

## STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND SIXTEEN

H.P. 1043 - L.D. 1518

**An Act To Ensure Children in the Care of Caretaker Relatives and Other  
Surrogates Can Access Health Care**

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

**Sec. 1. 22 MRSA §1501, sub-§§1-A and 4** are enacted to read:

**1-A. Health care.** "Health care" means any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

**4. Surrogate.** "Surrogate" means:

A. An adult who is not a parent or legal guardian but who is related to a minor by blood, marriage or adoption and with whom the minor resides and from whom the minor receives the ongoing care and support expected of a parent. "Surrogate" does not include a person to whom a parent has delegated parental authority to consent to the minor's medical treatment through a power of attorney or other written instrument; or

B. If an adult relative described in paragraph A does not exist, an adult to whom a parent or legal guardian has not delegated parental authority through a power of attorney or other written instrument with whom the minor resides and from whom the minor receives the ongoing care and support expected of a parent.

**Sec. 2. 22 MRSA §1503-A** is enacted to read:

**§1503-A. Authority for consent by a surrogate**

**1. Consent by a surrogate; notice of need for health care.** A surrogate may give consent for health care for a minor except that a surrogate may not withhold or withdraw life-sustaining treatment or deny surgery, procedures or other interventions that are life-saving and medically necessary. The existence of a surrogate does not affect the ability of a minor to give consent as otherwise provided by law. Before the surrogate may give consent, the surrogate must make a reasonable good faith attempt to inform the minor's parents or legal guardian of the minor's need for health care and the parents' right to make those decisions. If parental notification is not required by other provisions of law, the

surrogate is not required to inform or attempt to inform the minor's parents or legal guardian.

**2. Notice of health care received.** Unless parental notification is not required by other provisions of law, a surrogate giving consent pursuant to subsection 1 shall make a reasonable good faith attempt to inform the minor's parents or legal guardian of the health care that the minor received. A health care practitioner or health care provider who provides health care pursuant to this section shall inform the minor's surrogate of this obligation. The sending of correspondence by regular mail, e-mail, texting, posting to a personal website or other written means of communication to the last known address or contacting by telephone using the last known telephone number of the minor's parents or legal guardian, whichever means the surrogate believes to be the most effective way to ensure actual notification, is deemed a reasonable good faith attempt to provide notice for purposes of this subsection.

**3. Penalties.** The following penalties apply to violations of this section.

A. A surrogate who makes decisions for a minor knowing that the decisions are prohibited by subsection 1 commits a Class E crime.

B. A person who knowingly acts as a surrogate for a minor without meeting the definition of "surrogate" in section 1501, subsection 4 commits a Class E crime.

C. A surrogate who fails to attempt to give notice as required in subsection 1 or 2 commits a Class E crime.

**Sec. 3. 22 MRSA §1504**, as enacted by PL 1995, c. 694, Pt. C, §8 and affected by Pt. E, §2, is repealed and the following enacted in its place:

**§1504. Good faith reliance on consent**

**1. Reliance on minor's consent.** A health care practitioner or health care provider who takes reasonable steps to ascertain that a minor is authorized to consent to health care as authorized in section 1503 and who subsequently renders health care in reliance on that consent is not liable for failing to have secured consent of the minor's parents or legal guardian prior to providing health care to the minor.

**2. Reliance on surrogate's consent.** Recovery is not allowed against any health care practitioner or health care provider upon the grounds that the health care was rendered without informed consent if consent is given by the minor's surrogate pursuant to section 1503-A and the health care practitioner or provider acts with good faith reliance on that consent.

**Sec. 4. 22 MRSA §1507**, as enacted by PL 1999, c. 90, §1, is amended to read:

**§1507. Consent for sexual assault forensic examination**

Notwithstanding the limitations set forth in section 1503 or the existence of a surrogate described in section 1503-A, a minor may consent to health services associated with a sexual assault forensic examination to collect evidence after an alleged sexual assault.