



Grandparent and Relative Caregivers: Medical Consent and Educational Enrollment Laws

By Nina Williams-Mbengue

Child welfare agencies rely on relatives to care for children who cannot remain with their parents.

Nearly 6 million children in the United States today live in households headed by a relative other than their parents. Most of these families are in informal arrangements that do not involve the child welfare system. Child welfare agencies in many states, however, are increasingly relying on relatives, primarily grandparents, to provide both temporary and permanent placements for children who cannot safely remain with their birth families.

According to most experts, children come to live with grandparents and other relatives for a variety of reasons, including parental substance abuse and mental illness, child abuse or neglect, family violence, parental military deployment, parental incarceration and HIV/AIDS.

Many serious issues face grandparents and other relatives as they struggle to care for children's medical, educational and emotional needs. The Urban Institute's Assessing the New Federalism Project estimates that more than half the children in relative care live in families with incomes that are below 200 percent of the federal poverty level. Many families receive welfare for themselves or foster care maintenance payments. Some of these families receive TANF child-only grants, Supplemental Security Income or Medicaid benefits for the children. Getting health care and enrolling children in school can be quite difficult for grandparents and other relatives who do not have legal custody or guardianship of the children. Legal assistance to obtain legal custody or the authority to enroll a child in school and consent to medical treatment are key needs that caregivers often cite.

One way state lawmakers have responded to these concerns is to enact laws to allow grandparent and other relative caregivers the authority to obtain medical care (including immunizations, medical and hospital treatment, and services) for the children and to enroll the children in their care in school.

State Action

Medical Consent. Arkansas, California, Colorado (immunizations), Delaware, Florida, Georgia, Idaho, Indiana, Kansas (immunizations), Louisiana, Maryland, Mississippi, Missouri, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Texas, Utah, Virginia, Wyoming and the District of Columbia allow grandparents or other relative caregivers who do not have legal custody of a child to obtain a variety of medical services for children. Many of the states—including California, Delaware, Florida, Idaho, Kansas, Maryland, New Mexico, North Carolina, Oklahoma, Pennsylvania,

Grandparents in several states can obtain medical services for children in their care.

Washington and Wyoming—and the District of Columbia allow a child’s parent or legal guardian to sign and notarize some type of caregiver authorization affidavit or consent form that gives a relative caregiver authority to request medical treatment for the child. The form also may contain documentation that the caregiver was unable to locate the parent or guardian. Several state statutes contain the actual form or a sample that may be used. California, Delaware, Louisiana, New Mexico, Oklahoma, Pennsylvania, Washington and the District of Columbia provide civil and criminal immunity for health care providers who act in good faith as to the identity of the caregiver. Delaware and Washington provide penalties for false statements made on the consent forms.

In addition, Delaware, Florida, Georgia and Nevada stipulate that the medical provider must make a reasonable attempt to contact the child’s parent or legal guardian before allowing relatives or stepparents to obtain medical services for children in their care. Generally, these laws require the consent of the parent or legal guardian (unless the parent is not willing or able to care for the child or cannot be located) and do not confer legal guardianship upon the caregivers. A parent may rescind the consent at any time.

School Enrollment. Twenty-one states—California, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Louisiana, Maryland, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, Utah, Vermont and Wyoming—allow grandparent and other relative caregivers to enroll children in schools in their communities. As with medical consent laws, several states require signed and notarized caregiver authorization affidavits or consent forms: California, Colorado (consent may be given verbally), Delaware, Hawaii, Maryland, New Mexico, North Carolina, South Carolina, Oklahoma (if required by a school district) and Wyoming. School districts in Utah may require “power of attorney” status for the caregiver. Delaware, New Jersey, Oklahoma, South Carolina and Wyoming provide penalties for false statements, and Hawaii and New Mexico provide for civil and criminal immunity for schools.

In 21 states, relative caregivers can enroll children in schools.

Most states require the approval of a parent or legal guardian unless the parent cannot be located or is unwilling or unable to care for the child. A parent may rescind consent at any time. Most of these laws also specify that this authority is not to be used solely to circumvent school residency requirements or to attend a school to take advantage of a particular program or athletic activity.

Selected Reference

AARP, the Children’s Defense Fund, Casey Family Programs’ National Center for Resource Family Support, The Brookdale Foundation, the Child Welfare League of America, and Generations United. *State Kinship Care Fact Sheets*. <http://www.gu.org/factsheets.asp>, September 2005.

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