

SB 658

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2002

ENROLLED

SENATE BILL NO. 658

(By Senator Wooten et al)

PASSED March 8, 2002

In Effect ninety days from Passage

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 658

(BY SENATORS WOOTON, CALDWELL, HUNTER,
KESSLER, MINARD, MITCHELL, OLIVERIO, ROSS,
ROWE, DEEM AND FACEMYER)

[Passed March 8, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, four, five, six, seven, eight, ten, thirteen and twenty-two, article thirty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-five; and to amend and reenact sections three, five, six, seven, eleven and thirteen, article thirty-c of said chapter, all relating to end-of-life care; providing for a standardized physician orders for scope of treatment form; establishing the information required by the form; setting forth procedures for the issuance, use and transfer of the form; amending the qualifications for advanced nurse practitioners who determine the need for and select a surrogate decisionmaker; providing civil and criminal immunity from liability for good faith compliance with do-not-resuscitate orders; allowing person executing medical

power of attorney to specify on medical power of attorney form his or her wishes regarding funeral arrangements, autopsy and organ donation; precluding a medical power of attorney representative or surrogate from cancelling preneed funeral contract executed by deceased incapacitated person before onset of incapacity and paid in full before death; eliminating the language requirements for do-not-resuscitate identification; updating definitions and terms; and establishing effective dates.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, six, seven, eight, ten, thirteen and twenty-two, article thirty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-five; and that sections three, five, six, seven, eleven and thirteen, article thirty-c of said chapter be amended and reenacted, all to read as follows:

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-3. Definitions.

1 For the purposes of this article:

2 (a) "Actual knowledge" means the possession of infor-
3 mation of the person's wishes communicated to the health
4 care provider orally or in writing by the person, the
5 person's medical power of attorney representative, the
6 person's health care surrogate or other individuals result-
7 ing in the health care provider's personal cognizance of
8 these wishes. Constructive notice and other forms of
9 imputed knowledge are not actual knowledge.

10 (b) "Adult" means a person who is eighteen years of age
11 or older, an emancipated minor who has been established
12 as such pursuant to the provisions of section twenty-seven,
13 article seven, chapter forty-nine of this code or a mature
14 minor.

15 (c) "Advanced nurse practitioner" means a registered
16 nurse with substantial theoretical knowledge in a special-
17 ized area of nursing practice and proficient clinical
18 utilization of the knowledge in implementing the nursing
19 process, and who has met the further requirements of title
20 19, legislative rules for West Virginia board of examiners
21 for registered professional nurses, series 7 , who has a
22 mutually agreed upon association in writing with a
23 physician and has been selected by or assigned to the
24 person and has primary responsibility for treatment and
25 care of the person.

26 (d) "Attending physician" means the physician selected
27 by or assigned to the person who has primary responsibil-
28 ity for treatment and care of the person and who is a
29 licensed physician. If more than one physician shares that
30 responsibility, any of those physicians may act as the
31 attending physician under this article.

32 (e) "Capable adult" means an adult who is physically
33 and mentally capable of making health care decisions and
34 who is not considered a protected person pursuant to the
35 provisions of chapter forty-four-a of this code.

36 (f) "Close friend" means any adult who has exhibited
37 significant care and concern for an incapacitated person
38 who is willing and able to become involved in the incapac-
39 itated person's health care and who has maintained
40 regular contact with the incapacitated person so as to be
41 familiar with his or her activities, health and religious and
42 moral beliefs.

43 (g) "Death" means a finding made in accordance with
44 accepted medical standards of either: (1) The irreversible
45 cessation of circulatory and respiratory functions; or (2)
46 the irreversible cessation of all functions of the entire
47 brain, including the brain stem.

48 (h) "Guardian" means a person appointed by a court
49 pursuant to the provisions of chapter forty-four-a of this

50 code who is responsible for the personal affairs of a
51 protected person and includes a limited guardian or a
52 temporary guardian.

53 (i) "Health care decision" means a decision to give,
54 withhold or withdraw informed consent to any type of
55 health care, including, but not limited to, medical and
56 surgical treatments, including life-prolonging interven-
57 tions, psychiatric treatment, nursing care, hospitalization,
58 treatment in a nursing home or other facility, home health
59 care and organ or tissue donation.

60 (j) "Health care facility" means a facility commonly
61 known by a wide variety of titles, including, but not
62 limited to, hospital, psychiatric hospital, medical center,
63 ambulatory health care facility, physicians' office and
64 clinic, extended care facility operated in connection with
65 a hospital, nursing home, a hospital extended care facility
66 operated in connection with a rehabilitation center,
67 hospice, home health care and other facility established to
68 administer health care in its ordinary course of business or
69 practice.

70 (k) "Health care provider" means any licensed physician,
71 dentist, nurse, physician's assistant, paramedic, psycholo-
72 gist or other person providing medical, dental, nursing,
73 psychological or other health care services of any kind.

74 (l) "Incapacity" means the inability because of physical
75 or mental impairment to appreciate the nature and
76 implications of a health care decision, to make an in-
77 formed choice regarding the alternatives presented and to
78 communicate that choice in an unambiguous manner.

79 (m) "Life-prolonging intervention" means any medical
80 procedure or intervention that, when applied to a person,
81 would serve to artificially prolong the dying process or to
82 maintain the person in a persistent vegetative state.
83 Life-prolonging intervention includes, among other things,
84 nutrition and hydration administered intravenously or

85 through a feeding tube. The term “life-prolonging inter-
86 vention” does not include the administration of medica-
87 tion or the performance of any other medical procedure
88 considered necessary to provide comfort or to alleviate
89 pain.

90 (n) “Living will” means a written, witnessed advance
91 directive governing the withholding or withdrawing of
92 life-prolonging intervention, voluntarily executed by a
93 person in accordance with the requirements of section four
94 of this article.

