

DEALING WITH SURROGATE DECISION-MAKERS

01/2011, updated 12/2014; 5/2017; 12/2017

I. A “Surrogate” Is Someone Who Makes Decisions on Behalf of Another Adult

- A. The term “surrogate” is not used in the statutes.
- B. In Wisconsin, surrogates have no legal authority to act or make decisions on behalf of another unless the law specifically permits them to do so.
 - In practice, surrogates are sometimes given the authority even without legal authorization.
- C. Surrogates are often uninformed/incorrect/confused/ given deceptive information about their exact authority.

II. Legally Recognized Surrogates in Wisconsin Include

- A. Health care agent under an activated Power of Attorney for Health Care.
- B. Financial agent under an activated Durable Power of Attorney.
 - a/k/a Power of Attorney for Finances.
 - a/k/a General Power of Attorney.
- C. Guardian of the Person.
- D. Guardian of the Estate.
- E. Conservator.
- F. Representative Payee.
- G. Trustee.
- H. Family members/friends under certain limited circumstances.
 - Hospice. (Wis. Stat. § 50.94)
 - From hospitals to nursing homes (Wis. Stat. § 50.06 / Act 187).
- I. Law enforcement, county APS, guardians under emergency protective placements.

III. Obtain and Retain a Complete, Readable Copy of the Document That Gives the Surrogate His or Her Authority

- A. POA-HC, plus activation certification.
- B. DPOA, plus activation certification if needed.
- C. Authenticated Petitions for Guardianship and Protective Placement and doctors’ written statement of incapacity for Wis. Stat. § 50.06, Stats. (Act 187) admission.
- D. Letters of Guardianship.
- E. Determination and Order Appointing Guardian and Protective Placement.
- F. Letters of Conservatorship.



- G. Representative Payee.
- H. Statement of Emergency Protective Placement.

IV. Read the Document Carefully to Determine the Exact Scope of Authority

- A. Make sure the document is complete.
 - Look for page numbers to be sure the document is complete.
 - Look for paragraph numbers to be sure the document is complete.
 - Read the entire document to be sure the document is complete.
 - Look for the signatures that signal the end of the document.
- B. Power of Attorney for Health Care
 - “Health care decision” – an informed decision in the exercise of the right to accept, maintain, discontinue or refuse any care, treatment, service or procedure to maintain, diagnose or treat an individual’s physical or mental condition. Wis. Stat. § 155.01 (3) and (5).
 - Specific authorization for nursing home/CBRF admission.
 - Special instructions.
- C. Power of Attorney for Finance and Property
- D. Letters of Guardianship
 - Guardian of the Person? Or Estate? Or both?
 - Temporary or permanent?

V. Understand the Statute That Governs

- A. Contact your attorney.
- B. Contact the Wisconsin Guardianship Support Center at 1-855-409-9410 or guardian@gwaar.org.

QUESTIONS? Call the Wisconsin Guardianship Support Center at 1-855-409-9410 or email at guardian@gwaar.org.

Reproduction of this brochure is permitted and encouraged, so long as no modifications are made and credit to the Wisconsin Guardianship Support Center of the Greater Wisconsin Agency on Aging Resources, Inc., is retained.

This publication is provided for educational purposes only. The information contained herein is not intended, and should not be used, as legal advice. Application of the law depends upon individual facts and circumstances. In addition, statutes, regulations and case law are subject to change without notice. Consult a legal professional for assistance with individual legal issues.

