

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 470

BY SENATORS MARONEY, ROBERTS, TAKUBO, AND

STOLLINGS

[Introduced January 24, 2022; referred
to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]

1 A BILL to amend and reenact §16-30-3, §16-30-4, §16-30-5, §16-30-10, §16-30-13, §16-30-19,
 2 §16-30-21, §16-30-25 of the Code of West Virginia, 1931, as amended; and to amend and
 3 reenact §16-30C-5 of said code, all relating to health care decisions; defining terms;
 4 renaming the physician orders for scope of treatment as portable orders for scope of
 5 treatment and indicating that advanced practice registered nurses and physician assistant
 6 may complete them within their scope of practice; revising forms of a living will, medical
 7 power of attorney, and combined medical power of attorney and living will and specific
 8 provisions; providing clarifying language regarding the effect of signing a living will on the
 9 availability of medically administered food and fluids; requiring oral food and fluids be
 10 provided as desired and tolerated; providing reciprocity for portable orders for scope of
 11 treatment or similar medical orders validly executed in another state; providing that forms
 12 executed prior to effective date of this bill remain in full force and effect; and providing for
 13 effective date.

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 or 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 Portable orders for scope of treatment (POST) form" means a standardized
82 form containing orders by a qualified physician, an advanced practice registered nurse, or a
83 physician's assistant that details a person's life-sustaining wishes as provided by §16-30-25 of
84 this code.

85 ~~(v)~~ "Principal" means a person who has executed a living will, ~~or~~ medical power of attorney,
86 or combined medical power of attorney and living will.

87 ~~(w)~~ "Protected person" means an adult who, pursuant to ~~the provisions of Chapter 44A of~~
88 this code, has been found by a court, because of mental impairment, to be unable to receive and

89 evaluate information effectively or to respond to people, events, and environments to an extent
90 that the individual lacks the capacity to: (1) Meet the essential requirements for his or her health,
91 care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian;
92 or (2) manage property or financial affairs to provide for his or her support or for the support of
93 legal dependents without the assistance or protection of a conservator.

94 ~~(x)~~ "Qualified physician" means a physician licensed to practice medicine who has
95 personally examined the person.

96 ~~(y)~~ "Qualified psychologist" means a psychologist licensed to practice psychology who has
97 personally examined the person.

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

104 ~~(aa)~~ "Terminal condition" means an incurable or irreversible condition as diagnosed by the
105 attending physician or a qualified physician for which the administration of life-prolonging
106 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 or combined medical power of attorney and living will. A living will, ~~or~~ medical power of attorney,
3 or combined medical power of attorney and living will made pursuant to this article shall be: (1)
4 In writing; (2) executed by the principal or by another person in the principal's presence at the
5 principal's express direction if the principal is physically unable to do so; (3) dated; (4) signed in
6 the presence of two or more witnesses at least 18 years of age; and (5) signed and attested by

7 such witnesses whose signatures and attestations shall be acknowledged before a notary public.
8 ~~as provided in subsection (d) of this section.~~

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

10 (1) The person who signed the living will, ~~or~~ medical power of attorney, or combined
11 medical power of attorney and living will on behalf of and at the direction of the principal;

12 (2) Related to the principal by blood or marriage;

13 (3) Entitled to any portion of the estate of the principal under any will of the principal or
14 codicil thereto: *Provided*, That the validity of the living will, ~~or~~ medical power of attorney, or
15 combined medical power of attorney and living will ~~shall~~ may not be affected when a witness at
16 the time of witnessing ~~such~~ the living will, ~~or~~ medical power of attorney, or combined medical
17 power of attorney and living will was unaware of being a named beneficiary of the principal's will;

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

19 (5) The attending physician; or

20 (6) The principal's medical power of attorney representative or successor medical power
21 of attorney representative.

22 (c) The following persons may not serve as a medical power of attorney representative or
23 successor medical power of attorney representative:

24 (1) A treating health care provider of the principal;

25 (2) An employee of a treating health care provider not related to the principal;

26 (3) An operator of a health care facility serving the principal; or

27 (4) Any person who is an employee of an operator of a health care facility serving the
28 principal and who is not related to the principal.

