



March 25, 2021

ENGROSSED
SENATE BILL No. 204

DIGEST OF SB 204 (Updated March 24, 2021 3:54 pm - DI 133)

Citations Affected: IC 12-10; IC 16-18; IC 16-21; IC 16-36; IC 16-39; IC 23-14; IC 25-15; IC 29-2; IC 29-3; IC 30-5; IC 34-30; IC 35-42.

Synopsis: Health care advance directives. Allows an individual to make a health care advance directive that gives instructions or expresses preferences or desires concerning any aspect of the individual's health care or health information and to designate a health care representative to make health care decisions and receive health information for the individual. Consolidates definitions of "life prolonging procedures". Requires the state department of health to
(Continued next page)

Effective: July 1, 2021.

**Rogers, Koch, Brown L, Lanane,
Young M, Raatz**

(HOUSE SPONSORS — YOUNG J, BARRETT, HATFIELD)

January 11, 2021, read first time and referred to Committee on Judiciary.
February 4, 2021, amended, reported favorably — Do Pass.
February 11, 2021, read second time, ordered engrossed. Engrossed. Returned to second reading.

February 15, 2021, re-read second time, amended, ordered engrossed.
February 16, 2021, re-engrossed. Read third time, passed. Yeas 46, nays 0.

HOUSE ACTION

March 1, 2021, read first time and referred to Committee on Public Health.
March 25, 2021, amended, reported favorably — Do Pass.

ES 204—LS 6859/DI 123



Digest Continued

prepare a sample advance directive. Provides that the appointment of a representative or attorney in fact to consent to health care that was legally executed before January 1, 2023, is valid as executed. Adds definitions of "notarial officer", "observe", "present", and "telephonic interaction" to allow a mentally competent declarant to sign an advance directive by using technology to interact in real time with a notarial officer or with two attesting witnesses. Specifies certain prerequisites when witnessing specified directives through telephonic interaction. Provides for remote witnessing or signing of separate paper counterparts that are assembled later into a complete composite paper advance directive. Provides that the new health care directive provisions do not affect the consent provisions concerning abortion or a minor's medical or hospital care and treatment with respect to the minor's pregnancy, delivery, or postpartum care. Provides that an attending advanced practice registered nurse or physician assistant may perform the same functions and have the same responsibilities as an attending physician for purposes of an out of hospital do not resuscitate declaration. Adds cross references. Defines certain terms. Makes conforming changes. Makes technical changes.



March 25, 2021

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 204

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-10-7-8 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 8. (a) The division shall
3 contract in writing for the provision of the guardianship services
4 required in each region with a nonprofit corporation that is:
5 (1) qualified to receive tax deductible contributions under Section
6 170 of the Internal Revenue Code; and
7 (2) located in the region.
8 (b) The division shall establish qualifications to determine eligible
9 providers in each region.
10 (c) Each contract between the division and a provider must specify
11 a method for the following:
12 (1) The establishment of a guardianship committee within the
13 provider, serving under the provider's board of directors.
14 (2) The provision of money and services by the provider in an
15 amount equal to at least twenty-five percent (25%) of the total

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1 amount of the contract and the provision by the division of the
 2 remaining amount of the contract. The division shall establish
 3 guidelines to determine the value of services provided under this
 4 subdivision.

5 (3) The establishment of procedures to avoid a conflict of interest
 6 for the provider in providing necessary services to each
 7 incapacitated individual.

8 (4) The identification and evaluation of indigent adults in need of
 9 guardianship services.

10 (5) The adoption of individualized service plans to provide the
 11 least restrictive type of guardianship or related services for each
 12 incapacitated individual, including the following:

13 (A) Designation as a representative payee by:

- 14 (i) the Social Security Administration;
- 15 (ii) the United States Office of Personnel Management;
- 16 (iii) the United States Department of Veterans Affairs; or
- 17 (iv) the United States Railroad Retirement Board.

18 (B) Limited guardianship under IC 29-3.

19 (C) Guardianship of the person or estate under IC 29-3.

20 (D) The appointment of:

- 21 (i) a health care representative under IC 16-36-1-7 **or**
- 22 **IC 16-36-7;** or
- 23 (ii) a power of attorney under IC 30-5.

24 (6) The periodic reassessment of each incapacitated individual.

25 (7) The provision of legal services necessary for the guardianship.

26 (8) The training and supervision of paid and volunteer staff.

27 (9) The establishment of other procedures and programs required
 28 by the division.

29 SECTION 2. IC 12-10-13-3.3, AS AMENDED BY P.L.168-2018,
 30 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2021]: Sec. 3.3. As used in this chapter, "legal representative"
 32 means:

33 (1) a guardian;

34 (2) a health care representative acting under IC 16-36-1 **or**
 35 **IC 16-36-7;**

36 (3) an attorney-in-fact for health care appointed under
 37 IC 30-5-5-16;

38 (4) an attorney-in-fact appointed under IC 30-5-5 who does not
 39 hold health care powers; or

40 (5) the personal representative of the estate;

41 of a resident of a long term care facility.

42 SECTION 3. IC 12-10-18-1, AS ADDED BY P.L.140-2005,



1 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2021]: Sec. 1. (a) A law enforcement agency that receives a
3 notification concerning a missing endangered adult from:

4 (1) the missing endangered adult's:

5 (A) guardian;

6 (B) custodian; or

7 (C) guardian ad litem; or

8 (2) an individual who:

9 (A) provides the missing endangered adult with home health
10 aid services;

11 (B) possesses a health care power of attorney **that was**
12 **executed under IC 30-5-5-16** for the missing endangered
13 adult; or

14 (C) has evidence that the missing endangered adult has a
15 condition that may prevent the missing endangered adult from
16 returning home without assistance;

17 shall prepare an investigative report on the missing endangered adult,
18 if based on the notification, the law enforcement agency has reason to
19 believe that an endangered adult is missing.

20 (b) The investigative report described in subsection (a) may include
21 the following:

22 (1) Relevant information obtained from the notification
23 concerning the missing endangered adult, including the following:

24 (A) A physical description of the missing endangered adult.

25 (B) The date, time, and place that the missing endangered
26 adult was last seen.

27 (C) The missing endangered adult's address.

28 (2) Information gathered by a preliminary investigation, if one
29 was made.

30 (3) A statement by the law enforcement officer in charge setting
31 forth that officer's assessment of the case based upon the evidence
32 and information received.

33 SECTION 4. IC 16-18-2-1.5, AS AMENDED BY P.L.205-2018,
34 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2021]: Sec. 1.5. (a) "Abortion clinic", for purposes of
36 IC 16-21-2, IC 16-34-2-4.7, IC 16-34-3, and IC 16-41-16, means a
37 health care provider (as defined in section ~~163(d)(1)~~ **163(e)(1)** of this
38 chapter) that:

39 (1) performs surgical abortion procedures; or

40 (2) beginning January 1, 2014, provides an abortion inducing
41 drug for the purpose of inducing an abortion.

42 (b) The term does not include the following:



- 1 (1) A hospital that is licensed as a hospital under IC 16-21-2.
 2 (2) An ambulatory outpatient surgical center that is licensed as an
 3 ambulatory outpatient surgical center under IC 16-21-2.
 4 (3) A health care provider that provides, prescribes, administers,
 5 or dispenses an abortion inducing drug to fewer than five (5)
 6 patients per year for the purposes of inducing an abortion.

7 SECTION 5. IC 16-18-2-6.1 IS ADDED TO THE INDIANA CODE
 8 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 9 1, 2021]: **Sec. 6.1. "Advance directive", for purposes of IC 16-36-7,**
 10 **has the meaning set forth in IC 16-36-7-2.**

11 SECTION 6. IC 16-18-2-28.8 IS ADDED TO THE INDIANA
 12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2021]: **Sec. 28.8. "Attending", for purposes**
 14 **of IC 16-36-5, has the meaning set forth in IC 16-36-5-1.1.**

15 SECTION 7. IC 16-18-2-29 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 29. "Attending
 17 physician" means the licensed physician who has the primary
 18 responsibility for the treatment and care of the patient. ~~For purposes of~~
 19 ~~IC 16-36-5, the term includes a physician licensed in another state.~~

20 SECTION 8. IC 16-18-2-35.5 IS ADDED TO THE INDIANA
 21 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 2021]: **Sec. 35.5. "Best interests", for**
 23 **purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-3.**

24 SECTION 9. IC 16-18-2-92.4, AS AMENDED BY P.L.164-2013,
 25 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2021]: Sec. 92.4. (a) "Declarant", for purposes of IC 16-36-5,
 27 has the meaning set forth in IC 16-36-5-3.

28 (b) "Declarant", for purposes of IC 16-36-6, has the meaning set
 29 forth in IC 16-36-6-2.

30 (c) **"Declarant", for purposes of IC 16-36-7, has the meaning set**
 31 **forth in IC 16-36-7-4.**

32 SECTION 10. IC 16-18-2-92.5 IS ADDED TO THE INDIANA
 33 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 34 [EFFECTIVE JULY 1, 2021]: **Sec. 92.5. "Declaration", for purposes**
 35 **of IC 16-36-7, has the meaning set forth in IC 16-36-7-5.**

36 SECTION 11. IC 16-18-2-105.8 IS ADDED TO THE INDIANA
 37 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2021]: **Sec. 105.8. "Electronic", for purposes**
 39 **of IC 16-36-7, has the meaning set forth in IC 16-36-7-6.**

40 SECTION 12. IC 16-18-2-106.2 IS ADDED TO THE INDIANA
 41 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2021]: **Sec. 106.2. "Electronic record", for**



1 **purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-7.**

2 SECTION 13. IC 16-18-2-106.3, AS ADDED BY P.L.204-2005,
3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2021]: Sec. 106.3. **(a) "Electronic signature", for purposes
5 of IC 16-36-7, has the meaning set forth in IC 16-36-7-8.**

6 **(b)** For purposes of IC 16-42-3 and IC 16-42-22, "electronic
7 signature" means an electronic sound, symbol, or process:

- 8 (1) attached to or logically associated with an electronically
9 transmitted prescription or order; and
10 (2) executed or adopted by a person;

11 with the intent to sign the electronically transmitted prescription or
12 order.

13 SECTION 14. IC 16-18-2-160 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 160. **(a) "Health care",**
15 for purposes of IC 16-36-1, has the meaning set forth in IC 16-36-1-1.

16 **(b) "Health care", for purposes of IC 16-36-7, has the meaning
17 set forth in IC 16-36-7-9.**

18 SECTION 15. IC 16-18-2-160.3 IS ADDED TO THE INDIANA
19 CODE AS A NEW SECTION TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2021]: **Sec. 160.3. "Health care decision", for
21 purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-10.**

22 SECTION 16. IC 16-18-2-161, AS AMENDED BY P.L.113-2015,
23 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2021]: Sec. 161. (a) "Health care facility" includes:

- 25 (1) hospitals licensed under IC 16-21-2, private mental health
26 institutions licensed under IC 12-25, and tuberculosis hospitals
27 established under IC 16-11-1 (before its repeal);
28 (2) health facilities licensed under IC 16-28; and
29 (3) rehabilitation facilities and kidney disease treatment centers.

30 (b) "Health care facility", for purposes of IC 16-21-11 and
31 IC 16-34-3, has the meaning set forth in IC 16-21-11-1.

32 (c) "Health care facility", for purposes of IC 16-28-13, has the
33 meaning set forth in IC 16-28-13-0.5.

34 **(d) "Health care facility", for purposes of IC 16-36-7, has the
35 meaning set forth in IC 16-36-7-11.**

36 SECTION 17. IC 16-18-2-163, AS AMENDED BY P.L.112-2020,
37 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2021]: Sec. 163. (a) Except as provided in subsection (c),
39 "health care provider", for purposes of IC 16-21 and IC 16-41, means
40 any of the following:

- 41 (1) An individual, a partnership, a corporation, a professional
42 corporation, a facility, or an institution licensed or legally



1 authorized by this state to provide health care or professional
 2 services as a licensed physician, a psychiatric hospital, a hospital,
 3 a health facility, an emergency ambulance service (IC 16-31-3),
 4 a dentist, a registered or licensed practical nurse, a midwife, an
 5 optometrist, a pharmacist, a podiatrist, a chiropractor, a physical
 6 therapist, a respiratory care practitioner, an occupational therapist,
 7 a psychologist, a paramedic, an emergency medical technician, an
 8 advanced emergency medical technician, an athletic trainer, or a
 9 person who is an officer, employee, or agent of the individual,
 10 partnership, corporation, professional corporation, facility, or
 11 institution acting in the course and scope of the person's
 12 employment.

13 (2) A college, university, or junior college that provides health
 14 care to a student, a faculty member, or an employee, and the
 15 governing board or a person who is an officer, employee, or agent
 16 of the college, university, or junior college acting in the course
 17 and scope of the person's employment.

18 (3) A blood bank, community mental health center, community
 19 intellectual disability center, community health center, or migrant
 20 health center.

21 (4) A home health agency (as defined in IC 16-27-1-2).

22 (5) A health maintenance organization (as defined in
 23 IC 27-13-1-19).

24 (6) A health care organization whose members, shareholders, or
 25 partners are health care providers under subdivision (1).

26 (7) A corporation, partnership, or professional corporation not
 27 otherwise qualified under this subsection that:

28 (A) provides health care as one (1) of the corporation's,
 29 partnership's, or professional corporation's functions;

30 (B) is organized or registered under state law; and

31 (C) is determined to be eligible for coverage as a health care
 32 provider under IC 34-18 for the corporation's, partnership's, or
 33 professional corporation's health care function.

34 Coverage for a health care provider qualified under this subdivision is
 35 limited to the health care provider's health care functions and does not
 36 extend to other causes of action.

37 (b) "Health care provider", for purposes of IC 16-35, has the
 38 meaning set forth in subsection (a). However, for purposes of IC 16-35,
 39 the term also includes a health facility (as defined in section 167 of this
 40 chapter).

41 (c) "Health care provider", for purposes of IC 16-32-5, IC 16-36-5,
 42 IC 16-36-6, and IC 16-41-10 means an individual licensed or



1 authorized by this state to provide health care or professional services
2 as:

- 3 (1) a licensed physician;
- 4 (2) a registered nurse;
- 5 (3) a licensed practical nurse;
- 6 (4) an advanced practice registered nurse;
- 7 (5) a certified nurse midwife;
- 8 (6) a paramedic;
- 9 (7) an emergency medical technician;
- 10 (8) an advanced emergency medical technician;
- 11 (9) an emergency medical responder, as defined by section 109.8
- 12 of this chapter;
- 13 (10) a licensed dentist;
- 14 (11) a home health aide, as defined by section 174 of this chapter;
- 15 or
- 16 (12) a licensed physician assistant.

17 The term includes an individual who is an employee or agent of a
18 health care provider acting in the course and scope of the individual's
19 employment.

20 **(d) "Health care provider", for purposes of IC 16-36-7, has the**
21 **meaning set forth in IC 16-36-7-12.**

22 ~~(d)~~ **(e) "Health care provider", for purposes of section 1.5 of this**
23 **chapter and IC 16-40-4, means any of the following:**

- 24 (1) An individual, a partnership, a corporation, a professional
25 corporation, a facility, or an institution licensed or authorized by
26 the state to provide health care or professional services as a
27 licensed physician, a psychiatric hospital, a hospital, a health
28 facility, an emergency ambulance service (IC 16-31-3), an
29 ambulatory outpatient surgical center, a dentist, an optometrist, a
30 pharmacist, a podiatrist, a chiropractor, a psychologist, or a
31 person who is an officer, employee, or agent of the individual,
32 partnership, corporation, professional corporation, facility, or
33 institution acting in the course and scope of the person's
34 employment.
- 35 (2) A blood bank, laboratory, community mental health center,
36 community intellectual disability center, community health
37 center, or migrant health center.
- 38 (3) A home health agency (as defined in IC 16-27-1-2).
- 39 (4) A health maintenance organization (as defined in
40 IC 27-13-1-19).
- 41 (5) A health care organization whose members, shareholders, or
42 partners are health care providers under subdivision (1).



1 (6) A corporation, partnership, or professional corporation not
2 otherwise specified in this subsection that:

3 (A) provides health care as one (1) of the corporation's,
4 partnership's, or professional corporation's functions;

5 (B) is organized or registered under state law; and

6 (C) is determined to be eligible for coverage as a health care
7 provider under IC 34-18 for the corporation's, partnership's, or
8 professional corporation's health care function.

9 (7) A person that is designated to maintain the records of a person
10 described in subdivisions (1) through (6).

11 ~~(e)~~ **(f)** "Health care provider", for purposes of IC 16-45-4, has the
12 meaning set forth in 47 CFR 54.601(a).

13 SECTION 18. IC 16-18-2-163.4, AS ADDED BY P.L.137-2015,
14 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2021]: Sec. 163.4. **(a)** "Health care representative", for
16 purposes of IC 16-21-12, has the meaning set forth in IC 16-21-12-4.

17 **(b) "Health care representative", for purposes of IC 16-36-7,
18 has the meaning set forth in IC 16-36-7-13.**

19 SECTION 19. IC 16-18-2-167.5 IS ADDED TO THE INDIANA
20 CODE AS A NEW SECTION TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2021]: **Sec. 167.5. "Health information", for
22 purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-14.**

23 SECTION 20. IC 16-18-2-186.5 IS ADDED TO THE INDIANA
24 CODE AS A NEW SECTION TO READ AS FOLLOWS
25 [EFFECTIVE JULY 1, 2021]: **Sec. 186.5. "Incapacity" and
26 "incapacitated", for purposes of IC 16-36-7, have the meaning set
27 forth in IC 16-36-7-15.**

28 SECTION 21. IC 16-18-2-190 IS AMENDED TO READ AS
29 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 190. **(a) "Informed
30 consent", for purposes of IC 16-36-7, has the meaning set forth in
31 IC 16-36-7-16.**

32 **(b)** "Informed consent", for purposes of IC 16-41-6, has the meaning
33 set forth in IC 16-41-6-2.

34 SECTION 22. IC 16-18-2-203, AS AMENDED BY P.L.164-2013,
35 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2021]: Sec. 203. (a) "Life prolonging procedure", for purposes
37 of IC 16-36-4, has the meaning set forth in IC 16-36-4-1.

38 **(b) "Life prolonging procedure", for purposes of IC 16-36-6, has the
39 meaning set forth in IC 16-36-6-3. IC 16-36, means any medical
40 procedure, treatment, or intervention that does the following:**

41 **(1) Uses mechanical or other artificial means to sustain,
42 restore, or supplant a vital function.**



1 **(2) Serves to prolong the dying process.**

2 **(b) The term does not include the performance or provision of**
 3 **any medical procedure or medication necessary to provide comfort**
 4 **care or to alleviate pain.**

5 SECTION 23. IC 16-18-2-253.8 IS ADDED TO THE INDIANA
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2021]: **Sec. 253.8. "Notarial officer", for**
 8 **purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-17.**

9 SECTION 24. IC 16-18-2-254.3 IS ADDED TO THE INDIANA
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2021]: **Sec. 254.3. "Observe", for purposes**
 12 **of IC 16-36-7, has the meaning set forth in IC 16-36-7-18.**

13 SECTION 25. IC 16-18-2-293.3 IS ADDED TO THE INDIANA
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2021]: **Sec. 293.3. "Presence", "present", or**
 16 **"to be present", for purposes of IC 16-36-7, has the meaning set**
 17 **forth in IC 16-36-7-19.**

18 SECTION 26. IC 16-18-2-296.2 IS ADDED TO THE INDIANA
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS
 20 [EFFECTIVE JULY 1, 2021]: **Sec. 296.2. "Proxy", for purposes of**
 21 **IC 16-36-7, has the meaning set forth in IC 16-36-7-20.**

22 SECTION 27. IC 16-18-2-308.2 IS ADDED TO THE INDIANA
 23 CODE AS A NEW SECTION TO READ AS FOLLOWS
 24 [EFFECTIVE JULY 1, 2021]: **Sec. 308.2. "Reasonably available",**
 25 **for purposes of IC 16-36-7, has the meaning set forth in**
 26 **IC 16-36-7-21.**

27 SECTION 28. IC 16-18-2-331.4 IS ADDED TO THE INDIANA
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2021]: **Sec. 331.4. "Sign", for purposes of**
 30 **IC 16-36-7, has the meaning set forth in IC 16-36-7-22.**

31 SECTION 29. IC 16-18-2-331.5 IS ADDED TO THE INDIANA
 32 CODE AS A NEW SECTION TO READ AS FOLLOWS
 33 [EFFECTIVE JULY 1, 2021]: **Sec. 331.5. "Signature", for purposes**
 34 **of IC 16-36-7, has the meaning set forth in IC 16-36-7-23.**

35 SECTION 30. IC 16-18-2-348.7 IS ADDED TO THE INDIANA
 36 CODE AS A NEW SECTION TO READ AS FOLLOWS
 37 [EFFECTIVE JULY 1, 2021]: **Sec. 348.7. "Telephonic interaction",**
 38 **for purposes of IC 16-36-7, has the meaning set forth in**
 39 **IC 16-36-7-24.**

40 SECTION 31. IC 16-18-2-354.8 IS ADDED TO THE INDIANA
 41 CODE AS A NEW SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2021]: **Sec. 354.8. "Treating physician", for**



1 **purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-25.**

2 SECTION 32. IC 16-18-2-378.5 IS ADDED TO THE INDIANA
3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2021]: **Sec. 378.5. "Written" and "writing",**
5 **for purposes of IC 16-36-7, have the meaning set forth in**
6 **IC 16-36-7-26.**

7 SECTION 33. IC 16-21-12-4, AS ADDED BY P.L.137-2015,
8 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2021]: Sec. 4. As used in this chapter, "health care
10 representative" means an individual:

11 (1) appointed as the patient's health care representative under
12 IC 16-36-1-7;

13 (2) **appointed as the patient's health care representative under**
14 **IC 16-36-7; or an individual**

15 (3) holding the patient's health care power of attorney under
16 IC 30-5-5-16.

