

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 628**

BY SENATORS TAKUBO, MULLINS, STOLLINGS, PLYMALE  
AND UNGER

[Originating in the Committee on Health and Human  
Resources; reported on February 27, 2016]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §30-3-10b; and to amend said code by adding thereto a new section,  
3 designated §30-14-12d, all relating to palliative or emergent treatment for terminally ill or  
4 critically injured incapacitated patients whose medical directives would otherwise be made  
5 under the authority of the Secretary of the Department of Health and Human Resources;  
6 defining certain terms; providing that a treating physician with concurrence of another  
7 treating physician may direct palliative or emergent medical care plan or treatment for  
8 terminally ill or critically injured incapacitated patients, including when not to resuscitate,  
9 when Department of Health and Human Resources delays in providing a directive for  
10 medical treatment; and providing that in order to direct palliative or emergent treatment  
11 plan, two treating physicians must concur that Department of Health and Human  
12 Resources delay has resulted in the patient having to endure unnecessary pain and  
13 suffering and that any remedial medical intervention likely would not lead to any  
14 meaningful recovery.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
2 section, designated §30-3-10b; and that said code be amended by adding thereto a new section,  
3 designated §30-14-12d, all to read as follows:

**ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.**

**§30-3-10b. Permitting treating physician to direct palliative or emergent care for  
incapacitated patients in state care who are terminally ill or critically injured.**

1 (a) For the purposes of this section the following terms mean:

2 (1) "Incapacitated patient" means any adult or minor person who by reason of terminal  
3 illness or critical injury is unable to direct a medical care plan for himself or herself and for whom  
4 the Secretary of the Department of Health and Human Resources otherwise exercises such  
5 authority under the provisions of chapter nine of this code;

6           (2) "Secretary" means the Secretary of the Department of Health and Human Resources  
7 as defined in section two, article one, chapter nine of this code; and

8           (3) "Treating physician" means a duly licensed medical physician who provides, or has  
9 provided, a patient with medical treatment or evaluation and who has, or has had, an ongoing  
10 treatment relationship with an incapacitated patient consistent with accepted medical practice for  
11 the type of treatment or evaluation required for the incapacitated patient's medical condition or  
12 conditions.

13           (b) Notwithstanding any provision of law to the contrary, a treating physician of an  
14 incapacitated patient who is terminally ill or critically injured may direct a palliative or emergent  
15 treatment plan, including determining when it would be inappropriate to resuscitate an  
16 incapacitated patient when in a treating physician's reasonably prudent medical judgement in  
17 conjunction with a second treating physician's concurring opinion: (1) The Secretary, or his or her  
18 designee, who otherwise would be responsible for directing medical care plans for an  
19 incapacitated patient, has unduly delayed providing medical directives; and (2) the delay has  
20 resulted in the incapacitated patient enduring unnecessary pain and suffering; or (3) any remedial  
21 medical intervention likely would not lead to any meaningful recovery.

22           (c) Nothing in this section is intended to supersede decisions made pursuant to article  
23 thirty, chapter sixteen of this code.

**ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.**

**§30-14-12d. Permitting treating physician to direct palliative or emergent care for**  
**incapacitated patients in state care who are terminally ill or critically**  
**injured.**

1           (a) For the purposes of this section the following terms mean:

2           (1) "Incapacitated patient" means any adult or minor person who by reason of terminal  
3 illness or critical injury is unable to direct a medical care plan for himself or herself and for whom

4 the Secretary of the Department of Health and Human Resources otherwise exercises such  
5 authority under the provisions of chapter nine of this code;

6 (2) "Secretary" means the Secretary of the Department of Health and Human Resources  
7 as defined in section two, article one, chapter nine of this code; and

8 (3) "Treating physician" means a duly licensed osteopathic physician who provides, or has  
9 provided, an incapacitated patient with medical treatment or evaluation and who has, or has had,  
10 an ongoing treatment relationship with the incapacitated patient consistent with accepted medical  
11 practice for the type of treatment or evaluation required for the patient's medical condition or  
12 conditions.

13 (b) Notwithstanding any provision of law to the contrary, a treating physician of an  
14 incapacitated patient who is terminally ill or critically injured may direct a palliative or emergent  
15 treatment plan, including determining when it would be inappropriate to resuscitate an  
16 incapacitated patient when in a treating physician's reasonably prudent medical judgement in  
17 conjunction with a second treating physician's concurring opinion: (1) The Secretary, or his or  
18 her designee, who otherwise would be responsible for directing medical care plans for an  
19 incapacitated patient, has unduly delayed in providing medical directives; and (2) the delay has  
20 resulted in the incapacitated patient enduring unnecessary pain and suffering; or (3) any remedial  
21 medical intervention likely would not lead to any meaningful recovery.

22 (c) Nothing in this section is intended to supersede decisions made pursuant to article  
23 thirty, chapter sixteen of this code.