

# 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.

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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 prove 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 or send the payee an “Award Letter” and booklet explaining the duties and responsibilities of the payee. The payee should read the booklet and ask the SSA any questions he or she might have. He or she should then file a “Certificate of Application for Benefits on Behalf of Another” with the SSA.

If anyone is dissatisfied with the decision to appoint a representative payee, the decision can be appealed through the SSA.

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. Bayes' 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 if they are paid with State Disability or State Supplemental funds.

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) 399-8963 or (800) 827-1000.

### ***Power of Attorney***

(For information on Power of Attorney for Health Care, see page 11)

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. Thus, the Smiths assigned 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, although many lawyers may have printed forms that are often used. 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 for how long the person will have the authority to act on behalf of the principal; and
- 4) the signature of the person giving the power of attorney.

If the power of attorney authorizes the agent to sell real estate, it must be notarized to be valid. Otherwise, there are no formal execution requirements for a power of attorney. Nonetheless, it is advisable that they be witnessed by two people and notarized.

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 by 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 remain effective despite the principal's subsequent disability or incapacity, 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.

The power of attorney can be limited (dealing with only a particular action) or very general (dealing with an entire class of actions). It may also be made durable so that it lasts beyond disability or incapacity.

## 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. In fact, while oral advance directives are probably enforceable under the law, they 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;
- 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, physician, attorney in fact, or an employee of a life or health insurance provider for the principal;

- 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.
  - b. the attending physician determines that you have a terminal condition or are in a persistent vegetative state;
  - c. the attending physician determines that you are unable to make a health care decision; and
  - d. the attending physician has notified one of your immediate family members who is reasonably available of your diagnosis, and that the physician intends to invoke your declaration.

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.

### ***Code/No Code Orders***

Code/no code orders are directions one gives regarding his or her wishes in relation to cardiopulmonary resuscitation (CPR) and other emergency medical procedures. Code/no code

orders are quite common in nursing home and hospital settings. Generally, the patient is asked upon admission whether or not he or she wants emergency procedures undertaken should his or her medical situation warrant the need for such procedures. The treating physician will then note in the medical record whether the patient is a “code” or “no code” patient. If the patient is a code patient, the procedure will be done. If he or she is a no code patient, it 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 able 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. Only a court of competent jurisdiction in Nebraska can make determinations about capacity and take decision making authority away from an adult.

## **Guardianship And Conservatorship**

When one is no longer able to make a conscious choice regarding the type of surrogate decision making that is most appropriate for his or her situation, it may be necessary to pursue a conservatorship or guardianship.

### ***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.

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 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 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.

The law includes a list of people or organizations that may be appointed as conservator. When choosing, the court will look at the following people as having priority for appointment:

- 1) a person nominated most recently by:
  - a. the protected person in a power of attorney or durable power of attorney; or
  - b. a person nominated by an agent under a power of attorney if he or she has been given that authority in the power of attorney or a durable power of attorney;
- 2) a conservator or guardian of property 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 age fourteen or older, 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; and
- 8) a person nominated by the person who is caring for him or her or paying benefits to him or her.

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.

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 and should relate to the value of the assets in the estate.

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.

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. For a complete list of possible actions that may be taken without court action, see Section 30-2653 of the Nebraska Revised Statutes.

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.

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.

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:

- 1) an individual nominated most recently by either of the following methods:
  - a. by the person in a power of attorney or a durable power of attorney;
  - b. 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 person;
- 2) the spouse of the person for whom a guardian is sought;
- 3) the adult children of the person for whom a guardian is sought;
- 4) the parent of the person or someone named in the will of a deceased parent;
- 5) any relative with whom the person has been living for more than six months; or
- 6) a person nominated by the person for whom a guardian is sought.

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.

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.

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.

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.

The guardian is required to file a report with the court annually or at the request of the court. This

report should include a discussion of the condition of the person and his or her estate.

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.

## 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

#### **Blue Rivers Area Agency on Aging**

1901 Court Street

Beatrice, Nebraska 68310-3978

(402) 223-1352, (800) 659-3978

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

#### **Lincoln Area Agency on Aging**

Lincoln Information for the Elderly (LIFE)

1005 O Street, Suite 300

Lincoln, Nebraska 68508-3628

(402) 441-7070, (800) 247-0938

Counties Served: Butler, Fillmore, Lancaster, Polk, Saline, Saunders, Seward, York

#### **Midland Area Agency on Aging**

P.O. Box 905

305 Hastings, Room 202

Hastings, Nebraska 68902

(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) 370-3454, (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**

Suttle Plaza

4623 2<sup>nd</sup> Avenue, Suite 4.

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](mailto:info@conflictresolutioncenter.com)[www.conflictresolutioncenter.com](http://www.conflictresolutioncenter.com)

Counties Include: Arthur, Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Grant, Hooker, Keith, Kimball, Lincoln, Logan, McPherson, Morrill, Scotts Bluff, Sheridan, Sioux, Thomas

**Central Mediation Center**204 East 25<sup>th</sup> Street, Suite 5

P.O. Box 838

Kearney, Nebraska 68848-0838

(800) 203-3452, (308) 237-4692

[info@centralmediationcenter.com](mailto:info@centralmediationcenter.com)[www.centralmediationcenter.com](http://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, Loup, Merrick, Nuckolls, Perkins, Phelps, Red Willow, Sherman, Valley, Webster, Wheeler

**Concord Center**

3861 Farnam Street, Suite B  
Omaha, Nebraska 68131  
(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

*kostrom@qwest.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  
(402) 223-2309

115 North Webb Road  
P.O. Box 2138  
Grand Island, Nebraska 68802  
(308) 385-6440

Room 191  
100 Centennial Mall North  
Lincoln, Nebraska 68508  
(402) 437-5401

208 North 5<sup>th</sup> St., Suite A  
Norfolk, Nebraska 68701  
(402) 371-1595

300 East 3<sup>rd</sup> Street, Room 204  
North Platte, Nebraska 69101  
(308) 532-9502

7100 West Center Road, Ste. 200  
Omaha, Nebraska 68106  
(402) 399-8963

1937 Avenue A  
Scottsbluff, Nebraska 69361  
(308) 635-2158

3555 Southern Hills Drive  
Sioux City, Iowa 51106  
(712) 255-5525

***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 5<sup>th</sup> 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 10<sup>th</sup> 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.

## **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 Declarations. The forms are 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 lawyer, health-care provider, or social worker 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

### 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



## 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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## NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES



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