

Friday, June 16, 2023, 2:30 p.m.
Family Law Section/Family Division Program
 1 Substantive credit
 Wintergreen
Presented by the Family Law Section

**“Party of Three - Your Order Is Ready:
 Tips and Tools for Addressing Third Party Caregiver Issues”**

In today’s modern society, it is becoming increasingly common for third party caregivers to be involved in family law issues. Judges and practitioners frequently see third party caregivers/grandparents with de facto custody of children who are encountering obstacles, particularly regarding medical and mental healthcare for children. This program will discuss those obstacles and provide practice advice regarding strategies for creating Court Orders that best serve the parties and medical providers.

Speakers:

Robin L. Frank, Partner, Raphael, Ramsden & Behers, PC
 Hon. Nicola Henry-Taylor, Family Division, Allegheny County Court of Common Pleas
 Elizabeth L. Hughes, Senior Associate Counsel, UPMC
 Hon. Hugh F. McGough, Family Division, Allegheny County Court of Common Pleas

Moderator:

Elizabeth A. Parker, Partner, Raver Rawlings & Parker, PLLC

Planners:

Samantha Dorn, Law Clerk (Henry-Taylor), Allegheny County Court of Common Pleas
 Matthew Oas, Law Clerk (McGough), Allegheny County Court of Common Pleas

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- b. If a provider requires one or both parents to sign any documents for the care of Child, Mother and/or Father shall cooperate by signing and returning the documents within twenty-four (24) hours of receiving the request.

2. Within five (5) days of the date of this Order, Paternal Grandfather, Mother and Father shall register and download Our Family Wizard (“OFW”) to communicate with Mother and Father regarding Child’s medical needs.

- a. If Paternal Grandfather makes any medical decisions for Child, he shall notify Mother and Father within twenty-four (24) hours in Our Family Wizard.
- b. Paternal Grandfather shall use Our Family Wizard to provide Mother and Father with reasonable advance notice of any medical appointments that he schedules for Child, which shall include the date, time, and location of the appointment.
- c. Whenever it is reasonably feasible to do so, Mother, Father, and Paternal Grandfather shall discuss medical decisions for Child on Our Family Wizard prior to Paternal Grandfather making a medical decision. Paternal Grandfather is not required to confer with Mother or Father prior to making medical decisions regarding emergency treatment for Child. If there is a conflict between Mother, Father, and Paternal Grandfather regarding Child’s medical treatment, Paternal Grandfather is the final decision maker for Child.

BY THE COURT:

_____, J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

_____ and	:	
_____,'	:	
Plaintiffs,	:	FAMILY DIVISION
	:	
v.	:	No.
	:	
_____,'	:	
Defendant.	:	

ORDER OF COURT

AND NOW, this _____ day of _____, 202__, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. _____ (“Maternal Uncle”), _____ (“Maternal Aunt”), and _____ (“Mother”) shall share legal custody of _____ (“Children”).

- a. Shared legal custody is the right of the parties to control and to share in making decisions of importance in the life of the Children, including educational, medical, and religious decisions.
- b. No party has a superior or greater right over any other party to make these decisions.
- c. All parties shall ensure that the Mother, Maternal Uncle and Maternal Aunt are each listed as a parent/guardian and as an emergency contact on all medical, dental vision, psychological and educational documents and for all activities.
- d. All parties shall have the right to obtain and review all records of the Children including, but not limited to, medical, dental, psychiatric,

educational and religious records, in accordance with 23 Pa. C.S.A. § 5336. The parties shall execute any and all documents or releases necessary to effectuate legal custody, including but not restricted to authorizations and/or releases for school reports, medical reports, mental health reports, counseling reports, insurance documents, and documents related to state, local, or federal authorities.

- e. This Order shall serve as a release to any medical, mental health and counseling, educational or religious provider to release reports/information to the parties. Pursuant to 23 Pa. C.S.A. § 5336, all parties have access to the Children’s records and information.

BY THE COURT:

_____, J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

_____ ,	:	
	:	FAMILY DIVISION
Plaintiff,	:	
	:	No.
v.	:	
	:	
_____ and	:	
	:	
_____ ,	:	
	:	
Defendants.	:	

ORDER OF COURT

AND NOW, this _____ day of _____, 202__, it is hereby ORDERED, ADJUDGED and DECREED as follows:

- 1. _____ (“Defendant/Father”) and _____ (“Plaintiff/Maternal Grandmother”) shall share legal custody of _____ (“Children”).
 - a. Shared legal custody is the right of the parties to control and to share in making decisions of importance in the life of the Children, including educational, medical, and religious decisions.
 - b. _____ (“Mother”), Father, and Maternal Grandmother shall have the right to obtain and review all records of the Children including, but not limited to, medical, dental, psychiatric, educational and religious records. The parties shall execute any and all documents or releases necessary to effectuate legal custody, including but not restricted to authorizations and/or releases for school reports, medical reports, mental health reports, counseling reports, insurance documents, and documents related to state, local, or federal authorities.

- e. This Order shall serve as a release to any medical, mental health and counseling, educational or religious provider to release reports/information to each party.

BY THE COURT:

_____, J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:	:	JUVENILE DIVISION
	:	
_____ , a minor.	:	Docket No. _____
	:	FID: _____
DOB: _____	:	

ORDER OF COURT
APPOINTMENT OF SECONDARY MEDICAL DECISION-MAKER

AND NOW, to wit, this ____ day of _____, 202__, IT IS ORDERED, ADJUDGED AND DECREED that _____ (“Maternal Grandfather”) is hereby appointed as secondary medical decision-maker for the above-named child. The secondary medical decision-maker is authorized to make decisions related to the child's medical and mental health needs, including the need for ordinary and extraordinary treatment. The authority granted by this Order shall be exercised only when Mother, _____, is unable to participate in necessary appointments or unavailable to authorize treatment.

BY THE COURT:

_____, J.



Patient Name: _____

Identification Number: _____

Facility: _____

Medical Consent Authorization
Act 52 of 1999 Medical Consent Act

I, _____, am the Parent/Legal Guardian (if Legal Guardian, attach copy of court order) of the child(ren) listed below and there are no court orders now in effect that would prohibit me from conferring the power to consent upon another person.

I, _____, do hereby confer upon
(Name of Parent or Legal Guardian or Custodian)

(Name of Person Bringing Child(ren) for Care)

Residing at: _____

The power to consent to necessary medical or mental health treatment for the following child(ren):

1. Name: _____ Born on: _____

Residing at: _____

2. Name: _____ Born on: _____

Residing at: _____

3. Name: _____ Born on: _____

Residing at: _____

And on the child(ren)'s behalf do hereby state that the power to consent that I confer shall not be affected by my subsequent disability or incapacity.

The power that I confer is specifically limited to health care and mental health care decision making, and it may be exercised only by the person named above.

The person named above may consent to the following examinations and treatment for my child(ren) (check all that apply):

- Medical Surgical Mental Health
- Immunizations Development Dental





Patient Name: _____

Identification Number: _____

Facility: _____

Medical Consent Authorization
Act 52 of 1999 Medical Consent Act

Other (specify) _____

and may have access to any and all records, including, but not limited to, insurance records regarding any such services.

I confer the power to consent freely and knowingly in order to provide or the child(ren) and not as a result of pressure, threats or payments by any person or agency. This document shall remain in effect until it is revoked by my written notification to my child(ren)'s medical, mental health care, and insurance providers, and the person named above.

In witness hereof, I have signed my name to this medical consent authorization, on this ____ day of _____. 20__ in _____, Pennsylvania.

Printed name of Parent or Legal Guardian

Signature of Parent or Legal Guardian

Witness Signature

Printed Name and Address of Witness #1

Witness Signature

Printed Name and Address of Witness #2

Printed Name of Adult Person being given Power to Consent

Signature of Adult Person being given Power to Consent





Patient Name: _____

Identification Number: _____

Facility: _____

Medical Consent Authorization
Act 52 of 1999 Medical Consent Act

INTERPRETER'S STATEMENT

Execute if an interpreter is provided to assist the individual in understanding this informed consent form:

I have translated the information and advice presented orally to the individual to be treated by the person obtaining this consent. I have also read him/her the consent form in language and explained its contents to him/her. To the best of my knowledge and belief he/she understood this explanation.

Cyracom ID (if applicable)

Print Name

Signature (Not required if a Cyracom Interpreter Was Used)

11 Pa. Stat. § 2513

Section 2513 - Medical and mental health care consent

(a) General rule.--A parent, legal guardian or legal custodian of a minor may confer upon an adult person who is a relative or family friend the power to consent to medical, surgical, dental, developmental, mental health or other treatment to be rendered to the minor under the supervision of or upon the advice of a physician, nurse, school nurse, dentist, mental health or other health care professional licensed to practice in this Commonwealth and to exercise any existing parental rights to obtain records and information with regard to the health care services and insurance unless the minor is in the custody of a county child and youth agency or there is currently in effect a prior order of a court in any jurisdiction which would prohibit the parent, legal guardian or legal custodian from exercising the power that the parent, legal guardian or legal custodian seeks to confer. When a parent's rights have not been terminated or voluntarily relinquished, nothing in this subsection shall divest a parent of the power to consent to his children's medical or mental health treatment. The authorization may also include the right to act as the minor's legal representative for the purposes of receiving informational materials regarding vaccines under section 2126 of the Public Health Service Act (58 Stat. 682, 42 U.S.C. § 300aa-26). Conferral of powers authorized by this subsection shall not be used to compel the production or release of records or information to which the parent, legal guardian or legal custodian would not themselves be entitled to review, receive or authorize release to others.

(b) Rights of minors.--The provisions of subsection (a) may not be utilized by a parent, legal guardian or legal custodian to confer upon an adult person who is a relative or family friend the power to consent to treatment or to obtain medical or mental health records, or insurance records relating to either or both, if the power to consent to treatment or to obtain medical or mental health records has been assigned by Federal or State law to the minor.

(c) Form of authorization.--

(1) Authorization to consent.--to medical or mental health treatment of a minor may be conveyed by any written form containing the name of the person upon whom the power is conferred, the name and date of birth of each minor with respect to whom the power is conferred, a statement by the person conferring the power that there are no court orders presently in effect that would prohibit the person from conferring the power and a description of the categories for which power is being conferred, including medical, surgical, dental, developmental, mental health or other treatment or a description of the specific treatment for which power is being conferred. The authorization shall be signed by the parent, legal guardian or legal custodian in the presence of and along with the contemporaneous signatures of two witnesses who are at least 18 years of age. The person upon whom the power to consent to medical or mental health treatment is being conferred may not serve as one of the witnesses. The adult person upon whom the power to consent to medical or mental health treatment is conferred shall also sign the authorization. If for any physical reason the person executing the authorization is unable to sign, the person executing the authorization may make a mark to which that person's name shall be subscribed immediately thereafter.

(2) The authorization may be substantially in the following form, except that the use of alternative language shall not be precluded:

MEDICAL CONSENT AUTHORIZATION

() I (name) am the parent of the child(ren) listed below and there are no court orders now in effect that would prohibit me from conferring the power to consent upon another person.

() I (name) am the legal guardian or legal custodian of the child(ren) by court order (copy attached, if available) and there are no other court orders in effect that would prohibit me from conferring the power to consent upon another person.

I, _____, do hereby confer upon _____, residing at _____ the power to consent to necessary medical or mental health treatment for the following child(ren): _____, residing at _____, born on _____, and on the child(ren)'s behalf do hereby state that the power to consent which I confer shall not be affected by my subsequent disability or incapacity.

The power which I confer is specifically limited to health care and mental health care decision making, and it may be exercised only by the person named above.

The person named above may consent to the child(ren)'s (cross out all that do not apply): medical, dental, surgical, developmental and/or mental health examination or treatment and may have access to any and all records, including, but not limited to, insurance records regarding any such services.

I confer the power to consent freely and knowingly in order to provide for the child(ren) and not as a result of pressure, threats or payments by any person or agency. This document shall remain in effect until it is revoked by notifying my child(ren)'s medical, mental health care and insurance providers, in writing, and the person named above that I wish to revoke it.

In witness whereof, I, _____, have signed my name to this medical consent authorization, consisting of two (2) pages on this ___ day of _____, _____, in _____, Pennsylvania.

(Printed Name)

(Signature)

(Witness Signature)

(Witness No.1 printed Name and Address)

(Witness Signature)

(Witness No.2 printed Name and Address)

(Signature of adult person who is being given power to consent)

(d) Use by health care provider.--An authorization described in subsection (a) which is consistent with the requirements of subsection (c)(1) shall be honored by all physicians, nurses, school nurses, mental health professionals, dentists, other health care professionals,

hospitals, medical facilities, mental health facilities and insurance providers.

Notwithstanding the provisions of subsection (f), the existence of a written document conveying powers as described in subsection (a) which is consistent with the requirements of subsection (c)(1) creates a presumption that the power has been lawfully conferred.

(e) Revocation.--Powers conferred under this section are revocable at will and effective upon notifying all parties of interest in writing. Death of a person who has previously executed a medical consent authorization constitutes revocation of the authorization, except that action taken without actual knowledge of the death in good faith reliance upon the authorization shall be permitted. Unless otherwise indicated on the authorization, disability or incapacity of the person executing the authorization does not constitute revocation of the authorization.

(f) Liability.--A person, contractholder, group health care provider, mental health care provider, health care facility, mental health care facility and insurer who acts in good faith reliance on medical consent authorization shall not incur civil or criminal liability or be subject to professional disciplinary action for treating a minor without legal consent, except that nothing in this section shall relieve an individual from liability for violations of other provisions of law.

(g) Family reunification services.--This section shall not be construed to provide a substitute for family reunification services under 23 Pa.C.S. Ch. 63 (relating to child protective services). The execution of an authorization pursuant to subsection (a) shall not be binding in future custody or dependency proceedings. Regardless of the execution of a medical consent authorization, future custody or dependency determinations shall be based on the prevailing legal standard.

(h) Determination of insurance coverage.--An insurer shall determine whether to add a child to the insurance coverage of a person who has been authorized to consent to treatment of that child under this section. No provision of this section may be construed to compel an insurer to provide such coverage.

11 P.S. § 2513

1999, Nov. 24, P.L. 546, No. 52, § 3, effective in 90 days.

23 Pa. C.S. § 5602

Section 5602 - Definitions

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Alternate." A person with all the rights, responsibilities and qualifications of a standby guardian who shall become a standby guardian only in the event that the currently designated standby guardian is unable or refuses to fulfill his obligation.

"Attending physician." A physician who has primary responsibility for the treatment and care of the designator. If physicians share responsibility, another physician is acting on the attending physician's behalf or no physician has primary responsibility, any physician who is familiar with the designator's medical condition may act as an attending physician under this chapter.

"Coguardian." A person who along with a parent shares physical or legal custody, or both, of a child.

"Consent." A written authorization signed by the designator in the presence of two witnesses who shall also sign the writing. The witnesses must be 18 years of age or older and not named in the designation.

"Court." Family Court Division or domestic relations section of a court of common pleas unless otherwise provided by local rules of court.

"Debilitation." A person's chronic and substantial inability as a result of a physically incapacitating disease or injury to care for a dependent minor.

"Designation." A written document naming the standby guardian or temporary guardian. A parent, a legal custodian or a legal guardian may designate an alternate standby guardian in the same writing.

"Designator." A parent, a legal custodian or a legal guardian who appoints a standby guardian or temporary guardian.

"Determination of debilitation." A written finding made by an attending physician which states that the designator suffers from a physically incapacitating disease or injury. No identification of the illness in question is required.

"Determination of incapacity." A written finding made by an attending physician which states the nature, extent and probable duration of the designator's mental or organic incapacity.

"Family member." A grandparent, aunt, uncle or adult sibling of a minor.

"Incapacity." A chronic and substantial inability, resulting from a mental or organic impairment, to understand the nature and consequences of decisions concerning the care of the designator's dependent minor and a consequent inability to care for the minor.

"Standby guardian." A person named by a designator to assume the duties of coguardian or guardian of a minor and whose authority becomes effective upon the incapacity, debilitation and consent, or death of the minor's parent.

"Temporary guardian." A family member, appointed by a court for a limited period as a guardian of the minor when the minor's custodial parent has entered a rehabilitation facility for treatment of drug or alcohol addiction or has been subject to emergency medical intervention due to abuse of drugs or alcohol.

"Triggering event." A specified occurrence stated in the designation which empowers a standby guardian to assume the powers, duties and responsibilities of guardian or coguardian.

23 Pa.C.S. § 5602

Amended by P.L. TBD 2018 No. 88, § 2, eff. 12/24/2018.

1998, Nov. 24, P.L. 811, No. 103, § 1, effective in 60 days. Amended 2000, June 22, P.L. 443, No. 59, § 2, imd. effective.

23 Pa. C.S. § 5611

Section 5611 - Designation

(a) General rule.--A custodial parent, a legal custodian or legal guardian may designate a standby guardian by means of a written designation unless the minor has another parent or adoptive parent:

(1) whose parental rights have not been terminated or relinquished;

(2) whose whereabouts are known; and

(3) who is willing and able to make and carry out the day-to-day child-care decisions concerning the minor.

(b) Exception where other parent consents.--Notwithstanding subsection (a), a parent, legal custodian or legal guardian may designate a standby guardian with the consent of the other parent.

(c) Contents.--

(1) A designation of a standby guardianship shall identify the custodial parent, legal custodian or legal guardian making the designation, the minor or minors, any other parent, the standby guardian and the triggering event or events upon which a named standby guardian shall become a coguardian or guardian. If desired, different standby guardians may be designated for different triggering events. The designation shall also include the signed consent of the standby guardian and the signed consent of any other parent or an indication why the other parent's consent is not necessary.

(2) The designation shall be signed by the designating parent, legal custodian or legal guardian in the presence of two witnesses who are 18 years of age or older and not otherwise named in the designation, who shall also sign the designation. If the parent, legal custodian or legal guardian is physically unable to sign the designation, the parent, legal custodian or legal guardian may direct another person not named in the designation to sign on the parent's, the legal custodian's or the legal guardian's behalf in the presence of the parent, legal custodian or legal guardian and the witnesses.

(3) A parent, legal custodian or legal guardian may also but need not designate an alternate in the designation.

(4) A designation may but need not be in the following form:

I (insert name of designator) do hereby appoint (insert name, address and telephone number of standby guardian) as the standby guardian of (insert name(s) of minor(s)) to take effect upon the occurrence of the following triggering event or events (insert specific triggering events).

I hereby revoke all former wills and codicils to the extent that there is a conflict between those formerly executed documents and this, my duly executed standby guardian designation.

I am the (insert designator's relationship to minor(s)) of (insert name(s) of minor(s)).

(Insert name(s) of minor(s)'s other parent(s)) is the father/mother of (insert name(s) of minor(s)).

His/her address is:

(Check all that apply):

He/she died on (insert date of death).

His/her parental rights were terminated or relinquished on (insert date of termination or relinquishment).

His/her whereabouts are unknown. I understand that all living parents whose rights have not been terminated must be given notice of this designation pursuant to the Pennsylvania Rules of Civil Procedure or a petition to approve this designation may not be granted by the court.

He/she is unwilling and unable to make and carry out day-to-day child-care decisions concerning the minor.

He/she consents to this designation and has signed this form below.

By this designation I am granting (insert name of standby guardian) the authority to act for 60 days following the occurrence of the triggering event as a coguardian with me or, in the event of my death, as guardian of my minor child(ren).

Optional: I hereby nominate (insert name, address and telephone number of alternate standby guardian) as the alternate standby guardian to assume the duties of the standby guardian named above in the event the standby guardian is unable or refuses to act as a standby guardian.

If I have indicated more than one triggering event, it is my intent that the triggering event which occurs first shall take precedence. If I have indicated "my death" as the triggering event, it is my intent that the person named in the designation to be standby guardian for my minor child(ren) in the event of my death shall be appointed as guardian of my minor child(ren) when I die.

It is my intention to retain full parental rights to the extent consistent with my condition and to retain the authority to revoke the standby guardianship if I so choose.

This designation is made after careful reflection, while I am of sound mind.

(Date)

(Designator's signature)

(Witness's signature)

(Witness's signature)

(Number and Street)

(Number and Street)

(City, State and Zip Code)

(City, State and Zip Code)

If applicable: I (insert name of other parent) hereby consent to this designation.

(Date)

(Signature of other parent)

(Address of other parent)

I, (insert name of standby guardian) hereby accept my nomination as standby guardian of (insert minor(s)'s name(s)). I understand that my rights and responsibilities toward the minor child(ren) named above will become effective upon the occurrence of the above-stated triggering event or events. I further understand that in order to continue caring for the child(ren), I must file a petition with the court within 60 days of the occurrence of the triggering event.

(Date)

(Signature of standby guardian)

23 Pa.C.S. § 5611

1998, Nov. 24, P.L. 811, No. 103, § 1, effective in 60 days. Amended 2000, June 22, P.L. 443, No. 59, § 3, effective in 60 days.

23 Pa. C.S. § 5621

Section 5621 - Designation

(a) General rule.--Except as provided in subsection (b), a custodial parent may designate a temporary guardian by means of a written designation unless the minor has another parent or adoptive parent:

- (1) whose parental rights have not been terminated or relinquished;
- (2) whose whereabouts are known; and
- (3) who is willing and able to make and carry out the day-to-day child-care decisions concerning the minor.

(b) Exception where other parent consents.--Notwithstanding subsection (a), a parent, legal custodian or legal guardian may designate a temporary guardian with the consent of the other parent.

(c) Contents.--

- (1) A designation of a temporary guardianship shall identify the custodial parent, the minor or minors, any other parent, the temporary guardian and the triggering event or events upon which a named temporary guardian shall become a coguardian or guardian. The designation shall also include the signed consent of the temporary guardian and the signed consent of any other parent or an indication why the other parent's consent is not necessary.
- (2) The designation shall be signed by the designating parent in the presence of two witnesses who are 18 years of age or older and not otherwise named in the designation, who shall also sign the designation.
- (3) A parent may also but need not designate an alternate in the designation.

(4) A designation may but need not be in the following form:

.....

(Insert name of designator) do hereby appoint

.....

(Insert name, address and telephone number of temporary guardian) as the temporary guardian of

.....

(Insert name(s) of minor(s) to take effect upon

..... (Date).

I am the mother/father/other to.....

.....

(Insert name(s) of minor(s)).

.....

(Insert name(s) of other parent(s) of minor(s)) is the father/mother/other of.....

.....

(Insert name(s) of minor(s)).

By this designation, I am granting.....

(insert name of temporary guardian) the authority to act for 90 days following the occurrence of..... as a coguardian with me or as guardian of my minor child(ren).

It is my intention to retain full parental rights to the extent consistent with my condition and to retain the authority to revoke the temporary guardianship if I so choose.

This designation is made after careful reflection, while I am of sound mind.

.....

(Date) (Designator's signature)

.....

(Witness's signature) (Witness's signature)

.....

(Number and Street) (Number and Street)

.....

(City, State and Zip Code) (City, State and Zip Code)

If applicable: I,..... ,

(Insert name of other parent)

hereby consent to this designation.

.....

(Date) (Signature of other parent)

.....

(Address of other parent)

I,.....

(Insert name of temporary guardian), hereby accept my nomination as temporary guardian of.....

.....

(Insert minor(s)'s name(s)). I understand that my rights and responsibilities toward the minor child(ren) named above will become effective upon..... (Date) I further understand that in order to continue as temporary guardian for the child(ren), I must file a petition with the court of common pleas within 30 days of the order granting the petition for temporary guardianship.

.....

(Date) (Signature of temporary guardian)

NOTARY SEAL

I hereby revoke the above temporary guardianship agreement.

..... (Parent signature)

..... (Date)

NOTARY SEAL

23 Pa.C.S. § 5621

Added by P.L. TBD 2018 No. 88, § 4, eff. 12/24/2018.

42 Pa. C.S. § 6357

Section 6357 - Rights and duties of legal custodian

A custodian to whom legal custody has been given by the court under this chapter has the right to the physical custody of the child, the right to determine the nature of the care and treatment of the child, including ordinary medical care and the right and duty to provide for the care, protection, training, and education, and the physical, mental, and moral welfare of the child. An award of legal custody shall be subject to the conditions and limitations of the order and to the remaining rights and duties of the parents or guardian of the child as determined by the court. The court may award legal custody under this section on a temporary basis to an individual or agency under section 6351(a)(2) (relating to disposition of dependent child) or permanent basis to an individual under section 6351(a)(2.1).

42 Pa.C.S. § 6357

1976, July 9, P.L. 586, No. 142, § 2, effective 6/27/1978. Amended 1998, Dec. 15, P.L. 949, No. 126, § 10, effective 1/1/1999.

35 Pa. Stat. § 10101.1

Section 10101.1 - Mental health treatment

(a)

The following shall apply to consent for voluntary inpatient and outpatient mental health treatment:

- (1) A parent or legal guardian of a minor less than eighteen years of age may consent to voluntary inpatient mental health treatment under Article II of the act of July 9, 1976 (P.L. 817, No.143), known as the "Mental Health Procedures Act," if inpatient mental health treatment is determined to be necessary by a physician, licensed clinical psychologist or other mental health professional or outpatient mental health treatment on behalf of the minor, and the minor's consent shall not be necessary. An initial determination that inpatient mental health treatment of a minor is necessary under this paragraph shall be independent of the requirements of section 205 of the "Mental Health Procedures Act."
- (2) A minor who is fourteen years of age or older may consent on the minor's own behalf to voluntary inpatient mental health treatment as provided under Article II of the "Mental Health Procedures Act" or outpatient mental health treatment, and the minor's parent's or legal guardian's consent shall not be necessary.
- (3) A minor or another parent or legal guardian may not abrogate consent provided by a parent or legal guardian on the minor's behalf to voluntary inpatient or outpatient mental health treatment under paragraph (1) , nor may a parent or legal guardian abrogate consent given by the minor on the minor's own behalf.
- (4) A parent or legal guardian who has provided consent to voluntary inpatient or outpatient mental health treatment under paragraph (1) may revoke that consent, which revocation shall be effective unless the minor who is fourteen to eighteen years of age has provided consent for continued voluntary inpatient or outpatient mental health treatment.
- (5) A minor who is fourteen to eighteen years of age who has provided consent to voluntary inpatient or outpatient mental health treatment may revoke that consent, which revocation shall be effective unless the parent or legal guardian to the minor has provided for continued treatment under paragraph (1).
- (6) At the time of admission, the director of the admitting facility or a designee of the director shall provide the minor with an explanation of the nature of the mental health treatment in which the minor may be involved together with a statement of the minor's rights, including the right to object to treatment by filing a petition with the court. If the minor wishes to exercise this right AT ANY TIME , the director of the facility or a designee of the director shall provide a form for the minor to provide notice of the request

for modification or withdrawal from treatment. The director of the facility or a designee of the director shall file the signed petition with the court.

