

AUTHORIZING MEDICAL CARE FOR CHILDREN: WHEN A PARENT OR CAREGIVER CANNOT LEAVE THEIR HOME OR CAREGIVER LACKS COURT ORDER *

During the Coronavirus crisis, many parents and caregivers are particularly vulnerable, and they may need to stay at home. It is important to understand how they can obtain medical care for themselves and/or children in their care when it's best to stay at home. Below are strategies for obtaining medical care.

A. Medical Care via Telemedicine When Parent, Caregiver, or Children Cannot Leave Home

Telemedicine: Care for yourself or for your children may also be available without leaving your home. Many insurance providers are now offering telemedicine, where you can speak with a medical professional via phone or internet. See [Telemedicine](#).

B. Without Going To Court, You Can Authorize Someone To Assume Caregiving For A Child

Sometimes parents go to court to obtain an order of custody or guardianship for a non-parent (grandparent, aunt, uncle, relative, family friend), but even with courts closed there are ways arrange custodial care.

For Parents - Parental Designations: Parents can designate some of their authority over children via "Parental Designation" Form. This document is good for up to one month, or, if notarized, it is good for up to one year. The document can state a date or a circumstance when it becomes effective. Parents can designate authority for schooling decisions and most medical decisions. See Parental Designation Form and fact sheets. http://www.nysnavigator.org/?page_id=563

As part of the emergency rules during the Covid-19 social isolation, New York permits notarization via facetime online services like Skype or Zoom. See Facetime Notarization During Covid-19. **Note: you can contact the Kinship Navigator to arrange a facetime notarization of a parental designation with our staff.**

For Parents, Guardians, Legal Custodians, and Certain Caretakers - Standby Guardianship: Another way to designate authority is by naming a "standby guardian" who can act as a guardian when the parent, guardian, legal custodian, or primary caretakers (who cannot locate a parent, guardian, or legal custodian) become debilitated, incapacitated, die, or are detained by immigration authorities. The designation is witnessed and becomes effective upon the stated event. Guardians immediately have authority and then have sixty days to go to court to obtain a court order of guardianship. The designation is limited to the above circumstances. On April 7, NYS Governor Cuomo issues an executive order EOC 202.14 that modifies Surrogate's Court Procedure Act § 1726 (the Standby Guardian Statute) by permitting "**any parent, a legal guardian, a legal custodian, or primary caretaker who works or volunteers in a health facility or who reasonably believes that they may otherwise be exposed to**

Covid-19 may designate a standby guardian by means of a written designation.” Pursuant to this order, designated guardians have the power immediately when the Covid-19 related circumstances are invoked. See Standby Guardian Form and fact sheets. http://www.nysnavigator.org/?page_id=562

C. When You Cannot Go To the Medical Office With Your Child, You Can Authorize Medical Care From Home

Medical Care: Parents, guardians, or legal custodians¹ who cannot go to the medical office with children can still authorize care. Usually when you are at the medical office, you sign a medical authorization form. This standard authorization form can be completed at home, and then sent it to the medical provider when your child (young children should be accompanied by an adult) goes to the medical office. Some may now consider a skype or other form of facetime via an online service with their medical provider. Contact your pediatrician for instructions on providing consent remotely and whether an adult can accompany your child to the medical office.

Current law does not permit caregivers without a court order to delegate their authority for medical decision making to someone else. However, some medical providers, recognizing the need for flexibility, may permit caregivers to delegate. Please note that there is no guarantee that a medical provider will accept such a delegation.

Immunization: Public Health Laws permit “persons in parental relation” (PHL 2164) and certain relatives (grandparent, adult brother and sister, aunt or uncle who has assumed care) (PHL 2504) to consent to immunization of children. See Immunization – No Parent Available.

http://www.nysnavigator.org/?page_id=563

D. When children Need Emergency Care, No Authorization is Needed

Public Health Law permits medical personnel to provide care in an emergency, without obtaining consent. Known as “Good Samaritan” laws, the statute (PHL 2504(4)) states:

Medical, dental, health and hospital services may be rendered to persons of any age without the consent of a parent or legal guardian when, in the physician's judgment an emergency exists and the person is in immediate need of medical attention and an attempt to secure consent would result in delay of treatment which would increase the risk to the person's life or health.

E. When A Court Order Is Needed But Courts Are Closed

Many family courts and surrogate courts are closed or open only on a limited basis. For kin who cannot obtain an order of custody or guardianship, in the alternative medical providers may consider providing

¹ [2019 Chapter Law 623 added legal custodians as persons who are authorized to make medical decisions for children in their care.](#) (Family Court Act 657 and Public Health Law 2504).

care without consent forms. Current law does not require medical providers to do so, but given the crisis circumstances, routine care for children may be obtainable. Please note that there is no guarantee.

E. Preventive Services or Foster Care

Above are some ways to provide care without the involvement of child welfare services. If you are struggling to care for a child, you can reach out to the local department of social services for help. Preventive services may be available and enable you to continue care.

If you are a parent or a legal guardian, you can also decide to voluntarily place a child in foster care. If you use a voluntary placement agreement, you may have the option to designate who the foster parent will be. Counties do not often accept Voluntary Placements of children unless circumstances are extreme and all other caregiving arrangements have been exhausted. See VPA: <http://www.nysnavigator.org/wp-content/uploads/2016/01/Voluntary-Placement-Agreements.pdf>

Under special circumstances, children may be placed in foster care via the Destitute Child provisions. Any child who is without a permanent home is eligible and could be placed with a suitable relative. See Family Court Act 10-C. Also: <http://ww2.nycourts.gov/forms/familycourt/destitutechild.shtml>

*New, April 10, 2020

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