



Reprinted  
January 30, 2020

---

---

## HOUSE BILL No. 1317

---

DIGEST OF HB 1317 (Updated January 29, 2020 3:31 pm - DI 77)

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

**Synopsis:** Health care advance directive. Allows an individual to make a health care advance directive that gives instructions or expresses preferences or desires concerning any aspect of the individual's health care or health information and to designate a health care representative to make health care decisions and receive health information for the individual. Consolidates definitions of "life prolonging procedures". Requires the state department of health to prepare a sample advance directive. Provides that the appointment of a representative or attorney in fact to consent to health care that was legally executed before January 1, 2023, is valid as executed. Adds cross-references. Makes conforming changes. Makes technical changes.

**Effective:** July 1, 2020.

---

---

### Kirchhofer, Hatfield

---

---

January 14, 2020, read first time and referred to Committee on Public Health.  
January 27, 2020, amended, reported — Do Pass.  
January 29, 2020, read second time, amended, ordered engrossed.

---

---

HB 1317—LS 7174/DI 77





Reprinted  
January 30, 2020

Second Regular Session of the 121st General Assembly (2020)

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

## HOUSE BILL No. 1317

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

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

1 SECTION 1. IC 12-10-7-8 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 8. (a) The division shall  
3 contract in writing for the provision of the guardianship services  
4 required in each region with a nonprofit corporation that is:  
5 (1) qualified to receive tax deductible contributions under Section  
6 170 of the Internal Revenue Code; and  
7 (2) located in the region.  
8 (b) The division shall establish qualifications to determine eligible  
9 providers in each region.  
10 (c) Each contract between the division and a provider must specify  
11 a method for the following:  
12 (1) The establishment of a guardianship committee within the  
13 provider, serving under the provider's board of directors.  
14 (2) The provision of money and services by the provider in an  
15 amount equal to at least twenty-five percent (25%) of the total  
16 amount of the contract and the provision by the division of the  
17 remaining amount of the contract. The division shall establish

HB 1317—LS 7174/DI 77



- 1 guidelines to determine the value of services provided under this  
 2 subdivision.
- 3 (3) The establishment of procedures to avoid a conflict of interest  
 4 for the provider in providing necessary services to each  
 5 incapacitated individual.
- 6 (4) The identification and evaluation of indigent adults in need of  
 7 guardianship services.
- 8 (5) The adoption of individualized service plans to provide the  
 9 least restrictive type of guardianship or related services for each  
 10 incapacitated individual, including the following:
- 11 (A) Designation as a representative payee by:
- 12 (i) the Social Security Administration;
- 13 (ii) the United States Office of Personnel Management;
- 14 (iii) the United States Department of Veterans Affairs; or
- 15 (iv) the United States Railroad Retirement Board.
- 16 (B) Limited guardianship under IC 29-3.
- 17 (C) Guardianship of the person or estate under IC 29-3.
- 18 (D) The appointment of:
- 19 (i) a health care representative under IC 16-36-1-7 **or**  
 20 **IC 16-36-7**; or
- 21 (ii) a power of attorney under IC 30-5.
- 22 (6) The periodic reassessment of each incapacitated individual.
- 23 (7) The provision of legal services necessary for the guardianship.
- 24 (8) The training and supervision of paid and volunteer staff.
- 25 (9) The establishment of other procedures and programs required  
 26 by the division.
- 27 SECTION 2. IC 12-10-13-3.3, AS AMENDED BY P.L.168-2018,  
 28 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 29 JULY 1, 2020]: Sec. 3.3. As used in this chapter, "legal representative"  
 30 means:
- 31 (1) a guardian;
- 32 (2) a health care representative acting under IC 16-36-1 **or**  
 33 **IC 16-36-7**;
- 34 (3) an attorney-in-fact for health care appointed under  
 35 IC 30-5-5-16;
- 36 (4) an attorney-in-fact appointed under IC 30-5-5 who does not  
 37 hold health care powers; or
- 38 (5) the personal representative of the estate;  
 39 of a resident of a long term care facility.
- 40 SECTION 3. IC 12-10-18-1, AS ADDED BY P.L.140-2005,  
 41 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 42 JULY 1, 2020]: Sec. 1. (a) A law enforcement agency that receives a



1 notification concerning a missing endangered adult from:

2 (1) the missing endangered adult's:

3 (A) guardian;

4 (B) custodian; or

5 (C) guardian ad litem; or

6 (2) an individual who:

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

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

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

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

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

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

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

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

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

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

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

31 SECTION 4. IC 16-18-2-1.5, AS AMENDED BY P.L.205-2018,  
32 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
33 JULY 1, 2020]: Sec. 1.5. (a) "Abortion clinic", for purposes of  
34 IC 16-21-2, IC 16-34-2-4.7, IC 16-34-3, and IC 16-41-16, means a  
35 health care provider (as defined in section ~~163(d)(1)~~ **163(e)(1)** of this  
36 chapter) that:

37 (1) performs surgical abortion procedures; or

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

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

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

42 (2) An ambulatory outpatient surgical center that is licensed as an



1 ambulatory outpatient surgical center under IC 16-21-2.

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

5 SECTION 5. IC 16-18-2-6.1 IS ADDED TO THE INDIANA CODE  
6 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**  
7 **1, 2020]: Sec. 6.1. "Advance directive", for purposes of IC 16-36-7,**  
8 **has the meaning set forth in IC 16-36-7-2.**

9 SECTION 6. IC 16-18-2-35.5 IS ADDED TO THE INDIANA  
10 CODE AS A **NEW SECTION TO READ AS FOLLOWS**  
11 **[EFFECTIVE JULY 1, 2020]: Sec. 35.5. "Best interests", for**  
12 **purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-3.**

13 SECTION 7. IC 16-18-2-92.4, AS AMENDED BY P.L.164-2013,  
14 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2020]: Sec. 92.4. (a) "Declarant", for purposes of IC 16-36-5,  
16 has the meaning set forth in IC 16-36-5-3.

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

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

21 SECTION 8. IC 16-18-2-92.5 IS ADDED TO THE INDIANA  
22 CODE AS A **NEW SECTION TO READ AS FOLLOWS**  
23 **[EFFECTIVE JULY 1, 2020]: Sec. 92.5. "Declaration", for purposes**  
24 **of IC 16-36-7, has the meaning set forth in IC 16-36-7-5.**

25 SECTION 9. IC 16-18-2-105.8 IS ADDED TO THE INDIANA  
26 CODE AS A **NEW SECTION TO READ AS FOLLOWS**  
27 **[EFFECTIVE JULY 1, 2020]: Sec. 105.8. "Electronic", for purposes**  
28 **of IC 16-36-7, has the meaning set forth in IC 16-36-7-6.**

29 SECTION 10. IC 16-18-2-106.2 IS ADDED TO THE INDIANA  
30 CODE AS A **NEW SECTION TO READ AS FOLLOWS**  
31 **[EFFECTIVE JULY 1, 2020]: Sec. 106.2. "Electronic record", for**  
32 **purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-7.**

33 SECTION 11. IC 16-18-2-106.3, AS ADDED BY P.L.204-2005,  
34 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
35 JULY 1, 2020]: Sec. 106.3. (a) "Electronic signature", for purposes  
36 of IC 16-36-7, has the meaning set forth in IC 16-36-7-8.

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

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

41 (2) executed or adopted by a person;

42 with the intent to sign the electronically transmitted prescription or



- 1 order.
- 2 SECTION 12. IC 16-18-2-160 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 160. (a) "Health care",
- 4 for purposes of IC 16-36-1, has the meaning set forth in IC 16-36-1-1.
- 5 **(b) "Health care", for purposes of IC 16-36-7, has the meaning**
- 6 **set forth in IC 16-36-7-9.**
- 7 SECTION 13. IC 16-18-2-160.3 IS ADDED TO THE INDIANA
- 8 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 9 [EFFECTIVE JULY 1, 2020]: **Sec. 160.3. "Health care decision", for**
- 10 **purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-10.**
- 11 SECTION 14. IC 16-18-2-161, AS AMENDED BY P.L.113-2015,
- 12 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 13 JULY 1, 2020]: Sec. 161. (a) "Health care facility" includes:
- 14 (1) hospitals licensed under IC 16-21-2, private mental health
- 15 institutions licensed under IC 12-25, and tuberculosis hospitals
- 16 established under IC 16-11-1 (before its repeal);
- 17 (2) health facilities licensed under IC 16-28; and
- 18 (3) rehabilitation facilities and kidney disease treatment centers.
- 19 (b) "Health care facility", for purposes of IC 16-21-11 and
- 20 IC 16-34-3, has the meaning set forth in IC 16-21-11-1.
- 21 (c) "Health care facility", for purposes of IC 16-28-13, has the
- 22 meaning set forth in IC 16-28-13-0.5.
- 23 **(d) "Health care facility", for purposes of IC 16-36-7, has the**
- 24 **meaning set forth in IC 16-36-7-11.**
- 25 SECTION 15. IC 16-18-2-163, AS AMENDED BY P.L.2-2019,
- 26 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 27 JULY 1, 2020]: Sec. 163. (a) "Health care provider", for purposes of
- 28 IC 16-21 and IC 16-41, means any of the following:
- 29 (1) An individual, a partnership, a corporation, a professional
- 30 corporation, a facility, or an institution licensed or legally
- 31 authorized by this state to provide health care or professional
- 32 services as a licensed physician, a psychiatric hospital, a hospital,
- 33 a health facility, an emergency ambulance service (IC 16-31-3),
- 34 a dentist, a registered or licensed practical nurse, a midwife, an
- 35 optometrist, a pharmacist, a podiatrist, a chiropractor, a physical
- 36 therapist, a respiratory care practitioner, an occupational therapist,
- 37 a psychologist, a paramedic, an emergency medical technician, an
- 38 advanced emergency medical technician, an athletic trainer, or a
- 39 person who is an officer, employee, or agent of the individual,
- 40 partnership, corporation, professional corporation, facility, or
- 41 institution acting in the course and scope of the person's
- 42 employment.



- 1 (2) A college, university, or junior college that provides health  
 2 care to a student, a faculty member, or an employee, and the  
 3 governing board or a person who is an officer, employee, or agent  
 4 of the college, university, or junior college acting in the course  
 5 and scope of the person's employment.
- 6 (3) A blood bank, community mental health center, community  
 7 intellectual disability center, community health center, or migrant  
 8 health center.
- 9 (4) A home health agency (as defined in IC 16-27-1-2).
- 10 (5) A health maintenance organization (as defined in  
 11 IC 27-13-1-19).
- 12 (6) A health care organization whose members, shareholders, or  
 13 partners are health care providers under subdivision (1).
- 14 (7) A corporation, partnership, or professional corporation not  
 15 otherwise qualified under this subsection that:
- 16 (A) provides health care as one (1) of the corporation's,  
 17 partnership's, or professional corporation's functions;
- 18 (B) is organized or registered under state law; and
- 19 (C) is determined to be eligible for coverage as a health care  
 20 provider under IC 34-18 for the corporation's, partnership's, or  
 21 professional corporation's health care function.
- 22 Coverage for a health care provider qualified under this subdivision is  
 23 limited to the health care provider's health care functions and does not  
 24 extend to other causes of action.
- 25 (b) "Health care provider", for purposes of IC 16-35, has the  
 26 meaning set forth in subsection (a). However, for purposes of IC 16-35,  
 27 the term also includes a health facility (as defined in section 167 of this  
 28 chapter).
- 29 (c) "Health care provider", for purposes of IC 16-32-5, IC 16-36-5,  
 30 and IC 16-36-6, means an individual licensed or authorized by this  
 31 state to provide health care or professional services as:
- 32 (1) a licensed physician;
- 33 (2) a registered nurse;
- 34 (3) a licensed practical nurse;
- 35 (4) an advanced practice registered nurse;
- 36 (5) a certified nurse midwife;
- 37 (6) a paramedic;
- 38 (7) an emergency medical technician;
- 39 (8) an advanced emergency medical technician;
- 40 (9) an emergency medical responder, as defined by section 109.8  
 41 of this chapter;
- 42 (10) a licensed dentist;





- 1 (11) a home health aide, as defined by section 174 of this chapter;  
 2 or  
 3 (12) a licensed physician assistant.  
 4 The term includes an individual who is an employee or agent of a  
 5 health care provider acting in the course and scope of the individual's  
 6 employment.  
 7 **(d) "Health care provider", for purposes of IC 16-36-7, has the**  
 8 **meaning set forth in IC 16-36-7-12.**  
 9 ~~(d)~~ **(e) "Health care provider", for purposes of section 1.5 of this**  
 10 **chapter and IC 16-40-4, means any of the following:**  
 11 (1) An individual, a partnership, a corporation, a professional  
 12 corporation, a facility, or an institution licensed or authorized by  
 13 the state to provide health care or professional services as a  
 14 licensed physician, a psychiatric hospital, a hospital, a health  
 15 facility, an emergency ambulance service (IC 16-31-3), an  
 16 ambulatory outpatient surgical center, a dentist, an optometrist, a  
 17 pharmacist, a podiatrist, a chiropractor, a psychologist, or a  
 18 person who is an officer, employee, or agent of the individual,  
 19 partnership, corporation, professional corporation, facility, or  
 20 institution acting in the course and scope of the person's  
 21 employment.  
 22 (2) A blood bank, laboratory, community mental health center,  
 23 community intellectual disability center, community health  
 24 center, or migrant health center.  
 25 (3) A home health agency (as defined in IC 16-27-1-2).  
 26 (4) A health maintenance organization (as defined in  
 27 IC 27-13-1-19).  
 28 (5) A health care organization whose members, shareholders, or  
 29 partners are health care providers under subdivision (1).  
 30 (6) A corporation, partnership, or professional corporation not  
 31 otherwise specified in this subsection that:  
 32 (A) provides health care as one (1) of the corporation's,  
 33 partnership's, or professional corporation's functions;  
 34 (B) is organized or registered under state law; and  
 35 (C) is determined to be eligible for coverage as a health care  
 36 provider under IC 34-18 for the corporation's, partnership's, or  
 37 professional corporation's health care function.  
 38 (7) A person that is designated to maintain the records of a person  
 39 described in subdivisions (1) through (6).  
 40 ~~(e)~~ **(f) "Health care provider", for purposes of IC 16-45-4, has the**  
 41 **meaning set forth in 47 CFR 54.601(a).**  
 42 SECTION 16. IC 16-18-2-163.4, AS ADDED BY P.L.137-2015,



1 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 2020]: Sec. 163.4. (a) "Health care representative", for  
3 purposes of IC 16-21-12, has the meaning set forth in IC 16-21-12-4.

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

6 SECTION 17. IC 16-18-2-167.5 IS ADDED TO THE INDIANA  
7 CODE AS A NEW SECTION TO READ AS FOLLOWS  
8 [EFFECTIVE JULY 1, 2020]: **Sec. 167.5. "Health information", for**  
9 **purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-14.**

10 SECTION 18. IC 16-18-2-186.5 IS ADDED TO THE INDIANA  
11 CODE AS A NEW SECTION TO READ AS FOLLOWS  
12 [EFFECTIVE JULY 1, 2020]: **Sec. 186.5. "Incapacity" and**  
13 **"incapacitated", for purposes of IC 16-36-7, have the meaning set**  
14 **forth in IC 16-36-7-15.**

15 SECTION 19. IC 16-18-2-190 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 190. (a) **"Informed**  
17 **consent", for purposes of IC 16-36-7, has the meaning set forth in**  
18 **IC 16-36-7-16.**

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

21 SECTION 20. IC 16-18-2-203, AS AMENDED BY P.L.164-2013,  
22 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
23 JULY 1, 2020]: Sec. 203. (a) "Life prolonging procedure", for purposes  
24 of IC 16-36-4, has the meaning set forth in IC 16-36-4-1.

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

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

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

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

34 SECTION 21. IC 16-18-2-296.2 IS ADDED TO THE INDIANA  
35 CODE AS A NEW SECTION TO READ AS FOLLOWS  
36 [EFFECTIVE JULY 1, 2020]: **Sec. 296.2. "Proxy", for purposes of**  
37 **IC 16-36-7, has the meaning set forth in IC 16-36-7-17.**

38 SECTION 22. IC 16-18-2-308.2 IS ADDED TO THE INDIANA  
39 CODE AS A NEW SECTION TO READ AS FOLLOWS  
40 [EFFECTIVE JULY 1, 2020]: **Sec. 308.2. "Reasonably available",**  
41 **for purposes of IC 16-36-7, has the meaning set forth in**  
42 **IC 16-36-7-18.**



1 SECTION 23. IC 16-18-2-331.4 IS ADDED TO THE INDIANA  
 2 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 3 [EFFECTIVE JULY 1, 2020]: **Sec. 331.4. "Sign", for purposes of**  
 4 **IC 16-36-7, has the meaning set forth in IC 16-36-7-19.**

5 SECTION 24. IC 16-18-2-331.5 IS ADDED TO THE INDIANA  
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 7 [EFFECTIVE JULY 1, 2020]: **Sec. 331.5. "Signature", for purposes**  
 8 **of IC 16-36-7, has the meaning set forth in IC 16-36-7-20.**

9 SECTION 25. IC 16-18-2-354.8 IS ADDED TO THE INDIANA  
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 11 [EFFECTIVE JULY 1, 2020]: **Sec. 354.8. "Treating physician", for**  
 12 **purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-21.**

13 SECTION 26. IC 16-18-2-378.5 IS ADDED TO THE INDIANA  
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 15 [EFFECTIVE JULY 1, 2020]: **Sec. 378.5. "Written" and "writing",**  
 16 **for purposes of IC 16-36-7, have the meaning set forth in**  
 17 **IC 16-36-7-22.**

18 SECTION 27. IC 16-21-12-4, AS ADDED BY P.L.137-2015,  
 19 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20 JULY 1, 2020]: Sec. 4. As used in this chapter, "health care  
 21 representative" means an individual:

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

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

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

28 However, if the patient has not appointed a health care representative  
 29 under IC 16-36-1-7 **or IC 16-36-7** or granted a health care power of  
 30 attorney to an individual under IC 30-5-5-16, the term means an  
 31 individual authorized to consent to health care for the patient under  
 32 ~~IC 16-36-1-5.~~ **IC 16-36-7-39.**

33 SECTION 28. IC 16-21-12-15, AS ADDED BY P.L.137-2015,  
 34 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35 JULY 1, 2020]: Sec. 15. (a) This chapter may not be construed to  
 36 interfere with the rights of a health care representative appointed under  
 37 IC 16-36-1 **or a health care representative appointed under**  
 38 **IC 16-36-7.**

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

42 (c) No cause of action of any type arises against a hospital, a



1 hospital employee, a staff member, or an individual with whom a  
2 hospital has a contractual relationship based upon an act or omission  
3 of a lay caregiver.

4 SECTION 29. IC 16-36-1-4 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 4. (a) An individual  
6 described in section 3 of this chapter may consent to health care unless,  
7 in the good faith opinion of the attending physician, the individual is  
8 incapable of making a decision regarding the proposed health care.

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

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

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

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

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

22 SECTION 30. IC 16-36-1-7, AS AMENDED BY P.L.81-2015,  
23 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
24 JULY 1, 2020]: Sec. 7. (a) An individual who may consent to health  
25 care under section 3 of this chapter may appoint another representative  
26 to act for the appointor in matters affecting the appointor's health care.

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

29 (1) Be in writing.

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

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

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

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

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

42 (f) Unless the appointment provides otherwise, a representative



1 appointed under this section who is reasonably available and willing to  
2 act has priority to act in all matters of health care for the appointor,  
3 except when the appointor is capable of consenting.

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

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

8 (2) In good faith.

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

12 (1) The appointor.

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

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

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

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

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

22 SECTION 31. IC 16-36-1.5-5 IS AMENDED TO READ AS  
23 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 5. (a) This section  
24 applies to a patient who:

25 (1) receives mental health services; and

26 (2) is mentally incompetent.

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

30 (1) The patient's legal guardian or other court appointed  
31 representative.

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

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

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

38 **(5) The patient's health care representative appointed under**  
39 **IC 16-36-7.**

40 SECTION 32. IC 16-36-4-1 IS REPEALED [EFFECTIVE JULY 1,  
41 2020]. Sec. 1. (a) ~~As used in this chapter, "life prolonging procedure"~~  
42 ~~means any medical procedure, treatment, or intervention that does the~~



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

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 33. IC 16-36-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: 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



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

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 34. IC 16-36-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: 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 35. IC 16-36-6-3 IS REPEALED [EFFECTIVE JULY 1, 2020]. 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 36. IC 16-36-6-7, AS AMENDED BY P.L.139-2019, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: 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



- 1 IC 16-36-1-3(a)(2)(E)); and  
 2 (B) of sound mind.
- 3 (2) A qualified person's representative, if the qualified person:  
 4 (A) is less than eighteen (18) years of age and is not authorized  
 5 to consent under IC 16-36-1-3(a)(2); or  
 6 (B) has been determined to be incapable of making decisions  
 7 about the qualified person's health care by a treating physician,  
 8 advanced practice registered nurse, or physician assistant  
 9 acting in good faith and the representative has been:
- 10 (i) appointed by the individual under IC 16-36-1-7 to serve  
 11 as the individual's health care representative;  
 12 (ii) authorized to act under IC 30-5-5-16 and IC 30-5-5-17  
 13 as the individual's attorney in fact with authority to consent  
 14 to or refuse health care for the individual;  
 15 (iii) appointed by a court as the individual's health care  
 16 representative under IC 16-36-1-8; ~~or~~  
 17 (iv) appointed by a court as the guardian of the person with  
 18 the authority to make health care decisions under IC 29-3;  
 19 **or**  
 20 **(v) appointed by the individual under IC 16-36-7 to serve**  
 21 **as the individual's health care representative.**
- 22 (b) In order to complete a POST form, a person described in  
 23 subsection (a) and the qualified person's treating physician, advanced  
 24 practice registered nurse, or physician assistant or the physician's,  
 25 advanced practice registered nurse's, or physician assistant's designee  
 26 must do the following:
- 27 (1) Discuss the qualified person's goals and treatment options  
 28 available to the qualified person based on the qualified person's  
 29 health.  
 30 (2) Complete the POST form, to the extent possible, based on the  
 31 qualified person's preferences determined during the discussion  
 32 in subdivision (1).
- 33 (c) When completing a POST form on behalf of a qualified person,  
 34 a representative shall act:
- 35 (1) in good faith; and  
 36 (2) in:  
 37 (A) accordance with the qualified person's express or implied  
 38 intentions, if known; or  
 39 (B) the best interest of the qualified person, if the qualified  
 40 person's express or implied intentions are not known.
- 41 (d) A copy of the executed POST form shall be maintained in the  
 42 qualified person's medical file.





