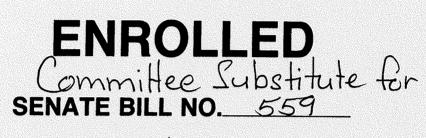
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OFFICE OF MEST MERINA SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992



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PASSED March 4, 1992 In Effect 90 clays from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR Senate Bill No. 559

(BY SENATOR HOLLIDAY, original sponsor)

[Passed March 4, 1992; in effect ninety days from passage.]

AN ACT to amend article five-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight-a, relating to substituted consent for health care services provided by extended care facilities operated in connection with hospitals.

Be it enacted by the Legislature of West Virginia:

That article five-b, 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 eight-a, to read as follows:

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-8a. Substituted consent for health care services in extended care facilities operated in connection with hospitals.

- 1 (a) For purposes of this section, "physical or mental
- 2 incapacity'', or like words, means the inability,
- 3 because of physical or mental impairment, of a patient

4 or prospective patient of an extended care facility
5 operated in connection with a hospital to appreciate
6 the nature and implications of a health care decision,
7 to make an informed choice regarding the alternatives
8 presented and to communicate that choice in an
9 unambiguous manner.

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10 (b) Where there has been no adjudication of incompetence of a patient or prospective patient, or appoint-11 12 ment of a guardian for such patient or prospective patient, and where there is no applicable durable 13 power of attorney for such patient or prospective 14 15 patient, but where such patient or prospective patient 16 is unable to grant informed consent for health care 17 services of an extended care facility operated in connection with a hospital or to acknowledge notifica-18 19 tion by such a facility of his or her rights, responsibil-20 ities and any applicable rules of such a facility due to 21 physical or mental incapacity, as documented in such patient's or prospective patient's health care records 22 23 by two physicians licensed to practice medicine in this state under the provisions of article three or fourteen. 24 25 chapter thirty of this code or one such physician and 26 one licensed psychologist, the following persons are 27 deemed the patient's or prospective patient's represen-28 tative authorized to consent to health care services by 29 such a facility for such patient or prospective patient 30 to acknowledge notification by such a facility of such 31 patient's or prospective patient's rights, responsibilities and any applicable rules of such a facility in the order 32 of class priority set forth below: 33

34 (1) The patient's or prospective patient's spouse;

35 (2) An adult child of the patient or prospective36 patient;

37 (3) A parent of the patient or prospective patient;

38 (4) An adult sibling of the patient or prospective39 patient; or

40 (5) The nearest living relative of the patient or 41 prospective patient;

42 (6) Such other persons or classes of persons, includ-

43 ing, but not limited to, such public agencies, public 44 guardians, other public officials, public and private 45 corporations, protective service agencies and other 46 representatives as the department of health and 47 human resources may from time to time designate in 48 its rules promulgated pursuant to chapter twenty-49 nine-a of this code: *Provided*, That there is no reason 50 to believe that such health care services are contrary 51 to the patient's or prospective patient's religious 52 beliefs and there is no actual notice of opposition by a 53 member of the same or a prior class.

(c) An extended care facility operated in connection with a hospital, as applicable, 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. An extended care facility operated in connection with hospitals, as applicable, may rely on the apparent authority of one member of a class to speak for that class.

66 (d) The determination of incapacity hereunder 67 expires after six months or upon the patient's earlier 68 discharge from the extended care facility operated in 69 connection with a hospital. At the end of every such 70 six-month period, if the patient remains admitted to 71 such a facility, the patient shall be reexamined by two 72 physicians licensed to practice medicine in this state as 73 set forth in subsection (b) or by one such physician 74 and one licensed psychologist who shall render a determination whether or not the patient remains 75 76 physically or mentally incapacitated, and such deter-77 mination shall be documented in the patient's health care records. The authority of the representatives 78 79 provided in said subsection shall terminate unless 80 upon such reevaluation the examining physicians, or the physician and the psychologist as the case may be, 81 82 certifies that the patient remains physically or men-83 tally incapacitated.

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84 (e) In addition to the reevaluations required by 85 subsection (d) above, an extended care facility oper-86 ated in connection with a hospital, as applicable, upon 87 request of any interested person, or upon its own 88 initiative if it has reason to believe that the patient has 89 regained his or her capacity, shall permit or obtain a 90 reevaluation at any time by one or more physicians 91 licensed to practice medicine in this state as set forth 92 in subsection (b), of a prior determination of capacity 93 or incapacity: Provided, That no patient shall be 94 required to be reevaluated within three months of a 95 prior evaluation except for good cause shown. A 96 physician's determination of capacity upon such 97 reevaluation shall terminate any authority of a 98 patient's representative under this section.

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99 (f) The department of health and human resources 100 shall adopt rules pursuant to the provisions of chapter 101 twenty-nine-a of this code setting forth a procedure by 102 which any interested person may obtain an adminis-103 trative review of any determination of capacity or 104 incapacity made pursuant to this section. Nothing 105 contained in this section shall preclude an interested 106 person from seeking a determination of competency or 107 incompetency under the provisions of article eleven, 108 chapter twenty-seven of this code in an appropriate 109 case or from seeking any form of judicial review.

(g) At least one of the physicians, or the psychologist,
who certifies the incapacity under subsections (b) and
(d) of this section shall not be employed by the
hospital-connected extended care facility. The two
persons performing the certification shall not be
associated in the same medical practice.

116 Nothing in this section shall be construed to pre-117 clude common membership on a facility medical staff.

118 Nothing in this section shall be interpreted to mean 119 that the consent of a patient's representative is 120 required in an emergency to save life or prevent 121 serious injury. The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Tlech

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

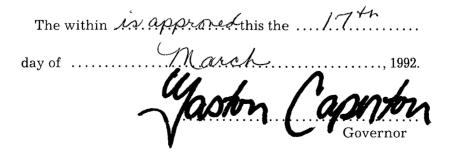
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Clerk of the Senate

Clerk of the House of Depegates

hlett President of the Senate

Speaker House of Delegates



PRESENTED TO THE GOVERNOR Date <u>JU192</u> Time <u>340 pm</u>