(7) When a petition is filed on behalf of a minor fourteen years of age or older and under eighteen years of age who has been confined for inpatient treatment on the consent of a parent or legal guardian and who objects to continued inpatient treatment by requesting a withdrawal from or modification of treatment, the court shall promptly appoint an attorney for the minor and schedule a hearing to be held within seventy-two hours following the filing of the petition, unless continued upon the request of the attorney for the minor, by a judge or mental health review officer who shall determine whether or not the voluntary mental health treatment is in the best interest of the minor. For inpatient treatment to continue against the minor's wishes, the court must find all of the following by clear and convincing evidence:

(i) that the minor has a diagnosed mental disorder;

(ii) that the disorder is treatable;

(iii) that the disorder can be treated in the particular facility where the treatment is taking place; and

(iv) that the proposed inpatient treatment setting represents the least restrictive alternative that is medically appropriate.

(8) A minor ordered to undergo treatment due to a determination under paragraph (7) shall remain and receive inpatient treatment at the treatment setting designated by the court for a period of up to twenty days. The minor shall be discharged whenever the attending physician determines that the minor no longer is in need of treatment, consent to treatment has been revoked under paragraph (4) or at the end of the time period of the order, whichever occurs first. If the attending physician determines continued inpatient treatment will be necessary at the end of the time period of the order and the minor does not consent to continued inpatient treatment prior to the end of the time period of the order, the court shall conduct a review hearing in accordance with this subsection to determine whether to:

(i) release the minor; or

(ii) make a subsequent order for inpatient mental health treatment for a period not to exceed sixty days subject to discharge of the minor whenever the attending physician determines that the minor no longer is in need of treatment, or if consent has been revoked under paragraph (4).

(9) The procedure for a sixty-day period of treatment under paragraph (8)(ii) shall be repeated until the court determines to release the minor or the minor is discharged in accordance with paragraph (8).

(10) Nothing in this subsection shall prevent a nonconsenting parent who has legal custody rights of a minor child to object to the consent given by the other parent to inpatient treatment under paragraph (1) by filing a petition in a court of common pleas in

the county where the minor resides. The court shall hold a hearing on the objection within seventy-two hours of the filing of the petition.

(b) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Facility" means any mental health establishment, hospital, clinic, institution, center, day-care center, base service unit, community mental health center, or part thereof, that provides for the diagnosis, treatment, care or rehabilitation of persons with mental illness.

"Inpatient treatment" means all mental health treatment that requires full-time or part-time residence in a facility that provides mental health treatment.

"Mental health treatment" means a course of treatment, including evaluation, diagnosis, therapy and rehabilitation, designed and administered to alleviate an individual's pain and distress and to maximize the probability of recovery from mental illness. The term also includes care and other services which supplement treatment and aid or promote recovery.

35 P.S. § 10101.1

Amended by P.L. TBD 2020 No. 65, § 1, eff. 9/21/2020.

1970, Feb. 13, P.L. 19, No. 10, § 1.1, added 2004, Nov. 23, P.L. 1149, No. 147, § 1, effective Jan. 24, 2005.



Overview of Act 65 of 2020

What is Act 65 of 2020?



- Act 65 replaces Act 147 of 2004.
- Act 65 determines who can provide consent for voluntary mental health treatment of minors, in both inpatient and outpatient settings.
- Act 65 also determines who can consent to the release of a minor's medical and mental health records.

Who Can Consent ?



- Minors who are **14 years or older** can consent to voluntary **inpatient or outpatient** mental health treatment for themselves, without consent from parent or legal guardian.
 - Upon the acceptance of an **application for examination and treatment** by a minor, the director of the facility or designee **must promptly notify the minor's parents, guardian, or person standing in loco parentis**, and shall **inform them of the right to be heard upon the filing of an objection** (See the Mental Health Procedures Act, 50 P. S. § 7204)
- A parent or legal guardian of a minor **under the age of 18** can consent to **inpatient or outpatient** mental health treatment of their minor, without the minor's consent.
 - A parent or legal guardian **can consent** to voluntary **outpatient** mental health treatment of their minor **without the recommendation of a physician**.
 - A parent or legal guardian **can consent** to voluntary **inpatient** mental health treatment **with the recommendation of a physician, licensed clinical psychologist or other mental health professional who has examined the minor**.

Revoking Consent



- **A minor or parent/legal guardian** can revoke their consent to inpatient or outpatient treatment at anytime
- If a minor **provides consent, then later revokes it**, the parent or legal guardian **can provide consent for the treatment to continue, and vice versa.**
- However, if no additional consent is provided, **the facility must discharge the minor unless the facility director or designee files a petition for involuntary commitment.**

Who can abrogate consent?



- **A parent or legal guardian cannot abrogate** consent given by a minor.
- **A minor cannot abrogate** consent given by a parent or legal guardian.

Who Can Object?



- A **minor or parent/ legal guardian can object** to voluntary **inpatient treatment**.
- A **nonconsenting parent or legal guardian can object** to the consent given by another parent or legal guardian for inpatient mental health treatment, as long as the nonconsenting parent or legal guardian **has legal custody rights** of the minor.
- Act 65 **is silent** on whether a minor or parent/legal guardian can object to voluntary **outpatient treatment** to which either has consented.

How Can A Minor Object?



- At the time of admission to an inpatient facility, the facility director or designee must explain to the minor the nature of the mental health treatment he or she will receive and the right to object to the treatment.
- A minor can object to inpatient treatment by requesting for **modification of or withdrawal from** inpatient mental health treatment.
- The **director of the facility or their designee shall provide a form** for the minor to request for the modification of or withdrawal from treatment.
- The **director of the facility or their designee shall file** the petition for modification or withdrawal with the court.
- The minor must be **assigned an attorney** and a **hearing must be held within 72 hours** of filing the petition.

How Can a Minor Object?

(cont'd)



- For inpatient treatment to continue against a minor's wishes, the court must find the following:
 - The minor has a **diagnosed mental disorder**
 - The disorder is **treatable**
 - The disorder **can be treated in the particular facility** where the treatment is taking place
 - The proposed inpatient treatment setting represents the **least restrictive alternative** that is medically appropriate
- The initial court order can be for up to **20 days** of inpatient mental health treatment. Subsequent orders can be for **60 day periods** until the minor is determined to no longer need inpatient mental health treatment.

How Can a Parent/ Legal Guardian Object?



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- A parent or legal guardian can object by **filing a petition with the court of common pleas** in the **county where the child resides** to object to the voluntary **inpatient** mental health treatment for a minor.
- A hearing must be held within **72 hours** of filing the petition.

Release of Medical Records



- Parents or legal guardians **have the right to be provided with information necessary to inform their consent for the minor's mental health treatment.**
- When a parent or legal guardian has consented to the mental health treatment of a minor, **the parent or legal guardian can also consent to the release of the minor's :**
 - **Medical records** to the minor's current mental health provider
 - **Prior mental health records** to the minor's current mental health treatment provider, if the information is **deemed pertinent by the current mental health provider.**
 - **Mental health records** to the primary care provider, if the current mental health treatment provider determines that the release **will not be detrimental to the minor**
- Release of records **with the consent of a parent or legal guardian are limited to direct release** from one mental health treatment provider to another or to a primary care provider.

Release of Medical Records



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- In all other situations, **minors control** the release of their mental health treatment records.



Questions regarding Act 65 can be directed to:
ra-pwAct65of2020@pa.gov

GRANDFACTS

STATE FACT SHEETS FOR GRANDFAMILIES



The GrandFacts state fact sheets for grandfamilies include state-specific data and programs as well as information about public benefits, educational assistance, legal relationship options and state laws. Visit www.grandfamilies.org to find this and all GrandFacts state fact sheets.

Pennsylvania

The Children

- 103,000 (4%) children live with a relative with no parent present.
- 238,598 (8.8%) children under 18 live in homes where householders are grandparents or other relatives.
 - 195,216 (7.2%) of these children live with grandparents.
 - 43,381 (1.6%) of these children live with other relatives.

The Grandparents

- 88,726 grandparents are householders responsible for their grandchildren who live with them. Of these:
 - 28,827 (32.5%) do not have parents present.
 - 58,568 (66.0%) are under age 60.
 - 51,727 (58.3%) are in the workforce.
 - 17,923 (20.2%) are in poverty.
 - 22,443 (25.3%) have a disability.
 - 28,481 (32.1%) are unmarried.
 - Race/Ethnicity:
 - 59,446 (67.0%) are white (not Hispanic or Latino)
 - 18,810 (21.2%) are black or African American
 - 7,630 (8.6%) are Hispanic or Latino origin
 - 2,041 (2.3%) are Asian
 - 266 (0.3%) are American Indian or Alaska Native
 - 0 (0.0%) are Native Hawaiian or other Pacific Islander
 - 1,331 (1.5%) are multiracial
 - 2,839 (3.2%) are some other race

Children in Kinship Foster Care

For data on children in kinship care within the child welfare system, see the [Child Trends fact sheet for Pennsylvania](#).

www.childtrends.org

Programs That Can Help

Local programs that provide support, resources and assistance to grandfamilies can often be found by contacting your local school, area agency on aging, community center, faith-based organization or children's services office.