17 However, if the patient has not appointed a health care representative
18 under IC 16-36-1-7 **or IC 16-36-7** or granted a health care power of
19 attorney to an individual under IC 30-5-5-16, the term means an
20 individual authorized to consent to health care for the patient under
21 ~~IC 16-36-1-5.~~ **IC 16-36-7-42.**

22 SECTION 34. IC 16-21-12-15, AS ADDED BY P.L.137-2015,
23 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2021]: Sec. 15. (a) This chapter may not be construed to
25 interfere with the rights of a health care representative appointed under
26 IC 16-36-1 **or a health care representative appointed under**
27 **IC 16-36-7.**

28 (b) This chapter may not be construed to create a private right of
29 action against a hospital, a hospital employee, or an individual with
30 whom a hospital has a contractual relationship.

31 (c) No cause of action of any type arises against a hospital, a
32 hospital employee, a staff member, or an individual with whom a
33 hospital has a contractual relationship based upon an act or omission
34 of a lay caregiver.

35 SECTION 35. IC 16-36-1-3, AS AMENDED BY P.L.139-2019,
36 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2021]: Sec. 3. (a) Except as provided in subsections (b)
38 through (d), unless incapable of consenting under section 4 of this
39 chapter, an individual may consent to the individual's own health care
40 if the individual is:

41 (1) an adult; or

42 (2) a minor and:



- 1 (A) is emancipated;
- 2 (B) is:
- 3 (i) at least fourteen (14) years of age;
- 4 (ii) not dependent on a parent **or guardian** for support;
- 5 (iii) living apart from the minor's parents or from an
- 6 individual in loco parentis; and
- 7 (iv) managing the minor's own affairs;
- 8 (C) is or has been married;
- 9 (D) is in the military service of the United States;
- 10 (E) meets the requirements of section 3.5 of this chapter; or
- 11 (F) is authorized to consent to the health care by any other
- 12 statute.

13 (b) A person at least seventeen (17) years of age is eligible to donate
 14 blood in a voluntary and noncompensatory blood program without
 15 obtaining ~~parental~~ permission **from a parent or guardian.**

16 (c) A person who is sixteen (16) years of age is eligible to donate
 17 blood in a voluntary and noncompensatory blood program if the person
 18 has obtained written permission from the person's parent **or guardian.**

19 (d) An individual who has, suspects that the individual has, or has
 20 been exposed to a venereal disease is competent to give consent for
 21 medical or hospital care or treatment of the individual.

22 SECTION 36. IC 16-36-1-4 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 4. (a) An individual
 24 described in section 3 of this chapter may consent to health care unless,
 25 in the good faith opinion of the attending physician, the individual is
 26 incapable of making a decision regarding the proposed health care.

27 (b) A consent to health care under section 5, 6, or 7 of this chapter
 28 is not valid if:

29 (1) the health care provider has knowledge that the individual has
 30 indicated contrary instructions in regard to the proposed health
 31 care; ~~even if the individual is believed to be incapable of making~~
 32 ~~a decision regarding the proposed health care at the time the~~
 33 ~~individual indicates contrary instructions; and~~

34 (2) **the individual has not been determined to be incapable of**
 35 **consenting to health care by:**

36 (A) **an order of a probate court under section 8 of this**
 37 **chapter; or**

38 (B) **the individual's attending physician under subsection**
 39 **(a).**

40 SECTION 37. IC 16-36-1-7, AS AMENDED BY P.L.81-2015,
 41 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2021]: Sec. 7. (a) An individual who may consent to health



1 care under section 3 of this chapter may appoint another representative
2 to act for the appointor in matters affecting the appointor's health care.

3 (b) An appointment and any amendment must meet the following
4 conditions:

5 (1) Be in writing.

6 (2) Be signed by the appointor or by a designee in the appointor's
7 presence **before January 1, 2023**.

8 (3) Be witnessed by an adult other than the representative.

9 (c) The appointor may specify in the appointment appropriate terms
10 and conditions, including an authorization to the representative to
11 delegate the authority to consent to another.

12 (d) The authority granted becomes effective according to the terms
13 of the appointment.

14 (e) The appointment does not commence until the appointor
15 becomes incapable of consenting. The authority granted in the
16 appointment is not effective if the appointor regains the capacity to
17 consent.

18 (f) Unless the appointment provides otherwise, a representative
19 appointed under this section who is reasonably available and willing to
20 act has priority to act in all matters of health care for the appointor,
21 except when the appointor is capable of consenting.

22 (g) In making all decisions regarding the appointor's health care, a
23 representative appointed under this section shall act as follows:

24 (1) In the best interest of the appointor consistent with the
25 purpose expressed in the appointment.

26 (2) In good faith.

27 (h) A health care representative who resigns or is unwilling to
28 comply with the written appointment may not exercise further power
29 under the appointment and shall so inform the following:

30 (1) The appointor.

31 (2) The appointor's legal representative if one is known.

32 (3) The health care provider if the representative knows there is
33 one.

34 (i) An individual who is capable of consenting to health care may
35 revoke:

36 (1) the appointment at any time by notifying the representative
37 orally or in writing; or

38 (2) the authority granted to the representative by notifying the
39 health care provider orally or in writing.

40 SECTION 38. IC 16-36-1.5-5 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 5. (a) This section
42 applies to a patient who:

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- 1 (1) receives mental health services; and
- 2 (2) is mentally incompetent.
- 3 (b) A patient described in subsection (a) shall provide consent for
- 4 mental health treatment through the informed consent of one (1) of the
- 5 following:
- 6 (1) The patient's legal guardian or other court appointed
- 7 representative.
- 8 (2) The patient's health care representative under IC 16-36-1.
- 9 (3) An attorney in fact for health care appointed under
- 10 IC 30-5-5-16.
- 11 (4) The patient's health care representative acting in accordance
- 12 with the patient's psychiatric advance directive as expressed in a
- 13 psychiatric advance directive executed under IC 16-36-1.7.
- 14 **(5) The patient's health care representative conferred under**
- 15 **IC 16-36-7.**

16 SECTION 39. IC 16-36-4-1 IS REPEALED [EFFECTIVE JULY 1,
 17 2021]. Sec. 1. (a) As used in this chapter, "life prolonging procedure"
 18 means any medical procedure, treatment, or intervention that does the
 19 following:

- 20 (1) Uses mechanical or other artificial means to sustain, restore,
- 21 or supplant a vital function.
- 22 (2) Serves to prolong the dying process.
- 23 (b) The term does not include the performance or provision of any
- 24 medical procedure or medication necessary to provide comfort care or
- 25 to alleviate pain.

26 SECTION 40. IC 16-36-4-10 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 10. The following is the
 28 living will declaration form:

29 LIVING WILL DECLARATION

30 Declaration made this ____ day of _____ (month, year). I,
 31 _____, being at least eighteen (18) years of age and of sound
 32 mind, willfully and voluntarily make known my desires that my dying
 33 shall not be artificially prolonged under the circumstances set forth
 34 below, and I declare:

35 If at any time my attending physician certifies in writing that: (1) I
 36 have an incurable injury, disease, or illness; (2) my death will occur
 37 within a short time; and (3) the use of life prolonging procedures would
 38 serve only to artificially prolong the dying process, I direct that such
 39 procedures be withheld or withdrawn, and that I be permitted to die
 40 naturally with only the performance or provision of any medical
 41 procedure or medication necessary to provide me with comfort care or
 42 to alleviate pain, and, if I have so indicated below, the provision of



1 artificially supplied nutrition and hydration. (Indicate your choice by
2 ~~initialling~~ **initialing** or making your mark before signing this
3 declaration):

4 _____ I wish to receive artificially supplied nutrition and
5 hydration, even if the effort to sustain life is futile or excessively
6 burdensome to me.

7 _____ I do not wish to receive artificially supplied nutrition
8 and hydration, if the effort to sustain life is futile or excessively
9 burdensome to me.

10 _____ I intentionally make no decision concerning
11 artificially supplied nutrition and hydration, leaving the decision
12 to my health care representative appointed under IC 16-36-1-7 or
13 my attorney in fact with health care powers **appointed** under
14 ~~IC 30-5-5~~. **IC 30-5-5-16.**

15 In the absence of my ability to give directions regarding the use of
16 life prolonging procedures, it is my intention that this declaration be
17 honored by my family and physician as the final expression of my legal
18 right to refuse medical or surgical treatment and accept the
19 consequences of the refusal.

20 I understand the full import of this declaration.

21 Signed _____

22 _____
23 City, County, and State of Residence

24 The declarant has been personally known to me, and I believe
25 (him/her) to be of sound mind. I did not sign the declarant's signature
26 above for or at the direction of the declarant. I am not a parent, spouse,
27 or child of the declarant. I am not entitled to any part of the declarant's
28 estate or directly financially responsible for the declarant's medical
29 care. I am competent and at least eighteen (18) years of age.

30 Witness _____ Date _____

31 Witness _____ Date _____

32 SECTION 41. IC 16-36-5-1.1 IS ADDED TO THE INDIANA
33 CODE AS A NEW SECTION TO READ AS FOLLOWS
34 [EFFECTIVE JULY 1, 2021]: **Sec. 1.1. As used in this chapter,**
35 **"attending" means the physician, advanced practice registered**
36 **nurse, or physician assistant who has the primary responsibility for**
37 **the treatment and care of the patient.**

38 SECTION 42. IC 16-36-5-4.3 IS ADDED TO THE INDIANA
39 CODE AS A NEW SECTION TO READ AS FOLLOWS
40 [EFFECTIVE JULY 1, 2021]: **Sec. 4.3. As used in this chapter, and**
41 **with respect to a declarant, witness, or other person who signs or**
42 **participates in the signing of an out of hospital DNR declaration**



1 under this chapter, "in the presence of" has the meaning set forth
2 in section 7.7 of this chapter.

3 SECTION 43. IC 16-36-5-4.5 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2021]: **Sec. 4.5. As used in this chapter, and
6 with respect to a declarant and witness, "observe" means to
7 perceive another's actions or expression of intent through the
8 senses of eyesight, hearing, or both. The term includes perceptions
9 perceived through the use of technology or learned skills to:**

- 10 (1) assist a person's capability for eyesight, hearing, or both;
11 or
12 (2) compensate for an impairment of a person's capability for
13 eyesight, hearing, or both.

14 SECTION 44. IC 16-36-5-7.7 IS ADDED TO THE INDIANA
15 CODE AS A NEW SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2021]: **Sec. 7.7 As used in this chapter, and
17 with respect to a declarant, witness, or other person who signs or
18 participates in the signing of an out of hospital DNR declaration
19 under this chapter, "presence" means a process of signing and
20 witnessing a DNR declaration in which:**

- 21 (1) the declarant and witness are:
22 (A) directly present with each other in the same physical
23 space;
24 (B) able to interact with each other in real time through
25 use of any audiovisual communications technology now
26 known or later developed; or
27 (C) are able to speak to and hear each other in real time
28 through telephonic interaction;
29 (2) the:
30 (A) identity of the declarant is personally known to all
31 witnesses;
32 (B) witnesses are able to view a government issued,
33 photographic identification of the declarant; or
34 (C) witnesses are able to ask any question of the declarant
35 that:
36 (i) authenticates the identity of the declarant; and
37 (ii) establishes the capacity and sound mind of the
38 declarant to the satisfaction of the witnesses; and
39 (3) each witness is able to interact with the declarant and each
40 other when observing or hearing in real time, as applicable:
41 (A) the declarant's expression of intent to execute an out of
42 hospital DNR declaration under this chapter;



1 **(B) the declarant's actions in executing or directing the**
 2 **execution of the out of hospital DNR declaration under this**
 3 **chapter; and**

4 **(C) the actions of the declarant and all other witnesses**
 5 **when signing the out of hospital DNR declaration.**

6 **The term includes the use of technology or learned skills for the**
 7 **purpose of assisting with hearing, eyesight, and speech or for the**
 8 **purpose of compensating for a hearing, eyesight, or speech**
 9 **impairment.**

10 SECTION 45. IC 16-36-5-7.9 IS ADDED TO THE INDIANA
 11 CODE AS A NEW SECTION TO READ AS FOLLOWS
 12 [EFFECTIVE JULY 1, 2021]: **Sec. 7.9. As used in this chapter, and**
 13 **with respect to a declarant, witness, or other person who signs or**
 14 **participates in the signing of an out of hospital DNR declaration**
 15 **under this chapter, "present" has the meaning set forth in section**
 16 **7.7 of this chapter.**

17 SECTION 46. IC 16-36-5-9 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 9. As used in this
 19 chapter, "representative" means a person's:

- 20 (1) legal guardian or other court appointed representative
 21 responsible for making health care decisions for the person;
 22 (2) health care representative **appointed** under ~~IC 16-36-1~~; or
 23 **IC 16-36-1-7;**
 24 **(3) health care representative appointed under IC 16-36-7; or**
 25 ~~(3)~~ **(4) attorney in fact for health care appointed under**
 26 **IC 30-5-5-16.**

27 SECTION 47. IC 16-36-5-9.5 IS ADDED TO THE INDIANA
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2021]: **Sec. 9.5 As used in this chapter,**
 30 **"telephonic interaction" means interaction through the use of any**
 31 **technology, now known or later developed, that enables two (2) or**
 32 **more people to speak to and hear each other in real time even if**
 33 **one (1) or more of the persons cannot see each other.**

34 SECTION 48. IC 16-36-5-10 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 10. An attending
 36 physician, **advanced practice registered nurse, or physician**
 37 **assistant** may certify that a patient is a qualified person if the attending
 38 physician, **advanced practice registered nurse, or physician**
 39 **assistant** determines, in accordance with reasonable medical standards,
 40 that one (1) of the following conditions is met:

- 41 (1) The person has a terminal condition (as defined in
 42 IC 16-36-4-5).



1 (2) The person has a medical condition such that, if the person
 2 were to suffer cardiac or pulmonary failure, resuscitation would
 3 be unsuccessful or within a short period the person would
 4 experience repeated cardiac or pulmonary failure resulting in
 5 death.

6 SECTION 49. IC 16-36-5-11 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 11. (a) A person who
 8 is of sound mind and at least eighteen (18) years of age may execute an
 9 out of hospital DNR declaration.

10 (b) A person's representative may execute an out of hospital DNR
 11 declaration for the person under this chapter only if the person is:

- 12 (1) at least eighteen (18) years of age; and
 13 (2) incompetent.

14 (c) An out of hospital DNR declaration must meet the following
 15 conditions:

- 16 (1) Be voluntary.
 17 (2) Be in writing.
 18 (3) Be signed by the person making the declaration or by another
 19 person in the declarant's presence and at the declarant's express
 20 direction.
 21 (4) Be dated.
 22 (5) Be signed in the presence of at least two (2) competent
 23 witnesses.

24 **(d) If the requirements concerning presence are met, a**
 25 **competent declarant and all necessary witnesses may complete and**
 26 **sign an out of hospital DNR declaration in two (2) or more**
 27 **tangible, paper counterparts with the declarant's signature placed**
 28 **on one (1) original counterpart and the signatures of the witnesses**
 29 **placed on one (1) or more different tangible, paper counterparts if**
 30 **the text of the out of hospital DNR declaration states that the**
 31 **declaration is being signed in separate counterparts. If an out of**
 32 **hospital DNR declaration is signed in counterparts under this**
 33 **subsection, one (1) or more of the following persons must combine**
 34 **each of the separately signed tangible, paper counterparts into a**
 35 **single composite document that contains all of the text of the**
 36 **declarant, the signature of the declarant, and the signature of each**
 37 **witness:**

- 38 (1) The declarant.
 39 (2) A health care representative who has been appointed by
 40 the declarant.
 41 (3) A person who supervised the signing of the out of hospital
 42 DNR declaration in the person's presence.



1 **(4) Any other person who was present during the signing of**
 2 **the out of hospital DNR declaration.**

3 **The person who combines the separately signed counterparts into**
 4 **a single composite document must do so not later than ten (10)**
 5 **business days after the person receives all of the separately signed**
 6 **tangible, paper counterparts. Any scanned, photocopied, or other**
 7 **accurate copy of the single, composite document shall be treated as**
 8 **validly signed under this subsection if the single, composite**
 9 **document contains the complete text of the out of hospital DNR**
 10 **declaration and all required signatures.**

11 **(e) If physical impairment, physical isolation, or other factors**
 12 **make it impossible or impractical for a declarant to use audiovisual**
 13 **technology to interact with witnesses or to otherwise comply with**
 14 **the requirements concerning presence as defined in section 7.7 of**
 15 **this chapter, the declarant and the witnesses may use telephonic**
 16 **interaction to witness and sign an out of hospital DNR declaration.**
 17 **A potential witness may not, however, be compelled to only use**
 18 **telephonic interaction when participating in the signing or**
 19 **witnessing of an out of hospital DNR declaration under this**
 20 **subsection. If an out of hospital DNR declaration is signed using**
 21 **telephonic interaction under this subsection:**

22 **(1) the:**

23 **(A) identity of the declarant must be personally known to**
 24 **the witness;**

25 **(B) witness must be able to view a government issued,**
 26 **photographic identification of the declarant; or**

27 **(C) witness must be able to ask any question of the**
 28 **declarant that:**

29 **(i) authenticates the identity of the declarant; and**

30 **(ii) establishes the capacity and sound mind of the**
 31 **declarant to the satisfaction of the witness;**

32 **(2) the text of the declaration must specify that the declarant**
 33 **and witnesses used telephonic interaction throughout the**
 34 **witnessing and signing process of the out of hospital DNR**
 35 **declaration; and**

36 **(3) the out of hospital DNR declaration is presumed valid if it**
 37 **specifies that the declarant and the witnesses witnessed and**
 38 **signed the declaration in compliance with Indiana law.**

39 **A health care provider or person who disputes the validity of an**
 40 **out of hospital DNR declaration described under this subsection**
 41 **has the burden of proving the invalidity of the declaration or**
 42 **noncompliance with this subsection, as applicable, by a**



1 **preponderance of the evidence.**

2 ~~(d)~~ **(f)** An out of hospital DNR declaration must be issued on the
3 form specified in section 15 of this chapter.

4 SECTION 50. IC 16-36-5-12 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 12. An out of hospital
6 DNR order:

7 (1) may be issued only by the declarant's attending physician,
8 **advanced practice registered nurse, or physician assistant;**
9 and

10 (2) may be issued only if both of the following apply:

11 (A) The attending physician, **advanced practice registered**
12 **nurse, or physician assistant** has determined the patient is a
13 qualified person.

14 (B) The patient has executed an out of hospital DNR
15 declaration under section 11 of this chapter.