95 (o) “Mature minor” means a person less than eighteen
96 years of age who has been determined by a qualified
97 physician, a qualified psychologist or an advanced nurse
98 practitioner to have the capacity to make health care
99 decisions.

100 (p) “Medical information” or “medical records” means
101 and includes without restriction any information recorded
102 in any form of medium that is created or received by a
103 health care provider, health care facility, health plan,
104 public health authority, employer, life insurer, school or
105 university or health care clearinghouse that relates to the
106 past, present or future physical or mental health of the
107 person, the provision of health care to the person, or the
108 past, present or future payment for the provision of health
109 care to the person.

110 (q) “Medical power of attorney representative” or
111 “representative” means a person eighteen years of age or
112 older appointed by another person to make health care
113 decisions pursuant to the provisions of section six of this
114 article or similar act of another state and recognized as
115 valid under the laws of this state.

116 (r) “Parent” means a person who is another person’s
117 natural or adoptive mother or father or who has been
118 granted parental rights by valid court order and whose
119 parental rights have not been terminated by a court of law.

120 (s) "Persistent vegetative state" means an irreversible
121 state as diagnosed by the attending physician or a quali-
122 fied physician in which the person has intact brain stem
123 function but no higher cortical function and has neither
124 self-awareness or awareness of the surroundings in a
125 learned manner.

126 (t) "Person" means an individual, a corporation, a
127 business trust, a trust, a partnership, an association, a
128 government, a governmental subdivision or agency or any
129 other legal entity.

130 (u) "Physician orders for scope of treatment (POST)
131 form" means a standardized form containing orders by a
132 qualified physician that details a person's life-sustaining
133 wishes as provided by section twenty-five of this article.

134 (v) "Principal" means a person who has executed a living
135 will or medical power of attorney.

136 (w) "Protected person" means an adult who, pursuant to
137 the provisions of chapter forty-four-a of this code, has
138 been found by a court, because of mental impairment, to
139 be unable to receive and evaluate information effectively
140 or to respond to people, events and environments to an
141 extent that the individual lacks the capacity to: (1) Meet
142 the essential requirements for his or her health, care,
143 safety, habilitation or therapeutic needs without the
144 assistance or protection of a guardian; or (2) manage
145 property or financial affairs to provide for his or her
146 support or for the support of legal dependents without the
147 assistance or protection of a conservator.

148 (x) "Qualified physician" means a physician licensed to
149 practice medicine who has personally examined the
150 person.

151 (y) "Qualified psychologist" means a psychologist
152 licensed to practice psychology who has personally
153 examined the person.

154 (z) "Surrogate decisionmaker" or "surrogate" means an
155 individual eighteen years of age or older who is reasonably
156 available, is willing to make health care decisions on
157 behalf of an incapacitated person, possesses the capacity
158 to make health care decisions and is identified or selected
159 by the attending physician or advanced nurse practitioner
160 in accordance with the provisions of this article as the
161 person who is to make those decisions in accordance with
162 the provisions of this article.

163 (aa) "Terminal condition" means an incurable or irre-
164 versible condition as diagnosed by the attending physician
165 or a qualified physician for which the administration of
166 life-prolonging intervention will serve only to prolong the
167 dying process.

§16-30-4. Executing a living will or medical power of attorney.

1 (a) Any competent adult may execute at any time a living
2 will or medical power of attorney. A living will or medical
3 power of attorney made pursuant to this article shall be:
4 (1) In writing; (2) executed by the principal or by another
5 person in the principal's presence at the principal's express
6 direction if the principal is physically unable to do so; (3)
7 dated; (4) signed in the presence of two or more witnesses
8 at least eighteen years of age; and (5) signed and attested
9 by such witnesses whose signatures and attestations shall
10 be acknowledged before a notary public as provided in
11 subsection (d) of this section.

12 (b) In addition, a witness may not be:

13 (1) The person who signed the living will or medical
14 power of attorney on behalf of and at the direction of the
15 principal;

16 (2) Related to the principal by blood or marriage;

17 (3) Entitled to any portion of the estate of the principal
18 under any will of the principal or codicil thereto: *Pro-*
19 *vided*, That the validity of the living will or medical power

20 of attorney shall not be affected when a witness at the
21 time of witnessing such living will or medical power of
22 attorney was unaware of being a named beneficiary of the
23 principal's will;

24 (4) Directly financially responsible for principal's
25 medical care;

26 (5) The attending physician; or

27 (6) The principal's medical power of attorney representa-
28 tive or successor medical power of attorney representative.

29 (c) The following persons may not serve as a medical
30 power of attorney representative or successor medical
31 power of attorney representative: (1) A treating health
32 care provider of the principal; (2) an employee of a treating
33 health care provider not related to the principal; (3) an
34 operator of a health care facility serving the principal; or
35 (4) any person who is an employee of an operator of a
36 health care facility serving the principal and who is not
37 related to the principal.

38 (d) It shall be the responsibility of the principal or his or
39 her representative to provide for notification to his or her
40 attending physician and other health care providers of the
41 existence of the living will or medical power of attorney or
42 a revocation of the living will or medical power of attor-
43 ney. An attending physician or other health care provider,
44 when presented with the living will or medical power of
45 attorney, or the revocation of a living will or medical
46 power of attorney, shall make the living will, medical
47 power of attorney or a copy of either or a revocation of
48 either a part of the principal's medical records.

49 (e) At the time of admission to any health care facility,
50 each person shall be advised of the existence and avail-
51 ability of living will and medical power of attorney forms
52 and shall be given assistance in completing such forms if
53 the person desires: *Provided*, That under no circumstances
54 may admission to a health care facility be predicated upon

55 a person having completed either a medical power of
56 attorney or living will.

