

SENATE NO. 69

AN ACT RELATIVE TO CAREGIVER MEDICAL AND EDUCATIONAL 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. Chapter 112 of the General Laws, as appearing in the 2004 Official Edition, is
2 hereby amended by adding the following new section:

3 Section 12 ½ MEDICAL TREATMENT AND CONSENT

4 (a) A parent, legal guardian, or legal custodian of a minor may authorize an adult person or
5 persons (“caregiver”) to

6 1) consent to medical, surgical, dental, developmental, mental health, or other
7 treatment for the minor under the supervision or upon the advice of a physician,
8 nurse, dentist, mental health, or other health care professional licensed to practice
9 in this Commonwealth;

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

12 3) make educational decisions on behalf of the minor and in all other ways stand in
13 for the parent, legal guardian or legal custodian with respect to federal, state and
14 district educational policy. Examples of educational decisions include, but are
15 not limited to, the following: accessing the minor’s educational records;
16 representing the minor in enrollment, disciplinary, curricular, special education,
17 or other educational matters; signing permission slips for school activities; and
18 any other decision that facilitates the minor’s educational experience.

19 4) provided there is no prior order of any court in any jurisdiction currently in effect
20 that would prohibit the parent, legal guardian, or legal custodian from exercising
21 the power that the parent, legal guardian, or legal custodian seeks to confer upon
22 the caregiver.

23 (b) “Caregiver” is defined as a person who is at least 18 years of age and with whom the child
24 currently resides.

25 (c) Granting of authority under this section shall not divest the parent or parents of any parental
26 or guardianship rights, but shall confer upon the caregiver concurrent authority with respect
27 to the minor.

28 (d) The parent, legal guardian, or legal custodian may only grant to the caregiver those powers
29 which he himself possesses.

30 The provisions of subsection (a) shall not be used by a parent, legal guardian or legal custodian
31 to confer upon a caregiver the power to make medical or educational decisions on behalf of a
32 minor if such power has been assigned by Federal or State law to the minor.

33 (e) Authorization may be conveyed by any written form containing the following information:

34 (i) the name of the parent, legal guardian, or legal custodian; (ii) the name of the caregiver;

35 (iii) the name and date of birth of the minor or minors; (iv) a statement by the parent, legal
36 guardian or legal custodian that there are no court orders presently in effect that would
37 prohibit him from exercising the power that he seeks to confer upon the caregiver; and (v) a
38 description of the categories of authority being conferred. The authorization shall be signed
39 by the parent, legal guardian, or legal custodian in the presence of two witnesses who are at
40 least 18 years of age, neither of which may be the caregiver. The authorization also shall be
41 signed by the caregiver, who shall attest to being at least 18 years of age and that the child
42 currently resides with the caregiver.

43 (f) The medical or educational decision of a caregiver pursuant to authorization under this
44 section shall be superseded by any contravening oral or written decision of the parent, legal
45 guardian or legal custodian.

46 (g) A grant of authority under this section may be amended or revoked at any time through a
47 writing signed by the parent that originally granted authority to the caregiver. The writing
48 that amends or revokes the grant of authority must be filed with those persons who received
49 notice of the previous grant of authority.

50 (h) A person who relies on a written instrument that is consistent with the requirements of this
51 section, without actual knowledge of facts contrary to those stated in the authorization form
52 or of a contravening decision by the child's parent, legal guardian or legal custodian, shall
53 not incur any criminal or civil liability for doing so and has no obligation to make any
54 further inquiry or investigation. Nothing in this section shall relieve any individual from
55 liability for other provisions of the law. Furthermore, nothing in this section shall relieve
56 professionals licensed under chapter 112 of the General Laws for violations of any

57 applicable law or regulation for failure to meet the standard of care when providing
58 treatment in accordance with any such written instrument.

59 (i) The Department of Public Health (DPH) shall be charged with designing and disseminating
60 the authorization form below to all of the appropriate medical care facilities licensed in the
61 Commonwealth. Individual medical care facilities shall be responsible for ensuring that the
62 authorization form is available and accessible to people who would benefit from its use.

63 (j) The Department of Education (DOE) shall be charged with designing and disseminating the
64 authorization form below to all of the appropriate educational facilities licensed in the
65 Commonwealth. Individual educational facilities shall be responsible for ensuring that the
66 authorization form is available and accessible to people who would benefit from its use.

