

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1518

H.P. 1043

House of Representatives, January 6, 2016

**An Act To Ensure Children in the Care of Caretaker Relatives Can
Access Fundamental Services**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative PICCHIOTTI of Fairfield.
Cosponsored by Senator CYRWAY of Kennebec and
Representatives: BEAVERS of South Berwick, ESPLING of New Gloucester, FOLEY of
Wells, HANLEY of Pittston, NADEAU of Winslow, POULIOT of Augusta, STETKIS of
Canaan, Senator: EDGECOMB of Aroostook.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 19-A MRSA c. 60** is enacted to read:

3 **CHAPTER 60**

4 **CAREGIVER RELATIVE AUTHORIZATION FOR MEDICAL CARE**

5 **§1821. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 **1. Caretaker relative.** "Caretaker relative" or "relative" means a person related by
9 blood, marriage or adoption to the minor whose care is undertaken by the relative.
10 "Caretaker relative" or "relative" includes a grandparent, aunt, uncle, brother, sister and
11 cousin of the minor. "Caretaker relative" or "relative" does not include a parent, foster
12 parent, stepparent or legal guardian of the minor.

13 **2. Caretaker relative medical authorization affidavit.** "Caretaker relative medical
14 authorization affidavit" or "affidavit" means an affidavit completed in compliance with
15 section 1822.

16 **3. Health care provider.** "Health care provider" means a person who provides
17 medical care.

18 **4. Medical care.** "Medical care" means care by a health care provider, for which
19 parental consent is normally required, for the prevention, diagnosis or treatment of a
20 mental, physical or dental injury or disease.

21 **5. Parent.** "Parent" means a biological parent, adoptive parent or other legal
22 guardian of a minor whose parental rights have not been terminated.

23 **§1822. Caretaker relative medical authorization affidavit**

24 **1. Caretaker relative medical authorization affidavit.** A caretaker relative of a
25 minor who has voluntarily been given custody of the minor by a parent of the minor has
26 the same authority as a parent of the minor to consent to medical care for the minor if:

27 A. In leaving the minor with the caretaker relative, the parent expressed no definite
28 time period in which the parent would return for the minor;

29 B. The minor is residing with the caretaker relative on a full-time basis;

30 C. The caretaker relative is unable to contact the parent after the parent voluntarily
31 leaves the minor with the caretaker relative or the parent whom the caretaker relative
32 is able to contact is unable or unwilling to regain custody of the minor after a written
33 request by the relative to do so;

34 D. Adequate provision, such as the appointment of a guardian ad litem or execution
35 of a power of attorney, has not otherwise been made for the medical care of the
36 minor; and

1 E. A caretaker relative medical authorization affidavit is completed in compliance
2 with this section.

3 **2. Affidavit must be notarized.** An affidavit is effective only if it is signed by the
4 caretaker relative, under oath, before a notary public. A clear photocopy of an affidavit
5 completed in compliance with this section is sufficient in any instance in which an
6 original is required by a health care provider.

7 **3. Conflicting decisions.** Unless the rights of a parent have been judicially
8 terminated, a decision by a parent of the minor communicated to the health care provider
9 regarding the health care of the minor supersedes a conflicting decision by a caretaker
10 relative made pursuant to an affidavit completed in compliance with this section.
11 However, a decision by a parent does not supersede a decision by a caretaker relative
12 made pursuant to an affidavit completed in compliance with this section if the decision by
13 the parent endangers the life of the minor. A health care provider may require reasonable
14 proof of authenticity of a decision by a parent intended to supersede a decision by a
15 caretaker relative.

16 **4. No civil or criminal liability.** A health care provider who acts in good faith
17 reliance on a caretaker relative medical authorization affidavit completed in compliance
18 with this section and who has no actual knowledge of facts contrary to those indicated in
19 the affidavit is not subject to civil liability or criminal prosecution or to a professional
20 disciplinary procedure for an action that would have been proper if the facts had been as
21 the health care provider believed them to be.

22 This subsection applies even if medical care is provided to a minor against the wishes of a
23 parent of that minor if the health care provider rendering the service does not have actual
24 knowledge of the parent's wishes.

25 **5. No obligation to make further inquiry or investigation.** A health care provider
26 who relies on an affidavit completed in compliance with this section has no obligation to
27 make further inquiry or investigation.

