

SENATE No. 1058

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to caregiver authorization affidavits.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|---------------------------|-------------------------|-------------------|
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> | |
| <i>Erika Uyterhoeven</i> | <i>27th Middlesex</i> | <i>10/12/2021</i> |

SENATE No. 1058

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 1058) of Patricia D. Jehlen for legislation relative to caregiver authorization affidavits. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3445 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to caregiver authorization affidavits.

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. Section 1 of Chapter 201F, as appearing in the 2016 Official Edition, is
2 hereby amended by striking out, in line 7, the words “with whom a minor resides.” and inserting
3 in place thereof:-

4 who has been so designated by an authorizing party in an affidavit pursuant to this
5 chapter.

6 SECTION 2. Section 2 of Chapter 201F, as appearing in the 2016 Official Edition, is
7 hereby amended by striking out the first paragraph and inserting in the place thereof the
8 following paragraph:-

9 A parent, legal guardian or legal custodian of one of more minor children, by a caregiver
10 authorization affidavit, may authorize a designated caregiver to exercise certain concurrent

11 parental rights and responsibilities relative to any designated minor child's education, health care,
12 recreational and enrichment activities as described in section 3(b). If a conflicting decision is
13 made under these concurrent rights and responsibilities, the decision of the authorizing party
14 shall supersede the decision of the caregiver.

15 SECTION 3. Said chapter 201F is hereby further amended by striking out section 3, as
16 appearing in the 2016 Official Edition, and inserting in the place thereof the following section:-

17 Section 3.

18 (a) A caregiver shall reside with the minor child or children during the time the caregiver
19 is authorized to act relative to said child or children.

20 (b) Under a caregiver authorization affidavit, a caregiver may:

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

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

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

32 (4) make decisions on behalf of the minor regarding recreational and enrichment
33 activities including, but not limited to, enrollment, signing permission slips for sports, clubs,
34 lessons, camps, and activities and any other recreational and enrichment activities.

35 (5) apply for health insurance and dental insurance coverage for the minor; services and
36 support for disabilities; and any other public or private services to address the education or health
37 needs of the minor.

38 SECTION 4. Section 4 of Chapter 201F, as appearing in the 2016 Official Edition, is
39 hereby amended by inserting, in line 1, after the words “relies on a caregiver” the following
40 words:- or alternate caregiver

41 SECTION 5. Said chapter 201F is hereby further amended by striking out section 5, as
42 appearing in the 2016 Official Edition, and inserting in the place thereof the following section:-

43 Section 5. The caregiver (and alternate caregiver, if any) authorization affidavit shall
44 include the following information:—

45 (1) the name, address and telephone number of the parent, legal guardian or legal
46 custodian;

47 (2) the name, address and telephone number of the caregiver;

48 (3) the name, address and telephone number of the alternate caregiver, if any;

49 (4) the name and date of birth of the minor;

50 (5) the relationship of the caregiver(s) to the minor;

51 (6) a statement by the authorizing party that there are no court orders in effect which
52 would prohibit the authorizing party from exercising or conferring the rights and responsibilities
53 sought to be conferred upon the caregiver or alternate;

54 (7) a statement of the authority being conferred and of any prohibitions;

55 (8) a statement that the affidavit is not for the purposes of circumventing any state or
56 federal law, for the purposes of attendance at a particular school, or to re-confer rights to a
57 caregiver from whom those rights have been removed by a court of law; and

58 (9) a statement by the authorizing party of when the authority of the appointed caregiver
59 commences and when it ends (if specified).

60 The affidavit shall be signed under the pains and penalties of perjury by the authorizing
61 party in the presence of 2 adult witnesses, neither of whom may be the caregiver nor alternate
62 caregiver, and the affidavit shall be notarized. The affidavit also shall be signed by the caregiver,
63 and by the alternate caregiver, if any, who shall attest to being an adult with whom the minor
64 resides or will reside.

