Surrogate Decision Making In Nebraska

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Introduction

This booklet is designed to assist those who work with the elderly and people with disabilities in determining what options might be best in situations in which surrogate decision making might be necessary. It covers such topics as payeeships, fiduciaries, advance directives, conservatorship, and guardianship.

For more information or to order copies, contact:

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Surrogate Decision Making

Surrogate decision making is a term used to describe situations in which one makes decisions on behalf of someone else. There are several different forms of surrogate decision making ranging from informal to formal, and from not intrusive to extremely intrusive. For example, parents are the surrogate decision makers for their children. While that may seem to be an informal relationship, it is actually a legal relationship that can be altered by the judicial system through divorce or juvenile court proceedings.

The most common types of surrogate decision making include representative payee, protective payee, Veterans Administration fiduciary, power of attorney, durable power of attorney, advance directives (living will, power of attorney for health care, code/no code orders, and medical directives), protective order, conservatorship, and guardianship (medical, temporary, limited, and full).

Nebraska's guardianship and conservatorship laws require the court to find that guardianship or conservatorship is the least restrictive alternative available before entering an order appointing a guardian or conservator.

The forms of surrogate decision making listed in this handbook are roughly listed in order of degree of restriction, from the least to the most restrictive. The least restrictive option that is appropriate should be the first choice.

Liberty and the Due Process Clause

Certain rights are guaranteed by the United States Constitution, including the right to make certain decisions. However, no right guaranteed by the United States or the Nebraska Constitution is absolute. Instead, it is necessary to balance the interest of the individual against the interest of the state. Nonetheless, to ensure that the rights of the individual are not taken away arbitrarily, we have designed mechanisms called "due process." Those mechanisms vary depending upon the situation; however, they almost always involve the right to a court hearing, counsel, and appeal.

Types Of Surrogate Decision Making

Community Resources

Community resources such as aging programs, social services programs and services to people with disabilities are good sources of information regarding surrogate decision making. Such programs have professionals on staff who have dealt with these types of situations on a regular basis, and should be consulted prior to filing for a guardian or conservator.

Mediation

Often guardianships and conservatorships are initiated out of frustration. The person seeking the appointment is at his or her "wits' end" and does not know where to turn. In such cases, mediation may be helpful.

Mediation involves the use of a neutral third party to facilitate discussion and decision making. Often a mediator can enhance communication to the extent that legal actions are not necessary.

There are six mediation centers located across Nebraska. These centers were set up by The Nebraska Dispute Resolution Act of 1991. A list of Nebraska's Mediation Centers can be found in the Resources section of this Guide.

Representative Payee

A representative payee is a person appointed by the Social Security Administration (SSA) to receive and manage benefits administered through the SSA. A representative payee may be considered when the beneficiary is:

1) alleged to be incompetent, or there is evidence that the beneficiary cannot manage his or her benefits;
2) disoriented, unable to communicate with others, unable to reason, or has impaired judgment;
3) physically dependent on others to cash and pay out his or her benefit checks and make decisions regarding the use of his or her payments; or
4) legally incompetent.

Any interested person can request the SSA to appoint a representative payee for a beneficiary. The SSA will consider any meaningful information that indicates there might be a need for a representative payee, including legal, medical, and other information. If there appears to be a need, the SSA will determine whether appointing a representative payee would be in the beneficiary's best interest.

The SSA will appoint a representative payee if there is documented evidence that the beneficiary cannot manage his or her benefits. Efforts should be made to teach money management skills to the beneficiary before action is taken to appoint a payee.

People seeking to have a representative payee should consult with the SSA regarding the potential need for a payee. If it appears that a payee is necessary, an application form can be completed and filed with the SSA. The SSA may conduct a face-to-face or phone interview with the potential payee (with certain exceptions) and require proof of the applicant's identification.

Payee preference is given to the following individuals:

1) legal guardian, spouse, other relative who has actual custody or who demonstrates a strong concern for the personal welfare of the beneficiary;
2) friend;
3) public or nonprofit agency or institution having actual custody, statutory guardianship, or voluntary guardianship;
4) private institutions operating for profit, having custody, and licensed under the state law; or
5) someone other than those listed above who is qualified to carry out the responsibilities of a payee and who is willing and able to serve (e.g., a community organization).

The SSA may waive this order of preference if it determines that someone else could better serve the needs of the beneficiary. The SSA looks for a qualified person who has demonstrated concern for the beneficiary's well-being by showing an active, on-going attempt to meet his or her needs, to improve his or her situation, and to plan for the future needs and best interests of the beneficiary.

Some of the payee's duties include:

- using the beneficiary's benefits for the personal interest and well-being of the beneficiary;
- keeping informed of the beneficiary's needs and reporting to the SSA any event affecting eligibility for, or the amount of, benefits;
- keeping records of benefits received and how benefits are used on behalf of the beneficiary;
- registering bank accounts and investments in the beneficiary's name; and
- knowing and following the SSA's rules and regulations for representative payees.

Representative payees must file an annual accounting with the SSA, documenting the amounts he or she received and spent on behalf of the beneficiary. In most cases, the SSA will send an accounting form to the representative payee. A representative payee who does not receive such a form should contact the SSA. The SSA can review the payee's records at any time, so records must be accurate and up-to-date.

The SSA may discontinue the use of a representative payee if the beneficiary:

- is able to resume managing his or her own benefits;
- dies; or
- is no longer eligible for benefits.

The SSA may also name a different representative payee if the first representative payee resigns, is removed, or dies. A representative payee may be removed if he or she is not carrying out his or her responsibilities. Complaints regarding the actions of a representative payee may be brought by the beneficiary or other concerned people to the SSA.

A payee who wishes to resign must give formal notice to the SSA at which time a new payee will be appointed, if necessary. A list of Nebraska's Social Security Offices can be found in the Resources section of this Guide.

Protective Payee

A protective payee is an individual assigned by the Nebraska Department of Health & Human Services (DHHS) to receive public assistance payments on behalf of another person. The protective payee has a supervisory and teaching role.

Public assistance (e.g. monthly cash payments, medical assistance) is made available to people who have limited income and meet eligibility requirements established by DHHS. If a person mismanages his or her public assistance or, for some reason, is unable to manage his or her public assistance funds due to a physical or mental impairment; DHHS may appoint a protective payee. Relatives or other concerned people may notify DHHS regarding the need for a protective payee.

Protective payees are only used for cash assistance programs. These include:

- Aid to Dependent Children Program (ADC),
- State Disability Program (SDP), and
- The State Supplemental Program (AABD).

The Aid to Dependent Children Program provides cash payments for children age 17 or younger who are deprived of parental support or care.

The State Disability Program provides cash payments to needy people who have a disability which has lasted, or will last, for at least six months, and who are not eligible for the federal Supplemental Security Income Program (SSI) because this disability is not expected to last twelve months or longer.

The State Supplemental Program provides cash payments to eligible people who are age 65 or older or people who are blind or disabled.

At times, people receiving public assistance may not be able to manage their money without assistance. For example:

> *Mr. Bays is an elderly gentleman who lives alone in his own home. When Mr. Bays' social worker visited him, she discovered his electricity had been shut off because he had failed to pay his bill. When the social worker asked him why he had not paid his electric bill,*

Mr. Bays replied that he had forgotten for several months to pay his bills and could use some assistance. After discussing the problem, the social worker, with Mr. Bays' agreement, appointed his granddaughter as protective payee, so his utility bills would be paid.

The need for a protective payee for people receiving either State Disability or State Supplemental benefits must be substantiated by a physician's statement or medical report. The case record must include an explanation of why a protective payee was initiated instead of a guardianship or conservatorship.

