

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

### ENROLLED

### Committee Substitute

for

### Senate Bill 470

BY SENATORS MARONEY, ROBERTS, TAKUBO,

STOLLINGS, WOODRUM, PHILLIPS, AND RUCKER

[Passed March 09, 2022; in effect 90 days from passage]

FILED

2022 MAR 23 P 5:23

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SB 470

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1 AN ACT to amend and reenact §16-30-3, §16-30-4, §16-30-5, §16-30-10, §16-30-13, §16-30-19,  
2 §16-30-21, and §16-30-25 of the Code of West Virginia, 1931, as amended; and to amend  
3 and reenact §16-30C-5 of said code, all relating to health care decisions; defining terms;  
4 renaming the physician orders for scope of treatment as portable orders for scope of  
5 treatment and indicating that advanced practice registered nurses and physician  
6 assistants may complete them within their scope of practice; revising forms of a living will,  
7 medical power of attorney, and combined medical power of attorney and living will;  
8 providing clarifying language regarding the effect of signing a living will on the availability  
9 of medically-administered food and fluids; requiring oral food and fluids be provided as  
10 desired and tolerated; providing reciprocity for portable orders for scope of treatment or  
11 similar medical orders validly executed in another state; providing that forms executed  
12 prior to effective date of this bill remain in full force and effect; and providing for effective  
13 date.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.**

### **§16-30-3. Definitions.**

1 For the purposes of this article:

2 “Actual knowledge” means the possession of information of the person’s wishes  
3 communicated to the health care provider orally or in writing by the person, the person’s medical  
4 power of attorney representative, the person’s health care surrogate, or other individuals resulting  
5 in the health care provider’s personal cognizance of these wishes. Constructive notice and other  
6 forms of imputed knowledge are not actual knowledge.

7 “Adult” means a person who is 18 years of age or older, an emancipated minor who has  
8 been established as such pursuant to the provisions of §49-4-115 of this code, or a mature minor.

9 “Advanced nurse practitioner” means a registered nurse with substantial theoretical  
10 knowledge in a specialized area of nursing practice and proficient clinical utilization of the

11 knowledge in implementing the nursing process, and who has met the further requirements of the  
12 West Virginia Board of Examiners for Registered Professional Nurses rule, advanced practice  
13 registered nurse, 19 CSR 7, who has a mutually agreed upon association in writing with a  
14 physician, and has been selected by or assigned to the person and has primary responsibility for  
15 treatment and care of the person.

16 “Attending physician” means the physician selected by or assigned to the person who has  
17 primary responsibility for treatment and care of the person and who is a licensed physician. If  
18 more than one physician shares that responsibility, any of those physicians may act as the  
19 attending physician under this article.

20 “Capable adult” means an adult who is physically and mentally capable of making health  
21 care decisions and who is not considered a protected person pursuant to chapter 44A of this  
22 code.

23 “Close friend” means any adult who has exhibited significant care and concern for an  
24 incapacitated person who is willing and able to become involved in the incapacitated person’s  
25 health care and who has maintained regular contact with the incapacitated person so as to be  
26 familiar with his or her activities, health, and religious and moral beliefs.

27 “Death” means a finding made in accordance with accepted medical standards of either:  
28 (1) The irreversible cessation of circulatory and respiratory functions; or (2) the irreversible  
29 cessation of all functions of the entire brain, including the brain stem.

30 “Guardian” means a person appointed by a court pursuant to chapter 44A of this code  
31 who is responsible for the personal affairs of a protected person and includes a limited guardian  
32 or a temporary guardian.

33 “Health care decision” means a decision to give, withhold, or withdraw informed consent  
34 to any type of health care, including, but not limited to, medical and surgical treatments, including  
35 life-prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a  
36 nursing home or other facility, home health care, and organ or tissue donation.

37           “Health care facility” means a facility commonly known by a wide variety of titles, including,  
38 but not limited to, hospital, psychiatric hospital, medical center, ambulatory health care facility,  
39 physicians’ office and clinic, extended care facility operated in connection with a hospital, nursing  
40 home, a hospital extended care facility operated in connection with a rehabilitation center,  
41 hospice, home health care, or other facility established to administer health care in its ordinary  
42 course of business or practice.