57 (f) The provision of living will or medical power of
58 attorney forms substantially in compliance with this
59 article by health care providers, medical practitioners,
60 social workers, social service agencies, senior citizens
61 centers, hospitals, nursing homes, personal care homes,
62 community care facilities or any other similar person or
63 group, without separate compensation, does not constitute
64 the unauthorized practice of law.

65 (g) The living will may, but need not, be in the following
66 form and may include other specific directions not incon-
67 sistent with other provisions of this article. Should any of
68 the other specific directions be held to be invalid, such
69 invalidity shall not affect other directions of the living will
70 which can be given effect without the invalid direction and
71 to this end the directions in the living will are severable.

72 **STATE OF WEST VIRGINIA**

72 a **LIVING WILL**

72 b

**The Kind of Medical Treatment I Want
and Don't Want
If I Have a Terminal Condition or
Am In a Persistent Vegetative State**

73 Living will made this _____
74 day of _____ (month, year).

75 I, _____,
76 being of sound mind, willfully and voluntarily declare that
77 I want my wishes to be respected if I am very sick and not
78 able to communicate my wishes for myself. In the absence
79 of my ability to give directions regarding the use of life-
80 prolonging medical intervention, it is my desire that my
81 dying shall not be prolonged under the following circum-
82 stances:

83 If I am very sick and not able to communicate my wishes
 84 for myself and I am certified by one physician, who has
 85 personally examined me, to have a terminal condition or
 86 to be in a persistent vegetative state (I am unconscious and
 87 am neither aware of my environment nor able to interact
 88 with others), I direct that life-prolonging medical inter-
 89 vention that would serve solely to prolong the dying
 90 process or maintain me in a persistent vegetative state be
 91 withheld or withdrawn. I want to be allowed to die
 92 naturally and only be given medications or other medical
 93 procedures necessary to keep me comfortable. I want to
 94 receive as much medication as is necessary to alleviate my
 95 pain.

96 I give the following SPECIAL DIRECTIVES OR LIMI-
 97 TATIONS: (Comments about tube feedings, breathing
 98 machines, cardiopulmonary resuscitation, dialysis and
 99 mental health treatment may be placed here. My failure to
 100 provide special directives or limitations does not mean
 101 that I want or refuse certain treatments.)

102 _____
 103 _____
 104 _____

105 It is my intention that this living will be honored as the
 106 final expression of my legal right to refuse medical or
 107 surgical treatment and accept the consequences resulting
 108 from such refusal.

109 I understand the full import of this living will.

110 _____
 111 Signed _____
 112 _____

113 _____
 114 Address _____

115 I did not sign the principal's signature above for or at the
 116 direction of the principal. I am at least eighteen years of
 117 age and am not related to the principal by blood or
 118 marriage, entitled to any portion of the estate of the

119 principal to the best of my knowledge under any will of
120 principal or codicil thereto, or directly financially respon-
121 sible for principal's medical care. I am not the principal's
122 attending physician or the principal's medical power of
123 attorney representative or successor medical power of
124 attorney representative under a medical power of attorney.

125 _____
126 Witness: _____ DATE _____

127 _____
128 Witness: _____ DATE _____

129 _____
130 STATE OF _____

131 _____
132 COUNTY OF _____

133 I, _____, a Notary Public of said
134 County, do certify that _____, as
135 principal, and _____ and _____, as
136 witnesses, whose names are signed to the writing above
137 bearing date on the _____ day of _____,
138 20____, have this day acknowledged the same before me.

139 Given under my hand this _____ day of
140 _____, 20____.

141 My commission expires: _____

142 _____
143 Notary Public

144 (h) A medical power of attorney may, but need not, be in
145 the following form and may include other specific direc-
146 tions not inconsistent with other provisions of this article.
147 Should any of the other specific directions be held to be
148 invalid, such invalidity shall not affect other directions of
149 the medical power of attorney which can be given effect
150 without invalid direction and to this end the directions in
151 the medical power of attorney are severable.

152
153

**STATE OF WEST VIRGINIA
MEDICAL POWER OF ATTORNEY**

154

**The Person I Want to Make Health Care Decisions
For Me When I Can't Make Them for Myself**

155 Dated: _____, 20____

156 I, _____, hereby
157 *(Insert your name and address)*

158 appoint as my representative to act on my behalf to give,
159 withhold or withdraw informed consent to health care
160 decisions in the event that I am not able to do so myself.

161 **The person I choose as my representative is:**

162 _____
163 *(Insert the name, address, area code and telephone*
164 *number of the person you wish to designate as your*
165 *representative)*

166 **The person I choose as my successor representative is:**

167 If my representative is unable, unwilling or disqualified
168 to serve, then I appoint:

169 _____
170 *(Insert the name, address, area code and telephone*
171 *number of the person you wish to designate as your*
172 *successor representative)*

173 This appointment shall extend to, but not be limited to,
174 health care decisions relating to medical treatment,
175 surgical treatment, nursing care, medication, hospitaliza-
176 tion, care and treatment in a nursing home or other
177 facility, and home health care. The representative ap-
178 pointed by this document is specifically authorized to be
179 granted access to my medical records and other health
180 information and to act on my behalf to consent to, refuse
181 or withdraw any and all medical treatment or diagnostic

182 procedures, or autopsy if my representative determines
183 that I, if able to do so, would consent to, refuse or with-
184 draw such treatment or procedures. Such authority shall
185 include, but not be limited to, decisions regarding the
186 withholding or withdrawal of life-prolonging interven-
187 tions.

188 I appoint this representative because I believe this
189 person understands my wishes and values and will act to
190 carry into effect the health care decisions that I would
191 make if I were able to do so and because I also believe that
192 this person will act in my best interest when my wishes are
193 unknown. It is my intent that my family, my physician
194 and all legal authorities be bound by the decisions that are
195 made by the representative appointed by this document
196 and it is my intent that these decisions should not be the
197 subject of review by any health care provider or adminis-
198 trative or judicial agency.