28 **6. Duration of affidavit.** An affidavit completed in compliance with this section is
29 effective until the earlier of:

30 A. One year from completion of the affidavit;

31 B. The date the affidavit is revoked by the caretaker relative; and

32 C. The date upon which the minor no longer resides with the caretaker relative.

33 **7. Residence changed.** If the minor ceases to live with the caretaker relative or the
34 caretaker relative revokes the affidavit, the caretaker relative shall provide written notice
35 of that fact to all health care providers to whom the caretaker relative has given the
36 affidavit or to whom the caretaker relative has caused the affidavit to be given.

37 **8. Limitations.** This section does not relieve a person from a violation of other law
38 and does not affect the rights of a minor's parent except as provided in this section.

39 **9. Form.** A caretaker relative medical authorization affidavit is invalid unless it is
40 written in substantially the following form and contains the warning described:

1 CARETAKER RELATIVE MEDICAL AUTHORIZATION AFFIDAVIT

2 1. INSTRUCTIONS: The completion and signing of the affidavit before a notary
3 public are sufficient to authorize medical care for the named minor. Please print clearly.

4 The minor named below lives in my home, and I am 18 years of age or older.

5 A. Name of minor:.....

6 B. Minor's date of birth:.....

7 C. My name (caretaker relative):.....

8 D. My home address:.....

9 E. My relationship to the minor (the caretaker relative must be an individual related
10 by blood, marriage or adoption by another individual to the minor whose care is
11 undertaken by the caretaker relative, but who is not a parent, foster parent, stepparent or
12 legal guardian of the minor):.....

13 2. I hereby certify that this affidavit is not being used for an unlawful purpose.

14 3. My date of birth:.....

15 4. Check the following if true (all must be checked for this affidavit to apply):

16 A parent of the minor identified in this affidavit has left the minor with me and
17 has expressed no definite time period when the parent will return for the minor.

18 The minor is now residing with me on a full-time basis.

19 I am unable to locate or contact the parent of the minor at this time to notify that
20 parent of my intended authorization or the parent refuses to regain custody of the minor
21 even though I have asked in writing that the parent do so.

22 Adequate provision, such as appointment of a legal custodian or guardian or
23 execution of a notarized power of attorney, has not been made for medical care for the
24 minor.

25 5. WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS
26 ABOVE ARE INCORRECT OR YOU WILL BE COMMITTING A CRIME
27 PUNISHABLE BY A FINE OR IMPRISONMENT OR BOTH.

28 6. I declare under penalty of perjury that the statements in this affidavit are true and
29 correct.

30 Signed this day of, 20.....

31

32 (Signature of caretaker relative)

33

34 (Signature, county, state and seal of notary public)

35 7. NOTICES:

1 A. Completion of this affidavit does not affect the rights of the minor's parent or
2 legal guardian regarding the care, custody and control of the minor and does not mean
3 that the caretaker relative has legal custody of the minor;

4 B. A health care provider who relies on this affidavit has no obligation to make any
5 further inquiry or investigation;

6 C. This affidavit is effective until the earlier of:

7 (1) One year from completion of the affidavit;

8 (2) The date the affidavit is revoked by the caretaker relative; and

9 (3) The date upon which the minor no longer resides with the caretaker relative;

10 D. If the minor stops living with you, you shall notify anyone to whom you have
11 given this affidavit and to whom you have caused the affidavit to be given; and

12 E. A health care provider who acts in good faith reliance upon a caretaker relative
13 medical authorization affidavit to provide medical care, without actual knowledge of facts
14 contrary to those indicated in the affidavit, is not subject to criminal prosecution or civil
15 liability or subject to any professional disciplinary action for reliance on the affidavit if
16 the form is completed in compliance with the Maine Revised Statutes, Title 19-A, section
17 1822.

18 **Sec. 2. 20-A MRSA c. 211, sub-c. 6** is enacted to read:

19 **SUBCHAPTER 6**

20 **CARETAKER RELATIVE EDUCATION AUTHORIZATION**

21 **§5171. Definitions**

22 As used in this subchapter, unless the context otherwise indicates, the following
23 terms have the following meanings.

