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

SENATE ENROLLED ACT No. 204

AN ACT to amend the Indiana Code concerning health.

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

SECTION 1. IC 12-10-7-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 8. (a) The division shall contract in writing for the provision of the guardianship services required in each region with a nonprofit corporation that is:

(1) qualified to receive tax deductible contributions under Section 170 of the Internal Revenue Code; and

(2) located in the region.

(b) The division shall establish qualifications to determine eligible providers in each region.

(c) Each contract between the division and a provider must specify a method for the following:

(1) The establishment of a guardianship committee within the provider, serving under the provider's board of directors.

(2) The provision of money and services by the provider in an amount equal to at least twenty-five percent (25%) of the total amount of the contract and the provision by the division of the remaining amount of the contract. The division shall establish guidelines to determine the value of services provided under this subdivision.

(3) The establishment of procedures to avoid a conflict of interest for the provider in providing necessary services to each

incapacitated individual.

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

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

(A) Designation as a representative payee by:

(i) the Social Security Administration;

(ii) the United States Office of Personnel Management;

(iii) the United States Department of Veterans Affairs; or

(iv) the United States Railroad Retirement Board.

(B) Limited guardianship under IC 29-3.

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

(D) The appointment of:

(i) a health care representative under IC 16-36-1-7 **or IC 16-36-7;** or

(ii) a power of attorney under IC 30-5.

(6) The periodic reassessment of each incapacitated individual.

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

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

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

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

(1) a guardian;

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

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

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

(5) the personal representative of the estate;

of a resident of a long term care facility.

SECTION 3. IC 12-10-18-1, AS ADDED BY P.L.140-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. (a) A law enforcement agency that receives a notification concerning a missing endangered adult from:

(1) the missing endangered adult's:

(A) guardian;

(B) custodian; or

(C) guardian ad litem; or

(2) an individual who:

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

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

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

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

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

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

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

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

(C) The missing endangered adult's address.

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

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

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

(1) performs surgical abortion procedures; or

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

(b) The term does not include the following:

(1) A hospital that is licensed as a hospital under IC 16-21-2.

(2) An ambulatory outpatient surgical center that is licensed as an ambulatory outpatient surgical center under IC 16-21-2.

(3) A health care provider that provides, prescribes, administers, or dispenses an abortion inducing drug to fewer than five (5) patients per year for the purposes of inducing an abortion.

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

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

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

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

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

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

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

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

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

SECTION 12. IC 16-18-2-106.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 106.2. "Electronic record", for purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-7.**

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

(b) For purposes of IC 16-42-3 and IC 16-42-22, "electronic

signature" means an electronic sound, symbol, or process:

(1) attached to or logically associated with an electronically transmitted prescription or order; and

(2) executed or adopted by a person;

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

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

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

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

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

(1) hospitals licensed under IC 16-21-2, private mental health institutions licensed under IC 12-25, and tuberculosis hospitals established under IC 16-11-1 (before its repeal);

(2) health facilities licensed under IC 16-28; and

(3) rehabilitation facilities and kidney disease treatment centers.

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

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

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

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

(1) An individual, a partnership, a corporation, a professional corporation, a facility, or an institution licensed or legally authorized by this state to provide health care or professional services as a licensed physician, a psychiatric hospital, a hospital, a health facility, an emergency ambulance service (IC 16-31-3), a dentist, a registered or licensed practical nurse, a midwife, an optometrist, a pharmacist, a podiatrist, a chiropractor, a physical therapist, a respiratory care practitioner, an occupational therapist,

a psychologist, a paramedic, an emergency medical technician, an advanced emergency medical technician, an athletic trainer, or a person who is an officer, employee, or agent of the individual, partnership, corporation, professional corporation, facility, or institution acting in the course and scope of the person's employment.

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

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

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

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

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

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

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

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

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

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

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

(c) "Health care provider", for purposes of IC 16-32-5, IC 16-36-5, IC 16-36-6, and IC 16-41-10 means an individual licensed or authorized by this state to provide health care or professional services as:

(1) a licensed physician;

(2) a registered nurse;

(3) a licensed practical nurse;

(4) an advanced practice registered nurse;

(5) a certified nurse midwife;

(6) a paramedic;

(7) an emergency medical technician;

(8) an advanced emergency medical technician;

(9) an emergency medical responder, as defined by section 109.8 of this chapter;

(10) a licensed dentist;

(11) a home health aide, as defined by section 174 of this chapter; or

(12) a licensed physician assistant.

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

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

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

(1) An individual, a partnership, a corporation, a professional corporation, a facility, or an institution licensed or authorized by the state to provide health care or professional services as a licensed physician, a psychiatric hospital, a hospital, a health facility, an emergency ambulance service (IC 16-31-3), an ambulatory outpatient surgical center, a dentist, an optometrist, a pharmacist, a podiatrist, a chiropractor, a psychologist, or a person who is an officer, employee, or agent of the individual, partnership, corporation, professional corporation, facility, or institution acting in the course and scope of the person's employment.

(2) A blood bank, laboratory, community mental health center, community intellectual disability center, community health center, or migrant health center.

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

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

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

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

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

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

(C) is determined to be eligible for coverage as a health care

provider under IC 34-18 for the corporation's, partnership's, or professional corporation's health care function.

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

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

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

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

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

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

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

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

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

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

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

(2) Serves to prolong the dying process.

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

SECTION 23. IC 16-18-2-253.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2021]: **Sec. 253.8. "Notarial officer", for purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-17.**

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

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

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

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

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

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

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

SECTION 31. IC 16-18-2-354.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 354.8. "Treating physician", for purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-25.**

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

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

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

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

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

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

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

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

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

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

(1) an adult; or

(2) a minor and:

(A) is emancipated;

(B) is:

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

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

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

(iv) managing the minor's own affairs;

(C) is or has been married;

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

(E) meets the requirements of section 3.5 of this chapter; or

(F) is authorized to consent to the health care by any other statute.

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

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

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

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

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

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

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

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

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

SECTION 37. IC 16-36-1-7, AS AMENDED BY P.L.81-2015, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 7. (a) An individual who may consent to health care under section 3 of this chapter may appoint another representative to act for the appointor in matters affecting the appointor's health care.

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

(1) Be in writing.

(2) Be signed by the appointor or by a designee in the appointor's

presence **before January 1, 2023.**

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

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

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

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

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

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

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

(2) In good faith.

