WEST VIRGINIA CODE: §16-30-7

§16-30-7. Determination of incapacity.

(a) For the purposes of this article, a person may not be presumed to be incapacitated merely by reason of advanced age or disability. With respect to a person who has a diagnosis of mental illness or intellectual disability, such a diagnosis is not a presumption that the person is incapacitated. A determination that a person is incapacitated shall be made by the attending physician, a physician, a qualified psychologist, a physician's assistant, or an advanced practice registered nurse who has personally examined the person.

(b) The determination of incapacity shall be recorded contemporaneously in the person's medical record by the attending physician, a physician, a physician's assistant, an advanced practice registered nurse or a qualified psychologist. The recording shall state the basis for the determination of incapacity, including the cause, nature, and expected duration of the person's incapacity, if these are known.

(c) If the person is conscious, the attending physician, psychologist, physician's assistant, or advanced practice registered nurse shall inform the person that he or she has been determined to be incapacitated and that a medical power of attorney representative or surrogate decision-maker may be making decisions regarding life-prolonging intervention or mental health treatment for the person.

WV Legislature