199 It is my intent that this document be legally binding and
200 effective and that this document be taken as a formal
201 statement of my desire concerning the method by which
202 any health care decisions should be made on my behalf
203 during any period when I am unable to make such deci-
204 sions.

205 In exercising the authority under this medical power of
206 attorney, my representative shall act consistently with my
207 special directives or limitations as stated below.

208 I am giving the following SPECIAL DIRECTIVES OR
209 LIMITATIONS ON THIS POWER: (Comments about tube
210 feedings, breathing machines, cardiopulmonary resuscita-
211 tion, dialysis, funeral arrangements, autopsy and organ
212 donation may be placed here. My failure to provide
213 special directives or limitations does not mean that I want
214 or refuse certain treatments.)

215
216

217 THIS MEDICAL POWER OF ATTORNEY SHALL
218 BECOME EFFECTIVE ONLY UPON MY INCAPACITY
219 TO GIVE, WITHHOLD OR WITHDRAW INFORMED
220 CONSENT TO MY OWN MEDICAL CARE.

221 _____
222 Signature of the Principal

223 I did not sign the principal's signature above. I am at
224 least eighteen years of age and am not related to the
225 principal by blood or marriage. I am not entitled to any
226 portion of the estate of the principal or to the best of my
227 knowledge under any will of the principal or codicil
228 thereto, or legally responsible for the costs of the princi-
229 pal's medical or other care. I am not the principal's
230 attending physician, nor am I the representative or succes-
231 sor representative of the principal.

232 _____
233 Witness: DATE

234 _____
235 Witness: DATE

236 _____
237 STATE OF

238 _____
239 COUNTY OF

240 I, _____, a Notary Public of said
241 County, do certify that _____, as
242 principal, and _____ and _____, as
243 witnesses, whose names are signed to the writing above
244 bearing date on the _____ day of _____,
245 20__, have this day acknowledged the same before me.

246 Given under my hand this _____ day of
247 _____, 20__.

248 My commission expires: _____
249 _____

250 _____
Notary Public

§16-30-5. Applicability and resolving actual conflict between advance directives.

1 (a) The provisions of this article which directly conflict
2 with the written directives contained in a living will or
3 medical power of attorney executed prior to the effective
4 date of this statute shall not apply. An expressed directive
5 contained in a living will or medical power of attorney or
6 by any other means the health care provider determines to
7 be reliable shall be followed.

8 (b) If there is a conflict between the person's expressed
9 directives, the physician orders for scope of treatment
10 form and the decisions of the medical power of attorney
11 representative or surrogate, the person's expressed direc-
12 tives shall be followed.

13 (c) In the event there is a conflict between two advance
14 directives executed by the person, the one most recently
15 completed takes precedence only to the extent needed to
16 resolve the inconsistency.

17 (d) If there is a conflict between the decisions of the
18 medical power of attorney representative or surrogate and
19 the person's best interests as determined by the attending
20 physician when the person's wishes are unknown, the
21 attending physician shall attempt to resolve the conflict by
22 consultation with a qualified physician, an ethics commit-
23 tee or by some other means. If the attending physician
24 cannot resolve the conflict with the medical power of
25 attorney representative, the attending physician may
26 transfer the care of the person pursuant to subsection (b),
27 section twelve of this article.

§16-30-6. Private decision-making process; authority of living will, medical power of attorney representative and surrogate.

1 (a) Any capable adult may make his or her own health
2 care decisions without regard to guidelines contained in
3 this article.

4 (b) Health care providers and health care facilities may
5 rely upon health care decisions made on behalf of an
6 incapacitated person without resort to the courts or legal
7 process, if the decisions are made in accordance with the
8 provisions of this article.

9 (c) The medical power of attorney representative or
10 surrogate shall have the authority to release or authorize
11 the release of an incapacitated person's medical records to
12 third parties and make any and all health care decisions on
13 behalf of an incapacitated person, except to the extent that
14 a medical power of attorney representative's authority is
15 clearly limited in the medical power of attorney.

16 (d) The medical power of attorney representative or
17 surrogate's authority shall commence upon a determina-
18 tion, made pursuant to section seven of this article, of the
19 incapacity of the adult. In the event the person no longer
20 is incapacitated or the medical power of attorney repre-
21 sentative or surrogate is unwilling or unable to serve, the
22 medical power of attorney representative or surrogate's
23 authority shall cease. However, the authority of the
24 medical power of attorney representative or surrogate may
25 recommence if the person subsequently becomes incapaci-
26 tated as determined pursuant to section seven of this
27 article unless during the intervening period of capacity the
28 person executes an advance directive which makes a
29 surrogate unnecessary or expressly rejects the previously
30 appointed surrogate as his or her surrogate. A medical
31 power of attorney representative or surrogate's authority
32 terminates upon the death of the incapacitated person
33 except with respect to decisions regarding autopsy, funeral
34 arrangements or cremation and organ and tissue donation:
35 *Provided*, That the medical power of attorney representa-
36 tive or surrogate has no authority after the death of the
37 incapacitated person to invalidate or revoke a preneed
38 funeral contract executed by the incapacitated person in
39 accordance with the provisions of article fourteen, chapter
40 forty-seven of this code prior to the onset of the incapacity

41 and either paid in full before the death of the incapacitated person or collectible from the proceeds of a life insurance policy specifically designated for that purpose.

44 (e) The medical power of attorney representative or surrogate shall seek medical information necessary to make health care decisions for an incapacitated person. For the sole purpose of making health care decisions for the incapacitated person, the medical power of attorney representative or surrogate shall have the same right of access to the incapacitated person's medical information and the same right to discuss that information with the incapacitated person's health care providers that the incapacitated person would have if he or she was not incapacitated.

