

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 HOUSE BILL 2536

By: Nelson

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5
6 AS INTRODUCED

7 An Act relating to children; permitting parent or
8 guardian to execute a power of attorney to delegate
9 care and custody powers to another person; limiting
10 delegation of certain powers; providing for
11 revocation or withdrawal of delegation; requiring
12 execution of new power of attorney after one year;
13 providing for abandonment, or abuse or neglect;
14 exempting certain children; clarifying status of
15 child; providing statutory form for power of attorney
16 to delegate care and custody powers; requiring
17 execution and acknowledgement of the form; amending
18 10 O.S. 2011, Section 403, as last amended by Section
19 2, Chapter 308, O.S.L. 2013 (10 O.S. Supp. 2013,
20 Section 403), which relates to the Oklahoma Child
21 Care Facilities Licensing Act; exempting care
22 provided by person who has a power of attorney;
23 amending 10A O.S. 2011, Sections 1-7-101 and 1-7-109,
24 which relate to the Oklahoma Children's Code;
providing exception; excepting licensing requirement;
providing for codification; and providing an
effective date.

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:

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

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

17 C. Except as provided by Section 1-4-904 of Title 10A of the
18 Oklahoma Statutes, a parent, guardian, or legal custodian who
19 executes a power of attorney authorized by subsection A of this
20 section shall not constitute abandonment, or abuse or neglect as
21 defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes
22 unless the parent, guardian, or legal custodian fails to make
23 contact or execute a new power of attorney after the one-year time
24 limit has elapsed.

1 D. This section shall not apply to a child who is in the
2 custody of the Department of Human Services.

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

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

12 A. The following statutory form of power of attorney to
13 delegate parental, guardian, or legal custodian powers as authorized
14 by Section 1 of this act is legally sufficient:

15 Statutory Form for Power of Attorney to Delegate Parental, Guardian,
16 or Legal Custodian Powers

17 I certify that I am the parent or legal guardian of:

18 _____
19 (Full name of minor child) (Date of birth)

20 _____
21 (Full name of minor child) (Date of birth)

22 _____
23 (Full name of minor child) (Date of birth)

24 ("minor child/ren").

1 I designate _____,

2 (Full name of Attorney-in-Fact)

3 _____,

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

5 _____

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

7 as the undersigned's attorney-in-fact with respect to the minor
8 child/ren under Section 1 of this act.

9 _____ "I delegate to the attorney-in-fact all of my power and
10 authority regarding the care, custody and property of the minor
11 child/ren, including but not limited to the right to enroll the
12 minor child/ren in school, inspect and obtain copies of education
13 records and other records concerning the minor child/ren, the right
14 to attend school activities and other functions concerning the minor
15 child/ren, and the right to give or withhold any consent or waiver
16 with respect to school activities, medical and dental treatment, and
17 any other activity, function or treatment that may concern the minor
18 child/ren."

19 OR

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

22 _____

23

24

1 This delegation does not include the power or authority of the
2 attorney-in-fact to consent to the minor child/ren's marriage or
3 adoption."

4 "This power of attorney is effective for a period not to exceed one
5 year, beginning _____, 20__, and ending _____,
6 20__. I reserve the right to revoke this authority at any time."

7 By: _____

8 (Parent/Guardian/Legal Custodian signature)

9 I hereby accept my designation as attorney-in-fact for

10 _____

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

12 _____

13 (Attorney-in-Fact signature)

14 State of _____

15 (County) of _____

16 This document was acknowledged before me on _____

17 (Date)

18 by _____ and _____

19 (Name of Parent/Guardian/Legal Custodian) (Attorney-in-Fact)

20 _____

21 (Signature of notarial officer)

22 (Seal, if any)

23 _____

24 (Title and Rank)

1 My commission expires: _____

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

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

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

- 11 1. Care provided in a child's own home or by relatives;
- 12 2. Informal arrangements which parents make with friends or
13 neighbors for the occasional care of their children;
- 14 3. Care provided by a person who has accepted a power of
15 attorney authorized by Section 1 of this act which delegates
16 parental, guardian, or legal custodian powers;

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

19 ~~4.~~ 5. Programs that serve children three (3) years of age and
20 older and that are operated during typical school hours by a public
21 school district;

22 ~~5.~~ 6. Programs that serve children three (3) years of age and
23 older and that are operated during typical school hours by a private
24

1 school that offers elementary education in grades kindergarten
2 through third grade;

3 ~~6.~~ 7. Summer youth camps for children who are at least five (5)
4 years of age, that are accredited by a national standard-setting
5 agency or church camp accreditation program;

6 ~~7.~~ 8. Programs in which children attend on a drop-in basis and
7 parents are on the premises and readily accessible;

8 ~~8.~~ 9. A program of specialized activity or instruction for
9 children that is not designed or intended for child care purposes
10 including, but not limited to, scouts, 4-H clubs and summer resident
11 youth camps, programs that limit children from enrolling in multiple
12 sessions because of the type of activity or ages accepted, and
13 single-activity programs such as academics, athletics, gymnastics,
14 hobbies, art, music, dance and craft instruction;

15 ~~9.~~ 10. Any child care facility that:

- 16 a. provides care and supervision for fifteen (15) or
17 fewer hours per week,
18 b. operates less than eight (8) weeks annually, or
19 c. operates in the summer for less than eight (8) hours
20 per day;

21 ~~10.~~ 11. Facilities whose primary purpose is medical treatment;

22 ~~11.~~ 12. Boarding schools that have education as their primary
23 purpose and that are recognized as accredited by the State Board of
24 Education. To be exempt, such programs shall:

- 1 a. have classroom facilities that are not used for
2 residential living,
3 b. not have been granted nor have assumed legal custody
4 of any child attending the facility, and
5 c. adhere to standard educational holiday and seasonal
6 recess periods to permit students reasonable
7 opportunities to return to their primary places of
8 residence with parents or legal guardians;

9 ~~12.~~ 13. Day treatment programs and maternity homes operated by
10 a licensed hospital;

11 ~~13.~~ 14. Juvenile facilities certified by the Office of Juvenile
12 Affairs or certified by any other state agency authorized by law to
13 license such facilities;

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

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

18 ~~16.~~ 17. A program on a military base or federal property.

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

22 SECTION 4. AMENDATORY 10A O.S. 2011, Section 1-7-101, is
23 amended to read as follows:
24

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

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

- 9 a. food, clothing, and shelter,
- 10 b. medical care as authorized by the court, and
- 11 c. education and discipline.

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

21 3. Nothing in this subsection shall be interpreted to:
22 a. relieve a parent of the obligation to provide for the
23 support of the child as otherwise provided by law, or
24

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

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

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

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

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

1 D. This section shall not apply when a parent, guardian, or
2 legal custodian executes a power of attorney to delegate parental,
3 guardian, or legal custodian powers as authorized by Section 1 of
4 this act.

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

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

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

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

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

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

3 D. This section shall not apply when a parent, guardian, or
4 legal custodian executes a power of attorney to delegate parental,
5 guardian, or legal custodian powers as authorized by Section 1 of
6 this act.

7 SECTION 6. This act shall become effective November 1, 2014.

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