

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 642

BY SENATORS MARONEY, AZINGER, RUCKER, TAKUBO,

TRUMP, AND ROBERTS

[Introduced February 18, 2019; Referred

to the Committee on the Judiciary]

1 A BILL to amend and reenact §16-30-3 and §16-30-4 of the Code of West Virginia, 1931, as
2 amended, all relating to providing options in living wills, and combined medical powers of
3 attorney and living wills, that permit the principal to either be provided with medically
4 assisted food and fluids or not to be provided with medically assisted food and fluids if the
5 principal is unable to communicate his or her desires; redefining a term; and clarifying
6 what constitutes a “terminal condition” and a “persistent vegetative state”.

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

10 (c) “Advanced nurse practitioner” means a registered nurse with substantial theoretical
11 knowledge in a specialized area of nursing practice and proficient clinical utilization of the
12 knowledge in implementing the nursing process, and who has met the further requirements of the
13 West Virginia Board of Examiners for registered professional nurses rule, advanced practice
14 registered nurse, 19CSR 7, who has a mutually agreed upon association in writing with a
15 physician, and has been selected by or assigned to the person and has primary responsibility for
16 treatment and care of the person.

17 (d) “Attending physician” means the physician selected by or assigned to the person who

18 has primary responsibility for treatment and care of the person and who is a licensed physician.
19 If more than one physician shares that responsibility, any of those physicians may act as the
20 attending physician under this article.

21 (e) "Capable adult" means an adult who is physically and mentally capable of making
22 health care decisions and who is not considered a protected person pursuant to the provisions of
23 chapter 44A of this code.

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

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

31 (h) "Guardian" means a person appointed by a court pursuant to the provisions of chapter
32 44A of this code who is responsible for the personal affairs of a protected person and includes a
33 limited guardian or a temporary guardian.

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

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

44 (k) "Health care provider" means any licensed physician, dentist, nurse, physician's
45 assistant, paramedic, psychologist, or other person providing medical, dental, nursing,
46 psychological or other health care services of any kind.

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

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

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

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

62 (p) "Medical information" or "medical records" means and includes without restriction any
63 information recorded in any form of medium that is created or received by a health care provider,
64 health care facility, health plan, public health authority, employer, life insurer, school, or university
65 or health care clearinghouse that relates to the past, present or future physical or mental health
66 of the person, the provision of health care to the person, or the past, present, or future payment
67 for the provision of health care to the person.

68 (q) "Medical power of attorney representative" or "representative" means a person, 18
69 years of age or older, appointed by another person to make health care decisions pursuant to the

70 provisions of §16-30-6 of this code or similar act of another state and recognized as valid under
71 the laws of this state.

72 (r) "Parent" means a person who is another person's natural or adoptive mother or father
73 or who has been granted parental rights by valid court order and whose parental rights have not
74 been terminated by a court of law.

75 (s) "Persistent vegetative state" means an irreversible state as diagnosed by the attending
76 physician or a qualified physician in which the person has intact brain stem function but no higher
77 cortical function and has neither self-awareness nor awareness of the surroundings in a learned
78 manner.

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

81 (u) "Physician orders for scope of treatment (POST) form" means a standardized form
82 containing orders by a qualified physician that details a person's life-sustaining wishes as
83 provided by §16-30-25 of this code.

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

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

92 (x) "Qualified physician" means a physician licensed to practice medicine who has
93 personally examined the person.

94 (y) "Qualified psychologist" means a psychologist licensed to practice psychology who has
95 personally examined the person.

96 (z) "Surrogate decisionmaker" or "surrogate" means an individual 18 years of age or older
97 who is reasonably available, is willing to make health care decisions on behalf of an incapacitated
98 person, possesses the capacity to make health care decisions, and is identified or selected by
99 the attending physician or advanced nurse practitioner in accordance with the provisions of this
100 article as the person who is to make those decisions in accordance with the provisions of this
101 article.

102 (aa) "Terminal condition" means an incurable or irreversible condition as diagnosed by the
103 attending physician or a qualified physician for which the administration of life-prolonging
104 intervention will serve only to prolong the dying process.