43           “Health care provider” means any licensed physician, dentist, nurse, physician assistant,  
44 paramedic, psychologist, or other person providing medical, dental, nursing, psychological, or  
45 other health care services of any kind.

46           “Incapacity” means the inability because of physical or mental impairment to appreciate  
47 the nature and implications of a health care decision, to make an informed choice regarding the  
48 alternatives presented, and to communicate that choice in an unambiguous manner.

49           “Life-prolonging intervention” means any medical procedure or intervention that, when  
50 applied to a person, would serve to artificially prolong the dying process. Life-prolonging  
51 intervention includes, among other things, nutrition and hydration administered intravenously or  
52 through a feeding tube. The term “life-prolonging intervention” does not include the administration  
53 of medication or the performance of any other medical procedure considered necessary to provide  
54 comfort or to alleviate pain.

55           “Living will” means a written, witnessed advance directive governing the withholding or  
56 withdrawing of life-prolonging intervention, voluntarily executed by a person in accordance with  
57 the requirements of §16-30-4 of this code.

58           “Mature minor” means a person, less than 18 years of age, who has been determined by  
59 a qualified physician, a qualified psychologist, or an advanced nurse practitioner to have the  
60 capacity to make health care decisions.

61           “Medical information” or “medical records” means and includes without restriction any  
62 information recorded in any form of medium that is created or received by a health care provider,

63 health care facility, health plan, public health authority, employer, life insurer, school, or university  
64 or health care clearinghouse that relates to the past, present, or future physical or mental health  
65 of the person, the provision of health care to the person, or the past, present, or future payment  
66 for the provision of health care to the person.

67 “Medical power of attorney representative” or “representative” means a person, 18 years  
68 of age or older, appointed by another person to make health care decisions pursuant to §16-30-  
69 6 of this code or similar act of another state and recognized as valid under the laws of this state.

70 “Parent” means a person who is another person’s natural or adoptive mother or father or  
71 who has been granted parental rights by valid court order and whose parental rights have not  
72 been terminated by a court of law.

73 “Person” means an individual, corporation, business trust, trust, partnership, association,  
74 government, governmental subdivision or agency, or any other legal entity.

75 “Portable orders for scope of treatment (POST) form” means a standardized form  
76 containing orders by a qualified physician, an advanced practice registered nurse, or a physician  
77 assistant that details a person’s life-sustaining wishes as provided by §16-30-25 of this code.

78 “Principal” means a person who has executed a living will, medical power of attorney, or  
79 combined medical power of attorney and living will.

80 “Protected person” means an adult who, pursuant to chapter 44A of this code, has been  
81 found by a court, because of mental impairment, to be unable to receive and evaluate information  
82 effectively or to respond to people, events, and environments to an extent that the individual lacks  
83 the capacity to: (1) Meet the essential requirements for his or her health, care, safety, habilitation,  
84 or therapeutic needs without the assistance or protection of a guardian; or (2) manage property  
85 or financial affairs to provide for his or her support or for the support of legal dependents without  
86 the assistance or protection of a conservator.

87 “Qualified physician” means a physician licensed to practice medicine who has personally  
88 examined the person.

89 "Qualified psychologist" means a psychologist licensed to practice psychology who has  
90 personally examined the person.

91 "Surrogate decision-maker" or "surrogate" means an individual 18 years of age or older  
92 who is reasonably available, to make health care decisions on behalf of an incapacitated person,  
93 possesses the capacity to make health care decisions, and is identified or selected by the  
94 attending physician or advanced nurse practitioner in accordance with the provisions of this article  
95 as the person who is to make those decisions in accordance with the provisions of this article.

96 "Terminal condition" means an incurable or irreversible condition as diagnosed by the  
97 attending physician or a qualified physician for which the administration of life-prolonging  
98 intervention will serve only to prolong the dying process.

**§16-30-4. Executing a living will, medical power of attorney, or combined medical power of attorney and living will.**

1 (a) Any competent adult may execute at any time a living will, medical power of attorney,  
2 or combined medical power of attorney and living will. A living will, medical power of attorney, or  
3 combined medical power of attorney and living will made pursuant to this article shall be: (1) In  
4 writing; (2) executed by the principal or by another person in the principal's presence at the  
5 principal's express direction if the principal is physically unable to do so; (3) dated; (4) signed in  
6 the presence of two or more witnesses at least 18 years of age; and (5) signed and attested by  
7 such witnesses whose signatures and attestations shall be acknowledged before a notary public.

