

SUBSTITUTE DECISION MAKER ACT Implementation of chapter subject to availability of funding; Code editor to be notified by department upon implementation of chapter; see §231E.13

231E.1 Title.

This chapter shall be known and may be cited as the *"Iowa Substitute Decision Maker Act"*.

2005 Acts, ch 175, §130

231E.2 Office of substitute decision maker findings and intent.

1. *a.* The general assembly finds that many adults in this state are unable to meet essential requirements to maintain their physical health or to manage essential aspects of their financial resources and are in need of substitute decision-making services. However, a willing and responsible person may not be available to serve as a private substitute decision maker or the adult may not have adequate income or resources to compensate a private substitute decision maker.

b. The general assembly further finds that a process should exist to assist individuals in finding alternatives to substitute decision-making services and less intrusive means of assistance before an individual's independence or rights are limited.

c. The general assembly further finds that a substitute decision maker may be necessary to finalize a person's affairs after death when there is no willing and appropriate person available to serve as the person's personal representative.

2. *a.* It is, therefore, the intent of the general assembly to establish a state office of substitute decision maker and authorize the establishment of local offices of substitute decision maker to provide substitute decision-making services to adults and their estates after their deaths, when no private substitute decision maker is available.

b. It is also the intent of the general assembly that the office of substitute decision maker provide assistance to both public and private substitute decision makers throughout the state in securing necessary services for their wards, principals, clients, and decedents and to assist substitute decision makers, wards, principals, clients, courts, and attorneys in the orderly and expeditious handling of substitute decision-making proceedings.

2005 Acts, ch 175, §131

231E.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Client"* means an individual for whom a representative payee is appointed.
2. *"Commission"* means the commission of elder affairs.
3. *"Conservator"* means conservator as defined in section 633.3.
4. *"Court"* means court as defined in section 633.3.
5. *"Decedent"* means the individual for whom an estate is administered or executed.
6. *"Department"* means the department of elder affairs established in section 231.21.

7. *"Director"* means the director of the department of elder affairs.
8. *"Estate"* means estate as defined in section 633.3.
9. *"Guardian"* means guardian as defined in section 633.3.
10. *"Incompetent"* means incompetent as defined in section 633.3.
11. *"Local office"* means a local office of substitute decision maker.
12. *"Local substitute decision maker"* means an individual under contract with the department to act as a substitute decision maker.
13. *"Personal representative"* means personal representative as defined in section 633.3.
14. *"Planning and service area"* means a geographic area of the state designated by the commission for the purpose of planning, developing, delivering, and administering services for elders.
15. *"Power of attorney"* means a durable power of attorney for health care as defined in section 144B.1 or a power of attorney that becomes effective upon the disability of the principal as described in section 633B.1.
16. *"Principal"* means an individual for whom a power of attorney is established.
17. *"Representative payee"* means an individual appointed by a government entity to receive funds on behalf of a client pursuant to federal regulation.
18. *"State agency"* means any executive department, commission, board, institution, division, bureau, office, agency, or other executive entity of state government.
19. *"State office"* means the state office of substitute decision maker.
20. *"State substitute decision maker"* means the administrator of the state office of substitute decision maker.
21. *"Substitute decision maker"* means a guardian, conservator, representative payee, attorney in fact under a power of attorney, or personal representative.
22. *"Substitute decision making"* or *"substitute decision-making services"* means the provision of services of a guardian, conservator, representative payee, attorney in fact under a power of attorney, or personal representative.
23. *"Ward"* means the individual for whom a guardianship or conservatorship is established.

2005 Acts, ch 38, §54; 2005 Acts, ch 175, §132

231E.4 State office of substitute decision maker established duties department rules.

1. A state office of substitute decision maker is established within the department to create and administer a statewide network of substitute decision makers who provide substitute decision-making services if other substitute decision makers are not available to provide the services.
2. The director shall appoint an administrator of the state office who shall serve as the state substitute decision maker. The state substitute decision maker shall be qualified for the position by training and

expertise in substitute decision-making law. The state substitute decision maker shall also have knowledge of social services available to meet the needs of persons adjudicated incompetent or in need of substitute decision making.

3. The state office shall do all of the following:

- a. Select persons through a request for proposals process to establish local offices of substitute decision maker in each of the planning and service areas. Local offices shall be established statewide on or before July 1, 2015.
- b. Monitor and terminate contracts with local offices based on criteria established by rule of the department.
- c. Retain oversight responsibilities for all local substitute decision makers.
- d. Act as substitute decision maker if a local office is not available to so act.
- e. Work with the department of human services, the Iowa department of public health, the governor's developmental disabilities council, and other agencies to establish a referral system for the provision of substitute decision-making services.
- f. Develop and maintain a current listing of public and private services and programs available to assist wards, principals, clients, personal representatives, and their families and establish and maintain relationships with public and private entities to assure the availability of effective substitute decision-making services for wards, principals, clients, and estates.
- g. Provide information and referrals to the public regarding substitute decision-making services.
- h. Provide personal representatives for estates where a person is not available for that purpose.
- i. Maintain statistical data on the local offices including various methods of funding, the types of services provided, and the demographics of the wards, principals, clients, and decedents and report to the general assembly on or before November 1, annually, regarding the local offices and recommend any appropriate legislative action.
- j. Develop, in cooperation with the judicial council as established in section 602.1202, a substitute decision-maker education and training program. The program may be offered to both public and private substitute decision makers. The state office shall establish a curriculum committee, which includes but is not limited to probate judges, to develop the education and training program.

4. The state office may do any of the following:

- a. Accept and receive gifts, grants, or donations from any public or private entity in support of the state office.
- b. Accept the services of individual volunteers and volunteer organizations.
- c. Employ staff necessary to administer the state office and enter into contracts as necessary.

5. The department shall provide administrative support to the state office.

6. The department shall adopt rules in accordance with chapter 17A necessary to create and administer the state and local offices, relating to but not limited to all of the following:

- a. An application and intake process and standards for receipt of substitute decision-making services from the state or a local office.
- b. A process for the removal or termination of the state or a local substitute decision maker.
- c. An ideal range of staff-to-client ratios for the state and local substitute decision makers.
- d. Minimum training and experience requirements for professional staff and volunteers.
- e. A fee schedule. The department may establish by rule a schedule of reasonable fees for the costs of substitute decision-making services provided under this chapter. The fee schedule established may be based upon the ability of the ward, principal, client, or estate to pay for the services but shall not exceed the actual cost of providing the services. The state office or a local office may waive collection of a fee upon a finding that collection is not economically feasible. The rules may provide that the state office or a local office may investigate the financial status of a ward, principal, client, or estate that requests substitute decision-making services or for whom or which the state or a local substitute decision maker has been appointed for the purpose of determining the fee to be charged by requiring the ward, principal, client, or estate to provide any written authorizations necessary to provide access to records of public or private sources, otherwise confidential, needed to evaluate the individual's or estate's financial eligibility. The rules may also provide that the state or a local substitute decision maker may, upon request and without payment of fees otherwise required by law, obtain information necessary to evaluate the individual's or estate's financial eligibility from any office of the state or of a political subdivision or agency of the state that possesses public records. In estate proceedings, the state or local decision maker shall be compensated pursuant to chapter 633, division III, part 8.
- f. Standards and performance measures for evaluation of local offices.
- g. Recordkeeping and accounting procedures to ensure that the state office and local offices maintain confidential, accurate, and up-to-date financial, case, and statistical records. The rules shall require each local office to file with the state office, on an annual basis, an account of all public and private funds received and a report regarding the operations of the local office for the preceding fiscal year.
- h. Procedures for the sharing of records held by the court or a state agency with the state office, which are necessary to evaluate the state office or local offices, to assess the need for additional substitute decision makers, or to develop required reports.

2005 Acts, ch 175, §133

231E.5 Local office of substitute decision maker requirements for state and local substitute decision makers.

1. The state substitute decision maker shall select persons to provide local substitute decision-making services in each of the planning and service areas, based upon a request for proposals process developed by the department.
2. The local office shall comply with all requirements established for the local office by the department and shall do all of the following:
 - a. Maintain a staff of professionally qualified individuals to carry out the substitute decision-making functions.
 - b. Identify client needs and local resources to provide necessary support services to recipients of substitute decision-making services.

c. Collect program data as required by the state office.

d. Meet standards established for the local office.

e. Comply with minimum staffing requirements and caseload restrictions.

f. Conduct background checks on employees and volunteers.

g. With regard to a proposed ward, the local office shall do all of the following:

(1) Determine the most appropriate form of substitute decision making needed, if any, giving preference to the least restrictive alternative.

(2) Determine whether the needs of the proposed ward require the appointment of a guardian or conservator.

(3) Assess the financial resources of the proposed ward based on the information supplied to the local office at the time of the determination.

(4) Inquire and, if appropriate, search to determine whether any other person may be willing and able to serve as the proposed ward's guardian or conservator.

(5) Determine the form of guardianship or conservatorship to request of a court, if any, giving preference to the least restrictive form.

(6) If determined necessary, file a petition for the appointment of a guardian or conservator pursuant to chapter 633.

h. With regard to an estate, the local office may appoint a personal representative to file a petition to open an estate who shall do all of the following:

(1) Retain legal counsel as described in section 231E.11 to be compensated from the proceeds of the estate pursuant to chapter 633, division III, part 8.

(2) Liquidate all assets of the estate.

(3) Distribute the assets of the estate pursuant to chapter 633, division VII, parts 7 and 8, and other applicable provisions of law.

3. A local office may do any of the following:

a. Contract for or arrange for provision of services necessary to carry out the duties of a local substitute decision maker.

b. Accept the services of volunteers or consultants and reimburse them for necessary expenses.

c. Employ staff and delegate to members of the staff the powers and duties of the local substitute decision maker. However, the local office shall retain responsibility for the proper performance of the delegated powers and duties. All delegations shall be to persons who meet the eligibility requirements of the specific type of substitute decision maker.