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

(1) The appointor.

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

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

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

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

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

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

(1) receives mental health services; and

(2) is mentally incompetent.

(b) A patient described in subsection (a) shall provide consent for mental health treatment through the informed consent of one (1) of the following:

(1) The patient's legal guardian or other court appointed

representative.

(2) The patient's health care representative under IC 16-36-1.

(3) An attorney in fact for health care appointed under IC 30-5-5-16.

(4) The patient's health care representative acting in accordance with the patient's psychiatric advance directive as expressed in a psychiatric advance directive executed under IC 16-36-1.7.

(5) The patient's health care representative conferred under IC 16-36-7.

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

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

~~(2) Serves to prolong the dying process.~~

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

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

LIVING WILL DECLARATION

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

If at any time my attending physician certifies in writing that: (1) I have an incurable injury, disease, or illness; (2) my death will occur within a short time; and (3) the use of life prolonging procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the performance or provision of any medical procedure or medication necessary to provide me with comfort care or to alleviate pain, and, if I have so indicated below, the provision of artificially supplied nutrition and hydration. (Indicate your choice by ~~initialling~~ **initialing** or making your mark before signing this declaration):

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

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

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

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

I understand the full import of this declaration.

Signed _____

_____

City, County, and State of Residence

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

Witness _____ Date _____

Witness _____ Date _____

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

SECTION 42. IC 16-36-5-4.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 4.3. As used in this chapter, and with respect to a declarant, witness, or other person who signs or participates in the signing of an out of hospital DNR declaration under this chapter, "in the presence of" has the meaning set forth in section 7.7 of this chapter.**

SECTION 43. IC 16-36-5-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 4.5. As used in this chapter, and with respect to a declarant and witness, "observe" means to**

perceive another's actions or expression of intent through the senses of eyesight, hearing, or both. The term includes perceptions perceived through the use of technology or learned skills to:

(1) assist a person's capability for eyesight, hearing, or both; or

(2) compensate for an impairment of a person's capability for eyesight, hearing, or both.

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

(1) the declarant and witness are:

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

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

(C) are able to speak to and hear each other in real time through telephonic interaction;

(2) the:

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

(3) each witness is able to interact with the declarant and each other when observing or hearing in real time, as applicable:

(A) the declarant's expression of intent to execute an out of hospital DNR declaration under this chapter;

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

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

The term includes the use of technology or learned skills for the

purpose of assisting with hearing, eyesight, and speech or for the purpose of compensating for a hearing, eyesight, or speech impairment.

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

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

(1) legal guardian or other court appointed representative responsible for making health care decisions for the person;

(2) health care representative **appointed** under ~~IC 16-36-1,~~ ~~or~~ **IC 16-36-1-7;**

(3) health care representative appointed under IC 16-36-7; or

~~(3)~~ **(4)** attorney in fact for health care appointed under IC 30-5-5-16.

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

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

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

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

SECTION 49. IC 16-36-5-11 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 11. (a) A person who is of sound mind and at least eighteen (18) years of age may execute an out of hospital DNR declaration.

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

(1) at least eighteen (18) years of age; and

(2) incompetent.

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

(1) Be voluntary.

(2) Be in writing.

(3) Be signed by the person making the declaration or by another person in the declarant's presence and at the declarant's express direction.

(4) Be dated.

(5) Be signed in the presence of at least two (2) competent witnesses.

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

(1) The declarant.

(2) A health care representative who has been appointed by the declarant.

(3) A person who supervised the signing of the out of hospital DNR declaration in the person's presence.

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

The person who combines the separately signed counterparts into a single composite document must do so not later than ten (10) business days after the person receives all of the separately signed tangible, paper counterparts. Any scanned, photocopied, or other

accurate copy of the single, composite document shall be treated as validly signed under this subsection if the single, composite document contains the complete text of the out of hospital DNR declaration and all required signatures.

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

(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;

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

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

A health care provider or person who disputes the validity of an out of hospital DNR declaration described under this subsection has the burden of proving the invalidity of the declaration or noncompliance with this subsection, as applicable, by a preponderance of the evidence.

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

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

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

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

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

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

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

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

(2) the patient is unable to validate the declaration.

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

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

(1) A court appointed guardian of the patient, if one has been appointed. This subdivision does not require the appointment of a guardian so that a treatment decision may be made under this section.

(2) A person designated by the patient in writing to make a treatment decision.

(3) The patient's spouse.

(4) An adult child of the patient or a majority of any adult

children of the patient who are reasonably available for consultation.

(5) An adult sibling of the patient or a majority of any adult siblings of the patient who are reasonably available for consultation.

(6) The patient's clergy.

(7) Another person who has firsthand knowledge of the patient's intent.

(d) The individuals described in subsection (c)(1) through (c)(7) shall act in the best interest of the patient and shall follow the patient's express or implied intent, if known.

(e) The attending physician, **advanced practice registered nurse, or physician assistant** acting under subsection (c) shall list the names of the individuals described in subsection (c) who were consulted and include the information received in the patient's medical file.

(f) If the attending physician, **advanced practice registered nurse, or physician assistant** determines from the information received under subsection (c) that the patient intended to execute a valid out of hospital DNR declaration, the attending physician, **advanced practice registered nurse, or physician assistant** may:

(1) issue an out of hospital DNR order, with the concurrence of at least one (1) physician documented in the patient's medical file; or

(2) request a court to appoint a guardian for the patient to make the consent decision on behalf of the patient.

(g) An out of hospital DNR order must be issued on the form specified in section 15 of this chapter.

SECTION 52. IC 16-36-5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 15. An out of hospital DNR declaration and order must be in substantially the following form:

OUT OF HOSPITAL DO NOT RESUSCITATE DECLARATION AND ORDER

This declaration and order is effective on the date of execution and remains in effect until the death of the declarant or revocation.

OUT OF HOSPITAL DO NOT RESUSCITATE DECLARATION

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

My attending physician, **advanced practice registered nurse, or physician assistant** has certified that I am a qualified person, meaning

that I have a terminal condition or a medical condition such that, if I suffer cardiac or pulmonary failure, resuscitation would be unsuccessful or within a short period I would experience repeated cardiac or pulmonary failure resulting in death.

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

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

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

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

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

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

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

I understand the full import of this declaration.

