

HOUSE No. 4318

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, February 8, 2024.

The committee on the Judiciary, to whom were referred the petition (accompanied by bill, Senate, No. 1010) of Patricia D. Jehlen for legislation relative to caregiver authorization affidavits, and the petition (accompanied by bill, House, No. 1393) of Christine P. Barber and Lindsay N. Sabadosa relative to caregiver authorization affidavits, reports recommending that the accompanying bill (House, No. 4318) ought to pass.

For the committee,

MICHAEL S. DAY.

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The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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. Chapter 201F is hereby amended by striking out section 1 and inserting in
2 place thereof the following section:-

3 Section 1. As used in this chapter the following words shall have the following meanings,
4 unless the context clearly indicates otherwise:-

5 “Alternate caregiver” a caregiver who, if the first designated caregiver is unwilling or
6 unable to serve, will carry out the responsibilities conferred in the caregiver authorization
7 affidavit

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

10 “Caregiver”, an adult who has been so designated by an authorizing party in a caregiver
11 authorization affidavit pursuant to this chapter who will carry out the responsibilities conferred
12 in the affidavit.

13 “Caregiver authorization affidavit”, an affidavit prepared pursuant to this chapter that
14 authorizes a designated caregiver or alternate caregiver to act relative to the education, health
15 care, recreation, enrichment and services needs of one or more minor children.

16 “Concurrent parental rights and responsibilities”, the authorizing party’s powers
17 regarding care, custody and property of one or more minor children as provided by state or
18 federal law or court order.

19 SECTION 2. Section 2 of said Chapter 201F, as appearing in the 2022 Official Edition ,
20 is hereby amended by striking out the first two paragraphs and inserting in the place thereof the
21 following paragraphs:-

22 A parent, legal guardian or legal custodian of one of more minor children, by a caregiver
23 authorization affidavit, may authorize a designated caregiver to exercise certain concurrent
24 parental rights and responsibilities relative to any designated minor child's education, health care,
25 recreational and enrichment activities as described in section 3. If a conflicting decision is made
26 under these concurrent rights and responsibilities, the decision of the authorizing party or a legal
27 guardian or legal custodian appointed subsequent to the execution of the affidavit shall supersede
28 the decision of the caregiver.

29 The caregiver authorization affidavit shall only authorize those rights and responsibilities
30 that the authorizing party possesses and shall not divest the authorizing party of their rights or
31 responsibilities. Nothing in this chapter shall affect the rights of any other parent, legal guardian
32 or legal custodian of a designated minor.

33 SECTION 3. Said chapter 201F is hereby further amended by striking out section 3 and
34 inserting in the place thereof the following section:-

35 Section 3. (a) A caregiver shall reside with the minor child or children during the time the
36 caregiver is authorized to act relative to the caregiver authorization affidavit unless the
37 authorizing party gives written permission that the minor child or children may reside at a
38 licensed camp or educational institution..

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

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

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

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

50 (4) make decisions on behalf of the minor regarding recreational and enrichment
51 activities including, but not limited to, enrollment, signing permission slips for daycare, sports,
52 clubs, lessons, camps, and any other decision relating to the minor's recreational and enrichment
53 activities.

54 (5) apply for health insurance and dental insurance coverage for the minor, services and
55 support for disabilities, and any other public or private services to address the education or health
56 needs of the minor.

57 SECTION 4. Said chapter 201F is hereby further amended by striking out section 5 and
58 inserting in the place thereof the following section:-

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

60 (1) the name, address and telephone number of the authorizing party and any other
61 parent, legal guardian or legal custodian of the minor child or children;

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

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

64 (4) the name and date of birth of each minor child;

65 (5) the relationship of the caregiver(s) to each minor child;

66 (6) a statement by the authorizing party that (i) there is no court order or pending suit
67 which would prohibit the authorizing party from exercising or conferring the rights and
68 responsibilities sought to be conferred upon the caregiver or alternate; and (ii) if there is a
69 pending action concerning the custody, placement, access or visitation rights to any of the minor
70 children, the relevant court has provided written approval for the execution of the authorization
71 agreement;

72 (7) a statement of the authority being conferred, including any limitations or prohibitions;

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

76 (9) the date, time, event or circumstance on which the authority of the appointed
77 caregiver commences and, if applicable, when it ends.

