

HB 4374

FILED

2010 MAR 16 PM 2:42

CITIZEN SERVICE CENTER
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4374**

(By Delegates Moore, C. Miller, Staggers, Lawrence, Phillips,
T. Walker, Hatfield, Manypenny, Hamilton, Moye and Perry)



Passed March 8, 2010

In Effect Ninety Days From Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4374

(BY DELEGATES MOORE, C. MILLER, STAGGERS,
LAWRENCE, PHILLIPS, T. WALKER, HATFIELD,
MANYPENNY, HAMILTON, MOYE AND PERRY)

[Passed March 8, 2010; in effect ninety days from passage]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §49-11-1, §49-11-2, §49-11-3, §49-11-4, §49-11-5, §49-11-6, §49-11-7, §49-11-8, §49-11-9 and §49-11-10, all relating to establishing the Caregivers Consent Act; defining terms; setting parameters of caregiver's consent for minor's health care; detailing duties of health care facilities or practitioners; stating requirements for affidavits of caregiver consent; providing for revocation or termination of consent; limiting liability for good faith reliance on affidavit; stating exceptions to applicability; creating a criminal penalty for false statement; and establishing rule-making authority.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §49-11-1, §49-11-2, §49-

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OFFICE OF THE CLERK
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11-3, §49-11-4, §49-11-5, §49-11-6, §49-11-7, §49-11-8, §49-11-9
and §49-11-10, all to read as follows:

ARTICLE 11. CAREGIVERS CONSENT ACT.

§49-11-1. Short title.

1 This article may be cited as the Caregivers Consent Act.

§49-11-2. Definitions.

1 As used in this article:

2 (1) "Caregiver" means any person who is at least
3 eighteen years of age and:

4 (A) Is related by blood, marriage or adoption to the
5 minor, but who is not the legal custodian or guardian of the
6 minor; or

7 (B) Has resided with the minor continuously during the
8 immediately preceding period of six months or more.

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

10 (A) Developmental screening;

11 (B) Mental health screening;

12 (C) Mental health treatment;

13 (D) Ordinary and necessary medical and dental examination
14 and treatment;

15 (E) Preventive care including ordinary immunizations,
16 tuberculin testing and well-child care; and

17 (F) Non-emergency diagnosis and treatment: *Provided*,
18 That non-emergency diagnosis and treatment does not
19 include an abortion.

§49-11-3. Caregiver consent for minor’s health care.

1 (a) Except for minor children placed under the custody of
2 the Department of Health and Human Resources pursuant to
3 proceedings established by this chapter, a caregiver who
4 possesses and presents a notarized affidavit pursuant to
5 section five of this article may consent on behalf of a minor
6 to health care and treatment.

7 (b) Examination and treatment shall be prescribed by or
8 under the supervision of a physician, advanced practice
9 nurse, dentist or mental health professional licensed to
10 practice in the state.

§49-11-4. Duty of health care facility or practitioner.

1 The decision of a caregiver who possesses and presents
2 a notarized affidavit of caregiver consent for a minor’s health
3 care pursuant to section five of this article shall be honored
4 by a health care facility or practitioner unless the health care
5 facility or practitioner has actual knowledge that a parent,
6 legal custodian or guardian of a minor has made a
7 contravening decision to consent to or to refuse medical
8 treatment for the minor.

§49-11-5. Affidavit of caregiver consent.

1 An affidavit of caregiver consent for a minor’s health
2 care shall include the following:

3 (1) The caregiver’s name and current home address;

4 (2) The caregiver's birth date;

5 (3) The relationship of the caregiver to the minor;

6 (4) The minor's name;

7 (5) The minor's birth date;

8 (6) The length of time the minor has resided with the
9 caregiver;

10 (7) The caregiver's signature under oath affirming the
11 truth of the matter asserted in the affidavit;

12 (8) The signature of the minor's parent, guardian or legal
13 custodian consenting to the caregiver's authority over the
14 minor's health care: *Provided*, That the signature of the
15 minor's parent, guardian or legal custodian is not necessary
16 if the affidavit includes the following: (A) a statement that
17 the caregiver has attempted, but has been unable to obtain,
18 the signature of the minor's parent, guardian or legal
19 custodian; (B) a statement that the minor's parent, guardian
20 or legal custodian has not refused to give consent for health
21 care and treatment of the minor child; and (C) a description,
22 in detail, of the attempts the caregiver made to obtain the
23 signature of the minor's parent, guardian or legal custodian;
24 and

25 (9) A statement, as follows:

26 "General Notices:

27 This declaration does not affect the rights of the minor's
28 parent, guardian or legal custodian regarding the care,
29 custody and control of the minor, other than with respect to
30 health care, and does not give the caregiver legal custody of
31 the minor.