Signed_____

Printed name_____

_____

City and State of Residence_____

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

Witness_____Printed name_____Date_____

Witness_____Printed name_____Date_____

OUT OF HOSPITAL DO NOT RESUSCITATE ORDER

I,_____, the attending physician, **advanced practice registered nurse, or physician assistant** of _____, have certified the declarant as a qualified person

to make an out of hospital DNR declaration, and I order health care providers having actual notice of this out of hospital DNR declaration and order not to initiate or continue cardiopulmonary resuscitation procedures on behalf of the declarant, unless the out of hospital DNR declaration is revoked.

Signed _____Date_____

Printed name_____

Medical license number _____

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

(1) by the declarant's attending physician, **advanced practice registered nurse, or physician assistant** in the declarant's medical file; and

(2) by the declarant or the declarant's representative.

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

(1) a necklace or bracelet; and

(2) inscribed with:

(A) the declarant's name;

(B) the declarant's date of birth; and

(C) the words "Do Not Resuscitate".

(b) An out of hospital DNR identification device may be created for a declarant only after an out of hospital DNR declaration and order has been executed by a declarant and an attending physician, **advanced practice registered nurse, or physician assistant.**

(c) The device developed under subsection (a) is not a substitute for the out of hospital DNR declaration and order.

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

(1) A signed, dated writing.

(2) Physical cancellation or destruction of the declaration and order by the declarant or another in the declarant's presence and at the declarant's direction.

(3) An oral expression by the declarant of intent to revoke.

(b) A declarant's representative may revoke an out of hospital DNR declaration and order under this chapter only if the declarant is incompetent.

(c) A revocation is effective upon communication to a health care provider.

(d) A health care provider to whom the revocation of an out of hospital DNR declaration and order is communicated shall immediately notify the declarant's attending physician, **advanced practice registered nurse, or physician assistant,** if known, of the revocation.

(e) An attending physician, **advanced practice registered nurse, or physician assistant** notified of the revocation of an out of hospital DNR declaration and order shall immediately:

(1) add the revocation to the declarant's medical file, noting the time, date, and place of revocation, if known, and the time, date, and place that the physician, **advanced practice registered nurse, or physician assistant** was notified;

(2) cancel the out of hospital DNR declaration and order by entering the word "VOID" on each page of the out of hospital DNR declaration and order in the declarant's medical file; and

(3) notify any health care facility staff responsible for the declarant's care of the revocation.

SECTION 56. IC 16-36-5-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 19. (a) A health care provider shall withhold or discontinue CPR to a patient in an out of hospital location if the health care provider has actual knowledge of:

(1) an original or a copy of a signed out of hospital DNR declaration and order executed by the patient; or

(2) an out of hospital DNR identification device worn by the patient or in the patient's possession.

(b) A health care provider shall disregard an out of hospital DNR declaration and order and perform CPR if:

(1) the declarant is conscious and states a desire for resuscitative measures;

(2) the health care provider believes in good faith that the out of hospital DNR declaration and order has been revoked;

(3) the health care provider is ordered by the attending physician, **advanced practice registered nurse, or physician assistant** to disregard the out of hospital DNR declaration and order; or

(4) the health care provider believes in good faith that the out of hospital DNR declaration and order must be disregarded to avoid verbal or physical confrontation at the scene.

(c) A health care provider transporting a declarant shall document on the transport form:

(1) the presence of an out of hospital DNR declaration and order;

(2) the attending physician's, **advanced practice registered**

nurse's, or physician assistant's name; and

(3) the date the out of hospital DNR declaration and order was signed.

(d) An out of hospital DNR identification device must accompany a declarant whenever the declarant is transported.

SECTION 57. IC 16-36-5-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 22. (a) A person may challenge the validity of an out of hospital DNR declaration and order by filing a petition for review in a court in the county in which the declarant resides.

(b) A petition filed under subsection (a) must include the name and address of the declarant's attending physician, **advanced practice registered nurse, or physician assistant.**

(c) A court in which a petition is filed under subsection (a) may declare an out of hospital DNR declaration and order void if the court finds that the out of hospital DNR declaration and order was executed:

(1) when the declarant was incapacitated due to insanity, mental illness, mental deficiency, duress, undue influence, fraud, excessive use of drugs, confinement, or other disability;

(2) contrary to the declarant's wishes; or

(3) when the declarant was not a qualified person.

(d) If a court finds that the out of hospital DNR declaration and order is void, the court shall cause notice of the finding to be sent to the declarant's attending physician, **advanced practice registered nurse, or physician assistant.**

(e) Upon notice under subsection (d), the declarant's attending physician, **advanced practice registered nurse, or physician assistant** shall follow the procedures under section 18(e) of this chapter.

SECTION 58. IC 16-36-5-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 26. The act of withholding or withdrawing CPR, when done under:

(1) an out of hospital DNR declaration and order issued under this chapter;

(2) a court order or decision of a court appointed guardian; or

(3) a good faith medical decision by the attending physician, **advanced practice registered nurse, or physician assistant** that the patient has a terminal illness;

is not an intervening force and does not affect the chain of proximate cause between the conduct of a person that placed the patient in a terminal condition and the patient's death.

SECTION 59. IC 16-36-6-3 IS REPEALED [EFFECTIVE JULY 1,

2021]. ~~Sec. 3. (a) As used in this chapter, "life prolonging procedure" means any medical procedure, treatment, or intervention that does the following:~~

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

~~(2) Serves to prolong the dying process.~~

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

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

(1) A qualified person who is:

(A) either:

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

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

(B) of sound mind.

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

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

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

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

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

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

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

(v) appointed by the individual under IC 16-36-7 to serve as the individual's health care representative.

(b) In order to complete a POST form, a person described in subsection (a) and the qualified person's treating physician, advanced practice registered nurse, or physician assistant or the physician's,

advanced practice registered nurse's, or physician assistant's designee must do the following:

(1) Discuss the qualified person's goals and treatment options available to the qualified person based on the qualified person's health.

(2) Complete the POST form, to the extent possible, based on the qualified person's preferences determined during the discussion in subdivision (1).

(c) When completing a POST form on behalf of a qualified person, a representative shall act:

(1) in good faith; and

(2) in:

(A) accordance with the qualified person's express or implied intentions, if known; or

(B) the best interest of the qualified person, if the qualified person's express or implied intentions are not known.