16 SECTION 51. IC 16-36-5-13 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 13. (a) An attending
18 physician, **advanced practice registered nurse, or physician**
19 **assistant** who does not issue an out of hospital DNR order for a patient
20 who is a qualified person may transfer the patient to another physician,
21 who may issue an out of hospital DNR order, unless:

22 (1) the attending physician, **advanced practice registered nurse,**
23 **or physician assistant** has reason to believe the patient's
24 declaration was not validly executed, or there is evidence the
25 patient no longer intends the declaration to be enforced; and
26 (2) the patient is unable to validate the declaration.

27 (b) Notwithstanding section 10 of this chapter, if an attending
28 physician, **advanced practice registered nurse, or physician**
29 **assistant**, after reasonable investigation, does not find any other
30 physician willing to honor the patient's out of hospital DNR declaration
31 and issue an out of hospital DNR order, the attending physician,
32 **advanced practice registered nurse, or physician assistant** may
33 refuse to issue an out of hospital DNR order.

34 (c) If the attending physician, **advanced practice registered nurse,**
35 **or physician assistant** does not transfer a patient under subsection (a),
36 the attending physician, **advanced practice registered nurse, or**
37 **physician assistant** may attempt to ascertain the patient's intent and
38 attempt to determine the validity of the declaration by consulting with
39 any of the following individuals who are reasonably available, willing,
40 and competent to act:

41 (1) A court appointed guardian of the patient, if one has been
42 appointed. This subdivision does not require the appointment of



1 a guardian so that a treatment decision may be made under this
2 section.
3 (2) A person designated by the patient in writing to make a
4 treatment decision.
5 (3) The patient's spouse.
6 (4) An adult child of the patient or a majority of any adult
7 children of the patient who are reasonably available for
8 consultation.
9 (5) An adult sibling of the patient or a majority of any adult
10 siblings of the patient who are reasonably available for
11 consultation.
12 (6) The patient's clergy.
13 (7) Another person who has firsthand knowledge of the patient's
14 intent.
15 (d) The individuals described in subsection (c)(1) through (c)(7)
16 shall act in the best interest of the patient and shall follow the patient's
17 express or implied intent, if known.
18 (e) The attending physician, **advanced practice registered nurse,**
19 **or physician assistant** acting under subsection (c) shall list the names
20 of the individuals described in subsection (c) who were consulted and
21 include the information received in the patient's medical file.
22 (f) If the attending physician, **advanced practice registered nurse,**
23 **or physician assistant** determines from the information received under
24 subsection (c) that the patient intended to execute a valid out of
25 hospital DNR declaration, the attending physician, **advanced practice**
26 **registered nurse, or physician assistant** may:
27 (1) issue an out of hospital DNR order, with the concurrence of at
28 least one (1) physician documented in the patient's medical file;
29 or
30 (2) request a court to appoint a guardian for the patient to make
31 the consent decision on behalf of the patient.
32 (g) An out of hospital DNR order must be issued on the form
33 specified in section 15 of this chapter.
34 SECTION 52. IC 16-36-5-15 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 15. An out of hospital
36 DNR declaration and order must be in substantially the following form:
37 OUT OF HOSPITAL DO NOT RESUSCITATE DECLARATION
38 AND ORDER
39 This declaration and order is effective on the date of execution and
40 remains in effect until the death of the declarant or revocation.
41 OUT OF HOSPITAL DO NOT RESUSCITATE DECLARATION
42 Declaration made this ____ day of _____. I, _____,



1 being of sound mind and at least eighteen (18) years of age, willfully
2 and voluntarily make known my desires that my dying shall not be
3 artificially prolonged under the circumstances set forth below. I
4 declare:

5 My attending physician, **advanced practice registered nurse, or**
6 **physician assistant** has certified that I am a qualified person, meaning
7 that I have a terminal condition or a medical condition such that, if I
8 suffer cardiac or pulmonary failure, resuscitation would be
9 unsuccessful or within a short period I would experience repeated
10 cardiac or pulmonary failure resulting in death.

11 I direct that, if I experience cardiac or pulmonary failure in a
12 location other than an acute care hospital or a health facility,
13 cardiopulmonary resuscitation procedures be withheld or withdrawn
14 and that I be permitted to die naturally. My medical care may include
15 any medical procedure necessary to provide me with comfort care or
16 to alleviate pain.

17 I understand that I may revoke this out of hospital DNR declaration
18 at any time by a signed and dated writing, by destroying or canceling
19 this document, or by communicating to health care providers at the
20 scene the desire to revoke this declaration.

21 **This declaration was signed by me and by the witnesses in**
22 **compliance with Indiana law and by: [Initial or check only one (1)**
23 **of the following spaces]**

24 **__ Signing on paper or electronically in each other's direct physical**
25 **presence.**

26 **__ Signing in separate counterparts on paper using two (2) way,**
27 **real time audiovisual technology.**

28 **__ Signing electronically using two (2) way, real time audiovisual**
29 **technology or telephonic interaction.**

30 **__ Signing in separate counterparts on paper using telephonic**
31 **interaction between the me (declarant) and all witnesses.**

32 I understand the full import of this declaration.

33 Signed _____

34 Printed name _____

35 _____

36 City and State of Residence _____

37 The declarant is personally known to me, and I believe the declarant
38 to be of sound mind. I did not sign the declarant's signature above, for,
39 or at the direction of, the declarant. I am not a parent, spouse, or child
40 of the declarant. I am not entitled to any part of the declarant's estate or
41 directly financially responsible for the declarant's medical care. I am
42 competent and at least eighteen (18) years of age.



1 Witness _____ Printed name _____ Date _____
 2 Witness _____ Printed name _____ Date _____
 3 OUT OF HOSPITAL DO NOT RESUSCITATE ORDER
 4 I, _____, the attending physician, **advanced**
 5 **practice registered nurse, or physician assistant** of
 6 _____, have certified the declarant as a qualified person
 7 to make an out of hospital DNR declaration, and I order health care
 8 providers having actual notice of this out of hospital DNR declaration
 9 and order not to initiate or continue cardiopulmonary resuscitation
 10 procedures on behalf of the declarant, unless the out of hospital DNR
 11 declaration is revoked.
 12 Signed _____ Date _____
 13 Printed name _____
 14 Medical license number _____

15 SECTION 53. IC 16-36-5-16 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 16. Copies of the out
 17 of hospital DNR declaration and order must be kept:

- 18 (1) by the declarant's attending physician, **advanced practice**
- 19 **registered nurse, or physician assistant** in the declarant's
- 20 medical file; and
- 21 (2) by the declarant or the declarant's representative.

22 SECTION 54. IC 16-36-5-17 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 17. (a) The emergency
 24 medical services commission shall develop an out of hospital DNR
 25 identification device that must be:

- 26 (1) a necklace or bracelet; and
- 27 (2) inscribed with:
 - 28 (A) the declarant's name;
 - 29 (B) the declarant's date of birth; and
 - 30 (C) the words "Do Not Resuscitate".
- 31 (b) An out of hospital DNR identification device may be created for
- 32 a declarant only after an out of hospital DNR declaration and order has
- 33 been executed by a declarant and an attending physician, **advanced**
- 34 **practice registered nurse, or physician assistant.**
- 35 (c) The device developed under subsection (a) is not a substitute for
- 36 the out of hospital DNR declaration and order.

37 SECTION 55. IC 16-36-5-18 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 18. (a) A declarant may
 39 at any time revoke an out of hospital DNR declaration and order by any
 40 of the following:

- 41 (1) A signed, dated writing.
- 42 (2) Physical cancellation or destruction of the declaration and



- 1 order by the declarant or another in the declarant's presence and
2 at the declarant's direction.
- 3 (3) An oral expression by the declarant of intent to revoke.
- 4 (b) A declarant's representative may revoke an out of hospital DNR
5 declaration and order under this chapter only if the declarant is
6 incompetent.
- 7 (c) A revocation is effective upon communication to a health care
8 provider.
- 9 (d) A health care provider to whom the revocation of an out of
10 hospital DNR declaration and order is communicated shall immediately
11 notify the declarant's attending physician, **advanced practice**
12 **registered nurse, or physician assistant**, if known, of the revocation.
- 13 (e) An attending physician, **advanced practice registered nurse,**
14 **or physician assistant** notified of the revocation of an out of hospital
15 DNR declaration and order shall immediately:
- 16 (1) add the revocation to the declarant's medical file, noting the
17 time, date, and place of revocation, if known, and the time, date,
18 and place that the physician, **advanced practice registered**
19 **nurse, or physician assistant** was notified;
- 20 (2) cancel the out of hospital DNR declaration and order by
21 entering the word "VOID" on each page of the out of hospital
22 DNR declaration and order in the declarant's medical file; and
- 23 (3) notify any health care facility staff responsible for the
24 declarant's care of the revocation.
- 25 SECTION 56. IC 16-36-5-19 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 19. (a) A health care
27 provider shall withhold or discontinue CPR to a patient in an out of
28 hospital location if the health care provider has actual knowledge of:
- 29 (1) an original or a copy of a signed out of hospital DNR
30 declaration and order executed by the patient; or
- 31 (2) an out of hospital DNR identification device worn by the
32 patient or in the patient's possession.
- 33 (b) A health care provider shall disregard an out of hospital DNR
34 declaration and order and perform CPR if:
- 35 (1) the declarant is conscious and states a desire for resuscitative
36 measures;
- 37 (2) the health care provider believes in good faith that the out of
38 hospital DNR declaration and order has been revoked;
- 39 (3) the health care provider is ordered by the attending physician,
40 **advanced practice registered nurse, or physician assistant** to
41 disregard the out of hospital DNR declaration and order; or
- 42 (4) the health care provider believes in good faith that the out of



- 1 hospital DNR declaration and order must be disregarded to avoid
 2 verbal or physical confrontation at the scene.
- 3 (c) A health care provider transporting a declarant shall document
 4 on the transport form:
- 5 (1) the presence of an out of hospital DNR declaration and order;
 - 6 (2) the attending physician's, **advanced practice registered**
 7 **nurse's, or physician assistant's** name; and
 - 8 (3) the date the out of hospital DNR declaration and order was
 9 signed.
- 10 (d) An out of hospital DNR identification device must accompany
 11 a declarant whenever the declarant is transported.
- 12 SECTION 57. IC 16-36-5-22 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 22. (a) A person may
 14 challenge the validity of an out of hospital DNR declaration and order
 15 by filing a petition for review in a court in the county in which the
 16 declarant resides.
- 17 (b) A petition filed under subsection (a) must include the name and
 18 address of the declarant's attending physician, **advanced practice**
 19 **registered nurse, or physician assistant.**
- 20 (c) A court in which a petition is filed under subsection (a) may
 21 declare an out of hospital DNR declaration and order void if the court
 22 finds that the out of hospital DNR declaration and order was executed:
- 23 (1) when the declarant was incapacitated due to insanity, mental
 24 illness, mental deficiency, duress, undue influence, fraud,
 25 excessive use of drugs, confinement, or other disability;
 - 26 (2) contrary to the declarant's wishes; or
 - 27 (3) when the declarant was not a qualified person.
- 28 (d) If a court finds that the out of hospital DNR declaration and
 29 order is void, the court shall cause notice of the finding to be sent to the
 30 declarant's attending physician, **advanced practice registered nurse,**
 31 **or physician assistant.**
- 32 (e) Upon notice under subsection (d), the declarant's attending
 33 physician, **advanced practice registered nurse, or physician**
 34 **assistant** shall follow the procedures under section 18(e) of this
 35 chapter.
- 36 SECTION 58. IC 16-36-5-26 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 26. The act of
 38 withholding or withdrawing CPR, when done under:
- 39 (1) an out of hospital DNR declaration and order issued under this
 40 chapter;
 - 41 (2) a court order or decision of a court appointed guardian; or
 - 42 (3) a good faith medical decision by the attending physician,



1 **advanced practice registered nurse, or physician assistant** that
 2 the patient has a terminal illness;
 3 is not an intervening force and does not affect the chain of proximate
 4 cause between the conduct of a person that placed the patient in a
 5 terminal condition and the patient's death.

6 SECTION 59. IC 16-36-6-3 IS REPEALED [EFFECTIVE JULY 1,
 7 2021]. Sec. 3: (a) As used in this chapter, "life prolonging procedure"
 8 means any medical procedure, treatment, or intervention that does the
 9 following:

10 (1) Uses mechanical or other artificial means to sustain, restore,
 11 or supplant a vital function.

12 (2) Serves to prolong the dying process.

13 (b) The term does not include the performance or provision of any
 14 medical procedure or medication necessary to provide comfort care or
 15 to alleviate pain.

16 SECTION 60. IC 16-36-6-7, AS AMENDED BY P.L.139-2019,
 17 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2021]: Sec. 7. (a) The following individuals may complete a
 19 POST form:

20 (1) A qualified person who is:

21 (A) either:

22 (i) at least eighteen (18) years of age; or

23 (ii) less than eighteen (18) years of age but authorized to
 24 consent under IC 16-36-1-3(a)(2) (except under
 25 IC 16-36-1-3(a)(2)(E)); and

26 (B) of sound mind.

27 (2) A qualified person's representative, if the qualified person:

28 (A) is less than eighteen (18) years of age and is not authorized
 29 to consent under IC 16-36-1-3(a)(2); or

30 (B) has been determined to be incapable of making decisions
 31 about the qualified person's health care by a treating physician,
 32 advanced practice registered nurse, or physician assistant
 33 acting in good faith and the representative has been:

34 (i) appointed by the individual under IC 16-36-1-7 to serve
 35 as the individual's health care representative;

36 (ii) authorized to act under IC 30-5-5-16 and IC 30-5-5-17
 37 as the individual's attorney in fact with authority to consent
 38 to or refuse health care for the individual;

39 (iii) appointed by a court as the individual's health care
 40 representative under IC 16-36-1-8; or

41 (iv) appointed by a court as the guardian of the person with
 42 the authority to make health care decisions under IC 29-3;



- 1 **or**
- 2 **(v) appointed by the individual under IC 16-36-7 to serve**
- 3 **as the individual's health care representative.**
- 4 (b) In order to complete a POST form, a person described in
- 5 subsection (a) and the qualified person's treating physician, advanced
- 6 practice registered nurse, or physician assistant or the physician's,
- 7 advanced practice registered nurse's, or physician assistant's designee
- 8 must do the following:
- 9 (1) Discuss the qualified person's goals and treatment options
- 10 available to the qualified person based on the qualified person's
- 11 health.
- 12 (2) Complete the POST form, to the extent possible, based on the
- 13 qualified person's preferences determined during the discussion
- 14 in subdivision (1).
- 15 (c) When completing a POST form on behalf of a qualified person,
- 16 a representative shall act:
- 17 (1) in good faith; and
- 18 (2) in:
- 19 (A) accordance with the qualified person's express or implied
- 20 intentions, if known; or
- 21 (B) the best interest of the qualified person, if the qualified
- 22 person's express or implied intentions are not known.
- 23 (d) A copy of the executed POST form shall be maintained in the
- 24 qualified person's medical file.
- 25 SECTION 61. IC 16-36-6-9, AS AMENDED BY P.L.10-2019,
- 26 SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 27 JULY 1, 2021]: Sec. 9. (a) The state department shall develop a
- 28 standardized POST form and distribute the POST form.
- 29 (b) The POST form developed under this section must include the
- 30 following:
- 31 (1) A medical order specifying whether cardiopulmonary
- 32 resuscitation (CPR) should be performed if the qualified person
- 33 is in cardiopulmonary arrest.
- 34 (2) A medical order concerning the level of medical intervention
- 35 that should be provided to the qualified person, including the
- 36 following:
- 37 (A) Comfort measures.
- 38 (B) Limited additional interventions.
- 39 (C) Full intervention.
- 40 (3) A medical order specifying whether antibiotics should be
- 41 provided to the qualified person.
- 42 (4) A medical order specifying whether artificially administered



1 nutrition should be provided to the qualified person.

2 (5) A signature line for the treating physician, advanced practice
3 registered nurse, or physician assistant, including the following
4 information:

5 (A) The physician's, advanced practice registered nurse's, or
6 physician assistant's printed name.

7 (B) The physician's, advanced practice registered nurse's, or
8 physician assistant's telephone number.

9 (C) The physician's medical license number, advanced practice
10 registered nurse's nursing license number, or physician
11 assistant's state license number.

12 (D) The date of the physician's, advanced practice registered
13 nurse's, or physician assistant's signature.

14 As used in this subdivision, "signature" includes an electronic or
15 physician, advanced practice registered nurse, or physician
16 assistant controlled stamp signature.

17 (6) A signature line for the qualified person or representative,
18 including the following information:

19 (A) The qualified person's or representative's printed name.

20 (B) The relationship of the representative signing the POST
21 form to the qualified person covered by the POST form.

22 (C) The date of the signature.

23 As used in this subdivision, "signature" includes an electronic
24 signature.

25 (7) A section presenting the option to allow a declarant to appoint
26 a representative (as defined in IC 16-36-1-2) under IC 16-36-1-7
27 **or IC 16-36-7** to serve as the declarant's health care
28 representative.

29 (c) The state department shall place the POST form on its Internet
30 web site.

31 (d) The state department is not liable for any use or misuse of the
32 POST form.

33 SECTION 62. IC 16-36-6-20, AS AMENDED BY P.L.2-2014,
34 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2021]: Sec. 20. The execution or revocation of a POST form
36 by or for a qualified person does not revoke or impair the validity of
37 any of the following:

38 (1) A power of attorney that is executed by a qualified person
39 when the qualified person is competent.

40 (2) Health care powers that are granted to an attorney in fact
41 under IC 30-5-5-16 or IC 30-5-5-17.

42 (3) An appointment of a health care representative that is



1 executed by a qualified person, except to the extent that the POST
 2 form contains a superseding appointment of a new health care
 3 representative under section 9(b)(7) of this chapter.

4 (4) The authority of a health care representative under ~~IC 16-36-1~~
 5 **IC 16-36-1-7 or IC 16-36-7** to consent to health care on behalf
 6 of the qualified person.

7 (5) The authority of an attorney in fact holding health care powers
 8 under IC 30-5-5-16 or IC 30-5-5-17 to issue and enforce
 9 instructions under IC 30-5-7 concerning the qualified person's
 10 health care.

