

1 HOUSE BILL 394

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO KINSHIP GUARDIANSHIP; AMENDING THE CAREGIVER'S
12 AUTHORIZATION AFFIDAVIT TO INCLUDE PRE-SCHOOL CARE.
13

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

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

17 "40-10B-15. CAREGIVER'S AUTHORIZATION AFFIDAVIT.--

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

23 (1) enroll the named child in early
24 intervention services, daycare, headstart, preschool or a
25 kindergarten through grade twelve school [~~and consent to school-~~

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1 ~~related medical care for the child];~~

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

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

7 B. A caregiver who is a relative of the child, who
8 executes a caregiver's authorization affidavit substantially in
9 the form set forth in Subsection J of this section by
10 completing Items 1 through [8] 7 and who subscribes and swears
11 to the affidavit before a notary public, has the same authority
12 to authorize medical care, dental care and mental health care
13 for the child as a guardian appointed pursuant to the Kinship
14 Guardianship Act.

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

18 D. The decision of a caregiver to consent to or
19 refuse medical, dental or mental health care pursuant to a
20 caregiver's authorization affidavit is superseded by a
21 contravening decision of a parent or other person having legal
22 custody of the child if the contravening decision does not
23 jeopardize the life, health or safety of the child.

24 E. No person who acts in good faith reliance on a
25 caregiver's authorization affidavit to provide medical, dental

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1 or mental health care to a child without actual knowledge of
2 facts contrary to those stated in the affidavit is subject to
3 criminal culpability, civil liability or professional
4 disciplinary action if the affidavit complies with the
5 requirements of this section. The foregoing exclusions apply
6 even though a parent having parental rights or person having
7 legal custody of the child has contrary wishes as long as the
8 provider of the care has no actual knowledge of the contrary
9 wishes.

10 F. A person who relies upon a caregiver's
11 authorization affidavit is under no duty to make further
12 inquiry or investigation.

13 G. If a child stops living with the caregiver, the
14 caregiver shall give notice of that fact to a school, early
15 intervention services provider, daycare provider, headstart
16 provider, preschool or kindergarten through grade twelve
17 school, medical or dental health care provider, mental health
18 care provider, health insurer or other person who has been
19 given a copy of the caregiver's authorization affidavit.

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

25 I. As used in this section, "school-related medical

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1 care" means medical care that is required by the state or a
2 local government authority as a condition for school
3 enrollment.

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

6 "Caregiver's Authorization Affidavit
7 Use of this affidavit is authorized by the Kinship Guardianship
8 Act.

9 Instructions:

10 A. Completion of Items 1-4 and the signing of the
11 affidavit is sufficient to authorize ~~[enrollment of]~~ the
12 caregiver to:

13 (1) enroll a minor in early intervention
14 services, daycare, headstart, preschool or a kindergarten
15 through grade twelve school ~~[and authorize school-related~~
16 ~~medical care]~~ ("school");

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

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

22 B. Completion of Items ~~[5-8]~~ 5-7 is additionally
23 required to authorize any other medical care.

24 Print clearly:

25 The minor named below lives in my home and I am 18 years of age

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1 or older.

2 1. Name of minor:

3 _____.

4 2. Minor's birth date:

5 _____.

6 3. My name (adult giving authorization):

7 _____.

8 4. My home address:

9 _____.

10 5. [~~()~~] ~~I am a grandparent, aunt, uncle or other qualified~~
11 ~~relative of the minor (see back of this form for a definition~~
12 ~~of "qualified relative").~~

13 ~~6.]~~ Check one or both (for example, if one parent was advised
14 and the other cannot be located):

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

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

21 [~~7.]~~ 6. My date of birth:

22 _____.

23 [~~8.]~~ 7. My NM driver's license or other identification card
24 number: _____.

25 WARNING: Do not sign this form if any of the statements above

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1 are incorrect, or you will be committing a crime punishable by
2 a fine, imprisonment or both.

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

5 Signed: _____

6 The foregoing affidavit was subscribed, sworn to and
7 acknowledged before me this ____ day of _____,
8 20____, by _____.

9 My commission expires: _____

10 _____
Notary Public

11 Notices:

12 1. This declaration does not affect the rights of the minor's
13 parents or legal guardian regarding the care, custody and
14 control of the minor and does not mean that the caregiver has
15 legal custody of the minor.

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

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

20 Additional Information:

21 TO CAREGIVERS:

22 1. [~~"Qualified relative", for purposes of Item 5, means a~~
23 ~~spouse, parent, stepparent, brother, sister, stepbrother,~~
24 ~~stepsister, half-brother, half-sister, uncle, aunt, niece,~~
25 ~~nephew, first cousin, godparent, member of the child's tribe or~~

1 ~~clan, an adult with whom the child has a significant bond or~~
2 ~~any person denoted by the prefix "grand" or "great", or the~~
3 ~~spouse or former spouse of any of the persons specified in this~~
4 ~~definition.~~

5 2.] If the minor stops living with you, you are required to
6 notify any school, early intervention services provider,
7 daycare provider, headstart provider, preschool or kindergarten
8 through grade twelve school, medical or dental health care
9 provider, mental health care provider, health insurer or other
10 person to whom you have given this affidavit.

11 [3-] 2. If you do not have the information requested in Item
12 [8] 7, provide another form of identification such as your
13 social security number or medicaid number.

14 TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:

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

22 2. This affidavit does not confer dependency for health care
23 coverage purposes."."