

# Guardianship and Conservatorship in Iowa

## Issues in Substitute Decision-Making

It may be very difficult to decide if a guardianship or conservatorship is needed.

### **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 the son to make decisions on his father's behalf. 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 has a mental illness;
- A person who has experienced a stroke or a head injury which has resulted in a mental disability;
- A person who has a disease such as Alzheimer's which affects decision making ability.

A person may fit into one of these categories, but not need a guardian or conservator. A person's need for decision-making support or for a substitute decision-maker 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.

## 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.
- There is no appropriate less restrictive alternative

The court will consider the availability of third-party in meeting the needs of the person.

## 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 provide for necessities 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 limitation” 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.”

Three 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?
- Is the person able to express a choice?

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.

## How to Determine the Need for Guardianship or Conservatorship

There needs to be a comprehensive evaluation or assessment of a person’s ability to make decisions to care for oneself. The assessment must address many areas.

- Medical: This assessment would be done by a physician or other medical professional. This would include diagnoses, medications and their affects, and treatment and prognosis for the impairments.
- Behavioral: This assessment could be done by a psychologist, care provider, or other behavioral professional. This would address how behavior may affects a person’s ability to make decisions.

- **Social History:** This assessment should be completed by the person, family members, and the social services provider. It would include the person's background with past and present decision-making skills, what led to the possible need for guardianship or conservatorship, and the person's view about a guardianship or conservatorship.
- **Intelligence:** An intelligence test may be completed by a psychologist or psychiatrist with an assessment of decisional capacity for personal and financial needs.

### **Court-ordered Professional Evaluation**

At or before a hearing, the court must order a professional evaluation of the respondent unless the court finds it has sufficient information to decide that a guardianship or conservatorship is needed or if a professional evaluation has already been filed. Even if a professional evaluation has been filed, the court may decide that an additional evaluation will assist the court and order another evaluation. If a report is ordered, it must include certain information such as a description of the respondent's cognitive and functional abilities, evaluation of the respondent's condition as well as prognosis for improvement, and recommendation for an appropriate treatment, support or habilitation plan. Unless the court orders otherwise, the cost of the evaluation will be paid by the respondent or, if the respondent is indigent, by the county where the case is pending.

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.

Updated Oct 2023

By Iowa Legal Aid  
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1-800-532-1503  
Funding was provided by the  
Iowa Developmental  
Disabilities Council

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