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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



# ENROLLED

*Com. Sub. For*  
HOUSE BILL No. *2616*

(By Delegates *Callaghan, Huntwork,*  
*P. White and Douglas*)



Passed *April 8,* 1993

In Effect *July 1, 1993* ~~Passage~~

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR

**H. B. 2616**

(By DELEGATES GALLAGHER, HUNTWORK,  
P. WHITE AND DOUGLAS)

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[Passed April 8, 1993; in effect July 1, 1993.]

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AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-b, relating to do not resuscitate act; legislative findings and purpose; definitions; applicability; presumed consent to cardiopulmonary resuscitation; health care facilities not required to expand to provide cardiopulmonary resuscitation; issuance of a do not resuscitate order; order to be written by a physician; compliance with a do not resuscitate order; revocation; protection of persons carrying out in good faith do not resuscitate order; notification by physician refusing to comply with do not resuscitate order; insurance; interinstitutional transfers; preservation of existing rights; do not resuscitate order form; do not resuscitation identification; public education; not suicide or murder; full faith and credit; and severability.

*Be it enacted by the Legislature of West Virginia:*

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-b, to read as follows:

**ARTICLE 30B. DO NOT RESUSCITATE ACT.**

**§16-30B-1. Short title.**

1 The article may be cited as the “Do Not Resuscitate  
2 Act.”

**§16-30B-2. Legislative findings and purposes.**

1 (a) *Findings.* — The Legislature hereby finds that:

2 (1) Although cardiopulmonary resuscitation has saved  
3 the lives of persons experiencing sudden, unexpected  
4 death, present medical data indicates that cardiopulmo-  
5 nary resuscitation rarely leads to prolonged survival in  
6 persons with chronic illnesses in whom death is  
7 expected;

8 (2) In many circumstances, the performance of  
9 cardiopulmonary resuscitation on persons may cause  
10 infliction of unwanted and unnecessary pain and  
11 suffering;

12 (3) All persons have a right to make health care  
13 decisions including the right to refuse cardiopulmonary  
14 resuscitation;

15 (4) Persons with incapacity have the right to have  
16 health care decisions made for them by surrogate  
17 decision-makers;

18 (5) Existing emergency medical services protocols  
19 require their personnel to proceed with cardiopulmo-  
20 nary resuscitation when they find a person in a cardiac  
21 or respiratory arrest even if such person has completed  
22 a living will or medical power of attorney, indicating  
23 that he/she does not wish to receive cardiopulmonary  
24 resuscitation; and

25 (6) The administration of cardiopulmonary resuscita-  
26 tion by emergency medical services personnel to persons  
27 who have indicated by a living will or medical power  
28 of attorney or other means that they do not wish to  
29 receive such resuscitation offends the dignity of the  
30 person and conflicts with standards of accepted medical  
31 practice.

32 (b) *Purpose.* — It is the purpose of this article to

33 ensure that the right of a person to self-determination  
34 relating to cardiopulmonary resuscitation is protected.  
35 It is the intent of the Legislature by enacting this article  
36 to give direction to emergency medical services person-  
37 nel and other health care providers in regard to the  
38 performance of cardiopulmonary resuscitation.

**§16-3B-3. Definitions.**

1 As used in this article, unless the context clearly  
2 requires otherwise, the following definitions apply:

3 (a) "Attending physician" means the physician se-  
4 lected by or assigned to the person who has primary  
5 responsibility for treatment or care of the person and  
6 who is a licensed physician. If more than one physician  
7 shares that responsibility, any of those physicians may  
8 act as the attending physician under the provisions of  
9 this article.

10 (b) "Cardiopulmonary resuscitation" means those  
11 measures used to restore or support cardiac or respira-  
12 tory function in the event of a cardiac or respiratory  
13 arrest.

14 (c) "Do not resuscitate identification" means a  
15 standardized identification necklace, bracelet or card as  
16 set forth in this article that signifies that a do not  
17 resuscitate order has been issued for the possessor.

18 (d) "Do not resuscitate order" means an order issued  
19 by a licensed physician that cardiopulmonary resuscita-  
20 tion should not be administered to a particular person.

