

4143

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

HOUSE BILL No. 4143

(By Mr. Del. Otto + Divers)



Passed March 12, 1988

In Effect Ninety Days From Passage

ENROLLED
H. B. 4143

(By DELEGATES OTTE and GIVENS)

[Passed March 12, 1988; in effect ninety days from passage.]

AN ACT to amend article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to substituted consent for nursing home and personal care home health care services; patient's representatives; rules and regulations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES.

§16-5C-5a. Substituted consent for nursing home and personal care home health care services.

1 (a) For purposes of this section, "physical or mental
2 incapacity" or like words shall mean the inability,
3 because of physical or mental impairment, of a nursing
4 home or personal care home patient to appreciate the
5 nature and implications of a health care decision, to
6 make an informed choice regarding the alternatives
7 presented, and to communicate that choice in an
8 unambiguous manner.

9 (b) Where there has been no adjudication of incompete-
10 tence of a patient or appointment of a guardian for such

11 patient and where there is no applicable durable power
12 of attorney for such patient but where such patient is
13 unable to grant informed consent for nursing home or
14 personal care home health care services or to acknowl-
15 edge notification by a nursing home or personal care
16 home of his or her rights, responsibilities, and any
17 applicable rules and regulations of the nursing home or
18 personal care home due to physical or mental incapacity,
19 as documented in such patient's health care records by
20 two physicians licensed to practice medicine in this state
21 under the provisions of article three or article fourteen,
22 both of chapter thirty of this code, or one such physician
23 and one licensed psychologist, the following persons
24 shall be deemed the patient's representative authorized
25 to consent to nursing home or personal care home health
26 care services for such patient, to acknowledge notifica-
27 tion by a nursing home or personal care home of such
28 patient's rights, responsibilities and any applicable rules
29 and regulations of the nursing home or personal care
30 home, in the order of class priority set forth below:

- 31 (1) The patient's spouse;
 - 32 (2) An adult child of the patient;
 - 33 (3) A parent of the patient;
 - 34 (4) An adult sibling of the patient;
 - 35 (5) The nearest living relative of the patient;
 - 36 (6) Such other persons or classes of persons including,
37 but not limited to, such public agencies, public
38 guardians, other public officials, public and private
39 corporations, protective service agencies and other
40 representatives as the board of health may from time
41 to time designate in its rules and regulations promul-
42 gated pursuant to chapter twenty-nine-a of this code:
43 *Provided*, That there is no reason to believe that such
44 health care services are contrary to the patient's
45 religious beliefs and there is no actual notice of
46 opposition by a member of the same or a prior class.
- 47 (c) A nursing home or personal care home, as appli-
48 cable, shall document its good faith efforts to contact
49 permitted representatives in the order of class priority

50 and its efforts to contact all members of a class before
51 the next class is contacted but shall suffer no liability
52 or deficiency for any failure to apprise the proper
53 persons of the requirements of this section, so long as
54 it has acted reasonably and in good faith. A nursing
55 home or personal care home, as applicable, may rely on
56 the apparent authority of one member of a class to speak
57 for that class.

58 (d) The determination of incapacity hereunder shall
59 expire after six months or upon the patient's earlier
60 discharge from the nursing home or personal care home.
61 At the end of every such six-month period, if the patient
62 remains admitted to the nursing home or personal care
63 home the patient shall be reexamined by two physicians
64 licensed to practice medicine in this state as set forth
65 in subsection (b), or by one such physician and one
66 licensed psychologist, who shall render a determination
67 whether or not the patient remains physically or
68 mentally incapacitated, and such determination shall be
69 documented in the patient's health care records. The
70 authority of the representatives provided in subsection
71 (b) above shall terminate unless upon such reevaluation
72 the examining physicians, or the physician and the
73 psychologist, as the case may be, shall certify that the
74 patient remains physically or mentally incapacitated.

75 (e) In addition to the reevaluations required by
76 subsection (d) above, a nursing home or personal care
77 home, as applicable, upon request of any interested
78 person, or upon its own initiative if it shall have reason
79 to believe that the patient has regained his or her
80 capacity, shall permit or obtain a reevaluation at any
81 time by one or more physicians licensed to practice
82 medicine in this state as set forth in subsection (b), of
83 a prior determination of capacity or incapacity, pro-
84 vided, that no patient shall be required to be reevaluated
85 within three months of a prior evaluation except for
86 good cause shown. A physician's determination of
87 capacity upon such reevaluation shall terminate any
88 authority of a patient's representative under this section.

89 (f) The board of health shall adopt rules and regula-
90 tions pursuant to the provisions of chapter twenty-nine-

91 a of this code setting forth a procedure by which any
92 interested person may obtain an administrative review
93 of any determination of capacity or incapacity made
94 pursuant to this section. Nothing contained in this
95 section shall preclude an interested person from seeking
96 a determination of competency or incompetency under
97 the provisions of article eleven, chapter twenty-seven of
98 this code in an appropriate case or from seeking any
99 form of judicial review.

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

Bruce O. Williams
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Jedd C. Miller
Clerk of the Senate

Donald J. Kopp
Clerk of the House of Delegates

Don Tolson
President of the Senate

Robert M. Harp
Speaker of the House of Delegates

The within *approved* this the *28th*
March day of _____, 1988.

Anna. Chang
Governor

PRESENTED TO THE
GOVERNOR

Date 3/23/58

Time 3:46 p.m.

RECEIVED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE