

By Mr. Lepper of Attleboro, petition of John A. Lepper and others relative to caregiver consent for medical and educational decisions for minors. Health Care Financing.

The Commonwealth of Massachusetts

PETITION OF:

John A. Lepper
Jeffrey Davis Perry
Daniel K. Webster
F. Jay Barrows

Elizabeth A. Poirier
Richard J. Ross
Alice Hanlon Peisch

In the Year Two Thousand and Seven.

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 Chapter 112 of the General Laws, as appearing in the 2002 Offi-
- 2 cial Edition, is hereby amend by adding the following new
- 3 section:—
- 4 Section 12½. MEDICAL TREATMENT AND CONSENT.
- 5 (a) A parent, legal guardian, or legal custodian of a minor may
- 6 authorize an adult person or persons (“caregiver”) to:—
- 7 1) consent to medical, surgical, dental, developmental, mental
- 8 health, or other treatment for the minor under the supervision or
- 9 upon the advice of a physician, nurse, dentist, mental health, or other
- 10 health care professional licensed to practice in this Commonwealth;
- 11 2) exercise parental rights to obtain records and other information
- 12 with regard to health care services and insurance provided to the
- 13 minor; and
- 14 3) make educational decisions on behalf of the minor and in all
- 15 other ways stand in for the parent, legal guardian or legal custodian
- 16 with respect to federal, state and district educational policy. Exam-
- 17 ples of educational decisions include, but are not limited to, the
- 18 following:— accessing the minor’s educational records; representing
- 19 the minor in enrollment, disciplinary, curricular, special education,

20 or other educational matters; signing permission slips for school
21 activities; and any other decision that facilitates the minor's educa-
22 tional experience.

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

27 (b) "Caregiver" is defined as a person who is at least 18 years of
28 age and with whom the child currently resides.

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

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

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

40 (f) Authorization may be conveyed by any written form con-
41 taining the following information:—

42 (i) the name of the parent, legal guardian, or legal custodian;

43 (ii) the name of the caregiver;

44 (iii) the name and date of birth of the minor or minors;

45 (iv) a statement by the parent, legal guardian or legal custodian
46 that there are no court orders presently in effect that would prohibit
47 him from exercising the power that he seeks to confer upon the care-
48 giver; and

49 (v) a description of the categories of authority being conferred.

50 The authorization shall be signed by the parent, legal guardian, or
51 legal custodian in the presence of two witnesses who are at least 18
52 years of age, neither of which may be the caregiver. The authoriza-
53 tion also shall be signed by the caregiver, who shall attest to being at
54 least 18 years of age and that the child currently resides with the
55 caregiver.

56 (g) The medical or educational decision of a caregiver pursuant to
57 authorization under this section shall be superseded by any contra-

58 vening oral or written decision of the parent, legal guardian or legal
59 custodian.

60 (h) A grant of authority under this section may be amended or
61 revoked at any time through a writing signed by the parent that orig-
62 inally granted authority to the caregiver. The writing that amends or
63 revokes the grant of authority must be filed with those persons who
64 received notice of the previous grant of authority.

65 (i) A person who relies on a written instrument that is consistent
66 with the requirements of this section, without actual knowledge of
67 facts contrary to those stated in the authorization form or of a contra-
68 vening decision by the child's parent, legal guardian or legal custo-
69 dian, shall not incur any criminal or civil liability for doing so and
70 has no obligation to make any further inquiry or investigation.
71 Nothing in this section shall relieve any individual from liability for
72 other provisions of the law.

73 (j) The Department of Public Health (DPH) shall be charged with
74 designing and disseminating the authorization form below to all of
75 the appropriate medical care facilities licensed in the Common-
76 wealth. Individual medical care facilities shall be responsible for
77 ensuring that the authorization form is available and accessible to
78 people who would benefit from its use.

79 (k) The Department of Education (DOE) shall be charged with
80 designing and disseminating the authorization form below to all of
81 the appropriate educational facilities licensed in the Commonwealth.
82 Individual educational facilities shall be responsible for ensuring that
83 the authorization form is available and accessible to people who
84 would benefit from its use.

