

Guardianship and 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 guardians or conservators have to be careful that they are acting in the protected person's best interest, not their own interest.

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 was making decisions for you;
- Take actions and make decisions that encourage and allow the maximum level of independent activities of the protected person;
- Exercise those powers that you are given by the court, but allow the protected persons to make decisions they are still able to make.

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

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

The Iowa statutes do not give much guidance on making decisions for someone else. Usually, courts consider what the protected person would have done if the protected person was able to make the decision. This is called substituted judgment. Sometimes courts consider what is in the protected person'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 make decisions for the protected persons based on how the protected persons would have decided for themselves if able. 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 protected person. The guardian or conservator should talk to the protected person and others who have known the protected person for a long time.

What is Best Interest?

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

In applying a best interest standard, a guardian or conservator considers the benefits and

harms to the protected person 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 protected person's wishes should also be considered. These decisions require the guardian to know enough about the protected person in order to make decisions on the protected person's behalf that are in their best interest.

What is Informed Consent?

In making decisions for a protected person, the guardian or conservator may need to consent or agree to some treatment or course of action. 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 protected person 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, 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 protected person’s rights in this area?
- Does the guardian or conservator have the legal authority or court approval needed to make the decision?
- 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 protected person 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 protected person’s preferences or been

able to determine what the protected person 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?

Additional Resource

The National Guardianship Association listed below has developed ethics and standards of practice for guardians and conservators. This information is available on its website.

National Guardianship Association
174 Crestview Drive
Bellefonte, PA 16823
Phone: 877-326-5992
Fax: 814-355-2452

Website: www.guardianship.org

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By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
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IOWA DD Council
Preparation, Participation, Power

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.