24 **1. Caretaker relative.** "Caretaker relative" or "relative" means a person related by
25 blood, marriage or adoption to the minor whose care is undertaken by the relative.
26 "Caretaker relative" or "relative" includes a grandparent, aunt, uncle, brother, sister and
27 cousin of the minor. "Caretaker relative" or "relative" does not include a parent, foster
28 parent, stepparent or legal guardian of the minor.

29 **2. Caretaker relative education authorization affidavit.** "Caretaker relative
30 education authorization affidavit" or "affidavit" means an affidavit completed in
31 compliance with section 5172.

32 **3. Health care provider.** "Health care provider" means a person who provides
33 medical care.

34 **4. Medical care.** "Medical care" means care by a health care provider, for which
35 parental consent is normally required, for the prevention, diagnosis or treatment of a
36 mental, physical or dental injury or disease.

1 **5. Parent.** "Parent" means a biological parent, adoptive parent or other legal
2 guardian of the minor whose parental rights have not been terminated.

3 **§5172. Caretaker relative education authorization affidavit**

4 **1. Caretaker relative education authorization affidavit.** A caretaker relative of a
5 minor who has voluntarily been given custody of the minor by a parent of the minor has
6 the same authority as a parent of the minor to enroll the minor in school, discuss with an
7 educator the educational progress of the minor, consent to an educational service and
8 consent to medical care related to an educational service for the minor if:

9 A. In leaving the minor with the caretaker relative, the parent expressed no definite
10 time period in which the parent would return for the minor;

11 B. The minor is residing with the caretaker relative on a full-time basis;

12 C. The caretaker relative is unable to contact the parent after the parent voluntarily
13 leaves the minor with the caretaker relative or a parent whom the caretaker relative is
14 able to contact is unable or unwilling to regain custody of the minor after a written
15 request by the relative to do so;

16 D. Adequate provision, such as the appointment of a guardian ad litem or execution
17 of a power of attorney, has not otherwise been made for the educational needs of the
18 minor; and

19 E. A caretaker relative education authorization affidavit is completed in compliance
20 with this section.

21 A caretaker relative of a minor who has voluntarily been given custody of the minor by a
22 parent of the minor may enroll the minor in school unless the minor's residency with the
23 caretaker relative is primarily for the purpose of attending a particular school or
24 participating in athletics at a particular school. The school may require additional
25 reasonable evidence that the caretaker relative lives at the address provided in the
26 affidavit.

27 **2. Affidavit must be notarized.** An affidavit is effective only if it is signed by the
28 caretaker relative, under oath, before a notary public. A clear photocopy of an affidavit
29 completed in compliance with this section is sufficient in any instance in which an
30 original is required by a school official or health care provider.

31 **3. Conflicting decisions.** Unless the rights of a parent have been judicially
32 terminated, a decision by a parent of the minor communicated to a school official or
33 health care provider or both regarding the minor supersedes a conflicting decision by a
34 caretaker relative made pursuant to an affidavit completed in compliance with this
35 section. However, a decision by a parent does not supersede a decision by a caretaker
36 relative made pursuant to an affidavit completed in compliance with this section if the
37 decision by the parent endangers the life of the minor. A school official or health care
38 provider may require reasonable proof of authenticity of a decision by a parent intended
39 to supersede a decision by a caretaker relative.

40 **4. No criminal or civil liability.** A person who acts in good faith reliance on a
41 caretaker relative education authorization affidavit completed in compliance with this

1 section and who has no actual knowledge of facts contrary to those indicated in the
2 affidavit is not subject to civil liability or criminal prosecution or to a professional
3 disciplinary procedure for an action that would have been proper if the facts had been as
4 the person believed them to be.

5 This subsection applies even if an educational service or medical care related to an
6 educational service or both are provided to a minor against the wishes of a parent of that
7 minor if the person rendering the service does not have actual knowledge of the parent's
8 wishes.

9 **5. No obligation to make further inquiry or investigation.** A person who relies on
10 an affidavit completed in compliance with this section has no obligation to make further
11 inquiry or investigation.

12 **6. Duration of affidavit.** An affidavit completed in compliance with this section is
13 effective until the earlier of:

- 14 A. The end of the first school year after delivery of the affidavit to a school;
- 15 B. The date the affidavit is revoked by the caretaker relative; and
- 16 C. The date upon which the minor no longer resides with the caretaker relative.

