapacity; neither is physical infirmity, lack of mobility, or medical weakness.

**B. Independent Living Skills**

What is the person's ability to functionally attend to personal and financial needs? Does the person require any adaptations or special devices in order to perform any of these activities? For each area indicate the following:

- Performs independently or can independently direct care

- Requires minimal supervision/assistance
- Requires verbal and/or physical instruction - expected outcome is of increased functional capacity
- Requires on-going verbal and physical instruction; continued assistance likely
- Unable to participate in activity

**1. Self-Care**

What is the person's ability to functionally attend to personal physical needs?

**Nutrition**

Can the person do a minimum level in meal planning and nutrition?

Can the person make sure he or she has adequate intake of nutrition and hydration?

**Personal Hygiene/Grooming/Dental Care**

To what extent can the person make sure he or she is bathed, hair is groomed, oral hygiene is maintained?

**Toileting**

To what extent is person continent of bowel and bladder?

### **Dressing**

Is there an ability to dress, or make sure that dressing is, appropriate for occasion, function, and to maintain physical health and safety?

### **2. Personal Health**

Is there an ability to respond to health needs which endanger physical health and safety?

Yes/No

- Knows about specific health problems
- Can self-medicate, take over the counter medications
- Is a reliable reporter of pain or distress
- Can make informed consent - voluntary, informed
- Can make and keep medical appointments
- Can complete routine medical self-care
- Can choose or refuse treatments
- Understands benefits/risks of treatment

### **3. Activities of Daily Living/Household Management**

What is the person's ability to functionally perform household tasks to assure safe and healthy physical environment, e.g., food preparation, cleaning, routine tasks/chores, use of appliances/devices?

### **Shelter**

Are there potential high risk factors which may contribute to the abuse or neglect of the person?

Is there an ability to maintain/repair or to assure maintenance/repair of safe shelter?

### **Point to Consider**

A problem in one or two areas of functional capacity, does not, in and of itself, demonstrate

a need for guardianship or conservatorship. You should look at the whole person and at what supports can provide the highest level of independence.

### **Money Management**

What is the person's ability to functionally manage money to assure personal needs are met, e.g., identifies currency, counts money, pays bills, purchases needed/wanted items, saves money for future needs, uses and maintains a checking account, budgets?

- Can collect money or benefits owed to self
- Can collect some, but not all money
- Cannot collect, but can direct how it is spent
- Cannot collect or direct without assistance
- Cannot collect or direct with any level of assistance
- Understands currency, writes checks, signs checks
- Can make routine purchases - clothes, medications, bills, groceries
- Recognizes financial exploitation
- Gives money or property away to friends or family when asked to even though it is not in own best interest
- Gives money or property away to anyone who asks

### **Community Living**

What is the person's ability to functionally access and participate in community services as needed/desired, e.g., communication skills, street safety, accessing transportation, awareness of accessible community environments/ services?

### **Leisure and Recreation**

What is the person's ability to functionally perform skills necessary to participate in individual and group activities as needed/ desired, which reflect person's personal interest/ preferences in home and community e.g., choice making, expressing preferences, ability to initiate or engage in activities alone or with others?

### **Personal Safety/Self-Preservation**

What is the person's ability to protect personal health and safety?

- \_\_\_ Is capable of self-preservation; recognizes signs/warnings of danger or emergency, independently seeks safety and/or assistance without prompts
- \_\_\_ Requires verbal/physical assistance for self-preservation; will avoid or escape danger or practice safety with minimal prompts/ assistance
- \_\_\_ Is not capable of self-preservation; places or does not remove self in danger/ emergencies requires presence of another person at all times to assure health and safety

### **C. Values and Goals**

#### **Personal Desire**

What are the person's desired goals or outcomes for life?

#### **Life Perspective**

What is person's outlook on life?

### **Current Services Status**

How satisfied is the person with his or her services: medical, vocational, case management, residential, etc; would he or she like a change?

### **D. Social/Family Supports**

Does the person have regular and on-going contact and support from family, friends, case management, or social services professional care staff, direct care staff? If so, describe them. If not, explain.

List names and relationship/title of each support person, document frequency and level of support or involvement. Be specific.

With adequate information and resources could any of these people increase or modify their involvement to aid the person in meeting his or her personal needs and/or managing the estate?

### **E. Recent Stressors**

What may have occurred in the last 12 months that may temporarily be affecting the person's ability to make sure personal safety or money management ability?

### **F. Historical Lifestyle**

Emotional/Mental Condition

Physical/Medical Condition

What less restrictive alternatives or supports, formal or informal, exist which are being used to assist the person to assure personal needs and safety are met?

Environment/Living Condition

Social/Community Condition

What less restrictive alternatives have been considered and/or rejected and why?

What is the history and degree of the above?

What is the person's current understanding of guardianship process and consequences?

What impact, if any, does this have on the person's ability to meet his or her needs for personal safety and physical health; any recent changes in the person's life in the areas listed above?

What is the least restrictive guardianship/ conservatorship plan that can be developed for the person, if needed?

Does any of this warrant an intrusive intervention such as a guardianship or conservatorship? If so, how and why?

### **G. Least Restrict Decision Making Alternatives**

Is there an ability to determine and understand the impact of alternatives? Describe.

What are the person's personal desires for a guardian or conservator?



## **Powers**

Based on the results of this assessment set out in writing which powers the petitioner for guardianship or conservatorship will seek and state why:

### **1. To have custody of the ward and to establish the place of residence**

The power to determine the ward's place of residence consistent with law and the least restrictive environment consistent with the ward's best interest

### **2. Provide for care, comfort, and maintenance needs**

The duty to assure that provision has been made for the ward's care, comfort, maintenance needs, including food, shelter, health care, social, and recreational requirements and whenever appropriate, training, education, and habilitation or rehabilitation

### **3. Take reasonable care of personal effects**

The duty to take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects

### **4. Consent to medical or other professional care**

The power to give necessary consent to enable the ward to receive necessary medical or other professional care, counsel, treatment, or service

### **5. Contracts**

The power to approve or withhold approval of any contract the ward makes

### **6. Collect income and pay claims**

The power to collect all debts and claims for the ward and to make payments to or for the benefit of the ward; the power to invest and actively manage the estate of the person.

*These materials are a general summary of the law. They are not meant to completely explain all that you should know about guardianship and conservatorship. You should see a lawyer to get complete, correct and up-to-date legal advice.*

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# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**A spouse, an adult child or parent of the ward can be a guardian or conservator. Others may also be able to fill that role.**

### **Picking a Guardian or Conservator**

#### **Who Can Be Appointed as a Guardian or Conservator?**

Generally, any person, 18 years of age or older, who is a resident of Iowa and not been declared incompetent can be a guardian or conservator. Banks and trust companies and private nonprofit corporations can also be guardians or conservators. There are some exceptions set out below. Non-residents of Iowa may also be guardians or conservators in some situations.

#### **How Do You Choose a Guardian or Conservator?**

Here are some, but not all, of the factors to think about when picking a guardian or conservator:

- Does the ward prefer someone as a guardian or conservator?
- Is there regular and appropriate contact between the ward and the proposed guardian or conservator?
- Is the proposed guardian or conservator interested in advocating for the welfare and the rights of the ward?
- Does the proposed guardian or conservator understand the ward's needs in all areas of life?
- Is the proposed guardian or conservator a family member? Does this help the person carry out the job that has to be done as guardian or conservator?

#### **Are there Education, Licensing, or Certification Requirements for Guardians or Conservators?**

There are no statutory, certification, or licensing requirements or guidelines for guardians or conservators. This is the same for paid professional guardians or conservators as well as unpaid, nonprofessional guardians or conservators. The National Guardianship Association has developed written ethical guidelines and performance standards for persons who act as guardians or conservators. These may be requested from the agency at the address listed at the end of this article.

#### **Can More than One Guardian or Conservator be Appointed?**

Co-guardians or conservators can be appointed. There is no statutory limit on the number of guardians or conservators who may be appointed for a person. For practical purposes and ease in decision making, it is recommended that one, and no more than two, co-guardians or co-conservators be appointed. Generally, both conservators or guardians will have to agree on an action. However, the court can direct that decisions

could be made by one or the other of the guardians or conservators.

## **Must the Guardian or Conservator and Ward Live in the Same City or State?**

The guardian or conservator should live in Iowa. He or she must be able to know about the ward's physical and mental status and needs. The guardian or conservator must be available to carry out all the powers and duties granted to him/her by the court. The court can allow an out-of-state guardian or conservator for good cause or if a resident of Iowa is also appointed.

It can be very difficult to live far away from the ward and be able to carry out all responsibilities. An example of when to consider asking the court for a co-guardian or co-conservator is when one of the proposed guardians or conservators lives out of state or far away from the ward. The person living farther away could share the responsibilities with another person who lives closer.

## **Can a Person's Licensed Service Provider be Appointed Guardian or Conservator?**

Sometimes the person who is willing to act as the guardian or conservator is also the proposed ward's licensed service provider. At times, this may not work well for the ward. There is a significant potential for conflict of interest when a licensed service provider also acts as guardian or conservator for the same person.

A guardian or conservator makes decisions which are in the best interest of the ward. A service provider makes decisions which should benefit the client, but also benefit the service provider. When the same person is making the decisions in both of these roles, the best interest decisions on behalf of the ward can be put in direct competition with business or employment decisions of the service provider. Sometimes the law does not allow a service provider to be a guardian or conservator.

Because of the potential for problems, a licensed service provider should generally not act as a provider and guardian or conservator for the same person.

## **Can the Employee of a Licensed Service Provider be Appointed Guardian or Conservator?**

Generally, employees of license holders should not act as guardian or conservator for a person who is receiving services from the employer/license holder. This conflict may be minimized somewhat by careful planning. Employees of the license holders should NOT be used as a guardian or conservator unless:

- there is absolutely no other less restrictive alternative available for legal representation (meaning it is a choice of last resort); AND
- the employee/guardian or conservator is not directly providing care or services to his/her ward; AND
- the court has been made aware of the conflict of interest and has made a finding that such appointment presents no substantial risk for a conflict of interest.

Here are some questions to be considered in this process. They should be discussed thoroughly before proceeding with a petition:

- What is the history of the relationships between the proposed ward and the employee and/or license holder? Is there anything about these current or past relationships to indicate that the proposed ward's best interests will not be met?
- Does the employee/proposed guardian or conservator have the ability to act independently when making decisions about the services the ward receives from the employer?
- What assurances or protections for the ward regarding service provision decisions will be included as part of this guardianship or conservatorship? Is there any reason to believe such protections won't be effective to ensure that the ward will receive the services that he or she needs?

## Selecting a Professional Guardian or Conservator

If there is no person available who is willing and able to act as a guardian or conservator for an individual, it may be appropriate to consider seeking the appointment of a professional guardian or conservator. This may be especially true in cases where there is an estate to manage which can be complex and may require specialized skills or knowledge to best serve the interests of the ward.

Before selecting a professional guardian or conservator, it is recommended that information about how he or she provides services be gathered. Below are some questions that may help when making a decision about who could best meet the needs of the ward.

### Background Information

1. Is the guardian or conservator a: (Please circle one)  
Private Individual  
For-Profit Corporation  
Non-Profit Agency
2. What guardianship/conservatorship or fiduciary services do you provide? (Please circle all that apply)  
Guardian of the Person  
Conservator of the Estate  
Personal Representative Trustee  
Attorney-in-Fact  
Guardian Ad Litem
3. How many years have you been acting as a guardian, conservator or fiduciary? \_\_\_\_\_
4. Is being a guardian or conservator your primary occupation? \_\_\_ Yes \_\_\_ No  
If No, what is your primary occupation?  
If Yes, How many hours per week do you work as guardian or conservator?  
1-10 hrs.  
11-20 hrs.  
21-40 hrs.  
41+ hrs
5. Do you have any assistants? \_\_\_ Yes \_\_\_ No
6. In which counties do you work?

7. Educational background: Do you participate in any continuing education or training?  
\_\_\_ Yes \_\_\_ No If Yes, what?
8. Are you a member of any professional associations?  
National Guardianship Association (NGA)  
Other (please specify)
9. What is your philosophy regarding family member involvement in decision making?
10. Describe a typical decision making process that you use.
11. Have you ever been removed as a guardian or conservator by the court?  
Yes No If Yes, Reason?
12. Have you ever been refused bond?  
Yes No If Yes, Reason?
13. Have you ever been convicted of a felony?  
Yes No If Yes, Reason?
14. Have you ever had a dependent adult complaint substantiated against you?  
Yes No If Yes, Reason?
15. With which populations of people do you work? (Please circle all that apply)  
Persons with Dementia or Alzheimer's Disease  
Persons with Developmental Disabilities  
Persons with Mental Illness  
Persons with Chronic Alcoholism or Substance Abuse  
Others (please specify):

16. What additional related information can you provide regarding your qualifications, experience, and education as a guardian or conservator?

