

SENATE No. 1010

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:

Patricia D. Jehlen

DISTRICT/ADDRESS:

Second Middlesex

SENATE No. 1010

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 1010) of Patricia D. Jehlen for legislation relative to caregiver authorization affidavits. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1058 OF 2021-2022.]

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. 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

parental rights and responsibilities relative to any designated minor child's education, health care, recreational and enrichment activities as described in section 3(b). 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.

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

Section 3.

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

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

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

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

(3) make educational decisions (including daycare) 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 nor alternate caregiver, and the affidavit shall be notarized. The affidavit also shall be signed by the caregiver, and by the alternate caregiver, if any, who shall attest to being an adult with whom the minor resides or will reside.

The caregiver authorization affidavit shall be valid for up to 2 years from the date that it comes into effect unless a shorter time is specified, 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: Said chapter 201F is hereby further amended by striking out section 6, as appearing in the 2016 Official Edition, and inserting in the place thereof the following section:-

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 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 or will reside, to exercise certain concurrent parental rights and responsibilities relative to a designated minor's education, health care, and recreational and enrichment activities. If a conflicting decision is made under these concurrent rights and responsibilities, the decision of the authorizing party or a legal guardian or legal custodian appointed subsequent to the execution of the affidavit 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.

Under a caregiver authorization affidavit, a caregiver may:

(1) 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;

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

(3) make educational decisions (including daycare) 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; and

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

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

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

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

114 Minor Child's/Children Name(s) Date(s) of Birth

115 ____ ____

116 ____ ____

117 ____ ____

118 The caregiver may NOT:

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

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

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

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

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

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

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

136 a date certain _____; or

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

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

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

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

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

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

155 Signature:

156 Printed name:

157 Telephone number:

158 2. WITNESSES TO AUTHORIZING PARTY SIGNATURE

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

161 Witness No. 1 signature:

162 Witness No. 1 printed name and address:

163 Witness No. 2 signature:

164 Witness No. 2 printed name and address:

165 3. NOTARIZATION OF AUTHORIZING PARTY SIGNATURE

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

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

171 Signature and seal of notary:

172 Printed name of notary:

173 My commission expires:

174 4. CAREGIVER ACKNOWLEDGEMENT

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

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

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

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

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

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

190 Signature of caregiver:

191 Printed name:

192 Telephone Number:

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

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

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

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

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

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

207 Signature of caregiver:

208 Printed name:

209 Telephone Number:

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

211 UNAVAILABILITY<\ul> (This section is optional)

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

213 _____

214 _____

215 _.

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

217 Signature of caregiver:

218 Printed name:

219 Telephone Number:

220 7. ATTESTATION OF ALTERNATE CAREGIVER AS TO DESIGNATED

221 CAREGIVER'S UNAVAILABILITY (This section is optional)

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

223 _____

224 _____.

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

226 Signature of alternate caregiver:

227 Printed name:

228 Telephone Number:

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

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