

The Elder Law Update: Child Care Designations

By Remo A. Hammid, Esq.

One of the joys of getting older, my clients tell me, is to be able to spend time with their grandchildren. That might mean taking the grandchildren away for a summer vacation or having them stay over for a couple of days or perhaps babysitting while the parents are off on a vacation of their own.

Many of our clients, however, incorrectly believe that because of their relationship to a child, for example as a grandparent, they are able to make decisions on behalf of the child in the absence of a parent.

In fact, the New York State Parental Designation Law requires a written statement from a parent authorizing a third party to make decisions relating to medical and hospital care, legal issues or school matters on behalf of a child in their care.

While this column will focus on the Parental Designation Law and its impact on a senior's role as a grandparent, the information offered here applies to all non-parental caretakers

of minor children (e.g., babysitters, uncles, aunts, anyone that will have custody of a minor for an extended period of time).

New York's Parental Designation Law: New York State's "Parental Designation" statute states that a parent may designate another person to make certain decisions on behalf of their minor child. The decisions authorized by the statute allow for the delegation of authority to make medical and dental care decisions, educational decisions and the authority to travel.

It would be good practice for parents to have such a form at their disposal so they may designate a non-parent caretaker before heading off for that long weekend in Montauk or the two week cruise through the Caribbean. Alternatively, a Parental Designation form can avoid many pitfalls if a child is traveling out of the state or country without a parent. The form allows for ease passage when con-

fronted by customs representatives and airline personnel.

Drafting Considerations:

Special care must be taken when preparing and executing these types of documents. New York has very specific rules as to how to designate an individual to be a "person in parental relation." The document must contain very specific information regarding the child and the parent(s), including information relevant to any child custody or visitation issues, and it must be signed by the parent.

Further, depending on how long the document needs to be effective, there are additional requirements. For example, the law states that if the document is not notarized it will automatically expire after thirty (30) days. And even if the document is notarized, the document will expire at the end of six (6) months unless otherwise stated.

Designations Can Be Limited: When drafting the

Parental Designation form parents are free to limit the authority they would like bestow on the caretaker and need not give total authority to act. Therefore a third party may have the authority to make medical decisions for your child but not authorized to travel with your child. The form may be drafted to suit the particular needs of each individual family.

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