1 SECTION 37. IC 16-36-6-9, AS AMENDED BY P.L.10-2019,  
 2 SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2020]: Sec. 9. (a) The state department shall develop a  
 4 standardized POST form and distribute the POST form.

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

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

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

13 (A) Comfort measures.

14 (B) Limited additional interventions.

15 (C) Full intervention.

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

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

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

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

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

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

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

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

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

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

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

40 (C) The date of the signature.

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



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

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

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

9 SECTION 38. IC 16-36-6-20, AS AMENDED BY P.L.2-2014,  
10 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
11 JULY 1, 2020]: Sec. 20. The execution or revocation of a POST form  
12 by or for a qualified person does not revoke or impair the validity of  
13 any of the following:

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

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

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

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

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

29 SECTION 39. IC 16-36-7 IS ADDED TO THE INDIANA CODE  
30 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
31 JULY 1, 2020]:

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

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

35 **(1) a declarant's advance directive; or**

36 **(2) any provision of this chapter;**

37 **does not constitute a suicide.**

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

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



- 1           (1) communicate or confirm the individual's desires or  
2 preferences to receive or refuse life prolonging treatment or  
3 other health care; or  
4           (2) give one (1) or more other persons authority to consent to  
5 health care or make health care decisions on the individual's  
6 behalf.
- 7           (d) Nothing in this chapter prohibits a health care provider  
8 from relying on a document that:  
9           (1) is signed by an adult who has not been determined to be  
10 incapacitated; and  
11           (2) in the context of the relevant circumstances, clearly  
12 communicates the individual's intention to give one (1) or  
13 more specified persons authority to consent to health care or  
14 make health care decisions on the individual's behalf.
- 15           A health care provider who reasonably relies in good faith on a  
16 document signed under this subsection is immune from liability  
17 under section 36 of this chapter even if the document is not  
18 witnessed or acknowledged in the manner required for an advance  
19 directive under section 24 of this chapter.
- 20           Sec. 2. As used in this chapter, "advance directive" means a  
21 written declaration of a declarant who:  
22           (1) gives instructions or expresses preferences or desires  
23 concerning any aspect of the declarant's health care or health  
24 information, including the designation of a health care  
25 representative, a living will declaration made under  
26 IC 16-36-4-10, or an anatomical gift made under IC 29-2-16.1;  
27 and  
28           (2) complies with the requirements of this chapter.
- 29           Sec. 3. As used in this chapter, "best interests" means the  
30 promotion of the individual's welfare, based on consideration of  
31 material factors, including relief of suffering, preservation or  
32 restoration of function, and quality of life.
- 33           Sec. 4. As used in this chapter, "declarant" means a competent  
34 adult who has executed an advance directive.
- 35           Sec. 5. As used in this chapter, "declaration" means a written  
36 document, voluntarily executed by a declarant for the declarant  
37 under section 23 of this chapter.
- 38           Sec. 6. As used in this chapter, "electronic" has the meaning set  
39 forth in IC 26-2-8-102(7).
- 40           Sec. 7. As used in this chapter, "electronic record" has the  
41 meaning set forth in IC 26-2-8-102(9).
- 42           Sec. 8. As used in this chapter, "electronic signature" has the



1 meaning set forth in IC 26-2-8-102(10).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38       (1) make health care decisions; and

39       (2) receive health information;

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



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

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

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

16           **Sec. 17.** As used in this chapter, "proxy" means a competent  
17 adult who:

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

21           (2) is authorized and willing to make health care decisions for  
22 the individual under section 38 of this chapter.

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

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

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

29           **Sec. 19.** As used in this chapter, "sign" includes the valid use of  
30 an electronic signature.

31           **Sec. 20.** As used in this chapter, "signature" means the  
32 authorized use of the name or mark of a declarant or other person  
33 to authenticate an electronic record or other writing. The term  
34 includes an electronic signature and an electronic notarial  
35 certificate completed by a notary public.

36           **Sec. 21.** As used in this chapter, "treating physician" means a  
37 licensed physician who is overseeing, directing, or performing  
38 health care to an individual at the pertinent time.

39           **Sec. 22.** As used in this chapter, "written" and "writing" include  
40 the use of any method to inscribe information in or on a tangible  
41 medium or to store the information in an electronic or other  
42 medium that can retrieve, view, and print the information in



- 1 perceivable form.
- 2 **Sec. 23. (a) Except when an individual has been determined to**
- 3 **be incapacitated under section 31 of this chapter, an individual**
- 4 **may consent to the individual's own health care if the individual is:**
- 5 **(1) an adult; or**
- 6 **(2) a minor, and:**
- 7 **(A) is emancipated;**
- 8 **(B) is:**
- 9 **(i) at least fourteen (14) years of age;**
- 10 **(ii) not dependent on a parent for support;**
- 11 **(iii) living apart from the minor's parents or from an**
- 12 **individual in loco parentis; and**
- 13 **(iv) managing the minor's own affairs;**
- 14 **(C) is or has been married;**
- 15 **(D) is in the military service of the United States; or**
- 16 **(E) is authorized to consent to health care by another**
- 17 **statute.**
- 18 **(b) A person at least seventeen (17) years of age is eligible to**
- 19 **donate blood in a voluntary and noncompensatory blood program**
- 20 **without obtaining parental permission.**
- 21 **(c) A person who is sixteen (16) years of age is eligible to donate**
- 22 **blood in a voluntary and noncompensatory blood program if the**
- 23 **person has obtained written permission from the person's parent.**
- 24 **(d) An individual who has, could be expected to have exposure**
- 25 **to, or has been exposed to a venereal disease is competent to give**
- 26 **consent for medical or hospital care or treatment, including**
- 27 **preventive treatment, of the individual.**
- 28 **(e) If:**
- 29 **(1) an individual:**
- 30 **(A) has a signed advance directive that is in effect; and**
- 31 **(B) has not been determined to be incapacitated under**
- 32 **section 31 of this chapter; and**
- 33 **(2) the individual's decisions and the health care**
- 34 **representative's decisions present a material conflict;**
- 35 **the health care decisions by that individual take precedence over**
- 36 **decisions made by a health care representative designated in that**
- 37 **individual's advance directive.**
- 38 **(f) Nothing in this chapter prohibits or restricts a health care**
- 39 **provider's right to follow or rely on a health care decision or the**
- 40 **designation of a health care representative on a permanent or**
- 41 **temporary basis that is:**
- 42 **(1) made by a competent individual described in subsection**



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



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

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

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

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

13 If the advance directive complies with either subdivision (1) or (2),  
 14 but contains additional witness signatures or a notarial certificate  
 15 that is not needed, the advance directive is still validly witnessed  
 16 and acknowledged.

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

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

25 (2) signed in a manner that complies with the applicable law  
 26 of the jurisdiction in which the declarant was residing or was  
 27 physically located at the time of signing.

28 Sec. 25. An advance directive signed by a declarant under this  
 29 section may contain any of the following additional provisions:

30 (1) A provision that delays:

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

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

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

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

42 (A) specifies the person or persons who are authorized to





- 1           **participate in the determination of incapacity, disability, or**  
 2           **incompetence and the evidence or information to be used**  
 3           **for the determination;**  
 4           **(B) is not more stringent than the procedure described in**  
 5           **section 31 of this chapter; and**  
 6           **(C) does not allow a medical determination by a physician,**  
 7           **psychologist, or other health care professional to be**  
 8           **superseded by the subjective judgment or veto of another**  
 9           **person or by nonmedical evidence regarding the**  
 10           **declarant's capacity or incapacity.**
- 11           **(3) A provision that terminates the authority of a designated**  
 12           **health care representative on:**
- 13               **(A) a stated date; or**  
 14               **(B) upon the occurrence of a specifically defined event.**
- 15           **(4) A provision that designates two (2) or more health care**  
 16           **representatives as having authority to act individually to**  
 17           **make health care decisions for the declarant in a specified**  
 18           **order of priority.**
- 19           **(5) A provision that designates two (2) or more health care**  
 20           **representatives and permits them to act individually and**  
 21           **independently, or that requires them to act jointly, on a**  
 22           **majority vote basis, or under a combination of requirements**  
 23           **to make all health care decisions or specified health care**  
 24           **decisions for the declarant. The advance directive may include**  
 25           **a provision for a successor health care representative to act**  
 26           **according to different requirements.**
- 27           **(6) A provision that states a fee or presumptive reasonable**  
 28           **hourly rate for the compensation that a health care**  
 29           **representative may collect for acting on behalf of the**  
 30           **declarant or providing caregiving services to the declarant.**
- 31           **(7) A provision that prohibits a health care representative**  
 32           **from collecting compensation for acting under the advance**  
 33           **directive.**
- 34           **(8) A provision that requires a professional adviser or other**  
 35           **additional person to witness, ratify, or approve the declarant's**  
 36           **oral or written revocation or amendment of designation of**  
 37           **one (1) or more health care representatives within the**  
 38           **advance directive.**
- 39           **(9) A provision that:**
- 40               **(A) prohibits a designated health care representative from**  
 41               **consenting to mental health treatment for the declarant; or**  
 42               **(B) designates a different health care representative to**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

- 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. 26. (a) The state department of health shall develop a sample form for an advance directive that is consistent with this chapter. The sample form must contain the following provisions:

- (1) A provision that states a declarant's preferences or desires about providing, continuing, terminating, or refusing life prolonging procedures, palliative care, comfort care, or assistance with activities of daily living.
- (2) A provision that designates one (1) or more health care representatives to make health care decisions for a declarant or to receive health information on behalf of a declarant, or both.