Evidence of mismanagement of benefits may include:

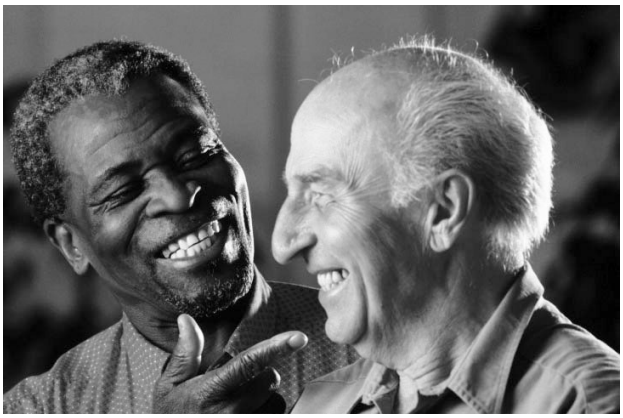
- the failure to plan and spread necessary expenditures over the usual assistance planning period;
- indications that the children are not properly fed or clothed and that expenditures for them are made in a way that threatens their chances for health, growth, and development;
- persistent and deliberate failure to meet obligations for rent, food, school supplies, and other essentials; or
- repeated evictions or debts causing attachments or liens to be made against current income.

A protective payee with the ADC program plays the special role of not only supervising the disbursement of assistance funds but also teaching the client money management. The ADC protective payee works in cooperation with DHHS in setting up objectives for the protective payment plan and shares the responsibility of planning and evaluating the beneficiary's progress in money management skills.

In choosing a payee, the DHHS worker consults with the beneficiary. Court action is not necessary to appoint a protective payee.

The following people may be appointed payee:

1. relative;
2. friend;
3. neighbor;
4. member of the clergy;
5. member of a church/community service group; or
6. other individuals who have a concern for the well being of the beneficiary.



The payee must be geographically close to the beneficiary or be able to make frequent contact. The payee must be a responsible and dependable person with the ability to relate positively to the beneficiary. The protective payee should have skills in household budgeting; experience in purchasing food, clothing, and household supplies on a limited income; and knowledge of effective household practices.

The following people may not be appointed payee:

1. an administrator of a local DHHS office;
2. an DHHS employee who determines eligibility for public assistance programs for the person in question;
3. a landlord, grocer or other vendor of goods and services who deals directly with the beneficiary; or
4. an operator of an alternate care facility.

The duties of the protective payee include:

- receiving public assistance money on behalf of a beneficiary;
- paying for maintenance needs (e.g., rent, utilities, food, and clothing);
- keeping records of payments received and disbursements made from assistance funds;
- treating all personal information about the beneficiary and his or her family as confidential; and
- reporting any changes of the beneficiary's status or problems to DHHS.

Every six months the DHHS worker will review the actions and responsibilities of the protective payee for people receiving ADC benefits. ADC benefits may be paid to a protective payee for no more than two years. If the beneficiary remains unable to manage his or her benefits after a two-year period, DHHS will make arrangements for the appointment of a guardian or conservator.

Payments of State Disability or State Supplemental benefits to a protective payee may continue as long as needed. DHHS has the right to review the actions of the protective payee at any time.

Protective payeeships may be terminated if:

- the beneficiary is able to resume management of his or her own funds;
- the beneficiary dies;
- the beneficiary no longer meets program eligibility;
- a guardian or conservator is appointed over the beneficiary; or
- the protective payee resigns, is replaced, or dies.

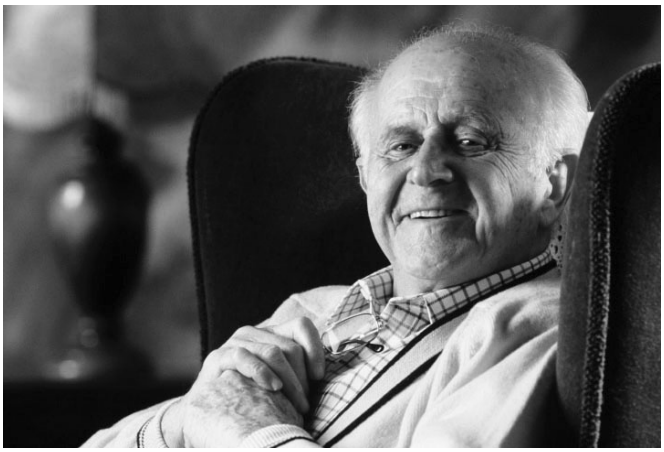
A protective payee may be replaced if he or she is not carrying out his or her responsibilities. The beneficiary may appeal the initial decision of continuance of protective payments and the choice of the protective payee. For more information on these options, contact the beneficiary's DHHS Case Worker.

For more information on the protective payee process, contact your local DHHS Office. A list of the DHHS Service Area Offices can be found in the Resources section of this Guide.

Veterans Administration Fiduciaries

A fiduciary is an individual or legal entity (such as a bank or nursing home) appointed by the Veterans Administration (VA) to manage the VA benefits for a veteran who is incompetent, or for a minor dependent of a veteran who is incompetent. The VA determines that a person is incompetent when he or she lacks the mental capacity to conduct or manage his or her own affairs, including the disbursement of funds.

The VA may pay benefits to a fiduciary when an adult beneficiary has been determined to be incompetent by the VA; an adult beneficiary has had a conservator or guardian appointed over him or her; or a beneficiary who is a minor is no longer in the custody or control of the person receiving payment for the minor, or it is determined that it would be in the minor's best interest to have a fiduciary.



There are two methods by which fiduciaries are appointed for beneficiaries. The first is through an internal procedure in the VA. To initiate this procedure, a family or other interested party submits a statement prepared by the beneficiary's doctor indicating that the beneficiary is not capable of managing his or her benefits. If the VA believes the person is incompetent, it will make a tentative rating of incompetence, and the beneficiary will be notified of his or her procedural rights. The beneficiary then has 30 days to object to the proposed rating. If the beneficiary does not object, the VA will make a final rating of "incompetence," and refer the case to the Veterans Services Officer for the region in which the beneficiary resides to arrange for the appointment of a fiduciary.

The second method is initiated upon the request of an interested party that the VA recognizes a court appointed guardian or conservator. The VA does not always recognize or pay a court appointed guardian or conservator, and may choose a separate fiduciary for VA purposes.

The VA is charged with selecting a fiduciary who will best serve the beneficiary. Frequently, the spouse or another close relative is selected as fiduciary, provided he or she is qualified to serve. All fiduciaries must be reliable, capable, and willing to perform the duties imposed by federal and state law.

The duties of a fiduciary include:

- applying the VA benefits for the needs of the beneficiary and his or her dependents;
- protecting the payments from loss or diversion; and
- accounting for the receipt and disbursement of benefit payments upon demand of the VA.

Fiduciaries may be required to furnish surety bonds. Fiduciaries appointed by state courts are subject to the duties imposed by the court and state law. For more information on the fiduciary process, contact the Department of Veterans Affairs at (402) 420-4021 or (800) 827−1000.

Power of Attorney

(For information on Power of Attorney for Health Care, see page 12)

A power of attorney is a document that authorizes one to act on another's behalf. Essentially, it is a delegation from the person creating the document – the principal – to the person to whom he or she is granting the power to act – the agent. Powers of attorney can be either limited or general, depending upon the wishes of the principal. A power of attorney that is limited usually gives the agent authority to act on the principal's behalf only with regard to very specific matters. For example

> *Mrs. Davis inherited a small apartment building from her husband. The building required periodic maintenance which she was not able to provide. Mrs. Davis gave a power of attorney to the apartment manager authorizing him to expend money in her name in order to properly maintain the apartment building and to keep it in good repair.*

A power of attorney can also be more general, authorizing the agent to act on behalf of the principal in a wide variety of actions. For instance:

> *Mr. and Mrs. Smith were going to Europe for the summer. Since they had numerous stocks and bonds, they wanted to make sure someone at home could manage their investments. The Smiths executed a power of attorney to Ms. Hancock, a close friend and business associate, to make all the necessary decisions regarding their investments. The power of attorney authorized Ms. Hancock to buy and sell stocks in Mr. and Mrs. Smith's name.*

> *Mr. Dean inherited a business from his father. He didn't want to sell the business because it made a good profit, but he lived 200 miles away and was unable to manage it himself. He gave a power of attorney to his nephew authorizing him to run the entire operation. He was authorized to buy inventory in Mr. Dean's name and generally to spend any money necessary to keep the business running at a profit.*

Regardless of whether a power of attorney is specific or general, the agent's authority to act is limited to the scope of the document itself. For example, unless a power of attorney specifically authorizes the agent to sell real estate, he or she does not have the authority to make such decisions.

