# WEST VIRGINIA CODE CHAPTER 16 ARTICLE 30C

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## §16-30C-1. Short title.

The article may be cited as the "Do Not Resuscitate Act."

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## §16-30C-2. Legislative findings and purposes.

(a) Findings. -- The Legislature hereby finds that:

(1) Although cardiopulmonary resuscitation has saved the lives of persons experiencing sudden, unexpected death, present medical data indicates that cardiopulmonary resuscitation rarely leads to prolonged survival in persons with chronic illnesses in whom death is expected;

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

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

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

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

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

(b) Purpose. -- It is the purpose of this article to ensure that the right of a person to self-determination relating to cardiopulmonary resuscitation is protected. It is the intent of the Legislature by enacting this article to give direction to emergency medical services personnel and other health care providers in regard to the performance of cardiopulmonary resuscitation.

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**§16-30C-3. Definitions.**

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

(a) "Attending physician" means the physician selected by or assigned to the person who has primary responsibility for treatment or care of the person and who is a licensed physician. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under the provisions of this article.

(b) "Cardiopulmonary resuscitation" means those measures used to restore or support cardiac or respiratory function in the event of a cardiac or respiratory arrest.

(c) "Do-not-resuscitate identification" means a standardized identification necklace, bracelet, card or physician orders for scope of treatment form as set forth in this article that signifies that a do-not-resuscitate order has been issued for the possessor.

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

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

(f) "Health care decision" means a decision to give, withhold or withdraw informed consent to any type of health care, including, but not limited to, medical and surgical treatments, including life-prolonging interventions, nursing care, hospitalization, treatment in a nursing home or other extended care facility, home health care and the gift or donation of a body organ or tissue.

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

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

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

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

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unambiguous manner.

(k) "Physician orders for scope of treatment (POST) form" means a standardized form containing orders by a qualified physician that details a person's life-sustaining wishes as provided by section twenty-five, article thirty of this chapter.

(l) "Qualified physician" means a physician licensed to practice medicine who has personally examined the person.

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

(n) "Surrogate decision maker" or "surrogate" means an individual eighteen years of age or older who is reasonably available, is willing to make health care decisions on behalf of an incapacitated person, possesses the capacity to make health care decisions and is identified or selected by the attending physician or advanced nurse practitioner in accordance with applicable provisions of article thirty of this chapter as the person or persons who is to make decisions pursuant to this article: Provided, That a representative named in the incapacitated person's medical power of attorney, if such document has been completed, shall have priority over a surrogate decision maker.

(o) "Trauma" means blunt or penetrating bodily injuries from impact which occur in situations, including, but not limited to, motor vehicle collisions, mass casualty incidents and industrial accidents.

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## §16-30C-4. Applicability.

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

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

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

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

(2) A completed living will or combined medical power of attorney and living will for that person is in effect, pursuant to the provisions of §16-30-1 *et seq*. of this code, and the person is in a terminal condition; or

(3) A completed medical power of attorney for that person is in effect, pursuant to §16-30-1 *et seq*. of this code, in which the person indicated that he or she does not wish to receive cardiopulmonary resuscitation, or his or her representative has determined that the person would not wish to receive cardiopulmonary resuscitation.

(4) A completed portable orders for scope of treatment form in which a qualified physician has ordered do-not-resuscitate.

Nothing in this article shall require a nursing home, personal care home, hospice, or extended care facility operated in connection with hospitals to institute or maintain the ability to provide cardiopulmonary resuscitation or to expand its existing equipment, facilities, or personnel to provide cardiopulmonary resuscitation: *Provided*, That if a health care facility does not provide cardiopulmonary resuscitation, this policy shall be communicated in writing to the person, representative, or surrogate decision maker prior to admission.

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**§16-30C-6. Issuance of a do-not-resuscitate order; order to be written by a physician, a physician's assistant, or an advanced practice registered nurse.**

(a) An attending physician, a physician's assistant, or an advanced practice registered nurse may issue a do-not-resuscitate order for persons who are present in or residing at home or in a health care facility if the person, representative, or surrogate has consented to the order. A do-not-resuscitate order shall be issued in writing in the form as described in this section for a person not present or residing in a health care facility. For persons present in health care facilities, a do-not-resuscitate order shall be issued in accordance with the policies and procedures of the health care facility or in accordance with the provisions of this article.

(b) Persons may request their physicians, physician's assistants, or advanced practice registered nurses to issue do-not-resuscitate orders for them.

(c) The representative or surrogate decisionmaker may consent to a do-not-resuscitate order for a person with incapacity. A do-not-resuscitate order written by a physician, a physician's assistant, or an advanced practice registered nurse for a person with incapacity with the consent of the representative or surrogate decisionmaker is valid and shall be respected by health care providers.

(d) A parent may consent to a do-not-resuscitate order for his or her minor child, provided that a second physician, physician's assistant, or advanced practice registered nurse who has examined the child concurs with the opinion of the attending physician, physician's assistant, or advanced practice registered nurse that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards. If the minor is between the ages of 16 and 18 and, in the opinion of the attending physician, physician's assistant, or advanced practice registered nurse the minor is of sufficient maturity to understand the nature and effect of a do-not-resuscitate order, then no such order shall be valid without the consent of such minor. In the event of a conflict between the wishes of the parents or guardians and the wishes of the mature minor, the wishes of the mature minor shall prevail. For purposes of this section, no minor less than 16 years of age shall be considered mature. Nothing in this article shall be interpreted to conflict with the provisions of the Child Abuse Prevention and Treatment Act and implementing regulations at 45 CFR 1340. In the event conflict is unavoidable, federal law and regulation shall govern.

