

Legal Issues Related to Host Home Situations and Guidance for Host Home Families

Question Presented

Does a program that matches minors to host homes need to be licensed by HHSC under existing Texas law? What laws would govern host home arrangements for minors and authorize host homes to assist minors in everyday matters, such as school enrollment and medical care?

Brief Answer

As we understand it, a “host home” is the term used for private individuals who care for minors in their home. Often host homes are extended family members, neighbors, or friends who choose to host a child so that the child does not need to be placed in foster care or taken out of his or her community. Some Texas organizations are also considering setting up a host home program to place children with families instead of into foster care or similar institutions. Current Texas law does not contemplate host homes specifically or include any sort of licensing requirements for host home programs. The most similar licensing regime is for independent foster homes.

However, there are existing Texas statutes that may be helpful for individuals considering hosting a minor in their home. These include Texas Family Code Chapter 34 (Authorization Agreement for Nonparent Adult Caregiver) and Chapter 35 (Temporary Authorization for a Minor Child). These statutes provide guidance on current best practices for individuals who are hosting minors in their homes.

Discussion

A. Authorization Agreements are Useful When the Child’s Parent is Available.

Texas Family Code Chapter 34 provides guidance for a nonparent adult caregiver of a child in instances where a parent is available to sign an Authorization Agreement.

<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.34.htm> Essentially, with permission of the parent or both parents, a caregiver may authorize medical treatment for the child, obtain health insurance for the child, enroll the child in school, authorize employment for the child, seek public benefits for the child, and perform other essential day to day activities that a non-parent caregiver of a child would likely encounter. This statute does not specifically contemplate in the Agreement that the parent confer permission for the child to live with the caregiver but, particularly because the caregiver may receive public benefits on the child’s behalf, there is an argument that cohabitation may be implied.

Under the statute, an “adult caregiver” is an “adult person whom a parent has authorized to provide temporary care for a child under this chapter.” §34.00015. There is no requirement in the statute that the adult caregiver be a relative of the child.

Sec. 34.002. AUTHORIZATION AGREEMENT

- (a) A parent or both parents of a child may enter into an authorization agreement with an adult caregiver to authorize the adult caregiver to perform the following acts in regard to the child:
 - (1) to authorize medical, dental, psychological, or surgical treatment and immunization of the child, including executing any consents or authorizations for the release of information as required by law relating to the treatment or immunization;
 - (2) to obtain and maintain health insurance coverage for the child and automobile insurance coverage for the child, if appropriate;
 - (3) to enroll the child in a day-care program or preschool or in a public or private elementary or secondary school;
 - (4) to authorize the child to participate in age-appropriate extracurricular, civic, social, or recreational activities, including athletic activities;
 - (5) to authorize the child to obtain a learner’s permit, driver’s license, or state-issued identification card;

- (6) to authorize employment of the child;
- (7) to apply for and receive public benefits on behalf of the child; and
- (8) to obtain:
 - A. copies or originals of state-issued personal identification documents for the child, including the child's birth certificate; and
 - B. to the extent authorized under federal law, copies or originals of federally issued personal identification documents for the child, including the child's social security card.
- (b) To the extent of any conflict or inconsistency between this chapter and any other law relating to the eligibility requirements other than parental consent to obtain a service under Subsection (a), the other law controls.
- (c) An authorization agreement under this chapter does not confer on an adult caregiver the right to authorize the performance of an abortion on the child or the administration of emergency contraception to the child.
- (d) Only one authorization agreement may be in effect for a child at any time. An authorization agreement is void if it is executed while a prior authorization agreement remains in effect.

Chapter 34 also provides details as to the mandatory contents of an Authorization Agreement (§34.003) and other issues regarding the Authorization Agreement, such as how it may be revoked by a parent.

Additionally, other chapters of the Texas Family Code imply that a child may live with a caregiver without a formal arrangement such as an Authorization Agreement. Chapter 35, reviewed more fully below, discusses the requirements for a caregiver who seeks temporary authorization for a minor child for some “service or action” that the caregiver is “unable to obtain or undertake on behalf of the child without authorization from the court.” A caregiver is only eligible to seek a temporary authorization if:

- (a) the child resided with the caregiver for at least the 30 days prior to the date the petition is filed; AND
- (b) the caregiver does not have an authorization agreement under Chapter 34 or other signed, written documentation from a parent, conservator, or guardian that enables the person to provide necessary care for the child.

These requirements provide two important details about Texas law. First, in Texas, a child may live with a caregiver without formal permission or authorization from the court - and indeed, MUST live with the caregiver for at least 30 days for the caregiver to seek temporary authorization. Second, while Authorization Agreements are useful, per Chapter 35 a court will accept a signed, written document from a parent, conservator, or guardian as allowing a caregiver to provide necessary care for the child.

B. If No Parent is Available or Willing to Sign an Authorization Agreement, Caregivers May Turn to Temporary Authorizations.

If a caregiver seeks to provide certain things for a child, such as consent to medical treatment, obtaining a public benefit, enrolling the child in day care or school, or other matters as provided in the statute, and no parent is available to sign an Authorization Agreement, nor has written permission been given from a parent, conservator, or guardian, Texas Family Code Chapter 35 provides a path through the courts. <https://statutes.capitol.texas.gov/Docs/FA/htm/FA.35.htm>

As stated above, the child must first have lived with the caregiver for at least 30 days before the petition for a Temporary Authorization is filed and no signed, written permission from a parent, conservator, or guardian has been obtained. §35.002

To file Petition for Temporary Authorization for care of a child, under §35.003:

- (a) A petition for temporary authorization for care of a child must:
 - (1) be styled “ex parte” and be in the name of the child;
 - (2) be verified by the petitioner;
 - (3) state:
 - i. (A) the name, date of birth, and current physical address of the child;
 - ii. (B) the name, date of birth, and current physical address of the petitioner;
and
 - iii. (C) the name and, if known, the current physical and mailing addresses of the child's parents, conservators, or guardians;
 - (4) describe the status and location of any court proceeding in this or another state with respect to the child;
 - (5) describe the petitioner’s relationship to the child;

- (6) provide the dates during the preceding 12 months that the child has resided with the petitioner;
 - (7) describe any service or action that the petitioner is unable to obtain or undertake on behalf of the child without authorization from the court;
 - (8) state any reason that the petitioner is unable to obtain signed, written documentation from a parent, conservator, or guardian of the child;
 - (9) contain a statement of the period for which the petitioner is requesting temporary authorization; and
 - (10) contain a statement of any reason supporting the request for the temporary authorization.
- (b) If the petition identifies a court proceeding with respect to the child under Subsection (a)(4), the petitioner shall submit a copy of any court order that designates a conservator or guardian of the child.

A Petition for Temporary Authorization, then, appears to be useful if a signature cannot be obtained from a parent and a caregiver needs to take some necessary action for the child, such as school enrollment or medical care.

The Temporary Authorization does not have a definite time period it may last but it may only be renewed for one year. See Texas Family Code §§35.005, 35.006.

While there is no legislation on the books for host homes, in Texas, caregivers do have guidance through the Texas Family Code on how to assist children who live with them. Chapters 34 and 35 provide useful details to caregivers on practical, everyday matters for children in their care.