The sample form may include boxes that can be checked, signed, or initialed to select provisions that are optional but permitted under section 25 of this chapter.

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

Sec. 27. (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 30(1) of this chapter.

If the advance directive is signed with electronic signatures, a



1 complete copy that is generated or converted from the original  
 2 electronic record and that is viewable and printable is valid and  
 3 may be relied upon as the equivalent to the original.

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

14 Sec. 28. (a) The declarant who signs an advance directive may  
 15 revoke that advance directive by any of the following:

16 (1) Signing, in a manner that complies with section 24(b) and  
 17 24(c) of this chapter, another advance directive.

18 (2) Signing, in a manner that complies with section 24(b) and  
 19 24(c) of this chapter, a document that:

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

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

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

27 (A) revoke the entire advance directive;

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

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

33 However, if a declarant has not been determined to be  
 34 incapacitated under section 31 of this chapter, the declarant always  
 35 has the right to orally revoke a health care decision that is included  
 36 within an advance directive under section 24(a)(2) of this chapter  
 37 or a statement of desires or treatment preferences that is included  
 38 within an advance directive under section 24(a)(3) of this chapter,  
 39 despite any contrary wording in the advance directive.

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

42 (1) actions and health care decisions by a health care



1           representative designated in the advance directive are valid  
2           and binding on the declarant; and

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

5           (c) A declarant who has signed a valid advance directive may  
6           amend or restate that advance directive in a writing that is signed  
7           in compliance with section 24(b) of this chapter and witnessed or  
8           acknowledged in compliance with section 24(c) of this chapter. The  
9           amendment or restatement may take any action that could have  
10          been included in the former or original advance directive.

11          Sec. 29. (a) Except when the terms of the advance directive  
12          explicitly prohibit or restrict delegation, a health care  
13          representative who is designated by name in an advance directive  
14          may make a written delegation of some or all of the health care  
15          representative's authority to one (1) or more other competent  
16          adults or other persons, on a temporary or open ended basis as  
17          stated in the written delegation document.

18          (b) A written delegation document under this section must be  
19          signed in compliance with section 24(b) of this chapter and  
20          witnessed or acknowledged in compliance with section 24(c) of this  
21          chapter.

22          (c) A written delegation of authority that does not state an  
23          expiration date continues until it is revoked, in a manner  
24          complying with section 28 of this chapter, by the competent  
25          declarant or by the health care representative who signed the  
26          written delegation.

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

32          Sec. 30. An advance directive must be interpreted to carry out  
33          the known or demonstrable intent of the declarant. The following  
34          presumptions apply to an advance directive unless the terms of the  
35          advance directive explicitly prevent a presumption from applying:

36          (1) If the advance directive does not state a delayed effective  
37          date or a future triggering event for effectiveness, the advance  
38          directive is effective immediately upon signing and witnessing  
39          or acknowledgment in compliance with section 24 of this  
40          chapter. However, if the declarant has capacity to consent to  
41          health care, the declarant has the right to make health care  
42          decisions, give consent, or provide instructions that supersede



- 1 or overturn any decision that is made or could be made by the  
 2 declarant's health care representative.
- 3 **(2) If the advance directive does not explicitly state an**  
 4 **expiration date or a triggering event for termination, the**  
 5 **advance directive and the authority of each designated health**  
 6 **care representative continues until the death of the declarant**  
 7 **or until an earlier valid revocation of the advance directive.**
- 8 **(3) If an advance directive designates two (2) or more health**  
 9 **care representatives and does not specify that:**
- 10 **(A) the health care representative's respective authority to**  
 11 **act is subject to an order of priority; or**
- 12 **(B) the health care representatives must act jointly or on**  
 13 **a majority vote basis;**
- 14 **each health care representative has concurrent authority to**  
 15 **act individually and independently to make health care**  
 16 **decisions for the declarant. If two (2) or more health care**  
 17 **representatives who are required to act jointly disagree about**  
 18 **a health care decision, or if two (2) or more health care**  
 19 **representatives who are authorized to act independently give**  
 20 **conflicting instructions to a health care provider, the health**  
 21 **care provider may decline to comply with the conflicting**  
 22 **instructions, and in an urgent or emergency situation, the**  
 23 **health care provider may provide treatment consistent with**  
 24 **the instructions of one (1) physician who examines or**  
 25 **evaluates the declarant.**
- 26 **(4) If:**
- 27 **(A) an individual signs more than one (1) advance directive**  
 28 **at different times; and**
- 29 **(B) the later signed advance directive does not explicitly**  
 30 **state that one (1) or more of the previous advance**  
 31 **directives by the declarant remain in effect;**
- 32 **each previous advance directive is superseded and revoked by**  
 33 **the last signed advance directive.**
- 34 **(5) Unless the advance directive explicitly provides otherwise,**  
 35 **each health care representative who is designated in an**  
 36 **advance directive continues to have authority after the death**  
 37 **of the declarant to do the following:**
- 38 **(A) Make anatomical gifts on the declarant's behalf,**  
 39 **subject to any previous written direction by the declarant.**
- 40 **(B) Request or authorize an autopsy.**
- 41 **(C) Make plans for the disposition of the declarant's body,**  
 42 **including executing a funeral planning declaration on**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

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



- 1 the advance directive or under this subdivision.  
 2 (10) If an advance directive explicitly provides that the  
 3 authority of a health care representative is effective only at  
 4 times when the declarant is incapacitated or unable to consent  
 5 to health care, then unless the advance directive explicitly  
 6 states another procedure:  
 7 (A) the health care representative's authority becomes  
 8 effective when a determination of the declarant's  
 9 incapacity is noted in the declarant's medical records  
 10 under section 31(c) of this chapter; and  
 11 (B) the health care representative's authority becomes  
 12 inactive when the declarant regains capacity.  
 13 (11) If the authority of a health care representative under the  
 14 advance directive is effective immediately upon signing by the  
 15 declarant, the health care representative's authority may be  
 16 rescinded or superseded by the direct decisions of the  
 17 declarant at all times when the declarant has not been  
 18 determined to be incapacitated.  
 19 (12) If:  
 20 (A) an advance directive designates one (1) or more health  
 21 care representatives;  
 22 (B) a health care representative is not reasonably available  
 23 to act for the declarant; and  
 24 (C) the declarant is incapacitated or not competent to  
 25 make personal health care decisions;  
 26 then subject to any order of priority explicitly stated in the  
 27 advance directive, each health care representative designated  
 28 in the advance directive must be given the opportunity to  
 29 exercise authority for the declarant.  
 30 (13) If explicitly allowed or required in the advance directive,  
 31 each person who may act as a proxy for the declarant under  
 32 sections 38 and 39 of this chapter, if an advance directive had  
 33 not existed, has the right to make a written demand for and to  
 34 receive from a health care representative a narrative  
 35 description or other appropriate accounting of the actions  
 36 taken and decisions made by a health care representative  
 37 under the advance directive. Notwithstanding any provision  
 38 in the advance directive, a health care representative who  
 39 prepares a narrative description or accounting in response to  
 40 a written demand is entitled to reasonable compensation for  
 41 the time and effort spent in doing so.  
 42 (14) Notwithstanding any provision in the advance directive,



1 if a declarant is not competent to amend or revoke the  
 2 declarant's advance directive, then a person who may act as  
 3 a proxy for the declarant under sections 38 and 39 of this  
 4 chapter has the right to petition a probate court with  
 5 jurisdiction over the declarant for any of the following relief:

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

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

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

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

20 Before issuing an order under this subdivision, the court must  
 21 hold a hearing after notice to the declarant, to each health  
 22 care representative, and any other person whose rights or  
 23 authority could be affected by the order, and to any persons  
 24 who have the highest priority under sections 38 and 39 of this  
 25 chapter to serve as a proxy for the declarant if an advance  
 26 directive had not existed. An order issued under this  
 27 subdivision must be guided by the declarant's best interests  
 28 and the declarant's known or demonstrable intent.

29 Sec. 31. (a) For purposes of this section, the term "declarant"  
 30 includes an individual who has not executed an advance directive  
 31 or who has no unrevoked advance directive in effect.

32 (b) A declarant is presumed to be capable of making health care  
 33 decisions for the declarant unless the declarant is determined to be  
 34 incapacitated. The declarant's desires are controlling while a  
 35 declarant has decision making capacity. Each physician or health  
 36 care provider must clearly communicate to a declarant who has  
 37 decision making capacity the treatment plan and any change to the  
 38 treatment plan before implementation of the plan or a change to  
 39 the plan. Incapacity may not be inferred from a person's voluntary  
 40 or involuntary hospitalization for mental illness or from the  
 41 person's intellectual disability.

42 (c) When a declarant is incapacitated, a health care decision





1 made on the declarant's behalf by a health care representative is  
 2 effective to the same extent as a decision made by the declarant if  
 3 the declarant were not incapacitated. However, if:

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

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

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

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

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

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

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

31 **Sec. 32. (a)** Except when a health care representative's authority  
 32 has been expressly limited by the declarant in an advance directive,  
 33 the health care representative, in accordance with the declarant's  
 34 instructions made while competent, has the following authority and  
 35 responsibilities:

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

41 (2) The authority and responsibility to be reasonably available  
 42 to consult with appropriate health care providers to provide



- 1 informed consent.
- 2 (3) The authority and responsibility to act in good faith and
- 3 make only health care decisions for the declarant that the
- 4 health care representative believes the declarant would have
- 5 made under the circumstances if the declarant were capable
- 6 of making the decisions, taking into account the express or
- 7 implied intentions of the declarant or if the declarant's
- 8 express or implied intentions are not known, the declarant's
- 9 best interests.
- 10 (4) The authority and responsibility to provide written
- 11 consent using an appropriate form when consent is required,
- 12 including a physician's order not to resuscitate (IC 16-36-6).
- 13 (5) The authority to be provided access to the appropriate
- 14 health information of the declarant.
- 15 (6) The authority to apply for public benefits, including
- 16 Medicaid and the community and home options to
- 17 institutional care for the elderly and disabled (CHOICE)
- 18 program, for the declarant and have access to information
- 19 regarding the declarant's income, assets, and banking and
- 20 financial records to the extent required to make application.
- 21 (b) The health care representative may authorize the release of
- 22 health information to appropriate persons to ensure the continuity
- 23 of the declarant's health care and may authorize the admission,
- 24 discharge, or transfer of the declarant to or from a health care
- 25 facility or other health or residential facility or program licensed or
- 26 registered by a state agency.
- 27 (c) If, after a declarant has designated one (1) or more health
- 28 care representatives in an advance directive, a court appoints a
- 29 guardian of the declarant's person, the authority of each
- 30 designated health care representative continues unless the
- 31 appointing court modifies or revokes the authority of one (1) or
- 32 more health care representatives after a hearing upon notice under
- 33 section 30(14) of this chapter. The court may order a health care
- 34 representative to make appropriate or specified reports to the
- 35 guardian of the declarant's person or property.
- 36 Sec. 33. (a) A health care provider furnished with a copy of a
- 37 declarant's advance directive shall make the declarant's advance
- 38 directive a part of the declarant's medical records. If a change in
- 39 or termination of the advance directive becomes known to the
- 40 health care provider, the change or termination must be noted in
- 41 the declarant's medical records.
- 42 (b) If a health care provider believes that an individual may lack