29 (d) It ~~shall be~~ is the responsibility of the principal or his or her representative to provide for
30 notification to his or her attending physician and other health care providers of the existence of
31 the living will, ~~or~~ medical power of attorney, or combined medical power of attorney and living will
32 or a revocation of the living will, ~~or~~ medical power of attorney, or combined medical power of

33 attorney and living will. An attending physician or other health care provider, when presented with
 34 the living will, ~~or~~ medical power of attorney, or combined medical power of attorney and living will
 35 or the revocation of a living will, ~~or~~ medical power of attorney, or combined medical power of
 36 attorney and living will, shall make the living will, medical power of attorney, or combined medical
 37 power of attorney and living will or a copy of ~~either~~ any or a revocation of ~~either~~ any a part of the
 38 principal's medical records.

39 (e) At the time of admission to any health care facility, each person shall be advised of the
 40 existence and availability of living will, ~~and~~ medical power of attorney, and combined medical
 41 power of attorney and living will forms and shall be given assistance in completing such forms if
 42 the person desires: *Provided,* That under no circumstances may admission to a health care facility
 43 be predicated upon a person having completed ~~either~~ a living will, a medical power of attorney,
 44 or combined medical power of attorney and living will.

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

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

55 **STATE OF WEST VIRGINIA**

56 **LIVING WILL**

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

58 **If I Have a Terminal Condition ~~or Am In a Persistent Vegetative State~~**

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

I, _____, (*Insert your name*)

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

If I am very sick and ~~not able~~ unable to communicate my wishes for myself and I am certified by one physician, who has personally examined me, to have a terminal condition, ~~or to be in a persistent vegetative state (I am unconscious and am neither aware of my environment nor able to interact with others)~~ I direct that life-prolonging ~~medical~~ intervention that would serve solely to prolong the dying process ~~or maintain me in a persistent vegetative state~~ be withheld or withdrawn. I understand that by signing this document I am agreeing to the REMOVAL or REFUSAL of cardiopulmonary resuscitation (CPR), breathing machine (ventilator), dialysis, and medically administered food and fluids, such as might be provided intravenously or by feeding tube. I want to be allowed to die naturally and only be given medications or other medical procedures necessary to keep me comfortable. I want to receive as much medication as is necessary to alleviate my pain. Nevertheless, oral food and fluids, such as may be provided by spoon or by straw, shall be offered as desired and can be tolerated.

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

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

87 I understand the full import of this living will.

88

89 _____

90 Signed

91 _____

92

93 _____

94 Address

95 I did not sign the principal's signature above for or at the direction of the principal. I am at
96 least 18 years of age and am not related to the principal by blood or marriage, nor entitled to any
97 portion of the estate of the principal to the best of my knowledge under any will of principal or
98 codicil thereto, ~~or~~ nor directly financially responsible for principal's medical care. I am not the
99 principal's attending physician or the principal's medical power of attorney representative or
100 successor medical power of attorney representative under a medical power of attorney.

101 _____

102 Witness

DATE

103 _____

104 Witness

DATE

105 STATE OF

106 _____

107 COUNTY OF

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

109 _____, as principal,

110 and _____ and _____, as witnesses, whose names

111 are signed to the writing above bearing date on the _____ day of _____, 20____,
112 have this day acknowledged the same before me.

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

114 My commission expires:_____

115 _____

116 Notary Public

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

122 **STATE OF WEST VIRGINIA**

123 **MEDICAL POWER OF ATTORNEY**

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

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

126 Dated: _____, 20_____

127 I, _____, hereby

128 (Insert your name and address)

129 hereby appoint as my representative to act on my behalf to give, withhold or withdraw
130 informed consent to health care decisions in the event that I am ~~not~~ unable to do so myself.

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

132 _____

133 _____

134 (Insert the name, address, area code and telephone number of the person you wish to
135 designate as your representative.) ~~(Please insert only one name.)~~

136 **If my representative is unable, unwilling, or disqualified to serve, then I appoint as**

137 **my successor representative:**

138 _____
139 _____

140 *(Insert the name, address, area code, and telephone number of the person you wish to*
141 *designate as your successor representative.) Please insert only one name*

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

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

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

162 In exercising the authority under this medical power of attorney, my representative shall

163 act consistently with my special directives or limitations as stated below.

