

Dealing with Surrogate Decision-Makers

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I. What is a surrogate decision-maker?

The term “surrogate decision-maker” or “substitute decision-maker” is not used in Wisconsin law, but it is a common way to refer to someone who has been given authority to act for another adult. In practice, many surrogates are uninformed/confused/given incorrect information about the scope of their authority. This document is intended to help both surrogates and professionals working with them to identify the sources and scope of authority for a surrogate decision-maker. This document is intended to provide information only. For legal advice about a specific situation or interpretation of a specific legal document, please consult with legal counsel.

II. What types of surrogates are recognized in Wisconsin?

Wisconsin recognizes several types of surrogate decision-makers:

- a. Health care agents under an activated Power of Attorney for Health Care.
- b. Financial agents under an activated Durable Power of Attorney, also called a Power of Attorney for Finances & Property or General Power of Attorney.
- c. Court-appointed guardians of the person.
- d. Court-appointed guardians of the estate.
- e. Court-appointed conservators.
- f. Representative payees, VA Fiduciaries, and other agency-designated individuals or organizations who manage benefits on a beneficiary’s behalf.
- g. Trustees.
- h. Family members/friends under certain limited circumstances. These include:
 - i. Hospice admissions for patients with terminal conditions under Wis. Stat. § 50.94;
 - ii. Post-inpatient rehab/long-term care admissions for an incapacitated patient in an inpatient unit and health care/financial decisions related to health care while the individual is in the care facility.¹
- i. A person or agency under a petition for emergency protective placement.

III. Verifying the decision-maker’s status

Professionals who are working with a surrogate decision-maker should obtain a complete, readable

¹ Please see the GSC Document “[Patient Representative FAQ](#)” for more information on the scope of the patient representative’s authority.

copy of the document that gives the surrogate authority. This includes the actual POA documents plus any necessary activation statements; Letters of Guardianship of Person/Estate or Letters of Conservatorship; any document issued by the Social Security Administration, VA or other benefits agency to authorize the person or entity to act on a beneficiary's behalf; a copy of a trust document (if the decision-maker is a trustee); or a statement of emergency protective placement or other court order.

For most, copies are likely acceptable, but it may be helpful to verify policy on copies vs originals with counsel.

IV. Verifying the decision-maker's authority

Make sure the document is complete!

- Look for page numbers and/or 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.
- Verify that the document has been witnessed/notarized, signed by a court official, or signed by a representative of a benefits agency as required for the type of document.

Power of Attorney for Health Care

- Check the items that require specific authorization: admission to long-term care, the decision to withdraw/withhold feeding tubes, authority to make decisions for an individual who is known to be pregnant.
- Review any special instructions in the document.
- Remember that a health care POA covers health care decisions only, defined as 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). The agent does not have authority for other types of decisions unless specifically stated in the POA document or another document granting them legal decision-making authority.

Power of Attorney for Finances and Property

- If the POA uses the state form, review the boxes indicating specific grants of authority. Has the appropriate box been initialed for the type of decision the agent wants to make?
- If the POA does not use the state form, review it carefully to determine the scope of the agent's authority.
- If co-agents have been appointed, review whether they may act independently or whether they must act together.

Letters of Guardianship

- For temporary guardianship: what is the end date? What authority has been granted to the temporary guardian?
- For permanent guardianship: did the court leave powers of attorney in place, or limit/revoke them (if any existed)? Is the guardian serving as guardian of person, estate, or both?
- Review the checkboxes to determine what authority the guardian has.
- If the court appointed co-guardians, review whether they may act independently or whether they must act together, and whether that is for some decisions or all.

Letters of Conservatorship

- Did the court leave a financial power of attorney in place, or limit/revoke it (if any existed)?
- Review the checkboxes to determine what authority the conservator has.

Representative Payees

- For representative payees: review any documents from the Social Security Administration and any other documents the payee may have that outline the scope of their authority. A representative payee appointed by Social Security typically only has authority to manage Social Security benefits, but some organizational representative payees may work with individuals to handle other types of income/benefits for the individual.

Trustees

- Review the trust document to verify what actions the trustee can take.

Patient Representative

- Review the patient representative's Declaration. A patient representative may make health care decisions to the same extent as a guardian of the person and may authorize health care decisions to the same extent as a guardian of the estate. Review the type of decision being made and whether it falls into those categories.

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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.***

QUESTIONS?

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

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