(e) If a surrogate decisionmaker is not reasonably available or capable of making a decision regarding a do-not-resuscitate order, an attending physician, physician's assistant, or advance practice registered nurse may issue a do-not-resuscitate order for a person with incapacity in a health care facility: *Provided,* That a second physician who has personally examined the person concurs in the opinion of the attending physician, physician's assistant, or advanced practice registered nurse that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(f) For persons not present or residing in a health care facility, the do-not-resuscitate order shall be noted on a physician, physician's assistant, or advanced practice registered nurse

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orders for scope of treatment form or in the following form on a card suitable for carrying on the person:

Do-Not-Resuscitate Order

"As treating physician, physician's assistant, or advanced practice registered nurse of _____ and a licensed physician, physician's assistant, or advanced practice registered nurse, I order that this person SHALL NOT BE RESUSCITATED in the event of cardiac or respiratory arrest. This order has been discussed with _____ or his/her representative _____ or his/her surrogate decisionmaker _____ who has given consent as evidenced by his/her signature below.

Provider Name

_____

Provider Signature _____

Address _____

Person Signature _____

Address _____

Surrogate Decision Maker Signature _____

Address _____".

(g) For persons residing in a health care facility, the do-not-resuscitate order shall be reflected in at least one of the following forms:

(1) Forms required by the policies and procedures of the health care facility;

(2) The do-not-resuscitate card as set forth in subsection (f) of this section; or

(3) The physician, physician's assistant, or advanced practice registered nurse orders for scope of treatment form.

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## §16-30C-7. Compliance with a do-not-resuscitate order.

(a) Health care providers shall comply with the do-not-resuscitate order when presented with one of the following:

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

(2) Do-not-resuscitate identification as set forth in section thirteen of this article;

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

(4) A physician orders for scope of treatment form in which a qualified physician has documented a do-not-resuscitate order.

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

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## §16-30C-8. Revocation of do not resuscitate order.

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

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

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

(d) At any time a representative or surrogate decision-maker may revoke his or her consent for a person with incapacity residing at home by destroying such order and removing do not resuscitate identification from the person. The representative or surrogate decision-maker is responsible for notifying the person's physician of the revocation.

(e) The attending physician who is informed of or provided with a revocation of consent pursuant to this section shall immediately cancel the do not resuscitate order if the person is in a health care facility and notify the professional staff of the health care facility responsible for the person's care of the revocation and cancellation. Any professional staff of the health care facility who is informed of or provided with a revocation of consent pursuant to this section shall immediately notify the attending physician of such revocation.

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

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**§16-30C-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.**

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

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

(1) Reasonably and in good faith was unaware of the issuance of a do not resuscitate order; or

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

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

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## §16-30C-10. Insurance.

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

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

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## §16-30C-11. Interinstitutional transfers.

If a person with a do-not-resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of a do-not-resuscitate order to the receiving facility prior to the transfer. The written do-not-resuscitate order, the do-not-resuscitate card as described in section six of this article or the physician orders for scope of treatment form shall accompany the person to the health care facility receiving the person and shall remain effective until a physician at the receiving facility issues admission orders. The do-not-resuscitate card or the physician orders for scope of treatment form shall be kept as the first page in the person's transfer records.

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## §16-30C-12. Preservation of existing rights.

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

(b) Nothing in this article shall be construed to preclude a court of competent jurisdiction from approving the issuance of a do not resuscitate order under circumstances other than those under which such an order may be issued pursuant to the provisions of this article.

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## §16-30C-13. Do-not-resuscitate order form; do-not-resuscitate identification; public education.

(a) The Secretary of the Department of Health shall implement the statewide distribution of do-not-resuscitate forms as described in section six of this article.

(b) Do-not-resuscitate identification as set forth in this article may consist of either a medical condition bracelet or necklace with the inscription of the patient's name, date of birth in numerical form and "WV do-not-resuscitate" on it. Such identification shall be issued only upon presentation of a properly executed do-not-resuscitate order form as set forth in section six of this article, a physician orders for scope of treatment form in which a qualified physician has documented a do-not-resuscitate order, or a do-not-resuscitate order properly executed in accordance with a health care facility's written policy and procedure.

(c) The secretary shall be responsible for establishing a system for the distribution of the do-not-resuscitate identification bracelets and necklaces.

(d) The secretary shall develop and implement a statewide educational effort to inform the public of their right to accept or refuse cardiopulmonary resuscitation and to request their physician to write a do-not-resuscitate order for them.

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## §16-30C-14. Not suicide or murder.

The withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of this article does not, for any purpose, constitute suicide or murder. The withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of this article, however, shall not relieve any individual of responsibility for any criminal acts that may have caused the person's condition. Nothing in this article shall be construed to legalize, condone, authorize or approve mercy killing or assisted suicide.

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## §16-30C-15. Full faith and credit.

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

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## §16-30C-16. Severability.

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

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