

## Planning for Incapacitation: The Legal Perspective

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## Statistics to Consider

- Iowa Department of Public Health – Vital Statistics (2008) Alzheimer's Disease ranked 5<sup>th</sup> among Iowa's morbidity rates, moving ahead of unintentional injuries and just behind stroke. (Unintentional injuries includes car accidents).
- Nationwide, Alzheimer's Disease ranks 6<sup>th</sup> as the leading cause of death among Americans. (Alzheimer's Association)
- 1 of 8 individuals aged 65 and older have Alzheimer's Disease. (Alzheimer's Association)

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# Who has dementia?

Dementia is a “generic term”

Many different types

Alzheimer’s disease → Most common type

Risk increases with advancing age

25% of 80 year olds

33% of 85 year olds

50% of 90 year olds

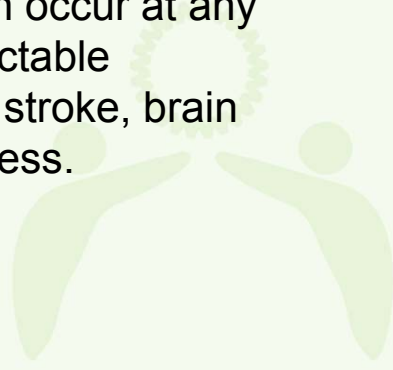
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Is dementia the only condition that brings about incapacity?

**NO!** Incapacity can occur at any age due to unpredictable conditions such as stroke, brain injury or mental illness.

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# Everyone can benefit from planning for incapacitation



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## Substitute Decision Making Types

- Personal Care
  - Health Care Power of Attorney
  - Advance Directives
  - Guardianship
- Financial Management
  - Representative Payee
  - Financial Power of Attorney
  - Conservatorship



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## Advance Directives

Legal documents that state a person's wishes for medical treatments in case he or she is not able to make his or her own decision. In Iowa, these are durable power of attorney for healthcare, living will, and out of hospital do-not-resuscitate orders.

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## Health Care Power of Attorney

- A written document by which one person (principal) gives another person (attorney-in-fact) the authority to act on the principal's behalf in health care matters.
- Form is available to the public through the Iowa State Bar Association.
- Iowa Legal Aid – Hotline for Older Iowans – may also be able to assist.

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## How does the Health Care Power of Attorney work?

- Flexible document
- Can take effect immediately or at some future date or event
- Can be set up for a specific and limited amount of time or only when a physician determines the principal is incapacitated.

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## Important!

- No court supervision or oversight mechanism
- Can be modified at any point prior to triggering event
- Can be revoked at any time, regardless of capacity
- Document terminates upon death of principal

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# Health Care Provider Exclusions

The following individuals cannot serve as a health care attorney-in-fact or a witness:

- A health care provider attending the principal on the date the document is signed.
- An employee of that health care provider unless the individual is related to the principal.

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# Living Will

- A directive to a physician to withhold or withdraw life sustaining procedures when an individual is in a terminal condition.
- Form is available to the public through the Iowa State Bar Association.
- Often combined with the Health Care Power of Attorney.

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## Out of Hospital – Do – Not – Resuscitate Order

- A physician's order for a person in a terminal condition which allows for non-resuscitation in out of hospital settings
- Always keep a copy of the physician's order on your person
- Check local EMS and firefighter rules and regulations.

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## Financial Power of Attorney

- A written document by which one person (principal) gives another person (attorney-in-fact) the authority to act on the principal's behalf in financial matters.
- Often referred to as a "General" Power of Attorney
- Form is NOT available to the public.
- Iowa Legal Aid – Hotline for Older Iowans – may also be able to assist.

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## How does the Financial Power of Attorney work?

- Flexible document
- Can take effect immediately or at some future date or event
- Can be set up for a specific and limited amount of time or only when a physician determines the principal is incapacitated.

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## Important!

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## Caveat to Revocation:

The Financial Power of Attorney must be revoked IN WRITING.



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## Responsibilities of Financial Attorney-in-Fact

- Agrees to act consistently with the desires as stated in the document or otherwise made known by the principal
- Can have authority to manage and conduct the following items if explicitly listed in the power of attorney document:
  - Borrowing money, mortgaging property, renewing or extending debts, and working with creditors
  - Handling property and finances, including selling, leasing, managing, and buying

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## Responsibilities of Financial Attorney-in-Fact, cont.

- Purchasing insurance
- Applying for benefits and participating in governmental programs
- Selling, conveying, leasing, or maintaining real estate
- Making financial investments (stocks, bonds, annuities, certificates of deposit, etc.)
- Opening, maintaining, or closing bank accounts or brokerage accounts
- Accessing and managing safe deposit boxes and their contents

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## Responsibilities of Financial Attorney-in-Fact, cont.

- Paying all city, county, state, or federal taxes
- Voting at corporate meetings
- Preparing and filing federal and state income tax returns and other tax returns as needed
- Initiating, defending, prosecuting, or settling any lawsuit
- Starting or carrying on a business
- Employing professional and business assistants of all kinds, including lawyers, accountants, real estate agents, etc.

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## Responsibilities of Financial Attorney-in-Fact, cont.

- Managing gifts
- Disclaiming part or all of an inheritance
- Handling burial funds
- Handling income and paying bills
- Administering federal benefits such as Social Security, but only if they are also appointed as representative payee
- Signing up for Social Security, veterans benefits, Medicare, and Medicaid
- Working with pensions and defined benefits
- Transferring to a trustee any and all property

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## Other Considerations

- Who should have copies of the financial power of attorney or advance directives?
  - The principal
  - Attorney-in-fact and alternate(s), if any
  - Physicians and other health care providers
  - Financial institutions and other financial managers
  - Family members and friends
- There is no central location to find out if a power of attorney has been put in place by an individual.

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The National Health Law and Policy  
Resource Center (NHLP) is conducting a  
Substitute Decision-Making Initiative.

Please visit the NHLP website at  
<http://www.uiowa.edu/~law-nhlp/index.shtml>  
for more information.

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