78 The affidavit shall be signed under the pains and penalties of perjury by the authorizing
79 party in the presence of 2 adult witnesses, neither of whom may be the caregiver nor alternate
80 caregiver, and the affidavit shall be notarized. The affidavit also shall be signed by the caregiver,
81 and by the alternate caregiver, if any, who shall attest to being an adult with whom the minor
82 child or children resides or will reside unless the authorizing party states that any of the minor
83 children shall reside at a licensed camp or educational institution. Any other person with legal
84 custody over any of the minor children including but not limited to a parent, legal guardian or
85 legal custodian shall be given timely legal notice of this affidavit including a copy of the
86 affidavit in writing. The caregiver authorization affidavit may be valid for up to 2 years from
87 the date that it becomes effective and may be reauthorized. The authorizing party may
88 reauthorize, amend or revoke the caregiver authorization affidavit by notifying the caregiver and
89 any other parent, legal guardian or legal custodian of the child or children in writing. The
90 authorizing party shall provide the amended affidavit or revocation to all parties to whom they
91 have provided the original affidavit. The caregiver shall provide the amended affidavit or
92 revocation to all parties to whom they have provided the original affidavit prior to further
93 exercising any rights or responsibilities under the affidavit.

94 SECTION 5: Said chapter 201F is hereby further amended by striking out section 6 and
95 inserting in the place thereof the following section:-

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

99 Caregiver Authorization Affidavit

100 I. What this form enables: A parent, legal guardian or legal custodian of one or more
101 minor children, by this affidavit, may authorize a designated caregiver, who is an adult with
102 whom the minor child or children resides or will reside unless the authorizing party permits the
103 minor child or children to reside at a licensed camp or educational institution, to exercise certain
104 concurrent parental rights and responsibilities relative to each designated minor child's
105 education, health care, services, recreational and enrichment activities. If a conflicting decision is
106 made under these concurrent rights and responsibilities, the decision of the authorizing party or a
107 legal guardian or legal custodian appointed subsequent to the execution of the affidavit shall
108 supersede the decision of the caregiver.

109 The caregiver authorization affidavit shall only authorize those rights and responsibilities
110 that the authorizing party possesses and shall not divest the authorizing party of their rights or
111 responsibilities. The caregiver authorization affidavit shall not affect the rights of any other
112 parent, legal guardian or legal custodian of each designated minor.

113 Under a caregiver authorization affidavit, a caregiver may:

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

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

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

124 (4) make decisions on behalf of the minor regarding recreational and enrichment
125 activities including, but not limited to, enrollment and signing permission slips for daycare,
126 sports, clubs, lessons, camps and any other decision relating to the minor's recreational and
127 enrichment activities; and

128 (5) apply for health insurance and dental insurance coverage for the minor, for services
129 and support for disabilities and for any other public or private services to address the education
130 or health needs of the minor.

131 II. Steps to authorize caregiver rights and responsibilities:

132 1. AUTHORIZING PARTY

133 I, [name of authorizing party], residing at [address of authorizing party] am the
134 parent/legal guardian/legal custodian of the minor child or children listed below. Other parents,

135 legal guardians, and legal custodians of any of the designated children include [name, address,
136 telephone number]. Any such parents, legal guardians, and legal parents will be given legal
137 notice and a copy of this affidavit.

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

142 Name and Date of Birth of Each Minor Child

143 _____

144 _____

145 _____

146 The caregiver may NOT:

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

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

152 There are no court orders in effect that would prohibit me from exercising or conferring
153 the rights and responsibilities that I wish to confer upon the caregiver. There is no pending action
154 concerning the custody, placement, access or visitation with any of the minor children or, if there

155 is, the relevant court has provided written approval for the execution of the authorization
156 agreement and that order is attached. I am not using this affidavit to circumvent any state or
157 federal law, for the purposes of attendance at a particular school, or to re-confer rights to a
158 caregiver from whom those rights have been removed by a court of law and I understand that
159 nothing in this affidavit affects the rights of any other parent, legal guardian or legal custodian of
160 a designated minor.