17 **7. Residence changed.** If the minor ceases to live with the caretaker relative or the
18 caretaker relative revokes the affidavit, the caretaker relative shall provide written notice
19 of that fact to all persons to whom the caretaker relative has given the affidavit or to
20 whom the caretaker relative has caused the affidavit to be given.

21 **8. Limitations.** This section does not relieve a person from a violation of other law
22 and does not affect the rights of a minor's parent except as provided in this section.

23 **9. Form.** A caretaker relative education authorization affidavit is invalid unless it is
24 written in substantially the following form and contains the warning described:

25 CARETAKER RELATIVE EDUCATION AUTHORIZATION AFFIDAVIT

26 1. INSTRUCTIONS: The completion and signing of the affidavit before a notary
27 public are sufficient to authorize educational enrollment and services and school-related
28 medical care for the named minor. Please print clearly.

29 The minor named below lives in my home, and I am 18 years of age or older.

- 30 A. Name of minor:.....
- 31 B. Minor's date of birth:.....
- 32 C. My name (caretaker relative):.....
- 33 D. My home address:.....

34 E. My relationship to the minor (the caretaker relative must be an individual related
35 by blood, marriage or adoption by another individual to the minor whose care is
36 undertaken by the caretaker relative, but who is not a parent, foster parent, stepparent or
37 legal guardian of the minor):.....

1 2. I hereby certify that this affidavit is not being used for the purpose of
2 circumventing school residency laws, to take advantage of a particular academic program
3 or athletic activity or for an otherwise unlawful purpose.

4 3. My date of birth:.....

5 4. Check the following if true (all must be checked for this affidavit to apply):

6 A parent of the minor identified in this affidavit has left the minor with me and
7 has expressed no definite time period when the parent will return for the minor.

8 The minor is now residing with me on a full-time basis.

9 I am unable to locate or contact the parent of the minor at this time to notify that
10 parent of my intended authorization or the parent refuses to regain custody of the minor
11 even though I have asked in writing that the parent do so.

12 Adequate provision, such as appointment of a legal custodian or guardian or
13 execution of a notarized power of attorney, has not been made for enrollment of the
14 minor in school, other educational services or medical care related to an educational
15 service.

16 5. WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS
17 ABOVE ARE INCORRECT OR YOU WILL BE COMMITTING A CRIME
18 PUNISHABLE BY A FINE OR IMPRISONMENT OR BOTH.

19 6. I declare under penalty of perjury that the statements in this affidavit are true and
20 correct.

21 Signed this day of....., 20.....

22

23 (Signature of caretaker relative)

24

25 (Signature, county, state and seal of notary public)

26 7. NOTICES:

27 A. Completion of this affidavit does not affect the rights of the minor's parent or
28 legal guardian regarding the care, custody and control of the minor and does not mean
29 that the caretaker relative has legal custody of the minor;

30 B. A person who relies on this affidavit has no obligation to make any further inquiry
31 or investigation;

32 C. This affidavit is effective until the earlier of:

33 (1) The end of the first school year after delivery of the affidavit to a school;

34 (2) The date the affidavit is revoked by the caretaker relative; or

35 (3) The date upon which the minor no longer resides with the caretaker relative;

36 D. If the minor stops living with you, you shall notify anyone to whom you have
37 given this affidavit and to whom you have caused the affidavit to be given; and

1 E. A school official or health care provider who acts in good faith reliance upon a
2 caretaker relative education authorization affidavit to provide educational services or
3 medical care related to an educational service, without actual knowledge of facts contrary
4 to those indicated in the affidavit, is not subject to criminal prosecution or civil liability or
5 subject to any professional disciplinary action for reliance on the affidavit if the form is
6 completed in compliance with the Maine Revised Statutes, Title 20-A, section 5172.

7

SUMMARY

8 This bill, which is based on Montana law, allows the caretaker relative, including a
9 grandparent, aunt, uncle, brother, sister and cousin, of a minor voluntarily left by the
10 minor's parent with the caretaker relative to exercise limited authority to make medical
11 and educational decisions for the minor in place of the parent. It provides for
12 authorization of the caretaker relative by a notarized affidavit and sets out the content and
13 form of the affidavit. It provides immunity from criminal and civil liability and
14 professional discipline for persons, including health care providers and school officials,
15 relying on the affidavit in the absence of the person's knowing facts contrary to the
16 affidavit or knowing that the parent has made a decision that supersedes the caretaker
17 relative's decision.