

NEW YORK BREAST CANCER LEGAL RESOURCE GUIDE



Designation of Person in Parental Relation

**LEGAL WELLNESS INSTITUTE
at THE FAMILY CENTER**



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A breast cancer diagnosis can lead to a variety of questions, concerns, and uncertainty. If you have children, you likely want to ensure that they are safe and well cared for while you manage your illness. Several legal tools can help you plan for your children's care during times of uncertainty. One such tool is a Designation of Person in Parental Relation.

What is a Designation of Person in Parental Relation?

A Designation of Person in Parental Relation is a legal document in which you, as a parent of a minor child or incapacitated person, can give temporary legal authority to another adult to make certain educational and health decisions for your child**. This person is called the "Designee" or the "Person in Parental Relation". Designations of Person in Parental Relation are authorized under the New York General Obligations Law (Title 15-A). The law describes what information the Designation should include, and you can obtain forms from certain NY state agencies or by speaking with an attorney.

A parent who signs a Designation of Person in Parental Relation does NOT lose their parental authority over the child, even after the Designation goes into effect. The Designation simply authorizes another person to also make certain decisions for the child.

A Designation of Person in Parental Relation can be personalized in many ways to meet your particular needs, situation, and comfort level. It can be used to plan for known and temporary events, like a parent's travel plans, or to plan for a possible future event, like a parent's hospitalization. In some situations, it can also be used to authorize longer-term caregiving arrangements.

*****This guide uses the term "child", but a Designation of Person in Parental Relation can also be used to plan for multiple (minor) children or for incapacitated adult(s).***

Who can Complete a Designation of Person in Parental Relation?

The law states that a Designation of Person in Parental Relation can be signed by a parent of a minor child or incapacitated person. Unfortunately, the law does not mention other people who may be the primary caregivers for a child or incapacitated person such as a legal guardian or custodian. If you are the primary caregiver for a child but are not their parent, speak with an attorney about how you can plan for their temporary care needs. In certain circumstances, a Designation of Person in Parental Relation may need to be signed by both of a child's parents (discussed more below).

If there is any court order in effect that would prohibit a parent from making educational or healthcare decisions for the child (for example, a termination of parental rights, or an order granting sole legal custody/decision-making authority to another person/parent/), that parent cannot legally complete a Designation of Person in Parental Relation for the child. A Designation completed by a parent under those circumstances would not be legally effective.

What if the Child has Another Parent?

Generally, if you would like the child's other legal parent (meaning they are on the child's birth certificate or there's a valid court order of paternity, parentage, or adoption) to be able to make decisions for that child, you do not have to use a Designation of Person in Parental Relation to authorize that parent's care, even if the child doesn't ordinarily live with that parent.

IMPORTANT: *If a court order states that both parents must agree on education or health decisions for the child (such as an order granting joint legal custody), both parents must consent to and sign the Designation of Person in Parental Relation. In this situation, if both parents have not signed the Designation, it will not be valid.*

If the child has two parents but there is not a current court order regarding custody, guardianship, or decision-making for the child, then either parent (or both parents) may sign a Designation of Person in Parental Relation for that child. But remember, signing such a Designation does not override the other parent's rights or authority concerning the child.

How does a Designation of Person in Parental Relation Work?

The authority given through A Designation of Person in Parental Relation can either begin immediately once the document is signed, or the document can be written such that it is signed in advance, and the authority will only become effective in the future, on a particular date or after a specific event occurs.

Examples: A Designation of Person in Parental Relation may be useful if you will be hospitalized or traveling without your child and need someone else to care for your child while you are separated. For parents currently in treatment for a serious medical condition, or with severe or late-stage illness, it may be helpful to have a Designation prepared, which would become effective in the event of your hospitalization. That way, someone has the authority to deal with your child's healthcare and educational needs while you are hospitalized.

The authority given to the Designee through a Designation of Person in Parental Relation is temporary. Under the law, the authority can last no more than 12 months but can be renewed. As a parent, you can choose to give authority for a shorter, specific period of time (e.g., two weeks), or between certain specific dates (e.g., from April 1, 2022 through April 30, 2022), or based on certain events that may happen in the future (e.g., in the event of an inpatient admission, to last throughout that admission). You can also choose to give the authority for a full 12 months.

If a Designation of Person in Parental expires, the parent can complete and sign another one, naming the same or a different Designee. However, if your child will live with or be cared for by someone else on a permanent or long-term basis, it is a good idea to discuss other legal arrangements with an attorney.

IMPORTANT: A Designation of Person in Parental Relation is only effective while the parent who signed it is still alive and has mental capacity. If the parent passes away or becomes incapacitated, the authority given under the Designation automatically ends. If you would like to plan for your child's care in the event of your death or incapacity, there are other legal tools to do so, including a Designation of Standby Guardian and Last Will. Please speak to an attorney about these options.

As a parent, you can revoke (cancel) a Designation of Person in Parental Relation at any time – before or after the authority has gone into effect. While it is not difficult to revoke a Designation, if possible, you should speak to an attorney to ensure that this is done correctly.