Key Programs in Pennsylvania

[A Second Chance Inc. \(ASCI\) – Allegheny County Children, Youth & Families](#)

Website: www.asecondchance-kinship.com

Phone: 412-342-0600 (Pittsburgh office)
215-564-0790 (Philadelphia office)

Email: info@asecondchance-kinship.com

Service area: Allegheny County; City of Philadelphia; Delaware County; and Berks County

Description: Kinship foster care licensing, case management and support services; Kinship Closet – providing gently used clothes; respite services; support group services; Kinship Emergency Response Services; Family Finding and Family Group Decision Making services; State-Wide Adoption Network services; and other services.

[Allegheny County Area Agency on Aging – Family Caregiver Support Program](#)

Website: www.alleghenycounty.us/Human-Services/News-Events/Engagement/Caregiver-Support-Programs.aspx

Phone: 412-350-5460 or 1-800-344-4319 (toll-free)

Email: seniorline@alleghenycounty.us

Service area: Allegheny County

Description: Monthly reimbursement for caregivers ages 55+ raising related children in their home when parents are not available. Reimbursement available for services, supplies, home modifications, and assistive devices. Household income guidelines apply.

[Butler County Area Agency on Aging](#)

Website: www.co.butler.pa.us/Area-Agency-on-Aging

Phone: 724-282-3008, 1-888-367-2434 (toll-free)

Email: aaainfo@co.butler.pa.us

Service area: Butler County

Description: Information and referral and/or financial reimbursement for costs related to caregiving for a family member age 17 or younger.

Chester County Family Caregiver Support Program

Website: www.chesco.org/482/Family-Caregiver-Support-Program

Phone: 610-344-6350

Email: ccaging@chesco.org

Service area: Chester County

Description: Reimbursement for purchase of certain supportive services and goods for eligible caregivers, benefits counseling, care management services for the caregiver, caregiver education and training, caregiver support groups, and one-time grants for approved home modifications and assistive devices. Certain eligibility requirements may apply.

Children's Aid Society - Relatives as Parents Program (RAPP)

Website: <http://childaid.org/rapp>

Phone: 814-765-2686

Email: rapp@childaid.org

Service area: Central Pennsylvania

Description: Monthly support group, referral and access to community-based services and resources, and education and training to learn new parenting and coping skills.

Clearfield Area Agency on Aging

Website: www.ccaaa.net

Phone: 814-765-2696 or 1-800-225-8571 (toll-free)

Email: mail@caaaa.net

Service area: Clearfield County

Description: Reimbursement up to \$200 for costs related to raising grandchildren, including costs for hygiene supplies, school supplies, school clothes, and respite care. Eligibility for financial assistance based on household income.

Family and Community Service of Delaware County

Website: www.fcsdc.org

Phone: 610-566-7540 (Media office)

610-859-3806 (Chester office)

610-6265800 (Clifton Heights office)

Service area: Delaware County

Description: Second Time Around Parents program, support groups, workshops, counseling, peer support, education in advocacy, and other services.

Family Support of Pressley Ridge

Website: www.pressleyridge.org/fscpa.html

Phone: 717-541-0828 or 1-800-984-9923 (toll-free)

Email: info@PressleyRidge.org

Service area: Perry County (Newport) and Dauphin County (Harrisburg)

Description: Grandparents Raising Minor Children/Kinship Care is a free support and education group and includes free childcare during group sessions.

Food and Wellness Network – Turning Points for Children

Website: www.turningpointsforchildren.org

Phone: 267-236-1558

Email: info@tp4c.org

Service area: Philadelphia

Description: Emergency food, infant formula, diapers and wellness resources, cooking and wellness classes, nutrition education, financial planning classes, and easy access to public benefits. Services are by appointment only and may vary based on location and other eligibility factors.

Franklin County Area Agency on Aging

Website: www.franklincountypa.gov/index.php?section=human-services_aging

Phone: 717-263-2153 or 1-800-642-6990 (toll-free)

Service area: Franklin County

Description: Reimbursement for expenses related to raising grandchildren, depending on household income, and a monthly caregiver support group.

Grand Central

Phone: 215-557-1554

Email: grandcentralinc@msn.com

Service area: Philadelphia County

Description: Bi-monthly support groups, information on various health and social services, and help with appointments, paperwork completion, etc.

Grandma's Kids – Center for Intergenerational Learning at Temple University

Website: <http://education.temple.edu/igc/programs/grandmas-kids>

Service area: Philadelphia

Description: School-based after-school services to children in out-of-home placements, including tutorial assistance, group counseling, and caregiver assistance, etc.

Greater Erie Community Action Committee – Family Caregiver Support Program

Website: www.gecac.org

Phone: 814-459-4581 or 1-800-769-2436 (toll-free)

Service area: Erie County

Description: Reimbursement for certain expenses related to raising children; income-based for those over 55 raising children under 18.

Mifflin-Juniata Area Agency on Aging

Website: www.mjaaa.com

Phone: 717-242-0315 or 1-800-348-2277 (toll-free)

Email: mifjunconf@mjaaa.com

Service area: Mifflin and Juniata Counties

Description: Caregivers over 55 raising minor children may be eligible for financial reimbursement including tutoring fees, school activity fees, clothing, and necessary school supplies. Caregiver must meet income requirements.

Parent-Child Home Program

Website: www.parent-child.org

Phone: 516-883-7480

Email: info@parent-child.org

Service area: Indiana, Easton, Louistown, Williamsport, Milton, Philadelphia, and Wilkes-Barre

Description: Free home visiting program with an emphasis on early literacy to help with development of school readiness.

Pennsylvania Kinship Navigator

Website: <http://extension.psu.edu/youth/intergenerational/program-areas/kinship>

Service area: Statewide

Description: Online database of programs, services, and resources available for kinship care families. Information is presented by county. The database is maintained by Penn State Extension – Relatives as Parents Program (RAPP).

Penn State, Department of Agricultural Economics, Sociology and Education, Extension Office – Relatives As Parents Program (RAPP)

Website: <http://aese.psu.edu/extension/intergenerational/program-areas>

Contact: Matthew Kaplan, Ph.D.

Phone: 814-863-7871

Email: msk15@psu.edu

Service area: Statewide

Description: Services include the PA Kinship Navigator website (see above), online resources for human service professionals, including a curriculum, educational workshops for kinship care families, and kinship family retreats.

Philadelphia Office of Family and Community Engagement

Website: <http://webgui.phila.k12.pa.us/offices/p/publicengagement>

Phone: 215-400-4180

Service area: Philadelphia

Description: Increases collaboration between families (parents and caregivers), schools and the community through programs such as Parents University, Multilingual Family Support, Professional Development, and Parent and Family Resource centers.

SeniorLAW Center

Website: www.seniorlawcenter.org

Phone: 215-988-1244 (general)

215-988-1242 (intake)

1-877-727-7529 (toll-free)

Service area: Statewide (Note: direct individual representation in Philadelphia only)

Description: Legal representation, education, and advocacy related to housing, consumer protection, family law, domestic violence, financial exploitation, and others.

Southwestern Pennsylvania Area Agency on Aging

Website: www.swpa-aaa.org

Phone: 724-489-8080 or 1-888-300-2704 (toll-free)

Email: contact@swpa-aaa.org

Service area: Washington, Greene, and Fayette Counties

Description: Grandparent Support Program offers benefits counseling, case management, support groups, and limited reimbursement for services and supplies related to caregiving.

Supportive Older Women's Network (SOWN)

Website: www.sown.org

Phone: 215-487-3000, Ext. 11

Email: info@sown.org

Service area: Philadelphia

Description: Grandparent Support Program provides parenting education, support groups, counseling, and mentoring for grandparents who are raising their grandchildren. SOWN's Philly Families Eat Smart teaches healthy food and fitness lifestyle changes to grandparent-headed families.

Westmoreland County Area Agency on Aging – Grandparenting Program

Website: www.co.westmoreland.pa.us/aging

Phone: 724-830-4444 or 1-800-442-8000 (toll-free)

Email: aaa@co.westmoreland.pa.us

Service area: Westmoreland County

Description: Services to individuals ages 55 and over who have formal or informal custody of a child who is 18 years or younger. Services include financial assistance offered on a cost-sharing basis depending on income and eligibility, referral for training/counseling, benefits counseling, and assistance completing benefits and insurance forms.

Public Benefits

Federal and state public benefits programs can help with income, food, healthcare, home energy, telephone and other needs for those who are eligible. Eligibility requirements vary with each public benefit and sometimes are different from state to state. Some benefits are for the family and others are for children or older adults individually. Children are often eligible for public benefits even if their caregivers do not have guardianship or legal custody. Relative caregivers may become eligible for benefits programs when their household size increases.

