

No. 1999-52

AN ACT

SB 405

Providing a mechanism for parents to confer upon other persons the power to consent to medical and mental health care of their children; and regulating procedure.

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

Section 1. Short title.

This act shall be known and may be cited as the Medical Consent Act.

Section 2. Legislative intent.

It is the intent of the General Assembly to provide a mechanism similar to a power of attorney whereby parents may confer the power to consent to medical and mental health treatment of their children upon a relative or family friend in order to enable those who are temporarily unable to care for the needs of their children to ensure that the medical and mental health needs of the children are met without terminating or limiting in any way the legal rights of the parents.

Section 3. Medical and mental health care consent.

(a) General rule.—A parent, legal guardian or legal custodian of a minor may confer upon an adult person who is a relative or family friend the power to consent to medical, surgical, dental, developmental, mental health or other treatment to be rendered to the minor under the supervision of or upon the advice of a physician, nurse, school nurse, dentist, mental health or other health care professional licensed to practice in this Commonwealth and to exercise any existing parental rights to obtain records and information with regard to the health care services and insurance unless the minor is in the custody of a county child and youth agency or there is currently in effect a prior order of a court in any jurisdiction which would prohibit the parent, legal guardian or legal custodian from exercising the power that the parent, legal guardian or legal custodian seeks to confer. When a parent's rights have not been terminated or voluntarily relinquished, nothing in this subsection shall divest a parent of the power to consent to his children's medical or mental health treatment. The authorization may also include the right to act as the minor's legal representative for the purposes of receiving informational materials regarding vaccines under section 2126 of the Public Health Service Act (58 Stat. 682, 42 U.S.C. § 300aa-26). Conferral of powers authorized by this subsection shall not be used to compel the production or release of records or information to which the parent, legal guardian or legal custodian would not themselves be entitled to review, receive or authorize release to others.

(b) Rights of minors.—The provisions of subsection (a) may not be utilized by a parent, legal guardian or legal custodian to confer upon an adult person who is a relative or family friend the power to consent to treatment or to obtain medical or mental health records, or insurance records relating to either or both, if the power to consent to treatment or to obtain medical or mental health records has been assigned by Federal or State law to the minor.

(c) Form of authorization.—

(1) Authorization to consent to medical or mental health treatment of a minor may be conveyed by any written form containing the name of the person upon whom the power is conferred, the name and date of birth of each minor with respect to whom the power is conferred, a statement by the person conferring the power that there are no court orders presently in effect that would prohibit the person from conferring the power and a description of the categories for which power is being conferred, including medical, surgical, dental, developmental, mental health or other treatment or a description of the specific treatment for which power is being conferred. The authorization shall be signed by the parent, legal guardian or legal custodian in the presence of and along with the contemporaneous signatures of two witnesses who are at least 18 years of age. The person upon whom the power to consent to medical or mental health treatment is being conferred may not serve as one of the witnesses. The adult person upon whom the power to consent to medical or mental health treatment is conferred shall also sign the authorization. If for any physical reason the person executing the authorization is unable to sign, the person executing the authorization may make a mark to which that person's name shall be subscribed immediately thereafter.

(2) The authorization may be substantially in the following form, except that the use of alternative language shall not be precluded:

MEDICAL CONSENT AUTHORIZATION

() I (name) am the parent of the child(ren) listed below and there are no court orders now in effect that would prohibit me from conferring the power to consent upon another person.

() I (name) am the legal guardian or legal custodian of the child(ren) by court order (copy attached, if available) and there are no other court orders in effect that would prohibit me from conferring the power to consent upon another person.

I, _____, do hereby confer upon _____, residing at _____, the power to consent to necessary medical or mental health treatment for the following child(ren):

_____, residing at _____, born on _____, and on the child(ren)'s behalf do hereby state that the power to consent which I confer shall not be affected by my subsequent disability or incapacity.

The power which I confer is specifically limited to health care and mental health care decision making, and it may be exercised only by the person named above.

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

I confer the power to consent freely and knowingly in order to provide for the child(ren) and not as a result of pressure, threats or payments by any person or agency. This document shall remain in effect until it is revoked by notifying my child(ren)'s medical, mental health care and insurance providers, in writing, and the person named above that I wish to revoke it.

In witness whereof, I, _____, have signed my name to this medical consent authorization, consisting of two (2) pages on this day of _____, in _____, Pennsylvania.

(Printed Name)

(Signature)

(Witness Signature)

(Witness No.1 printed Name and Address)

(Witness Signature)

(Witness No.2 printed Name and Address)

(Signature of adult person who is being given power to consent)

(d) Use by health care provider.—An authorization described in subsection (a) which is consistent with the requirements of subsection (c)(1) shall be honored by all physicians, nurses, school nurses, mental health professionals, dentists, other health care professionals, hospitals, medical facilities, mental health facilities and insurance providers. Notwithstanding the provisions of subsection (f), the existence of a written document conveying powers as described in subsection (a) which is consistent with the requirements of subsection (c)(1) creates a presumption that the power has been lawfully conferred.

(e) Revocation.—Powers conferred under this section are revocable at will and effective upon notifying all parties of interest in writing. Death of a person who has previously executed a medical consent authorization constitutes revocation of the authorization, except that action taken without actual knowledge of the death in good faith reliance upon the authorization shall be permitted. Unless otherwise indicated on the authorization, disability or incapacity of the person executing the authorization does not constitute revocation of the authorization.

(f) Liability.—A person, contractholder, group health care provider, mental health care provider, health care facility, mental health care facility and insurer who acts in good faith reliance on medical consent authorization shall not incur civil or criminal liability or be subject to professional disciplinary action for treating a minor without legal consent, except that nothing in this section shall relieve an individual from liability for violations of other provisions of law.

(g) Family reunification services.—This section shall not be construed to provide a substitute for family reunification services under 23 Pa.C.S. Ch. 63 (relating to child protective services). The execution of an authorization pursuant to subsection (a) shall not be binding in future custody or dependency proceedings. Regardless of the execution of a medical consent authorization, future custody or dependency determinations shall be based on the prevailing legal standard.

(h) Determination of insurance coverage.—An insurer shall determine whether to add a child to the insurance coverage of a person who has been authorized to consent to treatment of that child under this section. No provision of this section may be construed to compel an insurer to provide such coverage.

Section 4. Effective date.

This act shall take effect in 90 days.

APPROVED—The 24th day of November, A.D. 1999.

THOMAS J. RIDGE