(d) A copy of the executed POST form shall be maintained in the qualified person's medical file.

SECTION 61. IC 16-36-6-9, AS AMENDED BY P.L.10-2019, SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 9. (a) The state department shall develop a standardized POST form and distribute the POST form.

(b) The POST form developed under this section must include the following:

(1) A medical order specifying whether cardiopulmonary resuscitation (CPR) should be performed if the qualified person is in cardiopulmonary arrest.

(2) A medical order concerning the level of medical intervention that should be provided to the qualified person, including the following:

(A) Comfort measures.

(B) Limited additional interventions.

(C) Full intervention.

(3) A medical order specifying whether antibiotics should be provided to the qualified person.

(4) A medical order specifying whether artificially administered nutrition should be provided to the qualified person.

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

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

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

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

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

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

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

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

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

(C) The date of the signature.

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

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

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

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

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

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

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

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

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

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

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

Chapter 7. Health Care Advance Directives

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

(1) a declarant's advance directive; or

(2) any provision of this chapter;

does not constitute a suicide.

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

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

(1) communicate or confirm the individual's desires or preferences to receive or refuse life prolonging treatment or other health care; or

(2) give one (1) or more other persons authority to consent to health care or make health care decisions on the individual's behalf.

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

(1) IC 16-34; or

(2) IC 16-36-1-3.5.

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

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

(1) is signed by an adult who has not been determined to be incapacitated; and

(2) in the context of the relevant circumstances, clearly communicates the individual's intention to give one (1) or more specified persons authority to consent to health care or make health care decisions on the individual's behalf.

Sec. 2. As used in this chapter, "advance directive" means a written declaration of a declarant who:

(1) gives instructions or expresses preferences or desires

concerning any aspect of the declarant's health care or health information, including the designation of a health care representative, a living will declaration made under IC 16-36-4-10, or an anatomical gift made under IC 29-2-16.1; and

(2) complies with the requirements of this chapter.

Sec. 3. As used in this chapter, "best interests" means the promotion of the individual's welfare, based on consideration of material factors, including relief of suffering, preservation or restoration of function, and quality of life.

Sec. 4. As used in this chapter, "declarant" means a competent adult who has executed an advance directive.

Sec. 5. As used in this chapter, "declaration" means a written document, voluntarily executed by a declarant for the declarant under section 28 of this chapter.

Sec. 6. As used in this chapter, "electronic" has the meaning set forth in IC 26-2-8-102(7).

Sec. 7. As used in this chapter, "electronic record" has the meaning set forth in IC 26-2-8-102(9).

Sec. 8. As used in this chapter, "electronic signature" has the meaning set forth in IC 26-2-8-102(10).

Sec. 9. As used in this chapter, "health care" means any care, treatment, service, supplies, or procedure to maintain, diagnose, or treat an individual's physical or mental condition, including preventive, therapeutic, rehabilitative, maintenance, or palliative care, and counseling.

Sec. 10. As used in this chapter, "health care decision" means the following:

(1) Informed consent, refusal of consent, or withdrawal of consent to any and all health care, including life prolonging procedures and mental health treatment, unless otherwise stated in the advance directive.

(2) The decision to apply for private, public, government, or veterans' benefits to defray the cost of health care.

(3) The right of access to health information of the declarant reasonably necessary for a health care representative or proxy to make decisions involving health care and to apply for benefits.

(4) The decision to make an anatomical gift under IC 29-2-16.1.

Sec. 11. As used in this chapter, "health care facility" includes the following:

(1) An ambulatory outpatient surgical center licensed under IC 16-21-2.

(2) A health facility licensed under IC 16-28-2 or IC 16-28-3.

(3) A home health agency licensed under IC 16-27-1.

(4) A hospice program licensed under IC 16-25-3.

(5) A hospital licensed under IC 16-21-2.

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

Sec. 12. As used in this chapter, "health care provider" means any person licensed, certified, or authorized by law to administer health care in the ordinary course of business or practice of a profession.

Sec. 13. As used in this chapter, "health care representative" means a competent adult designated by a declarant in an advance directive to:

(1) make health care decisions; and

(2) receive health information;

regarding the declarant. The term includes a person who receives and holds validly delegated authority from a designated health care representative.

Sec. 14. As used in this chapter, "health information" has the meaning set forth in 45 CFR 160.103.

Sec. 15. As used in this chapter, "incapacity" and "incapacitated" mean that an individual is unable to comprehend and weigh relevant information and to make and communicate a reasoned health care decision. For the purposes of making an anatomical gift, the terms include an individual who is deceased.

Sec. 16. As used in this chapter, "informed consent" means consent voluntarily given by an individual after a sufficient explanation and disclosure of the subject matter involved to enable that individual to have a general understanding of the treatment or procedure and the medically acceptable alternatives, including the substantial risks and hazards inherent in the proposed treatment or procedure, and to make a knowing health care decision without coercion or undue influence.

Sec. 17. As used in this chapter, "notarial officer" means a person who is authorized under IC 33-42-9-7 to perform a notarial act (as defined in IC 33-42-0.5-18). The term includes a notary public.

Sec. 18. (a) As used in this chapter and with respect to interactions between a declarant and a witness, "observe" means to perceive another's actions or expressions of intent through the

senses of eyesight or hearing, or both. A person is able to observe another's actions or expressions of intent even if the person uses technology or learned skills to:

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

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

(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.

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:

(1) The declarant and the witness are:

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

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

(C) able to speak to and hear each other in real time through telephonic 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.

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

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

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

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

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

The requirements of subdivisions (2) and (3) are satisfied even if the declarant and one (1) or all witnesses 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.

(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.

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

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

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

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

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

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

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

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

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

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

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

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

(1) an adult; or

(2) a minor, and:

(A) is emancipated;

(B) is:

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

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

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

(iv) managing the minor's own affairs;

(C) is or has been married;

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

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

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

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

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

(e) If:

(1) an individual:

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

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

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

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

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

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

(2) communicated orally by the individual to a health care provider in the direct physical presence of the individual; and

(3) reduced to or confirmed in writing by the health care provider on a reasonably contemporaneous basis and made a part of the health care provider's medical records for the

individual.

(g) If:

(1) an individual later signs an advance directive under section 28 of this chapter; and

(2) the advance directive conflicts with the recorded earlier oral instructions of the individual with respect to health care decisions or the designation of a health care representative;

the advance directive controls.