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

165 {Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis,
166 mental health treatment, funeral arrangements, autopsy, and organ donation may be placed here.

167 My failure to provide special directives or limitations does not mean that I want or refuse certain
168 treatments.)

169 _____
170 _____

171 THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON
172 MY INCAPACITY TO GIVE, WITHHOLD OR WITHDRAW INFORMED CONSENT TO MY OWN
173 MEDICAL CARE.

174 _____
175 Signature of the Principal

176 _____
177 Address of Principal

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

183 _____
184 Witness: DATE

185 _____
186 _____

187 Witness: DATE

188

189 _____

190 STATE OF

191

192 _____

193 COUNTY OF

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195 I, _____, a Notary Public of said

196 County, do certify that _____, as principal,

197 and _____ and _____, as witnesses, whose names are

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

199 have this day acknowledged the same before me.

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

201 My commission expires: _____

202 _____

203 Notary Public

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

210 **STATE OF WEST VIRGINIA**

211 **COMBINED MEDICAL POWER OF ATTORNEY**

212 **AND LIVING WILL**

213 **The Person I Want to Make Health Care Decisions For Me When I Can't Make**

214 **Them for Myself And The Kind of Medical Treatment I Want and Don't Want**

215 **If I Have a Terminal Condition or Am in a Persistent Vegetative State**

216 Dated: _____, 20_____

217 I, _____, hereby (*Insert*
218 *your name and address*) hereby appoint as my representative to act on my behalf to give, withhold
219 or withdraw informed consent to health care decisions in the event that I am ~~not~~ unable to do so
220 myself.

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

222 _____
223 _____

224 (*Insert the name, address, area code and telephone number of the person you wish to*
225 *designate as your representative. Please insert only one name.*).

226 **If my representative is unable, unwilling, or disqualified to serve, then I appoint as**
227 **my successor representative:**

228 _____
229 _____

230 (*Insert the name, address, area code and telephone number of the person you wish to*
231 *designate as your successor representative. Please insert only one name.*).

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

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

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

252 ~~In exercising the authority under this medical power of attorney, my representative shall~~
253 ~~act consistently with my special directors or limitations as stated below.~~

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

259 1. IN A TERMINAL CONDITION: If I am very sick and ~~not~~ unable to communicate my
260 wishes for myself and I am certified by one physician, who has personally examined me, to have
261 a terminal condition, ~~to be in a persistent vegetative state (I am unconscious and am neither aware~~
262 ~~of my environment nor able to interact with others,)~~ I direct that life-prolonging medical intervention
263 that would serve solely to prolong the dying process ~~or maintain me in a persistent vegetative~~
264 ~~state~~ be withheld or withdrawn. Thus, if a physician has determined that I am in a terminal
265 condition, I understand that completing this form would mean that I refuse cardiopulmonary
266 resuscitation (CPR). It also means that I refuse or request the removal of a breathing machine

267 (ventilator), dialysis, and medically administered food and fluids, such as might be provided
 268 intravenously or by feeding tube. I want to be allowed to die naturally and only be given
 269 medications or other medical procedures necessary to keep me comfortable. I want to receive as
 270 much medication as is necessary to alleviate my pain. Nevertheless, oral food and fluids, such as
 271 may be provided by spoon or by straw, shall be offered as desired and can be tolerated.

272 2. ~~OTHER DIRECTIVES:~~ OTHER LIVING WILL SPECIAL DIRECTIVES OR
 273 LIMITATIONS ON THIS POWER: Comments about mental health treatment, funeral
 274 arrangements, autopsy, and organ donation may be placed here. My failure to provide special
 275 directives or limitations does not mean that I want or refuse certain treatments.

276 _____
 277 _____
 278 _____
 279 _____
 280 _____

281 In exercising the authority under this medical power of attorney, my representative shall
 282 act consistently with my special directives or limitations as stated in this advance directive.

283 3. NOT IN A TERMINAL CONDITION: MEDICAL POWER OF ATTORNEY SPECIAL
 284 DIRECTIVES OR LIMITATIONS ON THIS POWER: (Comments about tube feedings, breathing
 285 machines, cardiopulmonary resuscitation, dialysis, mental health treatment, funeral
 286 arrangements, autopsy and organ donation may be placed here. My failure to provide special
 287 directives or limitations does not mean that I want or refuse certain treatments.)

