

INFORMAL CAREGIVERS

WHO ARE INFORMAL CAREGIVERS?

An informal caregiver generally assumes his or her responsibility for a child without involvement from the court system, child protective services, or other authorities. As a result, the informal caregiver may have physical custody (the child lives with him or her) but does not have legal custody over the child (a court has not approved the living arrangement). This informal caregiving relationship may arise with or without the parents' consent and cooperation.

WHEN THE PARENT CONSENTS OR IS IN COMMUNICATION

Example:

When Carol's goddaughter, Tina, became pregnant at age 16, Carol and her husband took responsibility for the newborn infant and continued to care for him after Tina left home to go to college. Joey is now 11 and continues to live with his godparents. Tina has finished her education and now has a job. Although she no longer lives at home, Tina is in close contact with Joey.

This informal custodial arrangement has worked well for Carol and her family. Although the world has generally accepted Carol and her husband as Joey's primary caregivers, there have been instances when Tina needed to make decisions regarding Joey. For instance, when Joey needed corrective eye surgery, the hospital would not accept Carol's authorization to perform the surgery. Tina, as Joey's legal parent, needed to make those arrangements. This problem was resolved because the child's parent was available, cooperative and in communication with the caregiver.

If you are a caregiver and are in communication with and have cooperation from the child's parent(s), then you may not need to apply for formal court custody. **We recommend, however, that you get the following documents from the child's parent(s):**

- child's birth certificate,
- child's Social Security card, and
- any medical records, especially immunization history

You will find having copies of these documents will make your role as caregiver a little easier.

Next, ask the parents to sign a letter giving you permission to care for and make medical and educational decisions for the child as a safeguard in the event that the parent later falls out of communication. This letter does not give you any kind of legal custody regarding the child, nor does it suspend or terminate the parent's rights. However, it goes a long way toward guaranteeing recognition of an informal caregiver's status by doctors, schools and many others. **The letter should be signed by the parent(s) and the caregiver. It is also helpful to have it notarized. We have included a sample letter in the Sample Forms section of this booklet on page 53. When a notary stamps the letter, it means that they are an authorized witness and that the signature on the document is legitimate. Although it is not required by law, getting a document notarized will help ensure that doctors, school officials, and others will accept the document as valid. The fee to notarize a document is minimal (approximately \$10).**

Also, you should review the section on probate legal guardianship starting on page 13 to determine whether there is any need to obtain a court custody order for the child.

WHEN THE PARENT(S) DOES NOT CONSENT OR IS NOT IN COMMUNICATION WITH THE INFORMAL CAREGIVER

Example:

Lisa was a drug addict who lived with her friend Pat. Also living with them was Lisa's son, Nicholas. Nicholas' father is unknown. When Nicholas was only 3 years old, Lisa simply disappeared. It has been weeks since Pat heard from Lisa. Nicholas continues to live with Pat.

Unfortunately, Pat's situation has been more difficult than Carol's. Pat has no documents from Lisa designating Pat as the primary caregiver. Nor does she have copies of Nicholas' birth certificate or his Social Security card. Pat has only been able to obtain emergency medical care for Nicholas, and has had trouble enrolling Nicholas in pre-school. Pat is also fearful that Lisa, not having controlled her drug addiction, might return one day and take Nicholas away.

Pat's situation is less than ideal and it may be in her best interest, as well as Nicholas', to consider a more formal caregiving arrangement, either as Nicholas' foster parent, legal guardian or as his adoptive parent. These options will be discussed more fully later in this guide. However, all informal caregivers can take a certain amount of control over their situations.

COMMON PROBLEMS

As a caregiver, have you faced any of these problems?

- You need more income to pay for living expenses and to support the child.
- The child does not have health insurance.
- You are told that you cannot register the child for school or daycare.
- The doctor's office requires legal guardianship papers to treat the child.

If you answered yes to any of these situations, the following section will provide you with the resources to assist you.

WHAT DECISIONS CAN INFORMAL CAREGIVERS MAKE ON BEHALF OF A CHILD?

EDUCATION

Enrolling a Child in School

A caregiver, whether related or unrelated can enroll a child in school.

Using a Caregiver Affidavit

Under California law, the Caregiver's Authorization Affidavit enables a caregiver, whether related or unrelated, to enroll a child in school.

If you are related to the child, you may also consent to medical and dental treatment, including immunizations.

If you are unrelated to the child, this document allows you to make school-related medical decisions, such as obtaining vaccinations and medical examinations required for school enrollment.

