

## **HB 279, KINSHIP AFFIDAVIT & POWER OF ATTORNEY Provisions** **Representative Cheryl Grossman, sponsor**

**PURPOSE** - HB 279 supports extended family responsibility for the raising of Ohio's children. According to the 2010 Census, over 91,000 children are being raised by their grandparents – many more by other relatives and kin; less than 20% have any type of legal custody, making it difficult to access needed services. HB 279 establishes two legal mechanisms to assist caregivers to access educational and medical services for children in their residential care, as an alternative to intrusive children services intervention or expensive legal processes.

HB 130, limited to Grandparents as caregivers, became effective in July 2004. The only concern experienced has been that it is limited to Grandparents. *HB 279 merely expands the HB 130 law to allow for other caregivers to utilize this effective law.*

- **The Power of Attorney** provides legal documentation for the caregiver of a parents' choice, in consensual arrangements, when the custodial parent(s) are temporarily unable to care for their child.
- **The Caretaker Affidavit** provides legal documentation for relative caregivers, when location of the birth parent is unknown.

**POWER OF ATTORNEY (POA)** – Parent(s), or other legal custodian to create POA with an individual, when temporarily unable to care for child. Allows Caregiver / Attorney in Fact authority for child's educational enrollment, information, and consent for activities; also for medical, dental, psychological treatment of the child. Prohibits authority for adoption, marriage, or legal custody of child. (Sec. 3109.52, 3109.54, 3109.55)

**Power Of Attorney (POA) Form Provisions** – Form is in legislation. (Sec. 3109.52)

- **Parent initiates POA** and signs form awarding authority for educational and medical service access to grandparent caregiver; indicates the POA is in effect for up to one year, or as long as child is residing with caregiver; parent may revoke at any time, may also be terminated by court.
- **Caregiver / Attorney in Fact must sign POA and list criminal convictions.**
- **Notary Public is required to witness signatures.**
- **Specific notices are required** – Parent must notify the non-custodial parent, and file the POA with the juvenile court where the caregiver resides (or other court of original jurisdiction) within 5 days; a second year of the POA must be filed with the juvenile court for the purpose of a best interest hearing; upon termination of the POA, the Caregiver / Attorney in Fact is responsible to notify schools, healthcare givers, insurance providers, court, and the non-residential parent.
- **Instructions to Caregiver / Attorney in Fact** – Required written notices upon POA termination (to school, healthcare providers, non-residential parent, juvenile court).
- **Instructions to School Officials** – POA authorizes enrollment in district of caregiver residence; authorizes caregivers to consent to school related matters and to obtain educational information on child; does not preclude parent access to school related information; allows school district to seek evidence caregiver resides in school district; imparts good faith status to accept signed POA.
- **Instructions to Health Care Provider** – Imparts good faith civil, criminal, and professional disciplinary immunity for competent care provided, based on signed POA; instructs health care provider to accept decisions of Caregiver / Attorney in Fact.

**Power of Attorney Parameters** (in additional to what is mentioned in POA Form)

- **POA signature requirements** for custodial parents (3109.56)
- **Specific reasons for temporary inability of parent to care for child** (3109.57)
- **Judicial circumstances in which use of POA is prohibited**, such as custodial hearings pending or in progress (Sec. 3109.58)
- **POA Termination provisions** – after one year, the child ceases to live with caregiver, the parent revokes in writing, or if the court terminates (Sec. 3109.59)
- **Good Faith Immunity for Professionals Relying on POA** – does not include actions that are reckless, wonton, on inconsistent with professionals standards. (Sec. 3109.61)
- **Military Use of POA** – Consistent with the National Defense Authorization Act, allows Military POA to stay in effect beyond the one year limit. (Sec. 3109.62)

**RELATIVE CARETAKER AUTHORIZATION AFFIDAVIT** – To be used in situations in which whereabouts of the parent(s) of a child living with a relative are unknown, after reasonable attempts to locate and contact. Allows a relative authority for child's educational enrollment, participation in educational services and activities, consent for medical, dental, psychological treatment of the child. Prohibits Caregiver authority for adoption, marriage, or legal custody of child. (Sec. 3109.65)

**Caregiver Authorization Affidavit Form Provisions** – In legislation (Sec. 3109.66)

- **Relative Caregiver initiates** and signs form which allows authority for educational and medical service access to grandparent; form lists any criminal convictions by caregiver; indicates the Affidavit is in effect for up to one year, or as long as child is residing with caregiver, parent may revoke at any time, may also be terminated by court.
- **Notary Public is required to witness** signatures.
- **Specific notices are required by Relative** – The relative caregiver must file the Affidavit with the local juvenile court or court of original jurisdiction within 5 days; a second year of the Affidavit must be filed with the juvenile court for the purpose of a best interest hearing; upon termination of the Affidavit, the caregiver is responsible to notify schools, healthcare givers, insurance providers.
- **Instructions to School Officials** – Relative Affidavit authorizes enrollment in district of caregiver residence; authorizes caregivers to consent to school related matters and to obtain educational information on child; allows school district to seek evidence caregiver resides in school district; imparts good faith status to accept signed Affidavit; allows a parent to reverse a caregiver decision thru written notification – such will terminate the Affidavit.
- **Instructions to Health Care Provider** – Imparts good faith civil, criminal, and professional disciplinary immunity for competent care provided, based on signed Affidavit; instructs health care provider to accept decisions of relative caregiver; allows a parent to reverse a caregiver decision thru written notification –such will terminate the Affidavit.

**Relative Caretaker Authorization Affidavit Parameters** (in additional to those mentioned in Form)

- **Judicial circumstances in which use of Relative Affidavit is prohibited**, such as custodial hearings pending or in progress (Sec. 3109.68)
- **Parent Reversal or Negation of any decision** – may be done *in writing* at anytime, unless it would jeopardize the health or safety of the child; regardless of application, it will immediately terminate the Affidavit. (Sec. 3109.72)
- **Good Faith Immunity for Professionals Relying on an Affidavit**– does not include actions that are reckless, wonton, on inconsistent with professionals standards. (Sec. 3109.73)

**SAFETY PROVISIONS pertaining to both POA and Caregiver Affidavit**

- **POA or Affidavit will be filed with Juvenile Court in court of caregiver (or other court of original jurisdiction)** - must be accompanied by certified mail receipt, to non-custodial and non-residential parent (Sec. 3109.74)
- **Verification of POA or Affidavit** – a school may contact the local court to verify that a POA or Affidavit is on file. (Sec. 3109.75)
- **Permanency / Best Interest Review for Second or Subsequent Relative POA or Affidavit** – the person initiating a second POA or Affidavit must file it with the juvenile court within 10 days; the juvenile court will then schedule a Best Interest hearing, and provide notice to non-residential parent. Dispositional options include continuance of the POA or Affidavit, termination of the POA or affidavit and return to the parent or legal custodian, any disposition option for Dependent children in ORC 2151.27, or treating the filing of the POA or Affidavit as a petition for legal custody. If the non-residential parent is not present, but files a motion, the court shall conduct a de novo review of any Best Interest review hearing. (Sec. 3109.77)
- **Prohibition from using POA or Caregiver Affidavit for purposes of academic or athletic participation** – violation is offense of falsification. (Sec. 3109.78)
- **Child Support Enforcement** – existing orders remain in effect (Sec. 3109.79)
- **Prohibition from multiple POAs or Caregiver Affidavits** (Sec. 3109.80)
- **School Funding to Follow the Child** – Relative is viewed as “parent” for purposes of school funding – no tuition shall be charged. (Sec. 3313.64)