Sec. 28. (a) An advance directive signed by or for a declarant under this section may accomplish or communicate one (1) or more of the following:

(1) Designate one (1) or more competent adult individuals or other persons as a health care representative to make health care decisions for the declarant or receive health information on behalf of the declarant, or both.

(2) State specific health care decisions by the declarant.

(3) State the declarant's preferences or desires regarding the provision, continuation, termination, or refusal of life prolonging procedures, palliative care, comfort care, or assistance with activities of daily living.

(4) Specifically disqualify one (1) or more named individuals from:

(A) being appointed as a health care representative for the declarant;

(B) acting as a proxy for the declarant under section 42 of this chapter; or

(C) receiving and exercising delegated authority from the declarant's health care representative.

(b) An advance directive under this section must be signed by or for the declarant using one (1) of the following methods:

(1) Signed by the declarant in the presence of two (2) adult witnesses or in the presence of a notarial officer.

(2) Signing of the declarant's name by another adult individual at the specific direction of the declarant, in the declarant's presence, and in the presence of the two (2) adult witnesses or a notarial officer. However, an individual who signs the declarant's name on the advance directive may not be a witness, the notarial officer, or a health care representative designated in the advance directive.

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

(1) Signed in the declarant's direct physical presence by two

(2) adult witnesses, at least one (1) of whom may not be the spouse or other relative of the declarant.

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

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

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

(1) the declarant;

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

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

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

must combine all of the separately signed paper counterparts of the advance directive into a single composite document that contains the text of the advance directive, the signature of the declarant, and the signatures of the witnesses, if any, or the notarial officer. The person who combines the separately signed counterparts into a single composite document must do so not later than ten (10) business days after the person receives all of the separately signed paper counterparts. Any scanned copy, photocopy, or other accurate copy of the composite document that contains the complete text of the advance directive and all signatures will be treated as validly signed under this section. The person who creates

the signed composite document under this subsection may include information about compliance within this subsection in an optional affidavit that is signed under section 41 of this chapter.

(e) If facts and circumstances, including physical impairments or physical isolation of a competent declarant, make it impossible or impractical for the declarant to use audiovisual technology to interact with the two (2) witnesses and to satisfy the presence requirement under section 19 of this chapter, the declarant and the witnesses may use telephonic interaction throughout the signing process. A potential witness cannot be compelled to use telephonic interaction alone to accomplish the signing of an advance directive under this section. 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.

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

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

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

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

(j) If a declarant resides in or is located in a jurisdiction other than Indiana at the time when the declarant signs a writing that communicates the information described in subsection (a), the writing must be treated as a validly signed advance directive under this chapter if the declarant was not incapacitated at the time of signing and if the writing was:

(1) signed and witnessed or acknowledged in a manner that complies with subsections (b) and (c); or

(2) signed in a manner that complies with the applicable law

of the jurisdiction in which the declarant was residing or was physically located at the time of signing.

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

(1) A provision that delays:

(A) the effectiveness of an instruction or decision by the declarant; or

(B) the effectiveness of the authority of a designated health care representative;

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

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

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

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

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

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

(A) a stated date; or

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

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

(5) A provision that designates two (2) or more health care representatives and permits them to act individually and independently, or that requires them to act jointly, on a majority vote basis, or under a combination of requirements to make all health care decisions or specified health care decisions for the declarant. The advance directive may include a provision for a successor health care representative to act

according to different requirements.

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

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

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

(9) A provision that:

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

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

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

(A) receive:

(i) health information about the declarant; and

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

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

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

(11) Any other provision concerning the:

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

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

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.

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

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

(1) is specifically designated by name in the advance directive;

and

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

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

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

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

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

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

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

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

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

(A) revoke the entire advance directive;

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

(C) revoke one (1) or more specific health care decisions or one (1) or more desires or treatment preferences within the advance directive.

However, if a declarant has not been determined to be incapacitated under section 35 of this chapter, the declarant always has the right to orally revoke a health care decision that is included within an advance directive under section 28(a)(2) of this chapter or a statement of desires or treatment preferences that is included

within an advance directive under section 28(a)(3) of this chapter, despite any contrary wording in the advance directive.

(b) Until a health care representative or health care provider has actual knowledge of a valid revocation of an advance directive:

(1) actions and health care decisions by a health care representative designated in the advance directive are valid and binding on the declarant; and

(2) health care providers may continue to rely on health care decisions by the health care representative.

(c) A declarant who has signed a valid advance directive may amend or restate that advance directive in a writing that is signed in compliance with section 28 of this chapter and witnessed or acknowledged in compliance with section 28(c), 28(d), or 28(e) of this chapter. The amendment or restatement may take any action that could have been included in the former or original advance directive.

Sec. 33. (a) Except when the terms of the advance directive explicitly prohibit or restrict delegation, a health care representative who is designated by name in an advance directive may make a written delegation of some or all of the health care representative's authority to one (1) or more other competent adults or other persons, on a temporary or open ended basis as stated in the written delegation document.

(b) A written delegation document under this section must be signed in compliance with section 28 of this chapter and witnessed or acknowledged in compliance with section 28(c), 28(d), or 28(e) of this chapter.

(c) A written delegation of authority that does not state an expiration date continues until it is revoked, in a manner complying with section 32 of this chapter, by the competent declarant or by the health care representative who signed the written delegation.

(d) If the advance directive explicitly states a date or event that triggers termination of the advance directive or termination of the authority of a health care representative who makes a written delegation under this section, the delegated authority terminates upon the triggering event or expiration date.

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

(1) If the advance directive does not state a delayed effective

date or a future triggering event for effectiveness, the advance directive is effective immediately upon signing and witnessing or acknowledgment in compliance with section 28 of this chapter. However, if the declarant has capacity to consent to health care, the declarant has the right to make health care decisions, give consent, or provide instructions that supersede or overturn any decision that is made or could be made by the declarant's health care representative.

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

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

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

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

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

(4) If:

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

(B) the later signed advance directive does not explicitly state that one (1) or more of the previous advance directives by the declarant remain in effect;

each previous advance directive is superseded and revoked by the last signed advance directive.

(5) Unless the advance directive explicitly provides otherwise, each health care representative who is designated in an

advance directive continues to have authority after the death of the declarant to do the following:

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

(B) Request or authorize an autopsy.