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

9 (1) The person who signed the living will, medical power of attorney, or combined medical  
10 power of attorney and living will on behalf of and at the direction of the principal;

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

12 (3) Entitled to any portion of the estate of the principal under any will of the principal or  
13 codicil thereto: *Provided*, That the validity of the living will, medical power of attorney, or combined  
14 medical power of attorney and living will may not be affected when a witness at the time of

15 witnessing the living will, medical power of attorney, or combined medical power of attorney and  
16 living will was unaware of being a named beneficiary of the principal's will;

17 (4) Directly financially responsible for the principal's medical care;

18 (5) The attending physician; or

19 (6) The principal's medical power of attorney representative or successor medical power  
20 of attorney representative.

21 (c) The following persons may not serve as a medical power of attorney representative or  
22 successor medical power of attorney representative:

23 (1) A treating health care provider of the principal;

24 (2) An employee of a treating health care provider not related to the principal;

25 (3) An operator of a health care facility serving the principal; or

26 (4) Any person who is an employee of an operator of a health care facility serving the  
27 principal and who is not related to the principal.

28 (d) It is the responsibility of the principal or his or her representative to provide for  
29 notification to his or her attending physician and other health care providers of the existence of  
30 the living will, medical power of attorney, or combined medical power of attorney and living will or  
31 a revocation of the living will, medical power of attorney, or combined medical power of attorney  
32 and living will. An attending physician or other health care provider, when presented with the living  
33 will, medical power of attorney, or combined medical power of attorney and living will, or the  
34 revocation of a living will, medical power of attorney, or combined medical power of attorney and  
35 living will, shall make the living will, medical power of attorney, or combined medical power of  
36 attorney and living will, or a copy or revocation of any, a part of the principal's medical records.

37 (e) At the time of admission to any health care facility, each person shall be advised of the  
38 existence and availability of living will, medical power of attorney, and combined medical power  
39 of attorney and living will forms and shall be given assistance in completing such forms if the  
40 person desires: *Provided*, That under no circumstances may admission to a health care facility

41 be predicated upon a person having completed a living will, medical power of attorney, or  
42 combined medical power of attorney and living will.

43 (f) The provision of living will, medical power of attorney, or combined medical power of  
44 attorney and living will forms substantially in compliance with this article by health care providers,  
45 medical practitioners, social workers, social service agencies, senior citizens centers, hospitals,  
46 nursing homes, personal care homes, community care facilities, or any other similar person or  
47 group, without separate compensation, does not constitute the unauthorized practice of law.

48 (g) The living will may, but need not, be in the following form and may include other specific  
49 directions not inconsistent with other provisions of this article. Should any of the other specific  
50 directions be held to be invalid, the invalidity may not affect other directions of the living will which  
51 can be given effect without the invalid direction and to this end the directions in the living will are  
52 severable.

53 **STATE OF WEST VIRGINIA**

54 **LIVING WILL**

55 **The Kind of Medical Treatment I Want and Don't Want**

56 **If I Have a Terminal Condition**

57

58 Living will made this \_\_\_\_\_ day of  
59 \_\_\_\_\_ (month, year).

60 I, \_\_\_\_\_, (*Insert your name*)

61 being of sound mind, willfully and voluntarily declare that I want my wishes to be respected  
62 if I am very sick and unable to communicate my wishes for myself. In the absence of my ability to  
63 give directions regarding the use of life-prolonging intervention, it is my desire that my dying may  
64 not be prolonged under the following circumstances:

65 If I am very sick and unable to communicate my wishes for myself and I am certified by  
66 one physician, who has personally examined me, to have a terminal condition, I direct that life-

67 prolonging intervention that would serve solely to prolong the dying process be withheld or  
68 withdrawn. I understand that by signing this document I am agreeing to the REMOVAL or  
69 REFUSAL of cardiopulmonary resuscitation (CPR), breathing machine (ventilator), dialysis, and  
70 medically administered food and fluids, such as might be provided intravenously or by feeding  
71 tube. I want to be allowed to die naturally and only be given medications or other medical  
72 procedures necessary to keep me comfortable. I want to receive as much medication as is  
73 necessary to alleviate my pain. Nevertheless, oral food and fluids, such as may be provided by  
74 spoon or by straw, shall be offered as desired and can be tolerated.

75 I give the following SPECIAL DIRECTIVES OR LIMITATIONS: (Comments about funeral  
76 arrangements, autopsy, mental health treatment, and organ donation may be placed here. My  
77 failure to provide special directives or limitations does not mean that I want or refuse certain  
78 treatments.)

79

80

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

83 I understand the full import of this living will.

84

85

86 Signed

87

88

89

90 Address

91 I did not sign the principal's signature above for or at the direction of the principal. I am at  
92 least 18 years of age and am not related to the principal by blood or marriage, nor entitled to any



118           **STATE OF WEST VIRGINIA**

119           **MEDICAL POWER OF ATTORNEY**

120           **The Person I Want to Make Health Care Decisions**

121           **For Me When I Can't Make Them for Myself**

122           Dated: \_\_\_\_\_, 20\_\_\_\_

123           I, \_\_\_\_\_,

124           (Insert your name)

125           hereby appoint as my representative to act on my behalf to give, withhold, or withdraw

126 informed consent to health care decisions in the event that I am unable to do so myself.

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

128

129

130           *(Insert the name, address, area code, and telephone number of the person you wish to*

131 *designate as your representative. Please insert only one name.)*

132           **If my representative is unable, unwilling, or disqualified to serve, then I appoint as**

133 **my successor representative:**

134

135

136           *(Insert the name, address, area code, and telephone number of the person you wish to*

137 *designate as your successor representative. Please insert only one name.)*

138           This appointment shall extend to, but not be limited to, health care decisions relating to

139 medical treatment, surgical treatment, nursing care, medication, hospitalization, care and

140 treatment in a nursing home or other facility, and home health care. The representative appointed

141 by this document is specifically authorized to be granted access to my medical records and other

142 health information and to act on my behalf to consent to, refuse, or withdraw any and all medical

143 treatment or diagnostic procedures, or autopsy if my representative determines that I, if able to

144 do so, would consent to, refuse, or withdraw such treatment or procedures. This authority shall  
145 include, but not be limited to, decisions regarding the withholding or withdrawal of life-prolonging  
146 interventions.

147 I appoint this representative because I believe this person understands my wishes and  
148 values and will act to carry into effect the health care decisions that I would make if I were able to  
149 do so and because I also believe that this person will act in my best interest when my wishes are  
150 unknown. It is my intent that my family, my physician, and all legal authorities be bound by the  
151 decisions that are made by the representative appointed by this document and it is my intent that  
152 these decisions should not be the subject of review by any health care provider or administrative  
153 or judicial agency.

154 It is my intent that this document be legally binding and effective and that this document  
155 be taken as a formal statement of my desire concerning the method by which any health care  
156 decisions should be made on my behalf during any period when I am unable to make such  
157 decisions.

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

160 SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER: Comments about tube  
161 feedings, breathing machines, cardiopulmonary resuscitation, dialysis, mental health treatment,  
162 funeral arrangements, autopsy, and organ donation may be placed here. My failure to provide  
163 special directives or limitations does not mean I want or refuse certain treatments.

164

165

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166 THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON  
167 MY INCAPACITY TO GIVE, WITHHOLD, OR WITHDRAW INFORMED CONSENT TO MY OWN  
168 MEDICAL CARE.

169

170 Signature of the Principal

171

172 Address of Principal

173 I did not sign the principal's signature above. I am at least 18 years of age and am not  
174 related to the principal by blood or marriage. I am not entitled to any portion of the estate of the  
175 principal or to the best of my knowledge under any will of the principal or codicil thereto, nor legally  
176 responsible for the costs of the principal's medical or other care. I am not the principal's attending  
177 physician, nor am I the representative or successor representative of the principal.

178

179 Witness: DATE

180

181

182 Witness: DATE

183

184

185 STATE OF

186

187

188 COUNTY OF

189

190 I, \_\_\_\_\_, a Notary Public of said

191 County, do certify that \_\_\_\_\_, as principal,

192 and \_\_\_\_\_ and \_\_\_\_\_, as witnesses, whose names are

193 signed to the writing above bearing date on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

194 have this day acknowledged the same before me.