17. Please provide a list of three professional references.

### **Costs/Fees**

1. How do you bill your fees? Does this include travel time, other expenses?

Hourly \$ \_\_\_\_\_ /per hour

Flat Fees \$ \_\_\_\_\_ /per service

% of Income \_\_\_\_\_

% of Assets \_\_\_\_\_

2. Do you accept indigent (includes Medical Assistance recipients) clients? Yes No

What percentage of your cases are indigent?  
\_\_\_\_\_ %

### **Additional Resources**

The guardianship organization listed below has developed ethics and standards guidelines for guardians and conservators. To request a copy, write to the address listed below. There may be a fee for copies of the guidelines.

National Guardianship Association  
1604 N. Country Club Road  
Tucson, AZ 85716-3102(520)881-6561

Check their website at [www.guardianship.org](http://www.guardianship.org)

***These materials are a general summary of the law. They are not meant to completely explain all that you should know about guardianship and conservatorship. You should see a lawyer to get complete, correct and up-to-date legal advice.***

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***Funding was provided by the  
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Disabilities Council.***

# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**The following are the most frequently asked questions and answers parents have about guardianship or conservatorship.**

### **Transitions to the Future: What Parents Need to Know About Becoming Their Son's or Daughter's Guardian or Conservator**

#### **Why would a parent need to be appointed guardian or conservator of his or her adult son and daughter?**

Parents are the natural guardians for their minor children (persons age 17 years old and younger). As natural guardians, parents make a variety of decisions for their children. This includes decisions such as: 1) where their child will go to school; 2) what medical care their child will receive; and 3) in what activities their child will participate. This natural guardianship ends, however, once their child reaches the "age of majority," or adulthood (age 18 years). At that age, all children become legal adults with the right to make their own decisions.

As an adult, a person is granted certain legal and civil rights. These include the right to vote, to marry, and to sign contracts. Some individuals may lack the ability to make decisions for themselves in order to meet their personal needs and manage their finances. The individual may have had disabilities since childhood, or become a person with disabilities as an adult.

If an adult lacks the "capacity" (ability) to make decisions, he or she may need someone (a substitute decision-maker) to make decisions for him or her. The person and family members, or friends may want to consider which substitute decision making options would be best.

These options include: Power-of-Attorney for Finances, Durable Power of Attorney for Health Care, Social Security Representative Payeeship, Trusts, and many other formal and informal supports. The goal should be to preserve and protect the person's self determination and decision making independence as much as possible, and make sure his or her needs are met.

Two options that are used often are guardianships and conservatorships. These two options are discussed here. Careful assessment of the person's decision making abilities should be made before establishing any form of substituted decision making. When limiting or removing a person's legal or civil rights in any way, the least restrictive choice should always be used.

## **What is the difference between full guardianship and limited guardianship?**

In a full guardianship, the guardian is given broad powers over the ward, and makes all decisions for the person. Since most people have the ability to make some decisions (what clothes to wear, what recreational activities to participate in), this type of guardianship should not be used very often. Full guardianship is the most restrictive form of protection and should be sought only when there is no other less restrictive alternative.

In a limited guardianship, the guardian is only given decision making power in the areas of life where protection and supervision is necessary. Guardianship is used only for substitute decision making in specific areas necessary to meet the person's needs.

A limited guardianship assumes that the ward is able to make some decisions. There is no finding of general incompetence.

## **Why is limited guardianship recommended over full guardianship?**

By law, a limited guardianship must be considered in all cases because it is less restrictive than full guardianship. See Iowa Code section 633.551(3).

## **What happens if a parent does not pursue conservatorship or guardianship when it is needed?**

Finding the need for a guardianship or conservatorship is very important. Just because a parent disagrees with the decisions that an adult child makes, does not mean a guardianship is required. If a person is making decisions that could result in harm, a guardianship may be needed. Unless there is a guardianship, a parent's ability to make decisions for an adult child is limited. For example, if you are not your adult child's guardian, it may be hard to make decisions if the doctor does not believe your child has the

ability to consent to ordinary medical treatment. The doctor might refuse to treat your child, and you would not have the legal power to make the treatment happen for your child.

## **What is the difference between a guardian and conservator ?**

A guardian of the person makes personal decisions, such as where to live, and what medical, educational, or professional services a person might need.

A conservator of the estate makes financial decisions. This is usually not necessary when a person is "indigent," or has little or no property or money.

## **What are the personal costs to me in obtaining guardianship or conservatorship?**

Court fees and attorney fees can vary depending on the area of the state, who needs to be served with the court papers and whether the case is contested. The attorney and court costs for these procedures are typically paid for from the funds of the proposed ward. If a proposed ward is poor, the court may enter an order waiving payment of the court costs. The county will pay the fees charged by the ward's attorney, if the ward is poor. However, no payment from public funds is available for payment of the guardian's or conservator's attorney. As a result, the guardian's or conservator's attorney fees would be paid according to the agreement worked out between the guardian or conservator and the attorney.

## **Is a guardian or conservator responsible to provide services or pay for services or debts of the ward?**

For example, would the ward have to come to live with the guardian or must the guardian pay for services if the ward is no longer eligible for benefits, entitlements or services?

A guardian or conservator does not have to pay for any services of the ward from the

guardian's or conservator's personal funds. Services and debts are paid for out of the ward's own funds, as well as out of any governmental benefits that may be available.

The guardian or conservator should seek out federal, state, or county benefits, entitlements, and services to which the ward is entitled and make decisions about the service needs of the ward. The guardian does not have to pay for needed services.

The guardian or conservator does not have to act alone to decide which services or benefits are needed. The guardian or conservator can receive help to understand and get various benefits and services from case management, the central point coordinator employed by the county, providers and other advocates.

### **What are the ongoing legal duties and responsibilities as a guardian or conservator to the ward?**

The guardian or conservator must: know about the ward's physical and mental condition; be familiar with the ward's needs and wishes; and be available to carry out all of the powers and duties granted by the court.

The guardian should be actively involved in the following:

- plan for services (usually done with service providers, case managers, and funding personnel);
- make sure that the services meet the needs of the ward;
- make informed decisions by weighing the risks and benefits to the ward and the ward's wishes, if known.

The guardian must file an initial report within 60 days of being appointed. Also, the guardian is to report to the court every year. The report includes information about the ward's current mental and physical condition, the present living arrangement of the ward, a summary of the professional services provided to the ward, a description of the guardian's visits with and

activities on behalf of the ward and whether the guardianship is still needed. See Iowa Code section 633.669.

A conservator must:

- protect and preserve the property and money of the ward;
- invest funds prudently;
- account for the property and money of the ward;
- collect all debts and claims owed to the ward. See Iowa Code section 633.641.
- Depending upon the duties placed on the conservator by the court order, the conservator can, without prior court approval:
- collect income and enforce or defend any claim by or against the ward;
- sell and transfer personal property that is perishable or for which there is an established market;
- vote at corporate meetings;
- continue to hold any investment or property originally received until the timely filing of the first annual report.

See Iowa Code section 633.646.

With the approval of the court and unless otherwise limited by court order, a conservator shall have the following powers:

- invest funds;
- agree to leases;
- make payments to or for the benefit of the ward;
- compromise or settle a claim;
- apply any portion of income or assets for the support of any person for whose support the ward is legally liable.

See Iowa Code section 633.647.

The conservator must file an inventory of the ward's property within 60 days of the conservator's appointment. In addition, the conservator must report to the court every year. The report shall include:

- the amount of funds on hand at the close of the last accounting;



- all amounts received from any source;
- all disbursements made;
- any changes in investments;
- amount of the bond and name of the surety;
- residence of the ward;
- and general physical and mental condition of the ward.

See Iowa Code section 633.670.

## What is the scope of authority of a guardian or conservator?

The court will grant the conservator or guardian only the specific powers necessary to protect and supervise the ward. The guardian or conservator should exercise that power in a way that will maximize the ward's self-reliance and independence. The guardian or conservator must also exercise that power consistent with the authority granted by the court.

### Guardian

A guardian may make decisions about:

- care, comfort, and maintenance (food, clothing, shelter, health care, social and recreational activities, training, education);
- giving necessary consents for and ensuring that the ward receives needed professional care;
- taking reasonable care of personal property;
- ensuring the ward receives necessary emergency medical services.

A guardian may have the following powers with prior court approval:

- changing the ward's permanent residence to one more restrictive of the ward's liberty;
- arranging the provision of major elective surgery or any other non-emergency major medical procedure (certain dental and health procedures are specifically excluded from this requirement);
- consent to the withholding or withdrawal of life-sustaining procedures.

### Conservator

A conservator must:

- protect and preserve the property and assets of the ward;
- invest funds prudently;
- account for the assets of the ward;
- collect all debts and claims in favor of the ward.

A conservator shall have the following powers, unless a court limits them:

- collect income and enforce or defend any claim by or against the ward;
- sell and transfer personal property that is perishable or for which there is an established market;
- vote at corporate meetings;
- continue to hold any investment or property originally received until the timely filing of the first annual report.

A conservator shall have the following powers, if the court approves:

- enter into leases;
- make payments to or for the benefit of the ward;
- compromise or settle a claim;
- apply any portion of the ward's income or assets for the support of any person for whose support the ward is legally liable.

See Iowa Code section 633.647.

## Can co-conservators or co-guardians be appointed? If so, how many can there be?

Co-guardians can be appointed. There are no legal restrictions about the number of co-guardians that can be appointed by the court for a single person. Normally one and no more than two co-guardians should be appointed. This is because with more people it is difficult to get decisions made and come to an agreement. The guardians will have to work together. How well will they be able to do this? Generally, both conservators or guardians will have to agree on an action. However, the court could direct that decisions could be made by one or the other of the guardians or conservators.

A person who is not a resident of Iowa can be a guardian. A non-resident guardian would

usually be required to serve with a resident guardian. However, the court can decide, for good cause shown, that the nonresident may serve alone. See Iowa Code sections 633.63 and 633.64.

## When does guardianship or conservatorship end?

### Modification

At times a ward may not need as much decision making help. It is possible to modify a guardianship to allow the ward to make more decisions for himself/herself. It is also possible that a guardian may need to get more powers from the court than when the guardianship was first set up.

In either case, the court in a proceeding to modify must make specific findings when deciding whether the powers of the guardian should be increased or decreased. This decision must be based on the evidence presented and support the powers given to the guardian.

### Termination

A guardianship ends when the ward dies or when a minor reaches the age of majority. A guardianship may also end when the court decides that the ward is no longer incompetent or that the guardianship is no longer necessary for any other reason.

See Iowa Code section 633.675.

## Selecting an Attorney

Before a petitioner selects an attorney to represent him or her it is useful to get information about the attorney. Below are some questions that may be helpful when selecting an attorney for a guardianship or conservatorship petition.

### Background Information

- Do you handle guardianship or conservatorship cases? If, yes, how many cases do you take a year?
- When was your most recent case?
- In which counties do you work?
- What other information can you provide about your qualifications and experience?

- Are you familiar with the legal, health, and other issues of people with the same type of disability as the proposed ward?

### Fees/Costs

- How do you bill your fees? Hourly, flat fee, percentage of income or assets?
- Can you provide an estimate of the cost for your services to set up a guardianship/conservatorship?
- Do you provide a written agreement describing your fees, billing, and services?

### Resources

The yellow pages of phone books under Attorneys

Lawyer referral service of the Iowa State Bar Association: 1-800-532-1108

Legal Hotline for Older Iowans: provides advice and referral for Iowans 60 years of age and older: 1-800-992-8161, Des Moines area 515-282-8161

Iowa Legal Aid provides legal assistance to low-income Iowans in all Iowa counties: call 1-800-532-1275.

***These materials are a general summary of the law. They are not meant to completely explain all that you should know about guardianship and conservatorship. You should see a lawyer to get complete, correct and up-to-date legal advice.***

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# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**In this article,  
the basic steps  
to set up a  
guardianship or  
conservatorship  
are discussed.**

### **How to Set Up a Guardianship or Conservatorship**

#### **Is a Guardianship or Conservatorship Needed?**

A family member or other person helping someone must decide whether a guardianship or conservatorship is needed. The family member or other person will need the help of doctors, nurses, social workers, care givers and other people in order to make this decision. The person trying to get the guardianship or conservatorship must be able to show that the person who may need a guardianship or conservatorship (called the ward) is “incompetent.” It is not enough that a person has a mental illness. The mental illness must result in serious limits on the person’s ability to function. There should be no other less restrictive alternatives that will meet the needs of the person. (See the article “Determining if Guardianship or Conservatorship is Necessary.”) The person has the right to contest any guardianship or conservatorship.

#### **How to Get a Guardianship or Conservatorship**

An appropriate guardian or conservator is needed. A guardian or conservator may be a relative, other person or an agency. In Iowa, two or more people may be conservators or guardians. Guardians or conservators should live in Iowa. A guardian or conservator who does not live in Iowa may be appointed. The court may appoint someone who does not live in Iowa if there is also an Iowa resident appointed or if the court finds there is a good reason.