21 (e) "Emergency medical services personnel" means  
22 paid or volunteer firefighters, law-enforcement officers,  
23 emergency medical technicians, paramedics, or other  
24 emergency services personnel, providers or entities,  
25 acting within the usual course of their professions.

26 (f) "Health care decision" means a decision to give,  
27 withhold, or withdraw informed consent to any type of  
28 health care including, but not limited to, medical and  
29 surgical treatments including life-prolonging interven-  
30 tions, nursing care, hospitalization, treatment in a  
31 nursing home or other extended care facility, home

32 health care, and the gift or donation of a body organ or  
33 tissue.

34 (g) "Health care facility" means a facility established  
35 to administer and provide health care services and  
36 which is commonly known by a wide variety of titles,  
37 including, but not limited to, hospitals, medical centers,  
38 ambulatory health care facilities, physicians' offices and  
39 clinics, extended care facilities operated in connection  
40 with hospitals, nursing homes, and extended care  
41 facilities operated in connection with rehabilitation  
42 centers.

43 (h) "Health care provider" means any physician,  
44 dentist, nurse, paramedic, psychologist or other person  
45 providing medical, dental, nursing, psychological or  
46 other health care services of any kind.

47 (i) "Home" means any place of residence other than  
48 a health care facility and includes residential board and  
49 care homes and personal care homes.

50 (j) "Incapacity" or words of like import, means the  
51 inability because of physical or mental impairment, to  
52 appreciate the nature and implications of a health care  
53 decision, to make an informed choice regarding the  
54 alternatives presented and to communicate that choice  
55 in an unambiguous manner.

56 (k) "Representative" means a person designated by a  
57 principal to make health care decisions in accordance  
58 with article thirty-a of this chapter.

59 (l) "Surrogate decision-maker" means a person or  
60 persons over eighteen years of age with mental capacity  
61 who is reasonably available, is willing to make health  
62 care decisions on behalf of an incapacitated person, and  
63 is identified by the attending physician in accordance  
64 with applicable provisions of this code as the person or  
65 persons who is to make decisions pursuant to this article:  
66 *Provided*, That a representative named in the incapac-  
67 itated person's medical power of attorney, if such  
68 document has been completed, shall have priority over  
69 a surrogate decision-maker.

70 (m) "Trauma" means blunt or penetrating bodily

71 injuries from impact which occur in situations includ-  
72 ing, but not limited to, motor vehicle collisions, mass  
73 casualty incidents and industrial accidents.

**§16-30B-4. Applicability.**

1 The provisions of this article apply to all persons  
2 regardless of whether or not they have completed a  
3 living will or medical power of attorney. For the  
4 purposes of direction to emergency medical services  
5 personnel, a do not resuscitate order does not apply to  
6 treatment rendered at the site where trauma has  
7 occurred to persons who experience a cardiac or  
8 respiratory arrest as the result of severe trauma.

**§16-30B-5. Presumed consent to cardiopulmonary resus-  
citation; health care facilities not required  
to expand to provide cardiopulmonary  
resuscitation.**

1 (a) Every person shall be presumed to consent to the  
2 administration of cardiopulmonary resuscitation in the  
3 event of cardiac or respiratory arrest, unless one or  
4 more of the following conditions, of which the health  
5 care provider has actual knowledge, apply:

6 (1) A do not resuscitate order in accordance with the  
7 provisions of this article has been issued for that person;

8 (2) A completed living will for that person is in effect,  
9 pursuant to the provisions of article thirty of this  
10 chapter, and the person is in a terminal condition or a  
11 persistent vegetative state; or

12 (3) A completed medical power of attorney for that  
13 person is in effect, pursuant to the provisions of article  
14 thirty-a of this chapter, in which the person indicated  
15 that he or she does not wish to receive cardiopulmonary  
16 resuscitation, or his or her representative has deter-  
17 mined that the person would not wish to receive  
18 cardiopulmonary resuscitation.

