

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

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

252

253

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

262

263

264

265

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

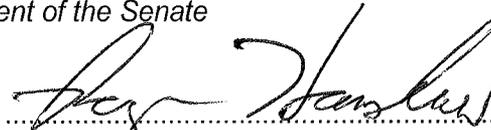
Originated in the Senate.

In effect 90 days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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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