STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2536 By: Nelson

COMMITTEE SUBSTITUTE

An Act relating to children; permitting parent or custodian to execute a power of attorney to delegate care and custody powers to another person; limiting delegation of certain powers; providing for revocation or withdrawal of delegation; requiring execution of new power of attorney after one year; directing attorney-in-fact to exercise continuous authority without compensation; providing for abandonment, abuse or neglect; clarifying status of child; providing statutory form for power of attorney; requiring execution and acknowledgement of form; amending 10 O.S. 2011, Section 403, as amended by Section 2, Chapter 308, O.S.L. 2013 (10 O.S. Supp. 2013, Section 403), which relates to the Oklahoma Child Care Facilities Licensing Act; exempting care provided by attorney-in-fact; amending 10A O.S. 2011, Sections 1-7-101 and 1-7-109, which relate to the Oklahoma Children's Code; providing exception; excepting licensing requirement; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 700 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. A parent or legal custodian of a child, by a properly executed power of attorney provided in Section 2 of this act, may delegate to another person, for a period not to exceed one (1) year, any of the powers regarding the care and custody of the child, except the power to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child. A delegation of powers under this section shall not deprive the parent or legal custodian of any parental or legal authority regarding the care and custody of the child.

B. The parent or legal custodian of the child shall have the authority to revoke or withdraw the power of attorney authorized by subsection A of this section at any time. If the delegation of authority lasts longer than one (1) year, the parent or legal custodian of the child shall execute a new power of attorney for each additional year that the delegation exists.

C. The attorney-in-fact shall exercise parental or legal authority on a continuous basis for not less than twenty-four (24) hours and without compensation for the intended duration of the power of attorney authorized by subsection A of this section and shall not be subject to the requirements of the Oklahoma Child Care Facilities Licensing Act.

D. Except as provided by Section 1-4-904 of Title 10A of the Oklahoma Statutes, a parent or legal custodian who executes a power

of attorney authorized by subsection A of this section shall not constitute abandonment, abuse or neglect as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes unless the parent or legal custodian fails to make contact or execute a new power of attorney after the one-year time limit has elapsed.

E. Under a delegation of powers as authorized by subsection A of this section, the child or children subject to the power of attorney shall not be considered placed in foster care as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes and the parties shall not be subject to any of the requirements or licensing regulations for foster care.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 701 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The following statutory form of power of attorney to delegate parental or legal authority as authorized by Section 1 of this act is legally sufficient:

Statutory Form for Power of Attorney to Delegate Parental or Legal Custodian Powers

1. "I certify that I am the parent or legal custodian of:

_____ _____

(Full name of minor child) (Date of birth)

_____ _____

(Full name of minor child) (Date of birth)

_____ _____

(Full name of minor child) (Date of birth)

("minor child/ren")."

2. "I designate

_____,

(Full name of Attorney-in-Fact)

_____,

(Street address, city, state and zip code of Attorney-in-Fact)

_____ _____

(Home phone of Attorney-in-Fact) (Work phone of Attorney-in-Fact)

as the attorney-in-fact of each minor child named above."

3. _____"I delegate to the attorney-in-fact all of my power and authority regarding the care, custody and property of each minor child named above, including but not limited to the right to enroll the child in school, inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function or treatment that may concern the child. This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child." or

4. _____"I delegate to the attorney-in-fact the following specific powers and responsibilities (write in):

_____

This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child."

5. "This power of attorney is effective for a period not to exceed one year, beginning _____, 20__, and ending _____, 20__. I reserve the right to revoke this authority at any time."

By:_____

(Parent/Legal Custodian signature)

6. "I hereby accept my designation as attorney-in-fact for

_____

(Minor child/ren) as specified in this power of attorney."

_____

(Attorney-in-Fact signature)

State of _____

County of _____

ACKNOWLEDGEMENT

Before me, the undersigned, a Notary Public, in and for said County and State on this _____ day of _____, 20__, personally appeared _____ (Name of

Parent/Legal Custodian) and _____ (Name of Attorney-in-Fact), to me known to be the identical persons who executed this instrument and acknowledged to me that each executed the same as his or her free and voluntary act and deed for the uses and purposes set forth in the instrument.

Witness my hand and official seal the day and year above written.

_____

(Signature of notarial officer)

(Seal, if any)

_____

(Title and Rank)

My commission expires: _____

B. The power of attorney is legally sufficient under this act, if the wording of the form complies substantially with subsection A of this section, the form is properly completed, and the signatures of the parties are acknowledged.

SECTION 3. AMENDATORY 10 O.S. 2011, Section 403, as amended by Section 2, Chapter 308, O.S.L. 2013 (10 O.S. Supp. 2013, Section 403), is amended to read as follows:

Section 403. A. The provisions of the Oklahoma Child Care Facilities Licensing Act shall not apply to:

1. Care provided in a child's own home or by relatives;

2. Informal arrangements which parents make with friends or neighbors for the occasional care of their children;

3. Care provided by an attorney-in-fact authorized by Section 1 of this act who exercises parental or legal authority on a continuous basis for not less than twenty-four (24) hours and without compensation for the intended duration of the power of attorney;

4. Programs in which school-aged children three (3) years of age and older are participating in home-schooling;

~~4.~~ 5. Programs that serve children three (3) years of age and older and that are operated during typical school hours by a public school district;

~~5.~~ 6. Programs that serve children three (3) years of age and older and that are operated during typical school hours by a private school that offers elementary education in grades kindergarten through third grade;

~~6.~~ 7. Summer youth camps for children who are at least five (5) years of age, that are accredited by a national standard-setting agency or church camp accreditation program;

~~7.~~ 8. Programs in which children attend on a drop-in basis and parents are on the premises and readily accessible;

~~8.~~ 9. A program of specialized activity or instruction for children that is not designed or intended for child care purposes including, but not limited to, scouts, 4-H clubs and summer resident youth camps, programs that limit children from enrolling in multiple sessions because of the type of activity or ages accepted, and

single-activity programs such as academics, athletics, gymnastics, hobbies, art, music, dance and craft instruction;

~~9.~~ 10. Any child care facility that:

a. provides care and supervision for fifteen (15) or fewer hours per week,

b. operates less than eight (8) weeks annually, or

c. operates in the summer for less than eight (8) hours per day;

~~10.~~ 11. Facilities whose primary purpose is medical treatment;

~~11.~~ 12. Boarding schools that have education as their primary purpose and that are recognized as accredited by the State Board of Education. To be exempt, such programs shall:

a. have classroom facilities that are not used for residential living,

b. not have been granted nor have assumed legal custody of any child attending the facility, and

c. adhere to standard educational holiday and seasonal recess periods to permit students reasonable opportunities to return to their primary places of residence with parents or legal guardians;

~~12.~~ 13. Day treatment programs and maternity homes operated by a licensed hospital;

~~13.~~ 14. Juvenile facilities certified by the Office of Juvenile Affairs or certified by any other state agency authorized by law to license such facilities;

~~14.~~ 15. A program where children are not enrolled by the parents and are free to come and go;

~~15.~~ 16. A program in tribal land as defined at 25 U.S.C.A. 1903 (10); and

~~16.~~ 17. A program on a military base or federal property.

B. The provisions of the Oklahoma Child Care Facilities Licensing Act shall be equally incumbent upon all private and public child care facilities.

SECTION 4. AMENDATORY 10A O.S. 2011, Section 1-7-101, is amended to read as follows:

Section 1-7-101. A. This section applies to persons, institutions, or agencies, other than the Department of Human Services, which receive custody of a child pursuant to a court order as provided by the Oklahoma Children's Code.

B. 1. The person, institution, or agency receiving custody shall have the right to, and shall be responsible for, the care and control of the child, and shall have the duty and authority to provide the following for the child:

a. food, clothing, and shelter,

b. medical care as authorized by the court, and

c. education and discipline.

2. The person, institution, or agency may provide or arrange for the emergency admission, inpatient evaluation, or inpatient treatment of a child only pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act. Nothing in this subsection shall be interpreted to prohibit or preclude the provision of outpatient behavioral health services, including an outpatient examination, counseling, educational, rehabilitative or other similar services to such child, as necessary and appropriate, in the absence of a specific court order for such services.

3. Nothing in this subsection shall be interpreted to:

a. relieve a parent of the obligation to provide for the support of the child as otherwise provided by law, or

b. limit the authority of the court to order a parent to make support payments or to make payments or reimbursements for medical care or treatment, including behavioral health care or treatment, to the person, institution, or agency having custody of the child, or

c. abrogate the right of the child to any benefits provided through public funds for which the child is otherwise eligible.

4. No person, agency, or institution shall be liable in a civil suit for damages for authorizing or not authorizing medical care, as determined by competent medical authority.

C. 1. If the child is placed in the custody of a person, institution, or agency, whether in emergency, temporary, or permanent custody, the person, institution, or agency shall ensure the child is not returned to the care or supervision of any person from whom the child was removed or to any person the court has previously ordered not to have contact with the child without specific authorization from the court.

2. The person, institution, or agency having legal custody of a child pursuant to an order of the court shall receive notice of court proceedings regarding the child and shall be allowed to intervene upon application as a party to all court proceedings pertaining to the care and custody of the child.

D. This section shall not apply when a parent or legal custodian executes a power of attorney to delegate parental or legal authority as authorized by Section 1 of this act.

SECTION 5. AMENDATORY 10A O.S. 2011, Section 1-7-109, is amended to read as follows:

Section 1-7-109. A. Except as otherwise provided by this section, no child in the custody of the Department of Human Services shall be placed with any foster placement unless the foster placement:

1. Has a current license or authorization issued pursuant to the Oklahoma Child Care Facilities Licensing Act; or

2. Meets licensing standards as required by the Oklahoma Child Care Facilities Licensing Act and is otherwise approved for foster care by the state agency for children within its custody.

B. Except as otherwise provided by this section, no person, corporation, or other legal entity shall receive a child for foster care or provide foster care services to a child unless such legal entity has a license or meets licensing standards as required by the Oklahoma Child Care Facilities Licensing Act, and is otherwise approved by the state agency for children within its custody.

C. The provisions of this section shall not be construed to prohibit foster placement of children in foster homes licensed or approved by Indian tribes, pursuant to the terms in Section 40.8 of Title 10 of the Oklahoma Statutes.

D. This section shall not apply when a parent or legal custodian executes a power of attorney to delegate parental or legal authority as authorized by Section 1 of this act.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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