65 The caregiver authorization affidavit shall be valid for up to 2 years from the date that it
66 comes into effect unless a shorter time is specified, and may be reauthorized. The authorizing
67 party may reauthorize, amend or revoke the caregiver authorization affidavit by notifying the
68 caregiver in writing. The authorizing party shall provide the amended affidavit or revocation to
69 all parties to whom he has provided the original affidavit. The caregiver shall provide the
70 amended affidavit or revocation to all parties to whom he has provided the original affidavit
71 prior to further exercising any rights or responsibilities under the affidavit.

72 SECTION 6: Said chapter 201F is hereby further amended by striking out section 6, as
73 appearing in the 2016 Official Edition, and inserting in the place thereof the following section:-

74

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

78 Caregiver Authorization Affidavit

79 I. What this form enables: A parent, legal guardian or legal custodian of a minor, by this
80 affidavit, may authorize a designated caregiver, who is an adult with whom the minor child
81 resides or will reside, to exercise certain concurrent parental rights and responsibilities relative to
82 a designated minor's education, health care, and recreational and enrichment activities. If a
83 conflicting decision is made under these concurrent rights and responsibilities, the decision of the
84 authorizing party or a legal guardian or legal custodian appointed subsequent to the execution of
85 the affidavit shall supersede the decision of the caregiver.

86 The caregiver authorization affidavit shall only authorize those rights and responsibilities
87 that the authorizing party possesses and shall not divest the authorizing party of his rights or
88 responsibilities.

89 Under a caregiver authorization affidavit, a caregiver may:

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

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

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

101 (4) make decisions on behalf of the minor regarding recreational and enrichment
102 activities including, but not limited to, enrollment, signing permission slips for sports, clubs,
103 lessons, camps and activities, and any other recreational and enrichment activities; and

104 (5) apply for health insurance and dental insurance coverage for the minor; for services
105 and support for disabilities; and for any other public or private services to address the education
106 or health needs of the minor.

107 II. Steps to authorize caregiver rights and responsibilities:

108 1. AUTHORIZING PARTY

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

111 I, [name of parent or legal guardian or legal custodian], do hereby authorize [name of
112 caregiver], residing at [address of caregiver], to exercise concurrently the rights and

113 responsibilities, except those prohibited below, that I possess relative to the education, health
114 care, recreational and enrichment activities of the minor child(ren) listed:

| 115 | Minor Child's/Children Name(s) | Date(s) of Birth |
|-----|--------------------------------|------------------|
|-----|--------------------------------|------------------|

| | | |
|-----|-------|-------|
| 116 | _____ | _____ |
|-----|-------|-------|

| | | |
|-----|-------|-------|
| 117 | _____ | _____ |
|-----|-------|-------|

| | | |
|-----|-------|-------|
| 118 | _____ | _____ |
|-----|-------|-------|

119 The caregiver may NOT:

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

122 In the event the above-named caregiver is unavailable or unwilling to serve as caregiver,
123 I do hereby authorize [name of alternate caregiver] residing at [address of alternate caregiver], to
124 exercise the rights referenced above. (This section is optional)

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

128 I am not using this affidavit to circumvent any state or federal law, for the purposes of
129 attendance at a particular school, or to re-confer rights to a caregiver from whom those rights
130 have been removed by a court of law.

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

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

136 The authority of the caregiver shall commence upon (choose one):

137 a date certain _____; or

138 the date of the incapacity of the authorizing party to make or carry out day-to-day
139 decisions concerning the minor, as established by written certification of a licensed physician, or
140 the date of the unavailability of the authorizing party to make or carry out day-to-day decisions
141 concerning the minor due to circumstances such as, but not limited to, incarceration, voluntary or
142 involuntary commitment to a treatment program, detention, deportation, or active military duty,
143 as established by attestation of the named caregiver.

144 This document shall remain in effect until (choose one):

145 a date certain (up to two years hence) _____; or

146 two years from the date of the incapacity of the authorizing party to make or carry out
147 day-to-day decisions concerning the minor, as established by written certification of a licensed
148 physician, or the date of the unavailability of the authorizing party to make or carry out day-to-
149 day decisions concerning the minor due to circumstances such as, but not limited to,
150 incarceration, voluntary or involuntary commitment to a treatment program, detention,
151 deportation, or active military duty, as established by attestation of the named caregiver.