1 the capacity to give informed consent to health care, then, until the  
 2 individual is determined to have capacity under section 31 of this  
 3 chapter, the health care provider shall consult with:

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

6 (2) if a health care representative has not been designated or  
 7 if a health care representative is not reasonably available to  
 8 act, a proxy under section 38 of this chapter;

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

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

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

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

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

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

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

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



1           **Sec. 34. If a health care representative designated in an advance**  
 2 **directive has authority to:**

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

6 **under either the explicit provisions of the advance directive or**  
 7 **section 30(5) of this chapter, the anatomical gift, autopsy, or**  
 8 **remains disposition is considered the act of the declarant or of the**  
 9 **person who has legal authority to make the necessary decisions.**

10          **Sec. 35. (a) A health care provider shall give a health care**  
 11 **representative authorized to receive information under an advance**  
 12 **directive the same access as the declarant has to examine and copy**  
 13 **the declarant's health information and medical records, including**  
 14 **records relating to mental health and other medical conditions held**  
 15 **by a physician or other health care provider.**

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

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

22          **Sec. 36. (a) A health care provider or other person who acts in**  
 23 **good faith reliance on an advance directive or on a health care**  
 24 **decision made by a health care representative with apparent**  
 25 **authority is immune from liability to the declarant and to the**  
 26 **declarant's heirs or other successors in interest to the same extent**  
 27 **as if the health care provider or other person had dealt directly**  
 28 **with the declarant and if the declarant had been competent and not**  
 29 **incapacitated.**

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

32          **Sec. 37. (a) A health care representative designated in an**  
 33 **advance directive may furnish to a health care provider or other**  
 34 **person an affidavit that states, to the best knowledge of the health**  
 35 **care representative:**

- 36           (1) **that the document attached to and furnished with the**  
 37 **affidavit is a true copy of the named declarant's advance**  
 38 **directive that is currently in effect;**  
 39           (2) **that the declarant is alive;**  
 40           (3) **that the advance directive was validly executed;**  
 41           (4) **if the effectiveness of the health care representative's**  
 42 **authority to act under the advance directive begins upon the**



1 occurrence of a certain event, that the event has occurred and  
 2 the health care representative has authority to act;

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

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

11 An affidavit under this section must be signed, sworn to, and  
 12 acknowledged by the health care representative in the presence of  
 13 a notary public or if the health care representative swears or  
 14 affirms to the accuracy of the affidavit's contents under the  
 15 penalties for perjury.

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

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

18 (2) acts in good faith;

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

22 Sec. 38. (a) For purposes of this section, the term "declarant"  
 23 includes an individual who has not executed an advance directive  
 24 or who does not have an advance directive currently in effect.

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

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

30 (2) the declarant has executed an advance directive and the  
 31 health care representative designated in the advance directive  
 32 is not willing, able, or reasonably available to make health  
 33 care decisions for the declarant.

34 (c) Except as provided in section 39 of this chapter, health care  
 35 decisions may be made for the declarant by any of the following  
 36 individuals to act as a proxy, in the following decreasing order of  
 37 priority, if an individual in a prior class is not reasonably available,  
 38 willing, and competent to act:

39 (1) The judicially appointed guardian of the declarant or a  
 40 health care representative appointed under IC 16-36-1-8 or  
 41 section 30(14) of this chapter.

42 (2) A spouse.



- 1           **(3) An adult child.**
- 2           **(4) A parent.**
- 3           **(5) An adult sibling.**
- 4           **(6) A grandparent.**
- 5           **(7) An adult grandchild.**
- 6           **(8) The nearest other adult relative in the next degree of**
- 7           **kinship who is not listed in subdivisions (2) through (7).**
- 8           **(9) A friend who:**
  - 9               **(A) is an adult;**
  - 10              **(B) has maintained regular contact with the individual;**
  - 11              **and**
  - 12              **(C) is familiar with the individual's activities, health, and**
  - 13              **religious or moral beliefs.**
- 14           **(10) The individual's religious superior, if the individual is a**
- 15           **member of a religious order.**
- 16           **(d) Any health care decision made under subsection (c) must be**
- 17           **based on the proxy's informed consent and on the decision the**
- 18           **proxy reasonably believes the declarant would have made under**
- 19           **the circumstances, taking into account the declarant's express or**
- 20           **implied intentions. If there is no reliable indication of what the**
- 21           **declarant would have chosen, the proxy shall consider the**
- 22           **declarant's best interests in deciding that proposed treatments are**
- 23           **to be withheld or that treatments currently in effect are to be**
- 24           **withdrawn.**
- 25           **(e) Before exercising the incapacitated declarant's rights to**
- 26           **select or decline health care, the proxy must attempt to comply in**
- 27           **good faith with:**
  - 28               **(1) the instructions, desires, or preferences, if any, stated by**
  - 29               **the declarant regarding life prolonging procedures in an**
  - 30               **advance directive executed under IC 16-36-1, IC 16-36-4, or**
  - 31               **IC 30-5; and**
  - 32               **(2) IC 16-36-6, if a valid POST form (as defined by**
  - 33               **IC 16-36-6-4) executed by the patient is in effect.**
- 34           **However, a proxy's decision to withhold or withdraw life**
- 35           **prolonging procedures must be supported by evidence that the**
- 36           **decision would have been the one the declarant would have chosen**
- 37           **had the declarant been competent or, if there is no reliable**
- 38           **indication of what the declarant would have chosen, that the**
- 39           **decision is in the declarant's best interests.**
- 40           **(f) If there are multiple individuals at the same priority level**
- 41           **under this section, those individuals shall make a reasonable effort**
- 42           **to reach a consensus as to the health care decisions on behalf of the**



1 declarant who is unable to provide health care consent. If the  
 2 individuals at the same priority level disagree as to the health care  
 3 decisions on behalf of the individual who is unable to provide  
 4 health care consent, a majority of the available individuals at the  
 5 same priority level controls.

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

9 Sec. 39. The following individuals may not serve as a proxy  
 10 under section 38 of this chapter:

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

13 (2) A spouse who:

14 (A) is legally separated; or

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

17 from the individual.

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

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

23 Sec. 40. If a declarant has become and remains incapacitated  
 24 and has previously executed a valid advance directive under this  
 25 chapter and executed:

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

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

30 (3) a similar advance directive executed by the declarant  
 31 under the laws of another state in which the declarant was  
 32 physically present at the time of signing; and

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

40 SECTION 40. IC 16-39-2-9 IS AMENDED TO READ AS  
 41 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 9. (a) For the purposes  
 42 of this chapter, the following persons are entitled to exercise the



- 1 patient's rights on the patient's behalf:
- 2 (1) If the patient is a minor, the parent, guardian, or other court
- 3 appointed representative of the patient.
- 4 (2) If the provider determines that the patient is incapable of
- 5 giving or withholding consent, the patient's guardian, a court
- 6 appointed representative of the patient, a person possessing a
- 7 health care power of attorney **under IC 30-5-5-16** for the patient,
- 8 or the patient's health care representative **under IC 16-36-1-7 or**
- 9 **IC 16-36-7.**
- 10 (b) A custodial parent and a noncustodial parent of a child have
- 11 equal access to the child's mental health records unless:
- 12 (1) a court has issued an order that limits the noncustodial parent's
- 13 access to the child's mental health records; and
- 14 (2) the provider has received a copy of the court order or has
- 15 actual knowledge of the court order.
- 16 If the provider incurs an additional expense by allowing a parent equal
- 17 access to a child's mental health records, the provider may require the
- 18 parent requesting the equal access to pay a fee under IC 16-39-9 to
- 19 cover the cost of the additional expense.
- 20 SECTION 41. IC 23-14-31-26, AS AMENDED BY P.L.190-2016,
- 21 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 22 JULY 1, 2020]: Sec. 26. (a) Except as provided in subsection (c), the
- 23 following persons, in the priority listed, have the right to serve as an
- 24 authorizing agent:
- 25 (1) A person:
- 26 (A) granted the authority to serve in a funeral planning
- 27 declaration executed by the decedent under IC 29-2-19; or
- 28 (B) named in a United States Department of Defense form
- 29 "Record of Emergency Data" (DD Form 93) or a successor
- 30 form adopted by the United States Department of Defense, if
- 31 the decedent died while serving in any branch of the United
- 32 States Armed Forces (as defined in 10 U.S.C. 1481) and
- 33 completed the form.
- 34 (2) An individual specifically granted the authority to serve in a
- 35 power of attorney or a health care power of attorney executed by
- 36 the decedent under IC 30-5-5-16 **or a health care representative**
- 37 **under IC 16-36-7.**
- 38 (3) The individual who was the spouse of the decedent at the time
- 39 of the decedent's death, except when:
- 40 (A) a petition to dissolve the marriage or for legal separation
- 41 of the decedent and spouse is pending with a court at the time
- 42 of the decedent's death, unless a court finds that the decedent





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



- 1 efforts to notify the other stepchildren of their intentions and are  
 2 not aware of any opposition to the final disposition instructions by  
 3 more than half of the stepchildren.
- 4 (9) The person appointed to administer the decedent's estate under  
 5 IC 29-1.
- 6 (10) If none of the persons described in subdivisions (1) through  
 7 (9) are available, any other person willing to act and arrange for  
 8 the final disposition of the decedent's remains, including a funeral  
 9 home that:
- 10 (A) has a valid prepaid funeral plan executed under IC 30-2-13  
 11 that makes arrangements for the disposition of the decedent's  
 12 remains; and
- 13 (B) attests in writing that a good faith effort has been made to  
 14 contact any living individuals described in subdivisions (1)  
 15 through (9).
- 16 (11) In the case of an indigent or other individual whose final  
 17 disposition is the responsibility of the state or township, the  
 18 following may serve as the authorizing agent:
- 19 (A) If none of the persons identified in subdivisions (1)  
 20 through (10) are available:
- 21 (i) a public administrator, including a responsible township  
 22 trustee or the trustee's designee; or
- 23 (ii) the coroner.
- 24 (B) A state appointed guardian.
- 25 However, an indigent decedent may not be cremated if a  
 26 surviving family member objects to the cremation or if cremation  
 27 would be contrary to the religious practices of the deceased  
 28 individual as expressed by the individual or the individual's  
 29 family.
- 30 (12) In the absence of any person under subdivisions (1) through  
 31 (11), any person willing to assume the responsibility as the  
 32 authorizing agent, as specified in this article.
- 33 (b) When a body part of a nondeceased individual is to be cremated,  
 34 a representative of the institution that has arranged with the crematory  
 35 authority to cremate the body part may serve as the authorizing agent.
- 36 (c) If:
- 37 (1) the death of the decedent appears to have been the result of:
- 38 (A) murder (IC 35-42-1-1);
- 39 (B) voluntary manslaughter (IC 35-42-1-3); or
- 40 (C) another criminal act, if the death does not result from the  
 41 operation of a vehicle; and
- 42 (2) the coroner, in consultation with the law enforcement agency



