

HIV

Issues
for
Families
with
Children

YOUR LEGAL RIGHTS

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This is one in a series of booklets published by the AIDS LEGAL COUNCIL OF CHICAGO. All are designed to help you understand **YOUR LEGAL RIGHTS** in Illinois. The booklets in this series are:

HIV and Confidentiality

HIV and Discrimination

HIV and Insurance

HIV and Public Benefits

HIV and Undocumented Immigrants

HIV in the Workplace

HIV: Issues for Families with Children

HIV: Issues for Youth and Young Adults

HIV: Returning to Work

HIV: Wills and Powers of Attorney

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This guide is intended as an overview of HIV-related Illinois and federal law. As with any legal matter, it is always a good idea to consult an attorney concerning the particular circumstances of your case.

HIV: ISSUES FOR FAMILIES WITH CHILDREN

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INTRODUCTION

If you are an HIV positive parent, you may have a lot of uncertainty in your life, especially when it comes to your kids. Should you make arrangements for someone to look after your children in case you become too sick to care for them yourself? What kinds of arrangements are possible? What if you change your mind in the future?

If your child has HIV, you probably have a lot of questions as well. Do you have to inform your child's school that he or she has HIV? Will your child be allowed to play sports or take shop class? Can your child get tested for HIV without telling you?

This booklet is designed to answer your questions. If you have more questions after you're done reading, you can call the AIDS LEGAL COUNCIL OF CHICAGO at (312) 427.8990. Someone there will be happy to speak with you confidentially.

Chapter One

KIDS AND HIV TESTS

1) Can my son or daughter be tested for HIV without my permission?

Yes. If your child is 12 years of age or older, then he or she does not need parental consent to get an HIV test according to the Illinois public health code. In fact, anyone 12 or older can get a test for any sexually transmitted disease on his own.

2) If my son or daughter tests HIV positive without my knowledge, do I have to be informed of the results?

Usually. The Illinois public health code says that when a child under 18 tests HIV positive, the health care worker who gives your child the test result must first encourage your child to notify you. If later on the health care worker has reason to believe your child has not informed you of his HIV status, then the health care worker must make an effort to inform you.

However, if the health care worker believes that it is **not** in the best interests of your child for you to be informed of his HIV status, then the health care worker does not have to tell you. For example, if your child tells the health care worker that you will kick him out of the house if you find out his HIV status, then the health care worker would not be required to inform you.

Of course, if your child takes an HIV test with a home kit, then that result is anonymous, and no one can inform you of the result except your child if he or she chooses to do so.

Chapter Two

HIV POSITIVE KIDS IN SCHOOL

1) If my child tests HIV positive, do I have to tell anyone in her school?

Of course, you can tell people at her school if you think they need to know it. For example, if your child needs medication during the day, you will probably want to discuss that with the school nurse.

2) If my child tests HIV positive, will the school be told?

No. There used to be a law in Illinois that said the public health department had to report the names of HIV+ kids to those kids' schools. But that law has been repealed.

3) Is my child with HIV allowed to play sports?

Yes. HIV is not spread through sports or any other activity that happens at school.

4) If my child is HIV positive, should she be in regular classes?

Sure. Your child's HIV status should not prevent her from getting the education she deserves. Of course, if your child has a learning disability, then the school may place them in special education. But HIV status alone is not reason to place a child in special education.

5) My child is HIV positive, and in the school cafeteria he has to use special silverware that no one else uses. Is this legal?

No. HIV is not spread by reusing utensils. Your child should be treated like everyone else in the cafeteria.

6) The school just found out that I'm HIV positive. Now the principal says my children can't go to school until they get HIV tests. Is that legal?

Absolutely not. An HIV test is not required for any student to stay in school.

7) My three-year-old is HIV positive. Will she be allowed in preschool?

Yes. According to the **Americans with Disabilities Act**, it would be illegal for a preschool to refuse to let your child enroll just because she is HIV positive. In addition, the preschool could not refuse to accept your other children out of fear that they might be HIV positive too.

Chapter Three

GETTING PUBLIC BENEFITS FOR YOUR CHILDREN

This chapter addresses a few questions about public benefits for children, like Social Security and TANF. For more information see our *HIV and Public Benefits* booklet.

1) My child has HIV. Will she be able to get her own Social Security benefits?

If you are a low income household, and your child's HIV is serious enough to be interfering with her daily life and her development, you may be able to get **Supplemental Security Income (SSI)** benefits for her. Apply at your local Social Security office or call Social Security at 1-800-772-1213.