55 (f) If an incapacitated person previously expressed his or her wishes regarding autopsy, funeral arrangements or cremation, organ or tissue donation or the desire to make an anatomical gift by a written directive such as a living will, medical power of attorney, donor card, driver's license or other means, the medical power of attorney representative or surrogate shall follow the person's expressed wishes regarding autopsy, funeral arrangements or cremation, organ and tissue donation or anatomical gift. In the absence of any written directives, any decision regarding anatomical gifts shall be made pursuant to the provisions of article nineteen of this chapter.

67 (g) If a person is incapacitated at the time of the decision to withhold or withdraw life-prolonging intervention, the person's living will or medical power of attorney executed in accordance with section four of this article is presumed to be valid. For the purposes of this article, a physician or health facility may presume in the absence of actual notice to the contrary that a person who executed a living will or medical power of attorney was a competent adult when it was executed. The fact that a person executed a living will or medical power of attorney is not an indication of the person's mental incapacity.

§16-30-7. Determination of incapacity.

1 (a) For the purposes of this article, a person may not be
2 presumed to be incapacitated merely by reason of ad-
3 vanced age or disability. With respect to a person who has
4 a diagnosis of mental illness or mental retardation, such a
5 diagnosis is not a presumption that the person is incapaci-
6 tated. A determination that a person is incapacitated shall
7 be made by the attending physician, a qualified physician,
8 a qualified psychologist or an advanced nurse practitioner
9 who has personally examined the person.

10 (b) The determination of incapacity shall be recorded
11 contemporaneously in the person's medical record by the
12 attending physician, a qualified physician, advanced nurse
13 practitioner or a qualified psychologist. The recording
14 shall state the basis for the determination of incapacity,
15 including the cause, nature and expected duration of the
16 person's incapacity, if these are known.

17 (c) If the person is conscious, the attending physician
18 shall inform the person that he or she has been determined
19 to be incapacitated and that a medical power of attorney
20 representative or surrogate decisionmaker may be making
21 decisions regarding life-prolonging intervention or mental
22 health treatment for the person.

§16-30-8. Selection of a surrogate.

1 (a) When a person is or becomes incapacitated, the
2 attending physician or the advanced nurse practitioner
3 with the assistance of other health care providers as
4 necessary, shall select, in writing, a surrogate. The
5 attending physician or advanced nurse practitioner shall
6 reasonably attempt to determine whether the incapaci-
7 tated person has appointed a representative under a
8 medical power of attorney, in accordance with the provi-
9 sions of section four of this article, or if the incapacitated
10 person has a court-appointed guardian in accordance with
11 the provisions of article one, chapter forty-four-a of this

12 code. If no representative or court-appointed guardian is
13 authorized or capable and willing to serve, the attending
14 physician or advanced nurse practitioner is authorized to
15 select a health care surrogate. In selecting a surrogate, the
16 attending physician or advanced nurse practitioner must
17 make a reasonable inquiry as to the existence and avail-
18 ability of a surrogate from the following persons:

- 19 (1) The person's spouse;
- 20 (2) The person's adult children;
- 21 (3) The person's parents;
- 22 (4) The person's adult siblings;
- 23 (5) The person's adult grandchildren;
- 24 (6) The person's close friends;
- 25 (7) Any other person or entity, including, but not limited
26 to, public agencies, public guardians, public officials,
27 public and private corporations and other persons or
28 entities which the department of health and human
29 resources may from time to time designate in rules pro-
30 mulgated pursuant to chapter twenty-nine-a of this code.

31 (b) After inquiring about the existence and availability
32 of a medical power of attorney representative or a guard-
33 ian as required by subsection (a) of this section and
34 determining that such persons either do not exist or are
35 unavailable, incapable or unwilling to serve as a surrogate,
36 the attending physician or an advanced nurse practitioner
37 shall select and rely upon a surrogate in the order of
38 priority set forth in subsection (a) of this section, subject
39 to the following conditions:

- 40 (1) Where there are multiple possible surrogate
41 decisionmakers at the same priority level, the attending
42 physician or the advanced nurse practitioner shall, after
43 reasonable inquiry, select as the surrogate the person who
44 reasonably appears to be best qualified. The following

45 criteria shall be considered in the determination of the
46 person or entity best qualified to serve as the surrogate:

47 (A) Whether the proposed surrogate reasonably appears
48 to be better able to make decisions either in accordance
49 with the known wishes of the person or in accordance with
50 the person's best interests;

51 (B) The proposed surrogate's regular contact with the
52 person prior to and during the incapacitating illness;

53 (C) The proposed surrogate's demonstrated care and
54 concern;

55 (D) The proposed surrogate's availability to visit the
56 incapacitated person during his or her illness; and

57 (E) The proposed surrogate's availability to engage in
58 face-to-face contact with health care providers for the
59 purpose of fully participating in the decision-making
60 process;

61 (2) The attending physician or the advanced nurse
62 practitioner may select a proposed surrogate who is
63 ranked lower in priority if, in his or her judgment, that
64 individual is best qualified, as described in this section, to
65 serve as the incapacitated person's surrogate. The attend-
66 ing physician or the advanced nurse practitioner shall
67 document in the incapacitated person's medical records his
68 or her reasons for selecting a surrogate in exception to the
69 priority order provided in subsection (a) of this section.

70 (c) The surrogate is authorized to make health care
71 decisions on behalf of the incapacitated person without a
72 court order or judicial involvement.

