

# HOUSE . . . . . No. 4718

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Substituted by the House, on motion of Mr. Lepper of Attleboro, for a bill with the same title (House bill No. 1151, changed). May 1, 2008.

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## The Commonwealth of Massachusetts

In the Year Two Thousand and Eight.

AN ACT RELATIVE TO CAREGIVER MEDICAL AND EDUCATION CONSENT.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. The General Laws are hereby amended by inserting  
2 after Chapter 201E the following chapter:—

3 **CHAPTER 201F.**  
4 **CAREGIVER AUTHORIZATION AFFIDAVITS.**

5 Section 1. The following words shall, unless the context clearly  
6 indicates otherwise, have the following meanings:—

7 “Authorizing party”, a parent, legal guardian or legal custodian  
8 who authorizes a caregiver to act under a caregiver authorization  
9 affidavit.

10 “Caregiver”, an adult with whom a minor resides.

11 “Caregiver authorization affidavit”, an affidavit prepared pursuant  
12 to this chapter that authorizes a designated caregiver to act relative  
13 to a minor’s education and health care.

14 “Parental rights and responsibilities”, rights and responsibilities  
15 of a parent, legal guardian or legal custodian under state or federal  
16 law or court order.

17 Section 2. A parent, legal guardian, or legal custodian of a minor,  
18 by a caregiver authorization affidavit, may authorize a designated  
19 caregiver to exercise certain concurrent parental rights and responsi-  
20 bilities relative to a designated minor’s education and health care, as  
21 described in Section 3. If a conflicting decision is made under these  
22 concurrent rights and responsibilities, the decision of the authorizing  
23 party shall supersede the decision of the caregiver.

24 The caregiver authorization affidavit shall only authorize those  
25 rights and responsibilities that the authorizing party possesses, and  
26 shall not divest the authorizing party of his rights or responsibilities.

27 The authorizing party shall not use a caregiver authorization affi-  
28 davit to circumvent any state or federal law or solely for the pur-  
29 poses of attendance at a particular school.

30 Section 3. Under a caregiver authorization affidavit, a caregiver  
31 may:—

32 (a) consent to medical, surgical, dental, developmental, mental  
33 health, or other treatment for the minor under the supervision or  
34 upon the advice of a health care professional licensed to practice in  
35 the Commonwealth;

36 (b) exercise parental rights to obtain records and other informa-  
37 tion with regard to health care services and insurance provided to the  
38 minor; and

39 (c) make educational decisions on behalf of the minor and in all  
40 other ways stand in for the authorizing party with respect to federal,  
41 state and district educational policy, including, but not limited to,  
42 accessing the minor's educational records; representing the minor in  
43 enrollment, disciplinary, curricular, special education, or other edu-  
44 cational matters; signing permission slips for school activities; and  
45 any other decision that facilitates the minor's educational experi-  
46 ence.

47 Section 4. Any person who relies on a caregiver authorization  
48 affidavit that is consistent with the requirements of this chapter has  
49 no obligation to make any further inquiry or investigation and shall  
50 not incur any criminal or civil liability or be subject to professional  
51 discipline for doing so, unless he knows facts contrary to the affi-  
52 davit or knows that an authorizing party has made a decision to  
53 supersede the caregiver's decision. Nothing in this chapter shall  
54 relieve any person from liability for other provisions of the law.

55 Section 5. The caregiver authorization affidavit shall include the  
56 following information:—

57 (a) the name and address and telephone number of the parent,  
58 legal guardian, or legal custodian;

59 (b) the name and address and telephone number of the caregiver;

60 (c) the name and date of birth of the minor;

61 (d) the relationship of the caregiver to the minor;

62 (e) a statement by the authorizing party that there are no court  
63 orders in effect that would prohibit him from exercising or confer-  
64 ring the rights and responsibilities that he seeks to confer upon the  
65 caregiver;

66 (f) a statement of the authority being conferred, and of any prohi-  
67 bitions; and

68 (g) a statement that the affidavit is not for the purposes of circum-  
69 venting any particular state or federal law or attendance at a partic-  
70 ular school.

