

Guardianship and 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 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 Health Care Power of Attorney (HCPOA) or
- The ward signed a valid Living Will.

A HCPOA designates someone to make health care decisions for the ward if the ward is not able to make those decisions. The person named in the HCPOA would have the right to make health care decisions for the ward even if there is a guardianship. The guardian would not be able to make those decisions. A 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 for the ward;
- Arranging for major elective surgery or any other non-emergency major medical procedure; and
- Consenting to the withdrawal of life-sustaining procedures.

What Decisions Can a Guardian Make About Communication, Visitation, and Interaction?

An adult ward under a guardianship has the right to communicate, visit, and interact with other persons.

- The right is not unlimited. The ward has to want to communicate, visit or interact with someone. The guardian, without court approval, can place reasonable time, place, or manner restrictions on the communication, visitation, or interaction.
- However, a guardian must get court approval and show good cause in order to deny an adult ward all communication, visitation, or interaction with a person with whom the adult ward has expressed a desire to communicate, visit, or interact or with a person who seeks to communicate, visit or interact with the adult ward.

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 request, 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 as much freedom and as many choices as 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.

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 that 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."

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. Iowa's law on guardianship and conservatorship is found in Iowa's Probate Code starting at section 633.551.



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