**§16-30-4. Executing a living will or 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 or medical power of attorney.
2 A living will or medical power of attorney made pursuant to this article shall be: (1) In writing; (2)
3 executed by the principal or by another person in the principal's presence at the principal's
4 express direction if the principal is physically unable to do so; (3) dated; (4) signed in the presence
5 of two or more witnesses at least 18 years of age; and (5) signed and attested by such witnesses
6 whose signatures and attestations shall be acknowledged before a notary public as provided in
7 subsection (d) of this section.

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

9 (1) The person who signed the living will or medical power of attorney on behalf of and at
10 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 or medical power of attorney shall not
14 be affected when a witness at the time of witnessing such living will or medical power of attorney
15 was unaware of being a named beneficiary of the principal's will;

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

17 (5) The attending physician; or

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

20 (c) The following persons may not serve as a medical power of attorney representative or
21 successor medical power of attorney representative: (1) A treating health care provider of the
22 principal; (2) an employee of a treating health care provider not related to the principal; (3) an
23 operator of a health care facility serving the principal; or (4) any person who is an employee of an
24 operator of a health care facility serving the principal and who is not related to the principal.

25 (d) It shall be the responsibility of the principal or his or her representative to provide for
26 notification to his or her attending physician and other health care providers of the existence of
27 the living will or medical power of attorney or a revocation of the living will or medical power of
28 attorney. An attending physician or other health care provider, when presented with the living will
29 or medical power of attorney, or the revocation of a living will or medical power of attorney, shall
30 make the living will, medical power of attorney or a copy of either or a revocation of either a part
31 of the principal's medical records.

32 (e) At the time of admission to any health care facility, each person shall be advised of the
33 existence and availability of living will and medical power of attorney forms, and shall be given
34 assistance in completing such forms if the person desires: *Provided*, That under no circumstances
35 may admission to a health care facility be predicated upon a person having completed either a
36 medical power of attorney or living will.

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

42 (g) The living will may, but need not, be in the following form and may include other specific
 43 directions not inconsistent with other provisions of this article. Should any of the other specific
 44 directions be held to be invalid, such invalidity shall not affect other directions of the living will
 45 which can be given effect without the invalid direction and to this end the directions in the living
 46 will are severable.

47 **STATE OF WEST VIRGINIA**

48 **LIVING WILL**

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

50 **If I Have a Terminal Condition or**

51 **Am In a Persistent Vegetative State**

52
 53 Living will made this _____ day of
 54 _____(month, year).

55 I, _____, being of sound mind,
 56 willfully and voluntarily declare that I want my wishes to be respected if I am very sick and not
 57 able to communicate my wishes for myself. In the absence of my ability to give directions
 58 regarding the use of life-prolonging medical intervention, it is my desire that my dying shall not be
 59 prolonged under the following circumstances:

60 If I am very sick and not able to communicate my wishes for myself and I am certified by
 61 one physician, who has personally examined me, to have a terminal condition (an incurable or
 62 irreversible condition for which the administration of life-prolonging intervention will serve only to
 63 prolong the dying process) or to be in a persistent vegetative state ~~(I am unconscious and am~~
 64 ~~neither aware of my environment nor able to interact with others)~~ (I have intact brain stem function
 65 but no higher cortical function and have neither self-awareness nor awareness of my surroundings
 66 in a learned manner), or to be in a persistent vegetative state (I am unconscious and am neither
 67 aware of my environment nor able to interact with others), I direct that life-prolonging medical

68 intervention that would serve solely to prolong the dying process or maintain me in a persistent
69 vegetative state be withheld or withdrawn. I want to be allowed to die naturally and only be given
70 medications or other medical procedures necessary to keep me comfortable. I want to receive as
71 much medication as is necessary to alleviate my pain.

72 I, _____, wish to be provided medically-assisted food (nutrition) and fluids (hydration),
73 for example, intravenously or by feeding tube, for so long as my body is able to assimilate them,
74 unless the provision of such becomes excessively burdensome to me, or would cause significant
75 physical discomfort. If I am able to receive food and fluids orally, for example, by spoon and straw,
76 I direct that such be offered to me, and shall not be denied simply because of a diagnosis or
77 terminal condition or persistent vegetative state. I recognize that in some cases the risk of choking
78 may preclude the provision of food and fluids orally, in which case I direct my choice of medically
79 assisted foods and fluids be followed.

