

# *Facing the Future*



*An  
introduction  
to life  
planning  
for parents  
and  
caregivers*



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*As a parent, you want to choose.*

*As a parent, you want to be sure.*



**I**f your family is affected by HIV/AIDS—or any other serious illness—this handbook can help ease your mind. It describes some of the steps in planning for medical care, for financial management, and for your children’s future so that your wishes will be carried out. This is not an easy subject. But the sooner you can think about these critical decisions, the fewer worries you may have about them later.

The process of planning for your future and your children’s future may feel overwhelming at first. This handbook offers a map to guide you and to help you make informed choices. As you begin to take these important steps, remember that The Family Ties Project, your case manager and your attorney are here to help.

Laws relating to all of the legal documents and procedures discussed below and laws relating to custody are determined by each state and vary from state to state. While the general concepts are similar, the specific details are often different. This booklet provides information for people living in Washington, DC. Residents of other states should consult attorneys or other knowledgeable service providers for further information and for assistance in making decisions and completing documents.

## **Making Decisions About Medical Care for Yourself and for Your Children**

**N**o one can predict when a medical emergency will occur. By planning ahead, you can control decisions about medical care for you and your children even when you are unable to speak for yourself. There are several ways to spell out your health care wishes in writing and to see that they are followed. For each of these approaches, as you work with an attorney, it is wise to seek your health care provider's advice in preparing specific instructions for your care.



## FOR YOURSELF

### ***Durable Power of Attorney for Health Care***

A *Durable Power of Attorney for Health Care* is a simple document that names a person you trust—“your agent”— to make decisions about your medical care if you are not able to express your wishes. You should talk with your agent about your wishes so that he or she can tell your health care providers about the medical care you should receive.

You can obtain standard forms for a *Durable Power of Attorney for Health Care* and complete them without the help of a lawyer, but it is generally recommended that you seek a lawyer’s assistance. You must sign the *Durable Power of Attorney for Health Care* in front of two witnesses, but the signatures need not be notarized. Interested parties—including your health care provider, the person you are naming as your agent, and close relatives who could inherit from you—may not serve as witnesses.



## ***Living Will/Advance Directive***

A *Living Will* or *Advance Directive* is a simple document that you prepare in advance to tell your doctor your wishes for your future medical care. The document briefly states your instructions, in writing, about medical services and treatment that you do or do not want. It only applies after a doctor deems your condition to be terminal and you are not able to express your wishes because of incapacity or disability. (A *Living Will* should not be confused with a *Last Will and Testament*, which provides for the distribution of your property after your death and is described on page 18.) Generally, a *Living Will* is used to indicate that you do not want extraordinary measures to be used to prolong your life. It allows you to die a natural death without invasive procedures. It does not in any way limit treatments that relieve pain or provide comfort.

You can revoke the *Living Will* at any time while you are still competent.

Like a *Durable Power of Attorney for Health Care*, it is possible to execute a *Living Will* without the help of a lawyer, but it is generally recommended that you seek a lawyer's assistance. It also is important to seek the guidance of your health care provider to identify any special treatments you should consider. You must sign the *Living Will* in front of two witnesses, and the signatures do not need to be notarized. You should give a copy of your *Living Will* to the person you named as your *Durable Power of Attorney for Health Care*, your health care provider, your attorney and your case manager.



## FOR YOUR CHILDREN

### ***Medical Consent***

Parents who may at some time be unable to make immediate medical decisions for their children can fill out a simple form called a *Medical Consent*. Only the parent or legal custodian can execute a *Medical Consent*. It can be revoked at any time. The document names an adult you have chosen to take your child for medical treatment and to make decisions about that treatment during times when you cannot do so yourself. It is used only during periods when you are unavailable or unable to express your wishes for your child's care.

*Medical Consent* is especially valuable if your child has special needs and requires regular, prompt, or complicated medical care. It allows you to rest assured that a person you trust will have the authority to handle your child's medical care if you cannot. To execute a *Medical Consent* all you need to do is name the person you choose to take the child for medical care and then sign the form—no lawyer, witness, or other signature is needed. You should give a copy of the *Medical Consent* to your child's health care provider and the person you have authorized for this role, as well as to your attorney and case manager.



## Making Decisions About Your Finances

**P**eople who are sick often have a hard time keeping up with bills and taking care of necessary business. In order to preserve your sense of security, you may wish to authorize a person whom you trust to handle your finances and personal business when you are unable to manage them yourself.



## ***Durable Power of Attorney for Finances***

Through a document called a *Durable Power of Attorney*, you can authorize a specific person you trust to serve as your “agent” or “attorney-in-fact” to take care of your financial matters while you are living. In the document, you can authorize your agent to do a range of activities, such as cash checks, pay bills, manage your bank accounts, collect your mail, and even bring legal action on your behalf.

The *Durable Power of Attorney* allows you to clearly spell out the specific powers you wish to give your agent and you can limit them in any way you choose. If you receive Social Security or other public assistance, the document can also authorize your agent to receive these benefits for you as your “representative payee.” In addition, you can specify that the *Durable Power of Attorney* will be in effect while you are living or you can choose a date when it will expire.