While a written document is needed, there is no designated form required to give another person a power of attorney. The Nebraska Statutory Short Form Act provides a form that legally creates a principal/agent relationship if used in substantiating the same form. It is advisable to consult with a lawyer before giving a power of attorney to another person.

Regardless of whether the power is limited or general, the power of attorney document should contain the following information:

1) the name of the person receiving the power;
2) a specific and detailed statement explaining the powers, duties, and responsibilities that are being given to that person;
3) a statement specifying how long the person will have the authority to act on behalf of the principal; and
4) the notarized signature of the person giving the power of attorney.

A principal must be competent at the time a POA or revocation is executed.

If the document assigning the power specifies a particular length of time, the power of attorney lasts only that long, unless it is renewed in a new document. If the document does not specify how long the power will last, it will continue until the person giving the power of attorney specifically revokes it. The power of attorney is revoked when the principal notifies the agent that he or she is revoking the power. It is a good idea for the principal to file a copy of the revocation with the county clerk. For instance:

John gave his stockbroker a power of attorney to sell his stocks for him. In the document assigning the power to his broker, he did not specify how long the power was to last. He wants to revoke the power because he is planning to change brokers. To do so, he sends the broker a written notice that the power will be revoked effective on a certain date.

A power of attorney is also terminated when the agent has notice of the death, disability, or incompetence of the principal. For example:

Ms. Jones had given Ms. Clayton a power of attorney to manage the insurance agency that she owns. The document assigning the power to Ms. Clayton did not specify how long the power was to last. However, when Ms. Jones died, the power of attorney given to Ms. Clayton was automatically terminated.

Mr. Sharkey gave his stockbroker a power of attorney to manage his stock holdings. Several years later a court ruled that Mr. Sharkey had become incompetent. Because Mr. Sharkey was declared to be incompetent, the power of attorney given to the stockbroker was automatically terminated.

Limitations: What A Power Of Attorney Cannot Do

Powers of attorney can be very useful. They can allow an agent to make decisions on behalf of the principal, saving the principal from having to make every decision personally. But, all powers of attorney have limits to what the agent can do, including the following:

- Powers of attorney do not give the agent the power to make decisions against the principal's will. For instance: If Mr. Smith gives Ms. Jones a power of attorney, Ms. Jones can take action on behalf of Mr. Smith but can't make a decision that Mr. Smith opposes. Mr. Smith still retains the ultimate power to make decisions.
- Powers of attorney do not take away the right to make decisions from the principal. For instance: If Ms. Brown gives her brother her power of attorney to sell real estate and even if several people agree that she is incompetent, she still hasn't lost the power to make her own decisions, including the right to make real estate decisions. Only court action can take away the right to make decisions from Ms. Brown.
- A power of attorney is no longer effective when the agent knows that the principal has died. So, a power of attorney is not a substitute for a will.

It is wise to talk with an attorney about what the principal wants to do and whether or not a power of attorney is appropriate before executing a power of attorney.

Durable Power of Attorney

A durable power of attorney is a power of attorney that lasts beyond the disability or incapacity of the principal. Otherwise, it is just like a power of attorney. It can be revoked or modified at any time as long as the principal is competent. Thus, a power of attorney would terminate if the principal is declared incompetent by a court, but a durable power of attorney would remain effective.

In order for a power of attorney to be durable in Nebraska, it must state one of two things:

1) This power of attorney shall not be affected by subsequent disability or incapacity of the principal, or
2) This power of attorney shall become effective upon the principal's disability or incapacity.

By assigning a power of attorney to someone else, a principal legally authorizes another person to act on his or her behalf. The agent should be selected very carefully. Characteristics a principal should look for in an agent include competence and experience in managing the type of actions assigned to him or her, reliability, and trustworthiness.

Advance Directives

An Advance Directive is a document that allows a person to give instructions about future medical care should he or she be unable to participate in health care decisions due to serious illness or incapacity. The most common types of advance directives are living wills, power of attorney for health care and code/no code orders.

It is best to make an advance directive in writing. Oral advance directives are usually unclear and incomplete, therefore they should be avoided.

> *John Jones recently watched his father and mother suffer tremendously as a result of their terminal illnesses. After they died, John stated to a group of friends that he did not want to be "hooked up to any machines" if he were suffering from a terminal illness. One of his friends said, "Surely, John, you want food and water." John replied, "Not if the only way I can get it is through a tube."*

While this is not a good method of making an advance directive, it was exactly what John did. He informed others of what his choices for medical treatment were, prior to the need for treatment.

Living Wills

A living will is a written statement that describes the type of care a person wishes to receive in the event he or she is suffering from a terminal illness or is in a persistent vegetative state. It gives health care providers and loved ones guidance when the person is not able to do it himself or herself. It is very important to understand that living wills cannot be used for any other type of situation.

Living will declarations are authorized under Nebraska law by the Rights of the Terminally Ill Act ("Act"). The Act allows one to make a declaration of his/her intent in writing, regarding the type of medical treatment he/she wants in the event of a terminal illness or a persistent vegetative state.

The key elements of the Act are as follows:

1) The declarant must be nineteen or older and must be of sound mind at the time of the execution of the living will;
2) Those who are under nineteen but who are or have been married may also sign a declaration;
3) The signing must be either notarized or witnessed by two people;
4) No more than one witness may be an administrator or employee of a health care provider who is caring for or treating the declarant;

5) No witness may be the employee of a life or health insurance provider for the declarant;
6) A health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record;
7) If the health care provider is not willing to comply with the declaration, he/she must take reasonable steps to transfer the declarant's care to another provider who is willing to comply;
8) A declaration is operative when:
   a. It is communicated to the attending physician;
   b. The declarant has been determined by the attending physician to be in a terminal condition or a persistent vegetative state.
   c. The declarant is determined by the attending physician to be unable to make decisions regarding life-sustaining treatment; and
   d. The attending physician has notified a "reasonably available" member of the declarant's family or guardian;

9) A declarant may revoke a declaration at any time without regard to his/her mental or physical condition by communicating the revocation to the attending physician or other health care provider in any manner capable of communicating; and

10) A physician or other health care provider is not subject to civil or criminal liability or discipline for unprofessional conduct for following the directions in the declaration.

Nebraska law includes a sample living will declaration form. A copy of the sample form, with instructions, can be found in the back of this guide in the Resources section. You can take the form out of the guide or make a copy of the form and use it to create a Declaration specifically for you.

Power of Attorney for Health Care

A power of attorney for health care is a power through which one person (the "principal") authorizes another person (the "agent") to make health care decisions on his or her behalf. A power of attorney for health care may be used in a variety of situations and is not limited to those situations in which one is suffering from a terminal illness or is in a persistent vegetative state.

If a power of attorney for health care is used in situations in which one is suffering from a terminal illness or is in a persistent vegetative state, the power of attorney for health care must clearly state the wishes of the principal.

The Power of Attorney for Health Care Act specifically authorizes the use of a durable power of attorney for health care in Nebraska. Although it may be used in situations where the person signing the power of attorney for health care is suffering from a terminal condition or is in a persistent vegetative state, it may also be used for more routine health care decisions. The key elements of the Power of Attorney for Health Care Act are as follows:

1) A person must be nineteen or older to sign a Power of Attorney for Health Care;

2) The power of attorney for health care must:
   a. be written;
   b. identify the principal, attorney in fact and successor attorney in fact, if any;
   c. authorize the attorney in fact to make health care decisions;
   d. be witnessed and signed by at least two adults or notarized; and
   e. include the date the Power of Attorney for Health Care was executed.
3) No more than one witness may be the administrator or an employee of a health care provider who is providing care for the principal;
4) The following people may not serve as witnesses: spouse, parent, child, grandchild, sibling, attending physician, attorney in fact, or an employee of a life or health insurance provider for the principal; presumptive heirs or known devisee at the time of the witnessing.
5) The attorney in fact cannot withdraw life-sustaining treatment including nutrition and hydration unless the principal is either terminally ill or in a persistent vegetative state and the principal has specifically authorized the agent to make such decisions in the Power of Attorney for Health Care.