- 1           investigating the death of the decedent, determines that there is a  
 2           reasonable suspicion that a person described in subsection (a)  
 3           committed the offense;  
 4           the person referred to in subdivision (2) may not serve as the  
 5           authorizing agent.
- 6           (d) The coroner, in consultation with the law enforcement agency  
 7           investigating the death of the decedent, shall inform the crematory  
 8           authority of the determination referred to in subsection (c)(2).
- 9           (e) If a person vested with a right under subsection (a) does not  
 10          exercise that right not later than seventy-two (72) hours after the person  
 11          receives notification of the death of the decedent, the person forfeits the  
 12          person's right to determine the final disposition of the decedent's  
 13          remains, and the right to determine final disposition passes to the next  
 14          person described in subsection (a).
- 15          (f) A crematory authority owner has the right to rely, in good faith,  
 16          on the representations of a person listed in subsection (a) that any other  
 17          individuals of the same degree of kinship have been notified of the  
 18          final disposition instructions.
- 19          (g) If there is a dispute concerning the disposition of a decedent's  
 20          remains, a crematory authority is not liable for refusing to accept the  
 21          remains of the decedent until the crematory authority receives:
- 22                (1) a court order; or  
 23                (2) a written agreement signed by the disputing parties;  
 24          that determines the final disposition of the decedent's remains. If a  
 25          crematory authority agrees to shelter the remains of the decedent while  
 26          the parties are in dispute, the crematory authority may collect any  
 27          applicable fees for storing the remains, including legal fees that are  
 28          incurred.
- 29          (h) Any cause of action filed under this section must be filed in the  
 30          probate court in the county where the decedent resided, unless the  
 31          decedent was not a resident of Indiana.
- 32          (i) A spouse seeking a judicial determination under subsection  
 33          (a)(3)(A) that the decedent and spouse were reconciled before the  
 34          decedent's death may petition the court having jurisdiction over the  
 35          dissolution or separation proceeding to make this determination by  
 36          filing the petition under the same cause number as the dissolution or  
 37          separation proceeding. A spouse who files a petition under this  
 38          subsection is not required to pay a filing fee.
- 39          SECTION 42. IC 23-14-55-2, AS AMENDED BY P.L.190-2016,  
 40          SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 41          JULY 1, 2020]: Sec. 2. (a) Except as provided in subsection (c), the  
 42          owner of a cemetery is authorized to inter, entomb, or inurn the body



1 or cremated remains of a deceased human upon the receipt of a written  
2 authorization of an individual who professes either of the following:

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

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

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

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

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

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

28 (D) The decedent's surviving adult child or, if more than one  
29 (1) adult child is surviving, the majority of the adult children.  
30 However, less than half of the surviving adult children have  
31 the rights under this clause if the adult children have used  
32 reasonable efforts to notify the other surviving adult children  
33 of their intentions and are not aware of any opposition to the  
34 final disposition instructions by more than half of the surviving  
35 adult children.

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

40 (F) The decedent's surviving sibling or, if more than one (1)  
41 sibling is surviving, the majority of the surviving siblings.  
42 However, less than half of the surviving siblings have the



1 rights under this clause if the siblings have used reasonable  
 2 efforts to notify the other surviving siblings of their intentions  
 3 and are not aware of any opposition to the final disposition  
 4 instructions by more than half of the surviving siblings.  
 5 (G) The individual in the next degree of kinship under  
 6 IC 29-1-2-1 to inherit the estate of the decedent or, if more  
 7 than one (1) individual of the same degree of kinship is  
 8 surviving, the majority of those who are of the same degree.  
 9 However, less than half of the individuals who are of the same  
 10 degree of kinship have the rights under this clause if they have  
 11 used reasonable efforts to notify the other individuals who are  
 12 of the same degree of kinship of their intentions and are not  
 13 aware of any opposition to the final disposition instructions by  
 14 more than half of the individuals who are of the same degree  
 15 of kinship.  
 16 (H) If none of the persons described in clauses (A) through (G)  
 17 are available, or willing, to act and arrange for the final  
 18 disposition of the decedent's remains, a stepchild (as defined  
 19 in IC 6-4.1-1-3(f)) of the decedent. If more than one (1)  
 20 stepchild survives the decedent, then a majority of the  
 21 surviving stepchildren. However, less than half of the  
 22 surviving stepchildren have the rights under this subdivision  
 23 if they have used reasonable efforts to notify the other  
 24 stepchildren of their intentions and are not aware of any  
 25 opposition to the final disposition instructions by more than  
 26 half of the stepchildren.  
 27 (I) The person appointed to administer the decedent's estate  
 28 under IC 29-1.  
 29 (J) If none of the persons described in clauses (A) through (I)  
 30 are available, any other person willing to act and arrange for  
 31 the final disposition of the decedent's remains, including a  
 32 funeral home that:  
 33 (i) has a valid prepaid funeral plan executed under  
 34 IC 30-2-13 that makes arrangements for the disposition of  
 35 the decedent's remains; and  
 36 (ii) attests in writing that a good faith effort has been made  
 37 to contact any living individuals described in clauses (A)  
 38 through (I).  
 39 (2) To have acquired by court order the right to control the  
 40 disposition of the deceased human body or cremated remains.  
 41 The owner of a cemetery may accept the authorization of an individual  
 42 only if all other individuals of the same priority or a higher priority



1 (according to the priority listing in this subsection) are deceased, are  
 2 barred from authorizing the disposition of the deceased human body or  
 3 cremated remains under subsection (c), or are physically or mentally  
 4 incapacitated from exercising the authorization, and the incapacity is  
 5 certified to by a qualified medical doctor.

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

11 (c) If:

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

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

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

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

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

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

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

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

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

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

39 (1) a court order; or

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

41 that determines the final disposition of the decedent's remains. If a  
 42 cemetery agrees to shelter the remains of the decedent while the parties



1 are in dispute, the cemetery may collect any applicable fees for storing  
2 the remains, including legal fees that are incurred.

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

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

13 SECTION 43. IC 25-15-9-18, AS AMENDED BY P.L.190-2016,  
14 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2020]: Sec. 18. (a) Except as provided in subsection (b), the  
16 following persons, in the order of priority indicated, have the authority  
17 to designate the manner, type, and selection of the final disposition of  
18 human remains, to make arrangements for funeral services, and to  
19 make other ceremonial arrangements after an individual's death:

20 (1) A person:

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

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

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

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

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

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



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





- 1 (10) If none of the persons identified in subdivisions (1) through  
 2 (9) are available, any other person willing to act and arrange for  
 3 the final disposition of the decedent's remains, including a funeral  
 4 home that:  
 5 (A) has a valid prepaid funeral plan executed under IC 30-2-13  
 6 that makes arrangements for the disposition of the decedent's  
 7 remains; and  
 8 (B) attests in writing that a good faith effort has been made to  
 9 contact any living individuals described in subdivisions (1)  
 10 through (9).  
 11 (11) In the case of an indigent or other individual whose final  
 12 disposition is the responsibility of the state or township, the  
 13 following:  
 14 (A) If none of the persons identified in subdivisions (1)  
 15 through (10) is available:  
 16 (i) a public administrator, including a responsible township  
 17 trustee or the trustee's designee; or  
 18 (ii) the coroner.  
 19 (B) A state appointed guardian.  
 20 (b) If:  
 21 (1) the death of the decedent appears to have been the result of:  
 22 (A) murder (IC 35-42-1-1);  
 23 (B) voluntary manslaughter (IC 35-42-1-3); or  
 24 (C) another criminal act, if the death does not result from the  
 25 operation of a vehicle; and  
 26 (2) the coroner, in consultation with the law enforcement agency  
 27 investigating the death of the decedent, determines that there is a  
 28 reasonable suspicion that a person described in subsection (a)  
 29 committed the offense;  
 30 the person referred to in subdivision (2) may not authorize or designate  
 31 the manner, type, or selection of the final disposition of human  
 32 remains.  
 33 (c) The coroner, in consultation with the law enforcement agency  
 34 investigating the death of the decedent, shall inform the cemetery  
 35 owner or crematory authority of the determination under subsection  
 36 (b)(2).  
 37 (d) If the decedent had filed a protection order against a person  
 38 described in subsection (a) and the protection order is currently in  
 39 effect, the person described in subsection (a) may not authorize or  
 40 designate the manner, type, or selection of the final disposition of  
 41 human remains.  
 42 (e) A law enforcement agency shall determine if the protection order



1 is in effect. If the law enforcement agency cannot determine the  
 2 existence of a protection order that is in effect, the law enforcement  
 3 agency shall consult the protective order registry established under  
 4 IC 5-2-9-5.5.

