

HOUSE BILL 961

J1

7lr2836
CF SB 935

By: **Delegate Kelly**

Introduced and read first time: February 6, 2017

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Delegation of Health Care Decisions – Temporary Health Care**
3 **Agent for Minors**

4 FOR the purpose of authorizing the parent or legal guardian of a minor to delegate to a
5 temporary health care agent the authority to consent to and make decisions
6 regarding medically necessary health care treatment of the minor; requiring a
7 certain delegation to be made on a certain medical authorization treatment form;
8 prohibiting a parent or legal guardian from delegating to a temporary health care
9 agent the power to make certain decisions regarding life-sustaining treatment of the
10 minor; providing that a health care agent who treats a minor is not subject to
11 criminal prosecution or civil liability and may not be found to have engaged in certain
12 unprofessional conduct as a result of relying in good faith on consent given by a
13 temporary health care agent when treating a minor; providing a suggested medical
14 authorization treatment form; defining certain terms; and generally relating to the
15 delegation of temporary authority to consent to health care treatment on behalf of a
16 minor to a temporary health care agent.

17 BY adding to
18 Article – Health – General
19 Section 20–1801 and 20–1802 to be under the new subtitle “Subtitle 18. Temporary
20 Health Care Agents for Minors”
21 Annotated Code of Maryland
22 (2015 Replacement Volume and 2016 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
24 That the Laws of Maryland read as follows:

25 **Article – Health – General**

26 **SUBTITLE 18. TEMPORARY HEALTH CARE AGENTS FOR MINORS.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(C) A PARENT OR LEGAL GUARDIAN OF A MINOR MAY NOT DELEGATE TO A TEMPORARY HEALTH CARE AGENT THE POWER TO MAKE DECISIONS REGARDING WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING TREATMENT OF THE MINOR.

(D) A HEALTH CARE PROVIDER WHO TREATS A MINOR IS NOT SUBJECT TO CRIMINAL PROSECUTION OR CIVIL LIABILITY AND MAY NOT BE FOUND TO HAVE ENGAGED IN UNPROFESSIONAL CONDUCT BY THE APPROPRIATE LICENSING AUTHORITY AS A RESULT OF RELYING IN GOOD FAITH ON CONSENT GIVEN BY A TEMPORARY HEALTH CARE AGENT WHEN TREATING THE MINOR.

20-1802.

**“MARYLAND STATUTORY FORM
MEDICAL AUTHORIZATION TREATMENT FORM
PLEASE READ CAREFULLY**

**SUGGESTED FORM – MEDICAL AUTHORIZATION TREATMENT FORM
MEDICAL AUTHORIZATION TREATMENT FORM**

A. SELECTION OF PRIMARY TEMPORARY HEALTH CARE AGENT

I, _____, A PARENT OR LEGAL GUARDIAN OF _____
_____(DOB:____), _____(DOB:
_____) AND _____(DOB:____)
(INDIVIDUALLY A “MINOR” AND COLLECTIVELY, THE “MINORS”), HEREBY
AUTHORIZE THE FOLLOWING INDIVIDUAL TO SERVE AS THE TEMPORARY
HEALTH CARE AGENT WITH RESPECT TO THE MINOR(S):

NAME:_____

ADDRESS:_____

TELEPHONE NUMBERS:_____

(HOME AND CELL)

**B. SELECTION OF BACK-UP TEMPORARY HEALTH CARE AGENT
(OPTIONAL; FORM VALID IF LEFT BLANK)**

1. IF MY PRIMARY TEMPORARY HEALTH CARE AGENT CANNOT BE LOCATED OR CONTACTED IN TIME BASED ON THE HEALTH CARE NEEDS OF THE MINOR(S) OR FOR ANY REASON IS UNAVAILABLE, UNABLE, OR UNWILLING TO ACT AS MY TEMPORARY HEALTH CARE AGENT, THEN I SELECT THE FOLLOWING PERSON TO ACT IN THIS CAPACITY:

NAME: _____

ADDRESS: _____

TELEPHONE NUMBERS: _____

(HOME AND CELL)

C. POWERS AND RIGHTS OF TEMPORARY HEALTH CARE AGENT

I AUTHORIZE MY TEMPORARY HEALTH CARE AGENT TO MAKE ALL DECISIONS WITH RESPECT TO, AND GIVE CONSENT TO, ANY AND ALL MEDICALLY NECESSARY IMMEDIATE HEALTH CARE TREATMENT FOR THE MINOR(S). NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL THE TEMPORARY HEALTH CARE AGENT HAVE THE POWER TO MAKE DECISIONS REGARDING WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING TREATMENT FOR THE MINOR.