11 SECTION 63. IC 16-36-7 IS ADDED TO THE INDIANA CODE
 12 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2021]:

14 **Chapter 7. Health Care Advance Directives**

15 **Sec. 1. (a) A death as a result of the withholding or withdrawal**
 16 **of life prolonging procedures in accordance with:**

- 17 (1) a declarant's advance directive; or
 18 (2) any provision of this chapter;

19 **does not constitute a suicide.**

20 (b) **This chapter does not authorize euthanasia or any**
 21 **affirmative or deliberate act or omission to end life other than to**
 22 **permit the natural process of dying.**

23 (c) **This chapter does not establish the only legal means that an**
 24 **individual may use to:**

- 25 (1) **communicate or confirm the individual's desires or**
 26 **preferences to receive or refuse life prolonging treatment or**
 27 **other health care; or**
 28 (2) **give one (1) or more other persons authority to consent to**
 29 **health care or make health care decisions on the individual's**
 30 **behalf.**

31 (d) **This chapter does not affect the consent provisions set forth**
 32 **in:**

- 33 (1) **IC 16-34; or**
 34 (2) **IC 16-36-1-3.5.**

35 (e) **This chapter does not modify any requirements or**
 36 **procedures under IC 33-42 concerning the performance of valid**
 37 **notarial acts.**

38 (f) **Nothing in this chapter prohibits a health care provider from**
 39 **relying on a document that:**

- 40 (1) **is signed by an adult who has not been determined to be**
 41 **incapacitated; and**
 42 (2) **in the context of the relevant circumstances, clearly**



- 1 communicates the individual's intention to give one (1) or
2 more specified persons authority to consent to health care or
3 make health care decisions on the individual's behalf.
- 4 **Sec. 2. As used in this chapter, "advance directive" means a**
5 **written declaration of a declarant who:**
- 6 (1) gives instructions or expresses preferences or desires
7 concerning any aspect of the declarant's health care or health
8 information, including the designation of a health care
9 representative, a living will declaration made under
10 IC 16-36-4-10, or an anatomical gift made under IC 29-2-16.1;
11 and
- 12 (2) complies with the requirements of this chapter.
- 13 **Sec. 3. As used in this chapter, "best interests" means the**
14 **promotion of the individual's welfare, based on consideration of**
15 **material factors, including relief of suffering, preservation or**
16 **restoration of function, and quality of life.**
- 17 **Sec. 4. As used in this chapter, "declarant" means a competent**
18 **adult who has executed an advance directive.**
- 19 **Sec. 5. As used in this chapter, "declaration" means a written**
20 **document, voluntarily executed by a declarant for the declarant**
21 **under section 28 of this chapter.**
- 22 **Sec. 6. As used in this chapter, "electronic" has the meaning set**
23 **forth in IC 26-2-8-102(7).**
- 24 **Sec. 7. As used in this chapter, "electronic record" has the**
25 **meaning set forth in IC 26-2-8-102(9).**
- 26 **Sec. 8. As used in this chapter, "electronic signature" has the**
27 **meaning set forth in IC 26-2-8-102(10).**
- 28 **Sec. 9. As used in this chapter, "health care" means any care,**
29 **treatment, service, supplies, or procedure to maintain, diagnose, or**
30 **treat an individual's physical or mental condition, including**
31 **preventive, therapeutic, rehabilitative, maintenance, or palliative**
32 **care, and counseling.**
- 33 **Sec. 10. As used in this chapter, "health care decision" means**
34 **the following:**
- 35 (1) Informed consent, refusal of consent, or withdrawal of
36 consent to any and all health care, including life prolonging
37 procedures and mental health treatment, unless otherwise
38 stated in the advance directive.
- 39 (2) The decision to apply for private, public, government, or
40 veterans' benefits to defray the cost of health care.
- 41 (3) The right of access to health information of the declarant
42 reasonably necessary for a health care representative or



- 1 proxy to make decisions involving health care and to apply for
2 benefits.
- 3 (4) The decision to make an anatomical gift under
4 IC 29-2-16.1.
- 5 Sec. 11. As used in this chapter, "health care facility" includes
6 the following:
- 7 (1) An ambulatory outpatient surgical center licensed under
8 IC 16-21-2.
- 9 (2) A health facility licensed under IC 16-28-2 or IC 16-28-3.
- 10 (3) A home health agency licensed under IC 16-27-1.
- 11 (4) A hospice program licensed under IC 16-25-3.
- 12 (5) A hospital licensed under IC 16-21-2.
- 13 (6) A health maintenance organization (as defined in
14 IC 27-13-1-19).
- 15 Sec. 12. As used in this chapter, "health care provider" means
16 any person licensed, certified, or authorized by law to administer
17 health care in the ordinary course of business or practice of a
18 profession.
- 19 Sec. 13. As used in this chapter, "health care representative"
20 means a competent adult designated by a declarant in an advance
21 directive to:
- 22 (1) make health care decisions; and
23 (2) receive health information;
- 24 regarding the declarant. The term includes a person who receives
25 and holds validly delegated authority from a designated health care
26 representative.
- 27 Sec. 14. As used in this chapter, "health information" has the
28 meaning set forth in 45 CFR 160.103.
- 29 Sec. 15. As used in this chapter, "incapacity" and
30 "incapacitated" mean that an individual is unable to comprehend
31 and weigh relevant information and to make and communicate a
32 reasoned health care decision. For the purposes of making an
33 anatomical gift, the terms include an individual who is deceased.
- 34 Sec. 16. As used in this chapter, "informed consent" means
35 consent voluntarily given by an individual after a sufficient
36 explanation and disclosure of the subject matter involved to enable
37 that individual to have a general understanding of the treatment or
38 procedure and the medically acceptable alternatives, including the
39 substantial risks and hazards inherent in the proposed treatment
40 or procedure, and to make a knowing health care decision without
41 coercion or undue influence.
- 42 Sec. 17. As used in this chapter, "notarial officer" means a



1 person who is authorized under IC 33-42-9-7 to perform a notarial
 2 act (as defined in IC 33-42-0.5-18). The term includes a notary
 3 public.

4 Sec. 18. (a) As used in this chapter and with respect to
 5 interactions between a declarant and a witness, "observe" means
 6 to perceive another's actions or expressions of intent through the
 7 senses of eyesight or hearing, or both. A person is able to observe
 8 another's actions or expressions of intent even if the person uses
 9 technology or learned skills to:

10 (1) assist the person's capabilities of eyesight or hearing, or
 11 both; or

12 (2) compensate for an impairment of the person's capabilities
 13 of eyesight or hearing, or both.

14 (b) As used in this chapter and with respect to interactions
 15 between a declarant and a notarial officer, "observe" means that
 16 the notarial officer is able to see and hear, in real time, the
 17 declarant's actions and expressions of intent either in the
 18 declarant's physical presence or through audiovisual
 19 communication as defined in IC 33-42-0.5-5.

20 Sec. 19. (a) As used in this chapter and with respect to
 21 interactions between a declarant and a witness who signs or
 22 participates in the signing of an advance directive or other
 23 document under this chapter, "presence", "present", and "to be
 24 present" means that throughout the process of signing and
 25 witnessing the advance directive or other document the following
 26 must occur:

27 (1) The declarant and the witness are:

28 (A) directly present with each other in the same physical
 29 space;

30 (B) able to interact with each other in real time through
 31 the use of any audiovisual technology now known or later
 32 developed; or

33 (C) able to speak to and hear each other in real time
 34 through telephonic interaction when:

35 (i) the identity of the declarant is personally known to
 36 the witness;

37 (ii) the witness is able to view a government issued,
 38 photographic identification of the declarant; or

39 (iii) the witness is able to ask any question of the
 40 declarant that authenticates the identity of the declarant
 41 and establishes the capacity and sound mind of the
 42 declarant to the satisfaction of the witness.



1 **(2) The witnesses are able to positively identify the declarant**
 2 **by viewing a government issued, photographic identification**
 3 **of the declarant, or by receiving accurate answers from the**
 4 **declarant that authenticate the identity of the declarant and**
 5 **establish the capacity and sound mind of the declarant to the**
 6 **satisfaction of the witness.**

7 **(3) Each witness is able to interact with the declarant and**
 8 **each other witness, if any, by observing:**

9 **(A) the declarant's expression of intent to execute an**
 10 **advance directive or other document under this chapter;**

11 **(B) the declarant's actions in executing or directing the**
 12 **execution of the advance directive or other document**
 13 **under this chapter; and**

14 **(C) the actions of each other witness in signing the advance**
 15 **directive or other document.**

16 **The requirements of subdivisions (2) and (3) are satisfied even if**
 17 **the declarant and one (1) or all witnesses use technology to assist**
 18 **with one (1) or more of the capabilities of hearing, eyesight, or**
 19 **speech to compensate for impairments of any one (1) or more of**
 20 **those capabilities.**

21 **(b) As used in this chapter and with respect to interactions**
 22 **between a declarant and a notarial officer who signs or**
 23 **participates in the signing of an advance directive or other**
 24 **document under this chapter, "presence", "present", and "to be**
 25 **present" means that throughout the process of signing,**
 26 **acknowledging, and notarizing the advance directive or other**
 27 **document the following must occur:**

28 **(1) The declarant and the notarial officer are:**

29 **(A) directly present with each other in the same physical**
 30 **space; or**

31 **(B) able to interact with each other in real time through**
 32 **the use of any audiovisual technology, now known or later**
 33 **developed, whose use complies with IC 33-42.**

34 **(2) The notarial officer is able to positively identify the**
 35 **declarant by using an identity proofing method permitted**
 36 **under IC 33-42-0.5-16.**

37 **(3) Each witness or the notarial officer is able to interact with**
 38 **the declarant and each other witness, if any, by observing the**
 39 **declarant's:**

40 **(A) expression of intent to execute an advance directive or**
 41 **other document under this chapter; and**

42 **(B) actions in executing or directing the execution of the**



1 advance directive or other document under this chapter.
2 If the declarant appears before the notarial officer in a manner
3 that satisfies the definitions of "appear" and "appearance" as
4 defined in IC 33-42-0.5, then the declarant and the notarial officer
5 satisfy the presence requirement described in this chapter. The
6 requirements specified in subdivisions (2) and (3) are satisfied even
7 if the testator and the notarial officer use technology to assist with
8 one (1) or more of the capabilities of hearing, eyesight, or speech
9 to compensate for impairments of any one (1) or more of those
10 capabilities.

11 Sec. 20. As used in this chapter, "proxy" means a competent
12 adult who:

13 (1) has not been expressly designated in a declaration to make
14 health care decisions for a particular incapacitated
15 individual; and

16 (2) is authorized and willing to make health care decisions for
17 the individual under section 42 of this chapter.

18 Sec. 21. As used in this chapter, "reasonably available" means
19 a health care representative or proxy for an individual who is:

20 (1) readily able to be contacted without undue effort; and

21 (2) willing and able to act in a timely manner considering the
22 urgency of that individual's health care needs or health
23 decisions.

24 Sec. 22. As used in this chapter, "sign" includes the valid use of
25 an electronic signature.

26 Sec. 23. As used in this chapter, "signature" means the
27 authorized use of the name or mark of a declarant or other person
28 to authenticate an electronic record or other writing. The term
29 includes an electronic signature and an electronic notarial
30 certificate completed by a notarial officer.

31 Sec. 24. As used in this chapter, "telephonic interaction" means
32 interaction through the use of any technology, now known or later
33 developed, that enables two (2) or more persons to speak to and
34 hear each other in real time, even if one (1) or more persons cannot
35 see each other.

36 Sec. 25. As used in this chapter, "treating physician" means a
37 licensed physician who is overseeing, directing, or performing
38 health care to an individual at the pertinent time.

39 Sec. 26. As used in this chapter, "written" and "writing" include
40 the use of any method to inscribe information in or on a tangible
41 medium or to store the information in an electronic or other
42 medium that can retrieve, view, and print the information in



1 perceivable form.

2 **Sec. 27. (a) Except when an individual has been determined to**
 3 **be incapacitated under section 35 of this chapter, an individual**
 4 **may consent to the individual's own health care if the individual is:**

5 (1) an adult; or

6 (2) a minor, and:

7 (A) is emancipated;

8 (B) is:

9 (i) at least fourteen (14) years of age;

10 (ii) not dependent on a parent or guardian for support;

11 (iii) living apart from the minor's parents or from an
 12 individual in loco parentis; and

13 (iv) managing the minor's own affairs;

14 (C) is or has been married;

15 (D) is in the military service of the United States; or

16 (E) is authorized to consent to health care by another
 17 statute.

18 (b) A person at least seventeen (17) years of age is eligible to
 19 donate blood in a voluntary and noncompensatory blood program
 20 without obtaining permission from a parent or guardian.

21 (c) A person who is sixteen (16) years of age is eligible to donate
 22 blood in a voluntary and noncompensatory blood program if the
 23 person has obtained written permission from the person's parent.

24 (d) An individual who has, could be expected to have exposure
 25 to, or has been exposed to a venereal disease is competent to give
 26 consent for medical or hospital care or treatment, including
 27 preventive treatment, of the individual.

28 (e) If:

29 (1) an individual:

30 (A) has a signed advance directive that is in effect; and

31 (B) has not been determined to be incapacitated under
 32 section 35 of this chapter; and

33 (2) the individual's decisions and the health care
 34 representative's decisions present a material conflict;

35 the health care decisions by that individual take precedence over
 36 decisions made by a health care representative designated in that
 37 individual's advance directive.

38 (f) Nothing in this chapter prohibits or restricts a health care
 39 provider's right to follow or rely on a health care decision or the
 40 designation of a health care representative on a permanent or
 41 temporary basis that is:

42 (1) made by a competent individual described in subsection



- 1 (a);
 2 (2) communicated orally by the individual to a health care
 3 provider in the direct physical presence of the individual; and
 4 (3) reduced to or confirmed in writing by the health care
 5 provider on a reasonably contemporaneous basis and made a
 6 part of the health care provider's medical records for the
 7 individual.
- 8 (g) If:
 9 (1) an individual later signs an advance directive under
 10 section 28 of this chapter; and
 11 (2) the advance directive conflicts with the recorded earlier
 12 oral instructions of the individual with respect to health care
 13 decisions or the designation of a health care representative;
 14 the advance directive controls.
- 15 **Sec. 28. (a) An advance directive signed by or for a declarant**
 16 **under this section may accomplish or communicate one (1) or more**
 17 **of the following:**
- 18 (1) Designate one (1) or more competent adult individuals or
 19 other persons as a health care representative to make health
 20 care decisions for the declarant or receive health information
 21 on behalf of the declarant, or both.
 22 (2) State specific health care decisions by the declarant.
 23 (3) State the declarant's preferences or desires regarding the
 24 provision, continuation, termination, or refusal of life
 25 prolonging procedures, palliative care, comfort care, or
 26 assistance with activities of daily living.
 27 (4) Specifically disqualify one (1) or more named individuals
 28 from:
 29 (A) being appointed as a health care representative for the
 30 declarant;
 31 (B) acting as a proxy for the declarant under section 42 of
 32 this chapter; or
 33 (C) receiving and exercising delegated authority from the
 34 declarant's health care representative.
- 35 (b) An advance directive under this section must be signed by or
 36 for the declarant using one (1) of the following methods:
 37 (1) Signed by the declarant in the presence of two (2) adult
 38 witnesses or in the presence of a notarial officer.
 39 (2) Signing of the declarant's name by another adult
 40 individual at the specific direction of the declarant, in the
 41 declarant's presence, and in the presence of the two (2) adult
 42 witnesses or a notarial officer. However, an individual who



1 signs the declarant's name on the advance directive may not
 2 be a witness, the notarial officer, or a health care
 3 representative designated in the advance directive.

4 (c) An advance directive signed under this section must be
 5 witnessed or acknowledged in one (1) of the following ways:

6 (1) Signed in the declarant's direct physical presence by two
 7 (2) adult witnesses, at least one (1) of whom may not be the
 8 spouse or other relative of the declarant.

9 (2) Signed or acknowledged by the declarant in the presence
 10 of a notarial officer, who completes and signs a notarial
 11 certificate under IC 33-42-9-12 and makes it a part of the
 12 advance directive.

13 If the advance directive complies with either subdivision (1) or (2),
 14 but contains additional witness signatures or a notarial certificate
 15 that is not needed, the advance directive is still validly witnessed
 16 and acknowledged. A remote online notarization or electronic
 17 notarization of an advance directive that complies with IC 33-42-17
 18 complies with subdivision (2).

19 (d) A competent declarant and the witnesses or a notarial officer
 20 may complete and sign an advance directive in two (2) or more
 21 counterparts in tangible paper form, with the declarant's signature
 22 placed on one (1) original counterpart and with the signatures of
 23 the witnesses, if any, or the notarial officer's signature and
 24 certificate on one (1) or more different counterparts in tangible
 25 paper form, so long as the declarant and the witnesses or notarial
 26 officer comply with the presence requirement as described in
 27 section 19 of this chapter, and so long as the text of the advance
 28 directive states that it is being signed in separate paper
 29 counterparts. If an advance directive is signed in counterparts
 30 under this subsection:

31 (1) the declarant;

32 (2) a health care representative who is designated in the
 33 advance directive;

34 (3) a person who supervised the signing of the advance
 35 directive in that person's presence; or

36 (4) any other person who was present during the signing of
 37 the advance directive;

38 must combine all of the separately signed paper counterparts of the
 39 advance directive into a single composite document that contains
 40 the text of the advance directive, the signature of the declarant, and
 41 the signatures of the witnesses, if any, or the notarial officer. The
 42 person who combines the separately signed counterparts into a



1 single composite document must do so not later than ten (10)
 2 business days after the person receives all of the separately signed
 3 paper counterparts. Any scanned copy, photocopy, or other
 4 accurate copy of the composite document that contains the
 5 complete text of the advance directive and all signatures will be
 6 treated as validly signed under this section. The person who creates
 7 the signed composite document under this subsection may include
 8 information about compliance within this subsection in an optional
 9 affidavit that is signed under section 41 of this chapter.

10 (e) If facts and circumstances, including physical impairments
 11 or physical isolation of a competent declarant, make it impossible
 12 or impractical for the declarant to use audiovisual technology to
 13 interact with the two (2) witnesses and to satisfy the presence
 14 requirement under section 19 of this chapter, the declarant and the
 15 witnesses may use telephonic interaction throughout the signing
 16 process. A potential witness cannot be compelled to use telephonic
 17 interaction alone to accomplish the signing of an advance directive
 18 under this section. A declarant and a notarial officer may not use
 19 telephonic interaction to accomplish the signing of an advance
 20 directive or other document under this chapter.

21 (f) If an advance directive is signed under subsection (e), the
 22 witnesses must be able to positively identify the declarant by
 23 receiving accurate answers from the declarant that:

- 24 (1) authenticate the identity of the declarant; and
- 25 (2) establish the capacity and sound mind of the declarant to
 26 the satisfaction of the witness.

27 (g) The text of the advance directive signed under subsection (e)
 28 must state that the declarant and the witnesses used telephonic
 29 interaction throughout the signing process to satisfy the presence
 30 requirement.

31 (h) An advance directive signed under subsection (e) is
 32 presumed to be valid if it recites that the declarant and the
 33 witnesses signed the advance directive in compliance with Indiana
 34 law.

35 (i) A health care provider or other person who disputes the
 36 validity of an advance directive signed under subsection (e) has the
 37 burden of proving the invalidity of the advance directive or
 38 noncompliance with subsection (e) by a reasonable preponderance
 39 of the evidence.

40 (j) If a declarant resides in or is located in a jurisdiction other
 41 than Indiana at the time when the declarant signs a writing that
 42 communicates the information described in subsection (a), the



1 writing must be treated as a validly signed advance directive under
 2 this chapter if the declarant was not incapacitated at the time of
 3 signing and if the writing was:

- 4 (1) signed and witnessed or acknowledged in a manner that
 5 complies with subsections (b) and (c); or
 6 (2) signed in a manner that complies with the applicable law
 7 of the jurisdiction in which the declarant was residing or was
 8 physically located at the time of signing.

9 **Sec. 29. An advance directive signed by a declarant under this**
 10 **section may contain any of the following additional provisions:**

- 11 (1) A provision that delays:
 12 (A) the effectiveness of an instruction or decision by the
 13 declarant; or
 14 (B) the effectiveness of the authority of a designated health
 15 care representative;

16 until a stated date or the occurrence of a specifically defined
 17 event.

- 18 (2) If the advance directive explicitly provides that a health
 19 care decision or instruction or the authority of one (1) or
 20 more health care representatives is to be effective upon the
 21 future incapacity, disability, or incompetence of the declarant,
 22 a provision that:

23 (A) specifies the person or persons who are authorized to
 24 participate in the determination of incapacity, disability, or
 25 incompetence and the evidence or information to be used
 26 for the determination;

27 (B) is not more stringent than the procedure described in
 28 section 35 of this chapter; and

29 (C) does not allow a medical determination by a physician,
 30 psychologist, or other health care professional to be
 31 superseded by the subjective judgment or veto of another
 32 person or by nonmedical evidence regarding the
 33 declarant's capacity or incapacity.

- 34 (3) A provision that terminates the authority of a designated
 35 health care representative on:

36 (A) a stated date; or

37 (B) upon the occurrence of a specifically defined event.

- 38 (4) A provision that designates two (2) or more health care
 39 representatives as having authority to act individually to
 40 make health care decisions for the declarant in a specified
 41 order of priority.

- 42 (5) A provision that designates two (2) or more health care



1 representatives and permits them to act individually and
 2 independently, or that requires them to act jointly, on a
 3 majority vote basis, or under a combination of requirements
 4 to make all health care decisions or specified health care
 5 decisions for the declarant. The advance directive may include
 6 a provision for a successor health care representative to act
 7 according to different requirements.

8 (6) A provision that states a fee or presumptive reasonable
 9 hourly rate for the compensation that a health care
 10 representative may collect for acting on behalf of the
 11 declarant or providing caregiving services to the declarant.

12 (7) A provision that prohibits a health care representative
 13 from collecting compensation for acting under the advance
 14 directive.

15 (8) A provision that requires a professional adviser or other
 16 additional person to witness, ratify, or approve the declarant's
 17 revocation or amendment of a designation of one (1) or more
 18 health care representatives within the advance directive.

19 (9) A provision that:

20 (A) prohibits a designated health care representative from
 21 consenting to mental health treatment for the declarant; or

22 (B) designates a different health care representative to
 23 consent to mental health treatment.

