

# Guardianship and Conservatorship in Iowa

## Issues in Substitute Decision-Making

There may come a time when a guardian will have to decide about limiting life-sustaining medical procedures for the protected person.

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

There may come a time when a guardian will have to decide about limiting life-sustaining medical procedures for the protected person. A guardian may find it helpful to think about how to make these decisions before the situation becomes critical.

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

A life-sustaining procedure is a medical procedure, treatment, or intervention that uses a mechanical or artificial means that serves only 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A competent adult may make a “living will” at any time directing that “life-sustaining procedures” be withheld or withdrawn.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 protected person 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Iowa law sets out specific procedures that must be followed before life-sustaining procedures can be withdrawn or withheld.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 caregivers 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 include:

- 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 machines.

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 protected person's dignity and life as a human being; whether life-sustaining treatment would extend life, preserve or restore function, relieve pain, enhance comfort, or affect the protected person's present and future ability to enjoy life as defined by the protected person; and the protected person'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:

### Protected Person's Condition

- What is the protected person's diagnosed condition(s)?
- What is the protected person'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 protected person'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 protected person (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 that should be considered that may be beneficial?
- What is the likelihood that the protected person will die, with or without the treatment?
- Will the treatment prolong the dying process?

### Protected Person's or Family's Preferences

- What do the protected person and any near relatives think about death and dying, pain and suffering, and level of functioning?
- Do the protected person 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, 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 protected person. 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 that 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.

### **Iowa Physician Orders for Scope of Treatment (IPOST)**

Iowa has a health care form for patients making decisions about end-of-life health care treatment. This is called Iowa Physician Orders for Scope of Treatment (IPOST).

The form makes the full range of a patient's end-of-life health care wishes clearer with complete

information in one place. It is to be available to all a patient's health care providers in all medical settings. This is to make sure the patient's wishes are carried out no matter where the patient is getting care or treatment.

- IPOST is for use by persons who are frail and elderly or have a chronic, critical medical condition or a terminal illness.
- It does not replace a Durable Power of Attorney for Health Care, living will or Out-of-Hospital Do-Not-Resuscitate Order which a person may already have. These decisions would be included in the IPOST form.
- The form is prepared by the patient's physician, nurse practitioner, or physician's assistant with the patient's help.
- The completed form contains medical orders to carry out the patient's wishes for end-of-life medical care.

The form is not yet in wide use. The patient should ask their doctor, nurse practitioner, or physician's assistant about completing the IPOST form. The form and more information about IPOST can be found on the Iowa Department of Public Health website.

<http://idph.iowa.gov/ipost>

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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.