

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 628**

BY SENATORS TAKUBO, MULLINS, STOLLINGS, PLYMALE

AND UNGER

[Introduced February 18, 2016;

Referred to the Committee on Health and Human

Resources.]

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 indigent patients whose medical directives would otherwise  
 5 be made under the authority of the Commissioner of Human Services; defining certain  
 6 terms; providing that a treating physician with the concurrence of another treating  
 7 physician may direct a palliative or emergent medical care plan or treatment for terminally  
 8 ill or critically injured incapacitated indigent patients, including when not to resuscitate,  
 9 when Human Services delays in providing a directive for medical treatment; and providing  
 10 that in order to direct a palliative or emergent treatment plan, two treating physicians must  
 11 concur that Human Services' delay has resulted in the patient having to endure  
 12 unnecessary pain and suffering and that any remedial medical intervention likely would  
 13 not lead to any meaningful recovery consistent with restoring an incapacitated indigent  
 14 patient to a minimally acceptable quality of life.

*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. When authority lies for treating physicians to direct palliative or emergent care  
 for incapacitated indigent patients for whom Human Services would otherwise  
 direct care, who are terminally ill or critically injured.**

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

2 (1) "Incapacitated indigent patient" means any adult or minor person who by reason of  
 3 terminal illness or critical injury is unable to direct a medical care plan for himself or herself and  
 4 for whom the Commissioner of Human Services otherwise exercises such authority under the

5 provisions of chapter nine of this code;

6 (2) “Commissioner” means the Commissioner of Human Services as described under  
7 section two, article two, chapter nine of this code; and

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

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

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

##### **§30-14-12d. When authority lies for treating physicians to direct palliative or emergent care for incapacitated indigent patients for whom Human Services would otherwise direct care, who are terminally ill or critically injured.**

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

2 (1) “Incapacitated indigent patient” means any adult or minor person who by reason of  
3 terminal illness or critical injury is unable to direct a medical care plan for himself or herself and  
4 for whom the Commissioner of Human Services otherwise exercises such authority under the

5 provisions of chapter nine of this code;

6 (2) “Commissioner” means the Commissioner of Human Services as described under  
7 section two, article two, chapter nine of this code; and

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

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

NOTE: The purpose of this bill is to allow treating physicians, under certain circumstances, to direct palliative or emergent treatment for terminally ill or critically injured incapacitated indigent patients whose medical directives would otherwise be made under the authority of the Commissioner of Human Services when Human Services unduly delays to direct care. In accordance with this purpose the bill : (1) Defines certain terms; (2) provides that a treating physician with the concurrence of another treating physician may direct a palliative or emergent medical care plan or treatment for terminally ill or critically injured incapacitated indigent patients, including when not to resuscitate, when Human Services unduly delays in providing a directive for medical treatment; and (3) provides that in order to direct a palliative or emergent treatment plan, two treating physicians must concur that Human Services’ delay has resulted in the patient having to endure unnecessary pain and suffering and that any remedial medical intervention likely would not lead to any meaningful recovery consistent with restoring an incapacitated indigent patient to a minimally acceptable quality of life.

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