

Affidavit of Caregiver Consent for a Minor's Health Care

This Act enables caregivers to consent to medical care of minors under their care under certain conditions. It provides for an Affidavit of Caregiver Consent for a Minor's Health Care and for revoking or terminating such consent. The Act defines caregivers and the duties of health care facilities and practitioners concerning such consent.

Submitted as:
West Virginia
[Enrolled Committee Substitute for HB 4374](#)
Status: Enacted into law in 2010.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as the "Caregiver Consent Act."
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3 Section 2. [*Definitions.*] As used in this Act:

4 (1) "Caregiver" means any person who is at least [eighteen] years of age and is related by
5 blood, marriage or adoption to the minor, but who is not the legal custodian or guardian of the
6 minor or has resided with the minor continuously during the immediately preceding period of
7 [six] months or more.

8 (2) "Health care and treatment" means:

9 (a) Developmental screening;

10 (b) Mental health screening;

11 (c) Mental health treatment;

12 (d) Ordinary and necessary medical and dental examination and treatment;

13 (e) Preventive care including ordinary immunizations, tuberculin testing and well-
14 child care; and

15 (f) Non-emergency diagnosis and treatment, provided that non-emergency
16 diagnosis and treatment does not include an abortion.

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18 Section 3. [*Caregiver Consent for Minor's Health Care.*]

19 (A) Except for minor children placed under the custody of the [department of health and
20 human resources] pursuant to [insert citation], a caregiver who possesses and presents a
21 notarized affidavit pursuant to section four of this Act may consent on behalf of a minor to health
22 care and treatment.

23 (B) Examination and treatment shall be prescribed by or under the supervision of a
24 physician, advanced practice nurse, dentist or mental health professional licensed to practice in
25 the state.

26 (C) The consent authorized by this Act shall not be applicable for purposes of the
27 Individuals with Disabilities Education Act, 20 U. S. C. §1400 et seq., or Section 504 of the
28 Rehabilitation Act of 1973, 29 U. S. C. §791.

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30 Section 4. [*Duty of Health Care Facility or Practitioner.*] The decision of a caregiver
31 who possesses and presents a notarized Affidavit of Caregiver Consent for a Minor's Health

32 Care pursuant to section five of this Act shall be honored by a health care facility or practitioner
33 unless the health care facility or practitioner has actual knowledge that a parent, legal custodian
34 or guardian of a minor has made a contravening decision to consent to or to refuse medical
35 treatment for the minor.

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37 Section 5. [*Affidavit of Caregiver Consent.*] An Affidavit of Caregiver Consent for a
38 Minor's Health Care shall include the following:

- 39 (1) The caregiver's name and current home address;
- 40 (2) The caregiver's birth date;
- 41 (3) The relationship of the caregiver to the minor;
- 42 (4) The minor's name;
- 43 (5) The minor's birth date;
- 44 (6) The length of time the minor has resided with the caregiver;
- 45 (7) The caregiver's signature under oath affirming the truth of the matter asserted
46 in the Affidavit;
- 47 (8) The signature of the minor's parent, guardian or legal custodian consenting to
48 the caregiver's authority over the minor's health care, provided, that the signature of the minor's
49 parent, guardian or legal custodian is not necessary if the Affidavit includes the following:
 - 50 (a) a statement that the caregiver has attempted, but has been unable to
51 obtain, the signature of the minor's parent, guardian or legal custodian;
 - 52 (b) a statement that the minor's parent, guardian or legal custodian has not
53 refused to give consent for health care and treatment of the minor child; and
 - 54 (c) a description, in detail, of the attempts the caregiver made to obtain the
55 signature of the minor's parent, guardian or legal custodian; and
- 56 (9) A statement, as follows:

57
58 "General Notices:

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60 This declaration does not affect the rights of the minor's parent, guardian
61 or legal custodian regarding the care, custody and control of the minor, other than
62 with respect to health care, and does not give the caregiver legal custody of the
63 minor.

64 This Affidavit is valid for one year unless the minor no longer resides in
65 the caregiver's home. Furthermore, the minor's parent, guardian or legal
66 custodian may at any time rescind this Affidavit of Caregiver Consent for a
67 Minor's Health Care by providing written notification of the rescission to the
68 appropriate health care professional.

69 A person who relies in good faith on this Affidavit of Caregiver Consent
70 for a Minor's Health Care has no obligation to conduct any further inquiry or
71 investigation and shall not be subject to civil or criminal liability or to
72 professional disciplinary action because of that reliance."
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74 Section 6. [*Revocation and Termination of Consent.*]

75 (A) The Affidavit of Caregiver Consent for a Minor's Health Care is superseded by
76 written notification from the minor's parent, guardian or legal custodian to the health care
77 professionals providing services to the minor that the Affidavit has been rescinded.

78 (B) The Affidavit of Caregiver Consent for a Minor's Health Care is valid for [one] year
79 unless the minor no longer resides in the caregiver's home or a parent, guardian or legal
80 custodian revokes his or her approval by written notification to the health care professionals

81 providing services to the minor that the Affidavit has been rescinded. If a parent, guardian or
82 legal custodian revokes approval, the caregiver shall notify any health care provider or health
83 service plans with which the minor has been involved through the caregiver.

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85 Section 7. [*Good Faith Reliance on Affidavit.*]

86 (A) Any person who relies in good faith on the Affidavit of Caregiver Consent for a
87 Minor's Health Care has no obligation to conduct any further inquiry or investigation and is not
88 subject to civil or criminal liability or to professional disciplinary action because of the reliance.

89 (B) The provisions of subsection (A) of this section apply even if medical treatment is
90 provided to a minor in contravention of a decision of a parent, legal custodian or guardian of the
91 minor who signed the Affidavit if the person providing care has no actual knowledge of the
92 decision of the parent, legal custodian or guardian.

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94 Section 8. [*Penalty for False Statement.*] A person who knowingly makes a false
95 statement in an Affidavit under this Act is guilty of a misdemeanor and, upon conviction thereof,
96 shall be fined not more than [\$1,000].

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98 Section 9. [*Rules.*] The [secretary of the department of health and human resources] is
99 authorized to propose rules necessary to implement the provisions of this Act in accordance with
100 [insert citation].

101
102 Section 10. [*Severability.*] [Insert severability clause.]

103
104 Section 11. [*Repealer.*] [Insert repealer clause.]

105
106 Section 12. [*Effective Date.*] [Insert effective date.]