195 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

196 My commission expires: \_\_\_\_\_

197

198 Notary Public

199 (i) A combined medical power of attorney and living will may, but need not, be in the  
200 following form, and may include other specific directions not inconsistent with other provisions of  
201 this article. Should any of the other specific directions be held to be invalid, the invalidity does not  
202 affect other directions of the combined medical power of attorney and living will which can be  
203 given effect without the invalid direction and to this end the directions in the combined medical  
204 power of attorney and living will are severable.

205 **STATE OF WEST VIRGINIA**

206 **COMBINED MEDICAL POWER OF ATTORNEY AND LIVING WILL**

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

208 **Them for Myself and the Kind of Medical Treatment I Want and Don't Want**

209 **If I Have a Terminal Condition**

210 Dated: \_\_\_\_\_, 20\_\_\_\_

211 I, \_\_\_\_\_, (*Insert your*  
212 *name*) hereby appoint as my representative to act on my behalf to give, withhold, or withdraw  
213 informed consent to health care decisions in the event that I am unable to do so myself.

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

215 \_\_\_\_\_  
216 \_\_\_\_\_

217 (*Insert the name, address, area code, and telephone number of the person you wish to*  
218 *designate as your representative. Please insert only one name.*)

219 **If my representative is unable, unwilling, or disqualified to serve, then I appoint as**  
220 **my successor representative:**

221 \_\_\_\_\_

222

223 \_\_\_\_\_  
224 *(Insert the name, address, area code, and telephone number of the person you wish to  
designate as your successor representative. Please insert only one name.)*

225 This appointment shall extend to, but not be limited to, health care decisions relating to  
226 medical treatment, surgical treatment, nursing care, medication, hospitalization, care and  
227 treatment in a nursing home or other facility, and home health care. The representative appointed  
228 by this document is specifically authorized to be granted access to my medical records and other  
229 health information and to act on my behalf to consent to, refuse, or withdraw any and all medical  
230 treatment or diagnostic procedures, or autopsy if my representative determines that I, if able to  
231 do so, would consent to, refuse, or withdraw such treatment or procedures. Such authority shall  
232 include, but not be limited to, decisions regarding the withholding or withdrawal of life-prolonging  
233 interventions, subject to the special directives and limitations as stated below:

234 1. IN A TERMINAL CONDITION: If I am very sick and unable to communicate my wishes  
235 for myself and I am certified by one physician, who has personally examined me, to have a  
236 terminal condition, I direct that life-prolonging intervention that would serve solely to prolong the  
237 dying process be withheld or withdrawn. Thus, if a physician has determined that I am in a terminal  
238 condition, I understand that completing this form would mean that I refuse cardiopulmonary  
239 resuscitation (CPR). It also means that I refuse or request the removal of a breathing machine  
240 (ventilator), dialysis, and medically administered food and fluids, such as might be provided  
241 intravenously or by feeding tube. I want to be allowed to die naturally and only be given  
242 medications or other medical procedures necessary to keep me comfortable. I want to receive as  
243 much medication as is necessary to alleviate my pain. Nevertheless, oral food and fluids, such as  
244 may be provided by spoon or by straw, shall be offered as desired and can be tolerated.

245 2. OTHER LIVING WILL SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER:  
246 (Comments about mental health treatment, funeral arrangements, autopsy, and organ donation

247 may be placed here. My failure to provide special directives or limitations does not mean that I  
248 want or refuse certain treatments.)

249

250

251

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254 In exercising the authority under this medical power of attorney, my representative shall  
255 act consistently with my special directives or limitations as stated in this advance directive.

256 3. NOT IN A TERMINAL CONDITION: MEDICAL POWER OF ATTORNEY SPECIAL  
257 DIRECTIVES OR LIMITATIONS ON THIS POWER: (Comments about tube feedings, breathing  
258 machines, cardiopulmonary resuscitation, dialysis, mental health treatment, funeral  
259 arrangements, autopsy and organ donation may be placed here. My failure to provide special  
260 directives or limitations does not mean that I want or refuse certain treatments.)

