

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Senate Bill 664

BY SENATORS TAKUBO AND MARONEY

[Passed March 6, 2020; in effect 90 days from
passage]

1 AN ACT to amend and reenact §16-30-7 of the Code of West Virginia, 1931, as amended, relating
2 to adding a physician's assistant to the list of medical professionals able to determine an
3 individual lacks capacity; updating terminology related to advanced practice registered
4 nurses; removing terminology related to physicians; and permitting a psychologist,
5 physician's assistant, or advanced practice registered nurse to inform a person, if
6 conscious, that he or she has been determined to be incapacitated.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-7. Determination of incapacity.

1 (a) For the purposes of this article, a person may not be presumed to be incapacitated
2 merely by reason of advanced age or disability. With respect to a person who has a diagnosis of
3 mental illness or intellectual disability, such a diagnosis is not a presumption that the person is
4 incapacitated. A determination that a person is incapacitated shall be made by the attending
5 physician, a physician, a qualified psychologist, a physician's assistant, or an advanced practice
6 registered nurse who has personally examined the person.

7 (b) The determination of incapacity shall be recorded contemporaneously in the person's
8 medical record by the attending physician, a physician, a physician's assistant, an advanced
9 practice registered nurse or a qualified psychologist. The recording shall state the basis for the
10 determination of incapacity, including the cause, nature, and expected duration of the person's
11 incapacity, if these are known.

12 (c) If the person is conscious, the attending physician, psychologist, physician's assistant,
13 or advanced practice registered nurse shall inform the person that he or she has been determined
14 to be incapacitated and that a medical power of attorney representative or surrogate decision-
15 maker may be making decisions regarding life-prolonging intervention or mental health treatment
16 for the person.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2020.

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Governor