

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-1. Short title.

This article may be cited as the "West Virginia Health Care Decisions Act."

§16-30-2. Legislative findings and purpose.

(a) Purpose. -- The purpose of this article is to ensure that a patient's right to self-determination in health care decisions be communicated and protected; and to set forth a process for private health care decision making for incapacitated adults, including the use of advance directives, which reduces the need for judicial involvement and defines the circumstances under which immunity shall be available for health care providers and surrogate decision makers who make health care decisions.

The intent of the Legislature is to establish an effective method for private health care decision making for incapacitated adults, and to provide that the courts should not be the usual venue for making decisions. It is not the intent of the Legislature to legalize, condone, authorize or approve mercy killing or assisted suicide.

(b) Findings. -- The Legislature hereby finds that:

(1) Common law tradition and the medical profession in general have traditionally recognized the right of a capable adult to accept or reject medical or surgical intervention affecting one's own medical condition;

(2) The application of recent advances in medical science and technology increasingly involves patients who are unconscious or otherwise unable to accept or reject medical or surgical treatment affecting their medical conditions;

(3) Such advances have also made it possible to prolong the dying process artificially through the use of intervening treatments or procedures which, in some cases, offer no hope of medical benefit;

(4) Capable adults should be encouraged to issue advance directives designating their health care representatives so that in the event any such adult becomes unconscious or otherwise incapable of making health care decisions, decisions may be made by others who are aware of such person's own wishes and values; and

(5) The right to make medical treatment decisions extends to a person who is incapacitated at the moment of decision. An incapacitated person who has not made his or her wishes known in advance through an applicable living will, medical power of attorney or through some other means has the right to have health care decisions made on his or her behalf by a person who will act in accordance with the incapacitated person's expressed values and wishes, or, if those values and wishes are unknown, in the incapacitated person's best interests.

§16-30-3. Definitions.

For the purposes of this article:

“Actual knowledge” means the possession of information of the person’s wishes communicated to the health care provider orally or in writing by the person, the person’s medical power of attorney representative, the person’s health care surrogate, or other individuals resulting in the health care provider’s personal cognizance of these wishes. Constructive notice and other forms of imputed knowledge are not actual knowledge.

“Adult” means a person who is 18 years of age or older, an emancipated minor who has been established as such pursuant to the provisions of §49-4-115 of this code, or a mature minor.

“Advanced nurse practitioner” means a registered nurse with substantial theoretical knowledge in a specialized area of nursing practice and proficient clinical utilization of the knowledge in implementing the nursing process, and who has met the further requirements of the West Virginia Board of Examiners for Registered Professional Nurses rule, advanced practice registered nurse, 19 CSR 7, who has a mutually agreed upon association in writing with a physician, and has been selected by or assigned to the person and has primary responsibility for treatment and care of the person.

“Attending physician” means the physician selected by or assigned to the person who has primary responsibility for treatment and care of the person and who is a licensed physician. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under this article.

“Capable adult” means an adult who is physically and mentally capable of making health care decisions and who is not considered a protected person pursuant to chapter 44A of this code.

“Close friend” means any adult who has exhibited significant care and concern for an incapacitated person who is willing and able to become involved in the incapacitated person’s health care and who has maintained regular contact with the incapacitated person so as to be familiar with his or her activities, health, and religious and moral beliefs.

“Death” means a finding made in accordance with accepted medical standards of either: (1) The irreversible cessation of circulatory and respiratory functions; or (2) the irreversible cessation of all functions of the entire brain, including the brain stem.

“Guardian” means a person appointed by a court pursuant to chapter 44A of this code who is responsible for the personal affairs of a protected person and includes a limited guardian or a temporary guardian.

“Health care decision” means a decision to give, withhold, or withdraw informed consent to any type of health care, including, but not limited to, medical and surgical treatments, including life-prolonging interventions, psychiatric treatment, nursing care,

hospitalization, treatment in a nursing home or other facility, home health care, and organ or tissue donation.

“Health care facility” means a facility commonly known by a wide variety of titles, including, but not limited to, hospital, psychiatric hospital, medical center, ambulatory health care facility, physicians’ office and clinic, extended care facility operated in connection with a hospital, nursing home, a hospital extended care facility operated in connection with a rehabilitation center, hospice, home health care, or other facility established to administer health care in its ordinary course of business or practice.

