

TO: Interested Parties

FROM: Cynthia Pederson, JD
State Long-Term Care Ombudsman

RE: Visitation and Substitute Decision Makers

DATE: February 1, 2019

The purpose of the Office of the State Long-Term Care Ombudsman (Office) is to advocate for the rights and wishes of residents and tenants in long-term care. In fact, residents' rights are guaranteed by the 1987 Nursing Home Reform Act (the Act).¹ The Act requires nursing facilities to promote and protect the rights of each resident and places a strong emphasis on individual dignity and self-determination. Iowa Code incorporates these rights into state law for nursing facility, residential care facility, assisted living and elder group home residents and tenants.² This Memorandum addresses a substitute decision maker's ability to limit or deny visitation for a resident or tenant.

1. Resident and Tenant Rights

The Act requires that residents and tenants are guaranteed access and visitation rights. These rights are essential to a meaningful quality of life.

- a. The resident has a right to receive visitors of his or her choosing at the time of his or her choosing, subject to the resident's right to deny visitation when applicable, and in a manner that does not impose on the rights of another resident.³
 1. The facility must provide immediate access to a resident by immediate family and other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time;
 2. The facility must provide immediate access to a resident by others who are visiting with the consent of the resident, subject to reasonable clinical and safety restrictions and the resident's right to deny or withdraw consent at any time;
 3. The facility must provide reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and
 4. The facility must have written policies and procedures regarding the visitation rights of residents, including those setting forth any clinically necessary or reasonable restriction or limitation or safety restriction or limitation, when such limitations may apply consistent with the requirements of this subpart, that the facility may need to place on such rights and the reasons for the clinical or safety restriction or limitation.

¹ 42 U.S.C. 1396r; 42 C.F.R. 483.10

² Iowa Code 135C.14(8); 481 IAC 67.3

³ 42 C.F.R. 483.10(f)4

- b. The tenant has the right to associate and communicate privately and without restriction with persons and groups of the tenant's choice, including the tenant advocate, on the tenant's initiative or on the initiative of the persons or groups at any reasonable hour.⁴
- c. Some limitations to access are provided for in Iowa law.⁵ A visitor may be restricted by the facility for the following reasons:
 1. The resident refuses to see the visitor;
 2. The resident's physician documents specific reasons why such a visit would be harmful to the resident's health;
 3. The visitor's behavior is unreasonably disruptive to the functioning of the facility.

It is the assessment of this Office that an attorney-in-fact acting under a durable power of attorney for health care cannot limit visitation or access to a resident or tenant. A durable power of attorney allows for an attorney-in-fact to act for the purpose of making health care decisions, and the decision to allow access to a resident is not a health care decision.⁶ Therefore, the resident's right to receive or refuse a visitor does not transfer to someone acting as an attorney-in-fact pursuant to a durable power of attorney for health care.

2. Durable Power of Attorney for Health Care

- a. A durable power of attorney for health care is a document which authorizes an attorney-in-fact to make health care decisions for the principal, if the principal is unable, in the judgment of the attending physician, to make health care decisions.
- b. An attorney-in-fact is the individual who is designated by a durable power of attorney for health care to act as agent to make health care decisions on behalf of the principal and has consented to act in that capacity. The attorney-in-fact must act consistently with the principal's desires as stated in the document or otherwise made known. If the principal has not refused visits in the past, a presumption should be made that he/she would not now want to limit visits.
- c. A principal is the person age 18 or older who has executed a durable power of attorney for health care.
- d. Since an attorney-in-fact is designated to make health care decisions, it is important to understand the definition of "health care decisions". Health care decisions are defined under Iowa law⁷ as the consent, refusal of consent, or withdrawal of consent to health care. Health care is defined as any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition. The attorney-in-fact's authority is over health care decisions. Visitation and access to a resident is not a health care decision. The law does not specifically set out restrictions on visitation as a right that the attorney-in-fact can exercise. Therefore, that right remains with the resident.

It is the determination of this Office that an adult ward under a guardianship has the right of communication, visitation, or interaction with other persons upon the consent of the adult ward. If an adult ward is unable to give express consent to such communication, visitation, or interaction with a person due to a physical or mental condition, consent of an adult ward may be presumed by a guardian or a court based on an adult ward's prior relationship with such person.⁸

⁴ 481 IAC 67.3(6)

⁵ 481 IAC 58.47(2)

⁶ Iowa Code 144B

⁷ Iowa Code 144B.1(4)

⁸ Iowa Code 633.637A

3. Guardianship

- a. A guardian is the person appointed by the court to have certain powers and duties regarding a ward.
- b. Without court approval, a guardian may place reasonable time, place or manner restrictions on communication, visitation, or interaction between the adult ward and another person.
- c. With court approval, a guardian may deny all communication, visitation, or interaction by an adult ward with a person with whom the adult ward has expressed a desire to communicate, visit, or interact or with a person who seeks to communicate, visit, or interact with the adult ward. A court shall approve the denial of all communication, visitation, or interaction with another person only upon a showing of good cause by the guardian.⁹ The guardian shall promote and make an effort to maintain the ward's social interactions and meaningful relationships with family and friends and encourage the ward to participate in all decisions that affect him or her.¹⁰

For more information on the Office of the State Long-Term Care Ombudsman or to reach a Local Long-Term Care Ombudsman, please call 866-236-1430.

⁹ Iowa Code 633.635 2d

¹⁰ National Guardianship Association Standards of Practice (4th ed.)