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

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

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

18 (1) a court order; or

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

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

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

34 SECTION 44. IC 29-2-16.1-1, AS AMENDED BY P.L.198-2016,  
 35 SECTION 659, IS AMENDED TO READ AS FOLLOWS  
 36 [EFFECTIVE JULY 1, 2020]: Sec. 1. The following definitions apply  
 37 throughout this chapter:

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

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

41 (A) authorized to make health care decisions on behalf of  
 42 another person by a health care power of attorney **under**



- 1                   **IC 30-5-5-16 or a health care representative under**  
 2                   **IC 16-36-7; or**  
 3                   (B) expressly authorized to make an anatomical gift on behalf  
 4                   of another person by a document signed by the person.  
 5                   (3) "Anatomical gift" means a donation of all or part of a human  
 6                   body to take effect after the donor's death for the purpose of  
 7                   transplantation, therapy, research, or education.  
 8                   (4) "Bank" or "storage facility" means a facility licensed,  
 9                   accredited, or approved under the laws of any state for storage of  
 10                  human bodies or parts of human bodies.  
 11                  (5) "Decedent":  
 12                   (A) means a deceased individual whose body or body part is  
 13                   or may be the source of an anatomical gift; and  
 14                   (B) includes:  
 15                   (i) a stillborn infant; and  
 16                   (ii) except as restricted by any other law, a fetus.  
 17                  (6) "Disinterested witness" means an individual other than a  
 18                  spouse, child, sibling, grandchild, grandparent, or guardian of the  
 19                  individual who makes, amends, revokes, or refuses to make an  
 20                  anatomical gift or another adult who exhibited special care and  
 21                  concern for the individual. This term does not include a person to  
 22                  whom an anatomical gift could pass under section 10 of this  
 23                  chapter.  
 24                  (7) "Document of gift" means a donor card or other record used  
 25                  to make an anatomical gift, including a statement or symbol on a  
 26                  driver's license, identification, or donor registry.  
 27                  (8) "Donor" means an individual whose body or body part is the  
 28                  subject of an anatomical gift.  
 29                  (9) "Donor registry" means:  
 30                   (A) a data base maintained by:  
 31                   (i) the bureau of motor vehicles; or  
 32                   (ii) the equivalent agency in another state;  
 33                   (B) the Donate Life Indiana Registry maintained by the  
 34                   Indiana Donation Alliance Foundation; or  
 35                   (C) a donor registry maintained in another state;  
 36                  that contains records of anatomical gifts and amendments to or  
 37                  revocations of anatomical gifts.  
 38                  (10) "Driver's license" means a license or permit issued by the  
 39                  bureau of motor vehicles to operate a vehicle.  
 40                  (11) "Eye bank" means a person that is licensed, accredited, or  
 41                  regulated under federal or state law to engage in the recovery,  
 42                  screening, testing, processing, storage, or distribution of human



- 1 eyes or portions of human eyes.
- 2 (12) "Guardian" means an individual appointed by a court to  
3 make decisions regarding the support, care, education, health, or  
4 welfare of an individual. The term does not include a guardian ad  
5 litem.
- 6 (13) "Hospital" means a facility licensed as a hospital under the  
7 laws of any state or a facility operated as a hospital by the United  
8 States, a state, or a subdivision of a state.
- 9 (14) "Identification card" means an identification card issued by  
10 the bureau of motor vehicles.
- 11 (15) "Minor" means an individual under eighteen (18) years of  
12 age.
- 13 (16) "Organ procurement organization" means a person  
14 designated by the Secretary of the United States Department of  
15 Health and Human Services as an organ procurement  
16 organization.
- 17 (17) "Parent" means an individual whose parental rights have not  
18 been terminated.
- 19 (18) "Part" means an organ, an eye, or tissue of a human being.  
20 The term does not mean a whole body.
- 21 (19) "Pathologist" means a physician:  
22 (A) certified by the American Board of Pathology; or  
23 (B) holding an unlimited license to practice medicine in  
24 Indiana and acting under the direction of a physician certified  
25 by the American Board of Pathology.
- 26 (20) "Person" means an individual, corporation, business trust,  
27 estate, trust, partnership, limited liability company, association,  
28 joint venture, public corporation, government or governmental  
29 subdivision, agency, instrumentality, or any other legal or  
30 commercial entity.
- 31 (21) "Physician" or "surgeon" means an individual authorized to  
32 practice medicine or osteopathy under the laws of any state.
- 33 (22) "Procurement organization" means an eye bank, organ  
34 procurement organization, or tissue bank.
- 35 (23) "Prospective donor" means an individual who is dead or near  
36 death and has been determined by a procurement organization to  
37 have a part that could be medically suitable for transplantation,  
38 therapy, research, or education. The term does not include a  
39 individual who has made an appropriate refusal.
- 40 (24) "Reasonably available" means:  
41 (A) able to be contacted by a procurement organization  
42 without undue effort; and



- 1 (B) willing and able to act in a timely manner consistent with  
 2 existing medical criteria necessary for the making of an  
 3 anatomical gift.
- 4 (25) "Recipient" means an individual into whose body a  
 5 decedent's part has been or is intended to be transplanted.
- 6 (26) "Record" means information that is inscribed on a tangible  
 7 medium or that is stored in an electronic or other medium and is  
 8 retrievable in perceivable form.
- 9 (27) "Refusal" means a record created under section 6 of this  
 10 chapter that expressly states the intent to bar another person from  
 11 making an anatomical gift of an individual's body or part.
- 12 (28) "Sign" means, with the present intent to authenticate or adopt  
 13 a record:
- 14 (A) to execute or adopt a tangible symbol; or  
 15 (B) to attach to or logically associate with the record an  
 16 electronic symbol, sound, or process.
- 17 (29) "State" means a state of the United States, the District of  
 18 Columbia, Puerto Rico, the United States Virgin Islands, or any  
 19 territory or insular possession subject to the jurisdiction of the  
 20 United States.
- 21 (30) "Technician" means an individual determined to be qualified  
 22 to remove or process parts by an appropriate organization that is  
 23 licensed, accredited, or regulated under federal or state law. The  
 24 term includes an eye enucleator.
- 25 (31) "Tissue" means a part of the human body other than an organ  
 26 or an eye. The term does not include blood or other bodily fluids  
 27 unless the blood or bodily fluids are donated for the purpose of  
 28 research or education.
- 29 (32) "Tissue bank" means a person that is licensed, accredited, or  
 30 regulated under federal or state law to engage in the recovery,  
 31 screening, testing, processing, storage, or distribution of tissue.
- 32 (33) "Transplant hospital" means a hospital that furnishes organ  
 33 transplants and other medical and surgical specialty services  
 34 required for the care of organ transplant patients.
- 35 SECTION 45. IC 29-2-16.1-3, AS ADDED BY P.L.147-2007,  
 36 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 37 JULY 1, 2020]: Sec. 3. Subject to section 7 of this chapter, an  
 38 anatomical gift of a donor's body or part may be made during the life  
 39 of the donor for the purpose of transplantation, therapy, research, or  
 40 education in the manner provided in section 4 of this chapter by:
- 41 (1) the donor, if the donor is an adult or if the donor is a minor  
 42 and is:



- 1 (A) emancipated; or  
 2 (B) authorized under state law to apply for a driver's license  
 3 because the donor is at least sixteen (16) years of age;  
 4 (2) an agent, **a health care representative, or a proxy (as**  
 5 **defined by IC 16-36-7-17)** of the donor, unless the health care  
 6 power of attorney, **advance directive**, or other record prohibits  
 7 the agent from making an anatomical gift;  
 8 (3) a parent of the donor, if the donor is not emancipated; or  
 9 (4) the donor's guardian.
- 10 SECTION 46. IC 29-2-19-10, AS ADDED BY P.L.143-2009,  
 11 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 JULY 1, 2020]: Sec. 10. The provisions of a declarant's most recent  
 13 declaration prevail over any other document executed by the declarant  
 14 concerning any preferences described in section 9 of this chapter.  
 15 However, this section may not be construed to invalidate a power of  
 16 attorney executed under IC 30-5-5 or an appointment of a health care  
 17 representative under IC 16-36-1 **or IC 16-36-7** with respect to any  
 18 power or duty belonging to the attorney in fact or health care  
 19 representative that is not related to a preference described in section 9  
 20 of this chapter.
- 21 SECTION 47. IC 29-2-19-17, AS AMENDED BY P.L.190-2016,  
 22 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23 JULY 1, 2020]: Sec. 17. The right to control the disposition of a  
 24 decedent's body, to make arrangements for funeral services, and to  
 25 make other ceremonial arrangements after an individual's death  
 26 devolves on the following, in the priority listed:  
 27 (1) A person:  
 28 (A) granted the authority to serve in a funeral planning  
 29 declaration executed by the decedent under this chapter; or  
 30 (B) named in a United States Department of Defense form  
 31 "Record of Emergency Data" (DD Form 93) or a successor  
 32 form adopted by the United States Department of Defense, if  
 33 the decedent died while serving in any branch of the United  
 34 States Armed Forces (as defined in 10 U.S.C. 1481) and  
 35 completed the form.  
 36 (2) An individual specifically granted the authority in a power of  
 37 attorney or a health care power of attorney executed by the  
 38 decedent under IC 30-5-5-16 **or a health care representative**  
 39 **under IC 16-36-7.**  
 40 (3) The decedent's surviving spouse.  
 41 (4) A surviving adult child of the decedent or, if more than one  
 42 (1) adult child is surviving, the majority of the other adult



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



1 home that:

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

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

8 SECTION 48. IC 29-3-8.5-9, AS AMENDED BY P.L.72-2010,  
9 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
10 JULY 1, 2020]: Sec. 9. A volunteer advocates for seniors program or  
11 a volunteer advocates for incapacitated adults program under this  
12 chapter is not authorized to consent to or refuse health care (as defined  
13 in ~~IC 16-36-1-1~~) **IC 16-36-7-9**) for an individual if:

14 (1) a spouse, a parent, an adult child, or an adult sibling of the  
15 individual or the individual's religious superior, if the individual  
16 is a member of a religious order, is available, capable, and  
17 suitable to consent to or refuse the health care on behalf of the  
18 individual; or

19 (2) the individual has previously:

20 (A) appointed a health care representative under ~~IC 16-36-1;~~

21 **IC 16-36-1-7 or IC 16-36-7;**

22 (B) authorized health care under IC 16-36-1.5, IC 16-36-4, or  
23 IC 16-36-5;

24 (C) executed a power of attorney under IC 30-5-4; or

25 (D) had a guardian appointed by the court under IC 29-3.

26 SECTION 49. IC 29-3-9-1, AS AMENDED BY P.L.74-2016,  
27 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
28 JULY 1, 2020]: Sec. 1. (a) As used in this section, "department" means  
29 the department of child services established by IC 31-25-1-1.