24 (10) A provision that designates an adult individual or
 25 another person as an advocate with the authority to:

26 (A) receive:

27 (i) health information about the declarant; and

28 (ii) information and documents from a health care
 29 representative about the health care representative's
 30 actions on behalf of the declarant;

31 (B) monitor, audit, and evaluate the actions of a health
 32 care representative designated by the declarant; and

33 (C) take remedial action in the best interests of the
 34 declarant, including revoking or limiting the authority of
 35 any health care representative or filing a petition with a
 36 court for appropriate relief.

37 (11) Any other provision concerning the:

38 (A) declarant's health care or health information; or

39 (B) implementation of the declarant's advance directive.

40 Sec. 30. (a) The state department shall maintain a list of
 41 resources on its Internet web site, including sample advance
 42 directive forms that are consistent with this chapter.



1 **(b) A declarant is not required to use any official or unofficial**
 2 **form to prepare and sign a valid advance directive.**

3 **Sec. 31. (a) A complete copy of the signed and witnessed or**
 4 **notarized advance directive must be given to each health care**
 5 **representative who:**

6 **(1) is specifically designated by name in the advance directive;**
 7 **and**

8 **(2) has authority to make health care decisions that are**
 9 **immediately effective under the explicit terms of the advance**
 10 **directive or under section 34(1) of this chapter.**

11 **If the advance directive is signed with electronic signatures, a**
 12 **complete copy that is generated or converted from the original**
 13 **electronic record and that is viewable and printable is valid and**
 14 **may be relied upon as the equivalent to the original.**

15 **(b) A declarant who has capacity is responsible for giving a**
 16 **complete copy of the declarant's advance directive to a health care**
 17 **provider. If a declarant has signed an advance directive but lacks**
 18 **the capacity to make health care decisions or provide informed**
 19 **consent, any health care representative designated in the advance**
 20 **directive or any other interested person shall give a complete copy**
 21 **of the declarant's advance directive to a health care provider.**
 22 **Upon receipt of the declarant's advance directive, the health care**
 23 **provider shall put a copy of the advance directive in the declarant's**
 24 **medical records.**

25 **Sec. 32. (a) The declarant who signs an advance directive may**
 26 **revoke that advance directive by any of the following:**

27 **(1) Signing, in a manner that complies with section 28 of this**
 28 **chapter, another advance directive.**

29 **(2) Signing, in a manner that complies with section 28 of this**
 30 **chapter, a document that:**

31 **(A) states in writing that the declarant is revoking the**
 32 **previously signed advance directive; and**

33 **(B) confirms the declarant's compliance with any explicit**
 34 **additional conditions for valid revocation that are stated in**
 35 **the advance directive.**

36 **(3) Orally expressing the declarant's present intention, in the**
 37 **direct physical presence of a health care provider, to:**

38 **(A) revoke the entire advance directive;**

39 **(B) revoke a designation of one (1) or more health care**
 40 **representatives within the advance directive; or**

41 **(C) revoke one (1) or more specific health care decisions or**
 42 **one (1) or more desires or treatment preferences within the**



- 1 **advance directive.**
- 2 **However, if a declarant has not been determined to be**
- 3 **incapacitated under section 35 of this chapter, the declarant always**
- 4 **has the right to orally revoke a health care decision that is included**
- 5 **within an advance directive under section 28(a)(2) of this chapter**
- 6 **or a statement of desires or treatment preferences that is included**
- 7 **within an advance directive under section 28(a)(3) of this chapter,**
- 8 **despite any contrary wording in the advance directive.**
- 9 **(b) Until a health care representative or health care provider**
- 10 **has actual knowledge of a valid revocation of an advance directive:**
- 11 **(1) actions and health care decisions by a health care**
- 12 **representative designated in the advance directive are valid**
- 13 **and binding on the declarant; and**
- 14 **(2) health care providers may continue to rely on health care**
- 15 **decisions by the health care representative.**
- 16 **(c) A declarant who has signed a valid advance directive may**
- 17 **amend or restate that advance directive in a writing that is signed**
- 18 **in compliance with section 28 of this chapter and witnessed or**
- 19 **acknowledged in compliance with section 28(c), 28(d), or 28(e) of**
- 20 **this chapter. The amendment or restatement may take any action**
- 21 **that could have been included in the former or original advance**
- 22 **directive.**
- 23 **Sec. 33. (a) Except when the terms of the advance directive**
- 24 **explicitly prohibit or restrict delegation, a health care**
- 25 **representative who is designated by name in an advance directive**
- 26 **may make a written delegation of some or all of the health care**
- 27 **representative's authority to one (1) or more other competent**
- 28 **adults or other persons, on a temporary or open ended basis as**
- 29 **stated in the written delegation document.**
- 30 **(b) A written delegation document under this section must be**
- 31 **signed in compliance with section 28 of this chapter and witnessed**
- 32 **or acknowledged in compliance with section 28(c), 28(d), or 28(e)**
- 33 **of this chapter.**
- 34 **(c) A written delegation of authority that does not state an**
- 35 **expiration date continues until it is revoked, in a manner**
- 36 **complying with section 32 of this chapter, by the competent**
- 37 **declarant or by the health care representative who signed the**
- 38 **written delegation.**
- 39 **(d) If the advance directive explicitly states a date or event that**
- 40 **triggers termination of the advance directive or termination of the**
- 41 **authority of a health care representative who makes a written**
- 42 **delegation under this section, the delegated authority terminates**



1 upon the triggering event or expiration date.

2 **Sec. 34. An advance directive must be interpreted to carry out**
 3 **the known or demonstrable intent of the declarant. The following**
 4 **presumptions apply to an advance directive unless the terms of the**
 5 **advance directive explicitly prevent a presumption from applying:**

6 (1) **If the advance directive does not state a delayed effective**
 7 **date or a future triggering event for effectiveness, the advance**
 8 **directive is effective immediately upon signing and witnessing**
 9 **or acknowledgment in compliance with section 28 of this**
 10 **chapter. However, if the declarant has capacity to consent to**
 11 **health care, the declarant has the right to make health care**
 12 **decisions, give consent, or provide instructions that supersede**
 13 **or overturn any decision that is made or could be made by the**
 14 **declarant's health care representative.**

15 (2) **If the advance directive does not explicitly state an**
 16 **expiration date or a triggering event for termination, the**
 17 **advance directive and the authority of each designated health**
 18 **care representative continues until the death of the declarant**
 19 **or until an earlier valid revocation of the advance directive.**

20 (3) **If an advance directive designates two (2) or more health**
 21 **care representatives and does not specify that:**

22 (A) **the health care representative's respective authority to**
 23 **act is subject to an order of priority; or**

24 (B) **the health care representatives must act jointly or on**
 25 **a majority vote basis;**

26 **each health care representative has concurrent authority to**
 27 **act individually and independently to make health care**
 28 **decisions for the declarant. If two (2) or more health care**
 29 **representatives who are required to act jointly disagree about**
 30 **a health care decision, or if two (2) or more health care**
 31 **representatives who are authorized to act independently give**
 32 **conflicting instructions to a health care provider, the health**
 33 **care provider may decline to comply with the conflicting**
 34 **instructions, and in an urgent or emergency situation, the**
 35 **health care provider may provide treatment consistent with**
 36 **the instructions of one (1) physician or one (1) advanced**
 37 **practice registered nurse who examines or evaluates the**
 38 **declarant.**

39 (4) **If:**

40 (A) **an individual signs more than one (1) advance directive**
 41 **at different times; and**

42 (B) **the later signed advance directive does not explicitly**



1 state that one (1) or more of the previous advance
 2 directives by the declarant remain in effect;
 3 each previous advance directive is superseded and revoked by
 4 the last signed advance directive.

5 (5) Unless the advance directive explicitly provides otherwise,
 6 each health care representative who is designated in an
 7 advance directive continues to have authority after the death
 8 of the declarant to do the following:

9 (A) Make anatomical gifts on the declarant's behalf,
 10 subject to any previous written direction by the declarant.

11 (B) Request or authorize an autopsy.

12 (C) Make plans for the disposition of the declarant's body,
 13 including executing a funeral planning declaration on
 14 behalf of the declarant under IC 29-2-19.

15 (6) Each health care representative who is designated in an
 16 advance directive and who has current authority to act is a
 17 personal representative of the declarant for purposes of 45
 18 CFR Parts 160 through 164.

19 (7) If an advance directive explicitly provides that the
 20 authority of one (1) or more health care representatives is to
 21 be effective upon the future incapacity, disability, or
 22 incompetence of the declarant but if the advance directive
 23 does not specify a method or procedure for determining the
 24 incapacity, disability, or incompetence of the declarant:

25 (A) the health care representative's authority to act
 26 becomes effective upon a determination that the declarant
 27 is incapacitated that is stated in a writing or other record
 28 by a physician, licensed psychologist, or judge; and

29 (B) each health care representative who is designated in
 30 the advance directive is authorized to act as the declarant's
 31 personal representative under 45 CFR 164.502(g) to obtain
 32 access to the declarant's information, and to communicate
 33 with the declarant's health care providers, for the purpose
 34 of gathering information necessary for determinations
 35 under this subdivision.

36 (8) Each health care representative who is designated in an
 37 advance directive and who has current authority to make
 38 health care decisions for the declarant has authority to
 39 consent to mental health treatment for the declarant.

40 (9) If the advance directive is silent on the issue of
 41 compensation for a health care representative designated in
 42 the advance directive, then each health care representative is



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entitled to receive the following:

(A) Reasonable compensation from the declarant's property for services or acts actually performed by the health care representative and for the declarant.

(B) Reasonable reimbursement from the declarant's property for out-of-pocket expenses actually incurred and paid by the health care representative from the health care representative's own funds in the course of performing services or acts for the declarant under the advance directive.

Any health care representative may waive part or all of the compensation or expense reimbursements that the health care representative would be entitled to receive under the terms of the advance directive or under this subdivision.

(10) If an advance directive explicitly provides that the authority of a health care representative is effective only at times when the declarant is incapacitated or unable to consent to health care, then unless the advance directive explicitly states another procedure:

(A) the health care representative's authority becomes effective when a determination of the declarant's incapacity is noted in the declarant's medical records under section 35(d) of this chapter; and

(B) the health care representative's authority becomes inactive when the declarant regains capacity.

(11) If the authority of a health care representative under the advance directive is effective immediately upon signing by the declarant, the health care representative's authority may be rescinded or superseded by the direct decisions of the declarant at all times when the declarant has not been determined to be incapacitated.

(12) If:

(A) an advance directive designates one (1) or more health care representatives;

(B) a health care representative is not reasonably available to act for the declarant; and

(C) the declarant is incapacitated or not competent to make personal health care decisions;

then subject to any order of priority explicitly stated in the advance directive, each health care representative designated in the advance directive must be given the opportunity to exercise authority for the declarant.



1 (13) If explicitly allowed or required in the advance directive,
 2 each person who may act as a proxy for the declarant under
 3 sections 42 and 43 of this chapter, if an advance directive had
 4 not existed, has the right to make a written demand for and to
 5 receive from a health care representative a narrative
 6 description or other appropriate accounting of the actions
 7 taken and decisions made by a health care representative
 8 under the advance directive. Notwithstanding any provision
 9 in the advance directive, a health care representative who
 10 prepares a narrative description or accounting in response to
 11 a written demand is entitled to reasonable compensation for
 12 the time and effort spent in doing so.

13 (14) Notwithstanding any provision in the advance directive,
 14 if a declarant is not competent to amend or revoke the
 15 declarant's advance directive, then a person who may act as
 16 a proxy for the declarant under sections 42 and 43 of this
 17 chapter has the right to petition a probate court with
 18 jurisdiction over the declarant for any of the following relief:

19 (A) An order modifying or terminating the advance
 20 directive.

21 (B) An order removing a health care representative or
 22 terminating the authority of a person who holds delegated
 23 authority under the advance directive, on the grounds that
 24 the health care representative or person is not acting or is
 25 declining to act in the best interests of the declarant.

26 (C) An order directing a health care representative to
 27 make or carry out a specific health care decision for the
 28 declarant.

29 (D) An order appointing a new or additional health care
 30 representative, on the grounds that all health care
 31 representatives designated in the advance directive are not
 32 reasonably available to act.

33 Before issuing an order under this subdivision, the court must
 34 hold a hearing after notice to the declarant, to each health
 35 care representative, and any other person whose rights or
 36 authority could be affected by the order, and to any persons
 37 who have the highest priority under sections 42 and 43 of this
 38 chapter to serve as a proxy for the declarant if an advance
 39 directive had not existed. An order issued under this
 40 subdivision must be guided by the declarant's best interests
 41 and the declarant's known or demonstrable intent.

42 Sec. 35. (a) For purposes of this section, the term "declarant"



1 includes an individual who has not executed an advance directive
2 or who has no unrevoked advance directive in effect.

3 (b) A declarant is presumed to be capable of making health care
4 decisions for the declarant unless the declarant is determined to be
5 incapacitated. The declarant's desires are controlling while a
6 declarant has decision making capacity. Each physician or health
7 care provider must clearly communicate to a declarant who has
8 decision making capacity the treatment plan and any change to the
9 treatment plan before implementation of the plan or a change to
10 the plan. Incapacity may not be inferred from a person's voluntary
11 or involuntary hospitalization for mental illness or from the
12 person's intellectual disability.

13 (c) When a declarant is incapacitated, a health care decision
14 made on the declarant's behalf by a health care representative is
15 effective to the same extent as a decision made by the declarant if
16 the declarant were not incapacitated. However, if:

17 (1) a health care representative makes and communicates a
18 health care decision; and

19 (2) a health care provider concludes that carrying out that
20 health care decision would be medically inappropriate or
21 clearly contrary to the declarant's best interests;

22 then the health care provider has the same right to refuse to carry
23 out that decision as if that decision were made and communicated
24 directly by the declarant at a time when the declarant was not
25 incapacitated.

26 (d) If a declarant's capacity to make health care decisions or
27 provide informed consent is in question, the declarant's treating
28 physician shall evaluate the declarant's capacity and, if the treating
29 physician concludes that the declarant lacks capacity, enter that
30 evaluation in the declarant's medical record.

31 (e) If the treating physician is unable to reach a conclusion
32 under subsection (d) about whether the declarant lacks capacity,
33 the treating physician and other health care providers shall treat
34 the declarant as still having capacity to make health care decisions
35 and provide informed consent, until a later evaluation occurs
36 under this section after the passage of time or after a change in the
37 declarant's condition.

38 (f) This chapter does not limit the authority of a probate court
39 under IC 29-3 to make determinations about an individual's
40 incapacity or recovery from a period of incapacity.

41 (g) A determination made under this section that a declarant
42 lacks capacity to make health care decisions may not be construed



1 as a finding that a declarant lacks capacity for any other purpose.

2 **Sec. 36. (a) Except when a health care representative's authority**
 3 **has been expressly limited by the declarant in an advance directive,**
 4 **the health care representative, in accordance with the declarant's**
 5 **instructions made while competent, has the following authority and**
 6 **responsibilities:**

7 (1) **The authority to act for the declarant and to make all**
 8 **health care decisions for the declarant at all times when the**
 9 **health care representative's authority is in effect, subject to**
 10 **the right of the competent declarant to act directly and**
 11 **personally.**

12 (2) **The authority and responsibility to be reasonably available**
 13 **to consult with appropriate health care providers to provide**
 14 **informed consent.**

15 (3) **The authority and responsibility to act in good faith and**
 16 **make only health care decisions for the declarant that the**
 17 **health care representative believes the declarant would have**
 18 **made under the circumstances if the declarant were capable**
 19 **of making the decisions, taking into account the express or**
 20 **implied intentions of the declarant or if the declarant's**
 21 **express or implied intentions are not known, the declarant's**
 22 **best interests.**

23 (4) **The authority and responsibility to provide written**
 24 **consent using an appropriate form when consent is required,**
 25 **including a physician's order not to resuscitate (IC 16-36-5 or**
 26 **IC 16-36-6).**

27 (5) **The authority to be provided access to the appropriate**
 28 **health information of the declarant.**

29 (6) **The authority to apply for public benefits, including**
 30 **Medicaid and the community and home options to**
 31 **institutional care for the elderly and disabled (CHOICE)**
 32 **program, for the declarant and have access to information**
 33 **regarding the declarant's income, assets, and banking and**
 34 **financial records to the extent required to make application.**

35 (b) **The health care representative may authorize the release of**
 36 **health information to appropriate persons to ensure the continuity**
 37 **of the declarant's health care and may authorize the admission,**
 38 **discharge, or transfer of the declarant to or from a health care**
 39 **facility or other health or residential facility or program licensed**
 40 **or registered by a state agency.**

41 (c) **If, after a declarant has designated one (1) or more health**
 42 **care representatives in an advance directive, a court appoints a**



1 guardian of the declarant's person, the authority of each
 2 designated health care representative continues unless the
 3 appointing court modifies or revokes the authority of one (1) or
 4 more health care representatives after a hearing upon notice under
 5 section 34(14) of this chapter. The court may order a health care
 6 representative to make appropriate or specified reports to the
 7 guardian of the declarant's person or property.

8 **Sec. 37. (a)** A health care provider furnished with a copy of a
 9 declarant's advance directive shall make the declarant's advance
 10 directive a part of the declarant's medical records. If a change in
 11 or termination of the advance directive becomes known to the
 12 health care provider, the change or termination must be noted in
 13 the declarant's medical records.

14 **(b)** If a health care provider believes that an individual may lack
 15 the capacity to give informed consent to health care, then, until the
 16 individual is determined to have capacity under section 35 of this
 17 chapter, the health care provider shall consult with:

18 (1) a health care representative designated by the declarant;

19 or

20 (2) if a health care representative has not been designated or
 21 if a health care representative is not reasonably available to
 22 act, a proxy under section 42 of this chapter;

23 who has authority and priority to act and who is reasonably
 24 available to act.

25 **(c)** Subject to the right of a competent declarant to directly
 26 make and communicate health care decisions for the declarant and
 27 to rescind a health care decision by a health care representative
 28 who is designated in an advance directive, the following conditions
 29 apply:

30 (1) A health care provider may continue to administer
 31 treatment for the declarant's comfort, care, or the alleviation
 32 of pain in addition to treatment made under the decision of
 33 the health care representative.

34 (2) Subject to subdivision (3), a health care provider shall
 35 comply with a health care decision made by a health care
 36 representative if the decision is communicated to the provider.

37 (3) If a health care provider is unwilling to comply with a
 38 health care decision made by a health care representative, the
 39 provider shall do the following:

40 (A) Notify the health care representative of the health care
 41 provider's unwillingness to comply with the decision.

42 (B) Promptly take all steps necessary to transfer the



1 responsibility for the declarant's health care to another
 2 health care provider designated by the health care
 3 representative. However, a health care provider who takes
 4 steps for a transfer does not have a duty to look for or
 5 identify another health care provider who will accept the
 6 declarant.

7 However, if a health care provider is unwilling to comply with
 8 a health care decision made by a health care representative,
 9 and the declarant's health condition would make transfer of
 10 the declarant untenable or unadvisable, this subsection does
 11 not prohibit the health care provider from following the
 12 health care provider's dispute resolution procedure with the
 13 objective of reaching a decision in the best interest of the
 14 declarant.

15 **Sec. 38. If a health care representative designated in an advance**
 16 **directive has authority to:**

- 17 (1) make an anatomical gift on behalf of the declarant;
 18 (2) authorize an autopsy of the declarant's remains; or
 19 (3) direct the disposition of the declarant's remains;

20 under either the explicit provisions of the advance directive or
 21 section 34(5) of this chapter, the anatomical gift, autopsy, or
 22 remains disposition is considered the act of the declarant or of the
 23 person who has legal authority to make the necessary decisions.

24 **Sec. 39. (a) A health care provider shall give a health care**
 25 **representative authorized to receive information under an advance**
 26 **directive the same access as the declarant has to examine and copy**
 27 **the declarant's health information and medical records, including**
 28 **records relating to mental health and other medical conditions held**
 29 **by a physician or other health care provider.**

30 **(b) The access to records under this section must be given at the**
 31 **declarant's expense and may be subject to reasonable rules of the**
 32 **provider to prevent disruption of the declarant's health care.**

33 **(c) A health care representative may release information**
 34 **obtained under this section to any person authorized to receive the**
 35 **information under IC 16-39.**

36 **Sec. 40. (a) A health care provider or other person who acts in**
 37 **good faith reliance on an advance directive or on a health care**
 38 **decision made by a health care representative with apparent**
 39 **authority is immune from liability to the declarant and to the**
 40 **declarant's heirs or other successors in interest to the same extent**
 41 **as if the health care provider or other person had dealt directly**
 42 **with the declarant and if the declarant had been competent and not**



1 incapacitated.