73 (d) A health care provider or health care facility may rely
74 upon the decisions of the selected surrogate if the provider
75 believes, after reasonable inquiry, that:

76 (1) A guardian or representative under a valid, applica-
77 ble medical power of attorney is unavailable, incapable or
78 unwilling to serve;

79 (2) There is no other applicable advance directive;

80 (3) There is no reason to believe that such health care
81 decisions are contrary to the incapacitated person's
82 religious beliefs; and

83 (4) The attending physician or advanced nurse practitio-
84 ner has not received actual notice of opposition to any
85 health care decisions made pursuant to the provisions of
86 this section.

87 (e) If a person who is ranked as a possible surrogate
88 pursuant to subsection (a) of this section wishes to chal-
89 lenge the selection of a surrogate or the health care
90 decision of the selected surrogate, he or she may seek
91 injunctive relief or may file a petition for review of the
92 selection of, or decision of, the selected surrogate with the
93 circuit court of the county in which the incapacitated
94 person resides or the supreme court of appeals. There shall
95 be a rebuttable presumption that the selection of the
96 surrogate was valid and the person who is challenging the
97 selection shall have the burden of proving the invalidity of
98 that selection. The challenging party shall be responsible
99 for all court costs and other costs related to the proceed-
100 ing, except attorneys' fees, unless the court finds that the
101 attending physician or advanced nurse practitioner acted
102 in bad faith, in which case the person so acting shall be
103 responsible for all costs. Each party shall be responsible
104 for his or her own attorneys' fees.

105 (f) If the attending physician or advanced nurse practi-
106 tioner is advised that a person who is ranked as a possible
107 surrogate pursuant to the provisions of subsection (a) of
108 this section has an objection to a health care decision to
109 withhold or withdraw a life-prolonging intervention which
110 has been made by the selected surrogate, the attending

111 physician or advanced nurse practitioner shall document
112 the objection in the medical records of the patient. Once
113 notice of an objection or challenge is documented, the
114 attending physician or advanced nurse practitioner shall
115 notify the challenging party that the decision shall be
116 implemented in seventy-two hours unless the attending
117 physician receives a court order prohibiting or enjoining
118 the implementation of the decision as provided in subsec-
119 tion (e) of this section. In the event that the incapacitated
120 person has been determined to have undergone brain death
121 and the selected surrogate has authorized organ or tissue
122 donation, the decision shall be implemented in twenty-
123 four hours unless the attending physician receives a court
124 order prohibiting or enjoining the implementation of the
125 decision as provided in said subsection.

126 (g) If the surrogate becomes unavailable for any reason,
127 the surrogate may be replaced by applying the provisions
128 of this section.

129 (h) If a person who ranks higher in priority relative to a
130 selected surrogate becomes available and willing to be the
131 surrogate, the person with higher priority may be substi-
132 tuted for the identified surrogate unless the attending
133 physician determines that the lower-ranked person is best
134 qualified to serve as the surrogate.

135 (i) The following persons may not serve as a surrogate:
136 (1) A treating health care provider of the person who is
137 incapacitated; (2) an employee of a treating health care
138 provider not related to the person who is incapacitated; (3)
139 an owner, operator or administrator of a health care
140 facility serving the person who is incapacitated; or (4) any
141 person who is an employee of an owner, operator or
142 administrator of a health care facility serving the person
143 who is incapacitated and who is not related to that person.

**§16-30-10. Reliance on authority of living will, physician orders
for scope of treatment form, medical power of
attorney representative or surrogate decision-
maker and protection of health care providers.**

1 (a) A physician, licensed health care professional, health
2 care facility or employee thereof shall not be subject to
3 criminal or civil liability for good-faith compliance with
4 or reliance upon the directions of the medical power of
5 attorney representative in accordance with this article.

6 (b) A health care provider shall not be subject to civil or
7 criminal liability for surrogate selection or good faith
8 compliance and reliance upon the directions of the surro-
9 gate in accordance with the provisions of this article.

10 (c) A health care provider, health care facility or em-
11 ployee thereof shall not be subject to criminal or civil
12 liability for good-faith compliance with or reliance upon
13 the orders in a physician orders for scope of treatment
14 form.

15 (d) No health care provider or employee thereof who in
16 good faith and pursuant to reasonable medical standards
17 causes or participates in the withholding or withdrawing
18 of life-prolonging intervention from a person pursuant to
19 a living will made in accordance with this article shall, as
20 a result thereof, be subject to criminal or civil liability.

21 (e) An attending physician who cannot comply with the
22 living will or medical power of attorney of a principal
23 pursuant to this article shall, in conjunction with the
24 medical power of attorney representative, health care
25 surrogate or other responsible person, effect the transfer
26 of the principal to another physician who will honor the
27 living will or medical power of attorney of the principal.
28 Transfer under these circumstances does not constitute
29 abandonment.

§16-30-13. Interinstitutional transfers.

1 (a) In the event that a person admitted to any health care
2 facility in this state has been determined to lack capacity
3 and that person's medical power of attorney has been
4 declared to be in effect or a surrogate decisionmaker has
5 been selected for that person all in accordance with the

6 requirements of this article and that person is subse-
7 quently transferred from one health care facility to
8 another, the receiving health care facility may rely upon
9 the prior determination of incapacity and the activation of
10 the medical power of attorney or selection of a surrogate
11 decisionmaker as valid and continuing until such time as
12 an attending physician, a qualified physician, a qualified
13 psychologist or advanced nurse practitioner in the receiv-
14 ing facility assesses the person's capacity. Should the
15 reassessment by the attending physician, a qualified
16 physician, a qualified psychologist or an advanced nurse
17 practitioner at the receiving facility result in a determina-
18 tion of continued incapacity, the receiving facility may
19 rely upon the medical power of attorney representative or
20 surrogate decisionmaker who provided health care deci-
21 sions at the transferring facility to continue to make all
22 health care decisions at the receiving facility until such
23 time as the person regains capacity.