19 (b) Nothing in this article shall require a nursing  
20 home, personal care home, or extended care facility  
21 operated in connection with hospitals to institute or  
22 maintain the ability to provide cardiopulmonary resus-

23 citation or to expand its existing equipment, facilities or  
24 personnel to provide cardiopulmonary resuscitation:  
25 *Provided*, That if a health care facility does not provide  
26 cardiopulmonary resuscitation, this policy shall be  
27 communicated in writing to the person, representative  
28 or surrogate decision-maker prior to admission.

**§16-30B-6. Issuance of a do not resuscitate order; order  
to be written by a physician.**

1 (a) It shall be lawful for the attending physician to  
2 issue a do not resuscitate order for persons who are  
3 present in or residing at home or in a health care  
4 facility, provided that the person, representative, or  
5 surrogate has consented to the order. A do not resusci-  
6 tate order shall be issued in writing in the form as  
7 described in this section for a person not present or  
8 residing in a health care facility. For persons present  
9 in health care facilities, a do not resuscitate order shall  
10 be issued in accordance with the policies and procedures  
11 of the health care facility or in accordance with the  
12 provisions of this article.

13 (b) Persons may request their physicians to issue do  
14 not resuscitate orders for them.

15 (c) The representative or surrogate decision-maker  
16 may consent to a do not resuscitate order for a person  
17 with incapacity. A do not resuscitate order written by  
18 a physician for a person with incapacity with the  
19 consent of the representative or surrogate decision-  
20 maker is valid and shall be respected by health care  
21 providers.

22 (d) A parent may consent to a do not resuscitate order  
23 for his or her minor child, provided that a second  
24 physician who has examined the child concurs with the  
25 opinion of the attending physician that the provision of  
26 cardiopulmonary resuscitation would be contrary to  
27 accepted medical standards. If the minor is between the  
28 ages of sixteen and eighteen, and in the opinion of the  
29 attending physician, the minor is of sufficient maturity  
30 to understand the nature and effect of a do not  
31 resuscitate order, then no such order shall be valid  
32 without the consent of such minor. In the event of a

33 conflict between the wishes of the parents or guardians  
34 and the wishes of the mature minor, the wishes of the  
35 mature minor shall prevail. For purposes of this section,  
36 no minor less than sixteen years of age shall be  
37 considered mature. Nothing in this article shall be  
38 interpreted to conflict with the provisions of the Child  
39 Abuse Prevention and Treatment Act and implementing  
40 regulations at 45 CFR 1340. In the event conflict is  
41 unavoidable, federal law and regulation shall govern.

42 (e) If a surrogate decision-maker is not reasonably  
43 available or capable of making a decision regarding a  
44 do not resuscitate order, an attending physician may  
45 issue a do not resuscitate order for a person with  
46 incapacity in a health care facility: *Provided*, That a  
47 second physician who has personally examined the  
48 person concurs in the opinion of the attending physician  
49 that the provision of cardiopulmonary resuscitation  
50 would be contrary to accepted medical standards.

51 (f) For persons not present or residing in a health care  
52 facility, the do not resuscitate order shall be in the  
53 following form on a card suitable for carrying on the  
54 person.

55 Do Not Resuscitate Order

56 "As treating physician of \_\_\_\_\_ and a  
57 licensed physician, I order that this person SHALL  
58 NOT BE RESUSCITATED in the event of cardiac or  
59 respiratory arrest. This order has been discussed with  
60 \_\_\_\_\_ or his/her representative  
61 \_\_\_\_\_ or his/her surrogate decision-maker  
62 \_\_\_\_\_ who has given consent as evidenced  
63 by his/her signature below.

64 Physician Name \_\_\_\_\_

65 Physician Signature \_\_\_\_\_

66 Address \_\_\_\_\_

67 Person Signature \_\_\_\_\_

68 Address \_\_\_\_\_

69 Surrogate Decision-maker Signature \_\_\_\_\_



70 Address \_\_\_\_\_

**§16-30B-7. Compliance with a do not resuscitate order.**

1 (a) Health care providers shall comply with the do not  
2 resuscitate order when presented with:

3 (1) A do not resuscitate order completed by a physi-  
4 cian on a form as specified in section six of this article;

5 (2) Do not resuscitate identification as set forth in  
6 section ~~fourteen~~<sup>fourteen</sup> of this article; or

7 (3) A do not resuscitate order for a person present or  
8 residing in a health care facility issued in accordance  
9 with the health care facility's policies and procedures.