Help with Public Benefits

AARP Foundation's Benefits QuickLink

Benefits QuickLINK, powered by BenefitsCheckUp of the National Council on Aging, offers a free and private way to complete a questionnaire to find out if relatives and/or the children they are raising qualify for certain programs that pay for food, increase income and cover home and healthcare costs. The specific programs covered by the questionnaire in the website are listed below. Once the questionnaire is completed, the website generates a list of eligible programs and contact information.

www.aarp.org/quicklink

Benefits QuickLINK State and Federal Public Benefits	Benefits QuickLINK Public Benefits for Families Raising Children
<ul style="list-style-type: none"> • Medicare Savings Programs • Medicare Prescription Drug Coverage • Medicare Rx Extra Help • State Pharmaceutical Assistance Programs (SPAP) • Medicaid for Aged, Blind, and Disabled • Supplemental Nutrition Assistance Program (SNAP) • Earned Income Tax Credit (EITC) • Low Income Home Energy Assistance (LIHEAP) • State Property Tax Relief/Rebates • Supplemental Security Income (SSI) • Employment Programs • Telephone and Cellphone Assistance • Transportation Assistance 	<ul style="list-style-type: none"> • Medicaid for Children • State Children's Health Insurance Program (SCHIP) • TANF-Child Only Grants • Supplemental Security Income for Children • Child Care Assistance

Benefits.gov

An official website of the federal government, this resource has state specific information on benefits, in addition to a screening tool to find out which programs you may be eligible to receive.

www.benefits.gov

Eldercare Locator

The National Eldercare Locator service helps you find your local area agency on aging and other state and local resources that can help with public benefits, local programs and other services for older adults.

1-800-677-1116 (toll-free)

www.eldercare.gov

Key Public Benefits: Income

Each state administers federal funds that provide cash assistance to families in need. Some states also offer other forms of financial assistance.

Temporary Assistance to Needy Families (TANF)

Cash assistance may be available to eligible children and their relative caregivers.

Pennsylvania Temporary Assistance for Needy Families (TANF)

Pennsylvania Department of Human Services

1-800-692-7462 (toll-free)

To apply online – Go to www.compass.state.pa.us

Apply in person by visiting your local [county assistance office](#)

Generations United's Grand Resources:

[A Fact Sheet for Grandparent and Relative Caregivers to Help Access Support through the Temporary Assistance for Needy Families \(TANF\) Program](#)

www.gu.org/RESOURCES.aspx

Social Security

A multigenerational program, Social Security provides income benefits to adults, older adults and children. In addition to [Retirement](#) and [Disability](#) benefits, [Survivor's Benefits](#) are based on a child's parent's earnings and may help if a child's parents die. Your grandchild may also qualify for benefits based on your work record. The [Supplemental Security Income](#) (SSI) program pays benefits to disabled [adults](#) and [children](#) who have limited income and resources. SSI benefits are also payable to people 65 and older without disabilities who meet the financial limits.

Online Directory - To find your local Social Security Administration office.

1-800-772-1213 (toll-free)

<https://secure.ssa.gov/>

Key Public Benefits: Nutrition

Relative caregivers and their families may be eligible for assistance with groceries, meals, infant formula and nutrition education. These are some of the key nutrition benefits programs and resources.

Supplemental Nutrition Assistance Program (SNAP)

SNAP is the new name for the federal Food Stamp Program. It helps low-income individuals and families buy the food they need for good health. Although SNAP is the national name, your state may use a different name.

Pennsylvania Supplemental Nutrition Assistance Program (SNAP)

Pennsylvania Department of Human Services

1-800-692-7462 (toll-free)

<http://www.dhs.pa.gov/citizens/supplementalnutritionassistanceprogram/index.htm>

www.fns.usda.gov/wic/Contacts/statealpha.HTM

To apply online – Go to www.compass.state.pa.us

Food and Nutrition Services of the U.S. Department of Agriculture (USDA)

Child Nutrition Program - The schools, early childhood education programs, child care centers, afterschool programs or other programs that children attend may offer free or reduced meals through the federal Child Nutrition Program, which provides breakfast, lunch, snacks, summer meals and milk. Contact the school, center or program to ask if they participate in any of the child nutrition programs and how to apply. Relative caregivers should inform the program that they are raising the child and whether or not they are doing so through a court order.

Online State Directory - To find your state office that manages the Child Nutrition program.

www.fns.usda.gov/cnd/Contacts/StateDirectory.htm

Women, Infant and Children (WIC) - States administer federal funds for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk.

Online State Directory - To find your state office that manages the WIC program.

www.fns.usda.gov/wic/wic-contacts

Foodbanks

Organizations that provide free food and sometimes other items, such as diapers, to families in need.

Online State Directory - To find local food banks.

www.feedingamerica.org/foodbank-results.aspx

Key Public Benefits: Health Care

Relative caregivers and the children they are raising may be eligible for health insurance through Medicare and/or Medicaid and help with prescription drugs. **Benefits QuickLINK** can help you find these benefits.

www.aarp.org/quicklink

Health Insurance for Children

Relative caregivers may apply for free or low-cost health and dental insurance for the children they are raising through the Children's Health Insurance Program (CHIP), which provides health coverage to eligible children through both Medicaid and separate CHIP programs. CHIP and Medicaid are the national names, and your state may use different names.

Pennsylvania Medicaid, Pennsylvania Department of Human Services

1-866-550-4355 (toll-free)

<http://www.healthchoicespa.com/>

To apply online – Go to www.compass.state.pa.us

Pennsylvania Children's Health Insurance Program (CHIP)

1-800-986-KIDS (5437) (toll-free)

www.chipcoverspakids.com/

To apply online – Go to www.compass.state.pa.us

Consent to Obtain Health Care

Even with insurance, consenting to health care for a child can be a challenge for relative caregivers who do not have legal custody. Some states have laws that allow these caregivers to “consent” to such treatment.

Grandfamilies.org Online Database - To see if your state has such a law.

www.grandfamilies.org/Search-Laws

Key Public Benefits: Tax Credits

The following information is about tax credits from the federal government available throughout the United States. Similar tax credits may exist in your state for state taxes. For example, according to the Center on Budget and Policy Priorities (CBPP), 26 states and the District of Columbia offer a state tax credit based on the federal Earned Income Tax Credit (EITC) and four states offer a Child Tax Credit. See CBPP's “**Get it Back Campaign**” for more information on state tax credits.

Earned Income Tax Credit (EITC) is an income tax credit for workers who do not have high incomes. It is a refundable tax credit, which means you could get a refund check from the U.S. Internal Revenue Service (IRS) even if you don't earn enough to pay taxes.

Child Tax Credit is a tax credit for up to \$1,000 per dependent child. But, it is not refundable.

Additional Child Tax Credit may help if you don't owe enough taxes to benefit from the child tax credit. Unlike the child tax credit, this tax credit is refundable.

Child and Dependent Care Tax Credit may help you if you've hired someone to help care for the child so you could work or look for work. If so, you may be able to claim up to \$3,000 in expenses per child.

Adoption Tax Credit can help if you have adopted your grandchild or other relative. It can give you a credit for the money you spent to adopt. If you adopted a child from the foster care system with special needs, you may be eligible for the maximum amount of credit for the year you adopted regardless of whether you had any qualifying expenses. If you did not adopt from the foster care system, you must have qualifying expenses like legal fees. This tax credit allows adoptive parents to claim up to \$13,460 per child.

Please note that tax credits themselves are not counted as income. They will not be counted when you apply for financial help.

Center for Budget and Policy Priorities (CBPP) – To find out about tax credits in your state.

www.cbpp.org

The U.S. Internal Revenue Service (IRS) – To find out more information about each of these tax credits

www.irs.gov

Education

The **U.S. Department of Education** offers a **parent site** that has a wide range of helpful information for parents **and** caregivers regarding children’s education from early childhood through college, special needs, disabilities, language challenges and gifted students.

1-800-USA-LEARN (1-800-872-5327) (toll-free)

www.ed.gov/parents

Pennsylvania Department of Education

717-783-6788

www.pde.state.pa.us

Educational Enrollment

Relative caregivers can contact their local school district’s administrative office or their local school to find out how to register the child and what paperwork is needed. Caregivers may need birth records, health records or previous school records. Some states have laws that allow relative caregivers without legal custody or guardianship to enroll the children they are raising in school. These laws are often called education “consent” laws, but they may be called something else in your state.

Grandfamilies.org Online Database - To find out if your state has an education consent law.

www.grandfamilies.org/Search-Laws

Early Intervention, Special Education and Related Services

The Federal Individuals with Disabilities Education Act (IDEA) - From birth to age 21, children who have learning disabilities, physical disabilities or other special needs may be able to get early intervention, preschool and special education services in school through the federal IDEA. Services may include speech, physical and occupational therapies.

The IDEA requires that states identify, locate and evaluate all children ages 3 to 21 with disabilities who may need special education and related services. Once the evaluation team, which includes a child's caregivers, has decided if a child is eligible for early intervention, preschool or special education services, an Individual Family Service Plan (IFSP; birth to three years of age) or an Individual Education Plan (IEP; three to 21 years of age) is developed and services should begin shortly.

Pennsylvania Department of Education, Bureau of Special Education

1-800-879-2301 (toll-free in-state) or (717) 657-5842 (out-of-state)

www.education.pa.gov/k-12/special%20education/pages/default.aspx#tab-1

Pennsylvania Early Intervention Services

Pennsylvania Department of Human Services

1-800-692-7462 (toll-free)

<http://www.dhs.pa.gov/citizens/earlyinterventionservices/>

Parent Centers across the country provide information to help parents *and* caregivers with children who have special education needs and disabilities.