71 The affidavit shall be signed under the pains and penalties of per-  
72 jury by the authorizing party in the presence of 2 adult witnesses,  
73 neither of whom may be the caregiver, and shall be notarized. The  
74 affidavit also shall be signed by the caregiver, who shall attest to  
75 being an adult with whom the minor resides.

76 The caregiver authorization affidavit may be valid for up to 2  
77 years, and may be reauthorized. The authorizing party may reautho-  
78 rize, amend or revoke the caregiver authorization affidavit by noti-  
79 fying the caregiver in writing. The authorizing party shall provide  
80 the amended affidavit or revocation to all parties to whom he has  
81 provided the original affidavit. The caregiver shall provide the  
82 amended affidavit or revocation to all parties to whom he has pro-  
83 vided the original affidavit prior to further exercising any rights or  
84 responsibilities under the affidavit.

85 Section 6. The caregiver authorization affidavit shall be substan-  
86 tially in the following form, except that the use of alternative lan-  
87 guage consistent with the statute shall not be precluded:—

88 Caregiver Education and Health Care Authorization Affidavit.

89 I. What this form enables:— A parent, legal guardian, or legal  
90 custodian of a minor, by this affidavit, may authorize a designated  
91 caregiver, who is an adult with whom the minor child resides, to  
92 exercise certain concurrent parental rights and responsibilities  
93 relative to a designated minor's education and health care. If a con-  
94 flicting decision is made under these concurrent rights and responsi-  
95 bilities, the decision of the authorizing party shall supersede the  
96 decision of the caregiver.

97 The caregiver authorization affidavit shall only authorize those  
98 rights and responsibilities that the authorizing party possesses, and  
99 shall not divest the authorizing party of his or her rights or responsi-  
100 bilities.

101 Under a caregiver authorization affidavit, a caregiver may:—

102 (a) consent to medical, surgical, dental, developmental, mental  
103 health, or other treatment for the minor under the supervision or  
104 upon the advice of a health care professional licensed to practice in  
105 the Commonwealth;

106 (b) exercise parental rights to obtain records and other informa-  
107 tion with regard to health care services and insurance provided to the  
108 minor; and

109 (c) make educational decisions on behalf of the minor and in all  
110 other ways stand in for the authorizing party with respect to federal,  
111 state and district educational policy, including, but not limited to,  
112 accessing the minor’s educational records representing the minor in  
113 enrollment, disciplinary, curricular, special education, or other edu-  
114 cational matters; signing permission slips for school activities; and  
115 any other decision that facilitates the minor’s educational experi-  
116 ence.

117 II. Steps to authorize caregiver rights and responsibilities:—

118 1. AUTHORIZING PARTY.

119 I, [name of authorizing party], residing at [address of authorizing  
120 party] am the parent/legal guardian/legal custodian of the minor  
121 child(ren) listed below.

122 I, [name of parent or legal guardian or legal custodian], do hereby  
123 authorize [name of caregiver], residing at [address of caregiver], to  
124 exercise concurrently the rights and responsibilities, except those  
125 prohibited below, that I possess relative to the education and health  
126 care of the minor child(ren) listed:—

127 Minor Child’s Name	Date of Birth
128 _____	_____
129 _____	_____
130 _____	_____

131 The caregiver may NOT:—

132 (Please list specifically any education or health care rights and  
133 responsibilities that you do NOT wish to confer upon the caregiver.)

134 There are no court orders in effect that would prohibit me from  
135 exercising or conferring the rights and responsibilities that I wish to  
136 confer upon the caregiver. (If you are the legal guardian or custo-  
137 dian, attach the court order.)

138 I am not using this affidavit to circumvent any state or federal law  
139 or solely for the purposes of attendance at a particular school.