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

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

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

167 a date or time certain _____; or

168 upon the occurrence of a certain event _____; or

169 the date of the incapacity of the authorizing party to make or carry out day-to-day
170 decisions concerning the minor, as established by written certification of a licensed physician.

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

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

173 upon the occurrence of a certain event _____; or

174 2 years from the date of the incapacity of the authorizing party to make or carry out
175 day-to-day decisions concerning the minor, as established by written certification of a licensed
176 physician. Unless or until I, as authorizing party, notify the caregiver (and alternate
177 caregiver, if any), in writing that I have amended or revoked it, or until such time as the minor
178 child or children reach the age of majority.

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

180 Signature:

181 Printed name:

182 Telephone number:

183 Permanent Address:

184 2. WITNESSES TO AUTHORIZING PARTY SIGNATURE

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

187 Witness No. 1 signature:

188 Witness No. 1 printed name and address:

189 Witness No. 2 signature:

190 Witness No. 2 printed name and address:

191 3. NOTARIZATION OF AUTHORIZING PARTY SIGNATURE

192 On this [date before me, the undersigned notary public, personally appeared [name of
193 authorizing party, and alternate caregiver, if any], proved to me through satisfactory evidence of
194 identification, which was [driver's license, etc.], to be the person(s) signing the preceding
195 document, and swore under the pains and penalties of perjury that the foregoing statements are
196 truthful and accurate to the best of their knowledge and belief.

197 Signature and seal of notary:

198 Printed name of notary:

199 My commission expires:

200 4. CAREGIVER ACKNOWLEDGEMENT

201 I, [name of caregiver], am at least 18 years of age and the named minor child or children
202 currently reside or will reside with me at [address of caregiver] unless the authorizing party
203 permits the minor child or children to reside at a licensed camp or educational institution as
204 stated in this affidavit. I am [relationship to the minor child or children].

205 I understand that I may, without obtaining further consent from a parent, legal custodian
206 or legal guardian of the minor child or children, exercise concurrent rights and responsibilities
207 relative to the education, health care, services, recreation and enrichment of the minor child or
208 children, except those rights and responsibilities prohibited or limited above.

209 I understand that I may not knowingly make a decision which conflicts with the decision
210 of the minor child or children's parent, legal guardian or legal custodian.

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

214 I understand that, if I become unable to carry out the responsibilities conferred by this
215 affidavit, I will do so by immediately notifying the authorizing party, the alternate caregiver and
216 any other parent, legal custodian or legal guardian of the minor child or children in writing.

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 Permanent address:

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

223 I, [name of alternate caregiver], am at least 18 years of age and the child or children
224 currently reside or will reside with me at [address of caregiver] unless the authorizing party
225 permits the minor child or children to reside at a licensed camp or educational institution as
226 stated in this affidavit. I am [relationship to the minor child or children].

227 I understand that I may, in the case of unwillingness, inability or incapacity of the first
228 designated caregiver to carry out the responsibilities conferred herein, and without obtaining
229 further consent from a parent, legal custodian or legal guardian of the minor child or children,
230 exercise concurrent rights and responsibilities relative to the education, health care, services,

231 recreation and enrichment of the minor child or children, except those rights and responsibilities
232 prohibited or limited above.

233 I understand that I may not knowingly make a decision that conflicts with the decision of
234 the minor child or children's parent, legal guardian or legal custodian.

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

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

239 Signature of caregiver:

240 Printed name:

241 Telephone Number:

242 Permanent Address:

243 6. ATTESTATION OF HEALTH CARE PROVIDER AS TO AUTHORIZING
244 PARTY'S UNAVAILABILITY (This section is optional)

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

246 _____.

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

248 Signature of caregiver:

249 Printed name:

250 Telephone Number:

251 7. ATTESTATION OF ALTERNATE CAREGIVER AS TO DESIGNATED
252 CAREGIVER'S UNAVAILABILITY (This section is optional)

253 I, [name of alternate caregiver], attest that the designated caregiver is unwilling or
254 unavailable due to _____.

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

256 Signature of alternate caregiver:

257 Printed name:

258 Telephone Number:

259 Permanent Address:

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

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