

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 664

BY SENATORS TAKUBO AND MARONEY

[Introduced January 30, 2020; referred
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §16-30-7 of the Code of West Virginia, 1931, as amended, relating
2 to adding a physician's assistant to the list of medical professionals able to determine an
3 individual lacks capacity; updating terminology related to advanced practice registered
4 nurses; removing terminology related to physicians; and permitting a psychologist,
5 physician's assistant, or advanced practice registered nurse to inform a person, if
6 conscious, that he or she has been determined to be incapacitated.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-7. Determination of incapacity.

1 (a) For the purposes of this article, a person may not be presumed to be incapacitated
2 merely by reason of advanced age or disability. With respect to a person who has a diagnosis of
3 mental illness or intellectual disability, such a diagnosis is not a presumption that the person is
4 incapacitated. A determination that a person is incapacitated shall be made by the attending
5 physician, a ~~qualified~~ physician, a qualified psychologist, a physician's assistant, or an ~~advanced~~
6 ~~nurse practitioner~~ advanced practice registered nurse who has personally examined the person.

7 (b) The determination of incapacity shall be recorded contemporaneously in the person's
8 medical record by the attending physician, a ~~qualified~~ physician, ~~advanced nurse practitioner~~ a
9 physician's assistant, an advanced practice registered nurse or a qualified psychologist. The
10 recording shall state the basis for the determination of incapacity, including the cause, nature,
11 and expected duration of the person's incapacity, if these are known.

12 (c) If the person is conscious, the attending physician, psychologist, physician's assistant,
13 or advanced practice registered nurse shall inform the person that he or she has been determined
14 to be incapacitated and that a medical power of attorney representative or surrogate decision-
15 maker may be making decisions regarding life-prolonging intervention or mental health treatment
16 for the person.

NOTE: The purpose of this bill is to add a physician's assistant to the list of medical professionals able to determine an individual lacks capacity. The bill also adds psychologists, physician's assistants, or advanced practice registered nurses to list of professionals able to inform a patient that he or she has been determined to be incapacitated.

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