261

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263

264

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266 I appoint this representative because I believe this person understands my wishes and  
267 values and will act to carry into effect the health care decisions that I would make if I were able to  
268 do so, and because I also believe that this person will act in my best interest when my wishes are  
269 unknown. It is my intent that my family, my physician, and all legal authorities be bound by the  
270 decisions that are made by the representative appointed by this document, and it is my intent that  
271 these decisions should not be the subject of review by any health care provider or administrative  
272 or judicial agency.

273 It is my intent that this document be legally binding and effective and that this document  
274 be taken as a formal statement of my desire concerning the method by which any health care  
275 decisions should be made on my behalf during any period when I am unable to make such  
276 decisions.

277 THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON  
278 MY INCAPACITY TO GIVE, WITHHOLD, OR WITHDRAW INFORMED CONSENT TO MY OWN  
279 MEDICAL CARE.

280 \_\_\_\_\_  
281 Signature of the Principal

282  
283 Address of Principal

284 I did not sign the principal's signature above. I am at least 18 years of age and am not  
285 related to the principal by blood or marriage. I am not entitled to any portion of the estate of the  
286 principal or to the best of my knowledge under any will of the principal or codicil thereto, nor legally  
287 responsible for the costs of the principal's medical nor other care. I am not the principal's attending  
288 physician, nor am I the representative or successor representative of the principal.

289 Witness \_\_\_\_\_ DATE \_\_\_\_\_

290 Witness \_\_\_\_\_ DATE \_\_\_\_\_

291 STATE OF \_\_\_\_\_

292 COUNTY OF \_\_\_\_\_

293 I, \_\_\_\_\_, a Notary Public of said county, do certify  
294 that \_\_\_\_\_, as principal, and \_\_\_\_\_ and  
295 \_\_\_\_\_, as witnesses, whose names are signed to the writing above bearing  
296 date on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, have this day acknowledged the same before  
297 me.

298 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

299 My commission expires: \_\_\_\_\_

300

301 Signature of Notary Public

302 (j) Any and all living will, medical power of attorney, and combined medical power of  
303 attorney and living will documents executed pursuant to §16-30-3 and §16-30-4 of this code,  
304 before the effective date of the amendments to these sections, remain in full force and effect. This  
305 section is effective for a living will, medical power of attorney, or combined medical power of  
306 attorney and living will document executed, amended, or adjusted on or after January 1, 2023.  
307 Accordingly, all health care facilities and health care providers using a living will, medical power  
308 of attorney, or combined medical power of attorney and living will form referenced in §16-30-4 of  
309 this code shall update their forms on or before January 1, 2023.

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

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

6 (b) If there is a conflict between the person's expressed directives, the portable orders for  
7 scope of treatment form, and the decisions of the medical power of attorney representative or  
8 surrogate, the person's expressed directives shall be followed.

9 (c) If there is a conflict between two advance directives executed by the person, the one  
10 most recently completed takes precedence only to the extent needed to resolve the inconsistency.

11 (d) If there is a conflict between the decisions of the medical power of attorney  
12 representative or surrogate and the person's best interests as determined by the attending  
13 physician when the person's wishes are unknown, the attending physician shall attempt to resolve  
14 the conflict by consultation with a qualified physician, an ethics committee, or by some other

15 means. If the attending physician cannot resolve the conflict with the medical power of attorney  
16 representative, the attending physician may transfer the care of the person pursuant §16-30-12(b)  
17 of this code.

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

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

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

7 (c) A health care provider, health care facility, or employee thereof shall not be subject to  
8 criminal or civil liability for good-faith compliance with or reliance upon the orders in a portable  
9 orders for scope of treatment form.

10 (d) No health care provider or employee thereof who in good faith and pursuant to  
11 reasonable medical standards causes or participates in the withholding or withdrawing of life-  
12 prolonging intervention from a person pursuant to a living will or combined medical power of  
13 attorney and living will made in accordance with this article shall, as a result thereof, be subject  
14 to criminal or civil liability.

15 (e) An attending physician who cannot comply with the living will, medical power of  
16 attorney, or combined medical power of attorney and living will of a principal pursuant to this  
17 article shall, in conjunction with the medical power of attorney representative, health care  
18 surrogate, or other responsible person, effect the transfer of the principal to another physician  
19 who will honor the living will, medical power of attorney, or combined medical power of attorney

20 and living will of the principal. Transfer under these circumstances does not constitute  
21 abandonment.

