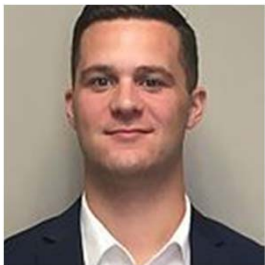


Legal Considerations for Medical Providers Regarding Guardianship and Power of Attorney



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We have no financial relationships to disclose



Guardian

A person appointed by the Court to make decisions for another person regarding non-financial matters such as medical treatment, education, living arrangements, etc.



Important Changes to Definitions

- Protected Person: A person subject to a guardianship (previously referred to as Ward)
- Fiduciary: A person who holds a legal or ethical relationship with one or more other parties and is obligated to put such person's interests ahead of the fiduciary's interests
- Attorney for the Respondent/Protected Person: represents wishes of individual
- Court Visitor: Person appointed by the Court to represent the Protected Person's "best interests" (f/k/a Guardian ad Litem)
- Agent/Attorney-in-fact: individual designated by a durable power of attorney for health care decisions on behalf of a principal



Setting Up a Guardianship

(New set guardianship laws have been effective in Iowa since January 1, 2020)

- Largely to ensure:
 - Constitutionally protected liberties are not diminished unnecessarily
 - Guardians are fulfilling duties to ensure adequate care
 - Courts are kept up-to-date on the status and well-being of a Protected Person
- Petition the Court, give notice to people with interest, appoint attorneys, set the matter for hearing
 - People of interest generally are closest of kin and care providers, but not likely to be a Primary Care Physician
 - Court may order an evaluation by a physician or other licensed medical professional
 - Generally filed confidentially
 - Background check of proposed Guardian
- After guardian is appointed, the Guardian must file an Initial Care Plan and annual reports



Powers of a Guardian That May Be Exercised Without Prior Court Approval

- Make decisions regarding care, maintenance, health, education, welfare, and safety - except as otherwise limited
- Establish permanent residence of Protected Person
- Take reasonable care of Protected Person's clothing, furniture, vehicle, animals, and other personal effects
- Consent to and arrange for medical, dental, and other health care treatment
- Consent to and arrange appropriate training and educational services
- Maintain regular visitation
- Facilitate supportive relationships
- Other powers that the Court may specify



Powers Requiring Court Approval

- Changing Protected Person's residence to a more liberty restrictive placement
- Consenting to the following:
 - Withholding or withdrawal from life-sustaining procedures from the Protected Person
 - Performance of an abortion on the Protected Person
 - Sterilization of the Protected Person
- Denying all communication, visitation, or interaction with someone whom the Protected Person has expressed a desire to communicate, visit, or interact with
- Court may limit the responsibility of a Guardian if the Protected Person has capabilities



Rights of a Protected Person

- Guardian must prove by clear and convincing evidence that restrictions are necessary and appropriate
- Right to be represented by counsel
- Upon proper showing, the periodic right to Court review for the modification of the rights, duties, and responsibilities related to the guardianship
- Right to communicate, visit, or interact with other persons



Durable Power of Attorney for Health Care Decisions

- Legal document that provides authorization from a principal to an attorney-in-fact (agent) to make healthcare decisions for the principal when the principal is unable to make sure decisions
- The document is deemed valid if the document specifically authorizes the attorney-in-fact to make such healthcare decisions, is signed by the principal, and is properly witnessed OR acknowledged (i.e. notarized)
- Agent cannot be:
 - Health care provider attending the principal on date of execution
 - Employee of health care provider attending the principal on date of execution unless related by blood, marriage, or adoption
- Standard form document from the Iowa State Bar Association is most commonly used
- Effective according to the listed instructions in document



Immunities and Responsibilities

- A healthcare provider is not subject to criminal prosecution, civil penalties, or professional disciplinary action if provider relies on a healthcare decision and both of the following are true
 - Decision is made by attorney-in-fact who provider believes in good faith to be authorized to make such decision
 - Provider believes in good faith that such decision is not inconsistent with the desires of the principal



Revocation of a Durable Power of Attorney

- May be revoked by a principal at any time and in any manner which principal is able to communicate such intent to revoke, without regard to mental or physical condition.
 - May be done orally or in writing to either the agent or healthcare provider, but is only effective as to a healthcare provider upon its communication to the provider
- Presumption of capacity to revoke
- A valid durable power of attorney revokes any prior durable power of attorney



Hierarchy of Decision-Makers

- Authority is granted only when the principal is unable, in the judgment of the attending physician, to make a particular healthcare decision
- Agent has a duty to act in accordance with the desires of the principal as expressed in the document. If desires are unknown, a duty to act in the principal's best interests prevails.
- Authority to receive and review medical records, except where expressly limited
- Unless a Court with proper jurisdiction finds otherwise, a designated attorney-in-fact who is willing and able to make healthcare decisions has priority over any other person, including a court appointed guardian.