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

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

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

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

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





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

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

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

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

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

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

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

38 (i) A parent who:

39 (1) is a member in the:

40 (A) active or reserve component of the armed forces of the  
41 United States, including the Army, Navy, Air Force, Marine  
42 Corps, National Guard, or Coast Guard; or



- 1 (B) commissioned corps of the:  
 2 (i) National Oceanic and Atmospheric Administration; or  
 3 (ii) Public Health Service of the United States Department  
 4 of Health and Human Services;  
 5 detailed by proper authority for duty with the Army or Navy of  
 6 the United States; or  
 7 (2) is required to:  
 8 (A) enter or serve in the active military service of the United  
 9 States under a call or order of the President of the United  
 10 States; or  
 11 (B) serve on state active duty;  
 12 may delegate the powers designated in subsection (c) for a period  
 13 longer than twelve (12) months if the parent is on active duty service.  
 14 However, the term of delegation may not exceed the term of active duty  
 15 service plus thirty (30) days. The power of attorney must indicate that  
 16 the parent is required to enter or serve in the active military service of  
 17 the United States and include the estimated beginning and ending dates  
 18 of the active duty service.  
 19 (j) Except as otherwise stated in the power of attorney delegating  
 20 powers under this section, a delegation of powers under this section  
 21 may be revoked at any time by a written instrument of revocation that:  
 22 (1) identifies the power of attorney revoked; and  
 23 (2) is signed by the:  
 24 (A) parent of a minor; or  
 25 (B) guardian of a protected person;  
 26 who executed the power of attorney.  
 27 SECTION 50. IC 29-3-9-4.5, AS ADDED BY P.L.6-2010,  
 28 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 29 JULY 1, 2020]: Sec. 4.5. (a) After notice to interested persons and  
 30 upon authorization of the court, a guardian may, if the protected person  
 31 has been found by the court to lack testamentary capacity, do any of the  
 32 following:  
 33 (1) Make gifts.  
 34 (2) Exercise any power with respect to transfer on death or  
 35 payable on death transfers that is described in IC 30-5-5-7.5.  
 36 (3) Convey, release, or disclaim contingent and expectant  
 37 interests in property, including marital property rights and any  
 38 right of survivorship incident to joint tenancy or tenancy by the  
 39 entireties.  
 40 (4) Exercise or release a power of appointment.  
 41 (5) Create a revocable or irrevocable trust of all or part of the  
 42 property of the estate, including a trust that extends beyond the



- 1 duration of the guardianship.  
 2 (6) Revoke or amend a trust that is revocable by the protected  
 3 person.  
 4 (7) Exercise rights to elect options and change beneficiaries under  
 5 insurance policies, retirement plans, and annuities.  
 6 (8) Surrender an insurance policy or annuity for its cash value.  
 7 (9) Exercise any right to an elective share in the estate of the  
 8 protected person's deceased spouse.  
 9 (10) Renounce or disclaim any interest by testate or intestate  
 10 succession or by transfer inter vivos.  
 11 (b) Before approving a guardian's exercise of a power listed in  
 12 subsection (a), the court shall consider primarily the decision that the  
 13 protected person would have made, to the extent that the decision of  
 14 the protected person can be ascertained. If the protected person has a  
 15 will, the protected person's distribution of assets under the will is prima  
 16 facie evidence of the protected person's intent. The court shall also  
 17 consider:  
 18 (1) the financial needs of the protected person and the needs of  
 19 individuals who are dependent on the protected person for  
 20 support;  
 21 (2) the interests of creditors;  
 22 (3) the possible reduction of income taxes, estate taxes,  
 23 inheritance taxes, or other federal, state, or local tax liabilities;  
 24 (4) the eligibility of the protected person for governmental  
 25 assistance;  
 26 (5) the protected person's previous pattern of giving or level of  
 27 support;  
 28 (6) the protected person's existing estate plan, if any;  
 29 (7) the protected person's life expectancy and the probability that  
 30 the guardianship will terminate before the protected person's  
 31 death; and  
 32 (8) any other factor the court considers relevant.  
 33 (c) A guardian may examine and receive, at the expense of the  
 34 guardian, copies of the following documents of the protected person:  
 35 (1) A will.  
 36 (2) A trust.  
 37 (3) A power of attorney.  
 38 (4) A health care appointment.  
 39 **(5) An advance directive.**  
 40 ~~(5)~~ **(6)** Any other estate planning document.  
 41 SECTION 51. IC 30-5-5-16, AS AMENDED BY P.L.81-2015,  
 42 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2020]: Sec. 16. (a) This section does not prohibit an individual  
 2 capable of consenting to the individual's own health care or to the  
 3 health care of another from consenting to health care administered in  
 4 good faith under the religious tenets and practices of the individual  
 5 requiring health care.

6 (b) Language conferring general authority with respect to health  
 7 care powers means the principal authorizes the attorney in fact to do  
 8 the following:

9 (1) Employ or contract with servants, companions, or health care  
 10 providers to care for the principal.

11 (2) Consent to or refuse health care for the principal who is an  
 12 individual in accordance with IC 16-36-4 and IC 16-36-1 by  
 13 properly executing and attaching to the power of attorney a  
 14 declaration or appointment, or both.

15 (3) Admit or release the principal from a hospital or health care  
 16 facility.

17 (4) Have access to records, including medical records, concerning  
 18 the principal's condition.

19 (5) Make anatomical gifts on the principal's behalf.

20 (6) Request an autopsy.

21 (7) Make plans for the disposition of the principal's body,  
 22 including executing a funeral planning declaration on behalf of  
 23 the principal in accordance with IC 29-2-19.

24 **(c) Notwithstanding any other law, a document granting health**  
 25 **care powers to an attorney in fact for health care may not be**  
 26 **executed under this chapter after December 31, 2022. However, if**  
 27 **a power of attorney that is executed after December 31, 2022, is**  
 28 **written to grant both:**

29 **(1) health care powers; and**

30 **(2) nonhealth care powers under this chapter;**

31 **to an attorney in fact, the health care powers are void, but all other**  
 32 **powers granted by the power of attorney will remain effective and**  
 33 **enforceable under this article.**

34 SECTION 52. IC 30-5-5-17 IS AMENDED TO READ AS  
 35 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 17. (a) If the attorney  
 36 in fact has the authority to consent to or refuse health care under  
 37 section ~~16(2)~~ **16(b)(2)** of this chapter, the attorney in fact may be  
 38 empowered to ask in the name of the principal for health care to be  
 39 withdrawn or withheld when it is not beneficial or when any benefit is  
 40 outweighed by the demands of the treatment and death may result. To  
 41 empower the attorney in fact to act under this section, the following  
 42 language must be included in an appointment under IC 16-36-1 or



1       **IC 16-36-7** in substantially the same form set forth below:  
2       I authorize my health care representative to make decisions in my  
3       best interest concerning withdrawal or withholding of health care.  
4       If at any time based on my previously expressed preferences and  
5       the diagnosis and prognosis my health care representative is  
6       satisfied that certain health care is not or would not be beneficial  
7       or that such health care is or would be excessively burdensome,  
8       then my health care representative may express my will that such  
9       health care be withheld or withdrawn and may consent on my  
10      behalf that any or all health care be discontinued or not instituted,  
11      even if death may result.  
12      My health care representative must try to discuss this decision  
13      with me. However, if I am unable to communicate, my health care  
14      representative may make such a decision for me, after  
15      consultation with my physician or physicians and other relevant  
16      health care givers. To the extent appropriate, my health care  
17      representative may also discuss this decision with my family and  
18      others to the extent they are available.  
19      (b) Nothing in this section may be construed to authorize  
20      euthanasia.  
21      SECTION 53. IC 30-5-7-2 IS AMENDED TO READ AS  
22      FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2. (a) A health care  
23      provider furnished with a copy of a declaration under IC 16-36-4 or an  
24      appointment under IC 16-36-1 **or IC 16-36-7** shall make the  
25      documents a part of the principal's medical records.  
26      (b) If a change in or termination of a power of attorney becomes  
27      known to the health care provider, the change or termination shall be  
28      noted in the principal's medical records.  
29      SECTION 54. IC 30-5-7-3 IS AMENDED TO READ AS  
30      FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3. Whenever a health  
31      care provider believes a patient may lack the capacity to give informed  
32      consent to health care the provider considers necessary, the provider  
33      shall consult with the attorney in fact who has power to act for the  
34      patient under IC 16-36-4, IC 16-36-1, **IC 16-36-7**, or this article.  
35      SECTION 55. IC 30-5-8-6 IS AMENDED TO READ AS  
36      FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 6. **Subject to**  
37      **IC 16-36-7**, appointments made under this article, IC 16-36-4, **and**  
38      IC 16-36-1, **and IC 16-36-7** can be made concurrently and will be  
39      given full effect under the law. However, the appointments may be  
40      executed independently and remain valid in their own right.  
41      SECTION 56. IC 34-30-2-75.6 IS ADDED TO THE INDIANA  
42      CODE AS A NEW SECTION TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2020]: **Sec. 75.6. IC 16-36-7-36 (Concerning**  
 2 **a health care provider's or other person's reliance on an advance**  
 3 **directive).**

4 SECTION 57. IC 34-30-2-75.7 IS ADDED TO THE INDIANA  
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 6 [EFFECTIVE JULY 1, 2020]: **Sec. 75.7. IC 16-36-7-37 (Concerning**  
 7 **a health care provider's or other person's reliance on an affidavit**  
 8 **regarding an advance directive or decision of a health care**  
 9 **representative).**

10 SECTION 58. IC 35-42-1-2.5, AS AMENDED BY P.L.158-2013,  
 11 SECTION 412, IS AMENDED TO READ AS FOLLOWS  
 12 [EFFECTIVE JULY 1, 2020]: Sec. 2.5. (a) This section does not apply  
 13 to the following:

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

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

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

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

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



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1317, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 19, line 4, after "to" insert "**comprehend and weigh relative information and to make and**".

Page 19, line 5, delete "willful and knowing" and insert "**reasoned**".

Page 23, line 34, delete "prohibits the declarant from orally" and insert "**requires**".

Page 23, delete lines 35 through 36.

Page 23, run in lines 34 through 37.

Page 25, delete lines 6 through 10, begin a new paragraph and insert:

**"(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"**

Page 25, line 16, delete "that explicitly" and insert ".".

Page 25, delete lines 17 through 18.

Page 25, line 26, delete "Unless the advance directive explicitly prohibits oral".

Page 25, delete line 27.

Page 25, line 28, delete "representatives within the advance directive, orally" and insert "**Orally**".

Page 25, line 37, delete "However, a" and insert "**However, if a declarant has not been determined to be incapacitated under section 31 of this chapter, the**".

Page 27, line 27, delete "two (2) physicians who examine or evaluate" and insert: "**one (1) physician who examines or evaluates**".

Page 30, line 32, after "(a)" insert "**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)"**.

Page 30, line 42, delete "(b)" and insert "**(c)**".

Page 31, line 13, delete "(c)" and insert "**(d)**".



Page 31, line 18, delete "(d)" and insert "(e)".

Page 31, line 19, delete "(c)" and insert "(d)".

Page 31, line 19, delete "a".

Page 31, delete lines 20 through 24.

Page 31, line 25, delete "conclusion that the declarant lacks capacity,".

Page 31, line 31, delete "(e)" and insert "(f)".

Page 31, line 34, delete "(f)" and insert "(g)".

Page 34, line 3, after "if" insert **"a health care provider is unwilling to comply with a health care decision made by a health care representative, and"**.

Page 34, line 30, after "36." insert "(a)".

Page 34, between lines 36 and 37, begin a new paragraph and insert:  
**"(b) A health care provider is not responsible for determining the validity of an advance directive."**

Page 35, line 28, delete "directive." and insert **"directive or who does not have an advance directive currently in effect."**

Page 35, line 32, delete "chapter;" and insert **"chapter or who does not have an advance directive currently in effect;"**.

and when so amended that said bill do pass.

(Reference is to HB 1317 as introduced.)

KIRCHHOFER

Committee Vote: yeas 11, nays 0.

---

HOUSE MOTION

Mr. Speaker: I move that House Bill 1317 be amended to read as follows:

Page 32, delete lines 21 through 24.

(Reference is to HB 1317 as printed January 27, 2020.)

KIRCHHOFER

