

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1425 Session of
1999

INTRODUCED BY McNAUGHTON, SAYLOR, MASLAND, FARGO, BENNINGHOFF,
M. COHEN, COSTA, DeLUCA, EGOLF, LAUGHLIN, HARHAI, GEIST,
FREEMAN, FRANKEL, MANDERINO, S. MILLER, NAILOR, NICKOL,
PLATTS, ROEBUCK, SEYFERT, ROHRER, SOLOBAY, ROSS, SAINATO,
STERN, WILLIAMS, STURLA, TRUE, E. Z. TAYLOR, J. TAYLOR,
THOMAS, TIGUE AND RIEGER, MAY 4, 1999

REFERRED TO COMMITTEE ON JUDICIARY, MAY 4, 1999

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, providing for parental
3 medical consent.

4 The General Assembly hereby declares and finds as follows:

5 It is the intent of the General Assembly to create an
6 expeditious manner, similar in form and in definition to a power
7 of attorney, for parents to temporarily assign their rights to
8 consent for medical and mental health treatment of their
9 children to relatives and family friends which will enable
10 parents who are temporarily unable to care for the needs of a
11 minor to ensure that their children's medical and mental health
12 needs are provided for without terminating or limiting in any
13 way the parents' legal rights.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Title 20 of the Pennsylvania Consolidated

1 Statutes is amended by adding a section to read:

2 § 5611. Parental medical consent.

3 (a) General rule.--A parent, legal guardian or legal
4 custodian of a minor may authorize an adult person to consent to
5 any medical, surgical, dental, developmental, mental health
6 examination or treatment to be rendered to the minor under the
7 supervision or upon the advice of a physician, nurse, school
8 nurse, dentist or mental health professional licensed to
9 practice in this Commonwealth and to obtain any and all records
10 with regard to such services, provided there is no prior order
11 of any court in any jurisdiction currently in effect which would
12 prohibit the parent, legal guardian or legal custodian from
13 exercising the power that the parent, legal guardian or legal
14 custodian seeks to convey to another person. The authorization
15 may also include the right to act as the legal representative of
16 the minor for the purposes of receiving informational materials
17 regarding vaccines under the National Vaccine Compensation Act
18 (Public Law 99-660, 42 U.S.C. § 300a-10 et seq.).

19 (b) Form of authorization.--

20 (1) Authorization to consent to any medical or mental
21 health treatment of a minor described in subsection (a) may
22 be conveyed by any written form and shall contain:

23 (i) The name of the appointee to whom authorization
24 is given.

25 (ii) The name and date of birth of each minor with
26 respect to whom authorization is given.

27 (iii) A statement by the person giving the
28 authorization that there are no court orders presently in
29 effect that would prohibit the person giving the
30 authorization from exercising the power that he seeks to

1 convey.

2 (iv) A description of the medical or mental health
3 examination or treatment for which authorization is
4 given.

5 (2) The authorization shall be signed by the parent,
6 legal guardian or legal custodian in the presence of two
7 witnesses who are at least 18 years of age, other than the
8 person receiving the power to consent to medical or mental
9 health treatment. If for any physical reason the person
10 wishing to consent is unable to sign his name, the person
11 wishing to consent may make his mark to which his name shall
12 be subscribed in his presence before or after he makes his
13 mark. The person wishing to consent shall make his mark in
14 the presence of two witnesses who sign their names to the
15 medical consent form in his presence. Any person signing any
16 written conveyance of authority is subject to the penalties
17 for forgery under 18 Pa.C.S. § 4101 (relating to forgery).

18 (3) The form set forth in this paragraph is offered as a
19 sample only and its inclusion in this section shall not be
20 construed to preclude the use of alternative language:

21 MEDICAL CONSENT SUGGESTED FORM

22 (CHECK ALL THAT APPLY)

23 () I (Name) am the parent of the child(ren) listed
24 below and there are no court orders now in effect
25 that would prohibit me from exercising the power
26 that I now seek to convey; OR

27 () I (Name) am the legal guardian or legal
28 custodian of the child(ren) by court order (copy
29 attached, if available) and there are no other
30 court orders in effect that would prohibit me from

1 exercising the power that I now seek to convey.
2 I, _____, do hereby appoint _____,
3 residing at _____ to consent to any
4 and all necessary medical or mental health treatment for the
5 following child(ren):

6 _____, residing at _____, born on _____
7 _____.

8 and on the child(ren)'s behalf do hereby state that this
9 consent shall not be affected by my subsequent disability or
10 incapacity.

11 This consent is specifically limited to health and mental
12 health care decision making. The power(s) conveyed herein may
13 only be exercised by the person that I have appointed.

14 The person named above may consent to the child(ren)'s
15 (cross out all that do not apply): medical, dental, surgical,
16 developmental, and mental health examination or treatment, and
17 may have access to any and all records regarding any such
18 services.

19 I am giving this consent freely and knowingly in order to
20 provide for the child(ren) and not due to pressure, threats
21 or payments by any person or agency. I understand that I can
22 revoke this consent at any time by notifying my child(ren)'s
23 medical and mental health care providers and the person
24 appointed above that I wish to revoke it.

25 IN WITNESS WHEREOF, I, _____, have signed my
26 name to this medical consent form, on this _____ day of
27 _____, in _____, Pennsylvania.

28 _____
29 Printed Name

30 _____

1 Signature

2 _____

3 Witness Signature Witness No. 1 Address

4 _____

5 Witness Signature Witness No. 2 Address

6 (c) Use by health care provider.--A conveyance of authority
7 described in subsection (a) which is consistent with the
8 requirements of subsection (b)(i) shall be honored by any
9 physician, nurse, school nurse, mental health professional,
10 dentist or other health care professional or any hospital or
11 medical or mental health facility. Notwithstanding subsection
12 (e), the existence of a written document conveying any authority
13 described in subsection (a) which is consistent with the
14 requirements of subsection (b)(i) creates a presumption that the
15 authority has been lawfully conveyed.

16 (d) Revocation.--

17 (1) A conveyance of authority described in this section
18 is revocable at will and effective upon the conveying
19 parent's notification to the appointee and the child's
20 medical and mental health providers to which a conveyance of
21 authority pursuant to subsection (a) has been presented.

22 (2) The death of the conveying parent shall revoke the
23 consent. Any person who acts on the consent without actual
24 knowledge of the death of the conveying parent acts in good
25 faith reliance under that consent.

26 (3) Unless otherwise noted on the consent form, the
27 disability or incapacity of a conveying parent who has
28 previously executed a written consent form shall not revoke
29 the consent.

30 (e) Liability.--Any person who acts in good faith reliance

1 on the medical consent form shall not incur civil or criminal
2 liability or be subject to professional disciplinary action for
3 treating a minor without legal consent. Nothing in this section
4 shall relieve an individual from liability for violations of
5 other provisions of law.

6 (f) Family reunification services.--This section is not
7 intended to provide a substitute for family reunification
8 services conducted under 42 Pa.C.S. Ch. 63 (relating to juvenile
9 matters). The execution of a document conveying any authority
10 described in subsection (a) shall not be binding in any future
11 custody or dependency proceedings. Regardless of the execution
12 of such document, any future custody or dependency determination
13 shall be based on the best interests of the child or other
14 applicable legal standard.

15 Section 2. This act shall take effect in 60 days.