2 (b) A health care provider is not responsible for determining the
3 validity of an advance directive.

4 Sec. 41. (a) A health care representative designated in an
5 advance directive or a person who was present during the signing
6 of the advance directive may furnish to a health care provider or
7 other person an affidavit that states, to the best knowledge of the
8 health care representative:

9 (1) that the document attached to and furnished with the
10 affidavit is a true copy of the named declarant's advance
11 directive that is currently in effect;

12 (2) that the declarant is alive;

13 (3) that the advance directive was validly executed;

14 (4) if the effectiveness of the health care representative's
15 authority to act under the advance directive begins upon the
16 occurrence of a certain event, that the event has occurred and
17 the health care representative has authority to act;

18 (5) if the health care representative who furnishes the
19 affidavit does not have the highest priority to act under the
20 explicit terms of the advance directive, an explanation that all
21 health care representatives who are identified in the advance
22 directive as having higher priority are not reasonably
23 available to act; and

24 (6) that the relevant powers granted to the health care
25 representative have not been altered or terminated.

26 An affidavit signed and furnished under this section may include
27 information based on the affiant's personal knowledge about the
28 manner in which the advance directive was signed under
29 subsection (b) and section 28(c), 28(d), or 28(e) of this chapter. An
30 affidavit under this section must be signed, sworn to, and
31 acknowledged by the affiant in the presence of a notarial officer,
32 unless the affiant swears or affirms to the accuracy of the
33 affidavit's contents under the penalties for perjury.

34 (b) A health care provider or other person who:

35 (1) relies on an affidavit described in subsection (a); and

36 (2) acts in good faith;

37 is immune from liability that might otherwise arise from the health
38 care provider's or other person's actions in reliance on the advance
39 directive that is the subject of the affidavit.

40 Sec. 42. (a) For purposes of this section, the term "declarant"
41 includes an individual who has not executed an advance directive
42 or who does not have an advance directive currently in effect.



1 **(b) This section applies only if a declarant is not capable of**
 2 **consenting to health care, and:**

3 **(1) the declarant has not executed an advance directive under**
 4 **this chapter or does not have an advance directive currently**
 5 **in effect; or**

6 **(2) the declarant has executed an advance directive and the**
 7 **health care representative designated in the advance directive**
 8 **is not willing, able, or reasonably available to make health**
 9 **care decisions for the declarant.**

10 **(c) Except as provided in section 43 of this chapter, health care**
 11 **decisions may be made for the declarant by any of the following**
 12 **individuals to act as a proxy, in the following decreasing order of**
 13 **priority, if an individual in a prior class is not reasonably available,**
 14 **willing, and competent to act:**

15 **(1) The judicially appointed guardian of the declarant or a**
 16 **health care representative appointed under IC 16-36-1-8 or**
 17 **section 34(14) of this chapter.**

18 **(2) A spouse.**

19 **(3) An adult child.**

20 **(4) A parent.**

21 **(5) An adult sibling.**

22 **(6) A grandparent.**

23 **(7) An adult grandchild.**

24 **(8) The nearest other adult relative in the next degree of**
 25 **kinship who is not listed in subdivisions (2) through (7).**

26 **(9) A friend who:**

27 **(A) is an adult;**

28 **(B) has maintained regular contact with the individual;**
 29 **and**

30 **(C) is familiar with the individual's activities, health, and**
 31 **religious or moral beliefs.**

32 **(10) The individual's religious superior, if the individual is a**
 33 **member of a religious order.**

34 **(d) Any health care decision made under subsection (c) must be**
 35 **based on the proxy's informed consent and on the decision the**
 36 **proxy reasonably believes the declarant would have made under**
 37 **the circumstances, taking into account the declarant's express or**
 38 **implied intentions. If there is no reliable indication of what the**
 39 **declarant would have chosen, the proxy shall consider the**
 40 **declarant's best interests in deciding that proposed treatments are**
 41 **to be withheld or that treatments currently in effect are to be**
 42 **withdrawn.**



1 (e) Before exercising the incapacitated declarant's rights to
 2 select or decline health care, the proxy must attempt to comply in
 3 good faith with:

4 (1) the instructions, desires, or preferences, if any, stated by
 5 the declarant regarding life prolonging procedures in an
 6 advance directive executed under IC 16-36-1, IC 16-36-4, or
 7 IC 30-5; and

8 (2) IC 16-36-6, if a valid POST form (as defined by
 9 IC 16-36-6-4) executed by the patient is in effect.

10 However, a proxy's decision to withhold or withdraw life
 11 prolonging procedures must be supported by evidence that the
 12 decision would have been the one the declarant would have chosen
 13 had the declarant been competent or, if there is no reliable
 14 indication of what the declarant would have chosen, that the
 15 decision is in the declarant's best interests.

16 (f) If there are multiple individuals at the same priority level
 17 under this section, those individuals shall make a reasonable effort
 18 to reach a consensus as to the health care decisions on behalf of the
 19 declarant who is unable to provide health care consent. If the
 20 individuals at the same priority level disagree as to the health care
 21 decisions on behalf of the declarant who is unable to provide health
 22 care consent, a majority of the available individuals at the same
 23 priority level controls.

24 (g) Nothing in this section shall be construed to preempt the
 25 designation of persons who may consent to the medical care or
 26 treatment of minors established under IC 16-36-1-5(b).

27 Sec. 43. The following individuals may not serve as a proxy
 28 under section 42 of this chapter:

29 (1) An individual specifically disqualified in the declarant's
 30 advance directive.

31 (2) A spouse who:

32 (A) is legally separated; or

33 (B) has a petition for dissolution, legal separation, or
 34 annulment of marriage that is pending in a court;

35 from the individual.

36 (3) An individual who is subject to a protective order or other
 37 court order that directs that individual to avoid contact with
 38 the declarant.

39 (4) An individual who is subject to a pending criminal charge
 40 in which the declarant was the alleged victim.

41 Sec. 44. If a declarant has become and remains incapacitated
 42 and has previously executed a valid advance directive under this



1 **chapter and executed:**

2 **(1) an appointment of a health care representative executed**
 3 **under IC 16-36-1 before January 1, 2023;**

4 **(2) a durable power of attorney granting health care powers**
 5 **and executed under IC 30-5 before January 1, 2023; or**

6 **(3) a similar advance directive executed by the declarant**
 7 **under the laws of another state in which the declarant was**
 8 **physically present at the time of signing; and**

9 **if a material conflict exists between multiple documents described**
 10 **in this section or if a material conflict exists between the health**
 11 **care decisions that different health care representatives or other**
 12 **authorized agents propose to make under the multiple documents,**
 13 **or if there is a material difference between the documents, then the**
 14 **document signed last by the declarant and the authority of the**
 15 **named representatives or agents in that document controls.**

16 SECTION 64. IC 16-39-2-9 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 9. (a) For the purposes
 18 of this chapter, the following persons are entitled to exercise the
 19 patient's rights on the patient's behalf:

20 (1) If the patient is a minor, the parent, guardian, or other court
 21 appointed representative of the patient.

22 (2) If the provider determines that the patient is incapable of
 23 giving or withholding consent, the patient's guardian, a court
 24 appointed representative of the patient, a person possessing a
 25 health care power of attorney **under IC 30-5-5-16** for the patient,
 26 or the patient's health care representative **under IC 16-36-1-7 or**
 27 **IC 16-36-7.**

28 (b) A custodial parent and a noncustodial parent of a child have
 29 equal access to the child's mental health records unless:

30 (1) a court has issued an order that limits the noncustodial parent's
 31 access to the child's mental health records; and

32 (2) the provider has received a copy of the court order or has
 33 actual knowledge of the court order.

34 If the provider incurs an additional expense by allowing a parent equal
 35 access to a child's mental health records, the provider may require the
 36 parent requesting the equal access to pay a fee under IC 16-39-9 to
 37 cover the cost of the additional expense.

38 SECTION 65. IC 23-14-31-26, AS AMENDED BY P.L.190-2016,
 39 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2021]: Sec. 26. (a) Except as provided in subsection (c), the
 41 following persons, in the priority listed, have the right to serve as an
 42 authorizing agent:

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- 1 (1) A person:
2 (A) granted the authority to serve in a funeral planning
3 declaration executed by the decedent under IC 29-2-19; or
4 (B) named in a United States Department of Defense form
5 "Record of Emergency Data" (DD Form 93) or a successor
6 form adopted by the United States Department of Defense, if
7 the decedent died while serving in any branch of the United
8 States Armed Forces (as defined in 10 U.S.C. 1481) and
9 completed the form.
- 10 (2) An individual specifically granted the authority to serve in a
11 power of attorney or a health care power of attorney executed by
12 the decedent under IC 30-5-5-16 **or a health care representative**
13 **under IC 16-36-7.**
- 14 (3) The individual who was the spouse of the decedent at the time
15 of the decedent's death, except when:
16 (A) a petition to dissolve the marriage or for legal separation
17 of the decedent and spouse is pending with a court at the time
18 of the decedent's death, unless a court finds that the decedent
19 and spouse were reconciled before the decedent's death; or
20 (B) a court determines the decedent and spouse were
21 physically and emotionally separated at the time of death and
22 the separation was for an extended time that clearly
23 demonstrates an absence of due affection, trust, and regard for
24 the decedent.
- 25 (4) The decedent's surviving adult child or, if more than one (1)
26 adult child is surviving, the majority of the adult children.
27 However, less than half of the surviving adult children have the
28 rights under this subdivision if the adult children have used
29 reasonable efforts to notify the other surviving adult children of
30 their intentions and are not aware of any opposition to the final
31 disposition instructions by more than half of the surviving adult
32 children.
- 33 (5) The decedent's surviving parent or parents. If one (1) of the
34 parents is absent, the parent who is present has authority under
35 this subdivision if the parent who is present has used reasonable
36 efforts to notify the absent parent.
- 37 (6) The decedent's surviving sibling or, if more than one (1)
38 sibling is surviving, the majority of the surviving siblings.
39 However, less than half of the surviving siblings have the rights
40 under this subdivision if the siblings have used reasonable efforts
41 to notify the other surviving siblings of their intentions and are
42 not aware of any opposition to the final disposition instructions by



- 1 more than half of the surviving siblings.
- 2 (7) The individual in the next degree of kinship under IC 29-1-2-1
- 3 to inherit the estate of the decedent or, if more than one (1)
- 4 individual of the same degree is surviving, the majority of those
- 5 who are of the same degree. However, less than half of the
- 6 individuals who are of the same degree of kinship have the rights
- 7 under this subdivision if they have used reasonable efforts to
- 8 notify the other individuals who are of the same degree of kinship
- 9 of their intentions and are not aware of any opposition to the final
- 10 disposition instructions by more than half of the individuals who
- 11 are of the same degree of kinship.
- 12 (8) If none of the persons described in subdivisions (1) through
- 13 (7) are available, or willing, to act and arrange for the final
- 14 disposition of the decedent's remains, a stepchild (as defined in
- 15 IC 6-4.1-1-3(f)) of the decedent. If more than one (1) stepchild
- 16 survives the decedent, then a majority of the surviving
- 17 stepchildren. However, less than half of the surviving stepchildren
- 18 have the rights under this subdivision if they have used reasonable
- 19 efforts to notify the other stepchildren of their intentions and are
- 20 not aware of any opposition to the final disposition instructions by
- 21 more than half of the stepchildren.
- 22 (9) The person appointed to administer the decedent's estate under
- 23 IC 29-1.
- 24 (10) If none of the persons described in subdivisions (1) through
- 25 (9) are available, any other person willing to act and arrange for
- 26 the final disposition of the decedent's remains, including a funeral
- 27 home that:
- 28 (A) has a valid prepaid funeral plan executed under IC 30-2-13
- 29 that makes arrangements for the disposition of the decedent's
- 30 remains; and
- 31 (B) attests in writing that a good faith effort has been made to
- 32 contact any living individuals described in subdivisions (1)
- 33 through (9).
- 34 (11) In the case of an indigent or other individual whose final
- 35 disposition is the responsibility of the state or township, the
- 36 following may serve as the authorizing agent:
- 37 (A) If none of the persons identified in subdivisions (1)
- 38 through (10) are available:
- 39 (i) a public administrator, including a responsible township
- 40 trustee or the trustee's designee; or
- 41 (ii) the coroner.
- 42 (B) A state appointed guardian.



- 1 However, an indigent decedent may not be cremated if a
 2 surviving family member objects to the cremation or if cremation
 3 would be contrary to the religious practices of the deceased
 4 individual as expressed by the individual or the individual's
 5 family.
 6 (12) In the absence of any person under subdivisions (1) through
 7 (11), any person willing to assume the responsibility as the
 8 authorizing agent, as specified in this article.
 9 (b) When a body part of a nondeceased individual is to be cremated,
 10 a representative of the institution that has arranged with the crematory
 11 authority to cremate the body part may serve as the authorizing agent.
 12 (c) If:
 13 (1) the death of the decedent appears to have been the result of:
 14 (A) murder (IC 35-42-1-1);
 15 (B) voluntary manslaughter (IC 35-42-1-3); or
 16 (C) another criminal act, if the death does not result from the
 17 operation of a vehicle; and
 18 (2) the coroner, in consultation with the law enforcement agency
 19 investigating the death of the decedent, determines that there is a
 20 reasonable suspicion that a person described in subsection (a)
 21 committed the offense;
 22 the person referred to in subdivision (2) may not serve as the
 23 authorizing agent.
 24 (d) The coroner, in consultation with the law enforcement agency
 25 investigating the death of the decedent, shall inform the crematory
 26 authority of the determination referred to in subsection (c)(2).
 27 (e) If a person vested with a right under subsection (a) does not
 28 exercise that right not later than seventy-two (72) hours after the person
 29 receives notification of the death of the decedent, the person forfeits the
 30 person's right to determine the final disposition of the decedent's
 31 remains, and the right to determine final disposition passes to the next
 32 person described in subsection (a).
 33 (f) A crematory authority owner has the right to rely, in good faith,
 34 on the representations of a person listed in subsection (a) that any other
 35 individuals of the same degree of kinship have been notified of the
 36 final disposition instructions.
 37 (g) If there is a dispute concerning the disposition of a decedent's
 38 remains, a crematory authority is not liable for refusing to accept the
 39 remains of the decedent until the crematory authority receives:
 40 (1) a court order; or
 41 (2) a written agreement signed by the disputing parties;
 42 that determines the final disposition of the decedent's remains. If a



1 crematory authority agrees to shelter the remains of the decedent while
 2 the parties are in dispute, the crematory authority may collect any
 3 applicable fees for storing the remains, including legal fees that are
 4 incurred.

5 (h) Any cause of action filed under this section must be filed in the
 6 probate court in the county where the decedent resided, unless the
 7 decedent was not a resident of Indiana.

8 (i) A spouse seeking a judicial determination under subsection
 9 (a)(3)(A) that the decedent and spouse were reconciled before the
 10 decedent's death may petition the court having jurisdiction over the
 11 dissolution or separation proceeding to make this determination by
 12 filing the petition under the same cause number as the dissolution or
 13 separation proceeding. A spouse who files a petition under this
 14 subsection is not required to pay a filing fee.

15 SECTION 66. IC 23-14-55-2, AS AMENDED BY P.L.190-2016,
 16 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2021]: Sec. 2. (a) Except as provided in subsection (c), the
 18 owner of a cemetery is authorized to inter, entomb, or inurn the body
 19 or cremated remains of a deceased human upon the receipt of a written
 20 authorization of an individual who professes either of the following:

21 (1) To be (in the priority listed) one (1) of the following:

22 (A) An individual granted the authority to serve in a funeral
 23 planning declaration executed by the decedent under
 24 IC 29-2-19, or the person named in a United States
 25 Department of Defense form "Record of Emergency Data"
 26 (DD Form 93) or a successor form adopted by the United
 27 States Department of Defense, if the decedent died while
 28 serving in any branch of the United States Armed Forces (as
 29 defined in 10 U.S.C. 1481) and completed the form.

30 (B) An individual specifically granted the authority in a power
 31 of attorney or a health care power of attorney executed by the
 32 decedent under IC 30-5-5-16 or a **health care representative**
 33 **under IC 16-36-7.**

34 (C) The individual who was the spouse of the decedent at the
 35 time of the decedent's death, except when:

36 (i) a petition to dissolve the marriage or for legal separation
 37 of the decedent and spouse is pending with a court at the
 38 time of the decedent's death, unless a court finds that the
 39 decedent and spouse were reconciled before the decedent's
 40 death; or

41 (ii) a court determines the decedent and spouse were
 42 physically and emotionally separated at the time of death



- 1 and the separation was for an extended time that clearly
2 demonstrates an absence of due affection, trust, and regard
3 for the decedent.
- 4 (D) The decedent's surviving adult child or, if more than one
5 (1) adult child is surviving, the majority of the adult children.
6 However, less than half of the surviving adult children have
7 the rights under this clause if the adult children have used
8 reasonable efforts to notify the other surviving adult children
9 of their intentions and are not aware of any opposition to the
10 final disposition instructions by more than half of the surviving
11 adult children.
- 12 (E) The decedent's surviving parent or parents. If one (1) of the
13 parents is absent, the parent who is present has authority under
14 this clause if the parent who is present has used reasonable
15 efforts to notify the absent parent.
- 16 (F) The decedent's surviving sibling or, if more than one (1)
17 sibling is surviving, the majority of the surviving siblings.
18 However, less than half of the surviving siblings have the
19 rights under this clause if the siblings have used reasonable
20 efforts to notify the other surviving siblings of their intentions
21 and are not aware of any opposition to the final disposition
22 instructions by more than half of the surviving siblings.
- 23 (G) The individual in the next degree of kinship under
24 IC 29-1-2-1 to inherit the estate of the decedent or, if more
25 than one (1) individual of the same degree of kinship is
26 surviving, the majority of those who are of the same degree.
27 However, less than half of the individuals who are of the same
28 degree of kinship have the rights under this clause if they have
29 used reasonable efforts to notify the other individuals who are
30 of the same degree of kinship of their intentions and are not
31 aware of any opposition to the final disposition instructions by
32 more than half of the individuals who are of the same degree
33 of kinship.
- 34 (H) If none of the persons described in clauses (A) through (G)
35 are available, or willing, to act and arrange for the final
36 disposition of the decedent's remains, a stepchild (as defined
37 in IC 6-4.1-1-3(f)) of the decedent. If more than one (1)
38 stepchild survives the decedent, then a majority of the
39 surviving stepchildren. However, less than half of the
40 surviving stepchildren have the rights under this subdivision
41 if they have used reasonable efforts to notify the other
42 stepchildren of their intentions and are not aware of any



- 1 opposition to the final disposition instructions by more than
 2 half of the stepchildren.
- 3 (I) The person appointed to administer the decedent's estate
 4 under IC 29-1.
- 5 (J) If none of the persons described in clauses (A) through (I)
 6 are available, any other person willing to act and arrange for
 7 the final disposition of the decedent's remains, including a
 8 funeral home that:
- 9 (i) has a valid prepaid funeral plan executed under
 10 IC 30-2-13 that makes arrangements for the disposition of
 11 the decedent's remains; and
- 12 (ii) attests in writing that a good faith effort has been made
 13 to contact any living individuals described in clauses (A)
 14 through (I).
- 15 (2) To have acquired by court order the right to control the
 16 disposition of the deceased human body or cremated remains.
- 17 The owner of a cemetery may accept the authorization of an individual
 18 only if all other individuals of the same priority or a higher priority
 19 (according to the priority listing in this subsection) are deceased, are
 20 barred from authorizing the disposition of the deceased human body or
 21 cremated remains under subsection (c), or are physically or mentally
 22 incapacitated from exercising the authorization, and the incapacity is
 23 certified to by a qualified medical doctor.
- 24 (b) An action may not be brought against the owner of a cemetery
 25 relating to the remains of a human that have been left in the possession
 26 of the cemetery owner without permanent interment, entombment, or
 27 inurnment for a period of three (3) years, unless the cemetery owner
 28 has entered into a written contract for the care of the remains.
- 29 (c) If:
- 30 (1) the death of the decedent appears to have been the result of:
- 31 (A) murder (IC 35-42-1-1);
- 32 (B) voluntary manslaughter (IC 35-42-1-3); or
- 33 (C) another criminal act, if the death does not result from the
 34 operation of a vehicle; and
- 35 (2) the coroner, in consultation with the law enforcement agency
 36 investigating the death of the decedent, determines that there is a
 37 reasonable suspicion that a person described in subsection (a)
 38 committed the offense;
- 39 the person referred to in subdivision (2) may not authorize the
 40 disposition of the decedent's body or cremated remains.
- 41 (d) The coroner, in consultation with the law enforcement agency
 42 investigating the death of the decedent, shall inform the cemetery



1 owner of the determination referred to in subsection (c)(2).

