

# When Do Informal Parenting Arrangements Need Approval from the State?

It is axiomatic that, ideally, it is best for children to be cared for by their parents. Yet, on an informal basis, thousands of children reside for extended periods of time with a caregiver who is not their parent. Often they are the child's relatives, sometimes they are friends or acquaintances of the child's family. This may be done to accommodate unique family dynamics, after-school or social activities, or for a variety of other reasons. Such time-efficient and cost-effective arrangements are accomplished without involving any lawyers or signing any legally binding documents. All things being equal, is there an expectation that such arrangements have to be sanctioned by the state?

Consider the following scenario: While Lily, a single mother, is putting her life back together, she decides it's best for her daughter, Madelyn, to stay with her friend Sophia. Everything is going well until Child Protective Services (CPS) gets a call that Sophia may be abusing her own biological daughter. CPS investigators come out and determine the allegation to be unsubstantiated. In the course of the investigation CPS becomes aware that Sophia is looking after Madelyn on Lily's behalf. Should Lily or Sophia have informed the local department of human services about the arrangement? As the Indiana Supreme Court recently cautioned, "[n]ot every endangered child is a child in need of services, permitting the State's *parens patriae* intrusion into the ordinarily private sphere of the family." *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). Has the department of human services, through its *parens patriae* (Latin for



“parent of the country”) responsibility, now obligated itself to ascertain whether Sophia's home is a safe and suitable place for Madelyn?

In the United Kingdom, when a child younger than 16 (or younger than 18 if disabled) is cared for 28 days or longer by someone who is not their parent or a close relative, this is termed private fostering, and the law requires that the local child welfare authority be notified of this arrangement.<sup>1</sup> In the United States, under what

circumstances, if any, should informal parenting arrangements need the approval of the state? Has there been an increase in the rate of informal parenting arrangements? If so, what factors have attributed to this rise? Here are the perspectives of a handful of expert attorneys:

**1. Sarah E. Oliver, Esq., California.** Many benefits to informal parenting arrangements exist: parents have the

*See Arrangements on page 28*

## **NAPCWA Continues Education and Advocacy to Advance Child Welfare Finance Reform Legislation**

APHSA and the National Association of Public Child Welfare Administrators (NAPCWA), along with the Alliance for Strong Families and Communities and the National Organization of State Associations for Children, The Triad, issued a press release through the Triad Partners Keeping Kids in Families Campaign urging Congress to formally introduce the Family First Act. As currently drafted, the Family First Act represents a major step forward to improve child welfare services and to prevent children from entering foster care or residential settings for temporary out-of-home placements. The current legislative draft includes Triad recommendations that called for the use of high-quality residential settings for treatment needs and including family and permanency teams as part of functional needs assessments.

Last December, Julie Krow, deputy executive director of Community Partnerships at the Colorado Department of Human Services and NAPCWA president, visited with Senators Cory Gardner and Michael Bennett, Rep. Scott Tipton (R-CO), and Morna Miller, minority staff for the House Ways and Means Human Resources Subcommittee, to discuss the emerging bipartisan Senate Finance

Committee legislative proposal, the Family First Act. The meetings allowed for additional discussion and clarification of the provisions outlined in the legislative summary, as well as opportunities to present a number of questions and concerns voiced by NAPCWA members.

## **NASCCA Comments on Child Care Regulations**

In February, the National Association of State Child Care Administrators (NASCCA) submitted comments in response to the December 24, 2015 Notice of Proposed Rulemaking (NPRM) on the Child Care and Development Fund program that was issued by the Office of Child Care. The comments noted the opportunities provided through the Child Care Development Block Grant Reauthorization (CCDBG) of 2014. The bill increases focus on improving the overall quality of early care and education programs while promoting economic stability for low-income families. The comments letter included overarching principles that high-quality early care and education are critical to healthy development growth in early years; successful implementation of the reauthorization law is multi-faceted and will require staging and phasing; and providers are key partners in this work.

The comments balanced the need for guidance and clarification on specific provisions in the reauthorization law. Visit <http://www.aphsa.org/content/NASCCA/en/home.html> for additional information.

## **NAPCWA Joins Steering Committee for National Technical Assistance Center**

NAPCWA is pleased to serve on the Steering Committee for the National Technical Assistance Center for Child, Youth and Family Mental Health (NTTAC). The Steering Committee will lead, guide, and advance the NTTAC efforts so that children, youth, and young adults with serious mental health disorders have greater access to effective services and supports to improve their lives. This effort will include projects to: (1) build a workforce skilled in community-based approaches and evidence-based programs (in partnership with the American Psychological Association and the National Child Welfare Workforce Institute); (2) customize approaches in Medicaid to meet the specific behavioral health needs of children, youth, and families involved in child welfare; (3) create learning communities on subjects such as early intervention with young children and working with co-occurring substance abuse disorders. 

## **ARRANGEMENTS continued from page 25**

flexibility to choose a caregiver whom they trust and who shares a common culture or language, family contacts are preserved, and children gain stability when a parent may be homeless, incarcerated, or struggling. California law does not require these arrangements to be reported regardless of duration. In fact, under Family Code section 6550, with a Caregiver's Affidavit, which does not require the consent of the parent, child protective services, or the

court, a caregiver may enroll a child in school and a relative caregiver may also consent to a child's medical, dental, and mental health care.

