

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #4

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2002 MAY 30 P 12: 20

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY: W. Va. Code § 16-30-8(a)(7)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 86

TITLE OF RULE BEING PROPOSED: Surrogates for Incapacitated Persons in Health Care
Facilities Operated by the Dep't of Health and Human Resources

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature

SCANNED

**TITLE 64
LEGISLATIVE RULES
BUREAU FOR PUBLIC HEALTH**

FILED

2002 MAY 30 P 12: 20

**SERIES 86
SURROGATES FOR INCAPACITATED PERSONS IN
HEALTH CARE FACILITIES
OPERATED BY
THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

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§64-86-1. General.

1.1. Scope. – This legislative rule designates individuals and entities who are authorized to act as surrogates for incapacitated persons in the Department's health care facilities. This rule should be read in conjunction with W. Va. Code § 16-30-8 and the definitions in W. Va. Code § 16-30-3. The W. Va. Code is available in public libraries and on the Legislature's web page: <http://www.legis.state.wv.us/>.

1.2. Authority. – W. Va. Code §16-30-8(a)(7).

1.3. Filing Date. –

1.4. Effective Date. –

§64-86-2. Application and Enforcement Section.

2.1. Application. – This rule applies to incapacitated persons who are in need of surrogates and who are patients in the Department's health care facilities; Department designated surrogates; health care facilities; health care providers; and individuals and entities who are prohibited from serving as surrogates.

2.2. Enforcement. – This rule is enforced by the Commissioner of the Bureau for Public Health or his or her designee.

§64-86-3. Definitions.

3.1. The definitions in W. Va. Code §16-30-3 apply to this rule.

3.2. Department. – The West Virginia Department of Health and Human Resources.

§64-86-4. Designation of Individuals and Entities.

4.1. Except as provided in Section 5 of this rule, the following are designated as individuals and entities that may be selected in accordance with W. Va. Code §16-30-

8(a)(7) as surrogates for patients in the Department's health care facilities:

4.1.a. Any health care facility or health care provider;

4.1.b. Any organization authorized under state or federal laws, or under contract with the Department, to advocate for individuals in the Department's health care facilities;

4.1.c. Any organization authorized under federal or state laws, or under contract with the Department, to provide surrogacy, guardianship or conservator services for persons in the Department's health care facilities; and

4.1.d. Any Department employee, other than an employee of the incapacitated person's health care facility, if the person selecting the surrogate determines that there is no other designated individual or entity willing and able to act as a surrogate.

§64-86-5. Prohibited Surrogates.

5.1. The following individuals and entities shall not serve as surrogates under W. Va. Code §16-30-8(a)(7) for an incapacitated person in a Department health care facility:

5.1.a. Any individual or entity unwilling or unable to act as a surrogate;

5.1.b. Any health care provider treating the incapacitated person and any individual or entity employed by or affiliated with that provider;

5.1.c. Any state governmental unit;

5.1.d. Any individual employed by the health care facility; or

5.1.e. Any individual or entity providing financial assistance or other substantial services to the incapacitated person.