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

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

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

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

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

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

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

(13) If explicitly allowed or required in the advance directive, each person who may act as a proxy for the declarant under sections 42 and 43 of this chapter, if an advance directive had not existed, has the right to make a written demand for and to receive from a health care representative a narrative description or other appropriate accounting of the actions

taken and decisions made by a health care representative under the advance directive. Notwithstanding any provision in the advance directive, a health care representative who prepares a narrative description or accounting in response to a written demand is entitled to reasonable compensation for the time and effort spent in doing so.

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

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

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

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

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

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

Sec. 35. (a) For purposes of this section, the term "declarant" includes an individual who has not executed an advance directive or who has no unrevoked advance directive in effect.

(b) A declarant is presumed to be capable of making health care decisions for the declarant unless the declarant is determined to be incapacitated. The declarant's desires are controlling while a declarant has decision making capacity. Each physician or health

care provider must clearly communicate to a declarant who has decision making capacity the treatment plan and any change to the treatment plan before implementation of the plan or a change to the plan. Incapacity may not be inferred from a person's voluntary or involuntary hospitalization for mental illness or from the person's intellectual disability.

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

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

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

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

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

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

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

(g) A determination made under this section that a declarant lacks capacity to make health care decisions may not be construed as a finding that a declarant lacks capacity for any other purpose.

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

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

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

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

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

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

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

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

(c) If, after a declarant has designated one (1) or more health care representatives in an advance directive, a court appoints a guardian of the declarant's person, the authority of each designated health care representative continues unless the appointing court modifies or revokes the authority of one (1) or more health care representatives after a hearing upon notice under section 34(14) of this chapter. The court may order a health care representative to make appropriate or specified reports to the

guardian of the declarant's person or property.

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

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

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

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

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

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

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

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

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

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

(B) Promptly take all steps necessary to transfer the responsibility for the declarant's health care to another health care provider designated by the health care representative. However, a health care provider who takes steps for a transfer does not have a duty to look for or identify another health care provider who will accept the declarant.

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

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

(1) make an anatomical gift on behalf of the declarant;

(2) authorize an autopsy of the declarant's remains; or

(3) direct the disposition of the declarant's remains;

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

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

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

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

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

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

Sec. 41. (a) A health care representative designated in an advance directive or a person who was present during the signing of the advance directive may furnish to a health care provider or

other person an affidavit that states, to the best knowledge of the health care representative:

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

(2) that the declarant is alive;

(3) that the advance directive was validly executed;

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

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

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

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

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

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

(2) acts in good faith;

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

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

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

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

(2) the declarant has executed an advance directive and the

health care representative designated in the advance directive is not willing, able, or reasonably available to make health care decisions for the declarant.

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

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

(2) A spouse.

(3) An adult child.

(4) A parent.

(5) An adult sibling.

(6) A grandparent.

(7) An adult grandchild.

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

(9) A friend who:

(A) is an adult;

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

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

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

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

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

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

IC 30-5; and

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

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

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

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

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

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

(2) A spouse who:

(A) is legally separated; or

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

from the individual.

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

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

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

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

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

(3) a similar advance directive executed by the declarant

under the laws of another state in which the declarant was physically present at the time of signing; and

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

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

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

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

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

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

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

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

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

(1) A person:

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

(B) named in a United States Department of Defense form "Record of Emergency Data" (DD Form 93) or a successor form adopted by the United States Department of Defense, if

the decedent died while serving in any branch of the United States Armed Forces (as defined in 10 U.S.C. 1481) and completed the form.

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

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

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

(B) a court determines the decedent and spouse were physically and emotionally separated at the time of death and the separation was for an extended time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

(4) The decedent's surviving adult child or, if more than one (1) adult child is surviving, the majority of the adult children. However, less than half of the surviving adult children have the rights under this subdivision if the adult children have used reasonable efforts to notify the other surviving adult children of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children.

(5) The decedent's surviving parent or parents. If one (1) of the parents is absent, the parent who is present has authority under this subdivision if the parent who is present has used reasonable efforts to notify the absent parent.

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

(7) The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent or, if more than one (1) individual of the same degree is surviving, the majority of those who are of the same degree. However, less than half of the individuals who are of the same degree of kinship have the rights

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

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

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

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

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

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

(11) In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following may serve as the authorizing agent:

(A) If none of the persons identified in subdivisions (1) through (10) are available:

(i) a public administrator, including a responsible township trustee or the trustee's designee; or

(ii) the coroner.

(B) A state appointed guardian.

However, an indigent decedent may not be cremated if a surviving family member objects to the cremation or if cremation would be contrary to the religious practices of the deceased individual as expressed by the individual or the individual's family.

(12) In the absence of any person under subdivisions (1) through

(11), any person willing to assume the responsibility as the authorizing agent, as specified in this article.

(b) When a body part of a nondeceased individual is to be cremated, a representative of the institution that has arranged with the crematory authority to cremate the body part may serve as the authorizing agent.

(c) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not serve as the authorizing agent.

(d) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the crematory authority of the determination referred to in subsection (c)(2).

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

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

(g) If there is a dispute concerning the disposition of a decedent's remains, a crematory authority is not liable for refusing to accept the remains of the decedent until the crematory authority receives:

(1) a court order; or

(2) a written agreement signed by the disputing parties;

that determines the final disposition of the decedent's remains. If a crematory authority agrees to shelter the remains of the decedent while the parties are in dispute, the crematory authority may collect any applicable fees for storing the remains, including legal fees that are incurred.

(h) Any cause of action filed under this section must be filed in the probate court in the county where the decedent resided, unless the

decedent was not a resident of Indiana.

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

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

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

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

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

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

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

(ii) a court determines the decedent and spouse were physically and emotionally separated at the time of death and the separation was for an extended time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

(D) The decedent's surviving adult child or, if more than one (1) adult child is surviving, the majority of the adult children. However, less than half of the surviving adult children have

the rights under this clause if the adult children have used reasonable efforts to notify the other surviving adult children of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children.

(E) The decedent's surviving parent or parents. If one (1) of the parents is absent, the parent who is present has authority under this clause if the parent who is present has used reasonable efforts to notify the absent parent.

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

(G) The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent or, if more than one (1) individual of the same degree of kinship is surviving, the majority of those who are of the same degree. However, less than half of the individuals who are of the same degree of kinship have the rights under this clause if they have used reasonable efforts to notify the other individuals who are of the same degree of kinship of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the individuals who are of the same degree of kinship.

