HOUSE .... No. 4718

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.

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:

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

CHAPTER 201F.

CAREGIVER AUTHORIZATION AFFIDAVITS.

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

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

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

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

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

Section 2. A parent, legal guardian, or legal custodian of a minor, by a caregiver authorization affidavit, may authorize a designated caregiver to exercise certain concurrent parental rights and responsibilities relative to a designated minor’s education and health care, as described in Section 3. If a conflicting decision is made under these concurrent rights and responsibilities, the decision of the authorizing party shall supersede the decision of the caregiver.
The caregiver authorization affidavit shall only authorize those rights and responsibilities that the authorizing party possesses, and shall not divest the authorizing party of his rights or responsibilities.

The authorizing party shall not use a caregiver authorization affidavit to circumvent any state or federal law or solely for the purposes of attendance at a particular school.

Section 3. Under a caregiver authorization affidavit, a caregiver may:

(a) consent to medical, surgical, dental, developmental, mental health, or other treatment for the minor under the supervision or upon the advice of a health care professional licensed to practice in the Commonwealth;
(b) exercise parental rights to obtain records and other information with regard to health care services and insurance provided to the minor; and
(c) make educational decisions on behalf of the minor and in all other ways stand in for the minor under the supervision or upon the advice of a health care professional licensed to practice in the Commonwealth; accessing the minor’s educational records; representing the minor in enrollment, disciplinary, curricular, special education, or other educational matters; signing permission slips for school activities; and any other decision that facilitates the minor’s educational experience.

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

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

(a) the name and address and telephone number of the parent, legal guardian, or legal custodian;
(b) the name and address and telephone number of the caregiver;
(c) the name and date of birth of the minor;
(d) the relationship of the caregiver to the minor;
(e) a statement by the authorizing party that there are no court orders in effect that would prohibit him from exercising or conferring the rights and responsibilities that he seeks to confer upon the caregiver;

(f) a statement of the authority being conferred, and of any prohibitions; and

(g) a statement that the affidavit is not for the purposes of circumventing any particular state or federal law or attendance at a particular school.

The affidavit shall be signed under the pains and penalties of perjury by the authorizing party in the presence of 2 adult witnesses, neither of whom may be the caregiver, and shall be notarized. The affidavit also shall be signed by the caregiver, who shall attest to being an adult with whom the minor resides.

The caregiver authorization affidavit may be valid for up to 2 years, and may be reauthorized. The authorizing party may reauthorize, amend or revoke the caregiver authorization affidavit by notifying the caregiver in writing. The authorizing party shall provide the amended affidavit or revocation to all parties to whom he has provided the original affidavit. The caregiver shall provide the amended affidavit or revocation to all parties to whom he has provided the original affidavit prior to further exercising any rights or responsibilities under the affidavit.

Section 6. The caregiver authorization affidavit shall be substantially in the following form, except that the use of alternative language consistent with the statute shall not be precluded:—

Caregiver Education and Health Care Authorization Affidavit.

I. What this form enables:— A parent, legal guardian, or legal custodian of a minor, by this affidavit, may authorize a designated caregiver, who is an adult with whom the minor child resides, to exercise certain concurrent parental rights and responsibilities relative to a designated minor’s education and health care. If a conflicting decision is made under these concurrent rights and responsibilities, the decision of the authorizing party shall supersede the decision of the caregiver.

The caregiver authorization affidavit shall only authorize those rights and responsibilities that the authorizing party possesses, and shall not divest the authorizing party of his or her rights or responsibilities.
Under a caregiver authorization affidavit, a caregiver may:—

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

(b) exercise parental rights to obtain records and other information with regard to health care services and insurance provided to the minor; and

(c) make educational decisions on behalf of the minor and in all other ways stand in for the authorizing party with respect to federal, state and district educational policy, including, but not limited to, accessing the minor’s educational records representing the minor in enrollment, disciplinary, curricular, special education, or other educational matters; signing permission slips for school activities; and any other decision that facilitates the minor’s educational experience.

II. Steps to authorize caregiver rights and responsibilities:—

1. AUTHORIZING PARTY.

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

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

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<th>Minor Child’s Name</th>
<th>Date of Birth</th>
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The caregiver may NOT:—

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

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

I am not using this affidavit to circumvent any state or federal law or solely for the purposes of attendance at a particular school.
I confer these rights and responsibilities freely and knowingly in order to provide for the child(ren) and not as a result of pressure, threats, or payments by any person or agency. I understand that, if the affidavit is amended or revoked, I must provide the amended affidavit or revocation to all parties to whom I have provided this affidavit. This document shall remain in effect until [enter date up to two years hence] or until I notify the caregiver in writing that I have amended or revoked it. I hereby affirm that the above statements are true, under pains and penalties of perjury.

Signature:
Printed name:
Telephone number:

2. WITNESSES TO AUTHORIZING PARTY SIGNATURE
(To be signed by persons over the age of 18 who are not the designated caregiver.)
Witness No. 1 signature:
Witness No. 1 printed name and address:
Witness No. 2 signature:
Witness No. 2 printed name and address:

3. NOTARIZATION OF AUTHORIZING PARTY SIGNATURE.
On this [date] before me, the undersigned notary public, personally appeared [name of authorizing party], proved to me through satisfactory evidence of identification, which was [driver’s license, etc.], to be the person whose name is signed on the preceding document, and swore under the pains and penalties of perjury that the foregoing statements are true.
Signature and seal of notary:
Printed name of notary:
My commission expires:

4. CAREGIVER ACKNOWLEDGEMENT.
I, [name of caregiver], am at least 18 years of age and the child(ren) currently reside with me at [address of caregiver]. I am [relationship to the minor]. I understand that I may, without obtaining further consent from a parent, legal custodian or legal guardian of the child(ren), exercise concurrent rights and responsibilities relative to the education and health care of the child(ren), except those rights and responsibilities
prohibited above. However, I may not knowingly make a decision that conflicts with the decision of the child(ren)’s parent, legal guardian or legal custodian.

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

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

Signature of caregiver:

Printed name:

Telephone Number:

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

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

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

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