2) I am applying for Social Security benefits because I can no longer work. Will I be able to get anything extra to help support my child?

The answer depends on the type of Social Security benefits you're applying for. There are two types of Social Security benefits for people with HIV:

- ◆ **SSDI** benefits (Social Security Disability Insurance) for people who have worked at a regular job
- ◆ **SSI** benefits (Supplemental Security Income) for people who haven't worked.

If you get **SSDI** benefits, any child of yours under age 18 will also get a check every month, whether or not the child is living with you. Be sure to tell Social Security about any children you have when you apply.

If you apply for **SSI** benefits, you will not get any extra money because you have children. But if you have no other income to support your children, you may be eligible to receive help for your children from the **Temporary Assistance for**

Needy Families program (TANF). Apply for TANF at your local Illinois Department of Human Services office.

3) Will my child's Social Security benefits stop if he goes to live with a guardian?

If your child is getting his own SSI check, or getting an SSDI check based on a parent's disability or death, then that check will continue even if he is living with a guardian.

4) Is there any other type of assistance that the guardian of my child can get?

If the guardian of your child has no other source of income, the guardian can apply for assistance from the Illinois Department of Human Services. If the guardian is related to your child (for example, she is your child's aunt) then she will be able to get TANF benefits for herself and your child.

5) If I name someone to be the guardian of my child, how will the guardian get medical care for my child?

If your child does not have any other way to pay for medical care, the guardian can apply for Medicaid. The guardian can apply for Medicaid for your child even if your guardian is working and makes too much money to qualify for Medicaid herself. The guardian's income is not counted in figuring out whether your child is poor enough to get Medicaid.

Chapter Four

PLANNING FOR YOUR CHILD'S FUTURE

- 1) **I'm HIV positive, and I have two kids. I'm perfectly healthy, and I plan to stay that way. Do I really need to plan for my kids' future care?**

It's always a good idea to make plans for the future care of your children, whether you're HIV positive or not. What if you are injured or killed in a car accident? Who will take care of your kids then?

It can be scary to think about planning for the future care of your children. No one likes to think about the possibility of not being able to raise their children into adulthood. But all parents owe it to their children to make arrangements in case something happens.

- 2) **What legal options are available for arranging the future care of my children?**

There are many options available to you. You could:

- ◆ **Write a will.** In your will you can name someone you want to be the guardian of your children.
- ◆ **Create a short-term guardianship.** This option allows someone to act as your children's guardian for up to 365 days.
- ◆ **Create a standby guardianship.** With this, the court appoints someone as your child's guardian, but the person doesn't begin to act until needed.
- ◆ **Create a guardianship.** With this option, the court appoints someone as your child's guardian, and that person begins taking full legal responsibility for your child immediately.

There is more information about each of these possibilities in the following chapters.

3) What about adoption?

Adoption is one more way you can arrange for someone else to take care of your children. If you want someone to adopt your children while you are alive, you will have to give up all of your legal rights to your child.

The people who adopt your child will become the child's new legal parents and the birth certificate will no longer have your name on it. The new parents will have the right to make all decisions for your child. They will also have the duty to support and care for your child. Unlike guardianship, the new parents' income will count against the child and may affect the child's eligibility for public benefits.

You could also set up a standby adoption. The person you choose would become your child's new parent but not until after you die or are so disabled you can no longer be a parent to your children.

Chapter Five

FUTURE CARE OPTIONS: A WILL

1) What is a will?

A will is a legal document that puts someone in charge of all your possessions after you die. It directs that person to give your things to the people you choose.

2) How can a will help me make future care plans for my children?

In a will, you can **nominate a guardian for your children**. This means you can name someone you trust to become the person legally in charge of your children after your death.

It is important for you to know that just naming someone in your will as guardian does **not** automatically make that person guardian over your children after your death. Only a judge can legally appoint someone as guardian over your children.

But a will does **express your wishes in a legal document**. If, for example, you nominate your sister as guardian of your children, then your sister would take your will to court after your death to show the judge that you wanted her to be the guardian.

You should know that the judge does not necessarily have to follow the wishes you express in your will. The judge has a duty to appoint a guardian who will act in the best interests of the child. Someone besides the person you name in your will might want to become guardian of your children, and that person would have a right to appear before the judge and ask to be appointed guardian.

For example, let's say you name your sister as guardian in your will, but your aunt thinks that she should be the guardian instead. Both your sister and your aunt could appear before the judge, and the judge would have to determine who

would be the better guardian. Certainly the judge would take into account the wishes you expressed in your will. But the judge will have to make a decision based upon the best interests of your child.

