

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2788

BY DELEGATE KESSINGER

[Introduced January 31, 2019; Referred
to the Committee on Health and Human Resources
then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §16-30-26, relating to life-sustaining treatment policies of health care facilities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-26. Simon’s Law; life sustaining procedures.

1 (a) This section may be known and cited as “Simon’s Law”.

2 (b) As used in this section:

3 "Life-sustaining" procedures, food, medication, or nutrition are life-sustaining if, in
4 reasonable medical judgment, the withdrawal or withholding of such procedures, food,
5 medication, or nutrition would result in or hasten the death of the patient; and

6 "Reasonable medical judgment", is a medical judgment that would be made by a
7 reasonably prudent physician who is knowledgeable about the case and the treatment
8 possibilities with respect to the medical conditions involved.

9 (c) Upon the request of a patient or resident or a prospective patient or resident, a health
10 care facility, nursing home, or physician shall disclose in writing any policies relating to a patient
11 or resident or the services a patient or resident may receive involving life-sustaining treatment,
12 including any policies related to health care deemed futile, inappropriate, or nonbeneficial, within
13 the health care facility or agency.

14 (d) No health care facility, nursing home, physician, nurse, or medical staff may withhold
15 life-sustaining procedures, food, medication, or nutrition, nor place any restrictions on life-
16 sustaining procedures including, but not limited to, food, medication, or nutrition for any patient,
17 resident, or ward under 18 years of age who is not emancipated without the written permission of
18 at least one parent or legal guardian of the patient or ward.

19 (e) A do-not-resuscitate order or similar physician’s order may not be instituted either orally
20 or in writing without the written permission of at least one parent or legal guardian of the patient
21 or resident or prospective patient or resident under 18 years of age who is not emancipated.

22 (f) Permission previously given under §16-30-26(d) or §16-30-26(e) of this code may be
23 revoked in writing by the legal guardian or either parent of the patient. If the parents are unable
24 to agree to withhold life-sustaining procedures, food, medication, nutrition, or resuscitation, either
25 parent may petition a circuit court of the county in which the patient resides or in which the patient
26 is receiving treatment to resolve the conflict based on a presumption in favor of the provision of
27 life-sustaining procedures, food, medication, nutrition, and resuscitation, unless there is clear and
28 convincing evidence that the provision is contrary to the best interests of the child. Upon receiving
29 the petition, the circuit court shall issue an order fixing the date, time, and place of the trial on the
30 petition and order that notice of the trial shall be given to persons the court specifies. The trial
31 may be held forthwith and without notice, if the court determines that holding a trial forthwith and
32 without notice is in the best interests of the petitioner. In the court's discretion, a trial may be
33 conducted in a courtroom, a treatment facility, or at some other suitable place. Pending the final
34 outcome of the proceedings, including any appeals, no permission under §16-30-26(d) or §16-
35 30-26(e) of this code may be implemented.

36 (g) Subject to the provisions of §16-30-26(f) of this code, the requirements for written
37 permission in §16-30-26(d) and §16-30-26(e) of this code do not apply if providing resuscitation,
38 food, medication, or nutrition would be:

39 (1) Futile because, in reasonable medical judgment, withholding resuscitation, food,
40 medication, or nutrition would not cause or hasten the death of the patient; or

41 (2) Medically inappropriate because, in reasonable medical judgment, providing
42 resuscitation, food, medication, or nutrition would create a greater risk of causing or hastening
43 the death of the patient than withholding resuscitation, food, medication, or nutrition.

44 (h) §16-30-26(g) of this code may be implemented, so long as a reasonably diligent effort
45 has been made to contact at least one parent or legal guardian who, if contacted, has been
46 informed of the planned withholding of food, medication, or nutrition or do-not-resuscitate order,
47 and the health care provider has cooperated with the parent or legal guardian's efforts to obtain

- 48 other medical opinions or a transfer of the patient to a provider selected by the parent or guardian,
49 if so requested.
- 50 (i) Nothing in this section requires a health care facility, nursing home, or physician to have
51 a written policy relating to or involving life-sustaining or nonbeneficial treatment for patients under
52 18 years of age who are not emancipated or adult patients, residents, or wards.

NOTE: The purpose of this bill is to prohibit health care facilities and others from withholding life-sustaining procedures from a minor patient without the written consent of a parent or legal guardian.

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