A petition stating the reason for the guardianship or conservatorship must be filed with the court. A Petition for Appointment of a Guardian or Conservator is a legal form asking the court to appoint a person or agency to act as guardian or conservator. Any person may file a petition for the appointment of a guardian or conservator. The person asking the court to set up the guardianship or conservatorship is called the “petitioner.” The petition should be filed in the county where the person who would be the ward lives.

#### **Can Persons Pick Who Will be their Guardian or Conservator?**

A person who can make some decisions can file a petition to set up a guardianship or conservatorship. That person can pick someone to serve as guardian or conservator. This is called a “voluntary” petition. An adult of “sound mind” may sign a petition

that sets up a guardianship or conservatorship on a stand-by basis. This kind of petition only goes into effect when a specific event happens or when a particular mental or physical condition exists.

## What Information has to be in the Petition?

### For a Guardianship:

The petition must state:

- name, age and post office address of the proposed ward (the person who may need the guardianship);
- the proposed ward is a person whose decision making capacity is so impaired that the person is unable to care for the person's personal safety or attend to or provide for necessities for the person such as food, shelter, clothing, or medical care without which physical injury or illness might occur;
- name and post office address of the proposed guardian
- statement that proposed guardian meets the test to be a guardian.
- the proposed ward is a resident of Iowa or present in the state;
- the proposed ward's best interests require the appointment of a guardian in Iowa;
- name and address of any person or institution having care, custody, or control of the proposed ward.

Other information is usually included in the petition. The proposed ward must get the following information:

- the actions the guardian or conservator may take without prior court approval and
- the actions the guardian or conservator may take only with prior court approval.
- the right to an attorney
- the right to have the court appoint an attorney if the proposed ward does not have money
- a guardianship or conservatorship takes away rights

### For a Conservatorship:

The petition includes the same information as needed for a guardianship. However, a petition asking for a conservator looks at the proposed ward's ability to manage financial affairs. The petition must include more information about the estimated value of the proposed ward's assets.

A single petition can ask for both a guardianship and conservatorship.

## Paying the Costs to File a Petition

There are costs to file a petition. In the case of a conservatorship, the fees would be paid out of the ward's assets. If the ward does not have enough assets, there normally is no need for a conservatorship.

In the case of a guardianship, the ward or the ward's estate would have to pay the court costs of the guardianship. A petition can still be filed if the person cannot afford to pay the filing fees. The person may ask the court to waive the filing fees. The person must show that he or she is not able to pay the fee. If the ward or the ward's estate is ever able to pay the cost, the costs are to be paid immediately.

## Notice to the Proposed Ward

After the petition is filed, the proposed ward must get notice of the case. A proposed ward must get:

- a copy of the petition;
- a notice telling the proposed ward that he or she has 20 days to file an "answer" in the lawsuit.

## The Proposed Ward's Right to Representation

A proposed ward who is an adult and who is not a petitioner has the right to legal representation. The court shall appoint an attorney to represent the proposed ward, if the proposed ward:

- does not have money or
- cannot ask to have an attorney appointed.

The costs of the attorney for a ward who does not have money shall be paid by the county where the guardianship or conservatorship was filed.

The attorney appointed to represent the ward in a guardianship has a number of duties. The attorney appointed to represent the ward must:

- Make sure that the proposed ward has been told about the guardianship;
- Make sure that the proposed ward has been told of the ward's rights in a guardianship;
- Personally talk to the proposed ward; and
- File a report stating that the attorney has complied with the requirements of the law.

The attorney must also do the following:

- Represent the proposed ward; and
- Make sure that the way the guardianship is set up meets the requirements of Iowa law.

If an order setting up a guardianship is entered, the attorney must:

- Tell the proposed ward about the effects of the order;
- Tell the ward about his or her rights to petition to change or end the guardianship; and
- Tell the ward of the rights they still have.

After a guardianship has been set up, the court may again appoint an attorney to represent the ward in any other proceedings in the guardianship case. The court does this if it is in the ward's best interest to have legal representation.

In a case where a conservatorship is set up, the proposed ward is entitled to representation in a similar way.

## **Preparing for the Hearing**

The hearing is a time for the petitioner to say why a guardianship or conservatorship should be set up. The petitioner has to show the court why it is needed.

The case may be contested if the proposed ward or some other interested person thinks there is no need for the guardian or conservator. Someone may also say that the proposed guardian or conservator will not act in the best interests of the ward. The court will have to decide.

## **Who Must Contact Witnesses and Gather Evidence?**

The petitioner or the petitioner's attorney must find witnesses who can talk about why a guardianship or conservatorship is needed. Any papers that show the ward needs help should be given to the court. The law assumes that the proposed ward is "competent." The burden of proof is on the petitioner. The petitioner must show by clear and convincing evidence that the ward is "incompetent."

## **What Kind of Information does the Court Want to Hear?**

The court will want to know about specific examples of how the proposed ward has acted in the past. The court will want to know how these past acts show that the person needs a guardianship or conservatorship. Information might include the latest psychological report, any medical reports, current service or care plans, and any other current assessments.

The petitioner is responsible for getting all of these reports and bringing them to the hearing. It is also helpful to bring someone along who can support the petitioner's statements, such as a social worker.

## **Should the Proposed Ward Attend the Hearing?**

The proposed ward should be at the hearing and has a right to be personally present at all hearings. It is possible for the proposed ward to waive the right to appear in person. In some cases, the proposed ward's medical condition may make it impossible for the ward to appear. It is strongly encouraged that the proposed ward attend the hearing.

Sometimes behavior problems may disrupt the hearing. Even then, it may be a good idea to have the proposed ward attend the hearing. The judge can see how the person acts. This may give the judge reasons to set up the guardianship or conservatorship.

## The Hearing

The petitioner has to give the court facts to show that the proposed ward needs the guardianship or conservatorship. The proposed ward can then give the court other facts to show that a guardianship or conservatorship is not needed. Usually, the court will decide the case without a jury. A person contesting the guardianship or conservatorship can ask for a jury.

After hearing the facts, the court can decide:

- A full guardianship or conservatorship is needed.
- A limited guardianship or conservatorship is needed. The court then sets out the specific powers that the guardian or conservator has.
- No guardianship or conservatorship is needed. The case is ended.

## What is a Bond and When is it Necessary?

A bond is a promise by a bonding company to pay if the conservator does not take care of the ward's money. The court may require the conservator to have a bond which is equal to the value of the estate. Each year, the conservator must continue to pay for the bond. Conservators can get a bond from any bonding company. Bonds are not required for guardianships of the person.

## After the Hearing

After the hearing, the court will enter a written order. If the court sets up a guardianship or conservatorship, additional action must be taken. If the court dismisses the petition, it is possible for the petitioner to appeal.

If the guardianship or conservatorship is set up, the ward has 30 days to appeal the order. If the ward appeals, a "stay" may be entered. A stay stops the guardian's or conservator's powers

during the appeal process. Stays are not easy to get.

## Acceptance of Appointment by the Guardian or Conservator

The proposed guardian or conservator will need to sign a paper saying that he or she will faithfully perform his or her duties.

## Letters of Appointment

The clerk of court gives the guardian or conservator letters of appointment. These papers are proof that the guardian or conservator can act for the ward. The guardian or conservator should get extra copies of the letters.

## Inventory and Appraisal

If a conservator is appointed, an inventory of the ward's property must be filed with the court within 60 days. A guardian must also file an initial report within 60 days of his or her appointment.

## Annually, After the Hearing

Each year the guardian or conservator will have to file a report.

A guardian must file an annual report unless the court says the guardian does not have to do so. Guardianship reports must include the following information:

- The current mental and physical condition of the ward
- Where the ward is living
- A summary of the medical, educational, vocational, and other professional services provided for the ward.
- The guardian's visits and activities on behalf of the ward
- Whether the guardianship is still needed.

The clerk of court may have a form for the guardian or conservator to use.

A conservator must file a report too. If additional property comes into the estate, the conservator must tell the court about this within 30 days.

Additionally, an annual accounting must be provided. The annual accounting report must include the balance of funds, income, payments made, changes in investments, and other information.

A report must be filed when a guardianship or conservatorship ends or when the conservator or guardian resigns.

***These materials are a general summary of the law. They are not meant to completely explain all that you should know about guardianship and conservatorship. You should see a lawyer to get complete, correct and up-to-date legal advice.***

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# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

### **Attorney, Court and Guardianship or Conservatorship Fees**

Filing fees can be waived if there is no money for them. They may have to be paid later if money is found. These costs, however, are small compared to the other costs which come with the filing of a petition for guardianship or conservatorship. If the ward has money, fees and costs can be paid out of the ward's funds. If the ward has no money, many of the costs of bringing a guardianship or conservatorship may be covered by the person who is trying to become the guardian or conservator. If the ward does not have enough money for these costs, the ward is "indigent."

#### **How Do You Decide If the Ward is Indigent?**

The court may find a person indigent if the person's income and resources do not exceed 150 percent of the federal poverty level. The court may also find a person indigent if the person can't pay other essential bills and pay the costs of an attorney. Essential bills would include things like food, shelter, clothing and health care.

#### **Court Fees**

Court costs are charged against the ward's estate. Court costs include court filing fees, costs for service of process, witness fees, and any other costs. The court may, if asked, enter an order waiving payment of the court costs where the ward doesn't have the money to pay for them. If the ward gets money and is able to pay, the costs that were waived must be paid.

#### **Guardianship/Conservatorship Fees**

##### **Can Conservators or Guardians Get Paid for Their Work?**

Yes. A guardian or conservator may charge a reasonable fee for work done for the ward.

If the ward has assets, the court will usually order payment from the ward. If the ward is indigent, there is no other source of money to pay the guardian or conservator. The guardian or conservator will not receive any payment.

The court decides what is reasonable compensation for the work done. The court will look at many things. These would include the difficulty of the case, the experience of the guardian or conservator and what other persons in the area might be paid for similar work.

**There are costs associated with bringing a guardianship or conservatorship case. There are filing fees and other court costs as well as the fee of the attorney who prepares the case. If the ward has assets, the court can order payment from the ward. If there are no or very little assets, then the attorney's fees and court costs must still be paid but there is no governmental source to pay for the costs.**



Fees for the attorney representing the guardian or conservator may also be charged against the ward. The court decides what is reasonable compensation for the work done by the attorney. Again, if the ward is indigent, there is no other source of funds to pay the attorney for the guardian or conservator.

The attorney, guardian or conservator must apply to the court to have the fees approved. The application must include a list of the work done. An affidavit by the attorney, guardian or conservator must state that the fees will not be divided with any other person.

### **How Does a Guardian or Conservator Keep Track of Services and Fees?**

A guardian or conservator must keep an accurate record of the work done for the ward in order to get paid for it. A guardian or conservator should keep a log which shows the date of service(s), service(s) performed and the amount of time spent.

A sample log is attached to this article. This can be used to help track services and fees.

### **Does the Ward Get an Attorney? How is that Paid For?**

Proposed wards in both guardianship and conservatorship proceedings may be entitled to be represented by an attorney. Proposed wards who are adults will have an attorney appointed, unless the proposed ward filed the petition voluntarily. An attorney for the ward can be paid directly by the proposed ward or file a claim or report with the court to recover fees and expenses. If the proposed ward is indigent or is not able to request counsel, the court shall appoint an attorney to represent the ward. The cost of court appointed counsel for indigents is paid by the county where the case is filed.

## **Sample Summary Log of Fees**

Guardian(s)/Conservator(s):

Ward:

Date:

Hours/Minutes:

Activity:

Expenses:

### **Selecting an Attorney**

Before selecting a lawyer, it is useful to gather information about the attorney. Below are some questions that may help in making the decision.

#### **Background Information**

1. Do you handle guardianship or conservatorship cases? If yes, how many cases do you take a year?
2. When was your most recent case?
3. What were the results of that case?
4. In which counties do you work?
5. What is your educational background?
6. Do you participate in continuing education or training related to guardianship or conservatorship? If yes, what trainings and when?
7. What additional related information can you provide regarding your qualifications and experience?
8. Please provide guardianship/conservatorship references.

#### **Fees/Costs**

1. How do you bill your fees? Hourly, flat fee, percentage of income or assets?
2. Can you provide a general estimate of the cost for your services to obtain a guardianship/conservatorship?
3. Do you provide a written agreement describing your fees, billing and services?

# **GUARDIANSHIP & CONSERVATORSHIP IN IOWA**

## ***Issues in Substitute Decision Making***

**A 1995 case decided by the Iowa Supreme Court had a major impact on Iowa's guardianship law.**

### **Changes to Iowa Guardianship Law**

In 1995, the Iowa Supreme Court decided an important case about guardianships, called *In Re Hedin*. In that case, the court stated that when a guardianship is set up, there is a significant loss of liberty. Because of this, the court said that the ward should have full due process rights. As a result of this case, the Iowa Legislature amended the guardianship statute. Four major changes were made to Iowa law.

