

# Delegation of Limited Parental Authority

Rachel Bakke and Kia Thrasher

William Mitchell College of Law: Center for Elder Justice  
and Policy

St. Paul, Minnesota, United States

# Overview

- Statistics
- Jurisdictional Issues
- Importance and Those Affected
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- Important Components
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- Questions

# Background and Importance

- United States Statistics (2000):
  - Over 6 million children raised in households headed by grandparents and other relatives
  - 2.5 million children in grandparent-headed households without any parents present
  - 2.4 million grandparents responsible for their live-in grandchildren
  - 39% of grandparent caregivers responsible for grandchildren for 5 or more years
  - Younger grandparents more likely to be responsible for their grandchildren
    - 3.5 million coresident grandparents younger than 60
    - 2.3 million aged 60 and over

[United States Census Bureau , \*Grandparents Living with Grandchildren: 2000\*, October 2003.](#)

[USA.gov, \*Grandfacts\*, October 2007](#)

# Background and Importance

- Jurisdictional Issues:
  - Procedural issues
    - Paperwork, time, permission, etc.
    - Ex: [Minn. Stat. §257C.03 \(2009\)](#)
  - Substantive issues
    - “Best Interests Standard”<sup>1</sup>
      - “The court may not use one factor to the exclusion of all others. The primary caretaker factor **may not** be used as a presumption in determining the best interests of the child.”
      - “(13)(b) The court shall **not** consider conduct of a proposed custodian that does not affect the custodian's relationship to the child.”
    - Costs

<sup>1</sup>[Minn. Stat. §518.17 \(2009\)](#)

# Background and Importance

- Why is consent legislation important?
  - Provides relative caregivers authority to consent to educational and medical needs of children when:
    - Parent is unable or unwilling to assume parental obligations
    - Caregiver does not consider it beneficial to seek legal custody
- Who is affected?
  - Anyone raising relative children to whom they are not the parent
  - Millions of grandparents raising their grandchildren without legal custody
  - Any child being raised by a third-party relative

# Background and Importance

- State Statistics
  - 25 of the 50 States have medical and/or educational consent laws in some capacity
    - 10 of the 25 have educational consent laws
    - 10 of the 25 mention consent for dental care
    - 7 of the 25 mention consent for mental/psychological care
    - 4 of the 25 mention consent for immunizations only
    - 3 of the 25 mention consent for medical emergencies only
  - [Based on: Relative Caregiver Consent Legislation Table](#)

# Important Components

- Non-superceding of parental/legal guardian rights
- Immunity to providers
- Warning in affidavit
- Type of care, treatment, or service to which the relative caregiver can consent:
  - School enrollment
  - Medical
  - Dental
  - Mental/Psychological
- To whom consent is given
- Documentation of reason for informal care

A Well Written Example:

California

[Cal. Fam. Code §6550-52 \(2009\)](#)



# A Well Written Example: California

- “(a) A caregiver's authorization affidavit that meets the requirements of this part authorizes a **caregiver 18 years of age or older** who completes items 1 to 4, inclusive, of the affidavit provided in Section 6552 and **signs the affidavit to enroll a minor in school and consent to school-related medical care** on behalf of the minor. A caregiver who is a **relative** and who completes items 1 to 8, inclusive, of the affidavit provided in Section 6552 and signs the affidavit shall have the **same rights to authorize medical care and dental care for the minor that are given to guardians** under Section 2353 of the Probate Code. The medical care authorized by this caregiver who is a relative **may include mental health treatment** subject to the limitations of Section 2356 of the Probate Code.”

# A Well Written Example: California

- “(b) The decision of a caregiver to consent to or to refuse medical or dental care for a minor **shall be superseded by any contravening decision of the parent or other person having legal custody** of the minor, provided the decision of the parent or other person having legal custody of the minor does not jeopardize the life, health, or safety of the minor.”

# A Well Written Example: California

- “(c) **A person who acts in good faith** reliance on a caregiver's authorization affidavit to provide medical or dental care, without actual knowledge of facts contrary to those stated on the affidavit, is **not subject to criminal liability or to civil liability** to any person, and is **not subject to professional disciplinary action**, for that reliance if the applicable portions of the affidavit are completed. This subdivision applies even if medical or dental care is provided to a minor in contravention of the wishes of the parent or other person having legal custody of the minor as long as the person providing the medical or dental care has no actual knowledge of the wishes of the parent or other person having legal custody of the minor.
- (d) A person who relies on the affidavit has **no obligation to make any further inquiry or investigation**. (e) Nothing in this section relieves any individual from liability for violations of other provisions of law.”

# A Well Written Example: California

- “(f) **If the minor stops living with the caregiver, the caregiver shall notify** any school, health care provider, or health care service plan that has been given the affidavit. The **affidavit is invalid** after the school, health care provider, or health care service plan receives notice that the minor is no longer living with the caregiver.”