2 (e) If a person vested with a right under subsection (a) does not
3 exercise that right not less than seventy-two (72) hours after the person
4 receives notification of the death of the decedent, the person forfeits the
5 person's right to determine the final disposition of the decedent's
6 remains and the right to determine final disposition passes to the next
7 person described in subsection (a).

8 (f) A cemetery owner has the right to rely, in good faith, on the
9 representations of a person listed in subsection (a) that any other
10 individuals of the same degree of kinship have been notified of the
11 final disposition instructions.

12 (g) If there is a dispute concerning the disposition of a decedent's
13 remains, a cemetery owner is not liable for refusing to accept the
14 remains of the decedent until the cemetery owner receives:

15 (1) a court order; or

16 (2) a written agreement signed by the disputing parties;
17 that determines the final disposition of the decedent's remains. If a
18 cemetery agrees to shelter the remains of the decedent while the parties
19 are in dispute, the cemetery may collect any applicable fees for storing
20 the remains, including legal fees that are incurred.

21 (h) Any cause of action filed under this section must be filed in the
22 probate court in the county where the decedent resided, unless the
23 decedent was not a resident of Indiana.

24 (i) A spouse seeking a judicial determination under subsection
25 (a)(1)(C)(i) that the decedent and spouse were reconciled before the
26 decedent's death may petition the court having jurisdiction over the
27 dissolution or separation proceeding to make this determination by
28 filing the petition under the same cause number as the dissolution or
29 separation proceeding. A spouse who files a petition under this
30 subsection is not required to pay a filing fee.

31 SECTION 67. IC 25-15-9-18, AS AMENDED BY P.L.190-2016,
32 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 JULY 1, 2021]: Sec. 18. (a) Except as provided in subsection (b), the
34 following persons, in the order of priority indicated, have the authority
35 to designate the manner, type, and selection of the final disposition of
36 human remains, to make arrangements for funeral services, and to
37 make other ceremonial arrangements after an individual's death:

38 (1) A person:

39 (A) granted the authority to serve in a funeral planning
40 declaration executed by the decedent under IC 29-2-19; or

41 (B) named in a United States Department of Defense form
42 "Record of Emergency Data" (DD Form 93) or a successor



- 1 form adopted by the United States Department of Defense, if
 2 the decedent died while serving in any branch of the United
 3 States Armed Forces (as defined in 10 U.S.C. 1481) and
 4 completed the form.
- 5 (2) An individual specifically granted the authority in a power of
 6 attorney or a health care power of attorney executed by the
 7 decedent under IC 30-5-5-16 **or a health care representative**
 8 **under IC 16-36-7.**
- 9 (3) The individual who was the spouse of the decedent at the time
 10 of the decedent's death, except when:
- 11 (A) a petition to dissolve the marriage or for legal separation
 12 of the decedent and spouse is pending with a court at the time
 13 of the decedent's death, unless a court finds that the decedent
 14 and spouse were reconciled before the decedent's death; or
- 15 (B) a court determines the decedent and spouse were
 16 physically and emotionally separated at the time of death and
 17 the separation was for an extended time that clearly
 18 demonstrates an absence of due affection, trust, and regard for
 19 the decedent.
- 20 (4) The decedent's surviving adult child or, if more than one (1)
 21 adult child is surviving, the majority of the adult children.
 22 However, less than half of the surviving adult children have the
 23 rights under this subdivision if the adult children have used
 24 reasonable efforts to notify the other surviving adult children of
 25 their intentions and are not aware of any opposition to the final
 26 disposition instructions by more than half of the surviving adult
 27 children.
- 28 (5) The decedent's surviving parent or parents. If one (1) of the
 29 parents is absent, the parent who is present has the rights under
 30 this subdivision if the parent who is present has used reasonable
 31 efforts to notify the absent parent.
- 32 (6) The decedent's surviving sibling or, if more than one (1)
 33 sibling is surviving, the majority of the surviving siblings.
 34 However, less than half of the surviving siblings have the rights
 35 under this subdivision if the siblings have used reasonable efforts
 36 to notify the other surviving siblings of their intentions and are
 37 not aware of any opposition to the final disposition instructions by
 38 more than half of the surviving siblings.
- 39 (7) The individual in the next degree of kinship under IC 29-1-2-1
 40 to inherit the estate of the decedent or, if more than one (1)
 41 individual of the same degree survives, the majority of those who
 42 are of the same degree of kinship. However, less than half of the



- 1 individuals who are of the same degree of kinship have the rights
 2 under this subdivision if they have used reasonable efforts to
 3 notify the other individuals who are of the same degree of kinship
 4 of their intentions and are not aware of any opposition to the final
 5 disposition instructions by more than half of the individuals who
 6 are of the same degree of kinship.
- 7 (8) If none of the persons described in subdivisions (1) through
 8 (7) are available, or willing, to act and arrange for the final
 9 disposition of the decedent's remains, a stepchild (as defined in
 10 IC 6-4.1-1-3(f)) of the decedent. If more than one (1) stepchild
 11 survives the decedent, then a majority of the surviving
 12 stepchildren. However, less than half of the surviving stepchildren
 13 have the rights under this subdivision if they have used reasonable
 14 efforts to notify the other stepchildren of their intentions and are
 15 not aware of any opposition to the final disposition instructions by
 16 more than half of the stepchildren.
- 17 (9) The person appointed to administer the decedent's estate under
 18 IC 29-1.
- 19 (10) If none of the persons identified in subdivisions (1) through
 20 (9) are available, any other person willing to act and arrange for
 21 the final disposition of the decedent's remains, including a funeral
 22 home that:
- 23 (A) has a valid prepaid funeral plan executed under IC 30-2-13
 24 that makes arrangements for the disposition of the decedent's
 25 remains; and
 - 26 (B) attests in writing that a good faith effort has been made to
 27 contact any living individuals described in subdivisions (1)
 28 through (9).
- 29 (11) In the case of an indigent or other individual whose final
 30 disposition is the responsibility of the state or township, the
 31 following:
- 32 (A) If none of the persons identified in subdivisions (1)
 33 through (10) is available:
 - 34 (i) a public administrator, including a responsible township
 35 trustee or the trustee's designee; or
 - 36 (ii) the coroner.
 - 37 (B) A state appointed guardian.
- 38 (b) If:
- 39 (1) the death of the decedent appears to have been the result of:
 - 40 (A) murder (IC 35-42-1-1);
 - 41 (B) voluntary manslaughter (IC 35-42-1-3); or
 - 42 (C) another criminal act, if the death does not result from the



- 1 operation of a vehicle; and
2 (2) the coroner, in consultation with the law enforcement agency
3 investigating the death of the decedent, determines that there is a
4 reasonable suspicion that a person described in subsection (a)
5 committed the offense;
6 the person referred to in subdivision (2) may not authorize or designate
7 the manner, type, or selection of the final disposition of human
8 remains.
9 (c) The coroner, in consultation with the law enforcement agency
10 investigating the death of the decedent, shall inform the cemetery
11 owner or crematory authority of the determination under subsection
12 (b)(2).
13 (d) If the decedent had filed a protection order against a person
14 described in subsection (a) and the protection order is currently in
15 effect, the person described in subsection (a) may not authorize or
16 designate the manner, type, or selection of the final disposition of
17 human remains.
18 (e) A law enforcement agency shall determine if the protection order
19 is in effect. If the law enforcement agency cannot determine the
20 existence of a protection order that is in effect, the law enforcement
21 agency shall consult the protective order registry established under
22 IC 5-2-9-5.5.
23 (f) If a person vested with a right under subsection (a) does not
24 exercise that right not later than seventy-two (72) hours after the person
25 receives notification of the death of the decedent, the person forfeits the
26 person's right to determine the final disposition of the decedent's
27 remains and the right to determine final disposition passes to the next
28 person described in subsection (a).
29 (g) A funeral home has the right to rely, in good faith, on the
30 representations of a person listed in subsection (a) that any other
31 individuals of the same degree of kinship have been notified of the
32 final disposition instructions.
33 (h) If there is a dispute concerning the disposition of a decedent's
34 remains, a funeral home is not liable for refusing to accept the remains
35 of the decedent until the funeral home receives:
36 (1) a court order; or
37 (2) a written agreement signed by the disputing parties;
38 that determines the final disposition of the decedent's remains. If a
39 funeral home agrees to shelter the remains of the decedent while the
40 parties are in dispute, the funeral home may collect any applicable fees
41 for storing the remains, including legal fees that are incurred.
42 (i) Any cause of action filed under this section must be filed in the



1 probate court in the county where the decedent resided, unless the
2 decedent was not a resident of Indiana.

3 (j) A spouse seeking a judicial determination under subsection
4 (a)(3)(A) that the decedent and spouse were reconciled before the
5 decedent's death may petition the court having jurisdiction over the
6 dissolution or separation proceeding to make this determination by
7 filing the petition under the same cause number as the dissolution or
8 separation proceeding. A spouse who files a petition under this
9 subsection is not required to pay a filing fee.

10 SECTION 68. IC 29-2-16.1-1, AS AMENDED BY P.L.11-2020,
11 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2021]: Sec. 1. The following definitions apply throughout this
13 chapter:

14 (1) "Adult" means an individual at least eighteen (18) years of
15 age.

16 (2) "Agent" means an individual who is:

17 (A) authorized to make health care decisions on behalf of
18 another person by a health care power of attorney **under**
19 **IC 30-5-5-16 or a health care representative under**
20 **IC 16-36-7**; or

21 (B) expressly authorized to make an anatomical gift on behalf
22 of another person by a document signed by the person.

23 (3) "Anatomical gift" means a donation of all or part of a human
24 body to take effect after the donor's death for the purpose of
25 transplantation, therapy, research, or education.

26 (4) "Bank" or "storage facility" means a facility licensed,
27 accredited, or approved under the laws of any state for storage of
28 human bodies or parts of human bodies.

29 (5) "Decedent":

30 (A) means a deceased individual whose body or body part is
31 or may be the source of an anatomical gift; and

32 (B) includes:

33 (i) a stillborn infant; and

34 (ii) except as restricted by any other law, a fetus.

35 (6) "Disinterested witness" means an individual other than a
36 spouse, child, sibling, grandchild, grandparent, or guardian of the
37 individual who makes, amends, revokes, or refuses to make an
38 anatomical gift or another adult who exhibited special care and
39 concern for the individual. This term does not include a person to
40 whom an anatomical gift could pass under section 10 of this
41 chapter.

42 (7) "Document of gift" means a donor card or other record used



- 1 to make an anatomical gift, including a statement or symbol on:
- 2 (A) a driver's license;
- 3 (B) an identification card;
- 4 (C) a resident license to hunt, fish, or trap; or
- 5 (D) a donor registry.
- 6 (8) "Donor" means an individual whose body or body part is the
- 7 subject of an anatomical gift.
- 8 (9) "Donor registry" means:
- 9 (A) a data base maintained by:
- 10 (i) the bureau of motor vehicles; or
- 11 (ii) the equivalent agency in another state;
- 12 (B) the Donate Life Indiana Registry maintained by the
- 13 Indiana Donation Alliance Foundation; or
- 14 (C) a donor registry maintained in another state;
- 15 that contains records of anatomical gifts and amendments to or
- 16 revocations of anatomical gifts.
- 17 (10) "Driver's license" means a license or permit issued by the
- 18 bureau of motor vehicles to operate a vehicle.
- 19 (11) "Eye bank" means a person that is licensed, accredited, or
- 20 regulated under federal or state law to engage in the recovery,
- 21 screening, testing, processing, storage, or distribution of human
- 22 eyes or portions of human eyes.
- 23 (12) "Guardian" means an individual appointed by a court to
- 24 make decisions regarding the support, care, education, health, or
- 25 welfare of an individual. The term does not include a guardian ad
- 26 litem.
- 27 (13) "Hospital" means a facility licensed as a hospital under the
- 28 laws of any state or a facility operated as a hospital by the United
- 29 States, a state, or a subdivision of a state.
- 30 (14) "Identification card" means an identification card issued by
- 31 the bureau of motor vehicles.
- 32 (15) "Minor" means an individual under eighteen (18) years of
- 33 age.
- 34 (16) "Organ procurement organization" means a person
- 35 designated by the Secretary of the United States Department of
- 36 Health and Human Services as an organ procurement
- 37 organization.
- 38 (17) "Parent" means an individual whose parental rights have not
- 39 been terminated.
- 40 (18) "Part" means an organ, an eye, or tissue of a human being.
- 41 The term does not mean a whole body.
- 42 (19) "Pathologist" means a physician:



- 1 (A) certified by the American Board of Pathology; or
 2 (B) holding an unlimited license to practice medicine in
 3 Indiana and acting under the direction of a physician certified
 4 by the American Board of Pathology.
- 5 (20) "Person" means an individual, corporation, business trust,
 6 estate, trust, partnership, limited liability company, association,
 7 joint venture, public corporation, government or governmental
 8 subdivision, agency, instrumentality, or any other legal or
 9 commercial entity.
- 10 (21) "Physician" or "surgeon" means an individual authorized to
 11 practice medicine or osteopathy under the laws of any state.
- 12 (22) "Procurement organization" means an eye bank, organ
 13 procurement organization, or tissue bank.
- 14 (23) "Prospective donor" means an individual who is dead or near
 15 death and has been determined by a procurement organization to
 16 have a part that could be medically suitable for transplantation,
 17 therapy, research, or education. The term does not include an
 18 individual who has made an appropriate refusal.
- 19 (24) "Reasonably available" means:
 20 (A) able to be contacted by a procurement organization
 21 without undue effort; and
 22 (B) willing and able to act in a timely manner consistent with
 23 existing medical criteria necessary for the making of an
 24 anatomical gift.
- 25 (25) "Recipient" means an individual into whose body a
 26 decedent's part has been or is intended to be transplanted.
- 27 (26) "Record" means information that is inscribed on a tangible
 28 medium or that is stored in an electronic or other medium and is
 29 retrievable in perceivable form.
- 30 (27) "Refusal" means a record created under section 6 of this
 31 chapter that expressly states the intent to bar another person from
 32 making an anatomical gift of an individual's body or part.
- 33 (28) "Sign" means, with the present intent to authenticate or adopt
 34 a record:
 35 (A) to execute or adopt a tangible symbol; or
 36 (B) to attach to or logically associate with the record an
 37 electronic symbol, sound, or process.
- 38 (29) "State" means a state of the United States, the District of
 39 Columbia, Puerto Rico, the United States Virgin Islands, or any
 40 territory or insular possession subject to the jurisdiction of the
 41 United States.
- 42 (30) "Technician" means an individual determined to be qualified



1 to remove or process parts by an appropriate organization that is
 2 licensed, accredited, or regulated under federal or state law. The
 3 term includes an eye enucleator.

4 (31) "Tissue" means a part of the human body other than an organ
 5 or an eye. The term does not include blood or other bodily fluids
 6 unless the blood or bodily fluids are donated for the purpose of
 7 research or education.

8 (32) "Tissue bank" means a person that is licensed, accredited, or
 9 regulated under federal or state law to engage in the recovery,
 10 screening, testing, processing, storage, or distribution of tissue.

11 (33) "Transplant hospital" means a hospital that furnishes organ
 12 transplants and other medical and surgical specialty services
 13 required for the care of organ transplant patients.

14 SECTION 69. IC 29-2-16.1-3, AS ADDED BY P.L.147-2007,
 15 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2021]: Sec. 3. Subject to section 7 of this chapter, an
 17 anatomical gift of a donor's body or part may be made during the life
 18 of the donor for the purpose of transplantation, therapy, research, or
 19 education in the manner provided in section 4 of this chapter by:

20 (1) the donor, if the donor is an adult or if the donor is a minor
 21 and is:

22 (A) emancipated; or

23 (B) authorized under state law to apply for a driver's license
 24 because the donor is at least sixteen (16) years of age;

25 (2) an agent, **a health care representative, or a proxy (as**
 26 **defined by IC 16-36-7-20)** of the donor, unless the health care
 27 power of attorney, **advance directive**, or other record prohibits
 28 the agent from making an anatomical gift;

29 (3) a parent of the donor, if the donor is not emancipated; or

30 (4) the donor's guardian.

31 SECTION 70. IC 29-2-19-10, AS ADDED BY P.L.143-2009,
 32 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2021]: Sec. 10. The provisions of a declarant's most recent
 34 declaration prevail over any other document executed by the declarant
 35 concerning any preferences described in section 9 of this chapter.
 36 However, this section may not be construed to invalidate a power of
 37 attorney executed under IC 30-5-5 or an appointment of a health care
 38 representative under IC 16-36-1 **or IC 16-36-7** with respect to any
 39 power or duty belonging to the attorney in fact or health care
 40 representative that is not related to a preference described in section 9
 41 of this chapter.

42 SECTION 71. IC 29-2-19-17, AS AMENDED BY P.L.190-2016,



1 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 2 JULY 1, 2021]: Sec. 17. The right to control the disposition of a
 3 decedent's body, to make arrangements for funeral services, and to
 4 make other ceremonial arrangements after an individual's death
 5 devolves on the following, in the priority listed:

6 (1) A person:

7 (A) granted the authority to serve in a funeral planning
 8 declaration executed by the decedent under this chapter; or

9 (B) named in a United States Department of Defense form
 10 "Record of Emergency Data" (DD Form 93) or a successor
 11 form adopted by the United States Department of Defense, if
 12 the decedent died while serving in any branch of the United
 13 States Armed Forces (as defined in 10 U.S.C. 1481) and
 14 completed the form.

15 (2) An individual specifically granted the authority in a power of
 16 attorney or a health care power of attorney executed by the
 17 decedent under IC 30-5-5-16 **or a health care representative**
 18 **under IC 16-36-7.**

19 (3) The decedent's surviving spouse.

20 (4) A surviving adult child of the decedent or, if more than one
 21 (1) adult child is surviving, the majority of the other adult
 22 children. However, less than half of the surviving adult children
 23 have the rights under this subdivision if the adult children have
 24 used reasonable efforts to notify the other surviving adult children
 25 of their intentions and are not aware of any opposition to the final
 26 disposition instructions by more than half of the surviving adult
 27 children.

28 (5) The surviving parent or parents of the decedent. If one (1) of
 29 the parents is absent, the parent who is present has the rights
 30 under this subdivision if the parent who is present has used
 31 reasonable efforts to notify the absent parent.

32 (6) The decedent's surviving sibling or, if more than one (1)
 33 sibling is surviving, the majority of the surviving siblings.
 34 However, less than half of the surviving siblings have the rights
 35 under this subdivision if the siblings have used reasonable efforts
 36 to notify the other surviving siblings of their intentions and are
 37 not aware of any opposition to the final disposition instructions by
 38 more than half of the surviving siblings.

39 (7) An individual in the next degree of kinship under IC 29-1-2-1
 40 to inherit the estate of the decedent or, if more than one (1)
 41 individual of the same degree survives, the majority of those who
 42 are of the same degree of kinship. However, less than half of the



1 individuals who are of the same degree of kinship have the rights
 2 under this subdivision if they have used reasonable efforts to
 3 notify the other individuals who are of the same degree of kinship
 4 of their intentions and are not aware of any opposition to the final
 5 disposition instructions by more than half of the individuals who
 6 are of the same degree of kinship.