The form does not require the signature of a parent, but does require that you make an effort and swear under written oath that you have attempted to contact the child's parent to get consent for non-school related medical care. The Affidavit is a simple two-page form and a sample may be found in the "Sample Forms" section of this booklet on page 51.

Education Rights Under the McKinney-Vento Act

The McKinney-Vento Act is a federal law which provides certain education rights to children who are "homeless". The definition of "homeless" includes children who are awaiting a permanent foster care placement or who are doubled up with friends or relatives because they cannot find or afford housing. Many children in informal caregiver situations, like the child in Pat's care discussed above, would qualify for help under the McKinney-Vento Act. Such children are entitled to be immediately enrolled in school, even if they do not have any documentation of residence, school records, or immunizations. Alternatively, the student can choose to remain in her original school and

receive free transportation to and from school. The student can also receive other assistance, such as emergency clothing, school supplies, and automatic enrollment in the free school lunch program.

TIP!

For more information on the McKinney-Vento Act please see the Children's Rights Project Publication entitled "Education: California School Rights and Responsibilities", which is available on the Public Counsel website or by calling the Children's Rights Project Intake Line (see the Legal Services Directory in the back of this book on page 48).

OTHER EDUCATIONAL DECISIONS

Special Education

Children who have disabilities can receive special education services and/or accommodations from school. If the child you are caring for has difficulty in school, low grades, behavior problems, or an unexplained lack of progress, the school can evaluate the child to see if they need special education services.

A non-parent caregiver **cannot** consent to an assessment or sign a child's special education plan if the parent is still available to make such decisions. In order for a non-parent caregiver to be able to consent to decisions regarding a child's special education needs, the caregiver must either obtain a written assignment of education rights by the parent, or be appointed by the school district to serve as the educational surrogate for the child. The school can only appoint a surrogate if the child's parents can not be identified or if the school district is unable to locate the parent, after diligent efforts. The school must follow certain guidelines in appointing a surrogate parent—for example, the surrogate parent must not have any interests that conflict with the child's interests, and the school must first try to appoint a relative caregiver, foster parent, or court appointed special advocate.

If the parents' location is known but they are just unwilling to participate, the non-parent caregiver will need to obtain probate legal guardianship in order to make special education decisions for the child.

If the child is in foster care, the court would need to limit the parents' education rights and

order that education rights be transferred to the caregiver (except for a foster parent in some circumstances) before the caregiver could consent to have the child assessed or placed in special education.

TIP!

If you think that you need to be appointed as the educational surrogate for a child who is in special education and in your care, tell the special education coordinator at your school immediately!

If a parent is willing to assign education rights to you, contact Public Counsel or one of the other Legal Service Providers in the back of the book, at page 48 for assistance.

For more information on Special Education, please refer to the Public Counsel pamphlet "Special Education: Students' and Parents' Rights and Responsibilities"-available on the Public Counsel website at www.publiccounsel.org.

Click on "Resources" and "Children's Rights Projects."

Extracurricular Activities

While the Caregiver Affidavit allows caregivers to enroll a child in school, it does not specifically give caregivers authority to consent to school extracurricular activities, such as participation in sports or field trips. School policies on this differ. If a school requires you to obtain a probate guardianship in order to consent to extracurricular activities, ask first to speak with the McKinney-Vento or Homeless Coordinator. All schools are required to have a McKinney-Vento or Homeless Coordinator. (Please refer to the Resources: Education section of this booklet on page 41).

If the Coordinator cannot assist you and a parent is not available to provide consent, you will need to obtain a probate legal guardianship in order to provide consent for these activities.

Daycare and Pre-school

The Caregiver Affidavit does not specifically authorize you to enroll a child in daycare or pre-school. You will likely need to obtain probate legal guardianship in order to do so, although some daycare and pre-school programs may accept the Caregiver Affidavit-particularly those associated with a school district.

MEDICAL DECISIONS

A caregiver who obtains a medical authorization from a parent can consent to the medical care specified in the authorization. In addition, a relative who uses a Caregiver Affidavit can consent to all medical care needed by a child. A non-relative using a Caregiver Affidavit can consent to school-related medical care. See p. 9 for additional discussion on the Caregiver Affidavit.

In certain limited circumstances, a child can consent to his or her own medical care. These circumstances include:

Emergency Treatment: *A child under 18 can receive emergency medical treatment without the consent of the parent or legal guardian.*

Pregnancy: *A child under 18 can consent to her own pregnancy-related medical care, including birth control, pregnancy testing, and prenatal care.*

Mental Health Treatment: *A child at least 12 years of age can obtain mental health treatment counseling or residential shelter if he or she is mature enough to participate intelligently in the treatment and is either (1) a danger to self or others without the requested treatment, or (2) is the alleged victim of incest or child abuse.*

A minor can obtain Minor Consent Medi-Cal to cover the cost of the above services by applying at a health clinic or welfare office.