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

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

(J) If none of the persons described in clauses (A) through (I) are available, any other person willing to act and arrange for

the final disposition of the decedent's remains, including a funeral home that:

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

(ii) attests in writing that a good faith effort has been made to contact any living individuals described in clauses (A) through (I).

(2) To have acquired by court order the right to control the disposition of the deceased human body or cremated remains.

The owner of a cemetery may accept the authorization of an individual only if all other individuals of the same priority or a higher priority (according to the priority listing in this subsection) are deceased, are barred from authorizing the disposition of the deceased human body or cremated remains under subsection (c), or are physically or mentally incapacitated from exercising the authorization, and the incapacity is certified to by a qualified medical doctor.

(b) An action may not be brought against the owner of a cemetery relating to the remains of a human that have been left in the possession of the cemetery owner without permanent interment, entombment, or inurnment for a period of three (3) years, unless the cemetery owner has entered into a written contract for the care of the remains.

(c) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize the disposition of the decedent's body or cremated remains.

(d) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner of the determination referred to in subsection (c)(2).

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

person described in subsection (a).

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

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

(1) a court order; or

(2) a written agreement signed by the disputing parties;

that determines the final disposition of the decedent's remains. If a cemetery agrees to shelter the remains of the decedent while the parties are in dispute, the cemetery may collect any applicable fees for storing the remains, including legal fees that are incurred.

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

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

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

(1) A person:

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

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

(2) An individual specifically granted the authority in a power of attorney or a health care power of attorney executed by the

decedent under IC 30-5-5-16 **or a health care representative under IC 16-36-7.**

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

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

(B) a court determines the decedent and spouse were physically and emotionally separated at the time of death and the separation was for an extended time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

(4) The decedent's surviving adult child or, if more than one (1) adult child is surviving, the majority of the adult children. However, less than half of the surviving adult children have the rights under this subdivision if the adult children have used reasonable efforts to notify the other surviving adult children of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children.

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

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

(7) The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent or, if more than one (1) individual of the same degree survives, the majority of those who are of the same degree of kinship. However, less than half of the individuals who are of the same degree of kinship have the rights under this subdivision if they have used reasonable efforts to notify the other individuals who are of the same degree of kinship of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the individuals who are of the same degree of kinship.

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

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

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

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

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

(11) In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following:

(A) If none of the persons identified in subdivisions (1) through (10) is available:

(i) a public administrator, including a responsible township trustee or the trustee's designee; or

(ii) the coroner.

(B) A state appointed guardian.

(b) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize or designate

the manner, type, or selection of the final disposition of human remains.

(c) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner or crematory authority of the determination under subsection (b)(2).

(d) If the decedent had filed a protection order against a person described in subsection (a) and the protection order is currently in effect, the person described in subsection (a) may not authorize or designate the manner, type, or selection of the final disposition of human remains.

(e) A law enforcement agency shall determine if the protection order is in effect. If the law enforcement agency cannot determine the existence of a protection order that is in effect, the law enforcement agency shall consult the protective order registry established under IC 5-2-9-5.5.

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

(g) A funeral home has the right to rely, in good faith, on the representations of a person listed in subsection (a) that any other individuals of the same degree of kinship have been notified of the final disposition instructions.

(h) If there is a dispute concerning the disposition of a decedent's remains, a funeral home is not liable for refusing to accept the remains of the decedent until the funeral home receives:

(1) a court order; or

(2) a written agreement signed by the disputing parties;

that determines the final disposition of the decedent's remains. If a funeral home agrees to shelter the remains of the decedent while the parties are in dispute, the funeral home may collect any applicable fees for storing the remains, including legal fees that are incurred.

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

(j) A spouse seeking a judicial determination under subsection (a)(3)(A) that the decedent and spouse were reconciled before the decedent's death may petition the court having jurisdiction over the dissolution or separation proceeding to make this determination by

filing the petition under the same cause number as the dissolution or separation proceeding. A spouse who files a petition under this subsection is not required to pay a filing fee.

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

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

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

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

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

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

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

(5) "Decedent":

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

(B) includes:

(i) a stillborn infant; and

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

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

(7) "Document of gift" means a donor card or other record used to make an anatomical gift, including a statement or symbol on:

(A) a driver's license;

(B) an identification card;

(C) a resident license to hunt, fish, or trap; or

(D) a donor registry.

(8) "Donor" means an individual whose body or body part is the

subject of an anatomical gift.

(9) "Donor registry" means:

(A) a data base maintained by:

(i) the bureau of motor vehicles; or

(ii) the equivalent agency in another state;

(B) the Donate Life Indiana Registry maintained by the Indiana Donation Alliance Foundation; or

(C) a donor registry maintained in another state;

that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(10) "Driver's license" means a license or permit issued by the bureau of motor vehicles to operate a vehicle.

(11) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(12) "Guardian" means an individual appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(13) "Hospital" means a facility licensed as a hospital under the laws of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(14) "Identification card" means an identification card issued by the bureau of motor vehicles.

(15) "Minor" means an individual under eighteen (18) years of age.

(16) "Organ procurement organization" means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.

(17) "Parent" means an individual whose parental rights have not been terminated.

(18) "Part" means an organ, an eye, or tissue of a human being. The term does not mean a whole body.

(19) "Pathologist" means a physician:

(A) certified by the American Board of Pathology; or

(B) holding an unlimited license to practice medicine in Indiana and acting under the direction of a physician certified by the American Board of Pathology.

(20) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association,

joint venture, public corporation, government or governmental subdivision, agency, instrumentality, or any other legal or commercial entity.

(21) "Physician" or "surgeon" means an individual authorized to practice medicine or osteopathy under the laws of any state.

(22) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(23) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made an appropriate refusal.

(24) "Reasonably available" means:

(A) able to be contacted by a procurement organization without undue effort; and

(B) willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(25) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(26) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(27) "Refusal" means a record created under section 6 of this chapter that expressly states the intent to bar another person from making an anatomical gift of an individual's body or part.

(28) "Sign" means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(29) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(30) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an eye enucleator.

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

research or education.

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

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

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

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

(A) emancipated; or

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

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

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

(4) the donor's guardian.