**§16-30-13. Interinstitutional transfers.**

1 (a) If a person admitted to any health care facility in this state has been determined to lack  
2 capacity and that person's medical power of attorney has been declared to be in effect or a  
3 surrogate decisionmaker has been selected for that person all in accordance with the  
4 requirements of this article and that person is subsequently transferred from one health care  
5 facility to another, the receiving health care facility may rely upon the prior determination of  
6 incapacity and the activation of the medical power of attorney or selection of a surrogate  
7 decisionmaker as valid and continuing until such time as an attending physician, a qualified  
8 physician, a qualified psychologist, or advanced nurse practitioner in the receiving facility  
9 assesses the person's capacity. Should the reassessment by the attending physician, a qualified  
10 physician, a qualified psychologist, or an advanced nurse practitioner at the receiving facility result  
11 in a determination of continued incapacity, the receiving facility may rely upon the medical power  
12 of attorney representative or surrogate decisionmaker who provided health care decisions at the  
13 transferring facility to continue to make all health care decisions at the receiving facility until such  
14 time as the person regains capacity.

15 (b) If a person admitted to any health care facility in this state has been determined to lack  
16 capacity and the person's medical power of attorney has been declared to be in effect or a  
17 surrogate decisionmaker has been selected for that person all in accordance with the  
18 requirements of this article and that person is subsequently discharged home in the care of a  
19 home health care agency or hospice, the home health care agency or hospice may rely upon the  
20 prior determination of incapacity. The home health care agency or hospice may rely upon the  
21 medical power of attorney representative or health care surrogate who provided health care  
22 decisions at the transferring facility to continue to make all health care decisions until such time  
23 as the person regains capacity.

24 (c) If a person with an order to withhold or withdraw life-prolonging intervention is  
25 transferred from one health care facility to another, the existence of such order shall be  
26 communicated to the receiving facility prior to the transfer and the written order shall accompany  
27 the person to the receiving facility and shall remain effective until a physician at the receiving  
28 facility issues admission orders.

29 (d) If a person with portable orders for scope of treatment form is transferred from one  
30 health care facility to another, the health care facility initiating the transfer shall communicate the  
31 existence of the portable orders for scope of treatment form to the receiving facility prior to the  
32 transfer. The portable orders for scope of treatment form shall accompany the person to the  
33 receiving facility and shall remain in effect. The form shall be kept at the beginning of the patient's  
34 transfer records unless otherwise specified in the health care facility's policy and procedures.  
35 After admission, the portable orders for scope of treatment form shall be reviewed by the attending  
36 physician and one of three actions shall be taken:

37 (1) The portable orders for scope of treatment form shall be continued without change;

38 (2) The portable orders for scope of treatment form shall be voided and a new form issued;

39 or

40 (3) The portable orders for scope of treatment form shall be voided without a new form  
41 being issued.

**§16-30-19. Physician's duty to confirm, communicate, and document terminal condition;  
medical record identification.**

1 (a) An attending physician who has been notified of the existence of a living will or  
2 combined medical power of attorney and living will executed under this article, without delay after  
3 the diagnosis of a terminal condition of the principal, shall take steps as needed to provide for  
4 confirmation, written certification, and documentation of the principal's terminal condition in the  
5 principal's medical record.

6 (b) Once confirmation, written certification, and documentation of the principal's terminal  
7 condition is made, the attending physician shall verbally or in writing inform the principal of his or  
8 her condition or the principal's medical power of attorney representative or surrogate, if the  
9 principal lacks capacity to comprehend such information and shall document such communication  
10 in the principal's medical record.

11 (c) All inpatient health care facilities shall develop a system to visibly identify a person's  
12 chart which contains a living will or medical power of attorney, combined medical power of  
13 attorney and living will, or a portable order for scope of treatment as set forth in this article.

**§16-30-21. Reciprocity.**

1 A living will medical power of attorney, mental health advance directive, medical orders  
2 (portable orders for scope of treatment or do-not-resuscitate card), or similar advance directive or  
3 medical orders form executed in another state is validly executed for the purposes of this article  
4 if it is executed in compliance with the laws of this state or with the laws of the state where  
5 executed.

