

# Definition of Kinship Caregivers

## KINSHIP/RELATIVE DEFINITIONS IN VIRGINIA

### By Program

#### **SOCIAL SERVICES**

##### **Kinship Care**

**VA. CODE § 63.2-100.**

*"Kinship care" means the full-time care, nurturing, and protection of children by relatives.*

##### **Interstate Compact for the Placement of Children (ICPC)**

**Definitions and Placement Categories: Applicability and Exemptions, Regulation 3**

*Relative: a birth or adoptive brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, first cousin, niece, nephew, as well as relatives of half-blood or marriage and those denoted by the prefixes of grand and great, including grandparent or great grandparent, or as defined in state statute for the purpose of foster and or adoptive placements.*

##### **Close Relative Adoption**

**VA. CODE § 63.2-1242.1.**

*Non-relative: a person not connected to the child by blood, marriage or adoption.*

- A. For the purposes of this chapter, a "close relative placement" shall be an adoption by the child's grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.*
- B. In a close relative placement the court may accept the written and signed consent of the birth parent(s) that is signed under oath and acknowledged by an officer authorized by law to take such acknowledgements.*

##### **Temporary Assistance to Needy Families (TANF)**

**22VAC40-295-20.**

*Specified relatives. The relative with whom the child is living who is designated as the caretaker must be a relative by blood, marriage, or adoption.*

##### **Title IV-E Foster Care**

**Virginia Department of Social Services Title IV-E Foster Care Manual**

###### *1.3.2 Specified relative*

###### *1.3.2.1 Identification/Determination*

*The specified relative shall be related to the child by blood, adoption, or marriage and shall have legal custody at time of removal.*

- Biological parents have legal custody until or unless that legal custody is terminated via court proceedings.*
- Other relatives shall be related within the fifth degree of kinship to be considered a specified relative.*
- Spouses of the specified relative within the fifth degree in which the marriage is terminated by death or divorce may also be considered a specified relative.*

###### *1.3.2.2 Documenting the specified relative*

###### *Biological Parent(s)*

- No additional documentation is needed when the specified relative is the biological parent(s).*

**Title IV-E Foster Care**

*(continued)*

All other relatives within the fifth degree of kinship

- A judicial determination will always exist if someone other than the biological parent has legal custody.
- If available, a copy of the court proceedings awarding legal custody shall be maintained in the eligibility record.
- If unavailable, a service worker or relative of the child may make a written, dated statement identifying who has legal custody.

Note: When evaluating court proceedings, terms such as “legal guardian” or “legal custodian” are acceptable, as long as the person obtaining legal custody has a clear legal responsibility for the day-to-day care of the child.

1.2.1 Definitions

Relatives of Fifth Degree

Any relative by blood, marriage, or adoption that is within five (5) generations of child which goes back to:

- 5<sup>th</sup> degree-Great-great-great grandparent; Great-great aunt/uncle; Great-great niece / nephew; First cousin once removed (child of first cousin).
- 4<sup>th</sup> degree-Great-great grandparent; Great aunt/uncle; Great niece / nephew; First cousin.
- 3<sup>rd</sup> degree-Great grandparent; Aunt / Uncle; Niece / nephew.
- 2<sup>nd</sup> degree-Grandparent; Sibling.
- 1<sup>st</sup> degree-Parent.

**Custody Assistance** *(This initiative is pending.)*

**Policy and Tools Work Group Definition**

Beginning March 1, 2010 and working continuously through August, 2010, the Policy and Tools Work Group met weekly to frame and define processes for the Custody Assistance guidance. The group recommended that the Custody Assistance guidance be added to the Foster Care Manual, Chapter B as an appendix. Additionally, the group has the definition of relative as follows:

*Relative means anyone related to the child by blood, marriage, or adoption. Relationships by marriage exist even after the marriage has been terminated by death, divorce or termination of parental rights.*

**Medicaid Covered Groups**

**Virginia Department of Social Services Medicaid Eligibility Manual, Volume XIII**

**M0310.107 Caretaker-Relative**

*Caretaker-relative*

A "caretaker-relative" is an individual who is not a parent, but who

- is a relative, of a specified degree, of a dependent child (as defined in M0310.111) and
- is living with and assuming continuous responsibility for day to day care of the dependent child (as defined in M0310.111) in a place of residence maintained as his or their own home.

A caretaker-relative is also referred to as a “non-parent caretaker” to distinguish the caretaker-relative from the parent.

*Specified Degree*

A relative of specified degree of the dependent child is

- any blood relative including those of half-blood and including first cousins, nephews or nieces and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

**Medicaid Covered Groups**

*(continued)*

- *a stepfather, stepmother, stepbrother, and stepsister;*
- *a relative by adoption following entry of the interlocutory or final order, whichever is first; the same relatives by adoption as listed above: including first cousins, nephews or nieces and persons of preceding generations as denoted by prefixes of grand, great, or great-great, and stepfather, stepmother, stepbrother, and stepsister.*
- *spouses of any persons named in the above groups even after the marriage is terminated by death or divorce.*

*Neither severance of parental rights nor adoption terminates the relationship to biological relatives.*

*Procedures – Relationship*

*The relationship as declared on the application/redetermination form is used to determine the caretaker-relative’s relationship to the child. No verification is required.*

*Living in the Home*

*A child’s presence in the home as declared on the application/redetermination form is used to determine if the child is living in the home with a parent or a caretaker-relative. No verification is required.*

**EDUCATION**

**The Individuals with Disabilities Education Act (IDEA) of 2004**

**20 U.S.C.A. § 1401(23)(C).**

The Individuals with Disabilities Education Act (IDEA) includes a provision relating to a non-parent acting in loco parentis for a child at an individualized education program (IEP) meeting. This provision includes in its definition of *parent* an “individual acting in place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives.” Section 1414(e) states that each local or state educational agency shall ensure that the parent of each child with a disability is a part of any decision made in regards to the educational placement of his or her child, this extends to the non-parent caregiver acting in loco parentis.

**Definition of a Parent**

**VA. CODE § 22.1-213.1.**

Definition of a “parent”.

A. “Parent,” for purposes of this article and regulations promulgated thereto, means:

1. *A biological or adoptive parent of a child;*
2. *A foster parent, even if the biological or adoptive parent’s rights have not been terminated, but subject to subsection B;*
3. *A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the Commonwealth if the child is a ward of the Commonwealth);*
4. *An individual acting in the place of a biological or adoptive parent (including grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or*
5. *If no party qualified under subdivisions 1 through 4 can be identified, or those parties are unwilling to act as parent, a surrogate parent who has been appointed in accordance with 8 VAC 20-81-220. (continued)*

- B. *The biological or adoptive parent, when attempting to act as the parent pursuant to this section and when more than one party is qualified under subsection A to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent has had their residual parental rights and responsibilities terminated pursuant to § 16.1-277.01, 16.1-277.02, or 16.1-283 or a comparable law in another state.*
- C. *The local school division shall provide written notice to the biological or adoptive parents at their last known address that a foster parent is acting as the parent pursuant to this section, and the local school division is entitled to rely upon the actions of the foster parent pursuant to this section until such time that the biological or adoptive parent attempts to act as the parent.*
- D. *If a judicial decree or order identifies a specific person or persons among subdivisions A 1 through A 5 to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of the special education identification, evaluation, and placement of a child and the provision of a free appropriate public education to a child.*
- E. *The Board of Education shall revise the regulations governing the provision of special education services in accordance with this section.*

