

Choosing A Legal Representative

Information for Healthcare Professionals

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 for the resident 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 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 the legal representative does not know what the resident's preferences are, the legal representative should make decisions based on what he/she thinks is in the best interest of the resident.

How can I support the resident in appointing a legal representative?

There are three types of legal representative appointments under Indiana law. The resident must have decision making capacity in order to appoint a healthcare representative or power of attorney over health care.

- 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 Health Care can make a broader range of decisions about health care 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.

How can I support a resident in selecting a legal representative?

Selecting a legal representative is an important decision. It is helpful to explore who is the best representative and would be comfortable in this role. The person the resident picks should be an adult who is willing to serve as their legal representative and knows the resident well. Ideally this person lives nearby and will be available to help make decisions in the future. It is a good idea to encourage the resident to have a back-up representative just in case.

Help the resident to discuss their wishes with the person(s) they want to be their representative. Explain to the resident they can't assume the person knows they want him or her to be their medical decision-maker. Before they have this conversation, help the resident in identifying their goals and values for medical care and where they would want to spend their last days. Explain to the resident that when discussing your goals with their legal representative, allow them time to think about what the resident is asking from them and understand the residents' goals for care. Remind the resident that they don't have to cover everything in one conversation.

What are some important qualities for a legal representative?

A legal representative should be willing to make decisions based on the residents' preferences, even if he/she does not agree with the resident. The person selected should be someone who is able to handle conflicting opinions and make difficult decisions.

What if a resident does not appoint a legal representative?

Choosing a legal representative is voluntary. If a resident does not appoint someone, Indiana state 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.

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/>