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

SECTION 71. IC 29-2-19-17, AS AMENDED BY P.L.190-2016, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 17. The right to control the disposition of a decedent's body, to make arrangements for funeral services, and to make other ceremonial arrangements after an individual's death devolves on the following, in the priority listed:

(1) A person:

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

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

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

(3) The decedent's surviving spouse.

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

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

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

(7) An individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent or, if more than one (1) individual of the same degree survives, the majority of those who are of the same degree of kinship. However, less than half of the individuals who are of the same degree of kinship have the rights under this subdivision if they have used reasonable efforts to notify the other individuals who are of the same degree of kinship of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the individuals who are of the same degree of kinship.

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

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

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

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

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

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

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

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

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

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

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

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

(1) consent to the marriage or adoption of a protected person who

is a minor; or

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

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

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

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

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

(i) A parent who:

(1) is a member in the:

(A) active or reserve component of the armed forces of the United States, including the Army, Navy, Air Force, Marine Corps, National Guard, or Coast Guard; or

(B) commissioned corps of the:

(i) National Oceanic and Atmospheric Administration; or

(ii) Public Health Service of the United States Department

of Health and Human Services;

detailed by proper authority for duty with the Army or Navy of the United States; or

(2) is required to:

(A) enter or serve in the active military service of the United States under a call or order of the President of the United States; or

(B) serve on state active duty;

may delegate the powers designated in subsection (c) for a period longer than twelve (12) months if the parent is on active duty service. However, the term of delegation may not exceed the term of active duty service plus thirty (30) days. The power of attorney must indicate that the parent is required to enter or serve in the active military service of the United States and include the estimated beginning and ending dates of the active duty service.

(j) Except as otherwise stated in the power of attorney delegating powers under this section, a delegation of powers under this section may be revoked at any time by a written instrument of revocation that:

(1) identifies the power of attorney revoked; and

(2) is signed by the:

(A) parent of a minor; or

(B) guardian of a protected person;

who executed the power of attorney.

SECTION 73. IC 29-3-9-4.5, AS ADDED BY P.L.6-2010, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 4.5. (a) After notice to interested persons and upon authorization of the court, a guardian may, if the protected person has been found by the court to lack testamentary capacity, do any of the following:

(1) Make gifts.

(2) Exercise any power with respect to transfer on death or payable on death transfers that is described in IC 30-5-5-7.5.

(3) Convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties.

(4) Exercise or release a power of appointment.

(5) Create a revocable or irrevocable trust of all or part of the property of the estate, including a trust that extends beyond the duration of the guardianship.

(6) Revoke or amend a trust that is revocable by the protected person.

(7) Exercise rights to elect options and change beneficiaries under insurance policies, retirement plans, and annuities.

(8) Surrender an insurance policy or annuity for its cash value.

(9) Exercise any right to an elective share in the estate of the protected person's deceased spouse.

(10) Renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos.

(b) Before approving a guardian's exercise of a power listed in subsection (a), the court shall consider primarily the decision that the protected person would have made, to the extent that the decision of the protected person can be ascertained. If the protected person has a will, the protected person's distribution of assets under the will is prima facie evidence of the protected person's intent. The court shall also consider:

(1) the financial needs of the protected person and the needs of individuals who are dependent on the protected person for support;

(2) the interests of creditors;

(3) the possible reduction of income taxes, estate taxes, inheritance taxes, or other federal, state, or local tax liabilities;

(4) the eligibility of the protected person for governmental assistance;

(5) the protected person's previous pattern of giving or level of support;

(6) the protected person's existing estate plan, if any;

(7) the protected person's life expectancy and the probability that the guardianship will terminate before the protected person's death; and

(8) any other factor the court considers relevant.

(c) A guardian may examine and receive, at the expense of the guardian, copies of the following documents of the protected person:

(1) A will.

(2) A trust.

(3) A power of attorney.

(4) A health care appointment.

(5) An advance directive.

~~(5)~~ **(6)** Any other estate planning document.

SECTION 74. IC 30-5-5-16, AS AMENDED BY P.L.81-2015, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 16. (a) This section does not prohibit an individual capable of consenting to the individual's own health care or to the health care of another from consenting to health care administered in

good faith under the religious tenets and practices of the individual requiring health care.

(b) Language conferring general authority with respect to health care powers means the principal authorizes the attorney in fact to do the following:

(1) Employ or contract with servants, companions, or health care providers to care for the principal.

(2) Consent to or refuse health care for the principal who is an individual in accordance with IC 16-36-4 and IC 16-36-1 by properly executing and attaching to the power of attorney a declaration or appointment, or both.

(3) Admit or release the principal from a hospital or health care facility.

(4) Have access to records, including medical records, concerning the principal's condition.

(5) Make anatomical gifts on the principal's behalf.

(6) Request an autopsy.

(7) Make plans for the disposition of the principal's body, including executing a funeral planning declaration on behalf of the principal in accordance with IC 29-2-19.

(c) Notwithstanding any other law, a document granting health care powers to an attorney in fact for health care may not be executed under this chapter after December 31, 2022. However, if a power of attorney that is executed after December 31, 2022, is written to grant both:

(1) health care powers; and

(2) nonhealth care powers under this chapter;

to an attorney in fact, the health care powers are void, but all other powers granted by the power of attorney will remain effective and enforceable under this article.

SECTION 75. IC 30-5-5-17, AS AMENDED BY THE TECHNICAL CORRECTIONS BILL OF THE 2021 GENERAL ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 17. (a) If the attorney in fact has the authority to consent to or refuse health care under section ~~16(2)~~ **16(b)(2)** of this chapter, the attorney in fact may be empowered to ask in the name of the principal for health care to be withdrawn or withheld when it is not beneficial or when any benefit is outweighed by the demands of the treatment and death may result. To empower the attorney in fact to act under this section, the following language must be included in an appointment under IC 16-36-1 **or IC 16-36-7** in substantially the same form set forth below:

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

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

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

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

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

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

SECTION 78. IC 30-5-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 6. **Subject to IC 16-36-7,** appointments made under this article, IC 16-36-4, ~~and~~ IC 16-36-1, **and IC 16-36-7** can be made concurrently and will be given full effect under the law. However, the appointments may be executed independently and remain valid in their own right.

SECTION 79. IC 34-30-2-75.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 75.6. IC 16-36-7-40 (Concerning**

a health care provider's or other person's reliance on an advance directive).

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

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

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

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

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

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

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

President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____