#### **The Newer Standard for Deciding If a Guardianship Is Appropriate**

The old standard for deciding whether a person was incompetent and needed a guardian, was whether the person could make or carry out important decisions. Now, the court looks at how impaired the person's decision making is. Is the person unable to care for his or her personal safety? Is the person unable to attend to or provide for such necessities as food, shelter, clothing, medical care? Because of this will physical injury or illness occur? Are there others available to help the ward? Iowa law requires that the court consider a person's "functional limitations" in determining whether and what type of guardianship is needed. Functional limitations are defined as "the behavior or condition of a person which impairs the person's ability to care for the person's personal safety or to attend to or provide for necessities for the person."

#### **The New Standard for Deciding How Much Authority a Guardian Has Over a Ward**

The court must limit the guardianship as much as possible. The court should allow the ward to continue to have the legal right to make as many decisions as possible. The court must decide whether a limited guardianship is appropriate and make findings of fact to support the powers given to the guardian in all cases.

#### **The New Standard of Proof and Burden of Proof Rules**

The last two changes involve the issues of who has the burden of proof and what the standard of proof is.

Burden of proof is about who must provide evidence. The party with the burden of proof in a case has to produce evidence to prove a fact. If a party has a burden of proof and does not produce enough evidence, the party will lose on that issue.

## Resources

The yellow pages of phone books under “Attorneys.”

Lawyer Referral Service of the Iowa State Bar Association: 800-532-1108

Legal Hotline for Older Iowans: Provides advice and referral for Iowans 60 years of age and older: 800-992-8161 Des Moines area: 515-282-8161

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Under old Iowa law, the burden of proof was on the person asking to have a guardianship set up. The burden of proof was on the ward in cases where the ward was attempting to end the guardianship. Under the new standard, the burden of proof remains on the person asking for the guardianship in cases to set up a guardianship. However, in a proceeding to change or end a guardianship, the burden of proof shifts to the guardian to prove the ward is incompetent. This happens once the ward has shown that the ward has some decision making ability.

Standard of proof has to do with the amount of evidence that must be presented in order for the court to make a determination about a fact. In most civil law cases, the standard of proof is a “preponderance.” Preponderance means most of the evidence shows that something is true. It is more likely than not that a particular fact is true. In criminal cases, the highest standard of proof is used, “beyond a reasonable doubt.” If there is any reasonable doubt, the fact or guilt of the person will not be established. A third standard of proof is “clear and convincing evidence.” This standard is used in some types of civil case. This standard is higher than a preponderance of evidence, but lower than beyond a reasonable doubt.

The old standard used in guardianship cases was a preponderance of the evidence. Now in proceedings to set up, change, or end a guardianship, standard of proof for determining incompetency is “clear and convincing evidence.”

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# **GUARDIANSHIP & CONSERVATORSHIP IN IOWA**

## ***Issues in Substitute Decision Making***

**The court gives the guardian certain powers. Because of these powers, the guardian has duties to the ward.**

### **Guardianship of the Person: Powers, Duties and Responsibilities**

#### **What are Guardians Supposed to Do?**

Guardians must:

- carry out duties and responsibilities given to them by the court.
- follow limits placed on their power by the law or the court.
- know what the ward needs.
- prepare and file annual reports.

#### **What are the Limits of a Guardian's Power?**

The guardian only has the power given by the court, and no more. The court can limit the guardian's power. The court can allow the ward to keep the right to make some decisions.

Guardians' decisions can be reviewed by other interested parties and by the court. Guardians' decisions may be challenged.

#### **Powers and Duties of a Guardian**

The powers and duties of a guardian are set out in the order appointing the guardian. Usually these include the following:

##### **Provide for Care, Comfort, and Maintenance of the Ward**

The guardian makes sure that the ward's basic needs are met. This means that the ward has food, shelter, health care, people to talk to and things to do. The guardian needs to see that the ward gets training and education so that the ward can do as much as possible.

Guardians do not have to pay for these needs out of their own funds. These needs can be met through governmental benefits or services for which the ward is eligible.

Guardians should think about the following:

The guardian should:

- Visit the ward and talk with care professionals or interested parties on a regular basis. This should be done monthly or as often as needed to check on the ward's well being.
- Keep written notes about visits and other communication about the guardianship. 40

The guardian should keep records about the ward and be available for routine or emergency communications.

- Promote the care, comfort, and well-being of the ward. The guardian should know about the ward's psychological and emotional state, as well as the ward's attitude towards his or her current situation.
- Know about the ward's personal items.
- Know the ward's religious faith and church. The guardian should help the ward participate as he or she wants.

### **Establish the Place of Residence**

The guardian will often be able to decide where the ward lives. The guardian cannot change the ward's permanent residence to a more restrictive place without prior court approval. For example, prior court approval is needed to put a ward in a nursing home.

Before making a decision to change a ward's residence, the guardian should consider:

- Are the living arrangements appropriate and the least restrictive?
- Do the living arrangements reflect the ward's prior lifestyle? Is the ward satisfied with the current living arrangements?
- Do the living arrangements meet the needs of the ward with the least amount of impact on the privacy and independence of the ward?
- Are needed support services available?
- Is it clean and safe?
- If the ward lives in a care facility, is there an individual plan in place to make sure the ward's personal, recreational, and medical needs will be met.

### **Take Reasonable Care of the Ward's Clothing, Furniture, Vehicle, and Other Personal Property**

The guardian usually has to take care of a ward's personal property. The conservator can pay for and buy personal property. This is an area where the powers and duties of guardians and

conservators may overlap. A guardian usually cannot use a ward's funds. As a result, the guardian cannot buy new clothes or furniture. However, the guardian needs to take reasonable care of the ward's personal property. The guardian needs to think about whether more clothing is needed. For example a new winter coat may be needed. The guardian may need to ask the conservator for money to buy the coat or find community resources to help with getting one.

### **Consent to Medical or Other Professional Care**

The guardian usually has to agree for the ward to get necessary medical or other professional care, counseling, treatment, or services. The guardian should get enough information to be able to make a good decision.

A guardian must get prior court approval in a number of situations. These situations include:

- arranging for major elective surgery or any other non-emergency major medical procedure; and
- consenting to the withdrawal of life sustaining procedures.

For more information about these issues, see "Guardianship Decisions Needing Court Approval."

### **Assist the Ward in Developing Maximum Self-reliance and Independence**

The guardian should get the ward training, treatment, or other services that will help the ward to be as independent as possible. The guardian should think about whether special clothing or tools might let a ward get dressed with less help or get around as independently as possible.

### **What are the Annual Duties of the Guardian?**

The guardian must file an annual report with the court. A guardian must file an annual report unless the court says the guardian does not have

to do so. Guardianship reports must include the following information:

- The current mental and physical condition of the ward
- Where the ward is living
- A summary of the medical, educational, vocational, and other professional services provided for the ward.
- The guardian's visits and activities on behalf of the ward
- Whether the guardianship is still needed.

The clerk of court may have a form for the guardian or conservator to use.

The report of the guardian is reviewed and approved by a district court judge or referee. If a report is not filed on time, the court may notify the guardian.

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# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**A conservator takes care of the ward's property. A conservator's actions are reviewed by the court.**

### **Conservator of the Estate**

#### **What must the Conservator Do?**

The conservator of the estate has to take care of the ward's income and assets, invest them well, account for them, and to perform all other duties required by law. The conservator has to report to the Iowa Department of Human Services all assets and income of any ward getting state medical assistance.

#### **What Are the Limits of the Power of a Conservator?**

The conservator only has the powers that the court gives the conservator. The conservator must always be aware of the rights kept by the ward. The conservator should use his or her powers in a way which allows the ward as much independence as possible.

Conservators must remember that their decisions can be reviewed and investigated by other interested parties. This means that their decisions may be criticized and challenged.

#### **What are the Ongoing Duties of Conservators?**

The duties of conservators include:

- To carry out duties given to them by the court.
- To follow any limits placed on their powers.
- To understand the current needs of the ward. This includes knowing about the ward's physical and mental condition, treatments, care plan, and needs through regular visits with the ward and contacts with care providers.

#### **What Can the Conservator Do Without Prior Court Approval?**

The conservator has the following powers that do not require prior court approval:

- To collect, or receive any principal or income
- To pursue or defend any claim by or against the ward or the conservator.
- To sell and transfer perishable personal property and personal property with a regularly established market such as certain stocks, bonds, mutual funds and commodities.
- To vote at corporate meetings.
- To receive additional property.
- To continue to hold any investment or other property originally received by the conservator whether it is the kind of investment that the conservator as a prudent person would be allowed to invest in, until filing of the first annual report.



## When Does the Conservator Need the Approval of the Court?

In some situations, conservators must ask for a hearing and get court approval before taking actions. The court may require notice to interested parties. The court has to approve the following actions before they can be taken:

- Invest funds belonging to the ward.
- Enter into leases.
- Make payments to or for the benefit of the ward, directly to the ward or directly for the maintenance, welfare, and education of the ward, to the legal guardian of the ward, or to anyone who has custody and care of the ward.
- Apply any portion of the income for the support of someone the ward is legally liable to support.
- Compromise or sell any claim by or against the ward or conservator.
- Take an election in the estate of a deceased spouse of the ward.
- Do other things that the court decides are in the best interest of the ward.

## What are the Conservator's Duties Regarding Reports?

A conservator must file an inventory of the ward's property within 60 days of the conservator's appointment. If the conservator gets or becomes aware of additional property, another inventory must be filed within 30 days.

A conservator must file written reports and accountings on an annual basis unless the court orders otherwise. A report and accounting must be filed within 30 days after the date the conservator is removed. If the conservator resigns, a report and accounting must be provided before the resignation is accepted. A final report must be filed within 60 days after the conservatorship is ended. The court may also require reports at other times.

The clerk of court must notify the conservator in writing of the reporting requirements. The reports will be reviewed and approved by the court.

## What are the Requirements of the Reports and Accountings?

The report and accounting must cover the period of time since the last report was filed. The reports need to include information on the financial transactions which have occurred, including any changes in assets or income.

Under the statute, the reports must contain the following information:

- The balance of funds on hand at the close of the last accounting and all amounts received during the period covered by the accounting.
- All money paid out during the period covered by the accounting.
- All changes in investments since the last report, including a list of all assets and recommendations of the conservator for keeping or getting rid of any property.
- The amount of the bond and the name of the surety.
- The residence or physical location of the ward.
- The general physical and mental condition of the ward.
- Other information necessary to show the condition of the conservatorship.

The court will not enter an order approving an annual report until the court costs have been paid. However, the court may enter an order waiving the payment of court costs if the ward is indigent. If the conservatorship later becomes financially able to pay the waived costs, those costs must be paid.

## Some Practical Considerations

There are many practical considerations in being a conservator. Some of them are listed below. In carrying out duties, a conservator must always check to see whether court approval is necessary.

The conservator is responsible for keeping accurate financial records at all times. In order to do this, the following steps are recommended.

- Establish a separate conservatorship account to receive all deposits and make all payments.

- Maintain a complete and accurate record which shows all funds going through the conservatorship account.
- Seek approval from the court whenever required by law or when there is any question regarding what course of action should be taken.

One of the conservator's first duties is to take control of the ward's property. This involves doing a complete search for all assets or property of the ward. The best source of information may be the ward. If possible, review financial records with the ward, such as current bank accounts and broker statements, income tax returns, account ledgers, deeds, and insurance policies.

The conservator has the duty to pay reasonable charges on behalf of the ward. Payments should be sent out in the name of the ward. All documents signed by a conservator should state that it is being signed as conservator. This should be done to make it clear that the conservator is not personally liable. The conservator should first make sure that the service has been provided and the charge is reasonable. For a person residing at home, reasonable charges might include: payment of mortgage, rent, insurance, taxes, utilities, maintenance of the home, needed in-home services, medical services, clothing, and other personal items. For a person residing in a facility, the conservator should review the charges to make sure that they are appropriate for the level of care required. The conservator should make sure that the ward has enough money for personal spending. The medical and personal services provided should also be reviewed.

If the ward's income is not enough to meet his or her needs, the conservator may have to sell some of the ward's assets. The conservator may also have to apply for the ward to receive federal, state or county financial help or services. A guardian or a conservator has no duty or obligation to pay for any service for the ward from the conservator's own funds. The conservator should not enter into any agreements to sell properties or assets without

first consulting his or her attorney and obtaining necessary court approval.

A conservator must make appropriate decisions regarding the ward's need for insurance. Here are some questions to ask:

- Is all real property adequately insured for replacement value? Are the premiums current? Does the ward have adequate household insurance?
- Does the ward have health insurance that is cost effective?
- Is there duplicate coverage with multiple policies?
- Is the ward eligible for Medicare? Is the ward eligible for medical assistance?
- Does the ward have life insurance? Are the premiums current and is the insurance necessary?

