WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

ENROLLED

Com. Sub. for
HOUSE BILL No. 2616

(By Delegates Gallagher, Hunt, White, and Douglas)

Passed April 7, 1993

In Effect July 1, 1993
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2616
(By DELEGATES GALLAGHER, HUNTWORK,
P. WHITE AND DOUGLAS)

[Passed April 8, 1993; in effect July 1, 1993]

AN ACT to amend chapter sixteen of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new article, designated
article thirty-b, relating to do not resuscitate act;
legislative findings and purpose; definitions; applicabil­
ity; presumed consent to cardiopulmonary resuscitation;
health care facilities not required to expand to provide
 cardiopulmonary resuscitation; issuance of a do not
resuscitate order; order to be written by a physician;
compliance with a do not resuscitate order; revocation;
protection of persons carrying out in good faith do not
resuscitate order; notification by physician refusing to
comply with do not resuscitate order; insurance;
interinstitutional transfers; preservation of existing
rights; do not resuscitate order form; do not resuscita­
tion identification; public education; not suicide or
murder; full faith and credit; and severability.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, be amended by
adding thereto a new article, designated article thirty-b, to
read as follows:
ARTICLE 30B. DO NOT RESUSCITATE ACT.

§16-30B-1. Short title.

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

§16-30B-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.

§16-3B-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 or card 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 unambiguous manner.

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

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

(m) "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.

§16-30B-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.

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

(a) 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 for that person is in effect, pursuant to the provisions of article thirty of this chapter, and the person is in a terminal condition or a persistent vegetative state; or

(3) A completed medical power of attorney for that person is in effect, pursuant to the provisions of article thirty-a of this chapter, 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.

(b) Nothing in this article shall require a nursing home, personal care home, or extended care facility operated in connection with hospitals to institute or maintain the ability to provide cardiopulmonary resus-
citation 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.

§16-30B-6. Issuance of a do not resuscitate order; order to be written by a physician.

(a) It shall be lawful for the attending physician to issue a do not resuscitate order for persons who are present in or residing at home or in a health care facility, provided that 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 to issue do not resuscitate orders for them.

(c) The representative or surrogate decision-maker may consent to a do not resuscitate order for a person with incapacity. A do not resuscitate order written by a physician for a person with incapacity with the consent of the representative or surrogate decision-maker 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 who has examined the child concurs with the opinion of the attending physician that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards. If the minor is between the ages of sixteen and eighteen, and in the opinion of the attending physician, 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 sixteen 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 decision-maker is not reasonably available or capable of making a decision regarding a do not resuscitate order, an attending physician 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 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 in the following form on a card suitable for carrying on the person.

Do Not Resuscitate Order

“As treating physician of _______________ and a licensed physician, 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 decision-maker _______________ who has given consent as evidenced by his/her signature below.

Physician Name ________________________________
Physician Signature ________________________________
Address ________________________________
Person Signature ________________________________
Address ________________________________
Surrogate Decision-maker Signature ________________
§16-30B-7. Compliance with a do not resuscitate order.

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

(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 fourteen of this article; or

(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.

(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.

§16-30B-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.

§16-30B-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
(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.

§16-30B-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.

§16-30B-11. Interinstitutional transfers.

If a person with a do not resuscitate order is trans-
ferred from one health care facility to another health
care facility, the existence of a do not resuscitate order
shall be communicated to the receiving facility prior to
the transfer, and the written do not resuscitate order
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.

§16-30B-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.

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

(a) The secretary of the department of health and human resources, no later than one year after the passage of this article, 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 shall 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. No other identification or wording shall be deemed to comply with the provisions of this article. 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 or a do not resuscitate order properly executed in accordance with a health care facility's written policy and procedure.

(c) The secretary of the department of health and human resources, no later than one year after the passage of this article, shall be responsible for establishing a system for the distribution of the do not resuscitate identification bracelets and necklaces.

(d) The secretary of the department of health and human resources, no later than one year after the passage of this article, 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 resuscitation order for them.

§16-30B-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.

§16-30B-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.

§16-30B-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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect July 1, 1993.

Clerk of the Senate

The within bill approved this the 22nd day of April, 1993.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/20/93
Time 10:31 am