

STANDBY GUARDIAN FOR IMMIGRANT PARENTS FAQ

Background

On June 28th 2018 Governor Cuomo signed a bill that amends New York’s standby guardianship law so that immigrants at risk of being separated from their children can now appoint a standby guardian. Below are answers to some common questions about standby guardianship and the new law. Immigrants and their advocates interested in the new law should call NYLAG’s information line at (212)659-6188 or The Legal Wellness Institute at The Family Center at (718)789-3841, Ext.150 with any questions they may have.

What is standby guardianship and how does the new law expand it?

It is a way for a parent designate a guardian for their child(ren) if they are terminally ill. The designation does not go into effect until the parent dies or becomes unable to care for their child.

The new law broadens the existing standby guardianship law to allow immigrants to plan for future care and custody of their children in New York if they are concerned about immigration enforcement proceedings or their removal from the United States. A standby guardian becomes the guardian in the event of an “administrative separation”, such as an arrest, detention, incarceration removal, deportation, or receipt of notice by any government authority that the parent may be separated from their child because of an immigration action.

Who should consider designating a standby guardian?

Immigrant parents who are worried that they may be separated from their child because of an immigration action should consider designating a standby guardian. This step can help prevent children from ending up in the foster care system and give peace of mind to the parent that their child will be properly cared for by the person they want.

How do parents designate a standby guardian?

There are two ways to designate a standby guardian.

The most common way is to complete a standby designation form – naming the individual to become the standby guardian and alternate if desired; and checking administrative separation as the triggering event. The form must be signed in front of two witnesses. This method can be used even if no administrative action has occurred.

An alternative way to designate a standby guardian, is to request the court (either Family or Surrogate court) to appoint a standby guardian. This is a useful method if the parent knows in advance that they will face an eventual administrative separation.

We recommend parents have an attorney assist them with designating a standby guardian to make sure the paperwork is completed properly.

When does the standby guardian become the guardian?

The standby guardian becomes the guardian when the administrative action occurs. For example, if a parent is arrested by an ICE officer, that is the moment the standby guardian becomes the child's guardian. The standby must go to court within 60 days to be formally appointed, but can act in that role for the duration of the 60 days.

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