The conservator must arrange for the care and maintenance of real estate. This could include cutting grass, snow shoveling, trash removal, furnace inspection or making sure there is adequate heating fuel. The conservator should determine who has access to the property and whether the locks should be changed. Are the real estate taxes current? Where is the abstract?

If the conservator wants to sell the principal residence of the ward, the conservator must consider whether the ward will be able to return to independent living. Before selling, the conservator should consult with his or her attorney.

The conservator must keep an adequate record of services he or she has performed, the time spent, and the expenses of performing duties. A conservator may charge a reasonable fee for providing needed services.

The conservator is responsible for filing income tax returns.

The conservator must investigate and determine all debts and claims in order to pursue collection. If there is a need to protect assets, the conservator may need to start a lawsuit.

As noted above, a conservator has authority to take many actions on behalf of the ward. However, in some cases, court approval must be obtained. In addition, the conservator should obtain competent legal and financial advice, particularly in the management of large assets and in contested or controversial situations.

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# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**A guardian or conservator is appointed to make decisions for the ward and protect the ward's rights.**

### **Rights of Wards**

A person under guardianship or conservatorship keeps any rights that are not taken by the court. A guardian or conservator should help the ward to use these rights, not prevent the ward from using these rights.

A guardian or conservator does not need to know every law, right, benefit, or service which may help the ward. There are advocacy organizations and state and local agencies in the community which can help. These organizations can provide information about various services and benefits, how to get them, and how to help the ward use the rights which he or she kept. Such organizations are usually good sources of support for family members or care givers.

### **How do these Rights Affect a Guardian's or Conservator's Decision Making?**

In making any kind of decision, the guardian or conservator should always consider the ward's wishes and beliefs before taking action. A ward has certain rights that may be affected by decisions made by the guardian or conservator. A guardian or conservator may not make decisions that restrict those rights that a ward keeps.

### **Does a Guardian or Conservator Also Act as an Advocate?**

Yes. An advocate is a person who speaks in favor of something. An advocate argues for a cause, defends beliefs, or supports a position. An advocate does these things on behalf of another person. An advocate agrees to help another person understand what his or her rights are and how to use those rights.

There are laws which are meant to protect those who cannot protect themselves. These laws often do not work unless someone takes a personal interest in a vulnerable adult's welfare and wants to help. That person acts as an advocate.

Once appointed, the guardian or conservator becomes an advocate in those areas where duties and powers are given to them.

## **When Should a Guardian or Conservator Ask For Additional Advocacy Support?**

This is a decision based on the best interests of the ward, the rights of the ward, and the duties of the guardian or conservator. The guardian or conservator should contact the parties involved and any related service providers, case managers, or social workers. The guardian or conservator should then determine each party's interest and point of view. Next, the guardian or conservator should use this information, along with any other relevant information the guardian or conservator has gathered, to make a decision about requesting advocacy support. Contacting advocacy support may help in resolving the issue as well.

Additional advocacy support can be especially useful in areas like funding questions or placement problems. Sometimes the guardian or conservator believes that the ward is not getting the services which will allow the ward to live in the least restrictive environment. Sometimes the guardian or conservator believes the ward is not getting services which will help the ward in developing maximum self-reliance and independence. If either of these happens, the guardian or conservator should consider getting additional advocacy support.

## **Does Getting the Assistance of an Additional Advocate Change the Authority of the Guardian or Conservator as Legal Decision Maker?**

No. When an additional advocate is obtained, the powers and duties of the guardian or conservator are not changed or restricted. It does not matter if the additional advocate is an attorney or lay person. Decisions must still be made by the guardian or conservator. Any additional advocates will usually take their direction from the guardian or conservator.

## **What Protection Does a Ward Have Against a Guardian or Conservator Who May be Unable or Unwilling to Properly Carry Out His or Her Responsibilities?**

A guardian or conservator appointed by the court is an officer of the court. Because the court is involved, the guardian or conservator is subject to the control and direction of the court. The ward or any other interested person should notify the court if he or she believes that the guardian or conservator is not acting in the best interest of the ward or is not carrying out his or her duties.

The ward can apply to the court to change or end the guardianship or conservatorship. The ward may also ask to have the guardian or conservator removed and a new guardian or conservator appointed. This may be necessary if the guardian or conservator is not able or willing to fulfill his or her duties. The ward may also ask to have the guardianship or conservatorship ended if it is not needed.

## **Ward's Rights under the Law**

The ward keeps all rights that the court has not given to the guardian or conservator. These rights could include the right to make health care decisions, the right to visit with persons of the ward's choice, and the right to make decisions about needed services. Iowa law does not talk about specific rights that a ward keeps. Rather, the law says a court has to make a specific finding that a ward is losing some particular rights. Included in these rights are:

- the right to vote;
- the right to decide what will happen to property upon death;
- the right to marry;
- the right to have children.

In addition to these rights, the ward has certain rights in the context of the guardianship or conservatorship. The ward has:

- the right to appeal any orders issued by the judge;
- the right to be represented by an attorney;
- the right to have an attorney appointed;
- the right to have an annual report filed, unless the court orders otherwise;
- the right to try to change or end the guardianship or conservatorship.

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# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**It can be very difficult to make decisions for another person. Here are some ideas that might help make some of those decisions.**

### **Standards and Principles of Substitute Decision Making**

When people cannot make decisions for themselves, guardians and conservators take on the very important job of making decisions for them. Acting as another person's substitute decision maker can be very rewarding. The guardian or conservator has to be careful that he or she is acting in the ward's best interest, not his or her own.

#### **Are There Guidelines for Substitute Decision Making?**

In making decisions for someone else, there are important factors to consider:

- Remember how you would like to be treated if someone were making decisions for you;
- Take actions and make decisions that encourage and allow the maximum level of independent activities of the ward;
- Exercise those powers that you are given by the court, but allow the ward to make those decisions he/she is still able to make.

In order to know what decisions to make, a guardian or conservator should:

- Get to know the ward;
- Understand any needs or problems the ward may have;
- Be able to ask questions and seek opinions about different ways to meet the needs of the ward.

The Iowa statutes do not give much guidance on making decisions for someone else. Usually, courts consider what the ward would have done if the ward was able to make the decision. This is called substituted judgment. Sometimes courts consider what is in the ward's best interest. Often using either of these standards will result in the same decision. Decisions should be made with informed consent. These concepts are explained below.

#### **What is Substituted Judgment?**

Substituted judgment means the guardian or conservator makes decisions for the ward based on how the ward would have decided for himself or herself if the ward could decide. This works best if the guardian or conservator knew the person when he or she was able to make decisions. The guardian or conservator should also review

any written statements made by the ward. The guardian or conservator should talk to the ward and others who have known the ward for a long time.

## What is Best Interest?

If the ward has always been considered incapacitated, it can be harder to figure out what the ward would do if able. An example is a person with a developmental disability. The conservator or guardian should talk to the ward. Even if the ward was able to make decisions in the past, it can be hard to know what the ward would do. When there is no good information about what the ward would do, it is proper to make a decision based on what is in the ward's best interest.

In applying a best interest standard, a guardian or conservator considers the benefits and harms to the ward of a particular act or course of action based on reasonable alternatives. The guardian or conservator then selects a reasonable alternative that provides the most benefit and least harm. The ward's wishes should also be considered. These decisions require the guardian to know enough about the ward in order to make decisions on the ward's behalf that are in his or her best interest.

## What is Informed Consent?

In making decisions for a ward, the guardian or conservator may need to consent or agree to some treatment or course of conduct. Consent should usually be informed consent. The concept is most often used in the context of health care treatment but can be used in other areas as well. "Informed consent" means that consent is valid only if the person giving the consent understands:

- the nature of what is being consented to;
- the benefits and/or the risks of harm; and
- what the available alternatives are to the ward if consent is, or is not, given.

The person giving consent should be able to give a reason for selecting a particular alternative.

Informed consent requires that the person giving consent:

- has the knowledge available to make a reasonable decision;
- has the capacity or ability to make reasoned decisions based upon information that applies to the situation; and
- is giving consent voluntarily and without coercion. That is, there is no intimidation or pressure from another person.

## Consent or Denial Checklist

Review the questions below when making a consent determination. If the answer is "no" to any of the questions, the guardian or conservator should stop and get the necessary information in order to continue with the decision making process.

- Has the court modified the ward's rights in this area?
- Does the guardian or conservator have the legal authority to make the decision?
- Does this consent require court review and approval?
- Does the guardian or conservator understand the nature of what is being consented to?
- Does the guardian or conservator understand the benefits and/or the risk of harm to the ward if consent is, or is not, given?
- Has the guardian or conservator weighed the benefits and/or the risk of harm?
- Does the guardian or conservator know about alternatives?
- Can the guardian or conservator give a reason for selecting this particular alternative?
- Has the guardian or conservator considered the ward's preferences or been able to determine what the ward would have decided if still competent?
- Has the guardian or conservator talked to any necessary experts to get their opinions?
- Are all interested parties in agreement with this decision?



- Is this decision a reasonable decision that would be made for any person regardless of disability, age, race, ethnicity, or place of residence?
- Has the guardian or conservator determined what funding resources are necessary and available to pay for this alternative?
- Is the necessary funding available?

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# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**Iowa law requires that before taking certain actions, a guardian must get approval of the court. These actions include agreeing to major elective surgery and restricting where the ward lives.**

### **Guardianship Decisions Requiring Court Approval**

#### **What Health Care Decisions can a Guardian Make?**

A guardian can make the health care decisions that the court says the guardian can make. Usually a guardian who can make health care decisions can decide whether and what kind of these services that the ward needs:

- emergency medical services,
- professional care,
- counseling,
- treatment or other services.

There are some limits. The guardian will not be able to make certain health care decisions if:

- the ward signed a valid Durable Healthcare Power of Attorney (HCPOA) or
- the ward signed a valid Living Will.

The person named in the HCPOA would have the right to make health care decisions and not the guardian. The living will says what kind of life sustaining procedures the ward wants. The ward's wishes must be followed.

A guardian is required to get prior court approval in a number of situations. These situations include:

- changing the ward's permanent residence if the new residence would be more restrictive of the ward's liberties;
- arranging for major elective surgery or any other non-emergency major medical procedure; and
- consenting to the withdrawal of life sustaining procedures.

#### **How to Ask for Court Approval**

The guardian must file a written application with the court. A hearing will be set. A notice of the hearing will be sent to the ward and other interested parties.

The guardian must give the court:

- complete details of the procedure or decision, including all risks and benefits;
- a written application asking the court to approve the procedure.

The court may appoint an attorney to represent the ward if the court decides it is in the ward's best interest. Based on the information given to the court, the court will make its decision and enter an order.

If the court approves, the guardian may carry out the decision. If the court does not approve it, the guardian will have to find other ways to meet the ward's needs.

## Changing the Ward's Residence

The ward should be able to live in the least restrictive setting possible. This means a place that gives the ward the most freedom and choices that the ward can handle. The guardian can decide that the ward should be moved to a more restrictive setting. The guardian must ask the court to approve the change before the move takes place. For example, if the ward has been living in his or her home and the guardian decides it would be best for the ward to live in a nursing home, the guardian must get court approval before moving the ward.

The ward may need to be moved because of an emergency. Court approval is not necessary in that case. Court approval would be needed if a change in placement becomes permanent.

## Major Elective Surgery and Non-Emergency Major Medical Procedures

Iowa law does not include a list of specific surgeries or procedures that require prior court approval. The statute states that the court must approve "major elective surgery" or any other "non-emergency major medical procedure." These words are not defined in the statute. This makes it difficult to decide when court approval is needed. As the risk to the ward from the procedure or surgery increases, the need for court approval would also increase. The guardian should seek court approval before making any decision about a significant medical procedure or surgery. In the case of an emergency, the guardian will not need prior court approval.

The statute also excludes two specific procedures from the need to get prior court approval. Court approval is not needed for:

- routine physical examinations and procedures under anesthesia, if the anesthesia is required because of the physical or mental disability of the ward; and
- routine dental examinations and procedures under anesthesia, if the anesthesia is required because of the physical or mental disability of the ward.

## Consenting to Stop or not Give Life Sustaining Procedures

Decisions about stopping or not giving life sustaining procedures should be made by the ward, if possible. The guardian may make the decision if:

- the guardian gets court approval; and
- the guardian has a written agreement with the doctor; and
- the ward has not signed a valid Living Will; and
- the ward cannot make the decision.

Iowa has a specific law which deals with the stopping or not giving of life sustaining procedures. Guardians must follow those rules. For more information about these issues, please look at the article "Making Decisions to Limit Medical Procedures."

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# **GUARDIANSHIP & CONSERVATORSHIP IN IOWA**

## ***Issues in Substitute Decision Making***

**The court may give a guardian the responsibility of deciding what medical treatment the ward will receive. The guardian must be sure that all decisions about medical treatment are given careful consideration. Each decision should be based on standards of informed consent.**

### **Medical Treatment Decisions**

#### **Does the Ward Participate in Medical Treatment Decisions?**

The statute does not require that the ward take part in treatment decisions when decision making authority for those decisions has been given to the guardian. However, many wards are able to understand and give preference. A ward should normally be told about the diagnosis or medical condition, treatment alternatives, prognosis with or without treatment, benefits and risks of treatments, and treatment goals.