288 _____
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 292 _____

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

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

304 THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON
 305 MY INCAPACITY TO GIVE, WITHHOLD OR WITHDRAW INFORMED CONSENT TO MY OWN
 306 MEDICAL CARE.

307 _____

308 Signature of the Principal

309 _____

310 Address of Principal

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

316 Witness _____ DATE _____

317 Witness _____ DATE _____

318 STATE OF _____

319 COUNTY OF _____

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

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

326 My commission expires: _____

327 _____

328 Signature of Notary Public

329 (j) Any and all living will, medical power of attorney, and combined medical power of
330 attorney and living will documents executed pursuant to §16-30-3 and §16-30-4 of this code,
331 before the effective date of the amendments to these sections remain in full force and effect. This
332 section is effective for a living will, medical power of attorney, or combined medical power of
333 attorney and living will document executed, amended or adjusted on or after January 1, 2023.
334 Accordingly, all health care facilities and health care providers using a living will, medical power
335 of attorney, or combined medical power of attorney and living will form referenced in §16-30-4 of
336 this code shall update their forms on or before January 1, 2023.

§16-30-5. Applicability and resolving actual conflict between advance directives.

1 (a) The provisions of this article which directly conflict with the written directives contained
2 in a living will or medical power of attorney or combined medical power of attorney and living will
3 executed prior to the effective date of this statute ~~shall~~ may not apply. An expressed directive
4 contained in a living will or medical power of attorney or combined medical power of attorney and
5 living will by any other means the health care provider determines to be reliable shall be followed.

6 (b) If there is a conflict between the person’s expressed directives, the physician portable
7 orders for scope of treatment form and the decisions of the medical power of attorney

8 representative or surrogate, the person's expressed directives shall be followed.

9 (c) ~~In the event~~ If there is a conflict between two advance directives executed by the
10 person, the one most recently completed takes precedence only to the extent needed to resolve
11 the inconsistency.

12 (d) If there is a conflict between the decisions of the medical power of attorney
13 representative or surrogate and the person's best interests as determined by the attending
14 physician when the person's wishes are unknown, the attending physician shall attempt to resolve
15 the conflict by consultation with a qualified physician, an ethics committee or by some other
16 means. If the attending physician cannot resolve the conflict with the medical power of attorney
17 representative, the attending physician may transfer the care of the person pursuant to subsection
18 (b), section 12 of this article.

**§16-30-10. Reliance on authority of living will, physician orders for scope of treatment
form, medical power of attorney representative or surrogate decisionmaker and
protection of health care providers.**

1 (a) A physician, licensed health care professional, health care facility or employee thereof
2 ~~shall~~ may not be subject to criminal or civil liability for good-faith compliance with or reliance upon
3 the directions of the medical power of attorney representative in accordance with this article.

4 (b) A health care provider ~~shall~~ may not be subject to civil or criminal liability for surrogate
5 selection or good faith compliance and reliance upon the directions of the surrogate in accordance
6 with the provisions of this article.

7 (c) A health care provider, health care facility or employee thereof ~~shall~~ may not be
8 subject to criminal or civil liability for good-faith compliance with or reliance upon the orders in a
9 ~~physician~~ portable orders for scope of treatment form.

10 (d) No health care provider or employee thereof who in good faith and pursuant to
11 reasonable medical standards causes or participates in the withholding or withdrawing of life-
12 prolonging intervention from a person pursuant to a living will or combined medical power of

13 attorney and living will made in accordance with this article ~~shall~~ may, as a result thereof, be
14 subject to criminal or civil liability.

15 (e) An attending physician who cannot comply with the living will, ~~or~~ medical power of
16 attorney or combined medical power of attorney and living will of a principal pursuant to this article
17 shall, in conjunction with the medical power of attorney representative, health care surrogate or
18 other responsible person, effect the transfer of the principal to another physician who will honor
19 the living will or medical power of attorney, or combined medical power of attorney and living will
20 of the principal. Transfer under these circumstances does not constitute abandonment.