Online State Directory - To find Parent Centers in your state.

www.parentcenterhub.org/find-your-center/

Generations United's Grand Resources:

A Grandparent's and Other Relative's Guide to Raising Children with Disabilities

www.gu.org/RESOURCES.aspx

Early Childhood Education

Head Start and **Early Head Start** are early education programs for eligible children.

Online Directory - To find Head Start or Early Head Start centers in your state.

1-866-763-6481 (toll-free)

www.eclkc.ohs.acf.hhs.gov/hslc/HeadStartOffices

Child Care Aware provides information, resources and connection to local Child Care Resource and Referral Agencies (CCR&R) that help you find local child care.

Online Directory - To find your local Child Care Resource & Referral Agency.

1- 800-424-2246 (toll-free)

www.childcareaware.org/families/

Legal

The following legal relationships may be options for both those children exiting the foster care system and those outside the system. For those families who do not want to establish a legal relationship, consent and power of attorney laws are available in several states.

All of the following options are presented in general terms. This area of the law is created at the state level, so how these options are defined and which ones are available can vary significantly by state.

Adoption

With adoption, the relative caregiver becomes the parent in the eyes of the law. This fact makes access to services on behalf of the child the same as for any parent. Adoption ends all of the birth parents' rights and responsibilities, which means that birth parents cannot go to court later and reclaim those rights and responsibilities.

Adoption assistance payments may be available to relative caregivers who choose to adopt children in their care from the child welfare system.

North American Council on Adoptable Children - To get information about your state's subsidy, in addition to other adoption information.

www.nacac.org

Dave Thomas Foundation for Adoption - To find adoption resources that may be helpful to you.

www.davethomasfoundation.org

Guardianship

The biggest difference between adoption and guardianship is that guardianship does not take away all the birth parents' rights and responsibilities. Parents typically keep certain rights and the obligation to financially support the child. Unlike adoption, the parents can go back to court and ask for the guardianship to be ended. For caregivers, a guardianship allows them to access services on behalf of the child that otherwise might prove impossible while not changing family relationships, like making grandma legally mom.

Guardianship assistance payments may be available to relative caregivers who choose to get guardianship of the children in their care who are exiting the child welfare system.

www.grandfamilies.org - To find out more about whether your state has guardianship assistance.

Legal Custody

Legal custody is similar to guardianship, but it is usually granted by a different court that has different procedures.

Other Options

In some states, relative caregivers who do not want or have a legal relationship to the children in their care have laws that make it possible to access health care treatment and educational services on behalf of the children without going to court.

For more information on all these options, and to see what exists in your state, see www.grandfamilies.org.

State Laws

Grandfamilies.org is a collaboration between [Generations United](#), the [American Bar Association Center on Children and the Law](#) and [Casey Family Programs](#). It contains an easy-to-use, searchable [database](#) of state laws and legislation directly impacting kinship families. You will also find explanations of legal topic areas, practical implementation ideas, personal stories and many other resources.

Topics Covered:

- Adoption
- Care and Custody
- Education
- Federal Laws
- Foster Care Licensing
- Financial Assistance
- Healthcare
- Housing
- Kinship Navigator Programs
- National Family Caregiver Support Program
- Notification of Relatives
- Subsidized Guardianship

The online database of laws and legislation is at www.grandfamilies.org/Search-Laws.

Updates

If you have an update or a resource to be included in this or any of the other GrandFacts State Fact Sheets, please email grandfamilies@gu.org.

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AIDS Law Project of Pennsylvania
a non profit public interest law firm
servicing people with HIV and AIDS

Understanding Pennsylvania's Standby Guardianship Law

By Rodney Cunningham, Esq.
 AIDS Law Project of Pennsylvania

for assistance or additional information on
 permanency planning in general.

A New Era in Permanency Planning for Terminally Ill Parents: The Standby Guardianship Act of 1998

The Importance of Standby Guardianship Law

Beginning in January 1999, parents in Pennsylvania have a more effective legal tool to make long term plans for their child's future care. Thanks to the Pennsylvania Standby Guardianship Act of 1998 terminally ill parents with custody of their children can adequately ensure their children's long term care without terminating or limiting their parental rights.

Standby Guardianship more effectively addresses a parent's needs than legal options which existed prior to its passage. Pennsylvania's legal landscape prior to Standby Guardianship left a terminally ill parent with several different options, none of which were adequate, to ensure his/her child's continuous care. Six options were previously available for permanency planning: 1) informal arrangements; 2) power of attorney; 3) Last Will and Testament; 4) shared custody; 5) foster care and 6) adoption.

The Standby Guardianship Act, now known as Act 103, became effective on January 22, 1999. Pennsylvania is the eleventh state to have such a law to protect the interests of parents who are periodically unable to care for their children due to illness like HIV or AIDS. Other states which have implemented similar laws include: California, Connecticut, Florida, Illinois, Massachusetts, Maryland, New Jersey, New York, North Carolina and Wisconsin. This article is intended to provide an overview of the Standby Guardianship Act and help establish a working knowledge of this important new law. A glossary of relevant terms and sample forms can be found at the end of this article.

Each of these legal options either required parents to give up their rights prematurely or left gaps in the child's care. For example, although a parent can designate a future guardian in a will, the necessary court approval of the designation occurs well after the parent dies. While waiting for the guardianship to be approved, children remain in "legal limbo" where potential barriers to school enrollment and medical care can arise. This "legal limbo" means that no one has legal responsibility to care for the child if the parent is incapacitated and puts the child at risk for foster care placement.

Readers should feel free to call the AIDS Law Project of Pennsylvania, coauthors of the Standby Guardianship Act

Given the choice between turning a

Pennsylvania's Standby Guardianship Law/ Page 2

child over to another person's care while alive and healthy or planning for an uncertain future, many parents opted for making no plans. Parents were discouraged by inevitable delays in the judicial system, delays exacerbated by laws which were ill-equipped to deal with children's needs. In addition problems existed with determining which person had standing and the court's unwillingness to address future circumstances. Terminally ill parents, in essence, were left with the option of either terminating or limiting their parental rights while still being able to care for their kids or taking steps which lacked long term legal effect while reserving hope that difficult circumstances would not arise.

The Standby Guardianship Act significantly increases the likelihood that a child faced with the loss of a parent will at least be minimally provided for both legally and emotionally. The Standby Guardianship Act, when added to the already existing legal options, creates a mechanism that is much more flexible and responsive to the needs of children whose parents are dying.

Highlights of the Act

Who will care for my child after I am gone or unable to care for him/her? Who will be able to make important life decisions about my child if I am unable to do so myself?

Many terminal illnesses, such as HIV or AIDS, are episodic in nature with a person experiencing alternating periods of good health and severe illness. Terminally ill parents often need someone to assume care of their child when they are too sick to handle the responsibility alone or when an emergency arises. The Standby Guardianship Act resolves the common

questions and concerns of a terminally ill parent by providing a useful tool in completing permanency plans to ensure his/her child's continued care.

The Standby Guardianship Act allows a parent to immediately transfer custodial authority to make parent-like decisions to a designated person upon a specified occurrence. This specified occurrence or "triggering event," determined by the parent, authorizes the designated person to act on behalf of the child until the circumstances leading to the triggering event are alleviated. A parent may select one of three triggering events: mental incapacity, physical debilitation with consent and/or death.

Thus, a designated person or "standby guardian" may share care taking responsibilities as a co-guardian with a parent whose mental incapacity impairs his/her ability to care for a child. The authority is immediately transferred to the standby guardian upon an attending physician's determination of incapacity. Once there is a determination of the parent's restored capacity, the standby guardian's authority as co-guardian ends and he/she resumes standby status. The designating parent resumes full custodial authority of the child. This is legally possible because the terminally ill parent's rights are never terminated or limited in any way.

The standby guardian may also act as co-guardian with a parent who is too sick to care for a child. In this situation, the authority is transferred to the standby guardian upon an attending physician's determination of debilitation and the terminally ill parent completing a consent form. The standby guardian's authority as co-guardian ends when the parent regains

his/her good health. Once again, the designating parent resumes full custodial authority of the child since his/her parental rights were never terminated or limited in any way.

Finally, the standby guardian may assume guardianship of a child after the parent dies. The standby guardian assumes authority immediately with no gaps or delays in his/her ability to care for the child. This assumption of authority is permanent as the terminally ill parent's authority expires upon death.

Procedure

A terminally ill parent can designate a standby guardian by completing a "designation form" and filing a "petition for approval" with the court. Legal recognition of the new relationship between parent, standby guardian and the child can occur for a temporary period without court approval but must eventually be approved by a court to have more permanent effect. The court approval process, discussed in more detail below, can occur before or after the occurrence of the triggering event.

a. Designation Form

The designation form is the essential document as it spells out the basic who, what, where, when and why as to the appointment of a standby guardian. A designation form can only be completed when: 1) the noncustodial parent's rights have been terminated or relinquished; 2) the noncustodial parent is deceased; 3) the noncustodial parent is unwilling or unable to care for the child; or 4) the noncustodial parent consents to the designation.

