

Increasing HIV/AIDS-Affected Families' Permanency Planning Options Through Enactment and Utilization of Standby Guardianship Laws

Jeffrey A. Menzer, RN, ACRN

Family Ties Project, Consortium for Child Welfare

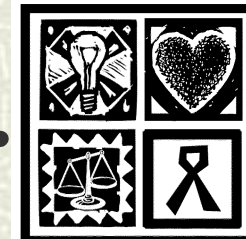
Natalie Wasserman, JD

University of the District of Columbia, David A. Clarke School of Law

Rodney Cunningham, JD

AIDS Law Project of Pennsylvania

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**Family
Ties
Project**

LIFE PLANNING FOR FAMILIES AFFECTED BY HIV/AIDS

Presentation Objectives

- # To review the history and purpose of standby guardianship laws
 - # To identify commonalities of standby guardianship laws
 - # To learn about legal alternatives to standby guardianship
 - # To learn about how standby guardianship is used in one state—Pennsylvania
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Definition of Voluntary Permanency Planning

“Voluntary permanency planning is the ongoing, elective process by which parents or caregivers make decisions about the future care of their children in the event of their incapacitation or death” (Coon, 2001)

Voluntary Permanency Planning Legal Options

- # Standby Guardianship
 - # Standby Adoption
 - # Testamentary Guardianship
 - # Custody transfer (joint, third-party)
 - # Adoption
 - # Powers of Attorney
 - # Medical Consent Authorization
 - # Provisional authority/designation
 - # {Concurrent Guardianships}
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Barriers to Permanency Planning

- # Psychosocial
- # Financial
- # Lack of legal options
- # Lack of legal custody of child
- # Lack of identified future caregiver

Definition of Standby Guardianship

“The purpose of standby guardianship is to allow parents, who have chronic, debilitating, or terminal medical conditions or illnesses, to make care and custody plans for their children now that will become effective at some future date.” (Simms, 1996 in AIA, 2000)

When standby guardianships become effective

A standby guardian is chosen by a parent to become the legal guardian of the parent's minor children in the event the parent becomes unable to care for the children.

In general, the standby guardian becomes the active [legal] caretaker of the children after either:

1. The death of the parent
 2. The parent becomes mentally or physically incapacitated; or
 3. Upon the request of the parent
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Legislative History of Standby Guardianship

- # 1992: New York state enacts 1st statute
- # 1994: Connecticut, Illinois, Maryland
- # 1995: Massachusetts, New Jersey, North Carolina
- # By end of 1999: Nebraska, Pennsylvania, Virginia, Wisconsin, Arkansas, West Virginia
- # 2/3ds of all adults & 4/5ths children living with AIDS are in covered states

States with Standby Guardianship Legislation

- # Arkansas
- # California (Joint Guardianship)
- # Colorado
- # Connecticut (Co-Guardianship)
- # Florida
- # Illinois (Standby Adoption)
- # Iowa
- # Maryland
- # Massachusetts
- # Minnesota
- # Nebraska
- # New Jersey
- # New York
- # North Carolina
- # Ohio
- # Pennsylvania
- # Virginia
- # West Virginia
- # Wisconsin
- # Wyoming

National Support for Standby Guardianship

Adoption and Safe Families Act (1997)

“Sense of Congress that the States should have in effect laws and procedures that permit any parent who is chronically ill or near death, without surrendering parental rights, to designate a standby guardian for the parent’s minor children, whose authority would take effect upon 1) the death of a parent; 2) the mental incapacity of the parent; or 3) the physical debilitation and the consent of the parent. (Sec 403).

American Bar Association

1998 amendment to the Uniform Guardianship and Protective Proceedings Act (Uniform State Laws)

American Academy of Pediatrics

Policy Statement, 1999

Benefits of Standby Guardianship

- # “Allows parent to maintain care, custody, and control of their children for as long as they are capable, while at the same time providing an established plan for future care in the event of parental incapacity, debilitation, or death” (Selbin & McAllaster)

Barriers to using Standby Guardianship

- # “Standby guardianship is only one legal tool among many and may not suit every family” may not be appropriate for every situation and may be most helpful for single parent families (Larsen, 2000)
 - # Notification requirements of non-custodial parent
 - # Fear of working with court and/or child welfare system (home studies, other documentation, disclosure)
 - # Lack of knowledge about standby guardianship among both parents and providers
 - # Lack of facilitating services (e.g., social work, mental health, financial, etc.)
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Common elements of standby guardianship legislation

- # Definition of eligibility of the Parent/Custodian
 - # Definition of eligibility and duties of standby guardian
 - # Definition of Triggering Event
 - Death, incapacity, debilitation, consent
 - # Standby Guardianship by Non-Judicial Designation
 - # Standby Guardianship by Judicial Designation
 - # Interests of the Non-Custodial Parent
 - # Revocation, Termination or Suspension
 - # Other issues: Process/placement in law, time limits, illness and other restrictions
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Resources

Abandoned Infants Assistance Resource Center, Berkeley, CA

510/643-8390 (John Krall, MSW)

jkrall@uclink.berkeley.edu

<http://socrates.berkeley.edu/~aiarc>

Acknowledgements/References

- # Judith Larsen, JD, Special Consultant to the American Bar Association Center on Children and the Law
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- # Jeffrey Selbin & Carolyn McAllaster, “Issues in Family Law for People with HIV”, *AIDS And the Law*, 3rd edition, 2000 Cumulative Supplement