As a parent, if you disagree with the Designee about a decision relating to your child, your decision outweighs and overrides that of the Designee.

What can a Person in Parental Relation (Designee) do?

The authority given through a Designation of Person in Parental Relation is not as extensive as the authority that a parent or court-appointed guardian or custodian has over a child. The Designation of Person in Parental Relation gives the Designee certain specific powers concerning the child, relating to education and healthcare.

As the parent, you can choose how much or how little authority you would like to give the Designee. You can choose to limit the Designee's authority to dealing with certain types of activities, treatments or for care relating to certain diagnoses. On most Designation forms, there is a list of specific powers that the Designee can have. You can decide which of these powers you would like the Designee to have with respect to your child. You can also choose to give the Designee all the listed powers or can include limitations or specific instructions.

The law is not entirely clear about all the specific powers a Designee can have, particularly with respect to education, but **a Designee's authority likely includes the following:**

- **Consenting to routine or non-major medical, dental, and mental health treatment and services** for the child (for example: taking the child for check-ups; taking the child to the doctor for an ear infection and getting a prescription for antibiotics; taking the child to the dentist for a cleaning or a dental problem; etc.)
- **Obtaining required and routine vaccinations** for the child
- **Consenting to participation in school activities** (extracurriculars or field trips)
- **Enrolling in school**
- **Accessing school records**
- **Consenting to evaluations for special education, and the development of an Individualized Education Plan (IEP)**

Limitations of a Designation of Person in Parental Relation

A child's school district of residence does not change based on a Designation of Person in Parental Relation. It is presumed that the child resides in the school district where the parent resided when the Designation was made.

A Designee cannot consent to certain types of medical treatments, including:

- Major medical treatment, including things like non-emergency surgery, any procedure requiring general anesthesia, or any procedure causing substantial pain or with a significant recovery period.
- Electroconvulsive therapy
- Withdrawal or discontinuance of any life-sustaining medical treatments

For any of these types of decisions or treatments, the parent would still have to consent rather than the Designee.

A Designee appointed through a Designation of Person in Parental Relation does not have any legal obligation to support a child financially.

REMEMBER: As a parent, if you disagree with the Designee about any decision relating to your child, your decision will override the Designee's.

Whom Should I Designate?

Choosing another person to make decisions for or care for your child, even temporarily, is a big decision. If possible, you should discuss this with important people in your child's life and with your child themselves (if they are old enough). Please keep in mind:

- The Designee should be an adult (over age 18).
- Choose someone you trust. As you know, caring for a child is not easy. You should be confident that the person you name will act in your child's best interest and make responsible decisions that you would agree with.
- The Designee should be someone who has a good relationship with your child, and with whom your child is comfortable. Remember that if the Designee needs to help care for your child, it could be during a difficult time in your child's life, so it is important that they are with someone they know, love, and trust.
- The person you designate does not have to be a resident of New York State. If a friend or relative from out of state will be coming to New York to temporarily care for your child, for example, you can use this Designation. However, **if your child will be going to stay with someone in another state or country, speak to a lawyer in that location**, because a Designation of Person in Parental Relation as described here might not have any effect in another State.

What does a Designation have to Include?

A Designation of Person in Parental Relation is a relatively simple document. You can find forms online based on the New York law, but it is recommended that you get help from an attorney to complete your Designation, if you can.

The Designation must be signed and dated by the child's parent or, in some circumstances, both parents and must include certain information like names and birthdates for the child, addresses, and phone numbers for the parent(s) and Designee.

Remember: If a court order states that both parents must agree on education or health decisions for the child (such as an order granting joint legal custody), both parents must consent to and sign the Designation of Person in Parental Relation.

The Designation should also include information about when it should go into effect and when the authority should end (up to 12 months).

It is a good idea for the Designation to list the specific powers you would like the Designee to have with respect to your child. Most forms already include this.

If the Designation gives authority that does or could last for more than 30 days, there are certain specific requirements, such as:

- It must be signed by the parent (or parents) in front of a notary public and notarized
- It must include the written consent of the Designee, meaning the Designee must also sign it.
- It must include contact information (phone number and address) for where the Designee and the parent can be reached while it is in effect (though this is a good idea to include in any Designation, even one that would last for less than 30 days).
- A Designation lasting more than 30 days must also include some required language specified in the law.

Note: *If your child has special medical or healthcare needs and the Designee may need to handle anything related to these conditions or needs, it may be a good idea to also sign a HIPAA release (authorization to access health information) on behalf of the child, naming the person you designated, to ensure that they can have access to any relevant medical information about the child. You should discuss this with an attorney.*

If you are a breast cancer patient or survivor in NYC and want to complete a Designation of Person in Parental Relation, or if you have other legal needs, contact the **Legal Wellness Institute** at 718.789.3841 x 150 or LWI@thefamilycenter.org to see if you are eligible for legal assistance through the Maite Aquino Program.