152 unless or until I, as authorizing party, notify the caregiver (and alternate caregiver, if
153 any), in writing that I have amended or revoked it, or until such time as the minor child(ren)
154 reach the age of majority.

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

156 Signature:

157 Printed name:

158 Telephone number:

159 2. WITNESSES TO AUTHORIZING PARTY SIGNATURE

160 (To be signed by persons over the age of 18 who are not the designated caregiver or
161 alternate caregiver.)

162 Witness No. 1 signature:

163 Witness No. 1 printed name and address:

164 Witness No. 2 signature:

165 Witness No. 2 printed name and address:

166 3. NOTARIZATION OF AUTHORIZING PARTY SIGNATURE

167 On this [date] before me, the undersigned notary public, personally appeared [name of
168 authorizing party, and alternate caregiver, if any], proved to me through satisfactory evidence of
169 identification, which was [driver's license, etc.], to be the person(s) signing the preceding

170 document, and swore under the pains and penalties of perjury that the foregoing statements are
171 true.

172 Signature and seal of notary:

173 Printed name of notary:

174 My commission expires:

175 4. CAREGIVER ACKNOWLEDGEMENT

176 I, [name of caregiver], am at least 18 years of age and the named minor child(ren)
177 currently reside or will reside with me at [address of caregiver]. I am [relationship to the minors].

178 I understand that I may, without obtaining further consent from a parent, legal custodian
179 or legal guardian of the minor child(ren), exercise concurrent rights and responsibilities relative
180 to the education and health care of the minor child(ren), except those rights and responsibilities
181 prohibited above.

182 I understand that I may not knowingly make a decision which conflicts with the decision
183 of the child(ren)'s parent, legal guardian or legal custodian.

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

187 I understand that, if I become unable to carry out the responsibilities conferred by this
188 affidavit, I will do so by immediately notifying the authorizing party and the alternate caregiver
189 in writing.

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

191 Signature of caregiver:

192 Printed name:

193 Telephone Number:

194 5. ALTERNATE CAREGIVER ACKNOWLEDGEMENT (This section is optional)

195 I, [name of alternate caregiver], am at least 18 years of age and the child(ren) currently
196 reside or will reside with me at [address of caregiver]. I am [relationship to the minor].

197 I understand that I may, in the case of inability or incapacity of the first designated
198 caregiver to carry out the responsibilities conferred herein, and without obtaining further consent
199 from a parent, legal custodian or legal guardian of the child(ren), exercise concurrent rights and
200 responsibilities relative to the education and health care of the child(ren), except those rights and
201 responsibilities prohibited above.

202 I understand that I may not knowingly make a decision that conflicts with the decision of
203 the child(ren)'s parent, legal guardian or legal custodian.

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

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

208 Signature of caregiver:

209 Printed name:

210 Telephone Number:

211 6. ATTESTATION OF CAREGIVER AS TO AUTHORIZING PARTY'S

212 UNAVAILABILITY (This section is optional)

213 I, [name of caregiver], attest that the authorizing party is unavailable due to

214 _____

215 _____

216 _.

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

218 Signature of caregiver:

219 Printed name:

220 Telephone Number:

221 7. ATTESTATION OF ALTERNATE CAREGIVER AS TO DESIGNATED

222 CAREGIVER'S UNAVAILABILITY (This section is optional)

223 I, [name of alternate caregiver], attest that the designated caregiver is unavailable due to

224 _____

225 _____.

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

227 Signature of alternate caregiver:

228 Printed name:

229 Telephone Number:

230

231 III. Explanations: This caregiver authorization affidavit is pursuant to chapter 201F of the
232 General Laws. A dispute arising hereunder shall be the exclusive jurisdiction of the probate
233 courts pursuant to section 3 of chapter 215 of the General Laws.

234 A person who relies on a caregiver authorization affidavit that is consistent with the
235 requirements of said chapter 201F has no obligation to make any further inquiry or investigation
236 and shall not incur any criminal or civil liability or be subject to professional discipline for doing
237 so, unless he knows facts contrary to the affidavit or knows that an authorizing party has made a
238 decision to supersede the caregiver's decision. The reliance on the affidavit shall not relieve a
239 person from liability arising from other provisions of the law.