24 (b) If a person admitted to any health care facility in
25 this state has been determined to lack capacity and the
26 person's medical power of attorney has been declared to be
27 in effect or a surrogate decisionmaker has been selected
28 for that person all in accordance with the requirements of
29 this article and that person is subsequently discharged
30 home in the care of a home health care agency or hospice,
31 the home health care agency or hospice may rely upon the
32 prior determination of incapacity. The home health care
33 agency or hospice may rely upon the medical power of
34 attorney representative or health care surrogate who
35 provided health care decisions at the transferring facility
36 to continue to make all health care decisions until such
37 time as the person regains capacity.

38 (c) If a person with an order to withhold or withdraw
39 life-prolonging intervention is transferred from one health
40 care facility to another, the existence of such order shall be
41 communicated to the receiving facility prior to the transfer
42 and the written order shall accompany the person to the

43 receiving facility and shall remain effective until a physi-
44 cian at the receiving facility issues admission orders.

45 (d) If a person with a physician orders for scope of
46 treatment form is transferred from one health care facility
47 to another, the health care facility initiating the transfer
48 shall communicate the existence of the physician orders
49 for scope of treatment form to the receiving facility prior
50 to the transfer. The physician orders for scope of treat-
51 ment form shall accompany the person to the receiving
52 facility and shall remain in effect. The form shall be kept
53 at the beginning of the patient's transfer records unless
54 otherwise specified in the health care facility's policy and
55 procedures. After admission, the physician orders for
56 scope of treatment form shall be reviewed by the attending
57 physician and one of three actions shall be taken:

58 (1) The physician orders for scope of treatment shall be
59 continued without change;

60 (2) The physician orders for scope of treatment form
61 shall be voided and a new form issued; or

62 (3) The physician orders for scope of treatment form
63 shall be voided without a new form being issued.

**§16-30-22. Liability for failure to act in accordance with the
directives of a living will or medical power of
attorney or the directions of a medical power of
attorney representative or health care surrogate.**

1 (a) A health care provider or health care facility without
2 actual knowledge of a living will or medical power of
3 attorney completed by a person is not civilly or criminally
4 liable for failing to act in accordance with the directives of
5 a principal's living will or medical power of attorney.

6 (b) A health care provider or a health care facility is
7 subject to review and disciplinary action by the appropri-
8 ate licensing board for failing to act in accordance with a
9 principal's directives in a living will or medical power of

10 attorney, or the decisions of a medical power of attorney
11 representative or health care surrogate: *Provided*, That the
12 provider or facility had actual knowledge of the directives
13 or decisions.

14 (c) Once a principal has been determined to be incapacitated in accordance with the provisions of this article and his or her living will or medical power of attorney has become effective, any health care provider or health care facility which refuses to follow the principal's directives in a living will or medical power of attorney or the decisions of a medical power of attorney representative or health care surrogate, because the principal has asked the health care provider or health care facility not to follow such directions or decisions, shall have two physicians, one of whom may be the attending physician, or one physician and a qualified psychologist, or one physician and an advanced nurse practitioner certify that the principal has regained capacity to make the request. If such certification occurs, the provisions of the applicable living will or medical power of attorney, or the statute creating the authority of the health care surrogate shall not apply because the principal has regained decision-making capacity.

§16-30-25. Physician orders for scope of treatment form.

1 (a) No later than the first day of July, two thousand
2 three, the secretary of the department of health and human
3 resources shall implement the statewide distribution of
4 standardized physician orders for scope of treatment
5 (POST) forms.

6 (b) Physician orders for scope of treatment forms shall
7 be standardized forms used to reflect orders by a qualified
8 physician for medical treatment of a person in accordance
9 with that person's wishes or, if that person's wishes are not
10 reasonably known and cannot with reasonable diligence be
11 ascertained, in accordance with that person's best interest.
12 The form shall be bright pink in color to facilitate recogni-

13 tion by emergency medical services personnel and other
14 health care providers and shall be designed to provide for
15 information regarding the care of the patient, including,
16 but not limited to, the following:

17 (1) The orders of a qualified physician regarding
18 cardiopulmonary resuscitation, level of medical interven-
19 tion in the event of a medical emergency, use of antibiotics
20 and use of medically administered fluids and nutrition and
21 the basis for the orders;

22 (2) The signature of the qualified physician;

23 (3) Whether the person has completed an advance
24 directive or had a guardian, medical power of attorney
25 representative or surrogate appointed;

26 (4) The signature of the person or his or her guardian,
27 medical power of attorney representative, or surrogate
28 acknowledging agreement with the orders of the qualified
29 physician; and

30 (5) The date, location and outcome of any review of the
31 physician orders for scope of treatment form.

32 (c) The physician orders for scope of treatment form
33 shall be kept as the first page in a person's medical record
34 in a health care facility unless otherwise specified in the
35 health care facility's policies and procedures and shall be
36 transferred with the person from one health care facility
37 to another.

ARTICLE 30C. DO-NOT-RESUSCITATE ACT.

§16-30C-3. Definitions.

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

3 (a) "Attending physician" means the physician selected
4 by or assigned to the person who has primary responsibil-
5 ity for treatment or care of the person and who is a
6 licensed physician. If more than one physician shares that

7 responsibility, any of those physicians may act as the
8 attending physician under the provisions of this article.

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

12 (c) "Do-not-resuscitate identification" means a stan-
13 dardized identification necklace, bracelet, card or physi-
14 cian orders for scope of treatment form as set forth in this
15 article that signifies that a do-not-resuscitate order has
16 been issued for the possessor.