You can complete a *Durable Power of Attorney* without the assistance of a lawyer, but your signature on this document must be notarized. Your attorney or case manager can tell you how to notify the Social Security Administration and other public assistance programs to have your benefits sent to your representative payee. Your attorney or case manager can also help you determine if you and your children are eligible for a range of public benefits.



## **Making Decisions About Your Children's Future**

**O**f all of the challenges of being a parent and living with HIV/AIDS, one of the hardest to think about is the future of your children. You can relieve some of the stress and worry about your children's future by identifying future caregivers for them well before the time that caregivers may be needed. As you share your concerns with your close friends and relatives, you can begin to plan together and choose the person you want to care for your children in the event that you cannot.



## ***How to Begin Thinking About Your Plan***

Speak with your case manager or health care provider about your questions and your options for planning for your children's future. By working with these professionals, you can learn more about your various options and the services that are available to you, such as an attorney who can assist you in completing the legal processes to carry out your wishes.

## ***Things to Consider***

There are many factors to consider when deciding on a future plan for your children. Such as, which services and support that your children currently receive may be lost when there is a new caregiver? Another factor to consider is how to ensure the future care of your children without giving up your rights and responsibilities while you are still able to care for them.

There are several different ways to provide for the care of your children in Washington, DC. Each option has benefits and drawbacks that are briefly discussed on the following pages. When you are ready, your attorney or case manager can help you review and consider these options and then take the steps necessary to plan for your family's future.



## ***Kinship Care***

Family or friends who have trusting relationships with your children provide a natural place to start in seeking potential caregivers. These may be friends, immediate or extended relatives, church family, coworkers, community members, neighbors—we know our kin when our hearts recognize them. These people already know your children’s needs and interests, their strengths and struggles. They probably share your values. Your children may already have spent some time with these relatives or close friends.

Placing your child with a kinship caregiver may appear to be the easiest option because it is based on an informal arrangement rather than on a legal agreement. In the short run, kinship care may require your children to make fewer adjustments to new places and new caregivers. However, it is important to know that the courts and other agencies may not recognize this informal arrangement. If you know you want this temporary arrangement to become permanent, it is best to secure your plan when you are ready by seeking legal custody for the caregiver you have chosen.



## **Legal Custody**

Legal custody gives the caregiver total decision-making authority over the children. Only the Superior Court of the District of Columbia can approve legal custody arrangements. In the District of Columbia, **joint legal custody** is possible, so you can request that the Court grant joint custody to another adult who will share care and decision-making authority with you, the custodial parent.

For example, a mother may ask the Court to name her sister as the joint custodian for the children. The two women will share legal custody. If the mother should become ill or die, the sister has legal custody of the children and is able to continue to care for the children.

Keep in mind that the other birth parent will normally get custody of your children if he or she wants to and is able to care for them. If you are seeking to have someone other than the other birth parent obtain legal custody of your children, you must attempt to notify the other parent to let him or her know your plan—even if the other parent has not been involved in the children’s lives. If the other parent agrees with your wishes and is willing to sign a statement that he or she agrees with the plan, then these cases are considered “uncontested custody transfers” and often proceed more quickly through the Court process.

If the other parent does not agree with your wishes and chooses to challenge them, this is considered a “contested custody transfer”. You will have the opportunity to explain your



preferences to the court and influence the judge's decision about which arrangement is in the best interest of the child. If you cannot locate the other parent, you will have to show the court what you did to try to find the other parent. Your attorney will assist you with this and is available to answer any questions you, the caregiver, or other family or friends may have. You do not have to face this alone.

Sharing or transferring legal custody to another adult does not change the rights and responsibilities of the child's other birth parent. Many parents do not fully understand the complex legal custody process and incorrectly believe that it "terminates parental rights." It does not. The non-custodial parent maintains the same rights and responsibilities as before the new custody arrangement. The custody order may specify such issues as visitation with the child. By understanding this, many non-custodial parents are willing to agree to the plan for the children's care.

When you are ready to go forward with a custody arrangement, your attorney can help you and guide you through the process.



## ***Standby Guardianship***

Standby Guardianship is another legal option for transferring the custody and the care of children to another person. Standby guardianship allows the custodial parent to make future plans for his or her children without having to legally transfer decision-making power. It does not go into effect until there is a “triggering event,” such as a serious illness or death.

The process is similar to writing a will. The parent or custodian writes and signs a petition naming a future caregiver. This petition is then filed with the Court. If the custodial parent is able to resume care of the children, the petition can be withdrawn, but reinstated if the custodial parent can no longer take care of the children. As with custody transfers, the parental rights of the other parent are not terminated; he or she continues to have the same parental rights and responsibilities as before.

Standby Guardianship legislation was enacted in Washington, DC in June 2002. Maryland and Virginia have also enacted standby guardianship provisions. These laws can be used for the future planning for children who live in these states. An attorney or case manager should be consulted about how to use these standby guardianship provisions.

