

Choosing a Legal Representative

Information for Nursing Facility Residents & Families

What is a legal representative?

A legal representative is someone who makes health care decisions for the resident if the resident is unable to speak for himself/herself on a temporary or long term basis.

Why is it important to have a legal representative?

Sometimes when a person becomes very ill, he or she may not be able to speak up and participate in making decisions about medical care. Having a legal representative who can speak as an advocate on the behalf of the resident increases the likelihood the resident will receive the kind of care he or she wants.

What are the responsibilities of a legal representative?

The legal representative is responsible for making decisions based on the resident's values and goals of care. If they do not know what the resident's preferences would be, the legal representative should make decisions based on what he/she thinks is in the best interest of the patient.

How does one become a legal representative?

A representative is appointed by filling out legal paperwork. In Indiana, there are three different types of legal representatives:

- 1) Healthcare Representative. A resident can appoint someone to serve as their healthcare representative. The form requires the signature of the resident and a witness.
- 2) Power of Attorney over Healthcare. A resident can also appoint someone to serve as their healthcare power of attorney. The form requires two witnesses and the stamp of a notary public, so it takes a little more planning to prepare. However, a Power of Attorney over healthcare can make a broader range of decisions about healthcare than a healthcare representative.
- 3) Legal Guardian. If a resident is unable to make decisions and did not appoint a legal representative, a judge can appoint a legal guardian.

Choosing a health care representative is included in the Indiana Health Care Consent Act. The advance directive naming a health care representative must be in writing, signed by the resident, and witnessed by another adult. Indiana courts have made it clear that decisions made for you by your health care representative should be honored.

Who should you pick to be your legal representative?

Picking a legal representative is an important decision. Although it may be tempting to pick your spouse or oldest child because it seems easy, it is helpful to think about whether this person is the best representative for you and would be comfortable in this role. The person you pick should be an adult who is willing to serve as your legal representative and knows you well. Ideally this person lives nearby and will be available to help make decisions in the future. It is a good idea to have a back-up representative just in case.

What are some important qualities for a legal representative?

Your legal representative should be willing to make decisions based on your preferences, even if he/she does not agree with you. The person you pick should be someone who is able to handle conflicting opinions and make decisions.

What if you do not appoint a legal representative?

Some people choose not to appoint a legal representative. If you do not appoint someone, the law allows family members to make decisions on your behalf. In Indiana, the list of people who could make decisions on your behalf is as follows: spouse, adult child, either parent, adult sibling, grandparent, adult grandchild, nearest adult relative, or adult friend. This list is in order of priority. If there is more than one person in any category and they disagree (e.g., multiple children), then the majority get to decide.

How do you talk to someone about becoming your legal representative?

Discuss your wishes with the person you want to be your representative - don't assume the person knows you want him or her to be your medical decision-maker. Before having the conversation, consider your goals and values for medical care and where you would want to spend your last days. When discussing your goals with the person, allow them time to think about what you are asking from them and what your preferences for care are. Let them ask questions so they understand what you want. Remember that you don't have to cover everything in one conversation.

Resources

If you have questions or would like to learn more, please reach out to your OPTIMISTIC Nurse or explore the following resources:

- Indiana Appointment of Health Care Representative
http://www.in.gov/fssa/files/Indiana_Appointment_of_Health_Care_Representative.pdf
- Indiana State Department of Health Advance Directives Resource Center
<http://www.in.gov/isdh/25880.htm>
- Indiana Physician Orders for Scope of Treatment (POST)
<http://www.indianapost.org/>