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

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

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

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

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

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

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

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

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

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

64 (n) "Surrogate decisionmaker" or "surrogate" means an
65 individual eighteen years of age or older who is reasonably
66 available, is willing to make health care decisions on
67 behalf of an incapacitated person, possesses the capacity
68 to make health care decisions and is identified or selected
69 by the attending physician or advanced nurse practitioner
70 in accordance with applicable provisions of article thirty
71 of this chapter as the person or persons who is to make
72 decisions pursuant to this article: *Provided*, That a
73 representative named in the incapacitated person's
74 medical power of attorney, if such document has been

75 completed, shall have priority over a surrogate
76 decisionmaker.

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

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

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

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

8 (2) A completed living will for that person is in effect,
9 pursuant to the provisions of article thirty of this chapter,
10 and the person is in a terminal condition or a persistent
11 vegetative state; or

12 (3) A completed medical power of attorney for that
13 person is in effect, pursuant to the provisions of article
14 thirty of this chapter, in which the person indicated that
15 he or she does not wish to receive cardiopulmonary
16 resuscitation, or his or her representative has determined
17 that the person would not wish to receive cardiopulmonary
18 resuscitation.

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

22 (b) Nothing in this article shall require a nursing home,
23 personal care home, hospice or extended care facility
24 operated in connection with hospitals to institute or
25 maintain the ability to provide cardiopulmonary resuscita-

26 tion or to expand its existing equipment, facilities or
27 personnel to provide cardiopulmonary resuscitation:
28 *Provided*, That if a health care facility does not provide
29 cardiopulmonary resuscitation, this policy shall be com-
30 municated in writing to the person, representative or
31 surrogate decisionmaker prior to admission.

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

1 (a) An attending physician may issue a do-not-resusci-
2 tate order for persons who are present in or residing at
3 home or in a health care facility if the person, representa-
4 tive or surrogate has consented to the order. A do-not-
5 resuscitate order shall be issued in writing in the form as
6 described in this section for a person not present or
7 residing in a health care facility. For persons present in
8 health care facilities, a do-not-resuscitate order shall be
9 issued in accordance with the policies and procedures of
10 the health care facility or in accordance with the provi-
11 sions of this article.

12 (b) Persons may request their physicians to issue do-not-
13 resuscitate orders for them.

14 (c) The representative or surrogate decisionmaker may
15 consent to a do-not-resuscitate order for a person with
16 incapacity. A do-not-resuscitate order written by a
17 physician for a person with incapacity with the consent of
18 the representative or surrogate decisionmaker is valid and
19 shall be respected by health care providers.

20 (d) A parent may consent to a do-not-resuscitate order
21 for his or her minor child, provided that a second physi-
22 cian who has examined the child concurs with the opinion
23 of the attending physician that the provision of
24 cardiopulmonary resuscitation would be contrary to
25 accepted medical standards. If the minor is between the
26 ages of sixteen and eighteen and, in the opinion of the
27 attending physician, the minor is of sufficient maturity to

28 understand the nature and effect of a do-not-resuscitate
 29 order, then no such order shall be valid without the
 30 consent of such minor. In the event of a conflict between
 31 the wishes of the parents or guardians and the wishes of
 32 the mature minor, the wishes of the mature minor shall
 33 prevail. For purposes of this section, no minor less than
 34 sixteen years of age shall be considered mature. Nothing
 35 in this article shall be interpreted to conflict with the
 36 provisions of the child abuse prevention and treatment act
 37 and implementing regulations at 45 CFR 1340. In the
 38 event conflict is unavoidable, federal law and regulation
 39 shall govern.

40 (e) If a surrogate decisionmaker is not reasonably
 41 available or capable of making a decision regarding a do-
 42 not-resuscitate order, an attending physician may issue a
 43 do-not-resuscitate order for a person with incapacity in a
 44 health care facility: *Provided*, That a second physician
 45 who has personally examined the person concurs in the
 46 opinion of the attending physician that the provision of
 47 cardiopulmonary resuscitation would be contrary to
 48 accepted medical standards.

49 (f) For persons not present or residing in a health care
 50 facility, the do-not-resuscitate order shall be noted on a
 51 physician orders for scope of treatment form or in the
 52 following form on a card suitable for carrying on the
 53 person:

54 Do-Not-Resuscitate Order

55 "As treating physician of _____ and a
 56 licensed physician, I order that this person SHALL NOT
 57 BE RESUSCITATED in the event of cardiac or respiratory
 58 arrest. This order has been discussed with _____
 59 or his/her representative _____ or
 60 his/her surrogate decisionmaker _____ who
 61 has given consent as evidenced by his/her signature below.

62 Physician Name _____

63 Physician Signature _____
 64 Address _____
 65 Person Signature _____
 66 Address _____
 67 Surrogate Decisionmaker Signature _____
 68 Address _____

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

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

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

76 (3) The physician orders for scope of treatment form.

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

1 (a) Health care providers shall comply with the do-not-
 2 resuscitate order when presented with one of the follow-
 3 ing:

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

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

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

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

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

§16-30C-11. Interinstitutional transfers.

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

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

1 (a) The secretary of the department of health and
2 human resources, no later than the first day of July, one
3 thousand nine hundred ninety-four, shall implement the
4 statewide distribution of do-not-resuscitate forms as
5 described in section six of this article.

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

18 (c) The secretary of the department of health and
19 human resources, no later than the first day of July, one

20 thousand nine hundred ninety-four, shall be responsible
21 for establishing a system for the distribution of the do-
22 not-resuscitate identification bracelets and necklaces.

23 (d) The secretary of the department of health and
24 human resources, the first day of July, one thousand nine
25 hundred ninety-four, shall develop and implement a
26 statewide educational effort to inform the public of their
27 right to accept or refuse cardiopulmonary resuscitation
28 and to request their physician to write a do-not-resusci-
29 tate order for them.

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

Carly Rose
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Barrett Clark
.....
Clerk of the Senate

Gregg M. Boy
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *3rd* ..
Day of *April*, 2002.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/19/02

Time 3:15p