#### **What Is Informed Consent?**

In making decisions on behalf of a ward, the guardian may need to consent to some treatment or course of conduct. Consent should usually be informed consent. "Informed consent" means that consent is valid only if the person giving the consent understands:

- the nature of what is being consented to;
- the benefits and/or the risks of harm; and
- what the available alternatives are if consent is, or is not, given.

The person giving consent should be able to give a reason for selecting a particular alternative.

Informed consent requires that the person giving consent:

- Has the knowledge available to make a reasonable decision;
- Has the capacity or ability to make reasoned decisions based upon information that applies to the situation; and
- Be giving consent voluntarily and without coercion, intimidation or pressure.

#### **How Does this Apply in Medical Emergencies?**

In a medical emergency, the guardian considers the information available at the time and uses his or her best judgment to make a decision.

#### **When Must the Court Approve Medical Treatment?**

The court must approve major elective surgery or any other non-emergency major medical procedure. These terms are not defined in the statute. As a result, it can be hard to decide if court approval is needed. Major usually means something that is not minor or minimal. Heart surgery would most likely be major surgery,

as would an operation on any vital organ. Elective surgery is optional or not required. Usually cosmetic surgery would be considered elective. Any surgery that could be postponed without danger of death or long-term health problems could be considered elective. A medical procedure could be any type of activity that requires instrumentation. For example, drawing blood would be a medical procedure, although not usually a major procedure. Routine physical examinations and procedures under anesthesia do not require court approval, if the anesthesia is required because of the physical or mental disability of the ward. Routine dental examinations and procedures under anesthesia also do not require court approval, if the anesthesia is required because of the physical or mental disability of the ward.

The court must approve sterilization procedures (permanent method of birth control). The court must approve the withholding or withdrawal of life-sustaining procedures as set out in Iowa Code Chapter 144A.

If court approval is or might be needed, guardians should consult with their attorneys. A court may appoint an attorney to represent the ward in a proceeding to approve medical treatment. If the ward objects to a particular medical treatment, it may also be appropriate to obtain court approval.

## **Can a Guardian Consent to Limit Treatment?**

A guardian can only consent to the withholding or withdrawal of life-sustaining procedures after obtaining court approval. See the handout in the series “Making Decisions to Limit Medical Procedures” for more information about this topic.

## **Can a Ward Refuse Treatment?**

If the power to make a decision has been given to the guardian by the court and any necessary court approval has been obtained, the ward does not have the right to refuse treatment. The ward may ask the court to review any decision made by the guardian. A guardian should use caution

when overriding a ward’s refusal. Less restrictive and other alternatives must be considered.

## **Medical Treatment Consent Check List**

The following questions can be used as a guideline when making medical decisions. Some may not apply to every situation. If the decision maker is unsure of the answer to any of the questions that apply, he or she may not be ready to give informed consent for a care plan or for medical treatment:

- Is the decision legally the guardian’s to make (refer to the court’s order setting out the guardian’s power)?
- Is there a regular physician? Is the physician aware of the ward’s living arrangements and current care or assistance being provided by others?
- Is the ward following the recommended medical procedures? If not, what are the reasons?
- Can the ward remember and correctly follow medical advice, medication schedules, and report warning signs of possible problems?
- Are there laws governing the requested care or treatment?
- Are there less restrictive options? What are they, and have they been considered prior to this current request?
- Has the guardian visited the ward recently? Does the situation the guardian sees reflect the facts being described to the guardian by others?
- Have the guardian and ward talked about the ward’s opinion regarding the requested care or treatment?
- Is the requested care or treatment in conflict with prior wishes expressed by the ward, either in a living will or other document or conversation?
- Has the guardian asked the opinions of the ward’s family and friends?
- Should the guardian ask the opinions of other experts such as advocates, medical specialists, psychiatrists, or others?

- Is there evidence that the care or treatment being requested discriminates against the ward? Would it be requested if the person were not elderly/developmentally disabled/mentally ill/brain injured?
- Is there agreement among the professionals that have been consulted?
- Does the guardian have the necessary information documented in writing?

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# **GUARDIANSHIP & CONSERVATORSHIP IN IOWA**

## ***Issues in Substitute Decision Making***

**A guardian may have to decide about limiting life-sustaining medical procedures. A guardian should think about these decisions before the situation becomes critical.**

### **Making Decisions to Limit Medical Procedures**

#### **What are Life-Sustaining Procedures?**

A life-sustaining procedure is a medical procedure which uses a mechanical means to prolong the dying process. Providing food and water through a feeding tube may be a life-sustaining procedure. A life-sustaining procedure does not include any treatment needed to provide comfort, care, or control pain.

#### **What is a Terminal Condition?**

A condition is terminal when there is no cure and the doctor believes it will result in death in the near future or a state of permanent unconsciousness.

#### **Who May Decide that Life-sustaining Procedures Are Not to be Provided?**

A competent adult may make a “living will” at any time directing that “life-sustaining procedures” be withheld or withdrawn. The “living will” shall be given effect only if the person’s condition is determined to be terminal and the person is not able to make treatment decisions. A living will made by a ward when he or she was competent can be used even if the person is now incompetent.

#### **What Happens If Someone is in a Coma, Has a Terminal Condition, And Does Not Have a Living Will?**

Iowa law sets out specific procedures which must be followed before life-sustaining procedures can be withdrawn or withheld. There must be a written agreement to withhold life-sustaining procedures between the physician and an individual or individuals authorized by law to act on behalf of the comatose person. The law sets out in order who can make that decision. First is a person who has durable power of attorney to make medical decisions for the patient. If no one has durable power of attorney for medical decisions, a court-appointed guardian has the authority to make the decision with court approval. If there is no person with durable power of attorney and no guardian, the law specifies, in order, who can make the decision. The list includes the spouse, children, and other relatives. Under the law, the express or implied intentions of the patient must guide whoever decides what to do.

#### **What is Comfort Care?**

Comfort care, or palliative care, is care intended to relieve pain, enhance comfort, and promote dignity and hygiene. Curing the disease is not the goal. The goal of

treatment is comfort and pain management. The patient may desire and benefit from hospice care. Hospice care addresses medical, social, and spiritual needs the patient and/or family and care givers may have. This can be provided in a variety of settings, including, but not limited to, a hospital, a nursing facility, or in the person's home.

### **What Are Artificial or Mechanical Means to Sustain, Restore, or Supplant a Spontaneous Vital Function?**

Artificial or mechanical means to sustain, restore or supplant a spontaneous vital function. This includes:

- the provision of nutrition or hydration that is provided parenterally (other than introduced through the intestine) or through intubation, such as through the nose and throat (nasogastric tube- NG tube) or through the veins (IV line);
- the use of a ventilator to assist breathing;
- heart and lung machine.
- Administering medication through the veins (IV) is not considered artificially administered nutrition or hydration.

### **When Should Discussions About Limited Treatment Occur?**

When a medical diagnosis of terminal illness has been made, discussions should begin. It is better to start before hospitalization or a medical emergency occurs. That way there is more time to make a decision.

### **What Information is Needed to Make a Limited Treatment Decision?**

These decisions must take into account several things such as: the ward's dignity and worth as a human being; whether life-sustaining treatment would extend life, preserve or restore function, relieve pain, enhance comfort, or affect the ward's present and future ability to enjoy life as defined by the ward; and the ward's preferences, values and beliefs regarding life-sustaining

treatment, if he or she is or was able to express them. A guardian should be careful about considering benefits to third parties or the cost of providing the life-sustaining procedures in question.

Since the court must approve any consent to limit treatment, the reasons for any decision should be clearly thought through and documented. The things to consider include, but are not limited to:

#### **Ward's Condition**

- What is the ward's diagnosed condition(s)?
- What is the ward's prognosis and life expectancy?
- Are there other underlying or secondary medical conditions affecting treatment options?
- Is the recommendation to limit medical procedures based on the ward's medical condition?
- Would this procedure be reasonable for a competent person with similar health and medical status?

#### **Medical Risks and Benefits**

- How likely is the procedure to benefit the ward (will it relieve pain and suffering; will it restore previous functioning levels)?
- What is the degree of the benefit of the treatment (the difference in outcome between treatment and no treatment; to what degree will it relieve pain and suffering; and to what degree will it restore functioning levels)?
- How long is the benefit of the treatment expected to last?
- Is the treatment likely to cause harm or to cause or increase pain and suffering?
- Are there alternative treatments which should be considered which may be beneficial?
- What is the likelihood that the ward will die, with or without the treatment?



- Will the treatment prolong the dying process?

### **Ward's or Family's Preferences**

- What do the ward and any near relatives think about death and dying, pain and suffering, and level of functioning?
- Do the ward or near relatives have religious concerns regarding the limitation of treatment?
- Are there any disagreements among any of the involved interested persons?

### **Other Limited Treatment Terms And Considerations**

#### **What Does DNR (Do Not Resuscitate) Mean?**

A DNR Order is an order from a doctor saying a patient is terminally ill and does not want to be revived if the heart or breathing stops. It does not mean the patient would not receive proper medical care. The patient would still be kept as comfortable and free from pain as possible. Originally, DNR Orders were often not followed unless the patient was in a hospital. A law passed in 2002 changed that. Under that law, terminally ill patients can ask the doctor to prepare an "Out-of-Hospital" DNR Order. The doctor will prepare the Order and give the patient a copy. If paramedics or other emergency personnel know about this Order, they will not revive the patient.

#### **How Should DNR and Limited Treatment Decisions Be Documented?**

The guardian must make sure that any documentation required by the hospital, nursing care facility, or other residential facility or service provider, other care or service providers, and the local emergency medical services provider is properly completed and available in emergency situations.

The guardian must make sure that each of these providers is aware of limited treatment decisions and that the declaration or agreement is in each care or service provider's chart or file for

the ward. The guardian should not assume that all service and care providers will recognize or honor a previously made DNR order or limited treatment decision made by a guardian after receiving court approval. Each provider should be asked what their policies and procedures are for responding to and following such orders.

If a provider refuses to honor such an order, the guardian should request a copy of the provider's policy which defines a person's right to challenge or appeal the decision or policy. The guardian may have to seek alternative service or care providers who will honor, or follow, the limited treatment directive or court order.

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# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**Sometimes a person with a disability may have behaviors that are disturbing, disruptive, or even potentially harmful. What can be done?**

### **Behavior Limit Interventions**

Sometimes, a person with a disability also has behaviors that are disturbing, disruptive, or even potentially harmful. When that is the case, family, guardians, care givers, and doctors may think about using behavior control interventions.

While these interventions are meant to stop the behavior in the short term, the long-term goal should be to help the person develop skills to control his or her own behavior. These interventions should always be the least restrictive and least intrusive to the ward (disabled person).

### **What are Behavior Control Interventions?**

There are a variety of interventions which are used to control behavior. These include behavior management, physical restraints, medication, or a combination of these approaches.

### **What is Behavior Management?**

Behavior management is a kind of behavior intervention. It is based on the theory that when behavior is followed by a positive and pleasurable experience, it will strengthen and increase. On the other hand, behavior followed by a negative or unpleasant experience will weaken and decrease. Behavior management is usually less restrictive and less intrusive than the use of medication to control behavior or the use of physical restraints.

### **What are the Keys to Successful Behavior Management?**

The keys to successful behavior management are making sure:

- that the behavior management plan fits the needs of the person;
- that alternative, appropriate, or positive behavior skills are being developed as part of the behavior management plan, in addition to reducing the negative or undesired behavior;
- to understand what the person may be trying to communicate through the inappropriate behavior; and
- to discover what in the person's environment may be reinforcing the unwanted behavior, causing it to continue, and then working to change that part of the environment or situation.

When considering the use of any behavior management intervention, it is important to realize that some behaviors cannot be reduced or eliminated and may actually increase.

This is most common in persons who have Alzheimer's Disease or other related dementia-type diseases. This also occurs in some people who develop permanent side effects from long-term administration of certain psychotropic medications. In these cases, the behavior management will focus more on helping the person avoid harm or danger to self and/or others, and less on reduction and elimination of the behavior.

## **When is Behavior Management Really Necessary?**

The guardian should closely follow the use of any behavior management program to make sure that it meets the needs and is in the best interest of the ward. The guardian should also be aware that such techniques may be used more for the convenience of care staff than for the best interest of the ward.

Under federal regulations for nursing homes, informed consent from the guardian must be given before the facility can restrict or deprive the person of access to an activity or property/object, or before using physical or mechanical types of restraints. For example, physical restraints, such as a "poesy" for use in a wheelchair, would be considered a mechanical restraint.