“Health care provider” means any licensed physician, dentist, nurse, physician assistant, paramedic, psychologist, or other person providing medical, dental, nursing, psychological, or other health care services of any kind.

“Incapacity” means the inability because of physical or mental impairment to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented, and to communicate that choice in an unambiguous manner.

“Life-prolonging intervention” means any medical procedure or intervention that, when applied to a person, would serve to artificially prolong the dying process. Life-prolonging intervention includes, among other things, nutrition and hydration administered intravenously or through a feeding tube. The term “life-prolonging intervention” does not include the administration of medication or the performance of any other medical procedure considered necessary to provide comfort or to alleviate pain.

“Living will” means a written, witnessed advance directive governing the withholding or withdrawing of life-prolonging intervention, voluntarily executed by a person in accordance with the requirements of §16-30-4 of this code.

“Mature minor” means a person, less than 18 years of age, who has been determined by a qualified physician, a qualified psychologist, or an advanced nurse practitioner to have the capacity to make health care decisions.

“Medical information” or “medical records” means and includes without restriction any information recorded in any form of medium that is created or received by a health care provider, health care facility, health plan, public health authority, employer, life insurer, school, or university or health care clearinghouse that relates to the past, present, or future physical or mental health of the person, the provision of health care to the person, or the past, present, or future payment for the provision of health care to the person.

“Medical power of attorney representative” or “representative” means a person, 18 years of age or older, appointed by another person to make health care decisions pursuant to §16-30-6 of this code or similar act of another state and recognized as valid under the laws of this state.

“Parent” means a person who is another person’s natural or adoptive mother or father or who has been granted parental rights by valid court order and whose parental rights have not been terminated by a court of law.

“Person” means an individual, corporation, business trust, trust, partnership, association, government, governmental subdivision or agency, or any other legal entity.

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

“Principal” means a person who has executed a living will, medical power of attorney, or combined medical power of attorney and living will.

“Protected person” means an adult who, pursuant to chapter 44A of this code, has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to an extent that the individual lacks the capacity to: (1) Meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or (2) manage property or financial affairs to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator.

“Qualified physician” means a physician licensed to practice medicine who has personally examined the person.

“Qualified psychologist” means a psychologist licensed to practice psychology who has personally examined the person.

“Surrogate decision-maker” or “surrogate” means an individual 18 years of age or older who is reasonably available, to make health care decisions on behalf of an incapacitated person, possesses the capacity to make health care decisions, and is identified or selected by the attending physician or advanced nurse practitioner in accordance with the provisions of this article as the person who is to make those decisions in accordance with the provisions of this article.

“Terminal condition” means an incurable or irreversible condition as diagnosed by the attending physician or a qualified physician for which the administration of life-prolonging intervention will serve only to prolong the dying process.

§16-30-4. Executing a living will, medical power of attorney, or combined medical power of attorney and living will.

(a) Any competent adult may execute at any time a living will, medical power of attorney, or combined medical power of attorney and living will. A living will, medical power of attorney, or combined medical power of attorney and living will made pursuant to this article shall be: (1) In writing; (2) executed by the principal or by another person

in the principal's presence at the principal's express direction if the principal is physically unable to do so; (3) dated; (4) signed in the presence of two or more witnesses at least 18 years of age; and (5) signed and attested by such witnesses whose signatures and attestations shall be acknowledged before a notary public.

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

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

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

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

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

(5) The attending physician; or

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

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

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

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

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

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

(d) It is the responsibility of the principal or his or her representative to provide for notification to his or her attending physician and other health care provider of the existence of the living will, medical power of attorney, or combined medical power of attorney and living will, or a revocation of the living will, medical power of attorney, or combined medical power of attorney and living will. An attending physician or other health care provider, when presented with the living will, medical power of attorney, or combined medical power of attorney and living will, or the revocation of a living will, medical power of attorney, or combined medical power of attorney and living will, shall make the living will, medical power of attorney, or combined medical power of attorney and living will, or a copy or revocation of any, a part of the principal's medical records.

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

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

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

STATE OF WEST VIRGINIA

LIVING WILL

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

If I Have a Terminal Condition

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 unable to communicate my wishes for myself. In the absence of my ability to give directions regarding the use of life-prolonging intervention, it is my desire that my dying may not be prolonged under the following circumstances:

If I am very sick and unable to communicate my wishes for myself and I am certified by one physician, who has personally examined me, to have a terminal condition, I direct that life-prolonging intervention that would serve solely to prolong the dying process 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 funeral arrangements, autopsy, 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).