4. An individual acting as the state or a local substitute decision maker shall comply with applicable requirements for guardians, conservators, or personal representatives pursuant to chapter 633, attorneys in fact under a power of attorney pursuant to chapter 633 or a durable power of attorney for health care pursuant

to chapter 144B, or representative payees pursuant to federal law and regulations.

5. Notwithstanding any provision to the contrary, an individual acting as the state or a local substitute decision maker shall not be subject to the posting of a bond pursuant to chapter 633. An individual acting as the state or a local substitute decision maker shall complete at least eight hours of training annually as certified by the department.

2005 Acts, ch 175, §134

231E.6 Court-initiated or petition-initiated appointment of state or local substitute decision maker guardianship or conservatorship discharge.

The court may appoint on its own motion or upon petition of any person, the state office or local office of substitute decision maker, to serve as guardian or conservator for any proposed ward in cases in which the court determines that the proceeding will establish the least restrictive form of substitute decision making suitable for the proposed ward and if the proposed ward meets all of the following criteria:

1. Is a resident of the planning and service area in which the local office is located from which services would be provided or is a resident of the state, if the state office would provide the services.
2. Is eighteen years of age or older.
3. Does not have suitable family or another appropriate entity willing and able to serve as guardian or conservator.
4. Is incompetent.
5. Is an individual for whom guardianship or conservatorship services are the least restrictive means of meeting the individual's needs.

2005 Acts, ch 175, §135

231E.7 Substitute decision maker-initiated appointment.

The state office or local office may on its own motion or at the request of the court intervene in a guardianship or conservatorship proceeding if the state office or local office or the court considers the intervention to be justified because of any of the following:

1. An appointed guardian or conservator is not fulfilling prescribed duties or is subject to removal under section 633.65.
2. A willing and qualified guardian or conservator is not available.
3. The best interests of the ward require the intervention.

2005 Acts, ch 175, §136

231E.8 Provisions applicable to all appointments and designations discharge.

1. The court shall only appoint or intervene on its own motion or act upon the petition of any person under section 231E.6 or 231E.7 if such appointment or intervention would comply with staffing ratios established

by the department and if sufficient resources are available to the state office or local office. Notice of the proposed appointment shall be provided to the state office or local office prior to the granting of such appointment.

2. The state office or local office shall maintain reasonable personal contact with each ward, principal, or client for whom the state office or local office is appointed or designated in order to monitor the ward's, principal's, or client's care and progress. For any estates in which the state office or local office is involved, the state office or local office shall move estate proceedings forward in a reasonable and expeditious manner and shall monitor the progress of any legal counsel retained on a regular basis.

3. Notwithstanding any provision of law to the contrary, the state office or local office appointed by the court or designated under a power of attorney document may access all confidential records concerning the ward or principal for whom the state office or local office is appointed or designated, including medical records and abuse reports.

4. In any proceeding in which the state or local office is appointed or is acting as guardian or conservator, the court shall waive court costs or filing fees, if the state office or local office certifies to the court that the state office or local office has waived its fees in their entirety based upon the ability of the ward to pay for the services of the state office or local office. In any estate proceeding, the court costs shall be paid in accordance with chapter 633, division VII, part 7.

5. The state or a local substitute decision maker shall be subject to discharge or removal, by the court, on the grounds and in the manner in which other guardians, conservators, or personal representatives are discharged or removed pursuant to chapter 633.

2005 Acts, ch 175, §137

231E.9 Fees appropriated.

Fees received by the state office and by local offices for services provided as state or local substitute decision maker shall be deposited in the general fund of the state and the amounts received are appropriated to the department for the purposes of administering this chapter.

2005 Acts, ch 175, §138

231E.10 Conflicts of interest limitations.

Notwithstanding section 633.63 or any other provision to the contrary, a local substitute decision maker shall not provide direct services to or have an actual or the appearance of any conflict of interest relating to any individual for whom the local substitute decision maker acts in a substitute decision-making capacity unless such provision of direct services or the appearance of a conflict of interest is approved and monitored by the state office in accordance with rules adopted by the department.

2005 Acts, ch 175, §139

231E.11 Duty of attorney general, county attorney, or other counsel.

1. The attorney general shall advise the state office on legal matters and represent the state office in legal proceedings.

2. Upon the request of the attorney general, a county attorney may represent the state office or a local office in connection with the filing of a petition for appointment as guardian or conservator and with routine, subsequent appearances.

3. A local attorney experienced in probate matters may represent the personal representative for all routine matters associated with probating an estate.

2005 Acts, ch 175, §140

231E.12 Liability.

All employees and volunteers of the state office and local offices operating under this chapter and other applicable chapters and pursuant to rules adopted under this and other applicable chapters are considered employees of the state and state volunteers for the purposes of chapter 669 and shall be afforded protection under section 669.21 or 669.24, as applicable. This section does not relieve a guardian or conservator from performing duties prescribed under chapter 633.

2005 Acts, ch 175, §141

231E.13 Implementation.

Implementation of this chapter is subject to availability of funding as determined by the department. The department shall notify the Code editor upon implementation of this chapter.

2005 Acts, ch 175, §142