§16-30-13. Interinstitutional transfers.

1 (a) ~~In the event that~~ If a person admitted to any health care facility in this state has been
2 determined to lack capacity and that person's medical power of attorney has been declared to be
3 in effect or a surrogate decisionmaker has been selected for that person all in accordance with
4 the requirements of this article and that person is subsequently transferred from one health care
5 facility to another, the receiving health care facility may rely upon the prior determination of
6 incapacity and the activation of the medical power of attorney or selection of a surrogate
7 decisionmaker as valid and continuing until such time as an attending physician, a qualified
8 physician, a qualified psychologist or advanced nurse practitioner in the receiving facility assesses
9 the person's capacity. Should the reassessment by the attending physician, a qualified physician,
10 a qualified psychologist or an advanced nurse practitioner at the receiving facility result in a
11 determination of continued incapacity, the receiving facility may rely upon the medical power of
12 attorney representative or surrogate decisionmaker who provided health care decisions at the
13 transferring facility to continue to make all health care decisions at the receiving facility until such
14 time as the person regains capacity.

15 (b) If a person admitted to any health care facility in this state has been determined to lack
16 capacity and the person's medical power of attorney has been declared to be in effect or a
17 surrogate decisionmaker has been selected for that person all in accordance with the

18 requirements of this article and that person is subsequently discharged home in the care of a
19 home health care agency or hospice, the home health care agency or hospice may rely upon the
20 prior determination of incapacity. The home health care agency or hospice may rely upon the
21 medical power of attorney representative or health care surrogate who provided health care
22 decisions at the transferring facility to continue to make all health care decisions until such time
23 as the person regains capacity.

24 (c) If a person with an order to withhold or withdraw life-prolonging intervention is
25 transferred from one health care facility to another, the existence of such order shall be
26 communicated to the receiving facility prior to the transfer and the written order shall accompany
27 the person to the receiving facility and shall remain effective until a physician at the receiving
28 facility issues admission orders.

29 (d) If a person with a ~~physician~~ portable orders for scope of treatment form is transferred
30 from one health care facility to another, the health care facility initiating the transfer shall
31 communicate the existence of the ~~physician~~ portable orders for scope of treatment form to the
32 receiving facility prior to the transfer. The ~~physician~~ portable orders for scope of treatment form
33 shall accompany the person to the receiving facility and shall remain in effect. The form shall be
34 kept at the beginning of the patient's transfer records unless otherwise specified in the health care
35 facility's policy and procedures. After admission, the ~~physician~~ portable orders for scope of
36 treatment form shall be reviewed by the attending physician and one of three actions shall be
37 taken:

38 (1) The ~~physician~~ portable orders for scope of treatment form shall be continued without
39 change;

40 (2) The ~~physician~~ portable orders for scope of treatment form shall be voided and a new
41 form issued; or

42 (3) The ~~physician~~ portable orders for scope of treatment form shall be voided without a
43 new form being issued.

§16-30-19. Physician's duty to confirm, communicate and document terminal condition; ~~or persistent vegetative state~~ medical record identification.

1 (a) An attending physician who has been notified of the existence of a living will or
 2 combined medical power of attorney and living will executed under this article, without delay after
 3 the diagnosis of a terminal condition or persistent vegetative state of the principal, shall take steps
 4 as needed to provide for confirmation, written certification, and documentation of the principal's
 5 terminal condition ~~or persistent vegetative state~~ in the principal's medical record.

6 (b) Once confirmation, written certification, and documentation of the principal's terminal
 7 condition ~~or persistent vegetative state~~ is made, the attending physician shall verbally or in writing
 8 inform the principal of his or her condition or the principal's medical power of attorney
 9 representative or surrogate, if the principal lacks capacity to comprehend such information and
 10 shall document such communication in the principal's medical record.

11 (c) All inpatient health care facilities shall develop a system to visibly identify a person's
 12 chart which contains a living will or medical power of attorney, combined medical power of
 13 attorney and living will, or a portable order for scope of treatment as set forth in this article.

§16-30-21. Reciprocity.

