

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 373**

BY SENATORS TRUMP, TAKUBO AND MARONEY

[Introduced February 21, 2017; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §16-30-6 of the Code of West Virginia, 1931, as amended, relating  
 2 to authorizing a medical power of attorney representative under stated circumstances to  
 3 sign a binding arbitration agreement with a nursing home or assisted living facility.

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

1 That §16-30-6 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

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

**§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 care decisions without regard to  
 2 guidelines contained in this article.

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

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

11 (d) For any medical power of attorney executed after the date of the reenactment of this  
 12 section during the 2017 session of the Legislature, the medical power of attorney representative  
 13 has the authority to sign binding arbitration agreements with nursing homes and assisted living  
 14 facilities as part of the agreements regarding admission to those facilities, except to the extent  
 15 that a medical power of attorney representative's authority to make such agreement is specifically  
 16 precluded by the medical power of attorney. If the incapacitated person regains capacity, he or  
 17 she may, prospectively revoke the arbitration agreement made by his or her medical power of

18 attorney representative by delivering a signed notice of revocation to the affected nursing home  
19 or assisted living facility.

20       ~~(d)~~ (e) The medical power of attorney representative or surrogate's authority shall  
21 commence upon a determination, made pursuant to section seven of this article, of the incapacity  
22 of the adult. In the event the person no longer is incapacitated or the medical power of attorney  
23 representative or surrogate is unwilling or unable to serve, the medical power of attorney  
24 representative or surrogate's authority shall cease. However, the authority of the medical power  
25 of attorney representative or surrogate may recommence if the person subsequently becomes  
26 incapacitated as determined pursuant to section seven of this article unless during the intervening  
27 period of capacity the person executes an advance directive which makes a surrogate  
28 unnecessary or expressly rejects the previously appointed surrogate as his or her surrogate. A  
29 medical power of attorney representative or surrogate's authority terminates upon the death of  
30 the incapacitated person except with respect to decisions regarding autopsy, funeral  
31 arrangements or cremation and organ and tissue donation: *Provided*, That the medical power of  
32 attorney representative or surrogate has no authority after the death of the incapacitated person  
33 to invalidate or revoke a preneed funeral contract executed by the incapacitated person in  
34 accordance with the provisions of article fourteen, chapter forty-seven of this code prior to the  
35 onset of the incapacity and either paid in full before the death of the incapacitated person or  
36 collectible from the proceeds of a life insurance policy specifically designated for that purpose.

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

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

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

NOTE: The purpose of this bill is to authorize a medical power of attorney representative to sign a binding arbitration agreement with a nursing home or assisted living facility.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.