Compare & Contrast

- Guardian

- Activated by Court order
- Initial and annual reporting
- Need Court approval for various actions
- Providers should require:
 - Letters of Appointment
 - Order of Appointment
 - Any other associated Court orders or stipulations (e.g. care plan)

- Durable Power of Attorney for Healthcare Decisions

- Activated according to instructions in the document
- No reporting requirements
- Authority supersedes even that of a Guardian, unless Court orders otherwise
- Providers should require:
 - Copy of most recent, properly executed power of attorney



Gray Areas and Ethical Considerations

- Physicians determine “decision-making capacity”
 - Generally the “attending physician” - default language in the standard form
 - Document may include state the determination comes from the Primary Care Physician
 - What if you are not the PCP?
 - What if you disagree with the PCP?
 - Ethics board?



Evaluating Medical Decision-Making Capacity

Medical decision-making capacity has four key elements.

Patients must be able to:

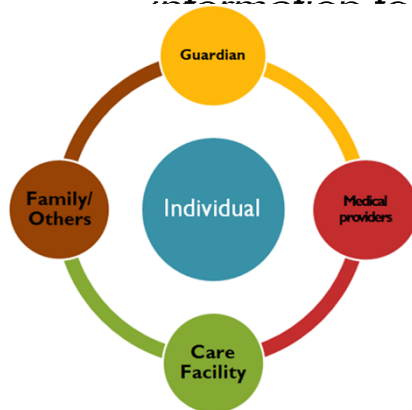
1. Demonstrate understanding of the benefits and risks of, and the alternatives to, a proposed treatment or intervention (including no treatment);
2. Demonstrate appreciation of those benefits, risks, and alternatives;
3. Show reasoning in making a decision; and
4. Communicate their choice.

Remember that capacity differs from competence



Legal & Personal Considerations

- Know and understand the law
- Understand powers and limitations
- Know which documents and information to request



- We are all here because of protected person
- Balance rights of Protected Person and rights of Guardian and/or agent
- Navigate with consideration and respect



GAIN - NGA State Affiliate- NGA Standards

<https://www.guardianship.org/standards/>

<https://iowaguardianship.online/>



National Guardianship Association (NGA)

Standards of Practice

Standard 1 – Applicable Law and General Standards

Standard 2 – The Guardian’s Relationship to the Court

Standard 3 – The Guardian’s Professional Relationship with the Person

- The guardian shall treat the person under guardianship with dignity.
- The guardian shall avoid personal relationships with the person, the person's family, or the person's friends, unless the guardian is a family member, or unless such a relationship existed before the appointment of the guardian.
- The guardian may not engage in sexual relations with a person unless the guardian is the person's spouse or in a physical relationship that existed before the appointment of the guardian.

Standard 4 – Guardian’s Relationship with Family Members and Friends of the Person

Standard 5 – Guardian’s Relationship with Other Professionals and Providers of Service to the Person



Standard 6 – Informed Consent

A Guardian stands in the place of the Protected Person and is entitled to the same information and freedom of choice as the person would have received if he or she were not under guardianship.

Informed consent involves providing patients with accurate and adequate information about the risks, benefits, and alternatives of a treatment in a manner that is free from coercion. It also requires that patients have medical *decision-making capacity*.



Standard 7 – Standards for Decision-Making (1 of 2)

Order of Operations:

1. The Guardian shall ask the person what he or she wants.
1. If the Protected Person has difficulty expressing what he or she wants, the Guardian shall do everything possible to help the Protected Person express his or her goals, needs, and preferences.
1. Only when the Protected Person cannot directly or indirectly express his or her goals and preferences shall the Guardian seek input from others familiar with the Protected Person to determine what the individual would have wanted.
1. Only when the Protected Person's goals and preferences cannot be ascertained, may the Guardian make a decision based solely on the person's best interest.



Standard 7 – Standards for Decision-Making (2 of 2)

Substituted Judgment:

- A. The principle of decision-making that substitutes the decision the person would have made when the person had capacity is the guiding force in any surrogate decision the guardian makes.
- B. Promotes the underlying values of self-determination and well-being of the person.
- C. Not used when following the person's wishes would cause substantial harm to the person or when the guardian cannot establish the person's goals and preferences even with support.

Best Interest:

- A. The principle of decision-making that should be used only when the person has never had capacity, when the person's goals and preferences cannot be ascertained even with support, or when following the person's wishes would cause substantial harm to the person.
- B. Requires the guardian to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the needs of the person.
- C. Requires the guardian to consider past practice and evaluate reliable evidence of likely choices.

Top Ten National Guardianship Association Ethical Principles

1. A guardian treats the person with dignity. (Standard 3)
2. A guardian involves the person to the greatest extent possible in all decision making. (Standard 9)
3. A guardian selects options that place the least restrictions on the person's freedom and rights.(Standard 8)
4. A guardian identifies and advocates for the person's goals, needs, and preferences. (Standard 7)
5. A guardian maximizes the self-reliance and independence of the person. (Standard 9)
6. A guardian keeps confidential the affairs of the person. (Standard 11)
7. A guardian avoids conflicts of interest and self-dealing. (Standard 16)
8. A guardian complies with all laws and court orders. (Standard 2)
9. A guardian manages all financial matters carefully. (Standard 18)
- 10.A guardian respects that the money and property being managed belong to the person. (Standard 17)





Case Discussion and Questions

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