D. HOW THE TEMPORARY HEALTH CARE AGENT IS TO DECIDE SPECIFIC ISSUES

THIS POWER IS SUBJECT TO THE FOLLOWING CONDITIONS OR LIMITATIONS:
(OPTIONAL; FORM VALID IF LEFT BLANK)

E. ACCESS TO MINOR'S HEALTH INFORMATION – FEDERAL PRIVACY LAW (HIPAA) AUTHORIZATION

1. DURING THE TIME THE TEMPORARY HEALTH CARE AGENT HAS FULL POWER TO ACT UNDER THIS DOCUMENT, THE TEMPORARY HEALTH CARE AGENT MAY REQUEST, RECEIVE, AND REVIEW ANY INFORMATION, ORAL OR WRITTEN, REGARDING A MINOR'S PHYSICAL OR MENTAL HEALTH, INCLUDING MEDICAL AND HOSPITAL RECORDS AND OTHER PROTECTED HEALTH INFORMATION, PERTAINING TO THE MEDICALLY

1 NECESSARY IMMEDIATE HEALTH CARE TREATMENT BEING SOUGHT FOR
2 THE MINOR, AND CONSENT TO USE AND DISCLOSURE OF THIS
3 INFORMATION.

- 4 2. FOR ALL PURPOSES RELATED TO THIS DOCUMENT, THE TEMPORARY
5 HEALTH CARE AGENT IS THE PERSON IN INTEREST UNDER MARYLAND'S
6 CONFIDENTIALITY OF MEDICAL RECORDS ACT AND THE PERSONAL
7 REPRESENTATIVE UNDER THE HEALTH INSURANCE PORTABILITY AND
8 ACCOUNTABILITY ACT (HIPAA). THE TEMPORARY HEALTH CARE
9 AGENT MAY SIGN, AS THE PERSONAL REPRESENTATIVE OF THE
10 MINOR(S), ANY MEDICAL RECORDS RELEASE FORMS OR OTHER
11 HIPAA-RELATED MATERIALS.

12 **F. DURATION**

13 THE APPOINTMENT OF THE TEMPORARY HEALTH CARE AGENT PURSUANT TO
14 THIS MEDICAL AUTHORIZATION TREATMENT FORM SHALL BE EFFECTIVE
15 AT 12:01 A.M. ON _____, _____, (THE "EFFECTIVE DATE")
16 AND SHALL TERMINATE AT 11:59 P.M. ON _____, _____ (THE
17 "TERMINATION DATE") (WHICH TERMINATION DATE CANNOT BE MORE THAN
18 90 DAYS FROM THE EFFECTIVE DATE).

19 **G. SIGNATURE AND WITNESSES**

20 BY SIGNING BELOW AS PARENT/LEGAL GUARDIAN OF THE MINOR(S), I REPRESENT
21 THAT I AM EITHER A PARENT OF THE MINOR(S) WITH THE LEGAL RIGHT TO MAKE
22 HEALTH CARE DECISIONS FOR THE MINOR(S), OR A LEGAL GUARDIAN FOR THE
23 MINOR(S) ACTING PURSUANT TO AN APPLICABLE COURT ORDER IN EFFECT AS OF
24 THE DATE INDICATED BELOW, AND CONTINUING THROUGH THE TERMINATION
25 DATE. FURTHERMORE, I INDICATE THAT I AM MENTALLY COMPETENT TO MAKE
26 THIS MEDICAL AUTHORIZATION TREATMENT FORM AND THAT I UNDERSTAND ITS
27 PURPOSE AND EFFECT. I ALSO UNDERSTAND THAT THIS DOCUMENT REPLACES ANY
28 SIMILAR MEDICAL AUTHORIZATION TREATMENT FORM I MAY HAVE COMPLETED
29 BEFORE THIS DATE.

30 _____
31 (SIGNATURE OF PARENT/LEGAL GUARDIAN)

(DATE)

32 ADDRESS: _____

33 _____

34 TELEPHONE NUMBERS: _____
35 (HOME AND CELL)

1 **THE PARENT/LEGAL GUARDIAN SIGNED OR ACKNOWLEDGED SIGNING THIS**
2 **DOCUMENT IN MY PRESENCE AND, BASED ON PERSONAL OBSERVATION, APPEARS TO**
3 **BE MENTALLY COMPETENT TO MAKE THIS MEDICAL AUTHORIZATION TREATMENT**
4 **FORM.**

5 _____
6 **(SIGNATURE OF WITNESS)**

(DATE)

7 _____
8 **(TELEPHONE NUMBER(S)):**

9 _____
10 **(SIGNATURE OF WITNESS)**

(DATE)

11 _____
12 **(TELEPHONE NUMBER(S)):**

13 **(NOTE: ANYONE SELECTED AS A TEMPORARY HEALTH CARE AGENT ABOVE MAY NOT**
14 **BE A WITNESS. MARYLAND LAW DOES NOT REQUIRE THIS DOCUMENT TO BE**
15 **NOTARIZED.)”**

16 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
17 **October 1, 2017.**