

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2612

By Delegate Foster

[Introduced January 17, 2023; 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 to
 2 authorizing a medical power of attorney representative to sign a binding arbitration
 3 agreement with an extended care facility operated in conjunction with a hospital, an
 4 assisted living facility, a nursing home or their related entities and employees on behalf of
 5 an incapacitated person unless the representative’s authority is clearly limited.

Be it enacted by the Legislature of West Virginia:

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 may release or authorize the release of an incapacitated person's medical records to third parties
 8 and make any and all health care decisions on behalf of an incapacitated person, except to the
 9 extent that a medical power of attorney representative’s authority is clearly limited in the medical
 10 power of attorney.

11 (d) For any medical power of attorney executed after the date of the reenactment of this
 12 section during the 2023 regular session of the Legislature, the medical power of attorney
 13 representative may sign binding arbitration agreements with extended care facilities operated in
 14 conjunction with hospitals, assisted living facilities, and nursing homes and their related entities
 15 and employees, except to the extent that a medical power of attorney representative’s authority to
 16 make that agreement is specifically precluded by the medical power of attorney. If the
 17 incapacitated person regains capacity, he or she may prospectively revoke the arbitration

18 agreement made by his or her medical power of attorney representative by delivering a signed
19 notice of revocation to the affected nursing home, assisted living facility, or extended care facility
20 operated in conjunction with a hospital.

21 ~~(d)~~ (e) The medical power of attorney representative or surrogate's authority shall
22 commence upon a determination, made pursuant to §16-30-7 of this code, of the incapacity of the
23 adult. In the event the person no longer is incapacitated or the medical power of attorney
24 representative or surrogate is unwilling or unable to serve, the medical power of attorney
25 representative or surrogate's authority shall cease. However, the authority of the medical power of
26 attorney representative or surrogate may recommence if the person subsequently becomes
27 incapacitated as determined pursuant to §16-30-7 of this code unless during the intervening
28 period of capacity the person executes an advance directive which makes a surrogate
29 unnecessary or expressly rejects the previously appointed surrogate as his or her surrogate. A
30 medical power of attorney representative or surrogate's authority terminates upon the death of the
31 incapacitated person except with respect to decisions regarding autopsy, funeral arrangements or
32 cremation and organ and tissue donation: *Provided*, That the medical power of attorney
33 representative or surrogate has no authority after the death of the incapacitated person to
34 invalidate or revoke a preneed funeral contract executed by the incapacitated person in
35 accordance with the provisions of §47-14-1 *et seq.* of this code prior to the onset of the incapacity
36 and either paid in full before the death of the incapacitated person or collectible from the proceeds
37 of a life insurance policy specifically designated for that purpose.

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

44 incapacitated.

45 ~~(f)~~ (g) If an incapacitated person previously expressed his or her wishes regarding autopsy,
46 funeral arrangements or cremation, organ or tissue donation or the desire to make an anatomical
47 gift by a written directive such as a living will, medical power of attorney, donor card, driver's
48 license or other means, the medical power of attorney representative or surrogate shall follow the
49 person's expressed wishes regarding autopsy, funeral arrangements or cremation, organ and
50 tissue donation or anatomical gift. In the absence of any written directives, any decision regarding
51 anatomical gifts shall be made pursuant to the provisions of §16-19-1 *et seq.* of this code.

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 §16-30-4 of this code is presumed to be valid. For the purposes of this article, a
55 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 an extended care facility operated in conjunction with a hospital, an assisted living facility, or a nursing home and their related entities and employees on behalf of an incapacitated person unless the representative's authority is clearly limited.

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