67 (k) The authorization must be either notarized or sworn to under pains and penalties of perjury.
68 The form must also be substantially in the following form, except that the use of alternative
69 language consistent with the statute shall not be precluded:

70 Medical and Educational Consent Authorization Form

71 I. What this form enables: (language directly from the statute)

72 A parent, legal guardian, or legal custodian of a minor may authorize an adult person or persons
73 (“caregiver”) to:

- 74 • consent to medical, surgical, dental, developmental, mental health, or other treatment
75 for the minor under the supervision or upon the advice of a physician, nurse, dentist,
76 mental health, or other health care professional licensed to practice in this
77 Commonwealth;
- 78 • exercise parental rights to obtain records and other information with regard to health
79 care services and insurance provided to the minor;; and

80 • make educational decisions on behalf of the minor and in all other ways stand in for the
81 parent, legal guardian or legal custodian with respect to federal, state and district
82 educational policy. Examples of educational decisions include, but are not limited to,
83 the following: accessing the minor’s educational records; representing the minor in
84 enrollment, disciplinary, curricular, special education, or other educational matters;
85 signing permission slips for school activities; and any other decision that facilitates the
86 minor’s educational experience.

87 II. Steps to delegate authority:

88 1. I, [name], am the parent of the child(ren) listed below and there are no court orders now in
89 effect that would prohibit me from exercising the power that I wish to confer upon the
90 caregiver.

91 2. (Only necessary if you are the child’s legal guardian or legal custodian): I, [name], am the
92 legal guardian or legal custodian of the child(ren) by court order (copy attached) and there are
93 no other court orders in effect that would prohibit me from exercising the power that I wish to

94 confer upon the caregiver3. I, [name], wish to be the caregiver of the child(ren) listed below. I
95 am at least 18 years of age and the minor child(ren) currently live with me.

96 4. I, [name of parent or legal guardian or legal custodian], do hereby give to [name of
97 caregiver], residing at [caregiver’s address], the power to make medical and educational
98 decisions for the following child(ren):

99 Name	Date of Birth
100 _____	_____
101 _____	_____
102 _____	_____

103 The power that I give is specifically limited to health care, mental health care, and educational
104 decision-making, and it may only be exercised by the person named above as caregiver.

105 The caregiver named above may NOT:

106 (please list specifically any decisions related to health care, mental health care, or educational
107 decision-making that you do NOT wish to delegate to the adult caregiver.)

108 I give the power to consent freely and knowingly in order to provide for the child(ren) and not
109 as a result of pressure, threats, or payments by any person or agency.

110 This document shall remain in effect until it is revoked by me by notifying my child(ren)'s
111 medical, mental health care and insurance providers, school district administrators, and the
112 caregiver named above, in writing.

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

114 Printed name:

115 Signature:

116 Signature of caregiver who is being given power to consent:

117 Witness No. 1 signature:

118 Witness No. 1 printed name and address:

119 Witness No. 2 signature:

120 Witness No. 2 printed name and address:

121 III. Explanations

122 TO PARENT, LEGAL GUARDIAN, OR LEGAL CUSTODIAN:

123 You may authorize any adult or adults to make medical and educational decisions on behalf of
124 your child(ren). You should convey only those powers that you wish the caregiver to share with
125 you. Authorization does not in any way limit your own right to make decisions on behalf of

126 your child(ren). You may revoke this authorization in writing, and you may override, orally or
127 in writing, any individual decision made by a caregiver.

128 TO CAREGIVER:

129 This authorization form authorizes you to make, on behalf of the child(ren) named above, only
130 those decisions specified by the child(ren)'s parent, legal guardian or legal custodian. You need
131 not obtain the consent of the child(ren)'s parent, legal guardian, or legal custodian before
132 making a decision, but you may not knowingly make a decision that conflicts with the decision
133 of the child(ren)'s parent, legal guardian or legal custodian.

134 TO SCHOOL OFFICIALS:

135 No person who acts in good faith reliance upon a consent letter to provide educational decision-
136 making authority without actual knowledge of facts contrary to those stated on the affidavit,
137 may be subject to criminal liability or to civil liability to any person, or is subject to professional
138 disciplinary action, for such reliance if the applicable portions of this form are completed.

139 TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:

140 No person who acts in good faith reliance upon a consent letter to provide medical, surgical,
141 dental, developmental screening and/or mental health examination or treatment, without actual
142 knowledge of facts contrary to those stated on the affidavit, is subject to criminal liability or to
143 civil liability to any person, or is subject to professional disciplinary action, for such reliance if
144 the applicable portions of this form are completed.