7 (8) If none of the persons described in subdivisions (1) through
 8 (7) are available, or willing, to act and arrange for the final
 9 disposition of the decedent's remains, a stepchild (as defined in
 10 IC 6-4.1-1-3(f)) of the decedent. If more than one (1) stepchild
 11 survives the decedent, then a majority of the surviving
 12 stepchildren. However, less than half of the surviving stepchildren
 13 have the rights under this subdivision if they have used reasonable
 14 efforts to notify the other stepchildren of their intentions and are
 15 not aware of any opposition to the final disposition instructions by
 16 more than half of the stepchildren.

17 (9) The person appointed to administer the decedent's estate under
 18 IC 29-1.

19 (10) If none of the persons described in subdivisions (1) through
 20 (9) are available, any other person willing to act and arrange for
 21 the final disposition of the decedent's remains, including a funeral
 22 home that:

23 (A) has a valid prepaid funeral plan executed under IC 30-2-13
 24 that makes arrangements for the disposition of the decedent's
 25 remains; and

26 (B) attests in writing that a good faith effort has been made to
 27 contact any living individuals described in subdivisions (1)
 28 through (9).

29 SECTION 72. IC 29-3-9-1, AS AMENDED BY P.L.74-2016,
 30 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2021]: Sec. 1. (a) As used in this section, "department" means
 32 the department of child services established by IC 31-25-1-1.

33 (b) As used in this section and except as otherwise provided in this
 34 section, "foster care" has the meaning set forth in IC 31-9-2-46.7.

35 (c) Except as provided in subsections (d) and (h), by a properly
 36 executed power of attorney, a parent of a minor or a guardian (other
 37 than a temporary guardian) of a protected person may delegate to
 38 another person for:

39 (1) any period during which the care and custody of the minor or
 40 protected person is entrusted to an institution furnishing care,
 41 custody, education, or training; or

42 (2) a period not exceeding twelve (12) months;



1 any powers regarding health care, support, custody, or property of the
 2 minor or protected person. A delegation described in this subsection is
 3 effective immediately unless otherwise stated in the power of attorney.

4 (d) A parent of a minor or a guardian of a protected person may not
 5 delegate under subsection (c) the power to:

6 (1) consent to the marriage or adoption of a protected person who
 7 is a minor; or

8 (2) petition the court to request the authority to petition for
 9 dissolution of marriage, legal separation, or annulment of
 10 marriage on behalf of a protected person as provided under
 11 section 12.2 of this chapter.

12 (e) **Subject to IC 30-5-5-16**, a person having a power of attorney
 13 executed under subsection (c) has and shall exercise, for the period
 14 during which the power is effective, all other authority of the parent or
 15 guardian respecting the health care, support, custody, or property of the
 16 minor or protected person except any authority expressly excluded in
 17 the written instrument delegating the power. The parent or guardian
 18 remains responsible for any act or omission of the person having the
 19 power of attorney with respect to the affairs, property, and person of the
 20 minor or protected person as though the power of attorney had never
 21 been executed.

22 (f) A delegation of powers executed under subsection (c) does not,
 23 as a result of the execution of the power of attorney, subject any of the
 24 parties to any laws, rules, or regulations concerning the licensing or
 25 regulation of foster family homes, child placing agencies, or child
 26 caring institutions under IC 31-27.

27 (g) Any child who is the subject of a power of attorney executed
 28 under subsection (c) is not considered to be placed in foster care. The
 29 parties to a power of attorney executed under subsection (c), including
 30 a child, a protected person, a parent or guardian of a child or protected
 31 person, or an attorney-in-fact, are not, as a result of the execution of the
 32 power of attorney, subject to any foster care requirements or foster care
 33 licensing regulations.

34 (h) A foster family home licensed under IC 31-27-4 may not provide
 35 overnight or regular and continuous care and supervision to a child
 36 who is the subject of a power of attorney executed under subsection (c)
 37 while providing care to a child placed in the home by the department
 38 or under a juvenile court order under a foster family home license.
 39 Upon request, the department may grant an exception to this
 40 subsection.

41 (i) A parent who:

42 (1) is a member in the:



- 1 (A) active or reserve component of the armed forces of the
 2 United States, including the Army, Navy, Air Force, Marine
 3 Corps, National Guard, or Coast Guard; or
 4 (B) commissioned corps of the:
 5 (i) National Oceanic and Atmospheric Administration; or
 6 (ii) Public Health Service of the United States Department
 7 of Health and Human Services;
 8 detailed by proper authority for duty with the Army or Navy of
 9 the United States; or
 10 (2) is required to:
 11 (A) enter or serve in the active military service of the United
 12 States under a call or order of the President of the United
 13 States; or
 14 (B) serve on state active duty;
 15 may delegate the powers designated in subsection (c) for a period
 16 longer than twelve (12) months if the parent is on active duty service.
 17 However, the term of delegation may not exceed the term of active duty
 18 service plus thirty (30) days. The power of attorney must indicate that
 19 the parent is required to enter or serve in the active military service of
 20 the United States and include the estimated beginning and ending dates
 21 of the active duty service.
 22 (j) Except as otherwise stated in the power of attorney delegating
 23 powers under this section, a delegation of powers under this section
 24 may be revoked at any time by a written instrument of revocation that:
 25 (1) identifies the power of attorney revoked; and
 26 (2) is signed by the:
 27 (A) parent of a minor; or
 28 (B) guardian of a protected person;
 29 who executed the power of attorney.
 30 SECTION 73. IC 29-3-9-4.5, AS ADDED BY P.L.6-2010,
 31 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2021]: Sec. 4.5. (a) After notice to interested persons and
 33 upon authorization of the court, a guardian may, if the protected person
 34 has been found by the court to lack testamentary capacity, do any of the
 35 following:
 36 (1) Make gifts.
 37 (2) Exercise any power with respect to transfer on death or
 38 payable on death transfers that is described in IC 30-5-5-7.5.
 39 (3) Convey, release, or disclaim contingent and expectant
 40 interests in property, including marital property rights and any
 41 right of survivorship incident to joint tenancy or tenancy by the
 42 entireties.



- 1 (4) Exercise or release a power of appointment.
- 2 (5) Create a revocable or irrevocable trust of all or part of the
- 3 property of the estate, including a trust that extends beyond the
- 4 duration of the guardianship.
- 5 (6) Revoke or amend a trust that is revocable by the protected
- 6 person.
- 7 (7) Exercise rights to elect options and change beneficiaries under
- 8 insurance policies, retirement plans, and annuities.
- 9 (8) Surrender an insurance policy or annuity for its cash value.
- 10 (9) Exercise any right to an elective share in the estate of the
- 11 protected person's deceased spouse.
- 12 (10) Renounce or disclaim any interest by testate or intestate
- 13 succession or by transfer inter vivos.
- 14 (b) Before approving a guardian's exercise of a power listed in
- 15 subsection (a), the court shall consider primarily the decision that the
- 16 protected person would have made, to the extent that the decision of
- 17 the protected person can be ascertained. If the protected person has a
- 18 will, the protected person's distribution of assets under the will is prima
- 19 facie evidence of the protected person's intent. The court shall also
- 20 consider:
 - 21 (1) the financial needs of the protected person and the needs of
 - 22 individuals who are dependent on the protected person for
 - 23 support;
 - 24 (2) the interests of creditors;
 - 25 (3) the possible reduction of income taxes, estate taxes,
 - 26 inheritance taxes, or other federal, state, or local tax liabilities;
 - 27 (4) the eligibility of the protected person for governmental
 - 28 assistance;
 - 29 (5) the protected person's previous pattern of giving or level of
 - 30 support;
 - 31 (6) the protected person's existing estate plan, if any;
 - 32 (7) the protected person's life expectancy and the probability that
 - 33 the guardianship will terminate before the protected person's
 - 34 death; and
 - 35 (8) any other factor the court considers relevant.
- 36 (c) A guardian may examine and receive, at the expense of the
- 37 guardian, copies of the following documents of the protected person:
 - 38 (1) A will.
 - 39 (2) A trust.
 - 40 (3) A power of attorney.
 - 41 (4) A health care appointment.
 - 42 (5) **An advance directive.**



- 1 ~~(5)~~ **(6)** Any other estate planning document.
- 2 SECTION 74. IC 30-5-5-16, AS AMENDED BY P.L.81-2015,
3 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2021]: Sec. 16. (a) This section does not prohibit an individual
5 capable of consenting to the individual's own health care or to the
6 health care of another from consenting to health care administered in
7 good faith under the religious tenets and practices of the individual
8 requiring health care.
- 9 (b) Language conferring general authority with respect to health
10 care powers means the principal authorizes the attorney in fact to do
11 the following:
- 12 (1) Employ or contract with servants, companions, or health care
13 providers to care for the principal.
- 14 (2) Consent to or refuse health care for the principal who is an
15 individual in accordance with IC 16-36-4 and IC 16-36-1 by
16 properly executing and attaching to the power of attorney a
17 declaration or appointment, or both.
- 18 (3) Admit or release the principal from a hospital or health care
19 facility.
- 20 (4) Have access to records, including medical records, concerning
21 the principal's condition.
- 22 (5) Make anatomical gifts on the principal's behalf.
- 23 (6) Request an autopsy.
- 24 (7) Make plans for the disposition of the principal's body,
25 including executing a funeral planning declaration on behalf of
26 the principal in accordance with IC 29-2-19.
- 27 **(c) Notwithstanding any other law, a document granting health
28 care powers to an attorney in fact for health care may not be
29 executed under this chapter after December 31, 2022. However, if
30 a power of attorney that is executed after December 31, 2022, is
31 written to grant both:**
- 32 **(1) health care powers; and**
- 33 **(2) nonhealth care powers under this chapter;**
- 34 **to an attorney in fact, the health care powers are void, but all other**
35 **powers granted by the power of attorney will remain effective and**
36 **enforceable under this article.**
- 37 SECTION 75. IC 30-5-5-17, AS AMENDED BY THE
38 TECHNICAL CORRECTIONS BILL OF THE 2021 GENERAL
39 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2021]: Sec. 17. (a) If the attorney in fact has the authority to
41 consent to or refuse health care under section ~~16(2)~~ **16(b)(2)** of this
42 chapter, the attorney in fact may be empowered to ask in the name of



1 the principal for health care to be withdrawn or withheld when it is not
 2 beneficial or when any benefit is outweighed by the demands of the
 3 treatment and death may result. To empower the attorney in fact to act
 4 under this section, the following language must be included in an
 5 appointment under IC 16-36-1 **or IC 16-36-7** in substantially the same
 6 form set forth below:

7 I authorize my health care representative to make decisions in my
 8 best interest concerning withdrawal or withholding of health care.
 9 If at any time based on my previously expressed preferences and
 10 the diagnosis and prognosis my health care representative is
 11 satisfied that certain health care is not or would not be beneficial
 12 or that such health care is or would be excessively burdensome,
 13 then my health care representative may express my will that such
 14 health care be withheld or withdrawn and may consent on my
 15 behalf that any or all health care be discontinued or not instituted,
 16 even if death may result.

17 My health care representative must try to discuss this decision
 18 with me. However, if I am unable to communicate, my health care
 19 representative may make such a decision for me, after
 20 consultation with my physician or physicians and other relevant
 21 health care givers. To the extent appropriate, my health care
 22 representative may also discuss this decision with my family and
 23 others to the extent they are available.

24 (b) Nothing in this section may be construed to authorize
 25 euthanasia.

26 SECTION 76. IC 30-5-7-2 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. (a) A health care
 28 provider furnished with a copy of a declaration under IC 16-36-4 or an
 29 appointment under IC 16-36-1 **or IC 16-36-7** shall make the
 30 documents a part of the principal's medical records.

31 (b) If a change in or termination of a power of attorney becomes
 32 known to the health care provider, the change or termination shall be
 33 noted in the principal's medical records.

34 SECTION 77. IC 30-5-7-3 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3. Whenever a health
 36 care provider believes a patient may lack the capacity to give informed
 37 consent to health care the provider considers necessary, the provider
 38 shall consult with the attorney in fact who has power to act for the
 39 patient under IC 16-36-4, IC 16-36-1, **IC 16-36-7**, or this article.

40 SECTION 78. IC 30-5-8-6 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 6. **Subject to**
 42 **IC 16-36-7**, appointments made under this article, IC 16-36-4, ~~and~~



1 IC 16-36-1, and IC 16-36-7 can be made concurrently and will be
 2 given full effect under the law. However, the appointments may be
 3 executed independently and remain valid in their own right.

4 SECTION 79. IC 34-30-2-75.6 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2021]: **Sec. 75.6. IC 16-36-7-40 (Concerning**
 7 **a health care provider's or other person's reliance on an advance**
 8 **directive).**

9 SECTION 80. IC 34-30-2-75.7 IS ADDED TO THE INDIANA
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2021]: **Sec. 75.7. IC 16-36-7-41 (Concerning**
 12 **a health care provider's or other person's reliance on an affidavit**
 13 **regarding an advance directive or decision of a health care**
 14 **representative).**

15 SECTION 81. IC 35-42-1-2.5, AS AMENDED BY P.L.158-2013,
 16 SECTION 412, IS AMENDED TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2021]: Sec. 2.5. (a) This section does not apply
 18 to the following:

19 (1) A licensed health care provider who administers, prescribes,
 20 or dispenses medications or procedures to relieve a person's pain
 21 or discomfort, even if the medication or procedure may hasten or
 22 increase the risk of death, unless such medications or procedures
 23 are intended to cause death.

24 (2) The withholding or withdrawing of medical treatment or
 25 life-prolonging procedures by a licensed health care provider,
 26 including pursuant to IC 16-36-4 (living wills and life-prolonging
 27 procedures), IC 16-36-1 (health care consent), **IC 16-36-7**
 28 **(advance directive)**, or IC 30-5 (~~power~~ **(health care power of**
 29 **attorney)**).

30 (b) A person who has knowledge that another person intends to
 31 commit or attempt to commit suicide and who intentionally does either
 32 of the following commits assisting suicide, a Level 5 felony:

33 (1) Provides the physical means by which the other person
 34 attempts or commits suicide.

35 (2) Participates in a physical act by which the other person
 36 attempts or commits suicide.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 204, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 11, delete lines 22 through 36.

Page 15, line 36, delete "testator" and insert "**declarant**".

Page 28, between lines 40 and 41, begin a new paragraph and insert:
"(e) This chapter does not modify any requirements or procedures under IC 33-42 concerning the performance of valid notarial acts."

Page 28, line 41, delete "(e)" and insert "**(f)**".

Page 31, line 7, after "18." insert "**(a)**".

Page 31, line 7, after "to" insert "**interactions between**".

Page 31, line 8, delete "witness or a notarial officer," and insert "**witness,**".

Page 31, between lines 16 and 17, begin a new paragraph and insert:

"(b) As used in this chapter and with respect to interactions between a declarant and a notarial officer, "observe" means that the notarial officer is able to see and hear, in real time, the declarant's actions and expressions of intent either in the declarant's physical presence or through audiovisual communication as defined in IC 33-42-0.5-5."

Page 31, delete lines 17 through 22, begin a new paragraph and insert:

"Sec. 19. (a) As used in this chapter and with respect to interactions between a declarant and a witness who signs or participates in the signing of an advance directive or other document under this chapter, "presence", "present", and "to be present" means that throughout the process of signing and witnessing the advance directive or other document the following must occur:"

Page 31, line 23, delete "or the declarant and the".

Page 31, line 24, delete "notarial officer".

Page 31, line 32, delete "notarial officer or the".

Page 31, line 38, delete "or the notarial officer".

Page 32, delete lines 3 through 6, begin a new line double block indented and insert:

"(C) the actions of each other witness in signing the advance directive or other document."

Page 32, line 8, delete "testator" and insert "**declarant**".



Page 32, line 8, delete "the notarial officer or".

Page 32, between lines 11 and 12, begin a new paragraph and insert:

"(b) As used in this chapter and with respect to interactions between a declarant and a notarial officer who signs or participates in the signing of an advance directive or other document under this chapter, "presence", "present", and "to be present" means that throughout the process of signing, acknowledging, and notarizing the advance directive or other document the following must occur:

(1) The declarant and the notarial officer are:

(A) directly present with each other in the same physical space; or

(B) able to interact with each other in real time through the use of any audiovisual technology, now known or later developed, whose use complies with IC 33-42.

(2) The notarial officer is able to positively identify the declarant by using an identity proofing method permitted under IC 33-42-0.5-16.

(3) Each witness or the notarial officer is able to interact with the declarant and each other witness, if any, by observing the declarant's:

(A) expression of intent to execute an advance directive or other document under this chapter; and

(B) actions in executing or directing the execution of the advance directive or other document under this chapter.

If the declarant appears before the notarial officer in a manner that satisfies the definitions of "appear" and "appearance" as defined in IC 33-42-0.5, then the declarant and the notarial officer satisfy the presence requirement described in this chapter. The requirements specified in subdivisions (2) and (3) are satisfied even if the testator and the notarial officer use technology to assist with one (1) or more of the capabilities of hearing, eyesight, or speech to compensate for impairments of any one (1) or more of those capabilities."

Page 33, delete lines 39 through 42

Page 34, delete lines 1 through 11.

Page 34, line 12, delete "(g)" and insert "**(f)**".

Page 34, line 24, delete "(h)" and insert "**(g)**".

Page 36, line 29, after "with the" insert "**two (2)**".

Page 36, line 29, delete "or the notarial officer".

Page 36, line 31, delete "or the declarant and the notarial".

Page 36, line 32, delete "officer".



Page 36, line 33, delete "or a notarial officer".

Page 36, line 35, after "section." insert "**A declarant and a notarial officer may not use telephonic interaction to accomplish the signing of an advance directive or other document under this chapter.**".

Page 36, line 37, delete "or the notarial officer".

Page 37, line 2, delete "or the notarial".

Page 37, line 3, delete "officer".

Page 37, line 7, delete "or the notarial officer".

Page 39, delete lines 14 through 27, begin a new paragraph and insert:

"Sec. 30. (a) The state department shall maintain a list of resources on its Internet web site, including sample advance directive forms that are consistent with this chapter."

Page 52, line 6, delete "individual" and insert "**declarant**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 204 as introduced.)

BROWN L, Chairperson

Committee Vote: Yeas 8, Nays 0.

SENATE MOTION

Madam President: I move that Engrossed Senate Bill 204, which is eligible for third reading, be returned to second reading for purposes of amendment.

ROGERS

SENATE MOTION

Madam President: I move that Senate Bill 204 be amended to read as follows:

Page 15, delete lines 29 through 35, begin a new line block indented and insert:

"(2) the:

(A) identity of the declarant is personally known to all

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witnesses;

(B) witnesses are able to view a government issued, photographic identification of the declarant; or

(C) witnesses are able to ask any question of the declarant that:

(i) authenticates the identity of the declarant; and

(ii) establishes the capacity and sound mind of the declarant to the satisfaction of the witnesses; and".

Page 18, line 18, delete "subsection the:" and insert "**subsection:**".

Page 18, delete lines 19 through 22, begin a new line block indented and insert:

"(1) the:

(A) identity of the declarant must be personally known to the witness;

(B) witness must be able to view a government issued, photographic identification of the declarant; or

(C) witness must be able to ask any question of the declarant that:

(i) authenticates the identity of the declarant; and

(ii) establishes the capacity and sound mind of the declarant to the satisfaction of the witness;".

Page 18, line 23, after "(2)" insert "**the**".

Page 18, line 27, after "(3)" insert "**the**".

Page 31, line 25, delete "interaction." and insert "**interaction when:**

(i) the identity of the declarant is personally known to the witness;

(ii) the witness is able to view a government issued, photographic identification of the declarant; or

(iii) the witness is able to ask any question of the declarant that authenticates the identity of the declarant and establishes the capacity and sound mind of the declarant to the satisfaction of the witness."

Page 31, line 27, delete "photo" and insert "**, photographic**".

Page 31, delete lines 29 through 30, and insert "**declarant that authenticate the identity of the declarant and establish the capacity and sound mind of the declarant to the satisfaction of the witness."**

Page 37, line 5, delete "about the" and insert "**that:**

(1) authenticate the identity of the declarant; and

(2) establish the capacity and sound mind of the declarant to the satisfaction of the witness."

Page 37, delete lines 6 through 9.

(Reference is to SB 204 as printed February 5, 2021.)



ROGERS

COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred Senate Bill 204, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 204 as reprinted February 16, 2021.)

BARRETT

Committee Vote: Yeas 10, Nays 0