6) The living will does not become effective until:
   a.the declaration has been communicated to the attending physician; and
   b.the attending physician determines that you are unable to make a health care decision.

NOTE: It is very important to understand that the principal does not lose any authority to make health care decisions by giving a Power of Attorney for Health Care. Health care powers of attorney should only be consulted when the principal is unable to communicate his or her wishes about health care.

The Power of Attorney for Health Care can include a number of clauses, such as:
1) naming alternate agents if your first choice for an agent is unable or unwilling to serve;
2) listing the specific types of procedures, illnesses, and situations in which you want the agent to act;
3) listing what an agent should do in specific situations, such as deciding whether or not to start or continue treatment, when to stop or refuse treatment, or when to demand that treatment be started or continued; and
4) general principals and values to consider when making decisions about treatment.

NOTE: These clauses are not necessarily required to be in a Power of Attorney for Health Care. However, if you have specific acts you want your agent to take under certain circumstances, you should consider putting them in the document to avoid confusion as to what your wishes are.

If you are competent, you can cancel your Power of Attorney for Health Care at any time by communicating this to a health care provider who is providing care for you, or your agent. The communication can be in any manner, including oral and written methods, as long as your intent to cancel or revoke is clear. A written revocation is usually the preferred method.

Nebraska law includes a sample of a form for a Power of Attorney for Health Care. A copy of the sample form, with instructions, can be found in the back of this guide in the Resources section. You can take the form out of the guide or make a copy of the form and use it to create a Power of Attorney for Health Care specifically for you.

Do Not Resuscitate (DNR) Orders

Cardiopulmonary resuscitation (CPR) is routinely attempted if a patient suddenly becomes unresponsive. It involves forceful chest compressions and electrical stimulation of the heart, if needed. Generally the patient is asked upon admission to a hospital or care facility whether or not he or she would want CPR should his or her medical situation warrant it in the future. The patient should discuss with his or her physician whether a DNR order would be appropriate. If the physician signs a DNR order and puts the order in the chart, then CPR will not be done.

Limitations: What An Advanced Directive Cannot Do

An advanced directive allows you to make decisions regarding your medical condition even after you lose the ability to communicate to someone what that decision might be. Some directives, such as powers of attorney for health care, allow you to select someone you trust to make decisions for you. Other directives, such as living wills, allow you to record your decisions on paper now, while you are still able to communicate your wishes, so that others will know what your wishes are in the event you are unable to communicate those wishes later. You keep a large amount control over your life with well-thought out advanced directives.

Advanced directives should only be consulted in the event that the principal cannot communicate his or her wishes. In the example below, Mrs. Mason was able to communicate her wishes to Dr. Dixon, and to the extent that they conflict with the living will, they override the living will's provisions. Dr. Dixon should follow his patients' expressed wishes.

Mrs. Mason executed a living will which, in part, stated she did not want to be resuscitated if she suffered heart failure during a medical procedure. Several months later, Mrs. Mason goes into the hospital for heart bypass surgery. Mrs. Mason tells Dr. Dixon, the surgeon, that she wants to be resuscitated if her heart stops on the operating table. Dr. Dixon tells her he can't do that since she executed a living will that said she didn't want resuscitation. Mrs. Mason tells Dr. Dixon that she has changed her mind, that she does want to be resuscitated, and that he should follow what she is telling him today, not what she wrote several months ago.

Also, advanced directives by themselves are not legal or judicial determinations of a person's capacity to make decisions. If a power of attorney for health care, code/no code status determination or other advanced directive is in effect, the person affected has not been determined to be legally incapable or incompetent and could possibly still make decisions about his or her care.

Guardianship And Conservatorship

Sometimes it may be necessary to pursue a conservatorship or guardianship for a person who is not able to make or communicate decisions.

Conservatorship

A conservator is an individual or corporation appointed by a court to manage the estate, property, and/or other business affairs of an individual whom the court has determined is unable to do so for himself or herself.

A number of different people may request a conservator be appointed, including:

- the person to be protected ("proposed ward");
- any person who is interested in the property affairs, or welfare of the proposed ward, including a parent, guardian, or custodian; or
- any person who would be adversely affected by lack of effective management of the proposed wards property and property affairs.

As per Section 30-2601 (7) of the Nebraska Revised Statutes: For purposes of article 26 of the Nebraska Probate Code, interested person means children, spouses, those persons who would be the heirs if the ward or person alleged to be incapacitated died without leaving a valid last will and testament who are adults and any trustee of any trust executed by the ward or person alleged to be incapacitated. The meaning of interested person as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding. If there are no persons identified as interested persons above, then interested person shall also include any person or entity named as a devisee in the most recently executed last will and testament of the ward or person alleged to be incapacitated.

Any of these "interested" people may petition the court for the appointment of a conservator. The petition must include the following information:

1) the interest the petitioner has in the person;
2) name, age, residence, and address of the proposed ward;
3) the name and address of proposed ward's guardian, if any;
4) the name and address of the nearest relative of the proposed ward known to the petitioner;
5) a general statement of property of the proposed ward with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which the proposed ward is entitled;
6) specific allegations regarding the necessity of the appointment of a conservator; and
7) the name and address of the proposed conservator and the basis of that person's priority for appointment, and his or her qualifications to serve.

The person filing the petition must "personally notify" the person for whom he or she is seeking a conservator and his or her spouse, parents and adult children, any persons serving as Guardian or Conservator or who has care and custody of the person to be protected, that he or she has filed the petition. Certain procedural requirements must be met to satisfy the personal notice requirements. Normally, personal notice means having the county sheriff serve the person with a copy of the petition and a notice of the hearing. The personal notice must be served at least fourteen days prior to the hearing on the matter. The protected person is also entitled to receive the Notice of Rights.

The person filing the petition may also be required to publish notice of the petition in the local paper, but only if the identity or address of any person required to be served is not known.

If the person against whom the petition has been filed does not have an attorney, the court may appoint an attorney to represent him or her. The court may also appoint an attorney called a "guardian ad litem" to advocate for the best interest of the person. Before the hearing is held to determine if a conservator will be appointed, the court has the power to perform several important functions, including appointing a physician to examine the person against whom the petition has been filed; appointing a court visitor to investigate the situation; and managing the affairs of the person against whom the petition has been filed.

At, or after the hearing, the court will determine whether a conservator is necessary. A conservator may be appointed if:

1) the court finds that the person is unable to manage his or her property and property affairs effectively for reasons such as:
   a. mental illness/deficiency;
   b. physical illness/disability;
   c. chronic use of drugs or alcohol;
   d. lack of discretion in managing benefits received from public funds;
   e. detention by a foreign power; or
   f. disappearance; and
2) the person has property which:
   a. is necessary to provide support for the person, or those entitled to be supported by the person; or
   b. would be wasted unless properly managed.

Who may be appointed conservator; priorities.

(a) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person, except that it shall be unlawful for any agency providing residential care in an institution or community-based program or any owner, part owner, manager, administrator, employee, or spouse of an owner, part owner, manager, administrator, or employee of any nursing home, room and board home, assisted-living facility, or institution engaged in the care, treatment, or housing of any person physically or mentally handicapped, infirm, or aged to be appointed conservator of any such person residing, being under care, receiving treatment, or being housed in any such home, facility, or institution within the State of Nebraska. Nothing in this subsection shall prevent the spouse, adult child, parent, or other relative of the person in need of protection from being appointed conservator.