140 I confer these rights and responsibilities freely and knowingly in  
141 order to provide for the child(ren) and not as a result of pressure,  
142 threats, or payments by any person or agency.

143 I understand that, if the affidavit is amended or revoked, I must  
144 provide the amended affidavit or revocation to all parties to whom I  
145 have provided this affidavit.

146 This document shall remain in effect until [enter date up to two  
147 years hence] or until I notify the caregiver in writing that I have  
148 amended or revoked it.

149 I hereby affirm that the above statements are true, under pains and  
150 penalties of perjury.

151 Signature:

152 Printed name:

153 Telephone number:

154 2. WITNESSES TO AUTHORIZING PARTY SIGNATURE

155 (To be signed by persons over the age of 18 who are not the des-  
156 igned caregiver.)

157 Witness No. 1 signature:

158 Witness No. 1 printed name and address:

159 Witness No. 2 signature:

160 Witness No. 2 printed name and address:

161 3. NOTARIZATION OF AUTHORIZING PARTY SIGNATURE.

162 On this [date] before me, the undersigned notary public, person-  
163 ally appeared [name of authorizing party], proved to me through sat-  
164 isfactory evidence of identification, which was [driver's license,  
165 etc.], to be the person whose name is signed on the preceding docu-  
166 ment, and swore under the pains and penalties of perjury that the  
167 foregoing statements are true.

168 Signature and seal of notary:

169 Printed name of notary:

170 My commission expires:

171 4. CAREGIVER ACKNOWLEDGEMENT.

172 I, [name of caregiver], am at least 18 years of age and the  
173 child(ren) currently reside with me at [address of caregiver]. I am  
174 [relationship to the minor].

175 I understand that I may, without obtaining further consent from a  
176 parent, legal custodian or legal guardian of the child(ren), exercise  
177 concurrent rights and responsibilities relative to the education and  
178 health care of the child(ren), except those rights and responsibilities

179 prohibited above. However, I may not knowingly make a decision  
180 that conflicts with the decision of the child(ren)'s parent, legal  
181 guardian or legal custodian.

182 I understand that, if the affidavit is amended or revoked, I must  
183 provide the amended affidavit or revocation to all parties to whom I  
184 have provided this affidavit prior to further exercising any rights or  
185 responsibilities under the affidavit.

186 I hereby affirm that the above statements are true, under pains and  
187 penalties of perjury.

188 Signature of caregiver:

189 Printed name:

190 Telephone Number:

191 III. Explanations. This caregiver authorization affidavit is pur-  
192 suant to Massachusetts General Laws, Chapter 201F. Any dispute  
193 arising hereunder shall be the exclusive jurisdiction of the probate  
194 courts pursuant to Massachusetts General Laws, Chapter 215,  
195 Section 3.

196 Any person who relies on a caregiver authorization affidavit that  
197 is consistent with the requirements of Chapter 201F has no obliga-  
198 tion to make any further inquiry or investigation and shall not incur  
199 any criminal or civil liability or be subject to professional discipline  
200 for doing so, unless he or she knows facts contrary to the affidavit or  
201 knows that an authorizing party has made a decision to supersede the  
202 caregiver's decision. However, this shall not relieve any person from  
203 liability for other provisions of the law.

1 SECTION 2. Section 3 of chapter 215 of the General Laws, as  
2 appearing in the 2006 Official Edition, is hereby amended by  
3 striking out the last paragraph and inserting in place thereof the  
4 following paragraph:—

5 Probate courts shall have exclusive original jurisdiction of all  
6 actions concerning the execution and validity of health care proxies  
7 created under Chapter 201D and caregiver authorization affidavits  
8 created under Chapter 201F or disputes arising thereunder.”; and by  
9 striking out the title and inserting in place thereof the following  
10 title:— “An act relative to caregiver education and health care  
11 authorization.”