

# SENATE BILL 935

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CF HB 961

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By: **Senator Smith**

Introduced and read first time: February 3, 2017

Assigned to: Finance

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## 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.**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 20-1801.

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
3 INDICATED.

4 (2) "MEDICAL AUTHORIZATION TREATMENT FORM" MEANS A FORM  
5 THAT DELEGATES MEDICAL TREATMENT DECISION-MAKING AUTHORITY ON BEHALF  
6 OF A MINOR TO ANOTHER INDIVIDUAL.

7 (3) "TEMPORARY HEALTH CARE AGENT" MEANS AN INDIVIDUAL WHO  
8 IS AUTHORIZED BY THE PARENT OR LEGAL GUARDIAN OF A MINOR TO CONSENT TO  
9 MEDICALLY NECESSARY IMMEDIATE HEALTH CARE TREATMENT ON BEHALF OF THE  
10 MINOR.

11 (B) (1) SUBJECT TO SUBSECTION (C) OF THIS SECTION, THE PARENT OR  
12 LEGAL GUARDIAN OF A MINOR MAY DELEGATE TO A TEMPORARY HEALTH CARE  
13 AGENT THE AUTHORITY TO CONSENT TO AND MAKE DECISIONS REGARDING  
14 MEDICALLY NECESSARY HEALTH CARE TREATMENT OF THE MINOR.

15 (2) THE DELEGATION SHALL BE MADE ON A MEDICAL  
16 AUTHORIZATION TREATMENT FORM THAT:

17 (I) INCLUDES:

18 1. THE NAME OF THE MINOR;

19 2. THE NAME AND SIGNATURE OF A PARENT OR LEGAL  
20 GUARDIAN OF THE MINOR AND THE DATE OF THE SIGNATURE;

21 3. THE NAME OF ONE OR MORE TEMPORARY HEALTH  
22 CARE AGENTS; AND

23 4. ANY LIMITATIONS ON THE MEDICAL TREATMENT  
24 DECISION-MAKING AUTHORITY OF THE TEMPORARY HEALTH CARE AGENT,  
25 INCLUDING THE DURATION OF THE TIME OF THE AUTHORITY;

26 (II) EXPIRES NOT LATER THAN 90 DAYS AFTER ITS EFFECTIVE  
27 DATE; AND

28 (III) IS REVOCABLE AT ANY TIME.

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

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

9 20-1802.

10 "MARYLAND STATUTORY FORM  
11 MEDICAL AUTHORIZATION TREATMENT FORM  
12 PLEASE READ CAREFULLY

13 SUGGESTED FORM – MEDICAL AUTHORIZATION TREATMENT FORM  
14 MEDICAL AUTHORIZATION TREATMENT FORM

15 A. SELECTION OF PRIMARY TEMPORARY HEALTH CARE AGENT

16 I, \_\_\_\_\_, A PARENT OR LEGAL GUARDIAN OF \_\_\_\_\_  
17 \_\_\_\_\_ (DOB: \_\_\_\_\_), \_\_\_\_\_ (DOB:  
18 \_\_\_\_\_) AND \_\_\_\_\_ (DOB: \_\_\_\_\_)  
19 (INDIVIDUALLY A "MINOR" AND COLLECTIVELY, THE "MINORS"), HEREBY  
20 AUTHORIZE THE FOLLOWING INDIVIDUAL TO SERVE AS THE TEMPORARY  
21 HEALTH CARE AGENT WITH RESPECT TO THE MINOR(S):

22 NAME: \_\_\_\_\_

23 ADDRESS: \_\_\_\_\_

24 \_\_\_\_\_  
25 TELEPHONE NUMBERS: \_\_\_\_\_

26 (HOME AND CELL)

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

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

1 NAME: \_\_\_\_\_

2 ADDRESS: \_\_\_\_\_

3 \_\_\_\_\_

4 TELEPHONE NUMBERS: \_\_\_\_\_

5 (HOME AND CELL)

6 C. POWERS AND RIGHTS OF TEMPORARY HEALTH CARE AGENT

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

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

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

18 \_\_\_\_\_

19 \_\_\_\_\_

20 \_\_\_\_\_

21 \_\_\_\_\_

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

24 1. DURING THE TIME THE TEMPORARY HEALTH CARE AGENT HAS FULL  
25 POWER TO ACT UNDER THIS DOCUMENT, THE TEMPORARY HEALTH  
26 CARE AGENT MAY REQUEST, RECEIVE, AND REVIEW ANY INFORMATION,  
27 ORAL OR WRITTEN, REGARDING A MINOR'S PHYSICAL OR MENTAL  
28 HEALTH, INCLUDING MEDICAL AND HOSPITAL RECORDS AND OTHER  
29 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.