For more detailed information about minor medical consent laws, please review the Children's Rights Project Publication, "Consent and Confidentiality: What Teens Should Know."

FINANCIAL ASSISTANCE

Generally, a child cared for by a relative is eligible for monthly cash assistance from CalWORKs and medical coverage through Medi-Cal. If you are unsure whether you would be considered a relative, see the definition of "relative" in the "Glossary of Terms" section on page 39. If a caretaker does apply for CalWORKs benefits, the Child Support Services Department will

often attempt to seek reimbursement from the parents by garnishing or taking their wages.

Non-relative caregivers are not eligible for CalWORKs, but they may be eligible to receive other benefits (see the Other Benefits section below). If you are a non-relative caregiver, you must obtain legal guardianship or become a foster parent before becoming eligible for monthly cash aid (called AFDC-FC or state foster care). However, you can obtain Medi-Cal for the child.

CALWORKS

Generally, a child being raised by a relative, regardless of the relative's immigration status or income, is eligible for a "non-needy caregiver" monthly cash assistance payment from CalWORKs. However, if the relative is low-income he/she may qualify for needy caregiver assistance under the general CalWORKs program (see the Other Benefits section at the back of this book, on page 32).

Contact the local Department of Public Social Services (DPSS) located in the County section of your telephone directory to complete a CalWORKs application. You can also find information at www.ladpss.org but not an online application.

TIP!

When applying for CalWORKs or Medi-Cal be sure to explain to the DPSS worker that you are making a "non-needy caregiver" application. Your household income should not be used to determine the child's eligibility for either program, unless you are also receiving CalWORKs or would like to receive CalWORKs for yourself.

Please note that the monthly cash assistance from CalWORKs is less than the monthly cash assistance from foster care, and does not provide supplements for children with special needs. (See Foster Care section below starting on page 16.)

HEALTH CARE

HEALTH INSURANCE

Most health insurance companies will require that you obtain guardianship before allowing you to add a child to your health plan. However, a caretaker, either related or unrelated, can obtain Medi-Cal for a child without first obtaining guardianship.

MEDI-CAL

Any caregiver, whether related or unrelated, can obtain Medi-Cal services for the child, without obtaining legal guardianship. A child receiving CalWORKs is automatically eligible for health coverage under the Medi-Cal program. Contact the local Department of Public Social Services (DPSS) located in the County section of your telephone directory to complete a Medi-Cal application.

Like CalWORKs, Medi-Cal benefits continue until the child is 18, or 19 if the child has a disability, health condition, or other situation (such as a school disruption due to domestic violence) that impairs his or her ability to graduate or can prove that he/she will graduate by age 19.

TIP!

If your application for CalWORKs or Medi-Cal is denied, you have a right to appeal the denial. Call the Toll-Free Number 800-952-5253 once you receive your Notice of Action. You can also follow the directions on the back of the notice to submit a request in writing. Some free legal assistance is available. Contact one of the Legal Service Providers listed in the "Services Directory" of this booklet on page 48 to find out if you qualify for free legal assistance.

OTHER BENEFITS

SOCIAL SECURITY AND CAPI

An informal caregiver may also apply to be the child's representative payee for benefits from the Social Security Administration. These benefits include:

- *Supplemental Security Income (SSI), if the child is disabled (CAPI is a similar benefit provided by the state of California for certain immigrants with disabilities);*
- *Social Security Survivor's Benefits, if the child's parent(s) are deceased and have a work history; or*
- *Social Security Dependent's Benefits, if the child's parent(s) or grandparent(s) receive Social Security Retirement or Disability Benefits based on their work history.*

In addition, the child in your care may be eligible for additional benefits. For additional information on these benefits and how to apply for them, refer to the "Other Benefits" section on page 31.

****Important Note: The child must be a United States Citizen, Legal Permanent Resident or certain type of immigrant to receive CalWORKs, full-scope Medi-Cal and Social Security benefits. Some examples of a qualified immigrant are children who are refugees or asylees, permanently residing in the US under color of law, or victims of trafficking, or abuse by a U.S. citizen parent or step-parent. If you are not certain whether the child in your care is a qualified immigrant, please contact one of the Legal Services Providers in the Services Directory on page 48.***