80 I, _____, do not wish to be given medically assisted food (nutrition) or fluids. I
81 understand that the removal of food and fluids may hasten or even cause my death.

82 I give the following SPECIAL DIRECTIVES OR LIMITATIONS: (Comments about tube
83 feedings, breathing machines, cardiopulmonary resuscitation, dialysis and mental health
84 treatment may be placed here. My failure to provide special directives or limitations does not
85 mean that I want or refuse certain treatments.)

86 _____
87 _____
88 _____

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

91 I understand the full import of this living will.

92 _____
93 _____

94 Signed

95 _____

96 _____

97 _____

98 Address

99 I did not sign the principal's signature above for or at the direction of the principal. I am at
100 least 18 years of age and am not related to the principal by blood or marriage, entitled to any
101 portion of the estate of the principal to the best of my knowledge under any will of principal or
102 codicil thereto, or directly financially responsible for principal's medical care. I am not the
103 principal's attending physician or the principal's medical power of attorney representative or
104 successor medical power of attorney representative under a medical power of attorney.

105 _____

106 Witness DATE

107 _____

108 Witness DATE

109 STATE OF

110 _____

111 COUNTY OF

112 I, _____, a Notary Public of said County, do certify that

113 _____, as principal,

114 and _____ and _____, as witnesses, whose names

115 are signed to the writing above bearing date on the _____ day of _____, 20____,

116 have this day acknowledged the same before me.

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

118 My commission expires: _____

119 _____

120 Notary Public

121 (h) A medical power of attorney may, but need not, be in the following form, and may
122 include other specific directions not inconsistent with other provisions of this article. Should any
123 of the other specific directions be held to be invalid, such invalidity shall not affect other directions
124 of the medical power of attorney which can be given effect without invalid direction and to this end
125 the directions in the medical power of attorney are severable.

126 **STATE OF WEST VIRGINIA**

127 **MEDICAL POWER OF ATTORNEY**

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

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

130

131 Dated: _____, 20_____

132 I, _____, hereby

133 (Insert your name and address)

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

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

137 _____

138 *(Insert the name, address, area code and telephone number of the person you wish to*
139 *designate as your representative).*

140

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

142

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

144

145 _____

146 *(Insert the name, address, area code and telephone number of the person you wish to*
147 *designate as your successor representative).*

148

149 This appointment shall extend to, but not be limited to, health care decisions relating to
150 medical treatment, surgical treatment, nursing care, medication, hospitalization, care and
151 treatment in a nursing home or other facility, and home health care. The representative appointed
152 by this document is specifically authorized to be granted access to my medical records and other
153 health information and to act on my behalf to consent to, refuse or withdraw any and all medical
154 treatment or diagnostic procedures, or autopsy if my representative determines that I, if able to
155 do so, would consent to, refuse or withdraw such treatment or procedures. Such authority shall
156 include, but not be limited to, decisions regarding the withholding or withdrawal of life-prolonging
157 interventions.

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

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

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

171 I am giving the following SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER:

172 (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis,
173 funeral arrangements, autopsy and organ donation may be placed here. My failure to provide
174 special directives or limitations does not mean that I want or refuse certain treatments).

175 _____
176 _____

177 THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON
178 MY INCAPACITY TO GIVE, WITHHOLD OR WITHDRAW INFORMED CONSENT TO MY OWN
179 MEDICAL CARE.

180 _____

181 Signature of the Principal

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

187 _____ DATE

188 Witness:

189 _____

191 Witness: DATE

192 _____

194 STATE OF

195 _____

197 COUNTY OF

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

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

My commission expires: _____

Notary Public

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

STATE OF WEST VIRGINIA

COMBINED MEDICAL POWER OF ATTORNEY

AND LIVING WILL

**The Person I Want to Make Health Care Decisions For Me When I Can't Make
Them for Myself And The Kind of Medical Treatment I Want and Don't Want
If I Have a Terminal Condition or Am In a Persistent Vegetative State**

Dated: _____, 20____

I, _____, hereby (*Insert
your name and address*) appoint as my representative to act on my behalf to give, withhold or

224 withdraw informed consent to health care decisions in the event that I am not able to do so myself.