85 (l) The authorization must be either notarized or sworn to under
86 pains and penalties of perjury. The form must also be substantially in
87 the following form, except that the use of alternative language con-
88 sistent with the statute shall not be precluded:—

89 Medical and Educational Consent Authorization Form.

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

91 A parent, legal guardian, or legal custodian of a minor may autho-
92 rize an adult person or persons ("caregiver") to:—

93 consent to medical, surgical, dental, developmental, mental
94 health, or other treatment for the minor under the supervision or
95 upon the advice of a physician, nurse, dentist, mental health, or other
96 health care professional licensed to practice in this Commonwealth;

97 exercise parental rights to obtain records and other information
 98 with regard to health care services and insurance provided to the
 99 minor;; and

100 make educational decisions on behalf of the minor and in all other
 101 ways stand in for the parent, legal guardian or legal custodian with
 102 respect to federal, state and district educational policy. Examples of
 103 educational decisions include, but are not limited to, the
 104 following:— accessing the minor's educational records; representing
 105 the minor in enrollment, disciplinary, curricular, special education,
 106 or other educational matters; signing permission slips for school
 107 activities; and any other decision that facilitates the minor's educa-
 108 tional experience.

109 II. Steps to delegate authority:—

110 1. I, [name], am the parent of the child(ren) listed below and there
 111 are no court orders now in effect that would prohibit me from exer-
 112 cising the power that I wish to confer upon the caregiver.

113 2. (Only necessary if you are the child's legal guardian or legal
 114 custodian): I, [name], am the legal guardian or legal custodian of the
 115 child(ren) by court order (copy attached) and there are no other court
 116 orders in effect that would prohibit me from exercising the power
 117 that I wish to confer upon the caregiver³. I, [name], wish to be the
 118 caregiver of the child(ren) listed below. I am at least 18 years of age
 119 and the minor child(ren) currently live with me.

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

124 Name	Date of Birth
125 _____	_____
126 _____	_____
127 _____	_____

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

131 The caregiver named above may NOT:—

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

135 I give the power to consent freely and knowingly in order to pro-
136 vide for the child(ren) and not as a result of pressure, threats, or pay-
137 ments by any person or agency.

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

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

144 Printed name:

145 Signature:

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

147 Witness No. 1 signature:

148 Witness No. 1 printed name and address:

149 Witness No. 2 signature:

150 Witness No. 2 printed name and address:

151 III. Explanations

152 TO PARENT, LEGAL GUARDIAN, OR LEGAL CUSTO-
153 DIAN:—

154 You may authorize any adult or adults to make medical and edu-
155 cational decisions on behalf of your child(ren). You should convey
156 only those powers that you wish the caregiver to share with you.
157 Authorization does not in any way limit your own right to make
158 decisions on behalf of your child(ren). You may revoke this autho-
159 rization in writing, and you may override, orally or in writing, any
160 individual decision made by a caregiver.

161 TO CAREGIVER:—

162 This authorization form authorizes you to make, on behalf of the
163 child(ren) named above, only those decisions specified by the
164 child(ren)'s parent, legal guardian or legal custodian. You need not
165 obtain the consent of the child(ren)'s parent, legal guardian, or legal
166 custodian before making a decision, but you may not knowingly
167 make a decision that conflicts with the decision of the child(ren)'s
168 parent, legal guardian or legal custodian.

169 TO SCHOOL OFFICIALS:—

170 No person who acts in good faith reliance upon a consent letter to
171 provide educational decision-making authority without actual
172 knowledge of facts contrary to those stated on the affidavit, may be
173 subject to criminal liability or to civil liability to any person, or is

174 subject to professional disciplinary action, for such reliance if the
175 applicable portions of this form are completed.

176 TO HEALTH CARE PROVIDERS AND HEALTH CARE
177 SERVICE PLANS:—

178 No person who acts in good faith reliance upon a consent letter to
179 provide medical, surgical, dental, developmental screening and/or
180 mental health examination or treatment, without actual knowledge of
181 facts contrary to those stated on the affidavit, is subject to criminal
182 liability or to civil liability to any person, or is subject to profes-
183 sional disciplinary action, for such reliance if the applicable portions
184 of this form are completed.