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

1 (a) The secretary of the Department of Health and Human Resources shall implement the  
2 statewide distribution of standardized portable orders for scope of treatment (POST) forms.

3 (b) Portable orders for scope of treatment forms shall be standardized forms used to reflect  
4 orders by a qualified physician, an advanced practice registered nurse, or a physician assistant  
5 for medical treatment of a person in accordance with that person's wishes or, if that person's  
6 wishes are not reasonably known and cannot with reasonable diligence be ascertained, in  
7 accordance with that person's best interest. The form shall be bright pink in color to facilitate  
8 recognition by emergency medical services personnel and other health care providers and shall  
9 be designed to provide for information regarding the care of the patient, including, but not limited  
10 to, the following:

11 (1) The orders of a qualified physician, an advanced practice registered nurse, or a  
12 physician assistant regarding cardiopulmonary resuscitation, level of medical intervention in the  
13 event of a medical emergency, use of antibiotics, and use of medically administered fluids and  
14 nutrition and the basis for the orders;

15 (2) The signature of the qualified physician, an advanced practice registered nurse, or a  
16 physician assistant;

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

19 (4) The signature of the person or his or her guardian, medical power of attorney  
20 representative, or surrogate acknowledging agreement with the orders of the qualified physician,  
21 an advanced practice registered nurse, or a physician assistant; and

22 (5) The date, location, and outcome of any review of the portable orders for scope of  
23 treatment form.

24 (c) The portable orders for scope of treatment form shall be kept as the first page in a  
25 person's medical record in a health care facility unless otherwise specified in the health care  
26 facility's policies and procedures and shall be transferred with the person from one health care  
27 facility to another.

**ARTICLE 30C. DO NOT RESUSCITATE ACT.**

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

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

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

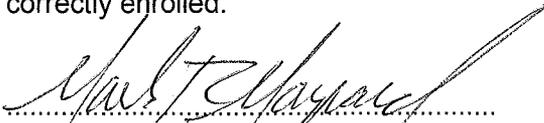
6           (2) A completed living will or combined medical power of attorney and living will for that  
7 person is in effect, pursuant to the provisions of §16-30-1 *et seq.* of this code, and the person is  
8 in a terminal condition; or

9           (3) A completed medical power of attorney for that person is in effect, pursuant to §16-30-  
10 1 *et seq.* of this code, in which the person indicated that he or she does not wish to receive  
11 cardiopulmonary resuscitation, or his or her representative has determined that the person would  
12 not wish to receive cardiopulmonary resuscitation.

13           (4) A completed portable orders for scope of treatment form in which a qualified physician  
14 has ordered do-not-resuscitate.

15           Nothing in this article shall require a nursing home, personal care home, hospice, or  
16 extended care facility operated in connection with hospitals to institute or maintain the ability to  
17 provide cardiopulmonary resuscitation or to expand its existing equipment, facilities, or personnel  
18 to provide cardiopulmonary resuscitation: *Provided*, That if a health care facility does not provide  
19 cardiopulmonary resuscitation, this policy shall be communicated in writing to the person,  
20 representative, or surrogate decision maker prior to admission.

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

  
.....  
Chairman, Senate Committee

  
.....  
Chairman, House Committee

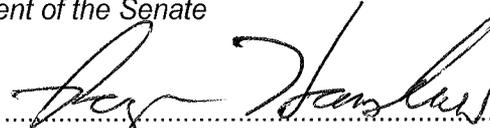
Originated in the Senate.

In effect 90 days from passage.

  
.....  
Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

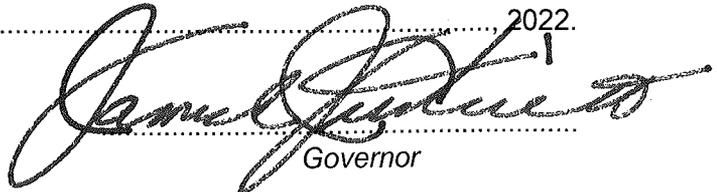
  
.....  
Speaker of the House of Delegates

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

2022 MAR 23 P 5:24

FILED

The within is approved this the 23rd  
Day of March ..... 2022.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 15 2022

Time 11:41am