*Further information on standby guardianship is available at [www.standbyguardianship.org](http://www.standbyguardianship.org).*

Updated June 2002. Visit our Web site:  
**[www.familytiesproject.org](http://www.familytiesproject.org)**



## ***Adoption***

Unlike transfer of custody or standby guardianship, adoption is a termination of parental rights and the transfer of all parental rights and duties to the adoptive parents. Whereas custody arrangements can be reversed, adoption generally is permanent. Once an adoption is completed, the child is issued a new birth certificate and usually the child's last name is changed to that of the adoptive parents. Washington, DC does not provide for open adoptions, but non-binding arrangements can sometimes be made with adoptive parents to allow the birth parents to continue seeing the child.

Because adoption is the most permanent type of placement. For birth parents it can be an emotionally difficult option to consider. However, adoption gives some parents the peace of mind and sense of security in knowing who their children's caregiver will be for the rest of their lives. If you already have begun to rely on a trusted kinship caregiver to provide for your children, you may decide to begin the legal process of adoption.

The judge in an adoption case will consider many of the same issues that are involved in a custody case. For example, the child's other parent must be contacted and his or her consent obtained if possible. If the adoption is not contested, it can take the courts six months to a year to complete and will not necessarily require the assistance of a lawyer. Adoptions which are contested may take longer and require legal counsel.



## **Foster Care**

Under foster care, the child welfare agency of the Washington, DC becomes the custodian of your children and decides where they will live. The child welfare agency must approve the foster parent and foster home and provide money to the caregivers for the children's needs.


Foster care may be required in response to allegations of child neglect, abuse or abandonment. In addition, parents can voluntarily place their children in foster care when they expect that they will not be able to care for them.

Once you voluntarily place your children in foster care, you lose the control you would have if you chose a caregiver to take care of them. In addition, even though this arrangement can be temporary or time-limited, you may risk permanently losing custody of your children if they remain in foster care for a long time—especially if you do not have regular contact with them. Foster care requires careful consideration, and legal counsel is strongly encouraged before you make this choice.



## ***Last Will and Testament***

Although it can be emotionally difficult to do, anyone with children should write a *Last Will and Testament* that names the children's future caregiver. A court considers your choice of a caregiver as stated in a *Will* only in the event of death, so you can retain full custody until that time. The *Will* does not automatically grant legal custody to the person you name, but it is a quick and easy way to give written proof of your wishes. You can also use a *Will* to spell out instructions about funeral arrangements and how your belongings will be distributed. Writing a *Will* may help relieve your concern about your children's future care.



A *Will* does not guarantee placement with the chosen caregiver. It could be contested by a surviving parent or another person who can claim legal rights to your child. If the *Will* is contested, it may take some time for the courts to resolve the matter. Therefore, the *Will* can be used if you know that the other birth parent agrees with your choice and will not seek legal custody. If you think your *Will* may be challenged, it is best to seek joint legal custody with the caregiver you choose. Joint custody is discussed on page 13.

Writing your own *Will* is not a good idea. You need an attorney to prepare a *Will* because it must be written according to certain rules that most people do not know. In addition, the *Will* must be written while you can show the capacity to make sound decisions.

## Some Common Questions That Parents Have Asked

- Who do I trust to share or take over caring for my children if I can't take care of their daily needs?
- Who have I talked with about my illness who understands my situation?
- Have I asked my friends and family directly whether they are willing to care for my children?
- Have I explained to my friends and family that it is a real possibility they will need to care for my children?
- Do these potential caregivers:
  - Have adequate resources—money and living space—to care for my children?
  - Live near my children's schools?
  - Have the physical health and ability to care for my children?
- Have I involved the child's other parent in my decisions?
- What would my children want?
- How can I ask my children what their preference would be?
- Can I keep my children together?
- If my children must be separated, how can they stay in contact?
- How can I prepare a smooth transition for my children? What should I tell them and when should I tell them?
- What will happen to my children if I do not select their future caregiver?



## **THE CONSORTIUM FOR CHILD WELFARE**

The Consortium for Child Welfare is a coalition of 21, private, non-profit service agencies established in 1980 to improve child welfare services in Washington, DC. The mission of the Consortium is to protect children and support families in Washington, DC by: 1) facilitating communication and collaboration, between public and private agencies that provide services and resources to children, youth and families; 2) promoting innovation, services and developing resources that are easily accessible and culturally appropriate to children, youth and families; and 3) advocating for the highest practice standards for children, youth and family services.

## **THE FAMILY TIES PROJECT**

The Consortium for Child Welfare is the lead agency of the Family Ties Project, a city-wide collaboration. The mission of the Family Ties Project is to promote and preserve the well being of children, youth and families affected by HIV/AIDS by working with parents and caregivers to plan for the future care of their children. These objectives are accomplished through the direct collaborative efforts of a multi-disciplinary team of service providers, including case managers, therapists, and attorneys. The project also advocates for policy changes to improve the life planning options available to parents and caregivers in Washington, DC. The Family Ties Project receives financial support from the Abandoned Infants Program of the U.S. Department of Health and Human Services (Grant No. 90-CB-0065/04), the Washington AIDS Partnership and private sources.

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