A doctor may prescribe the use of restraints for medical purposes. But there may be occasions when care staff use this type of restraint to control a person because it is easier than engaging the person in some other appropriate or needed activity.

This may happen more frequently in care facilities or by in-home care providers where care staff are untrained and underpaid, or where there are not enough staff to attend to all the people who need assistance. In any situation, the guardian must be informed about the use of the restraint and given information about how and why it is being used before giving consent for its use.

## **What Are the Ward's Rights When a Behavior Management Plan is Used?**

All licensed service providers operate under specific regulations which allow them to perform certain functions, but which also protect the rights of the person receiving the service. The guardian should become familiar with the rights related to any service the ward may receive. Also, the guardian should ask the service provider to give him/her a written copy of the rights of the person receiving their services and ask them to explain any portion which the guardian does not understand.

## **What if the Ward's Behavior is Very Challenging?**

When a person's behavior may cause immediate harm to him or herself or to others, some form of physical restraint may be used to control the behavior. This is called "aversive and deprivation" intervention. It may be used when general behavior management techniques are not enough to control dangerous or challenging behavior. Physical and mechanical restraint procedures fall under this category.

Aversive and deprivation procedures combined with positive approaches have been effective in reducing, and in some cases eliminating, challenging behavior. However, most often they serve primarily to protect the person, property, or others from harm. The use of aversive or deprivation procedures is not generally recommended unless other less-restrictive and positive methods have been tried first. They must be used under the supervision of a person trained in behavior management and behavior analysis. All parts of the behavior reduction plan must be specifically related to the person's own needs and closely monitored.

## **What, if Any, Medication is Recommended to Control Behavior?**

Any guardian who makes decisions for an individual is properly concerned with choices regarding behavior-altering medications.

These medications are called “psychotropics.” A subclass of these medications is called “neuroleptic” medications. Psychotropic medication will not necessarily solve or eliminate all problems an individual is facing. Yet it may be unfair to deprive an individual of medication which can assist in making the person’s life better. It is most important to know why the medication is being used.

## **What Happens After Consenting to the Use of Medication?**

The guardian needs to continuously monitor the use of any medication. Consenting to the use of medication is only the beginning of an ongoing process - a process which includes evaluating the effectiveness of the treatment to ensure that it is actually benefitting the person. The guardian who has been given the power to consent to medical treatment has the authority to refuse or authorize the use of medications, including psychotropics. The guardian should include all medication strategies and results in the annual report which he or she submits to the court.

### **Behavior Management Consent Checklist**

Before consenting to the use of any behavior management intervention, including aversive or deprivation procedures, make sure that there is careful planning and the least restrictive or least aversive interventions are tried first. To assist the guardian in making these decisions, a checklist has been developed. If the guardian answers “no” to many of these questions, he or she may want to reconsider the use of the behavior management intervention plan or aversive or deprivation procedures.

- Does staff have reasonable knowledge of behavior management techniques?
- If aversive and deprivation procedures are being planned, are they truly being used as a “last resort?” Have there been a number of well-designed, positive behavior management techniques that have been found unsuccessful?

- Have staff been instructed on how to develop non-aversive, positive programs for challenging behaviors?
- Have the possible side effects of medication, behavioral techniques, deprivation, and aversive intervention been fully discussed?
- Will the care-giver be able to implement these methods in the ward’s home? What will happen if the care-giver cannot or does not want to implement the programs?
- Can the behavior management procedure be used in all the settings in which the ward exhibits the behavior?
- Is the environment in which the ward resides or receives services stimulating and supportive?
- Is the guardian sure that the disruptive behaviors are not the result of frustration? Communication limitations? Lack of alternative means to express anger? Refusal? Boredom? The result of untreated illness or pain?
- Is the facility or program including the guardian in its planning for behavior management procedures?
- Have staff been instructed on how to perform the procedure?
- Do staff have resources available for consultation, such as a social worker, a psychologist, or psychiatrist?
- Does the guardian feel that the ward’s dignity is being maintained throughout both the planning process and the administration of the behavior management procedures?
- Has the ward recently experienced life events which would explain the behavior?

### **Behavior Medication Consent Checklist**

If the guardian is asked to consent to the use of medication to treat the ward’s behavior, the guardian must make sure that he or she has appropriate information in order to give informed consent. These questions may help in determining whether a guardian has sufficient information to make this decision.

- What are the specific behaviors or statements of the individual that the medication is to change? If there is a psychiatric diagnosis, what are the specific behaviors that the medication is to change?
- What information or data is recorded and collected and used to monitor the behavior in order to determine if the psychotropic medication is having its desired effect? Is the data “opinion” or actually observed behavior? Is the data shared with the guardian?
- What are the specifics of the medication - the dose, the possible dose range, the route of administration, the expected duration? How long is it to be used before deciding whether it is working or not?
- What are the side effects and risks of the medication? How are they treated? Is the person at higher risk for some of the side effects?
- How will the medication be monitored? What is the monitoring system? What specific assessment tools are used to check for side effects? How often are they used? How will the guardian be informed if side effects are observed?
- What other behavior management techniques are being used along with the use of the psychotropic medication? What kind of educational, environmental, or skill-building efforts are also in place? Have these been considered and properly addressed?
- Is the lowest effective dose of the medication being used? If attempts to lower the dosage are made, are these done very gradually in order to prevent withdrawal reactions?
- Are medication changes occurring without the guardian being informed? Are too many “emergencies” occurring and medication being started without the guardian’s consent?
- The most important question: How is the ward doing when the guardian sees the ward and observes daily activities? Is the ward participating in activities to the extent of their ability? Is the behavior still interfering with life despite the medication? Are side effects present and interfering with life activities?

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# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**A guardianship or conservatorship can be changed when a ward needs more or less help than when the guardianship or conservatorship began. A guardianship or conservatorship can be ended when the ward dies or when the ward no longer needs a guardian or conservator.**

### **Modification and Termination of Guardianship and Conservatorship**

#### **Why Modify a Guardianship or Conservatorship?**

Sometimes a conservator or guardian may need to get more powers from the court than when the conservatorship or guardianship was first set up. Sometimes the ward may get better and less powers are needed.

The way to change (modify) a guardianship or conservatorship is much the same as the way to set up a guardianship or conservatorship. A petition for “modification” is filed with the court. A hearing date is set. The interested persons may present facts at the hearing. The court must decide if a “limited” guardianship or conservatorship is right for the ward. The court must try to limit the powers of the guardian or conservator to those that are really needed.

#### **When Does a Guardianship or Conservatorship End?**

A guardianship or conservatorship ends (the statute uses the word “terminates”) when the ward dies or if the court says that the ward is able to make decisions. A ward can ask the court to end the guardianship or conservatorship. A ward can do this by filing a petition in court.

If the court ends the guardianship or conservatorship, all rights taken from the ward are returned to the ward. The ward is no longer considered “incompetent.”

The way to end the guardianship or conservatorship is much the same as the way to set up the guardianship or conservatorship. A petition to end or terminate the guardianship or conservatorship is filed with the court. A hearing date is set. Notice of the hearing is given to all interested persons. The ward has to put on some evidence to show that the ward is competent. The burden of proof then shifts to those opposing the termination to show the court by clear and convincing evidence that the ward is incompetent.

A guardianship can end even if the ward is still disabled. The facts may show that the person now has the ability to take care of personal matters and/or manage property. A person who is able to care for self or property may be considered “competent” and not need a guardian. This may be true even if the person has a mental disability.

When a ward dies, the guardian or conservator can no longer make any decisions. The guardian or conservator still has to tell the court what he or she did before the death of the ward. The guardian or conservator has to file a final paper with the court saying what he or she did. The court has to approve the accounting or report before the guardianship or conservatorship case is ended.

## **What Happens When the Guardian or Conservator has to be Changed?**

A guardian or conservator will need to be replaced if he or she dies, is removed, or resigns. A guardian or conservator may be removed for mismanagement or improper actions.

If the ward is still in need of a guardian or conservator, the court can pick a new guardian or conservator, called a “successor” guardian or conservator. The process for picking a successor guardian or conservator is similar to the other legal proceedings described above. Often, the biggest problem is finding someone to act as the conservator or guardian. The Court does not have a list of people. It is up to the people involved to offer someone as a successor guardian or conservator. Notice will be given to interested parties. A hearing may be needed to approve the successor guardian or conservator.

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# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**The following  
are frequently  
asked questions  
regarding  
guardianship  
and  
conservatorship**

### **Frequently Asked Questions About Guardianship and Conservatorship**

The following are the most frequently asked questions about guardianships and conservatorships. This information is from a series on substitute decision making prepared by Iowa Legal Aid and funded by the Iowa Governor's Developmental Disabilities Council.

#### **What is the difference between a guardian and a conservator?**

In a conservatorship, a person (the conservator) is appointed by the court to have control of the property (or estate) of a ward. In a guardianship, a person (the guardian) is appointed by the court to have control over the person of the ward. A conservatorship deals with the person's financial decisions. A guardianship deals with non-financial decisions such as where the ward lives and what type of medical care the ward gets. It is possible to have one person be both the guardian and conservator. Guardianship and conservatorship cases may be combined into one court action.

It is important to know that the words "guardian" and "conservator" have different meanings in different states. The person who is called a guardian in Iowa is sometimes referred to as a "conservator of the person." A person who is called the conservator in Iowa might be called the "guardian of the estate."

#### **What are the personal costs to me in getting a guardianship or conservatorship?**

Court fees and attorney fees can vary. It may depend on the area of the state and the persons who need to get notice of the action. Fees may increase if the action will be contested by any person. The attorney's fee and court costs for these cases are typically paid for from the funds of the proposed ward. If a proposed ward is poor, the court may enter an order waiving pre-payment of the court costs. The law provides that the county will pay the fees charged by the ward's attorney, if the ward is poor. However, public funds are generally not available for payment of the guardian or conservator's attorney, if the ward's estate cannot pay. As a result, payment of the guardian or conservator's attorney's fees would be paid according to the agreement worked out between the guardian or conservator and the attorney.



**Am I responsible to provide services or pay for services or debts of the ward out of my own personal funds? For example, would the ward have to come to live with me or must I pay for services if he or she is no longer eligible for benefits, entitlements, or services?**

A guardian or conservator has no duty or obligation to pay for any services for the ward from the guardian's or conservator's personal funds. The ward's funds pay for services and debts of the ward. Governmental benefits may also be available to pay for services.

The guardian or conservator should find federal, state, or county benefits, entitlements, and services for which the ward is eligible. The guardian or conservator makes decisions about the service needs of the person, but does not need to provide or pay for needed services. The guardian does not have to act alone to determine which services or benefits are needed or available. There are many places to get information. Case management services, the central point coordinator employed by the county, providers and other advocates can be helpful. The guardian can receive assistance to understand and figure out how to get various benefits and services available to the ward.

**What are my ongoing legal duties and responsibilities as guardian?**

In general, the guardian must know about the ward's physical and mental status, be familiar with the ward's needs and be available to carry out all of the powers granted by the court.

In order to carry out these responsibilities, the guardian should be actively involved in:

- planning for services (usually done in conjunction with service providers, case managers, and funding personnel);
- ensuring that the services that are provided meet the needs of the ward;
- making informed decisions by weighing the risks and benefits to the ward and the ward's preferences, if known.

The guardian is required to report annually to the court. The report includes information regarding the ward's current mental and physical condition and the present living arrangements of the ward. The report also includes a summary of the professional services provided to the ward, a description of the guardian's visits with and activities on behalf of the ward, and a recommendation as to whether or not the guardianship should continue.

**What is the scope of authority that I have as guardian or conservator?**

The court will grant the conservator or guardian only the specific powers necessary to protect and supervise the ward. The guardian or conservator should exercise that power in a way that will maximize the ward's self-reliance and independence. The guardian or conservator must also exercise that power consistent with the authority granted by the court.

**Guardian**

A guardian may make decisions about:

- care, comfort, and maintenance (food, clothing, shelter, health care, social and recreational activities, training, education);
- giving necessary consents for and ensuring that the ward receives needed professional care;
- taking reasonable care of personal property;
- ensuring the ward receives necessary emergency medical services.

A guardian may have the following powers with prior court approval:

- changing the ward's permanent residence to one more restrictive of the ward's liberty;
- arranging the provision of major elective surgery or any other non-emergency major medical procedure (certain dental and health procedures are specifically excluded from this requirement);
- consent to the withholding or withdrawal of life-sustaining procedures.

**Conservator**

A conservator must:

- protect and preserve the property and assets of the ward;

- invest funds prudently;
- account for the assets of the ward;
- collect all debts and claims in favor of the ward.

A conservator shall have the following powers, unless a court limits them:

- collect income and enforce or defend any claim by or against the ward;
- sell and transfer personal property that is perishable or for which there is an established market;
- vote at corporate meetings;
- continue to hold any investment or property originally received until the timely filing of the first annual report.