(b) Persons who are not disqualified under subsection (a) of this section and who exhibit the ability to exercise the powers to be assigned by the court have priority for appointment as conservator in the following order:

(1) A person nominated most recently by one of the following methods:
(i) A person nominated by the protected person in a power of attorney or durable power of attorney;
(ii) A person acting under a power of attorney or durable power of attorney; or
(iii) A person nominated by an attorney in fact who is given power to nominate in a power of attorney or a durable power of attorney executed by the protected person;

(2) A conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(3) An individual or corporation nominated by the protected person if he or she is fourteen or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(4) The spouse of the protected person;

(5) An adult child of the protected person;

(6) A parent of the protected person or a person nominated by the will of a deceased parent;

(7) Any relative of the protected person with whom he or she has resided for more than six months prior to the filing of the petition;

(8) A person nominated by the person who is caring for him or her or paying benefits to him or her.

(c) When appointing a conservator, the court shall take into consideration the expressed wishes of the person to be protected. A person having priority listed in subdivision (2), (4), (5), (6), or (7) of subsection (b) of this section may nominate in writing a person to serve in his or her stead. With respect to persons having equal priority, the court shall select the person it deems best qualified of those willing to serve. The court, acting in the best interest of the protected person, may pass over a person having priority and appoint a person having lower priority or no priority.

(d) In its order of appointment, unless waived by the court, the court shall require any person appointed as conservator to successfully complete within three months of such appointment a training program approved by the State Court Administrator. If the person appointed as conservator does not complete the training program, the court shall issue an order to show cause why such person should not be removed as conservator.

When selecting a conservator, the court must select the most qualified person willing to serve. An individual having less or no priority may be appointed if the court feels the person's needs would best be met by having this individual as conservator. If the person has no relatives or friends willing or able to become conservator, the law allows the court to appoint any competent individual as conservator.

Nebraska statues and court rules require four separate background checks for any person who is to be appointed as a conservator.

1) A credit report from an established credit reporting agency or business.
2) A Sex Offender Registry Check, which for Nebraska residents means the Nebraska State Patrol Sex Offender Registry. Results of this check are submitted by completing an Affidavit of Sex Offender Registry Search, which is available from the court.
3) A criminal history check. Nebraska residents use Nebraska State Patrol Criminal History Reports for Arrest and Prosecution (RAP) sheet.
4) A check of the Child/Abuse, Neglect Registry available through the Nebraska Department of Health and Human Services.

Each must be submitted to the court at least 10 days prior to the court hearing regarding the conservator's appointment. Records will be kept confidential by the Court.

The law specifically states that several groups of individuals cannot be appointed as conservators, including: an owner; part owner; manager; administrator; or employee of any of the following in which the person resides:

1) nursing home;
2) room and board home;
3) residential care facility;
4) domiciliary facility; or
5) institution engaged in the care, treatment, or housing of any person physically or mentally handicapped, infirmed, or aged.

Even after being appointed by the Court, a Conservator will not be able to undertake his or her duties until the Court has issued Letters of Conservatorship to the new Conservator. The Court will not issue Letters of Conservatorship until the Conservator has filed with the Court an Acceptance, Address Information Sheet, General Information Sheet, Inventory with Affidavit of Due Diligence, and the Bond (if required). The Conservator must also file with the Court an Acknowledgment of Financial Institution Form showing that the Court Order appointing the Conservator was provided to each financial institution in which the Protected person has an account or other assets. Copies of each of these forms is available from the Court.

After the Conservator has been issued Letters of Conservatorship, the Conservator must file with the Court an acknowledgment of financial institution form showing that the Letters have been provided to each financial institution in which the Protected Person has an account or other assets. This form must shall be filed with the court within 10 days of the Letters being issued. Failure to file the will result in suspension of the Conservator's authority.

Within 90 days of being appointed, the conservator must complete a training approved by the State Court Administrator unless the training is waived by the court. If he or she does not complete the training, he or she must show cause to the court why he or she should not be removed.

Once appointed, the conservator holds title to all of the property of the person for whom he or she is serving as conservator. He or she will be issued letters of conservatorship which specify his or her duties. In addition to other duties, the conservator is required to:

1) prepare and file with the court a complete inventory of the person's property;
2) keep accurate records of the administration of the property;
3) account to the court for the administration of the property when required to do so; and
4) be prepared to submit any and all property to a physical inspection at any time.

When administering the affairs of the person for whom he or she has been appointed, a conservator must consider any estate plan that was in place prior to the conservatorship and consider any recommendations made by a guardian regarding the person's standard of support.

The conservator is given broad discretion in the management of the person's property. The conservator may take several actions without the approval of the court; however, it is best for the conservator to obtain the approval of the court before taking any major action such as selling property. However, a conservator shall not change a protected person's place of abode to a location outside of the State of Nebraska without court permission. For a complete list of possible actions that may be taken without court action, see Section 30-2653 of the Nebraska Revised Statutes.

The court may require that the conservator furnish a bond to ensure that he or she faithfully performs the duties of the conservatorship. The amount of the bond will be determined by the court.

For estates with a net value of more than ten thousand dollars, the bond for a conservator shall be in the amount of the aggregate capital value of the personal property of the estate in the conservator's control plus one year's estimated income from all sources minus the value of securities and other assets deposited under arrangements requiring an order of the court for their removal. The bond of the conservator shall be conditioned upon the faithful discharge of all duties of the trust according to law, with sureties as the court shall specify. The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land owned by the conservator. For good cause shown, the court may eliminate the requirement of a bond or decrease or increase the required amount of any such bond previously furnished. The court shall not require a bond if the protected person executed a written, valid power of attorney that specifically nominates a guardian or conservator and specifically does not require a bond. The court shall consider as one of the factors of good cause, when determining whether a bond should be required and the amount thereof, the protected person's choice of any attorney in fact or alternative attorney in fact. No bond shall be required of any financial institution, or trust company serving as a conservator.

Each year after being appointed, a Conservator must prepare and file each of the following items with the court.

1) An Updated Inventory/Annual Accounting.
2) A Certificate of Proof of Possession from each institution that holds a financial account of the Protected Person.
3) Copies of bank statements for the prior year with personal information, such as social security numbers, dates of birth, and account numbers blacked out.
4) An annual report on the condition of the Protected Person.

In addition, copies of each of these items must also be sent by first-class mail to all interested parties, along with notice to the interested parties of their right to object to contents of each filing. The forms that are required to be used for each filing are available from the court.

The duties and responsibilities of the conservator may be terminated either by the court or by the death of the person for whom the conservator was appointed. The court may terminate the conservatorship by dismissing one conservator and appointing a successor or closing the conservatorship. Any interested party may petition the court for a change in the conservatorship.

If the person for whom the conservator was appointed dies, the conservator must deliver his or her will to the court. Until the court appoints a personal representative of the will, the conservator maintains control of the estate. If no personal representative has been appointed after forty days, the conservator may apply to the court to exercise the powers of a personal representative over the estate. If there is no objection from any other person, and after notice and a hearing, the court will grant the conservator's application to exercise the powers of a personal representative. Once the application is granted, the conservator will proceed to distribute the estate assets accordingly.

Conservatorship is one of the most restrictive measures that can be taken in regard to a person's personal life. As a result, it should be approached with great care, and other less restrictive alternatives should be considered first.

Guardianship

Guardianship provides for the care of someone who is not able to care for himself or herself. The court may appoint a guardian if there is clear and convincing evidence that the person is incapacitated and that he or she requires continuing care or supervision.

Nebraska law allows for, and favors, the appointment of a limited guardian. This is a guardian who looks after a limited number of the person's personal needs. A limited guardianship is less restrictive than a full guardianship.

Any interested party may petition the county court requesting the appointment of a guardian for another. The petition must contain specific allegations about the functional limitations of the person; why the guardianship is necessary; a statement that less restrictive alternatives have been tried and failed; and the name and qualifications of the person wanting to serve as guardian.

Nebraska statues and court rules require four separate background checks for any person who is to be appointed as a Guardian.