## **JUVENILE AND DOMESTIC RELATIONS**

### **Juvenile and Domestic Relations District Court Law**

#### **VA. CODE § 16.1-228.**

*"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.*

### **Standby Guardianship**

#### **Definition of Standby Guardian**

#### **VA. ANN. CODE §§ 16.1-349.**

*"Standby guardian" means a person who, in accordance with this article, is designated in writing or approved by the court to temporarily assume the duties of guardian of the person or guardian of the property, or both, of a minor child on behalf of or in conjunction with a qualified parent upon the occurrence of a triggering event. The term shall be so construed as to enable the parent to plan for the future care of a child, without terminating parental or legal rights, and to give the standby guardian the authority to act in a manner consistent with the known wishes of a qualified parent regarding the care, custody and support of the minor child.*

(continued)

**Who Can Nominate a Standby Guardian**

**VA. ANN. CODE §§ 16.1-349; 16.1-351.**

*A qualified parent may petition the juvenile court to approve a standby guardian for the child. ‘Qualified parent’ means a parent who has been diagnosed by a licensed physician to be afflicted with a progressive or chronic condition caused by injury, disease, or illness from which, to a reasonable degree of medical probability, the patient cannot recover. Any other person may file a petition. If the petitioner, however, is other than the child’s custodial parent, the parent must give consent.*

**How to Establish a Standby Guardian**

**VA. ANN. CODE §§ 16.1-350; 16.1-352.**

Upon petition, the court may approve a person as standby guardian for a child of a qualified parent upon the occurrence of a specific triggering event. The petition shall include:

- The name and address of the petitioner and his or her relationship to the child, the name and address of the child’s qualified parent, and the name and address of any other parent of the child whose identity and whereabouts are known to the petitioner
- The name, address, and birth date of the child
- The proposed triggering event
- Whether a determination of incompetence or debilitation has been made
- Whether there is a significant risk that the parent will imminently become physically or mentally incapable of caring for the child or die as the result of a progressive chronic condition or illness
- The name and address of the proposed standby guardian
- Any known reasons why the child’s other parent is not assuming or should not assume the responsibilities of a standby guardian

The parent may also name a standby guardian by executing a written designation at any time. Children who are age 12 or older must be notified of any hearing.

**How Standby Authority Is Activated**

**VA. ANN. CODE §§ 16.1-352; 16.1-353.**

The authority of the standby guardian is effective:

- Upon receipt by the standby guardian of a determination of incompetence or a certificate of death
- If so requested in the petition, upon receipt by the standby guardian of a written consent of the qualified parent and filing of the consent with the court

The court-approved standby guardian then has 30 days to file confirming documents with the court. A standby guardian by written designation must petition the court for approval as soon as possible, but no later than 30 days after the triggering event. If the parent has died, the standby guardian has 90 days to petition for the appointment of a permanent guardian or initiate proceedings to determine custody of the child.

**Involvement of the Noncustodial Parent**

**VA. ANN. CODE § 16.1-350.**

Each parent whose identity and whereabouts are known must be notified of the petition. Another known parent, stepparent, adult sibling, or other adult related to the child may request a hearing within 10 days. The court cannot proceed if a custody case is pending.

*(continued)*

**Authority Relationship of the Parent and the Standby Guardian**

**VA. ANN. CODE §§ 16.1-349; 16.1-354.**

The standby guardian temporarily assumes the duties of guardian of a minor child on behalf of or in conjunction with a qualified parent upon the occurrence of a triggering event. This is meant to enable the parent to plan for the future care of a child, without terminating parental or legal rights. When a standby guardian's authority is effective upon debilitation or incompetence of the parent, the standby guardian's authority to act on behalf of the parent continues even though the parent is restored to health unless the parent notifies the guardian and, if appropriate, the court, in writing.

**Withdrawing Guardianship**

**VA. ANN. CODE § 16.1-354.**

The authority of a standby guardian who has been approved by the court may be revoked by the parent by filing a notice of revocation with the court. At any time following his or her approval by the court, a standby guardian may decline to serve by filing a written statement of refusal with the court and having the statement personally served on the parent. When a written designation has been executed but is not yet effective because the triggering event has not yet occurred, the parent may revoke or the prospective standby guardian may refuse the designation by notifying the other party in writing. A written designation may also be revoked by the execution of a subsequent inconsistent designation.