WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

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ENROLLED

HOUSE BILL No. 4143

(By Mr. Dale Otte and Driscoll)

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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.]

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.

(a) For purposes of this section, “physical or mental incapacity” or like words shall mean the inability, because of physical or mental impairment, of a nursing home or personal care home patient 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 unambiguous manner.

(b) Where there has been no adjudication of incompetence of a patient or appointment of a guardian for such
patient and where there is no applicable durable power
of attorney for such patient but where such patient is
unable to grant informed consent for nursing home or
personal care home health care services or to acknowl-
edge notification by a nursing home or personal care
home of his or her rights, responsibilities, and any
applicable rules and regulations of the nursing home or
personal care home due to physical or mental incapacity,

as documented in such patient's health care records by
two physicians licensed to practice medicine in this state
under the provisions of article three or article fourteen,
both of chapter thirty of this code, or one such physician
and one licensed psychologist, the following persons
shall be deemed the patient's representative authorized
to consent to nursing home or personal care home health
care services for such patient, to acknowledge notifica-
tion by a nursing home or personal care home of such
patient's rights, responsibilities and any applicable rules
and regulations of the nursing home or personal care
home, in the order of class priority set forth below:

(1) The patient's spouse;

(2) An adult child of the patient;

(3) A parent of the patient;

(4) An adult sibling of the patient;

(5) The nearest living relative of the patient;

(6) Such other persons or classes of persons including,
but not limited to, such public agencies, public
guardians, other public officials, public and private
corporations, protective service agencies and other
representatives as the board of health may from time
to time designate in its rules and regulations promul-
gated pursuant to chapter twenty-nine-a of this code:

Provided, That there is no reason to believe that such
health care services are contrary to the patient's
religious beliefs and there is no actual notice of
opposition by a member of the same or a prior class.

(c) A nursing home or personal care home, as appli-
cable, shall document its good faith efforts to contact
permitted representatives in the order of class priority
and its efforts to contact all members of a class before the next class is contacted but shall suffer no liability or deficiency for any failure to apprise the proper persons of the requirements of this section, so long as it has acted reasonably and in good faith. A nursing home or personal care home, as applicable, may rely on the apparent authority of one member of a class to speak for that class.

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

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

(f) The board of health shall adopt rules and regulations pursuant to the provisions of chapter twenty-nine-
a of this code setting forth a procedure by which any interested person may obtain an administrative review of any determination of capacity or incapacity made pursuant to this section. Nothing contained in this section shall preclude an interested person from seeking a determination of competency or incompetency under the provisions of article eleven, chapter twenty-seven of this code in an appropriate case or from seeking any form of judicial review.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce C. Williams  
Chairman Senate Committee

Bernard V. Kelly  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

S. 405  
Clerk of the Senate

Donald L. Kopp  
Clerk of the House of Delegates

Don Tucker  
President of the Senate

Robert C.il  
Speaker of the House of Delegates

The within  

approved  

this the  

28th.  

day of  


Andrew P. Barnes Jr.  
Governor
PRESENTED TO THE
GOVERNOR

Date 3/23/58
Time 3:46 p.m.