So if you nominate a guardian in your will, it is a good idea for you to talk about your wishes with family first, to make sure everyone will go along with your plan.

Chapter Six

FUTURE CARE OPTIONS: SHORT-TERM GUARDIANSHIP

1) What is a short-term guardianship?

A short-term guardianship is a private legal arrangement between you and the person you want to take care of your child. **A short-term guardian is not a permanent arrangement.** The person that you appoint as short-term guardian will only have authority to act as guardian for a maximum of 365 days. It is very useful if you go in and out of the hospital a lot.

However, those 365 days don't have to start immediately. For example, let's say you are very healthy now, and you don't need anyone to take care of your kids today. But you want to make someone the short-term guardian of your child **just in case** you get sick in the future. The law lets you make exactly this arrangement. You can appoint someone short-term guardian over your child, but that person will not have any authority to take care of your child until the day when you are no longer able to care for your child yourself.

2) How do I get a short-term guardianship?

To make someone the short-term guardian of your child, all you have to do is complete a form called an **Appointment of Short-Term Guardian**. The form is relatively simple, and you can get one by calling the AIDS Legal Council. If you would like, someone at the Council can help you fill out the form. **You don't have to go to court to make someone the short-term guardian of your children.**

3) Who has to sign an **Appointment of Short-Term Guardian?**

Several people have to sign the form:

- ◆ The parent who has custody of the child
- ◆ The person named as short-term guardian
- ◆ The child's other parent

Sometimes, getting both parents to sign the form causes problems. For example, let's say a mother doesn't live with the father of the child, and she doesn't see him very often. Maybe he has never taken much interest in his child's life.

In four circumstances, the other parent of the child is **not** required to sign the form:

- ◆ If the other parent is deceased
- ◆ If the whereabouts of the other parent are unknown
- ◆ If the other parent is not able to make and carry out day-to-day childcare decisions for your child
- ◆ If the parents were never married, and no court has ever issued an order establishing parentage.

If any one of these four things is true, then you do not have to have the signature of the other parent on the short-term guardian form. Otherwise, the other parent must sign it.

Also, the form requires that two people witness your signature. This means they sign their names, stating that they saw you sign the paper. The person you name as short-term guardian cannot be one of the witnesses.

Chapter Seven

FUTURE CARE OPTIONS: STANDBY GUARDIANSHIP

1) What is a standby guardianship?

A standby guardianship is a legal arrangement approved by a judge. **It allows you to appoint someone legal guardian of your child, but that person "stands by" until needed.** In other words, the standby guardian does not take custody of your children immediately, but only at some point in the future when you are no longer able to take care of your children yourself.

2) How do I arrange a standby guardianship?

Making someone standby guardian of your children requires a court hearing. At a standby guardianship hearing, you will explain to the judge why you want this particular person to take care of your children in the future. The person that you want as standby guardian must appear in court. If the judge agrees with your plan, the court will appoint that person as standby guardian.

If you are too sick to go to court, you can sign something called an **appearance and consent form**. This is just a court form that says you agree with the standby guardianship arrangement. This form tells the judge your wishes, so you don't have to appear in court yourself. However, **the person you want as standby guardian must appear before the judge.**

3) Who can be a standby guardian?

According to Illinois law, a standby guardian must:

- ◆ be at least 18 years old
- ◆ be a resident of the United States
- ◆ be of sound mind
- ◆ be able to manage their own affairs, both physically and mentally
- ◆ never have had a felony conviction; or, have it expunged, unless the judge decides that the proposed guardian is still the best person, despite the felony conviction.

You can appoint a family member, a friend, or any person that you trust to take care of your children. Of course, the judge will have to approve the person you've selected to be the standby guardian.

4) Does the child's other parent have to be notified of a standby guardianship hearing?

Yes. Illinois law requires that both parents be given notice of your court hearing. Both parents have a right to appear at that hearing.

5) What if the other parent doesn't agree with my standby arrangement?

The other parent has a right to contest your arrangement, and to offer a different plan. For example, let's say you are the mother of Rhonda, and you want to name your mother as her standby guardian. But let's say that Rhonda's father thinks that he should take care of Rhonda instead. He has a right to tell the judge he wants to take custody of Rhonda after you die. It is then the judge's duty to decide which plan is in the best interest of the child.

If you decided to go to court without notifying Rhonda's father, he could probably get the judge to decide your standby guardianship arrangement is not legal. All the father would have to do is show the judge that he was not given proper notice.

6) Does anyone else besides the child's other parent have to be notified about a standby guardianship hearing?

Yes. Anyone who has taken care of the child for an extended period of time must be notified.

If both of the child's parents are deceased, any brothers and sisters of the child who are 18 or over must be notified. If there are none, the notification is sent to the nearest adult relative (usually maternal and paternal aunts and uncles of the child).

7) Are there fees to file a stand-by guardianship?

Yes. There are court fees plus additional fees if you don't know the address of the other parent. But if you can't afford the fees, you can ask a judge to let you file without paying the fees.

8) Can I change this standby guardianship arrangement in the future?

Yes. For example, if the person you've appointed as standby guardian moves out of the state, you might want to appoint someone else instead. This would require another court hearing, but you certainly have the right to change the arrangement. Of course, you will have to convince the judge that the new plan is in your child's best interest.

Chapter Eight

FUTURE CARE OPTIONS: GUARDIANSHIP

1) What is a guardianship?

A guardianship is a legal arrangement approved by a judge, which appoints someone else to care for your child. In legal language, the guardian has "care, custody, and control" of the child. The legal guardian has the authority to enroll the child in school, take the child to the doctor, and make all other decisions for the child that a parent can make.

2) What's the difference between a guardian and a standby guardian?

If you go to court to appoint someone **standby guardian** of your child, then that person will stand by until needed. In other words, you will continue to care for your child until the day you are no longer able to do so. Then, and only then, will the standby guardian take custody of your child.

If you go to court to appoint someone **guardian** of your child, then that person takes custody of your child **immediately**.

3) How do I arrange a guardianship?

Making someone guardian of your children requires a court hearing. You would follow exactly the same steps that you would follow in appointing someone standby guardian.

At a guardianship hearing, you will explain to the judge why it is necessary for someone to take care of your children immediately. The person you want as guardian must appear in court. If the judge agrees with your plan, the court will appoint that person as guardian.

If you are too sick to go to court, you can sign something called an **appearance and consent form**. This is just a court form that says you agree with the guardianship

arrangement. This form tells the judge your wishes, so you don't have to appear in court yourself. However, **the person you want as guardian must appear before the judge.**

4) Who can be a guardian?

According to Illinois law, a guardian must:

- ◆ be at least 18 years old
- ◆ be a resident of the United States
- ◆ be of sound mind
- ◆ be able to manage own affairs, both physically and mentally
- ◆ pass a background check, including criminal convictions and any past problems with DCFS. The judge can still allow the guardianship even if these things exist, but only if he's convinced the problem won't happen again.

Within these guidelines, you can appoint a family member, a friend, or any person that you trust to take care of your children. Of course, the judge will have to approve the person you've selected to be the guardian. Usually a judge favors a guardianship arrangement that will cause the least disruption in the child's life.

5) Does the child's other parent have to be notified of a guardianship hearing?

Yes. Illinois law requires that both parents be given notice of your court hearing. Both parents have a right to appear at that hearing.

6) What if the other parent doesn't agree with my arrangement?

The other parent has a right to contest your arrangement, and to offer a different plan. For example, let's say you are the father of Jason, and you want to name

your mother as his guardian. But let's say that Jason's mother thinks that she should take custody of Jason instead. She has a right to appear in court. It is then the judge's duty to decide which plan is in the best interest of the child.

If you decided to go to court without notifying Jason's mother, she could probably get the judge to decide your guardianship arrangement is not legal. All the mother would have to do is show the judge that she was not given proper notice.

7) Does anyone else besides the child's other parent have to be notified about a guardianship hearing?

Yes. You also must notify:

- ◆ Any brothers or sisters of the child who are 18 and older. If there are none, the nearest adult relative (usually maternal and paternal aunts and uncles of the child) must be notified.
- ◆ Anyone who has taken care of the child for an extended period of time
- ◆ The child, if the child is at least 14 years of age.

8) Are there any fees to file a guardianship?

Yes. There are court fees plus additional fees if you don't know the address of the other parent. But if you can't afford the fees, you can ask a judge to let you file without paying the fees.

9) Can I change this guardianship arrangement in the future?

Yes. For example, imagine that your child's guardian decides that he is no longer financially able to take care of your child. At this point, it would be important to appoint someone else guardian. This would require going back to court again, and following the same procedures you followed the first time.

Chapter Nine

FUTURE CARE OPTIONS: STANDBY ADOPTION

1) What is standby adoption?