10 (b) Pursuant to this article, health care providers shall  
11 respect do not resuscitate orders for persons in health  
12 care facilities, ambulances, homes and communities  
13 within this state.

**§16-30B-8. Revocation of do not resuscitate order.**

1 (a) At any time a person in a health care facility may  
2 revoke his or her previous request for or consent to a  
3 do not resuscitate order by making either a written, oral  
4 or other act of communication to a physician or other  
5 professional staff of the health care facility.

6 (b) At any time a person residing at home may revoke  
7 his/her do not resuscitate order by destroying such order  
8 and removing do not resuscitate identification on his or  
9 her person. The person is responsible for notifying his  
10 or her physician of the revocation.

11 (c) At any time a representative or surrogate decision-  
12 maker may revoke his or her consent to a do not  
13 resuscitate order for a person with incapacity in a health  
14 care facility by notifying a physician or other profes-  
15 sional staff of the health care facility of the revocation  
16 of consent in writing, or by orally notifying the  
17 attending physician in the presence of a witness  
18 eighteen years of age or older.

19 (d) At any time a representative or surrogate decision-  
20 maker may revoke his or her consent for a person with  
21 incapacity residing at home by destroying such order

22 and removing do not resuscitate identification from the  
23 person. The representative or surrogate decision-maker  
24 is responsible for notifying the person's physician of the  
25 revocation.

26 (e) The attending physician who is informed of or  
27 provided with a revocation of consent pursuant to this  
28 section shall immediately cancel the do not resuscitate  
29 order if the person is in a health care facility and notify  
30 the professional staff of the health care facility respon-  
31 sible for the person's care of the revocation and  
32 cancellation. Any professional staff of the health care  
33 facility who is informed of or provided with a revocation  
34 of consent pursuant to this section shall immediately  
35 notify the attending physician of such revocation.

36 (f) Only a licensed physician may cancel the issuance  
37 of a do not resuscitate order.

**§16-30B-9. Protection of persons carrying out in good  
faith do not resuscitate order; notification  
of representative or surrogate decision-  
maker by physician refusing to comply  
with do not resuscitate order.**

1 (a) No health care provider, health care facility, or  
2 individual employed by, acting as the agent of, or under  
3 contract with any of the foregoing shall be subject to  
4 criminal prosecution or civil liability for carrying out in  
5 good faith a do not resuscitate order authorized by this  
6 article on behalf of a person as instructed by the person,  
7 representative or surrogate decision-maker or for those  
8 actions taken in compliance with the standards and  
9 procedures set forth in this article.

10 (b) No health care provider, health care facility,  
11 individual employed by, acting as agent of, or under  
12 contract with any of the foregoing or other individual  
13 who witnesses a cardiac or respiratory arrest shall be  
14 subject to criminal prosecution or civil liability for  
15 providing cardiopulmonary resuscitation to a person for  
16 whom a do not resuscitate order has been issued,  
17 provided that such physician or individual:

18 (1) Reasonably and in good faith was unaware of the

19 issuance of a do not resuscitate order; or

20 (2) Reasonably and in good faith believed that consent  
21 to the do not resuscitate order had been revoked or  
22 canceled.

23 (c) Any physician who refused to issue a do not  
24 resuscitate order at a person's request or to comply with  
25 a do not resuscitate order entered pursuant to this  
26 article shall take reasonable steps to advise promptly the  
27 person, representative, or surrogate decision-maker of  
28 the person that such physician is unwilling to effectuate  
29 the order. The attending physician shall thereafter at  
30 the election of the person, representative or surrogate  
31 decision-maker permit the person, representative or  
32 surrogate decision-maker to obtain another physician.

**§16-30B-10. Insurance.**

1 (a) No policy of life insurance shall be legally  
2 impaired, modified, or invalidated in any manner by the  
3 issuance of a do not resuscitate order notwithstanding  
4 any term of the policy to the contrary.

