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AN ACT

RELATING TO KINSHIP GUARDIANSHIP; AMENDING THE CAREGIVER'S  
AUTHORIZATION AFFIDAVIT TO INCLUDE PRE-SCHOOL CARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 40-10B-15 NMSA 1978 (being Laws  
2001, Chapter 167, Section 15) is amended to read:

"40-10B-15. CAREGIVER'S AUTHORIZATION AFFIDAVIT.--

A. A caregiver who executes a caregiver's  
authorization affidavit substantially in the form contained  
in Subsection J of this section by completing Items 1 through  
4 of the form and who subscribes and swears to it before a  
notary public, is authorized to:

(1) enroll the named child in early  
intervention services, child development programs, headstart,  
preschool or a kindergarten through grade twelve school;

(2) consent to medical care, including  
school-related medical care, immunizations, sports physical  
examinations, dental care and mental health care; and

(3) be the authorized contact person for  
school-related purposes.

B. A caregiver who is a relative of the child, who  
executes a caregiver's authorization affidavit substantially  
in the form set forth in Subsection J of this section by  
completing Items 1 through 7 and who subscribes and swears to

1 the affidavit before a notary public, has the same authority  
2 to authorize medical care, dental care and mental health care  
3 for the child as a guardian appointed pursuant to the Kinship  
4 Guardianship Act.

5 C. A caregiver's authorization affidavit executed  
6 pursuant to this section is not valid for more than one year  
7 after the date of its execution.

8 D. The decision of a caregiver to consent to or  
9 refuse medical, dental or mental health care pursuant to a  
10 caregiver's authorization affidavit is superseded by a  
11 contravening decision of a parent or other person having  
12 legal custody of the child if the contravening decision does  
13 not jeopardize the life, health or safety of the child.

14 E. No person who acts in good faith reliance on a  
15 caregiver's authorization affidavit to provide medical,  
16 dental or mental health care to a child without actual  
17 knowledge of facts contrary to those stated in the affidavit  
18 is subject to criminal culpability, civil liability or  
19 professional disciplinary action if the affidavit complies  
20 with the requirements of this section. The foregoing  
21 exclusions apply even though a parent having parental rights  
22 or person having legal custody of the child has contrary  
23 wishes as long as the provider of the care has no actual  
24 knowledge of the contrary wishes.

25 F. A person who relies upon a caregiver's

1 authorization affidavit is under no duty to make further  
2 inquiry or investigation.

3 G. If a child stops living with the caregiver, the  
4 caregiver shall give notice of that fact to a school, early  
5 intervention services provider, child development program  
6 provider, headstart provider, preschool or kindergarten  
7 through grade twelve school, medical or dental health care  
8 provider, mental health care provider, health insurer or  
9 other person who has been given a copy of the caregiver's  
10 authorization affidavit.

11 H. A caregiver's authorization affidavit is  
12 invalid unless it contains the warning statement set out in  
13 the form contained in Subsection J of this section in not  
14 less than ten-point boldface type, or a reasonable equivalent  
15 thereof, enclosed in a box with three-point rule lines.

16 I. As used in this section, "school-related  
17 medical care" means medical care that is required by the  
18 state or a local government authority as a condition for  
19 school enrollment.

20 J. The caregiver's authorization affidavit shall  
21 be in substantially the following form:

22 "Caregiver's Authorization Affidavit"

23 Use of this affidavit is authorized by the Kinship  
24 Guardianship Act.

25 Instructions:

1           A. Completion of Items 1-4 and the signing of the  
2 affidavit is sufficient to authorize the caregiver to:

3                   (1) enroll a minor in early intervention  
4 services, child development programs, headstart, preschool or  
5 a kindergarten through grade twelve school ("school");

6                   (2) consent to medical care, including  
7 school-related medical care, immunizations, sports physical  
8 examinations, dental care and mental health care; and

9                   (3) be the authorized contact person for  
10 school-related purposes.

11           B. Completion of Items 5-7 is additionally  
12 required to authorize any other medical care.

13 Print clearly:

14 The minor named below lives in my home and I am 18 years of  
15 age or older.

16 1. Name of minor:  
17 \_\_\_\_\_.

18 2. Minor's birth date:  
19 \_\_\_\_\_.

20 3. My name (adult giving authorization):  
21 \_\_\_\_\_.

22 4. My home address:  
23 \_\_\_\_\_.

24 5. Check one or both (for example, if one parent was advised  
25 and the other cannot be located):

1 ( ) I have advised the parent(s) or other person(s)  
2 having legal custody of the minor of my intent to authorize  
3 medical care, and have received no objection.

4 ( ) I am unable to contact the parent(s) or other  
5 person(s) having legal custody of the minor at this time, to  
6 notify them of my intended authorization.

7 6. My date of birth:  
8 \_\_\_\_\_.

9 7. My NM driver's license or other identification card  
10 number: \_\_\_\_\_.

11 WARNING: Do not sign this form if any of the statements  
12 above are incorrect, or you will be committing a crime  
13 punishable by a fine, imprisonment or both.

14 I declare under penalty of perjury under the laws of the  
15 state of New Mexico that the foregoing is true and correct.

16 Signed: \_\_\_\_\_

17 The foregoing affidavit was subscribed, sworn to and  
18 acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
19 20\_\_\_\_, by \_\_\_\_\_.

20 My commission expires: \_\_\_\_\_

21 Notary Public

22 Notices:

23 1. This declaration does not affect the rights of the  
24 minor's parents or legal guardian regarding the care, custody  
25 and control of the minor and does not mean that the caregiver

1 has legal custody of the minor.

2 2. A person who relies on this affidavit has no obligation  
3 to make any further inquiry or investigation.

4 3. This affidavit is not valid for more than one year after  
5 the date on which it is executed.

6 Additional Information:

7 TO CAREGIVERS:

8 1. If the minor stops living with you, you are required to  
9 notify any school, early intervention services provider,  
10 child development program provider, headstart provider,  
11 preschool or kindergarten through grade twelve school,  
12 medical or dental health care provider, mental health care  
13 provider, health insurer or other person to whom you have  
14 given this affidavit.

15 2. If you do not have the information requested in Item 7,  
16 provide another form of identification such as your social  
17 security number or medicaid number.

18 TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:

19 1. No person who acts in good faith reliance upon a  
20 caregiver's authorization affidavit to provide medical,  
21 dental or mental health care, without actual knowledge of  
22 facts contrary to those stated on the affidavit, is subject  
23 to criminal liability or to civil liability to any person, or  
24 is subject to professional disciplinary action, for such  
25 reliance if the applicable portions of the form are

1 completed.

2 2. This affidavit does not confer dependency for health care  
3 coverage purposes." \_\_\_\_\_

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