Standby adoption is a legal arrangement approved by a judge. The judge names someone you chose who will adopt your children when you die or when you decide you can't care for your children yourself. In the meantime, you retain all of your rights as a parent, and keep custody of your child. Your doctor must say you are terminally ill in order to ask the court to appoint a standby adoptive parent for your child.

2) How do I arrange a standby adoption?

Making someone a standby adoptive parent of your child requires a court hearing.

At a standby adoption hearing, you will explain to the judge why you want this particular person to take care of your child in the future. The person that you want as standby adoptive parent must appear in court. Your child must also appear.

Either before you go to court or at the court hearing you must sign a written consent for the standby adoption to take place.

If you are too sick to go to court, you can sign a Final and Irrevocable Consent to Standby Adoption, but you have to work with a licensed child welfare agency or the Cook County Department of Supportive Services because someone from one of those agencies will need to discuss your consent with you. Whether or not you go to court, the person that you want as standby adoptive parent and your child must appear before the judge.

3) Who can be a standby adoptive parent?

According to Illinois law, a standby adoptive parent must:

- ◆ Be at least 18 years old
- ◆ Be a resident of Illinois for at least 6 continuous months immediately before starting the standby adoption process. **Note:** this requirement does *not* apply in cases in which a relative will be the standby adoptive parent.

Other requirements: If the standby adoptive parents is or has been married:

- ◆ If currently married, the standby adoptive parent's spouse must also adopt the child.
- ◆ If separated but not divorced, the standby adoptive parent must have been separated for 12 months or longer.

4) Will someone have to investigate the standby adoptive parent's home? What about a criminal background check?

The requirements vary. If the standby adoptive parent is *not related* to the child, then the Sheriff's office must do a criminal background check and fingerprinting. A home study must also be done.

If the standby adoptive parent is *related* to the child, then fingerprinting and a criminal background check are not required. There will still have to be a home study but it is usually not complicated.

5) Does the child's other parent have to be notified of a standby adoption hearing?

Yes. Illinois law requires that both parents be given notice of the court hearing. Both parents have a right to appear at the hearing.

6) What if the other parent doesn't agree with my standby adoption arrangement?

The other parent has the right to contest your arrangement. For example, Christina's mother wants to name Christina's grandmother as standby adoptive parent. But Christina's father thinks that he should take care of Christina

instead. He has a right to tell the judge he wants to take custody of Christina after her mother dies. The judge will probably not approve the mother's plan if the child's father objects.

If Christina's mother decided to go to court without notifying Christina's father, he could probably get the judge to decide that the standby adoption arrangement is not legal. All the father would have to do is show the judge that he was not given proper notice.

But if Christina's mother give the father proper notice, and he does not show up or object, then the judge will probably approve the plan.

7) What if the other parent does agree with my standby adoption arrangement?

If the other parent agrees with your arrangement, he or she can also sign a Final and Irrevocable Consent to Standby Adoption. This consent will be filed with the court and will become part of the adoption record.

8) Does anyone else besides the child's other parent have to be notified about a standby adoption hearing?

Yes. Depending on the circumstances, you may also have to notify certain people who might be the child's father, including anyone who is living with you when you file the petition, anyone on the birth certificate, or anyone who was married to you while you were pregnant.

9) Can I change this standby adoption arrangement in the future?

No. You cannot withdraw your consent for standby adoption. The consent is final and cannot be revoked. That is why it is very important to be absolutely sure that this is the arrangement that will be in your child's best interests.

10) By signing the consent for standby adoption, am I “giving my child up for adoption?”

No. Your consent for standby adoption applies only to the person or person(s) that you designate to adopt. It will work to help that only the standby adoptive parent, and no one else, adopt your child.

11) What if the standby adoptive parent decides later that he or she doesn't want to adopt my child?

If the standby adoptive parent decides not to adopt and does not file a request to finalize the adoption after you pass away, then the adoption will not be finalized. At that point, a new plan would need to be made for your child, hopefully with the assistance of other members of your family.

12) So after doing all of this, what is the real advantage of standby adoption? Why not just let my child be adopted after I pass away?

Standby adoption has three main advantages over a regular adoption.

First, the standby adoption court order will permit you to keep custody of your children for as long as you desire, but also have the assurance that the adoption will be finalized after you pass away.

Second, you will be able to present your own evidence to the court about your preference for your child. If you relied only on a will or other document to be presented after your death, the court could decide that the child should live with someone else other than the person you choose.

You, your child, and the standby adoptive parent will have a legal document that assures that the adoption will be finalized as you wished. In this way, your plan is in place and is legally recognized. Hopefully, this will give you some peace of mind about your child's future.