A conservator shall have the following powers, if the court approves:

- enter into leases;
- make payments to or for the benefit of the ward;
- compromise or settle a claim;
- apply any portion of the ward's income or assets for the support of any person for whose support the ward is legally liable.

### **Can co-guardians be appointed? If so, how many can there be?**

Co-guardians can be appointed. There are no legal restrictions about the number of co-guardians that can be appointed by the court for a single person. Normally one and no more than two co-guardians should be appointed. This is because with more people it is difficult to get decisions made and come to an agreement. The guardians will have to work together. How well will they be able to do this? Generally, both conservators or guardians will have to agree on an action. However, the court could direct that decisions could be made by one or the other of the guardians or conservators.

A person who is not a resident of Iowa can be a guardian. A non-resident guardian would usually be required to serve with a resident guardian. However, the court can decide, for good cause shown, that the nonresident may serve alone.

## **When does a guardianship end?**

### **Modification**

At times a ward may not need as much decision making help. It is possible to modify a guardianship to allow the ward to make more decisions for himself/herself. It is also possible that a guardian may need to get more powers from the court than when the guardianship was first set up.

In either case, the court in a proceeding to modify must make specific findings when deciding whether the powers of the guardian should be increased or decreased. This decision must be based on the evidence presented and support the powers given to the guardian.

### **Termination**

A guardianship ends when the ward dies or when a minor reaches the age of majority. A guardianship may also end when the court decides that the ward is no longer incompetent or that the guardianship is no longer necessary for any other reason.

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# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**The legal terms used in guardianship and conservatorship can be confusing. These definitions give information about basic terms used in guardianship and conservatorship cases.**

### **Definitions of Legal Terms**

#### **General Legal Terms**

**Affidavit** A written statement made under oath. The signature is usually witnessed by a notary public.

**Affiant** The person who makes an affidavit.

**Appeal** To bring a case before a higher court to review a decision of a lower court.

**Bond** A promise by a bonding company. The promise protects the ward (see definition below) from mismanagement by the conservator of the estate. In the event of mismanagement, the court may decide that the bond will reimburse the estate for the missing money. In that case the company that issued the bond can try to get the money back from the conservator.

**Burden of Proof** Duty of a party to prove a fact. The amount of proof required depends on the type of case. In some guardianship and conservatorship matters, the amount of proof is “clear and convincing evidence.” In others, it is probably a “preponderance of the evidence.” (Preponderance means more than half of the available evidence must support a certain decision. This is a lower standard than clear and convincing evidence.)

**Change of Venue** To move the court case from one county to another.

**Civil Lawsuit** A legal action brought to get relief for injuries or financial loss. This is different than a criminal lawsuit. Civil lawsuits are usually brought by private parties (people or companies) against other private or public parties.

**Contested** When any party objects to the petition or opposes at the hearing, the case is “contested.”

**Constitutional Rights** Rights guaranteed by the Federal or State Constitution.

**Continuance** A postponement of the hearing or trial date.

**Estate** A person’s income, assets, real estate, or any other financial holdings all make up an estate.

**Evidence** Evidence includes documents, material, or testimony presented during a legal case which are used to prove the claims made in the case.

**Guardian Ad Litem** A person appointed by a court to look after the interests of a minor or a person with a disability who is involved in a court case.

**Hearing** A hearing is a court proceeding presided over by a judge. The judge “hears” the petition or request for action that has been filed. The judge listens to the evidence presented and the arguments of the parties. Based on the evidence presented in the hearing, the judge makes findings of fact, conclusions of law, and an order based on both.

**Indigent** A person with little money and property. If a ward or proposed ward is indigent, he or she may be entitled to have an attorney appointed, at no charge to the ward. A person who is indigent may be able to file without prepaying fees or costs. This is called “in forma pauperis.”

**Litigation** Litigation is a trial and associated proceedings. A litigant is a party to a lawsuit.

**Notarize** Process where an authorized person (a notary public) verifies the signature on a document. The signing must be done in the presence of the notary.

**Oath** A sworn statement.

**Order** Decision made by a court.

**Order to Show Cause** An order requiring a person to appear and show why he or she did not comply with a previous order or why a proposed order should not be made.

**Petition** A legal paper asking for action or relief from the court. A petition is the first document filed with a court in a lawsuit. It starts the lawsuit.

**Petitioner** The person who files a petition with the court.

**Pro Se** A party who acts as his or her own attorney.

**Subpoena** An order requiring a witness to appear and testify in a court proceeding.

**Substitute Decision-Maker** A person who makes decisions regarding personal and medical issues and /or financial issues for a person who is incompetent. This can be done either informally, as a family member or friend, or formally, as a proxy, agent, guardian, or conservator,

**Testimony** Oral statements made under oath at a legal proceeding.

**Venue** The county in which legal proceeding is held.

**Witness** A person called to testify in a legal proceeding. Also a person who witnesses the signing of a legal document.

## **Guardianship/Conservatorship Legal Terms**

**Conservator** (also called Conservator of the Estate) A person appointed by the court to handle the property or estate of a ward.

**Co-conservator/Co-guardian** One of two or more people appointed to serve as decision-maker. There is no limit on the number of co-conservators or co-guardians that can be appointed. However, having more than one conservator or guardian may make decision making more complicated. The co-guardians and co-conservators will have to agree on decisions made for the ward, unless the court directs otherwise.

**Guardian** (also called Guardian of the Person) A person appointed by the court to make decisions for the person of the ward about non-financial matters such as medical treatment, education, living arrangements, etc.

**Incompetency** In the case of a guardianship, an incompetent person is one who the court has decided has a decision making capacity which is so impaired that the person is unable to care for the person’s personal safety or to attend to or provide for necessities of the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.

In the case of a conservatorship, an incompetent person is a person who the court has decided has

a decision making capacity which is so impaired that the person is unable to make, communicate, or carry out important decision concerning the person's financial affairs.

**Inventory** A conservator must make a list of all of the ward's property which the conservator has or knows about.

**Ward** The person for whom a guardian or conservator has been appointed to handle personal or financial matters.

## **Types of Conservatorships and Guardianships**

**Guardianship of the Person** This type of substitute decision making can cover all or only some decisions about a person's medical care, nutrition, clothing, shelter or residence, and other matters regarding the person, but not the person's finances. A guardianship can be full (or "general"), covering all aspects of the ward's personal life, or it can be "limited," only covering certain specific areas of the person's life.

**Conservator of the Estate** This type of substitute decision making can cover all or only some decisions about a person's finances, property, and real estate. A conservatorship can be full (or "general"), covering all aspects of the person's finances, or it may be "limited," only covering certain specific portions of the person's finances.

**Standby Conservatorship** The Iowa Code sets out a procedure for a competent adult to plan for a court-supervised conservatorship. In a written petition, the person can say that a conservator shall be appointed when certain conditions have been met. These could be a particular event or the occurrence of a physical or mental condition. The petition also says how the occurrence of these events or conditions must be proven.

**Standby Guardianship** The Iowa Code sets out a procedure for a competent adult to plan for a court-supervised guardianship. In a written petition, the person can say that a guardian shall

be appointed when certain conditions have been met. These could be a particular event or the occurrence of a physical or mental condition. The petition also says how the occurrence of these events or conditions must be proven.

### **Voluntary Guardianship or Conservatorship**

The Iowa Code permits a person to ask the court to appoint a guardian or conservator to handle the person's personal or financial affairs. A person must have the capacity to consent to the appointment of a guardian or conservator. Even in this situation, the court must decide whether a limited guardianship or conservatorship is appropriate.

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# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**Sources of  
help and  
information for  
guardians and  
conservators in  
Iowa.**

### **Resource Guide for Guardians and Conservators**

#### **Advocacy**

**Iowa Department of Elder Affairs** ([www.state.ia.us/government.dea/index.html](http://www.state.ia.us/government.dea/index.html))  
515-281-5187

#### **Adult Care Programs Area Agencies on Aging**

**Northland** – Decorah  
563-382-2941 or 800-233-4603

**Elderbridge** - Mason City  
641-424-0678 or 800-243-0678

#### **Field Offices**

Ft. Dodge 515-955-5244 or 800-543-3280

Carroll 712-792-3512 or 800-543-3265

**Northwest** - Spencer ([www.nwaging.org](http://www.nwaging.org))  
712-262-1775 or 800-242-5033

**Siouxland** - Sioux City  
712-279-6900 or 800-798-6916

**Hawkeye Valley** - Waterloo ([www.hvaaa.org](http://www.hvaaa.org))  
319-272-2244 or 800-779-8707

**Scenic Valley** – Dubuque  
563-588-3970

**Great River Bend** – Davenport  
319-324-9085 or 800-892-9085

**Heritage** - Cedar Rapids ([www.heritageaaa.org](http://www.heritageaaa.org))  
319-398-5559 or 800-332-5934

**Southwest Senior Services** - Council Bluffs  
([www.southwest8.org](http://www.southwest8.org))  
712-328-2540 or 800-432-9209

**Area XIV** - Creston  
641-782-4040

**Seneca** - Ottumwa  
641-682-2270 or 800-642-6522

**Southeast** - Burlington  
([www.southeastiowaagingservices.com](http://www.southeastiowaagingservices.com))  
319-752-5433 or 800-292-1268

**Aging Resources of Central Iowa** - Des Moines  
515-255-1310 or 800-747-5352

## Adult Protection

**Iowa Elder Abuse Hotline**  
1-800-362-2178

**Long Term Care Ombudsman**  
515-242-3324 or 800-532-3213

## Consumer

**Attorney General of Iowa - Consumer Division**  
([www.state.ia.us/government/ag/index.html](http://www.state.ia.us/government/ag/index.html))  
515-281-5926

### Better Business Bureau

Des Moines  
800-222-1600 or 515-243-8137

Bettendorf  
563-355-6344

Sioux City  
712-252-4501

**Citizen's Aide Ombudsman**  
([staffweb.legis.state.ia.us/cao/](http://staffweb.legis.state.ia.us/cao/))  
888-426-95/6 or 515-281-3592

**Funeral Consumers Alliance**  
([www.funerals.org](http://www.funerals.org))  
800-458-5563

**Iowa Department of Inspections and Appeals**  
([www.state.ia.us/government/dia/index.html](http://www.state.ia.us/government/dia/index.html))  
515-281-3642

**Iowa Utilities Board - Consumer Services**  
([www.state.ia.us/government/com/util/](http://www.state.ia.us/government/com/util/))  
877-565-4450 or 515-281-5979

**Iowa Insurance Division**  
([www.iid.state.ia.us/](http://www.iid.state.ia.us/))

Life: 515-281-8246  
Health: 515-281-4241  
Property: 515-281-4025

**Iowa Civil Rights Commission**  
([www.state.ia.us/government/crc/](http://www.state.ia.us/government/crc/))  
800-457-4416

**IRS Problem Resolution Office**  
800-829-1040

**SHIIP - Senior Health Insurance Information Program**  
([www.shiip.state.ia.us/](http://www.shiip.state.ia.us/))  
800-351-4664

**Social Security Administration**  
([www.ssa.gov/](http://www.ssa.gov/))  
800-772-1213

**Taxpayer Service/Tax Counseling for the Elderly**  
Des Moines 515-283-0523 or 800-829-1040

**Department of Veterans Affairs - Disability Programs**  
([www.va.gov/](http://www.va.gov/))  
800-827-1000 or 515-284-0219

## Employment

**Green Thumb Senior Community Service Employment Program**  
([www.experienceworks.org](http://www.experienceworks.org))  
515-243-2430

**JTPA Older Individual Program**  
515-281-9715

**Vocational Rehabilitation**  
800-432-1486

## Health

### Alzheimer's Associations

**Big Sioux Chapter - Sioux City**  
800-426-6512 or 712-279-5802

**Mid Iowa Chapter - Des Moines**  
800-738-8071 or 515-263-2464

**East Central Iowa Chapter - Cedar Rapids**  
319-398-3550

**Mississippi Valley Chapter – Davenport**  
800-448-3650 or 563-324-1022

**Heart of Iowa Chapter – Ames**  
515-733-6038

### Medicare Consumer Helpline

800-752-7014

### Medicare Part A (specific cases)

877-910-8139 or 515-471-7200

### Medicare Part B

800-532-1285

### Durable Medical Equipment

800-899-7095

### Iowa Hospice Organization

515-243-1046

## Legal Assistance

### Iowa State Bar Association

#### Lawyer Referral Service

800-532-1108 or 515-280-7429

### Iowa Legal Aid

[www.iowalegalaid.org](http://www.iowalegalaid.org)

800-532-1275 or (Español) 800-272-0008

### Legal Hotline for Older Iowans

800-992-8161 or 515-282-8161

### Senior Citizens Legal Clinic

#### Drake University Law School

515-271-3851

### Mental Health Alliance for the Mentally Ill

515-254-0417

### ARC of Iowa

515-283-2358

### Iowa Association of Community Providers

515-270-9495

### Iowa Protection & Advocacy Services

800-779-2502 or 515-278-2502

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