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

I understand the full import of this living will.

_____ Signed

_____ Address

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

_____ Witness
Date

_____ Witness
Date

STATE OF

COUNTY OF

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

and _____ and _____, as witnesses, whose

telephone number of the person you wish to designate as your successor representative. Please insert only one name.)

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

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

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

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

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

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

Signature of the Principal

Address of the Principal

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

Date Witness

Date Witness

STATE OF

COUNTY OF

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

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

My commission expires:

Notary Public

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

STATE OF WEST VIRGINIA

COMBINED MEDICAL POWER OF ATTORNEY AND LIVING WILL

The Person I want to Make Health Care Decisions for Me When I Can't Make Them for Myself and the Kind of Medical Treatment I Want and Don't want If I Have a Terminal Condition

Dated: _____, 20 _____

I,

(Insert your name)

hereby appoint as my representative to act on my behalf to give, withhold, or withdraw informed consent to health care decisions in the event that I am unable to do so myself.

The person I choose as my representative is:

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

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

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

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

1. IN A TERMINAL CONDITION: If I am very sick and unable to communicate my wishes for myself and I am certified by one physician, who has personally examined me, to have a terminal condition, I direct that life-prolonging intervention that would serve solely to prolong the dying process 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.

2. OTHER LIVING WILL SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER: (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis, mental health treatment, funeral arrangements, autopsy, and organ donation may be placed here. My failure to provide special directives or limitations does not mean I want or refuse certain treatments.)

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

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

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

It is my intent that this document be legally binding and effective and that this document be taken as a formal statement of my desire concerning the method by

which any health care decisions should be made on my behalf during any period when I am unable to make such decisions.

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

Signature of the Principal

Address of the Principal

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

Date _____ Witness

Date _____ Witness

STATE OF

COUNTY OF

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

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

My commission expires:

Notary Public

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

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

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

(b) If there is a conflict between the person's expressed directives, the portable orders for scope of treatment form, and the decisions of the medical power of attorney representative or surrogate, the person's expressed directives shall be followed.

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

(d) If there is a conflict between the decisions of the medical power of attorney representative or surrogate and the person's best interests as determined by the attending physician when the person's wishes are unknown, the attending physician shall attempt to resolve the conflict by consultation with a qualified physician, an ethics committee, or by some other means. If the attending physician cannot resolve the conflict with the medical power of attorney representative, the attending physician may transfer the care of the person pursuant §16-30-12(b) of this code.

§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.

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

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

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

(d) No health care provider or employee thereof who in good faith and pursuant to reasonable medical standards causes or participates in the withholding or withdrawing of life-prolonging intervention from a person pursuant to a living will or combined medical power of attorney and living will made in accordance with this article shall, as a result thereof, be subject to criminal or civil liability.

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

§16-30-13. Interinstitutional transfers.

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

(b) If a person admitted to any health care facility in this state has been determined to lack capacity and the person's medical power of attorney has been declared to be in effect or a surrogate decisionmaker has been selected for that person all in accordance with the requirements of this article and that person is subsequently discharged home in the care of a home health care agency or hospice, the home health care agency or hospice may rely upon the prior determination of incapacity. The home health care agency or hospice may rely upon the medical power of attorney representative or health care surrogate who provided health care decisions at the transferring facility to continue to make all health care decisions until such time as the person regains capacity.

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

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

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

(2) The portable orders for scope of treatment form shall be voided and a new form issued;

or

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

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

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

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

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

§16-30-21. Reciprocity.

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

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

(a) The secretary of the Department of Health and Human Resources shall implement the statewide distribution of standardized portable orders for scope of treatment (POST) forms.

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

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

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

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

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

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

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

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

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

(2) A completed living will or combined medical power of attorney and living will for that person is in effect, pursuant to the provisions of §16-30-1 et seq. of this code, and the person is in a terminal condition; or

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

(4) A completed portable orders for scope of treatment form in which a qualified physician has ordered do-not-resuscitate. Nothing in this article shall require a nursing home, personal care home, hospice, or extended care facility operated in connection with hospitals to institute or maintain the ability to provide cardiopulmonary resuscitation or to expand its existing equipment, facilities, or personnel to provide cardiopulmonary resuscitation: *Provided*, That if a health care facility does not provide cardiopulmonary resuscitation, this policy shall be communicated in writing to the person, representative, or surrogate decision maker prior to admission.