1) A credit report from an established credit reporting agency or business.

2) A Sex Offender Registry Check, which for Nebraska residents means the Nebraska State Patrol Sex Offender Registry. Results of this check are submitted by completing an Affidavit of Sex Offender Registry Search, which is available from the court.

3) A criminal history check. Nebraska residents use Nebraska State Patrol Criminal History Reports for Arrest and Prosecution (RAP) sheet.

4) A check of the Child/Abuse, Neglect Registry available through the Nebraska Department of Health and Human Services.

Each must be submitted to the court at least 10 days prior to the court hearing regarding the Guardian's appointment. Records will be kept confidential by the Court.

When a petition is filed asking for the appointment of a guardian, the court will set a hearing date. It may also appoint an attorney to represent the person against whom the petition has been filed. The court may also appoint an attorney called a "guardian ad litem" to advocate for the best interest of the person. Finally, the court may also appoint a physician to examine the person and a court visitor to investigate the situation.

The party filing the petition must personally notify the person against whom the guardianship is sought and his or her spouse. Personal notice is usually served by the county sheriff. In addition, the petitioner must notify the person's conservator, if any, and the person's adult children or one of his or her closest living relatives if there is no spouse. Such notice is usually done by mail. The petitioner may also need to publish notice in a local paper if he or she does not know the names and addresses of interested parties.

The person against whom the guardianship is sought must be notified by the petitioner that he or she has the following rights:

1) to request the appointment of an attorney;
2) to present evidence in his or her own behalf;
3) to compel attendance of witnesses;
4) to cross-examine witnesses, including the court-appointed physician;
5) to appeal any final order; and
6) to request a hearing closed to the public.

After the hearing, the court may appoint a guardian, if the court is satisfied, by clear and convincing evidence, that the person for whom the guardian is sought is incapacitated, and the appointment of a guardian is the least restrictive means of providing continuing care and supervision.

Who may be guardian; priorities; bond.

The law provides that any competent individual or institution may be appointed as a guardian over another person. There are, however, certain people to whom the court must give priority:

(a) Any competent person or a suitable institution may be appointed guardian of a person alleged to be incapacitated, except that it shall be unlawful for any agency providing residential care in an institution or community-based program, or any owner, part owner, manager, administrator, employee, or spouse of an owner, part owner, manager, administrator, or employee of any nursing home, room and board home, assisted-living facility, or institution engaged in the care, treatment, or housing of any person physically or mentally handicapped, infirm, or aged to be appointed guardian of any such person residing, being under care, receiving treatment, or being housed in any such home, facility, or institution within the State of Nebraska. Nothing in this subsection shall prevent the spouse, adult child, parent, or other relative of the person alleged to be incapacitated from being appointed guardian or prevent the guardian officer for one of the Nebraska veterans homes as provided in section 80-327 from being appointed guardian or conservator for the person alleged to be incapacitated. It shall be unlawful for any county attorney or deputy county attorney appointed as guardian for a person alleged to be incapacitated to circumvent his or her duties or the rights of the ward pursuant to the Nebraska Mental Health Commitment Act by consenting to inpatient or outpatient psychiatric treatment over the objection of the ward.

(b) Persons who are not disqualified under subsection (a) of this section and who exhibit the ability to exercise the powers to be assigned by the court have priority for appointment as guardian in the following order:

(1) A person nominated most recently by one of the following methods:

(i) A person nominated by the incapacitated person in a power of attorney or a durable power of attorney;

(ii) A person acting under a power of attorney or durable power of attorney; or

(iii) A person nominated by an attorney in fact who is given power to nominate in a power of attorney or a durable power of attorney executed by the incapacitated person;

(2) The spouse of the incapacitated person;

(3) An adult child of the incapacitated person;

(4) A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(5) Any relative of the incapacitated person with whom he or she has resided for more than six months prior to the filing of the petition;

(6) A person nominated by the person who is caring for him or her or paying benefits to him or her.

(c) When appointing a guardian, the court shall take into consideration the expressed wishes of the allegedly incapacitated person. The court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having lower priority or no priority. With respect to persons having equal priority, the court shall select the person it deems best qualified to serve.

(d) In its order of appointment, unless waived by the court, the court shall require any person appointed as guardian to successfully complete within three months of such appointment a training program approved by the State Court Administrator. If the person appointed as guardian does not complete the training program, the court shall issue an order to show cause why such person should not be removed as guardian.

(e) The court may require a guardian to furnish a bond in an amount and conditioned in accordance with the provisions of sections 30-2640 and 30-2641.

The court may disregard the order of priorities if it is in the best interest of the person for whom a guardian is sought.

The court may also require the guardian to post a bond. The amount of the bond will be set by the court and is normally based on the value of the estate of the person for whom the guardian is appointed.

Even after being appointed by the Court, a Guardian will not be able to act on behalf of the Ward until the Court has issued Letters of Guardianship to the new Guardian. The Court will not issue Letters of Guardianship until the Guardian has filed with the Court an Acceptance, Address Information Sheet, General Information Sheet, Inventory with Affidavit of Due Diligence, and the Bond (if required). The Guardian must also file with the Court an Acknowledgment of Financial Institution Form showing that the Court Order appointing the Guardian was provided to each financial institution in which the Ward has an account or other assets. Copies of each of these forms is available from the Court.

After the Guardian has been issued Letters of Guardianship, the Guardian must file with the Court an Acknowledgment of Financial Institution form showing that the Letters have been provided to each financial institution in which the Ward has an account or other assets. This form must shall be filed with the Court within 10 days of the Letters being issued. Failure to file will result in suspension of the Guardian's authority.

Within 90 days of his or her appointment, a guardian must complete training approved by the State Court Administrator unless the training is waived by the court. If the guardian does not complete the training, he or she must show cause to the court why he or she should not be removed.

If no conservator has been appointed, a guardian must, within thirty days after appointment, prepare and file with the court a complete inventory of the ward's estate. The guardian shall mail copies of the inventory to the ward if age fourteen years or above, and to all other interested persons. The guardian shall keep suitable records of the guardian's administration and exhibit the same on request of any interested person.

Each year after being appointed, a Guardian must prepare and file each of the following items with the court.

1) An Updated Inventory/Annual Accounting.
2) A Certificate of Proof of Possession from each institution which maintains a financial account of the Ward.
3) Copies of bank statements for the prior year with personal information, such as social security numbers, dates of birth, and account numbers blacked out.
4) An annual report on the condition of the Ward.

In addition, copies of each of these items must also be sent by first-class mail to all interested parties, along with notice to the interested parties of their right to object to contents of each filing. The forms that are required to be used for each filing are available from the court.

Generally, a guardian has the duty and responsibility to adequately take care of the person's well being and personal needs. For example, the guardian may have the following responsibilities:

1) to establish a new legal residence for the person;
2) to arrange for the person's medical care;
3) to protect the person's personal effects;
4) to give necessary consents, approval, or releases on the person's behalf;
5) to arrange for training, education, or other habilitating services appropriate for the person;
6) to apply for private or governmental benefits to which the person may be entitled;
7) to bring actions against any individual whose duty it is to support the person, if the person does not have a conservator;

8) to enter into contract agreements for the person, if the person does not have a conservator;
9) to receive money and tangible property delivered to the person, and apply the money to the person's expenses, if no conservator has been appointed; or
10) any other relevant area.

A guardian must not change a ward's place of abode to a location outside of the State of Nebraska without court permission.

If the guardian chooses to move the person, he or she is encouraged to find the least restrictive placement available. To the extent it is feasible, the guardian should consult with professionals regarding the effects of such a move.

If an emergency exists, the court may appoint a temporary guardian without notice or hearing. The concept of the temporary guardian is to provide protection for the person in an emergency situation pending a hearing at which a full guardian can be appointed or until the emergency has ended. The person over whom a temporary guardian has been appointed has a right to a hearing to determine whether the temporary guardianship is necessary or continues to be necessary.

