

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2781

2015 Carryover

(BY DELEGATES WESTFALL, COWLES, ELLINGTON,
SUMMERS, FOSTER, WAXMAN, SHOTT, HANSHAW,
CAMPBELL AND SOBONYA)

[Introduced January 13, 2016; 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 allowing a medical power of attorney representative or surrogate to waive the
 3 incapacitated person's right to a trial by jury and bind them to arbitration.

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,
 8 wave the incapacitated person's right to a trial by jury and bind them to arbitration and make any
 9 and all health care decisions on behalf of an incapacitated person, except to the extent that a
 10 medical power of attorney representative's authority is clearly limited in the medical power of
 11 attorney.

12 (d) The medical power of attorney representative or surrogate's authority shall commence
 13 upon a determination, made pursuant to section seven of this article, of the incapacity of the adult.
 14 In the event the person no longer is incapacitated or the medical power of attorney representative
 15 or surrogate is unwilling or unable to serve, the medical power of attorney representative or

16 surrogate's authority shall cease. However, the authority of the medical power of attorney
17 representative or surrogate may recommence if the person subsequently becomes incapacitated
18 as determined pursuant to section seven of this article unless during the intervening period of
19 capacity the person executes an advance directive which makes a surrogate unnecessary or
20 expressly rejects the previously appointed surrogate as his or her surrogate. A medical power
21 of attorney representative or surrogate's authority terminates upon the death of the incapacitated
22 person except with respect to decisions regarding autopsy, funeral arrangements or cremation
23 and organ and tissue donation: *Provided*, That the medical power of attorney representative or
24 surrogate has no authority after the death of the incapacitated person to invalidate or revoke a
25 preneed funeral contract executed by the incapacitated person in accordance with the provisions
26 of article fourteen, chapter forty-seven of this code prior to the onset of the incapacity and either
27 paid in full before the death of the incapacitated person or collectible from the proceeds of a life
28 insurance policy specifically designated for that purpose.

29 (e) The medical power of attorney representative or surrogate shall seek medical
30 information necessary to make health care decisions for an incapacitated person. For the sole
31 purpose of making health care decisions for the incapacitated person, the medical power of
32 attorney representative or surrogate shall have the same right of access to the incapacitated
33 person's medical information and the same right to discuss that information with the incapacitated
34 person's health care providers that the incapacitated person would have if he or she was not
35 incapacitated.

36 (f) If an incapacitated person previously expressed his or her wishes regarding autopsy,
37 funeral arrangements or cremation, organ or tissue donation or the desire to make an anatomical
38 gift by a written directive such as a living will, medical power of attorney, donor card, driver's
39 license or other means, the medical power of attorney representative or surrogate shall follow the

40 person's expressed wishes regarding autopsy, funeral arrangements or cremation, organ and
41 tissue donation or anatomical gift. In the absence of any written directives, any decision
42 regarding anatomical gifts shall be made pursuant to the provisions of article nineteen of this
43 chapter.

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

NOTE: The purpose of this bill is to allow the medical power of attorney representative or surrogate to waive the incapacitated person's right to a trial by jury and bind them to arbitration.

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