# A Well Written Example: California

- “(g) A caregiver's authorization **affidavit shall be invalid**, unless it substantially contains, in not less than 10-point boldface type or a reasonable equivalent thereof, the warning statement beginning with the word "warning" specified in Section 6552. The warning statement shall be enclosed in a box with 3-point rule lines.”

# A Well Written Example: California

- “(h) For purposes of this part, the following terms have the following meanings:
- (2) **‘Relative’** means a **spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great," or the spouse** of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution. “

# A Well Written Example: California

- **Additional Beneficial Components:**
  - Pre-written affidavit form located in statute
    - Sufficient documentation of failure/refusal of parent/guardian
    - Perjury warning
    - Signature and date required
    - Terminates if caregiver is no longer responsible for child
  - Provides notes to caregivers, school officials and health care providers of their right
  - School shopping provision incorporated

A Poorly Written Example:

Nevada

Nev. Rev. Stat. §129.040 (2009)



# A Poorly Written Example: Nevada

- “When person standing in loco parentis may give consent for minor’s **emergency hospitalization** or medical attention. Notwithstanding any other provision of law, in cases of emergency in which a minor is in need of immediate hospitalization, medical attention or surgery and, after reasonable efforts made under the circumstances, the parents of such minor cannot be located for the purpose of consenting thereto, consent for such emergency attention may be given by any person standing in loco parentis to such minor.”

Example of Proposed Legislation:

Minnesota

Proposed Bill: H.F. 1090, 86<sup>th</sup> Cong. (2009)

# Example of Proposed Legislation: Minnesota

- “Subdivision 1. Definitions. (a) The definitions in this subdivision apply to this section. (b) **‘Qualified relative’ means** an adult related to the child by blood or marriage including a grandfather, grandmother, step-grandparent, brother, sister, half-brother, half-sister, stepbrother, stepsister, uncle, aunt, first cousin or first cousin once removed, nephew, niece, person of preceding generation as denoted by prefixes of ‘great,’ ‘great-great,’ or ‘great-great-great’ or a spouse of any person named in the above groups even after the marriage ends by death or divorce. (c) **‘School-related medical care’ means** medical care required by the state or a local unit of government as a condition of school enrollment.”

# Example of Proposed Legislation: Minnesota

- “Subd. 2. Authorization. Conditions. A relative caretaker of a child who has voluntarily been given custody of the child by a parent or legal custodian of the child has the same authority as a custodial parent of the child to exercise care, physical custody, and control of the child including **authority to enroll the child in school**, to discuss with the school district the child's educational progress, to consent to all school-related matters regarding the child, and **to consent to medical, dental, and psychological treatment** for the child...”

# Example of Proposed Legislation: Minnesota

- “Subd. 4. Contravening decision by parent or custodian. The decision of a relative caregiver to consent to or refuse medical, dental, or psychological health care or educational services for a child is **superceded** by any contravening decision of a parent or a person having legal custody of the child, if the decision of the parent or legal custodian does not jeopardize the life, health, safety, or welfare of the child.”

# Example of Proposed Legislation: Minnesota

- “Subd. 6. Termination of authority. An executed relative caregiver authorization affidavit **becomes invalid on the occurrence** of one of the following: (1) one year following the date the affidavit is notarized; (2) the child ceases to reside with the relative; (3) the parent, guardian, or custodian of the child who is the subject of the affidavit acts, in accordance with this section, to negate, reverse, or otherwise disapprove an action or decision of the relative who signed the affidavit with respect to the child. (4) the affidavit is terminated by court order. (5) the death of the child who is the subject of the affidavit. Or (6) the death of the relative who executed the affidavit.”

# Example of Proposed Legislation: Minnesota

- “Subd. 8. Good faith reliance. (a) A person who acts in good faith reliance on a properly executed relative caregiver’s authorization affidavit and who has no actual knowledge of facts contrary to those stated in the affidavit, **is not subject to criminal prosecution, civil liability, or professional disciplinary action** for any action which would have been proper if the facts had been as the person believed them to be, This subdivision applies even if medical or educational services are rendered to a child in contravention of the wishes of the parent or legal custodian of that child. However, the person rendering the services must not have actual knowledge of the wishes of the parent of legal custodian.”

# Example of Proposed Legislation: Minnesota

- Affidavit form provided in the bill.
  - “Warning: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment, or both. “
  - Requires date and signature, including that of a MN notary.
  - Requires reason for informal care
  - Provides notice to caregivers, school officials, and health care providers of their rights and limitations.



# Final Considerations

- Is a “no health care coverage conferred” clause a good thing to have in consent legislation?
  - Will not including it deter caregivers from seeking medical care?
  - If it is not conferred and the parent/legal guardian is nowhere to be found, then is the cost imposed on tax payers?
  - If the caregiver is reaping the benefits of caring for the child, why shouldn't they be responsible for the costs?
- Should caregiver consent be given only provided that the action is carried out “upon the advice” of a professional?
  - How can the child be taken to the doctor the “first time” if they first need the authorization of a professional?
  - What if the caregiver does not agree with the advice of the professional?

# Questions?

- Thank you!

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