

Suggested 2017 Kinship Legislative Actions:

1. Extend Parental Designation period form from six month maximum to twelve month, and from thirty days to sixty days.

General Obligations Law Sections 1551-1555 permits a parent or guardian to name a caregiver as a person in parental relation, who has limited authority under the education law and public health law for up to six months. The maximum allowable period is twelve months. Any designation that is for a period longer than thirty days must be notarized. Extending the periods to twelve months and sixty days will better reflect the realities of kinship caregiving and also provide another tool for undocumented parents and guardians who may not be able to easily renew designations while detained or outside the country.

Current Law:

§ 5-1551. Power of parent to designate a person in parental relation. A parent of a minor or incapacitated person may designate another person as a person in parental relation to such minor or incapacitated person pursuant to sections twenty-one hundred sixty-four and twenty-five hundred four of the public health law and sections two and thirty-two hundred twelve of the education law for a period not exceeding six months provided that there is no prior order of any court in any jurisdiction currently in effect that would prohibit such parent from himself or herself exercising the same or similar authority, and provided further, that, in the case where a court has ordered that both parents must agree on education or health decisions regarding the child, a designation pursuant to this subdivision shall not be valid unless both parents have consented thereto. Such designation shall be in the form prescribed by section 5-1552 of this title, and may be presented to any school, health care provider or health plan that requires such designation by either the parent or the designee.

§ 5-1552. Form of designation. 1. Designations in general. A designation of a person in parental relation pursuant to this title shall be in writing and shall include: the name of the parent, the name of the designee, the name of each minor or incapacitated person with respect to whom such designation is made, the parent's signature, and the date of such signature. The designation may specify a period of time less than six months for which such designation shall be valid unless earlier revoked by such parent pursuant to section 5-1554 of this title, provided that any designation specifying a period of more than thirty days shall also conform to the provisions of subdivision two of this section.

2. Designations for more than thirty days. A designation specifying a period of more than thirty days shall also include: an address and

telephone number where the parent can be reached, an address and telephone number where the designee can be reached, the date of birth of each minor or incapacitated person with respect to whom such designation is made, the date or contingent event on which the designation commences, the written consent of the designee to such designation, and a statement that there is no prior order of any court in any jurisdiction currently in effect prohibiting such parent from making the designation. A designation specifying a period of more than **thirty days** shall be notarized.

Amendment:

....for a period not exceeding twelve months....

.....sixty days.....

2. Add “legal custodian” to Person in Parental Relation statutes.

Education Law Sections 02, 3212 and Public Health Law Sections 2504, 2164 define who may be a “person in parental relation”. Such persons have limited powers regarding responsibility for schooling, school enrollment, and immunizations of children in their care. The definition does not include persons who have an order of custody from a court of competent jurisdiction. Since many caregivers have such orders and since already Domestic Relations Law Section 74 and Family Court Act Section 657 provide that guardians and legal custodians can enroll children in school, there is a need to establish uniformity of powers for legal custodians.

Current Law:

§ 3212. Definition of persons in parental relation and their duties; duties of certain other persons. 1. Definition. As used in this article, a person in parental relation to another individual shall include his father or mother, by birth or adoption, his step-father or step-mother, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of another individual if he has assumed the charge and care of such individual because the parents or legally appointed guardian of such individual have died, are imprisoned, are mentally ill, or have been committed to an institution, or because, they have abandoned or deserted such individual or are living outside the state or their whereabouts are unknown, or have designated the person pursuant to title fifteen-A of article five of the general obligations law as a person in parental relation to the child.

Amendment (same for all statutes):

....his legally appointed guardian, **or person possessing a lawful order of custody**, or his custodian....

....parents or legally appointed guardian **or person possessing a lawful order of custody** of such individual have died...

3. Add legal custodians to Family Court Act Section 657, which authorized parents and legal guardians to make medical decisions for children.

Legal custodians who must make medical decisions but who do not have court orders expressly providing such powers can be denied non-emergency medical care for children by medical providers. Addition of custodians will insure that they do not have to go back to court to request modification of the court order.

Current Law:

§ 657. Certain provisions relating to the guardianship and custody of children by persons who are not the parents of such children. (a) Notwithstanding any provision of the law to the contrary, a person possessing a lawful order of guardianship or custody of a minor child, who is not the parent of such child, may enroll such child in public school in the applicable school district where he or she and such child reside. Upon application for enrollment of a minor child by a guardian or custodian who is not the parent of such child, a public school shall enroll such child for such time as the child resides with the guardian or custodian in the applicable school district, upon verification that the guardian or custodian possess a lawful order of guardianship or custody for such child and that the guardian or custodian and the child properly reside in the same household within the school district.

(b) Notwithstanding any provision of law to the contrary, persons possessing a lawful order of custody of a child who are not a parent of such child shall have the same right to enroll and receive coverage for such child in their employer based health insurance plan and to assert the same legal rights under such employer based health insurance plans as persons who possess lawful orders of guardianship of the person for a child pursuant to rule twelve hundred ten of the civil practice laws and rules, article seventeen of the surrogate's court procedure act, or part 4 of this article.

(c) Notwithstanding any other provision of law to the contrary, persons possessing a lawful order of guardianship of a child shall have the right and responsibility to make decisions, including issuing any necessary consents, regarding the child's protection, education, care and control, health and medical needs, and the physical custody of the person of the child. Provided, however, that nothing in this subdivision shall be construed to limit the ability of a child to consent to his or her own medical care as may be otherwise provided by law

Amendment:

... possessing a lawful order of guardianship **or custody** of a child...

4. Amend Social Services Law 131- c(1) to exclude half siblings from being included in same filing unit by adding the following language.

1. For the purposes of determining eligibility for and the amount of assistance payable, the social services district shall, when a minor is named as an applicant for public assistance, require that his or her parents and minor brothers and sisters also apply for assistance and be included in the household for purposes of determining eligibility and grant amounts, if such individuals reside in the same dwelling unit as the minor applying for assistance. Any income of or available for such parents, brothers and sisters which is not disregarded under subdivision eight of section one hundred thirty-one-a of this article, shall be considered available to such household. The provisions of this subdivision shall not apply to individuals who are recipients of federal supplemental security income benefits or additional state payments pursuant to this chapter, or to individuals whose relationship to the minor is that of stepbrother or stepsister, or to any other individuals whose needs are excluded pursuant to department regulations consistent with federal law and regulations.

Amendment:

1. For the purposes of determining eligibility for and the amount of assistance payable, the social services district shall, when a minor is named as an applicant for public assistance, require that his or her parents and minor brothers and sisters also apply for assistance and be included in the household for purposes of determining eligibility and grant amounts, if such individuals reside in the same dwelling unit as the minor applying for assistance. Any income of or available for such parents, brothers and sisters which is not disregarded under subdivision eight of section one hundred thirty-one-a of this article, shall be considered available to such household, **except that when the household is headed by a non-parent caregiver, a child's income shall be applied only against the needs of that child, and the non-parent caregiver may choose to exclude such child from the public assistance household.** The provisions of this subdivision shall not apply to individuals who are recipients of federal supplemental security income benefits or additional state payments pursuant to this chapter, or to individuals whose relationship to the minor is that of stepbrother or stepsister, or to any other individuals whose needs are excluded pursuant to department regulations consistent with federal law and regulations.