A guardian may resign but must have the permission of the court to do so. Normally, the court will not allow a guardian to resign unless there is a successor ready to serve as guardian.

Guardianship is the most restrictive measure that can be taken in relation to an individual's personal life. Therefore, it should be approached with great care. Other least restrictive measures should be examined first.

Sources of Additional Information

More detailed information about Conservatorships and Guardianships, including the Forms which must be used for the various Court filings referenced above, is available from the Nebraska Supreme Court's website at:
http://www.supremecourt.nebraska.gov/10272/about-guardianships-and-conservatorships-nebraska

In addition, the University of Nebraska has information on guardianships, Conservatorships and training classes for both available through the University of Nebraska-Lincoln Extension, and its website found at: http://www.extension.unl.edu/guardianship/

Resources

Nebraska Area Agencies On Aging

For general questions and legal assistance regarding surrogate decision making contact the local Area Agency on Aging nearest you, and ask for the legal services provider. The addresses are:

Aging Office of Western Nebraska
1517 Broadway, Suite 122
Scottsbluff, Nebraska 69361−3184
(308) 635−0851, (800) 682−5140
Counties Served: Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, Sioux

Aging Partners
Lincoln Information for the Elderly (LIFE)
1005 O Street
Lincoln, Nebraska 68508−3628
(402) 441−7070, (800) 247−0938
Counties Served: Butler, Fillmore, Lancaster, Polk, Saline, Saunders, Seward, York

Blue Rivers Area Agency on Aging
1901 Court Street
Beatrice, Nebraska 68310−3978
(402) 223−1376, (888) 317-9417
Counties Served: Gage, Jefferson, Johnson, Nemaha, Otoe, Pawnee, Richardson, Thayer

Eastern Nebraska Office on Aging
4223 Center Street
Omaha, Nebraska 68105
(402) 444−6444, (888) 554−2711
Counties Served: Cass, Dodge, Douglas, Sarpy, Washington

Midland Area Agency on Aging
2727 West 2nd Street, Suite 440
Hastings, Nebraska 68901
(402) 463−4565, (800) 955−9714
Counties Served: Adams, Clay, Hall, Hamilton, Howard, Merrick, Nuckolls, Webster

Northeast Nebraska Area Agency on Aging
P.O. Box 1447
119 Norfolk Ave.
Norfolk, Nebraska 68702−1447
(402) 370−3279, (800) 672−8368
Counties Served: Antelope, Boone, Boyd, Brown, Burt, Cedar, Cherry, Colfax, Cuming, Dakota, Dixon, Holt, Keya Paha, Knox, Madison, Nance, Pierce, Platte, Rock, Stanton, Thurston, Wayne

South Central Nebraska Area Agency on Aging
620 East 25th Street
Suite 12
Kearney, Nebraska 68847– 3009
(308) 234–1851, (800) 658–4320
Counties Served: Blaine, Buffalo, Custer, Franklin, Furnas, Garfield, Greeley, Harlan, Kearney, Loup, Phelps, Sherman, Valley, Wheeler

West Central Nebraska Area Agency on Aging
115 North Vine
North Platte, Nebraska 69101–3902
(308) 535–8195, (800) 662–2961
Counties Served: Arthur, Chase, Dawson, Dundy, Frontier, Gosper, Grant, Hayes, Hitchcock, Hooker, Keith, Lincoln, Logan, McPherson, Perkins, Red Willow, Thomas

Nebraska Mediation Centers

If you have questions about mediation services, or you are considering using mediation services to resolve a dispute, you can contact your local Mediation Center.

Center for Conflict Resolution
1524 Broadway
P.O. Box 427
Scottsbluff, Nebraska 69363–0427
(800) 967–2115, (308) 635–2002
info@conflictresolutioncenter.com
www.conflictresolutioncenter.com
Counties Include: Arthur, Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Grant, Hooker, Keith, Kimball, Morrill, Scotts Bluff, Sheridan, Sioux,

Central Mediation Center
204 East 25th Street, Suite 5
P.O. Box 838
Kearney, Nebraska 68848–0838
(800) 203–3452, (308) 237–4692
info@centralmediationcenter.com
www.centralmediationcenter.com
Counties Include: Adams, Blaine, Buffalo, Chase, Clay, Custer, Dawson, Dundy, Franklin, Frontier, Furnas, Garfield, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Howard, Kearney, Lincoln, Logan, Loup, McPherson, Merrick, Nuckolls, Perkins, Phelps, Red Willow, Sherman, Thomas, Valley, Webster, Wheeler

Concord Center
9802 Nicholas St., Suite 375
Omaha, Nebraska 68114
(402) 345−1131
www.concord-center.com
Counties Include: Douglas and Sarpy

The Mediation Center
Mill Towne Building
610 J Street, Suite 100
Lincoln, Nebraska 68508
(402) 441−5740
info@themediationcenter.org
www.themediationcenter.org
Counties Include: Lancaster

Nebraska Justice Center
P.O. Box 1062
Fremont, Nebraska 68026−1062
(402) 753−9415, (866) 846−5576
nejustice@huntel.net
Counties Include: Antelope, Boone, Boyd, Brown, Burt, Cedar, Cherry, Colfax, Cuming, Dakota, Dixon, Dodge, Holt, Keya Paha, Knox, Madison, Nance, Pierce, Platte, Rock, Stanton, Thurston, Washington, Wayne
Tribes Served: Omaha, Winnebago, Northern Ponca, Santee Sioux

The Resolution Center
5109 W Scott Road, Suite 414
Beatrice, Nebraska 68310
(800) 837−7826, (402) 223−6061
trc@bvca.net
www.theresolutioncenter.org
Counties Include: Butler, Cass, Fillmore, Gage, Jefferson, Johnson, Nemaha, Otoe, Pawnee, Polk, Richardson, Saline, Saunders, Seward, Thayer, York

Nebraska Social Security Administration Offices

For questions regarding representative payees, contact the Social Security Administration, 1−800−772−1213, or your local Social Security office at:

2630 Eastside Blvd.
Beatrice, Nebraska 68310
(877) 319-3080

115 North Webb Road
P.O. Box 2138, Ste. 1
Grand Island, Nebraska 68802
(877) 407-3441

100 Centennial Mall North
Room 240
Lincoln, Nebraska 68508
(866) 593-2880

605 Iron Horse Drive
Ste. 1
Norfolk, Nebraska 68701
(402) 371−1595

300 East 3rd Street, Room 204
North Platte, Nebraska 69101
(308) 532−9502

Old Mill Centre
604 N 109th Ct
Omaha, NE 68154
(866) 716-8299

415 Valley View Dr
Scottsbluff, Nebraska 69361
(308) 635−2158

3555 Southern Hills Drive
Sioux City, Iowa 51106
(866) 338-2859

Nebraska Department of Health And Human Services Area Offices

For questions regarding protective payees, contact the nearest service area office of the Nebraska Department of Health & Human Services.

