

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2349

BY DELEGATE FOSTER

[Introduced February 12, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §16-30-6 of the Code of West Virginia, 1931, as amended, relating
 2 to authorizing a medical power of attorney representative to sign a binding arbitration
 3 agreement with an extended care facility operated in conjunction with a hospital, an
 4 assisted living facility, a nursing home or their related entities and employees on behalf of
 5 an incapacitated person unless the representative’s authority is clearly limited.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-6. Private decision-making process; authority of living will, medical power of attorney representative and surrogate.

1 (a) Any capable adult may make his or her own health care decisions without regard to
 2 guidelines contained in this article.

3 (b) Health care providers and health care facilities may rely upon health care decisions
 4 made on behalf of an incapacitated person without resort to the courts or legal process, if the
 5 decisions are made in accordance with the provisions of this article.

6 (c) The medical power of attorney representative or surrogate shall have the authority to
 7 release or authorize the release of an incapacitated person’s medical records to third parties and
 8 make any and all health care decisions on behalf of an incapacitated person, except to the extent
 9 that a medical power of attorney representative’s authority is clearly limited in the medical power
 10 of attorney.

11 (d) For any medical power of attorney executed after the date of the reenactment of this
 12 section during the 2021 regular session of the Legislature, the medical power of attorney
 13 representative has the authority to sign binding arbitration agreements with extended care
 14 facilities operated in conjunction with hospitals, assisted living facilities, and nursing homes and
 15 their related entities and employees, except to the extent that a medical power of attorney
 16 representative’s authority to make such agreement is specifically precluded by the medical power
 17 of attorney. If the incapacitated person regains capacity, he or she may prospectively revoke the

18 arbitration agreement made by his or her medical power of attorney representative by delivering
19 a signed notice of revocation to the affected nursing home, assisted living facility, or extended
20 care facility operated in conjunction with a hospital.

21 ~~(d)~~ (e) The medical power of attorney representative or surrogate's authority shall
22 commence upon a determination, made pursuant to §16-30-7 of this code, of the incapacity of
23 the adult. In the event the person no longer is incapacitated or the medical power of attorney
24 representative or surrogate is unwilling or unable to serve, the medical power of attorney
25 representative or surrogate's authority shall cease. However, the authority of the medical power
26 of attorney representative or surrogate may recommence if the person subsequently becomes
27 incapacitated as determined pursuant to §16-30-7 of this code unless during the intervening
28 period of capacity the person executes an advance directive which makes a surrogate
29 unnecessary or expressly rejects the previously appointed surrogate as his or her surrogate. A
30 medical power of attorney representative or surrogate's authority terminates upon the death of
31 the incapacitated person except with respect to decisions regarding autopsy, funeral
32 arrangements or cremation and organ and tissue donation: *Provided*, That the medical power of
33 attorney representative or surrogate has no authority after the death of the incapacitated person
34 to invalidate or revoke a preneed funeral contract executed by the incapacitated person in
35 accordance with the provisions of §47-14-1 *et seq.* of this code prior to the onset of the incapacity
36 and either paid in full before the death of the incapacitated person or collectible from the proceeds
37 of a life insurance policy specifically designated for that purpose.

38 ~~(e)~~ (f) The medical power of attorney representative or surrogate shall seek medical
39 information necessary to make health care decisions for an incapacitated person. For the sole
40 purpose of making health care decisions for the incapacitated person, the medical power of
41 attorney representative or surrogate shall have the same right of access to the incapacitated
42 person's medical information and the same right to discuss that information with the incapacitated
43 person's health care providers that the incapacitated person would have if he or she was not

44 incapacitated.

45 ~~(f)~~ (g) If an incapacitated person previously expressed his or her wishes regarding
46 autopsy, funeral arrangements or cremation, organ or tissue donation or the desire to make an
47 anatomical gift by a written directive such as a living will, medical power of attorney, donor card,
48 driver's license or other means, the medical power of attorney representative or surrogate shall
49 follow the person's expressed wishes regarding autopsy, funeral arrangements or cremation,
50 organ and tissue donation or anatomical gift. In the absence of any written directives, any decision
51 regarding anatomical gifts shall be made pursuant to the provisions of §16-19-1 *et seq.* of this
52 code.

53 ~~(g)~~ (h) If a person is incapacitated at the time of the decision to withhold or withdraw life-
54 prolonging intervention, the person's living will or medical power of attorney executed in
55 accordance with §16-30-4 of this code is presumed to be valid. For the purposes of this article, a
56 physician or health facility may presume in the absence of actual notice to the contrary that a
57 person who executed a living will or medical power of attorney was a competent adult when it was
58 executed. The fact that a person executed a living will or medical power of attorney is not an
59 indication of the person's mental incapacity.

NOTE: The purpose of this bill is to authorize a medical power of attorney representative to sign a binding arbitration agreement with an extended care facility operated in conjunction with a hospital, an assisted living facility, or a nursing home and their related entities and employees on behalf of an incapacitated person unless the representative's authority is clearly limited.

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