State approval of these arrangements should not be required unless a risk factor occurs such as an abuse or neglect referral or the legal parent's disappearance. California law already provides adequate oversight of children in all caregiving arrangements. California's Child Abuse and Neglect

Reporting Act (CANRA) requires numerous professionals—including teachers, physicians, and commercial film processors—to report child abuse or neglect when they reasonably suspect it. Failure to do so can result in severe penalties. The Department of Social Services Structured Decision Making Manual (SDM), which guides child protective service agencies' risk assessments statewide, provides for an extensive safety assessment

of substitute care providers when an abuse referral is made. If no safety threats are found, the SDM guides the social worker to leave the child in the substitute caregiver's home. Together, the CANRA and the SDM ensure the child's safety and well-being—meeting the state's interest in child protection—while protecting the parent's wishes and the child's stability.

**2. Bonnie Saltzman, Esq., Colorado.** I never advise parents to have an *informal* arrangement when their child(ren) reside with others during a difficult time. Inevitably, the situation explodes and human services ends up getting involved. I advise parents to give the caretaker a formal Limited Power of Attorney or give them temporary guardianship. Colorado actually has a Power of Attorney form on its judicial website that I recommend parents modify for their use.

I also believe, and Colorado case law supports, the premise that parents are presumably capable of making good decisions for their children. When a parent is not able to care for their child(ren), the parent should have the authority to seek an alternative that provides the child(ren) with a safe, healthy environment. A fit parent recognizes when he or she needs help and seeks that assistance. Generally, state intervention is needed only when parents make poor choices for their children.

**3. Stephanie L. Curtin, Esq., Massachusetts.** In Massachusetts, there is no requirement that parents involve the state in the care-giving arrangements they make for their children. However, failing to formalize such arrangements could cause problems for temporary caregivers. Temporary caregivers can face difficulties enrolling the child in school or seeking medical treatment for the child. To alleviate these burdens, and to ensure that a temporary caregiver can properly care for the child, the parent has several options. The parent could choose not to involve the state at all, and instead execute a "caregiver affidavit" that authorizes the caregiver to make decisions on the child's behalf. Alternatively, the parent could involve the state in a limited manner by petitioning the court for a temporary

guardianship, which could be terminated when the parent was able to parent the child again. With either option, there are tradeoffs. A temporary guardianship can protect the child by requiring, for example, that the caregiver pass a Criminal Offender Record Information (CORI) check; but, the parent risks losing custody of the child if the court determines that the child needs permanency and care that the parent cannot provide. The question becomes: which side of the scale tips the balance—assurance of safety or preservation of parental autonomy? Only the specific facts and circumstances of the particular care-giving arrangement can properly answer that question.

**4. Jeanne Hannah, Esq., Michigan.** Michigan's Estates and Protected Individuals Code, MCL 700.5103, states that a parent or guardian of a minor child may leave the child in the care of a third party and may, by a properly executed power of attorney, delegate to another person any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward. Exceptions to the authority delegated are authority to consent to marriage or adoption of the minor or to release of the minor for adoption. Such a delegation is, by operation of the statute, valid for only six months unless renewed, except in the case of a deployed person. In the latter case, the delegation is effective until 31 days after the end of the deployment. If the person executing the delegation is a guardian, the court authorizing the guardianship must be notified within seven days of the delegation.

I believe that it's a good thing that such delegations are allowed. First, parental rights are protected by a delegation. No one can claim that a parent has abandoned a child as to whom the parent executed or continued a delegation. A charge of abandonment can lead to termination of parental rights. Thus, a proper delegation can protect the parental rights of one who properly executes and, perhaps, extends a delegation. Moreover, the delegation provides a third party with authorization to enroll the child in school, seek emergency and ordinary day-to-day medical care, among other things.

Second, I see the delegation as being protective of the child's right to a parent-child relationship with his or her parents. The delegation may prevent an intrusion into or a disruption of the relationship. Because a major facet of my practice is parental abduction, my focus tends to be focus on the constitutional rights of parent(s) and child(ren) to preserve their natural or legal relationship.

**5. Robert "Chip" Mues, Esq., Ohio.** Chapter 3109 of the Ohio Revised Code governs parental rights and responsibilities. In Ohio, an "informal" parenting arrangement means just that—because it's informal, it's not overseen by the state. For the state to even take notice, the arrangement must either be brought in front of the court, or a complaint regarding the arrangement must be made to the authorities.

Ideally, every living arrangement, including that into which a child is born, would be monitored to ensure its safety and stability. However, in reality we presume that a parent knows what's best for their child and will act accordingly. Therefore, until a question is raised to the contrary, the state usually won't intervene.

Requiring parents to report informal arrangements, unless it is, perhaps, part of one's parole, probation, or court-ordered sanction, seems an intrusion on the inalienable rights afforded to parents. In addition, if it did choose to get involved, how would the state decide when to step in? When the child's left for an arbitrary number of days? Must these be consecutive days? A certain number of days or a month? Should it depend on where the child is left? What if the child remains home but with someone new? Demanding such reporting would lead to a slippery slope in which the right of privacy and the family sphere in general are jeopardized. 

#### Reference Note

1. See Children Act 1989: Private Fostering. <https://www.gov.uk/government/publications/children-act-1989-private-fostering>

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