Central Service Area
208 North Pine Street
P.O. Box 2440
Grand Island, Nebraska 68802
(308) 385−6147
Counties Served: Adams, Blaine, Buffalo, Clay, Custer, Franklin, Garfield, Greeley, Hall, Hamilton, Harlan, Howard, Kearney, Loup, Merrick, Nuckolls, Phelps, Sherman, Valley, Webster, Wheeler

Eastern Service Area
Omaha State Office Building
1313 Farnam Street
Omaha, Nebraska 68102
(402) 595−2872
Counties Served: Douglas and Sarpy

Northern Service Area
209 North 5th Street
P.O. Box 339
Norfolk, Nebraska 68702
(402) 370-3189
Counties Served: Antelope, Boone, Boyd, Brown, Burt, Cedar, Cherry, Colfax, Cumming, Dakota, Dixon, Dodge, Holt, Keya Paha, Knox, Madison, Nance, Pierce, Platte, Rock, Stanton, Thurston, Washington, Wayne

Southeast Service Area
Gold's Building
1050 N Street, Suite 350
Lincoln, Nebraska 68509
(402) 471−5328
Counties Served: Butler, Cass, Fillmore, Gage, Jefferson, Johnson, Lancaster, Nemaha, Otoe, Pawnee, Polk, Richardson, Saline, Saunders, Seward, Thayer, York

Western Service Area
1600 10th Street
P.O. Box 540
Gering, Nebraska 69341
(308) 436−6579
Counties Served: Arthur, Banner, Box Butte, Chase, Cheyenne, Dawes, Dawson, Deuel, Dundy, Frontier, Furnas, Garden, Gosper, Grant, Hayes, Hitchcock , Hooker, Keith, Kimball, Lincoln, Logan, McPherson, Morrill, Perkins, Red Willow, Scottsbluff, Sheridan, Sioux

Adult Protective Services
(Abuse, neglect and financial exploitation)

Vulnerable adults have the right to protection from abuse, neglect and financial exploitation, including self-neglect. If you are aware of a vulnerable adult who may be a victim of abuse, neglect, self-neglect or financial exploitation, please contact the Nebraska Department of Health and Human Services' Adult Protective Services Program at 1–800–652–1999 (Adult and Child Abuse Hotline). If calling from outside Nebraska, please contact (402) 595–1324 or your local law enforcement agency.

How To Use The Forms For Power Of Attorney For Health Care And Living Will Included In This Guide

This Guide includes forms for making your own Powers of Attorney for Health Care and Living Will Declaration. Forms taken from Nebraska statutes.

Before you use either form, you should do the following:

- Read this guide carefully.
- Read the instructions on these pages.
- Consider those values and qualities of life that are important to you and use those values and qualities to help you identify and list those things concerning your medical care that you would like done, or not done, in the event you are not able to make your wishes known. Be as specific as you can be. For example, if you want treatment for cancer if it is skin cancer, no treatment for lung cancer, and all treatment except for chemotherapy for leukemia, this should be stated in the form.
- If you want to use the Power of Attorney for Health Care form, you may want to contact those persons you want to name as your agent or alternate agent to see if they would be willing to act as your agent and if they are willing to make some serious health care decisions on your behalf.

Note: It is important that you understand what the forms say and what they do. If you do not understand or have questions about using either form, contact a qualified professional before you use the forms.

Filling out a form

- Fill in blanks on the form, including your name, the names, addresses, and phone numbers of any witnesses and any agents you want to appoint, and special care instructions you might have.
- Sign and date the form in front of two witnesses or a notary public. If you use witnesses, have them sign and date the form. If a notary witnesses the signature, have the notary sign and date the form and stamp it with his or her seal. You do not need to use witnesses AND a notary, but you do need to use at least one or the other.

Note: Refer to the guide for a list of persons who can and cannot witness the form you want to use.

- Make copies of the original document that you can give to health care providers and any agents under a Power of Attorney for Health Care. Keep the originals in a safe place.

Nebraska Power of Attorney for Health Care

1. I appoint _____, whose address is _____ and whose telephone number is _____, as my attorney-in-fact for health care. I appoint, _____ whose address is _____, and whose telephone number is _____, as my successor attorney-in-fact for health care. I authorize my attorney-in-fact appointed by this document to make health care decisions for me when I am determined to be incapable of making my own health care decisions. I have read the warning which accompanies this document and understand the consequences of executing a power of attorney for health care.

2. I direct that my attorney-in-fact comply with the following instructions or limitations: _____

_____

_____

_____

3. I direct that my attorney-in-fact comply with the following instructions on life-sustaining treatment: (optional) _____

_____

_____

_____

4. I direct that my attorney-in-fact comply with the following instructions on artificially administered nutrition and hydration: (optional) _____

_____

_____

_____

I have read this power of attorney for health care. I understand that it allows another person to make life and death decisions for me if I am incapable of making such decisions. I also understand that I can revoke this power of attorney for health care at any time by notifying my attorney-in-fact, my physician, or the facility in which I am a patient or resident. I also understand that I can require in this power of attorney for health care that the fact of my incapacity in the future be confirmed by a second physician.

_____

(Signature of person making designation/date)

Declaration of Witnesses

We declare that the principal is personally known to us, that the principal signed or acknowledged his or her signature on this power of attorney for health care in our presence, and that the principal appears to be of sound mind and not under duress or undue influence, and that neither of us nor the principal's attending physician is the person appointed as attorney in fact by this document.

Witnessed By:

_____ _____

(Signature of Witness/Date) (Printed Name of Witness)

_____ _____

(Signature of Witness/Date) (Printed Name of Witness)

OR

State of Nebraska)
) ss,
County of _____)

On this _____ day of _____ 20 _____, before me, _____ a notary public in and for _____ County, personally came _____, personally known to be the identical person whose name is affixed to the above power of attorney for health care as principal, and I declare that he or she acknowledges the execution of the same to be his or her voluntary act and deed, and that I am not the attorney-in-fact or successor attorney-in-fact designated by this power of attorney for health care.

Witness my hand and notarial seal at _____ in such county the day and year last above written.

_____

Notary Public

Source: § 30-3408 Neb Rev Stat

Nebraska Living Will Declaration

If I should lapse into a persistent vegetative state or have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, pursuant to the Rights of the Terminally Ill Act, to withhold or withdraw life-sustaining treatment that is not necessary for my comfort or to alleviate pain.

Other directions: _____

_____

_____

_____

Signed this _____ day of _____

Signature _____

Address _____

_____

The declarant voluntarily signed this writing in my presence.

Witness _____

Address _____

_____

Witness _____

Address _____

_____

Or

The declarant voluntarily signed this writing in my presence.

_____

Notary Public

Source: § 20-404 Neb Rev Stat

Glossary

Advance Directives– A general term that describes two kinds of legal documents, living wills and health care powers of attorney. These documents allow a person to give instructions about future medical care should he or she be unable to participate in health care decisions due to serious illness or incapacity. Each state regulates the use of advance directives differently.

Agent– A person authorized by another (the principal) to act for him or her.

Beneficiary– The individual receiving benefits.

Conservator– An individual or corporation appointed by a court to manage the estate, property and/or other business affairs of an individual (the ward) whom the court has determined is unable to do so for him or herself.

Durable Power of Attorney– A Power of Attorney that lasts beyond the disability or incapacity of the principal.

Guardian– An individual appointed by a court to manage the care of an individual (the ward) whom the court has determined is unable to do so for him or herself.

Living Wills– A written statement that describes the type of care a person wishes to receive in the event he or she is suffering from a terminal illness or is in a persistent vegetative state.

Mediation– The use of a neutral third party to facilitate discussion and decision making.

Power of Attorney– A document that authorizes one person (the agent) to act on another person's (the principal) behalf. Powers of Attorney can be either limited or general, depending upon the wishes of the principal.

Power of Attorney for Health Care– A document through which one person (the principal) authorizes another person (the agent) to make health care decisions on his or her behalf.

Principal– One who has permitted or directed another (the agent) to act for him or her. The agent is subject to the control and direction of the principal.

Protective payee– An individual assigned by the Nebraska Health and Human Services System (HHSS) to receive public assistance payments on behalf of another person.

Representative payee – A person appointed by the Social Security Administration (SSA) to receive and manage benefits, administered through the SSA, on behalf of another person.

Surrogate decision making– When someone makes decisions on behalf of someone else.

Veterans Administration fiduciary– An individual or legal entity appointed by the Veterans Administration (VA) to manage the VA benefits on behalf of a veteran or on behalf of a minor dependent of a veteran.

Ward– A person placed by the court under the care of another (the guardian and/or conservator).

The Nebraska Department of Health & Human Services State Unit on Aging
provides services without regard to race, color, religion, sex, national origin, marital status, disability or age.

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This publication can be made available in an alternative format, for those with disabilities, upon request.
Requests will be filled within 15 working days.

The Nebraska Department of Health and Human Services is committed to affirmative action/equal employment opportunities and does not discriminate in delivering benefits or services.

Department of Health & Human Services
DHHS
NEBRASKA

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