



*“Advocating for All Generations”*

The Coalition of Wisconsin Aging Groups is a nonprofit, nonpartisan, statewide membership organization that was founded in 1978.

Coalition of Wisconsin Aging Groups

*Intergenerational Leadership Development ▪ Education ▪ Advocacy ▪ Elder Law Center*

## DEALING with SURROGATE DECISION-MAKERS

05/01/2011

### **I. A “Surrogate” is Someone Who Makes Decisions on Behalf of Another Adult**

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

### **II. Legally Recognized Surrogates in Wisconsin Include:**

- A. Health care agent under an activated Power of Attorney for Health Care
- B. Financial agent under a Durable Power of Attorney
  - a/k/a Power of Attorney for Finances
  - a/k/a General Power of Attorney
- C. Guardian of the Person
- D. Guardian of the Estate
- E. Conservator
- F. Representative Payee
- G. Trustee
- H. Family members/friends under certain limited circumstances
  - Hospice

- From hospitals to nursing homes (Section 50.06 of Wisconsin Statutes)
- I. Law enforcement, county APS, Guardians under emergency protective placement
- J. Others

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

- A. POA-HC *plus* activation certification
- B. DPOA (Durable Power of Attorney) plus activation certification, if needed
- C. Authenticated Petition for Guardianship and Protective Placement and doctors' written statement of incapacity for Section 50.06 admission
- D. Letters of Guardianship (Estate and/or Person)
- E. Determination and Order Appointing Guardian and Protective Placement/Services
- F. Letters of Conservatorship
- G. Representative Payee
- H. Statement of Emergency Protective Placement

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

- A. Make sure the document is complete.
- B. Look for page numbers to be sure the document is complete.
- C. Look for paragraph numbers to be sure the document is complete.
- D. Read the entire document to be sure the document is complete.
- E. Look for the signatures that signal the end of the document.
- F. POA-HC (Power of Attorney for Health Care)
  - a. "Health Care decision" – "an informed decision in the exercise of the right to accept, maintain, discontinue or refuse any care, treatment, service or procedure to maintain, diagnose or treat an individual's physical or mental condition." Sections 155.01 (3) and (5) of Wisconsin Statutes.
  - b. Specific authorization needed for nursing home/CBRF admission
  - c. Special instructions?
- G. DPOA (Durable Power of Attorney)

- a. Gifting authority?
- b. Limitations on authority?
- H. Letters of Guardianship
  - a. Guardian of the Person? Or Estate? Or both?
  - b. Temporary or permanent?

## **V. Understanding the Statute that Governs**

- A. Contact your attorney
- B. Contact the Wisconsin Guardianship Support Center at 1-800-488-2596 ext. 314 or [guardian@cwag.org](mailto:guardian@cwag.org)

**QUESTIONS? Call the Guardianship Support Center at 1-800-488-2596 ext. 314. Or e-mail at [guardian@cwag.org](mailto:guardian@cwag.org).**

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