5 (b) A person may not prohibit or require the issuance  
6 of a do not resuscitate order for an individual as a  
7 condition of such individual's being insured or receiving  
8 health care services.

**§16-30B-11. Interinstitutional transfers.**

1 If a person with a do not resuscitate order is trans-  
2 ferred from one health care facility to another health  
3 care facility, the existence of a do not resuscitate order  
4 shall be communicated to the receiving facility prior to  
5 the transfer, and the written do not resuscitate order  
6 shall accompany the person to the health care facility  
7 receiving the person and shall remain effective until a  
8 physician at the receiving facility issues admission  
9 orders.

**§16-30B-12. Preservation of existing rights.**

1 (a) Nothing in this article shall impair or supersede  
2 any legal right or legal responsibility which any person  
3 may have to effect the withholding of cardiopulmonary  
4 resuscitation in any lawful manner. In such respect, the

5 provisions of this article are cumulative.

6 (b) Nothing in this article shall be construed to  
7 preclude a court of competent jurisdiction from approv-  
8 ing the issuance of a do not resuscitate order under  
9 circumstances other than those under which such an  
10 order may be issued pursuant to the provisions of this  
11 article.

**§16-30B-13. Do not resuscitate order form; do not resus-  
citate identification; public education.**

1 (a) The secretary of the department of health and  
2 human resources, no later than one year after the  
3 passage of this article, shall implement the statewide  
4 distribution of do not resuscitate forms as described in  
5 section six of this article.

6 (b) Do not resuscitate identification as set forth in this  
7 article shall consist of either a medical condition  
8 bracelet or necklace with the inscription of the patient's  
9 name, date of birth in numerical form, and "WV do not  
10 resuscitate" on it. No other identification or wording  
11 shall be deemed to comply with the provisions of this  
12 article. Such identification shall be issued only upon  
13 presentation of a properly executed do not resuscitate  
14 order form as set forth in section six of this article or  
15 a do not resuscitate order properly executed in accord-  
16 dance with a health care facility's written policy and  
17 procedure.

18 (c) The secretary of the department of health and  
19 human resources, no later than one year after the  
20 passage of this article, shall be responsible for establish-  
21 ing a system for the distribution of the do not resuscitate  
22 identification bracelets and necklaces.

23 (d) The secretary of the department of health and  
24 human resources, no later than one year after the  
25 passage of this article, shall develop and implement a  
26 statewide educational effort to inform the public of their  
27 right to accept or refuse cardiopulmonary resuscitation  
28 and to request their physician to write a do not  
29 resuscitation order for them.

**§16-30B-14. Not suicide or murder.**

1 The withholding of cardiopulmonary resuscitation  
2 from a person in accordance with the provisions of this  
3 article does not, for any purpose, constitute suicide or  
4 murder. The withholding of cardiopulmonary resuscita-  
5 tion from a person in accordance with the provisions of  
6 this article, however, shall not relieve any individual of  
7 responsibility for any criminal acts that may have  
8 caused the person's condition. Nothing in this article  
9 shall be construed to legalize, condone, authorize or  
10 approve mercy killing or assisted suicide.

**§16-30B-15. Full faith and credit.**

1 It is the intention of the Legislature to recognize that  
2 existence of do not resuscitate identification correctly  
3 expresses the will of any person who bears it and that  
4 foreign courts recognize this expression and give full  
5 faith and credit to do not resuscitate identification.

**§16-30B-16. Severability.**

1 The provisions of this article are severable and if any  
2 provision, section or part thereof shall be held invalid,  
3 unconstitutional or inapplicable to any person or  
4 circumstance, such invalidity, unconstitutionality or  
5 inapplicability shall not affect or impair any other  
6 remaining provisions contained herein.

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

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*Ernest C. Moore*  
.....  
Chairman House Committee

Originating in the House.

Takes effect July 1, 1993.

*Harrell E. Adams*  
.....  
Clerk of the Senate

*Donald L. Hoop*  
.....  
Clerk of the House of Delegates

*Will Swartz*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker of the House of Delegates

The within is approved ..... this the 22<sup>nd</sup>  
day of April, 1993.

*Yasun Capen*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/20/93

Time 10:31 am