32 This affidavit is valid for one year unless the minor no
33 longer resides in the caregiver's home. Furthermore, the
34 minor's parent, guardian or legal custodian may at any time
35 rescind this affidavit of caregiver consent for a minor's health
36 care by providing written notification of the rescission to the
37 appropriate health care professional.

38 A person who relies in good faith on this affidavit of
39 caregiver consent for a minor's health care has no obligation
40 to conduct any further inquiry or investigation and shall not
41 be subject to civil or criminal liability or to professional
42 disciplinary action because of that reliance."

§49-11-6. Revocation and termination of consent.

1 (a) The affidavit of caregiver consent for a minor's health
2 care is superseded by written notification from the minor's
3 parent, guardian or legal custodian to the health care
4 professionals providing services to the minor that the
5 affidavit has been rescinded.

6 (b) The affidavit of caregiver consent for a minor's health
7 care is valid for one year unless the minor no longer resides
8 in the caregiver's home or a parent, guardian or legal
9 custodian revokes his or her approval by written notification
10 to the health care professionals providing services to the
11 minor that the affidavit has been rescinded. If a parent,
12 guardian or legal custodian revokes approval, the caregiver
13 shall notify any health care provider or health service plans
14 with which the minor has been involved through the
15 caregiver.

§49-11-7. Good faith reliance on affidavit.

1 (a) Any person who relies in good faith on the affidavit
2 of caregiver consent for a minor's health care:

3 (1) Has no obligation to conduct any further inquiry or
4 investigation; and

5 (2) Is not subject to civil or criminal liability or to
6 professional disciplinary action because of the reliance.

7 (b) The provisions of subsection (a) of this section apply
8 even if medical treatment is provided to a minor in
9 contravention of a decision of a parent, legal custodian or
10 guardian of the minor who signed the affidavit if the person
11 providing care has no actual knowledge of the decision of the
12 parent, legal custodian or guardian.

§49-11-8. Exceptions to applicability.

1 The consent authorized by this section shall not be
2 applicable for purposes of the Individuals with Disabilities
3 Education Act, 20 U. S. C. §1400 *et seq.*, or Section 504 of
4 the Rehabilitation Act of 1973, 29 U. S. C. §791.

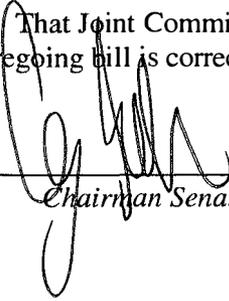
§49-11-9. Penalty for false statement.

1 A person who knowingly makes a false statement in an
2 affidavit under this article is guilty of a misdemeanor and,
3 upon conviction thereof, shall be fined not more than \$1,000.

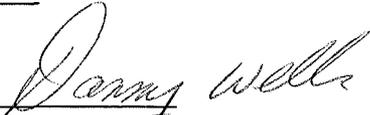
§49-11-10. Rule-making authority.

1 The Secretary of the Department of Health and Human
2 Resources is authorized to propose rules necessary to
3 implement the provisions of this article for legislative
4 approval in accordance with the provisions of article three,
5 chapter twenty-nine-a of this code.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



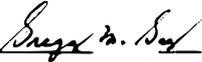
Chairman House Committee

Originating in the House.

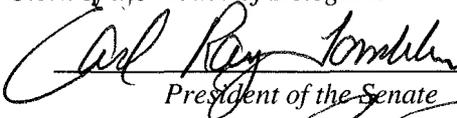
In effect ninety days from passage.



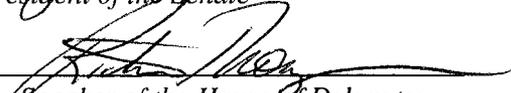
Clerk of the Senate



Clerk of the House of Delegates

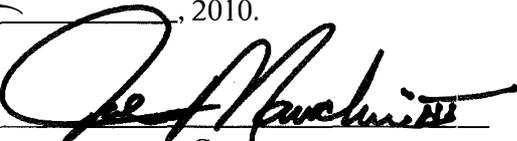


President of the Senate



Speaker of the House of Delegates

The within is appended this the 16th
day of March, 2010.



Governor

PRESENTED TO THE
GOVERNOR

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