1 A living will, ~~or~~ medical power of attorney mental health advance directive, or medical
 2 orders (portable orders for scope of treatment or do-not-resuscitate card), or similar advance
 3 directive or medical orders form executed in another state is validly executed for the purposes of
 4 this article if it is executed in compliance with the laws of this state or with the laws of the state
 5 where executed.

§16-30-25. Physician Portable orders for scope of treatment form.

1 (a) ~~No later than July 1, 2003, the~~ The secretary of the Department of Health and Human
 2 Resources shall implement the statewide distribution of standardized ~~physician~~ portable orders
 3 for scope of treatment (POST) forms.

4 (b) ~~Physician~~ Portable orders for scope of treatment forms shall be standardized forms

5 used to reflect orders by a qualified physician, an advanced practice registered nurse, or a
6 physician's assistant for medical treatment of a person in accordance with that person's wishes
7 or, if that person's wishes are not reasonably known and cannot with reasonable diligence be
8 ascertained, in accordance with that person's best interest. The form shall be bright pink in color
9 to facilitate recognition by emergency medical services personnel and other health care providers
10 and shall be designed to provide for information regarding the care of the patient, including, but
11 not limited to, the following:

12 (1) The orders of a qualified physician, an advanced practice registered nurse, or a
13 physician's assistant regarding cardiopulmonary resuscitation, level of medical intervention in the
14 event of a medical emergency, use of antibiotics and use of medically administered fluids and
15 nutrition and the basis for the orders;

16 (2) The signature of the qualified physician, an advanced practice registered nurse, or a
17 physician's assistant;

18 (3) Whether the person has completed an advance directive or had a guardian, medical
19 power of attorney representative or surrogate appointed;

20 (4) The signature of the person or his or her guardian, medical power of attorney
21 representative, or surrogate acknowledging agreement with the orders of the qualified physician;
22 an advanced practice registered nurse, or a physician's assistant and

23 (5) The date, location, and outcome of any review of the ~~physician~~ portable orders for
24 scope of treatment form.

25 (c) The ~~physician~~ portable orders for scope of treatment form shall be kept as the first
26 page in a person's medical record in a health care facility unless otherwise specified in the health
27 care facility's policies and procedures and shall be transferred with the person from one health
28 care facility to another.

ARTICLE 30C. DO NOT RESUSCITATE ACT.

§16-30C-5. Presumed consent to cardiopulmonary resuscitation; health care facilities not

required to expand to provide cardiopulmonary resuscitation.

1 ~~(a)~~ Every person shall be presumed to consent to the administration of cardiopulmonary
2 resuscitation in the event of cardiac or respiratory arrest, unless one or more of the following
3 conditions, of which the health care provider has actual knowledge, apply:

4 (1) A do-not-resuscitate order in accordance with the provisions of this article has been
5 issued for that person;

6 (2) A completed living will or combined medical power of attorney and living will for that
7 person is in effect, pursuant to the provisions of article thirty of this chapter, and the person is in
8 a terminal condition ~~or a persistent vegetative state~~; or

9 (3) A completed medical power of attorney for that person is in effect, pursuant to ~~the~~
10 ~~provisions of §16-30-1 et seq.~~ of this code, in which the person indicated that he or she does not
11 wish to receive cardiopulmonary resuscitation, or his or her representative has determined that
12 the person would not wish to receive cardiopulmonary resuscitation.

13 (4) A completed physician orders for scope of treatment form in which a qualified physician
14 has ordered do-not-resuscitate.

15 ~~(b)~~ Nothing in this article shall may require a nursing home, personal care home, hospice
16 or extended care facility operated in connection with hospitals to institute or maintain the ability to
17 provide cardiopulmonary resuscitation or to expand its existing equipment, facilities or personnel
18 to provide cardiopulmonary resuscitation: *Provided*, That if a health care facility does not provide
19 cardiopulmonary resuscitation, this policy shall be communicated in writing to the person,
20 representative or surrogate decision maker prior to admission.

NOTE: The purpose of this bill is to remove the persistent vegetative state from the living will and combined medical power of attorney and living will, to rename the physician orders for scope of treatment as the portable orders for scope of treatment and indicate that an advanced practice registered nurse and a physician's assistant may complete one within their scope of practice, and to provide reciprocity for the portable orders for scope of treatment or similar medical orders validly executed in another 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.