



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2011 Wisconsin Act 87
[2011 Assembly Bill 30]

**Delegation of Parental Powers by
Power of Attorney**

2011 Wisconsin Act 87 creates s. 48.979, Stats., which authorizes the parent of a child to delegate certain powers regarding the care and custody of the child by a power of attorney.

Delegation of Parental Powers Under Act 87

Under current law, a parent may petition a court for the appointment of a guardian for the parent's child. A guardian has the authority to make important decisions in matters having a permanent effect on the life and development of the child. Act 87 creates an alternate procedure by which a parent may, without court involvement, delegate certain parental powers to an agent by a power of attorney. The general requirements for this procedure are set forth in s. 48.979 (1) (a), Stats., which provides that a parent who has legal custody of a child, by a power of attorney that is properly executed by all parents with legal custody of the child, may delegate to an agent, for up to one year, any of the parent's powers regarding the care and custody of the child *except* for the power to consent to any of the following:

- The child's marriage or adoption;
- The performance or inducement of an abortion on or for the child;
- The termination of parental rights to the child; or
- The enlistment of the child in the U.S. Armed Forces.

Retention of powers; revocation. Act 87 provides that a delegation of parental powers does not deprive a parent of any of his or her powers regarding the care and custody of the child. In addition, a parent may revoke the delegation of parental powers at any time by executing a written revocation and notifying the agent in writing.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

Statutory form. Act 87 creates a statutory form for a power of attorney delegating parental powers. The Act further provides that a power of attorney complies with the general requirements for a delegation of parental powers under s. 48.979 (1) (a), Stats., if it substantially conforms to the statutory form.

Restrictions on placements. Act 87 provides that a parent may not place a child in foster care, a group home, or an inpatient treatment facility by means of a delegation of parental powers as provided under the Act. Under Act 87, as under current law, those placements may be made *only* by court order or under s. 48.63, Stats., regarding placement in a foster home or group home, or s. 51.13, Stats., regarding admission to an inpatient treatment facility.

Additional limitations. Act 87 provides that a delegation of parental powers does not prevent or supersede any of the following:

- An agency, a sheriff, or a police department from receiving and investigating a report of suspected or threatened abuse or neglect of the child under s. 48.981, Stats.;
- The child from being taken into and held in custody under ss. 48.19 to 48.21, Stats., or 938.19 to 938.21, Stats.;
- An intake worker from conducting an intake inquiry under s. 48.24 or 938.24, Stats.; and
- A court from exercising jurisdiction over the child under s. 48.13 or 938.13, Stats.

Act 87 also provides that if a child is subject to the jurisdiction of the juvenile court under the Wisconsin's Children's Code or ss. 938.12 to 938.14, Stats., a parent of that child may not delegate parental powers unless the juvenile court approves the delegation.

Provisions Related to Prevention of Child Abuse

Applicability of child abuse and neglect provisions. Under Act 87, persons to whom parental powers are delegated under Act 87, as well as entities that facilitate delegations of parental power under Act 87, are generally subject to provisions regarding:

- Criminal history and child abuse record searches under s. 48.685, Stats.; and
- Reporting of suspected or threatened child abuse or neglect under s. 48.981, Stats.

Collection of information by entity facilitating delegation. Under Act 87, when an entity facilitates delegation of parental powers, a "nonclient resident" of a proposed agent means a person, other than a client of the proposed agent, who resides or is expected to reside with the proposed agent and has or is expected to have regular, direct contact with clients of the proposed agent. Act 87 provides that an entity facilitating a delegation of parental power is required to obtain the following information with respect to the proposed agent and any nonclient resident of the proposed agent:

- A criminal history search from the records maintained by the Department of Justice;
- Information that is contained in the Department of Health Services (DHS) nurse aide registry regarding any findings against the person;

- Information maintained by the Department of Safety and Professional Licensing regarding the status of the person's credentials, if applicable;
- Information maintained by the Department of Children and Families (DCF) regarding any substantiated reports of child abuse or neglect against the person; and
- Information maintained by DHS regarding any denial to the person of a license, continuation or renewal of a license, certification, or a contract to operate a child welfare or care agency or facility because the person has been convicted of a serious crime or been found to have abused or neglected a child or client, and regarding any denial to the person of employment at, a contract with, or permission to reside at a child welfare or care agency or facility or with a person who has been delegated parental powers under Act 87, because of a criminal background of findings of abuse.

Act 87 prohibits an entity from facilitating a delegation of parental powers to a proposed agent if the above information collected by the entity indicates that either the proposed agent or a nonclient resident of the proposed agent has been convicted of a serious crime or found to have abused or neglected a child or client, as described in s. 48.685 (4m) (b), Stats. When a delegation of powers to a proposed agent is prohibited for this reason, Act 87 requires the entity to provide DHS with information about the proposed agent or non-client resident whose conviction, abuse, or neglect caused the prohibition.

Rules for Organizations Facilitating Delegation of Parental Powers

Act 87 authorizes DCF to promulgate rules to implement the procedure for delegation of parental powers under the Act. If DCF promulgates the rules, the rules must include rules establishing certain requirements and expectations applicable to organizations facilitating delegation of parental powers and any agent to whom delegation of parental powers is facilitated by an organization, as follows:

- Requirements that the organization: (a) regularly monitor the agent and the child whose care and custody is delegated to the agent, and (b) maintain communications with the child's parents;
- Training requirements for the staff of the organization, including training in identifying children who have been abused or neglected and the laws and procedures under s. 48.981, governing the reporting of suspected or threatened child abuse or neglect;
- Training requirements for the agent, including training in identifying children who have been abused or neglected and the laws and procedures under s. 48.981, Stats;
- Certain expectations of the agent, as specified in the Act, along with training requirements for the agent regarding these expectations; and
- Requirements for screening and assessment of a proposed agent according to criteria specified in the Act, along with a requirement prohibiting organizations from facilitating delegations of parental powers under the Act to a proposed agent that is not fit to provide for the care and custody of the child and able to meet the child's needs.

Compliance With Indian Child Welfare Act

Act 87 adopts certain provisions of the federal Indian Child Welfare Act previously incorporated into s. 48.028, Stats. These include a provision stating that any delegation of parental powers under the Act that is made for an Indian child prior to or within 10 days after the birth of the child is not valid.

Act 87 provides that a delegation of parental powers under the Act that is made for an Indian child must be executed in writing, recorded before a judge, and accompanied by a written certification from the judge stating all of the following:

- The terms and consequences of the delegation were fully explained to and understood by the parent executing the delegation;
- The parent fully understood the explanation in English, or the explanation was translated into a language that the parent or custodian understood; and
- The parents, custodian, or tribe may move the court to invalidate the delegation on the grounds that it was done in violation of federal law pertaining to tribal jurisdiction over certain custody proceedings.

Act 87 provides that any parent of an Indian child who delegates parental powers under the Act may withdraw the delegation for any reason at any time. In addition, the Indian child who is the subject of the delegation, or a parent of the Indian child, or the child's tribe may move to invalidate the delegation on the grounds that it violated federal law pertaining to tribal jurisdiction.

Exemptions From Licensure

Act 87 exempts a person to whom care and custody of a child is delegated under Act 87 from the requirement that the person obtain a license to operate a foster home, child welfare agency, or group home, in order to provide care and maintenance for the child.

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