225 The person I choose as my representative is:

226 _____

227 *(Insert the name, address, area code and telephone number of the person you wish to*
228 *designate as your representative).*

229 If my representative is unable, unwilling or disqualified to serve, then I appoint as my
230 successor representative:

231 _____

232 *(Insert the name, address, area code and telephone number of the person you wish to*
233 *designate as your successor representative).*

234 This appointment shall extend to, but not be limited to, health care decisions relating to
235 medical treatment, surgical treatment, nursing care, medication, hospitalization, care and
236 treatment in a nursing home or other facility, and home health care. The representative appointed
237 by this document is specifically authorized to be granted access to my medical records and other
238 health information and to act on my behalf to consent to, refuse or withdraw any and all medical
239 treatment or diagnostic procedures, or autopsy if my representative determines that I, if able to
240 do so, would consent to, refuse or withdraw such treatment or procedures. Such authority shall
241 include, but not be limited to, decisions regarding the withholding or withdrawal of life-prolonging
242 interventions.

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

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

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 below.

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

261 1. If I am very sick and not able to communicate my wishes for myself and I am certified
262 by one physician who has personally examined me, to have a terminal condition (an incurable or
263 irreversible condition for which the administration of life-prolonging intervention will serve only to
264 prolong the dying process) or to be in a persistent vegetative state (~~I am unconscious and am~~
265 ~~neither aware of my environment nor able to interact with others,)~~ (I have intact brain stem function
266 but no higher cortical function and have neither self-awareness nor awareness of my surroundings
267 in a learned manner) I direct that life-prolonging medical intervention that would serve solely to
268 prolong the dying process or maintain me in a persistent vegetative state be withheld or
269 withdrawn. I want to be allowed to die naturally and only be given medications or other medical
270 procedures necessary to keep me comfortable. I want to receive as much medication as is
271 necessary to alleviate my pain.

272 I, _____, wish to be provided medically-assisted food (nutrition) and fluids (hydration),
273 for example, intravenously or by feeding tube, for so long as my body is able to assimilate them,
274 unless the provision of such becomes excessively burdensome to me, or would cause significant
275 physical discomfort. If I am able to receive food and fluids orally, for example, by spoon and straw,

276 I direct that such be offered to me, and shall not be denied simply because of a diagnosis or
 277 terminal condition or persistent vegetative state. I recognize that in some cases the risk of choking
 278 may preclude the provision of food and fluids orally, in which case I direct my choice of medically
 279 assisted foods and fluids be followed.

280 I, _____, do not wish to be given medically assisted food (nutrition) or fluids. I
 281 understand that the removal of food and fluids may hasten or even cause my death.

282 2.

283 Other directives: _____
 284 _____
 285 _____
 286 _____
 287 _____

288 THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON
 289 MY INCAPACITY TO GIVE, WITHHOLD OR WITHDRAW INFORMED CONSENT TO MY OWN
 290 MEDICAL CARE.

291 _____

292 Signature of the Principal

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

298 Witness _____ DATE _____

299 Witness _____ DATE _____

300 STATE OF _____

301 COUNTY OF _____

302 I, _____, a Notary Public of said county, do certify
 303 that _____, as principal, and _____ and
 304 _____, as witnesses, whose names are signed to the writing above bearing
 305 date on the ____ day of _____, 20____, have this day acknowledged the same before
 306 me.

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

308 My commission expires: _____

309 _____

310 Signature of Notary Public

NOTE: The purpose of this bill is to provide options in living wills, and combined medical powers of attorney and living wills that permit the principal to either be provided with medically-assisted food and fluids or not to be provided with medically-assisted food and fluids if the principal is unable to communicate his or her desires. The bill redefines a term, and clarifies what constitutes a “terminal condition” and a “persistent vegetative state.”

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