A designating parent or the standby guardian should be prepared to provide proof that the aforementioned requirements have been met. This proof should be made part of the Petition for Approval. The following can be attached to the Petition for Approval as exhibits: 1) a copy of the order terminating or relinquishing the noncustodial parent's rights; 2) a copy of the noncustodial parent's death certificate; and 3) a copy of the noncustodial parent's signed consent to the designation. Any allegations that the noncustodial parent is "unwilling and unable" to care for the child can be specifically spelled out in the Petition for Approval. (This would include all allegations of why noncustodial parent is unfit, i.e., physical abuse; addiction to drugs, etc.).

A completed designation form contains the following: the name of the custodial parent; the name of the standby guardian; the triggering event or events which will vest authority in the standby guardian; the name and address of the noncustodial parent; a completed checklist detailing the noncustodial parent's current circumstances; the signature of the custodial parent and standby guardian; the signature of the noncustodial parent, if consenting to the designation; and the signatures of two witnesses who are over 18 and not parties to the designation. (See sample Designation, Form A).

b. Petition for Approval

A Petition for Approval can be filed either before or after the occurrence of a triggering event. (See sample Petition for Approval, Form B). Whether the petition is filed before or after the event determines who shall be the filing party, the contents of the petition, and the terms of the final

standby guardianship decree. As the designating parent makes the decision regarding the time of filing, he or she should consider several factors.

First, the designator's own health at the time the designation is executed should be considered. A designator who executes a standby guardianship designation from his/her hospital bed may be too ill to file court papers. If that is the case, it clearly makes more sense to have the designated standby guardian file the court papers.

On the other hand, if there is a surviving non-custodial parent who has been severely abusive, a designator may want to file papers and obtain court approval before the occurrence of the triggering event in order to ensure that the court receives direct evidence from the designator about the abuse.

A third factor to be considered is the place of residence and address of the designated standby guardian. In order to avoid jurisdictional problems, the designator may want to obtain court approval for a distant designated standby guardian prior to the occurrence of the triggering event.¹

If a Petition for Approval is filed before a triggering event has occurred, then the Petition can be filed only by the designating parent. This protects the

rights of the designating parent.

If a Petition for Approval is filed after a triggering event, then either the designating parent or the designated standby guardian may be the filing party. However, in this instance, the Petition for Approval must contain documentation that the triggering event has occurred. That documentation must be one of the following: 1) a written determination of the designator's mental or organic incapacity (See sample Form C); 2) a written determination of the designator's physical debilitation accompanied by the designator's signed and dated consent to the transfer of authority (See sample Forms D & E); or 3) a copy of designator's death certificate.

c. Court Hearing

A hearing can be scheduled to review the Petition for Approval. This hearing, and any underlying issues, would be addressed consistent with current Pennsylvania Rules (i.e., notice, jurisdiction and how the hearing will be conducted). At the hearing, the best interests of the child is the standard for review of the Petition and Designation. However, the Act creates a rebuttable presumption that the standby guardian named in a designation is capable of caring for the child as co-guardian or legal guardian and that the designation itself is in the child's best interests.

The Act allows for the expedited approval of the designation when: 1) the designator is the sole surviving parent; 2) the parental rights of the noncustodial parent have been terminated or relinquished; or 3) all parties consent to the designation. In those instances, a Petition for Approval is still filed but a

¹ Note: Act 103 specifically includes the UCCJA, 23 Pa.C.S.A. Section 5341, et seq., within its scope (See Section 5612). Therefore, designators and designated standby guardians who live in different jurisdictions should consult the UCCJA for guidance about where to file and where and when to register a Standby Guardianship Decree.

judge has the authority to bypass an evidentiary hearing.

d. Assumption of Authority

A standby guardian automatically assumes authority to make decisions regarding the child upon the occurrence of any of the triggering events chosen by the designator. If the triggering event is incapacity or debilitation, with consent, the standby guardian's authority is shared physical and legal custody of the child. The standby guardian or co-guardian and the terminally ill parents, upon the occurrence of one of these triggering events, should work together as much as possible to address the needs of the child.

If a Petition for Approval was not filed before the triggering event occurred, the co-guardian will have temporary authority immediately upon the occurrence of the triggering event for a 60-day period. During those 60-days, a Petition for Court Approval must be filed. This period may last longer if the petition is filed but a court hearing has not occurred. However, if no petition has been filed by the end of the 60-day period, the co-guardian's authority will lapse. Assuming that a Petition for Approval has been timely filed, the co-guardian's authority will revert back to the designating parent upon his/her return to health.

If the triggering event is death, the designated standby guardian will assume primary physical and legal custody upon the designating parent's death. As with the other two triggering events, if a Petition for Approval is not filed before the designating parent's death, the guardian's authority is only temporary. He/she has 60 days after the designator's death to file the Petition for Approval. If the standby

guardian fails to do this during the 60-day period, his/her authority will expire on the 61st day.²

e. Revocation

The designation of a standby guardian can always be revoked. If a Petition for Approval has not been filed with the court, the terminally ill parent can simply destroy the designation and notify the standby guardian of the revocation. If a Petition for Approval has been filed with the court, written revocation must occur in the form of either a Petition to Modify or a request to withdraw the Petition for Approval without prejudice.

Practical Considerations

The Standby Guardianship Act is drafted to create a simple procedure for parents to follow. In furtherance of that goal, certain considerations should be kept in mind. An attorney/advocate retains an important role in ensuring that these considerations are addressed. First, any attorney/advocate assisting a terminally ill parent with permanency plans should take time to discuss the parent's circumstances at length. It is important for a parent to be familiar with all seven permanency planning options so they may select an option best suited to their needs.

Second, an attorney/advocate should see that parents are working closely with both the potential standby guardian and their treating physician. The

² Note that if this happens the caregiver can still file for custody or adopt the child but, depending on the caregiver's relationship to the child and the length of time he/she has acted as guardian for the child, the caregiver may have standing problems in those forums.

standby guardian should be familiar with the needs of the parent and the child. The standby guardian should be a participant in the family's life. Ideally, the designated standby guardian should be a presence that is known and accepted by the physician. This is important since authority from the designating parent to the standby guardian is automatically transferred upon the occurrence of a triggering event. Only someone who is involved with the family can be aware that a triggering event has occurred and ensure a smooth transition.

Third, attorneys/advocates should also talk to the parent about signing medical release forms giving permission for medical information to be released to the standby guardian. The standby guardian would use the releases when gathering the required medical documentation to be submitted with a Petition for Approval. The release should be specific and limited, permitting the information to be released solely upon the occurrence of the triggering event.

Fourth, attorneys/advocates can be creative in designating a standby guardian based upon the needs of the custodial parent. The Act allows the designation of an alternate guardian when a parent's first choice is unable to assume authority. Designating a different guardian for each triggering event is also acceptable. Once again, the key lies in being familiar with the custodial parent's circumstances and the extent of his/her support network.

Finally, the attorney will, hopefully, also be willing to represent the standby guardian, if he/she wishes, upon the designating parent's death. Because the potential for conflict is too great, it is not wise to represent the standby guardian while the parent is still alive. However, it is

possible and advisable to obtain the designating parent's permission to represent the standby guardian after the parent's death. In this manner, an attorney/advocate can help to ensure a smooth transition for the children after the death of a parent.

Conclusion

The Standby Guardianship Act creates several benefits: no termination or limitation of parental rights; an expedited court process in specific circumstances; the child's needs are more adequately addressed because of the immediate assumption of authority for a sixty-day period; and, most importantly, peace of mind for terminally ill parents who are worried about their child's long term care.

Despite these benefits, however, it is important to reiterate that advocates still need to be equipped with a working knowledge of all potential permanency planning options. Attorneys/advocates should keep in mind the needs of their clients and be aware of the relationship that exists between the client, potential caretaker, and the child. Permanency planning must be responsive to the specific and individual needs and circumstances of the client.

QUESTIONS ??? COMMENTS???

We are interested in hearing from you. **Please feel free to contact Rodney Cunningham, Esq. at the AIDS Law Project of Pennsylvania with questions, or to share your experience in representing individuals wishing to name a standby guardian.**

GLOSSARY

Co-guardian - a person who, along with a parent, shares physical and/or legal custody of a child.

Consent - a written authorization signed by the designator in the presence of two attesting witnesses. The witnesses must be 18 years of age or older and not named in the designation.

Debilitation - a person's chronic and substantial inability, as a result of a physically incapacitating disease or injury, to care for a dependent minor.

Designation Form - a written document naming the standby guardian.

Designator - a parent or a legal guardian who appoints a standby guardian.

Determination of debilitation - a written finding made by an attending physician which states that the designator suffers from a physically incapacitating disease or injury. No identification of the illness is required.

Determination of incapacity - a written finding made by an attending physician which states the nature, extent, and probable duration of the designator's mental or organic incapacity.

Incapacity - a chronic and substantial inability, resulting from a mental or organic impairment, to understand the nature and consequences of decisions concerning the care of the designator's dependent minor and a consequent inability to care for the minor.

Standby Guardian - a person named by a

designator to assume the duties of co-guardian or guardian of a minor and whose authority becomes effective upon the incapacity, debilitation and consent, or death of the minor's parent.

Triggering event - a specified occurrence stated in the designation which authorizes a standby guardian to assume the powers, duties, and responsibilities of guardian or co-guardian.

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