

# Guardianship and Conservatorship in Iowa

## Issues in Substitute Decision-Making

Before taking certain actions, a guardian must get prior approval of the court.

### Guardianship Decisions Requiring Court Approval

Based on the evidence produced at the guardianship hearing, the court may grant a guardian a range of powers and duties which may be carried out without prior court approval. These are decisions on care, maintenance, health, education, and safety of the protected person. This includes health care decisions and establishing a protected person's permanent residence. For a broad overview of the guardian's role in making decisions, see the section "Guardianship of the Person: Powers Duties and Responsibilities."

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### What Health Care Decisions Can a Guardian Make?

A guardian can consent to and arrange for medical, dental, and other health care treatment and services for the protected person except as otherwise limited by the court or requiring prior court approval.

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

- The protected person has named someone other than the guardian to make health care decisions under a valid Durable Health Care Power of Attorney (HCPOA) or
- The protected person has a valid Living Will.

A HCPOA designates someone to make health care decisions for the protected person if the protected person is not able to make those decisions. The person named in the HCPOA would have the right to make health care decisions for the protected person even if there is a guardianship. The guardian would not be able to make those decisions. A living will states what kind of life sustaining procedures the protected person wants. The protected person's wishes must be followed.

## **Prior Court Approval Required for a Guardian to Consent to the Following:**

- The withholding or withdrawal of life-sustaining procedures from the protected person under Iowa Code Chapters 144A or 144D.
- The performance of an abortion on the protected person.
- The sterilization of the protected person.

## **Other Decisions Requiring Prior Court Approval:**

A guardian is required to get prior court approval for:

- Changing the protected person's permanent residence to a nursing home, other secure facility, or secure portion of a facility that restricts the protected person's ability to leave or have visitors, unless advance notice of the change was included in the guardian's initial care plan that was approved by the court.
- Denying all communication, visitation, or interaction by the protected person with a person whom the protected person has expressed a desire to communicate, visit, or interact or with a person who seeks to communicate, visit, or interact with the protected person.

## **Changing the Protected Person's Residence**

The protected person should be able to live in the least-restrictive setting possible. This means a place that gives the protected persons as much freedom and as many choices as the protected person can handle. In an emergency situation, the court will review the request for approval on an expedited basis.

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

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

- The right is not unlimited. The protected person 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 protected person all communication, visitation, or interaction with a person with whom the adult protected person has expressed a desire to communicate, visit, or interact or with a person who seeks to communicate, visit or interact with the adult protected person.

## **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 protected person 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 or decision.

The court may appoint an attorney to represent the protected person if the court decides it is in the protected person'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 protected person's needs.

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 section "Making Decisions to Limit Medical Procedures."

There are other rights that cannot be taken away from a protected person without specific court action. This includes the right to vote and the right to marry. See the section "Rights of the Protected Person" for more information about these rights.

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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