

# HOUSE BILL No. 1516

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 12-10; IC 16-18-2; IC 16-21-12; IC 16-36; IC 16-39-2-9; IC 23-14; IC 25-15-9-18; IC 29-2; IC 29-3; IC 30-5; IC 34-30-2; IC 35-42-1-2.5.

**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". Allows a minor's parent, legal custodian, or legal guardian to sign an advance directive on behalf of the minor. 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, 2019.

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## Kirchhofer, Hatfield

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January 17, 2019, read first time and referred to Committee on Judiciary.

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First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## HOUSE BILL No. 1516

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, 2019]: 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



- 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, 2019]: 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, 2019]: 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, 2019]: 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, 2019]: 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, 2019]: 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, 2019]: 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, 2019]: 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, 2019]: 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, 2019]: 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, 2019]: 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, 2019]: 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, 2019]: **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, 2019]: 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.129-2018,
- 26 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 27 JULY 1, 2019]: 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 16-36-5 and  
 30 IC 16-36-6, means an individual licensed or authorized by this state to  
 31 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, 2019]: 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 16-18-2-166.5 IS ADDED TO THE INDIANA  
7 CODE AS A NEW SECTION TO READ AS FOLLOWS  
8 [EFFECTIVE JULY 1, 2019]: **Sec. 166.5. "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, 2019]: **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, 2019]: 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, 2019]: 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 16-18-2-236.5 IS ADDED TO THE INDIANA  
35 CODE AS A NEW SECTION TO READ AS FOLLOWS  
36 [EFFECTIVE JULY 1, 2019]: **Sec. 236.5. "Minor's declarant", for  
37 purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-17.**

38 SECTION 22. IC 16-18-2-296.2 IS ADDED TO THE INDIANA  
39 CODE AS A NEW SECTION TO READ AS FOLLOWS  
40 [EFFECTIVE JULY 1, 2019]: **Sec. 296.2. "Proxy", for purposes of  
41 IC 16-36-7, has the meaning set forth in IC 16-36-7-18.**

42 SECTION 23. IC 16-18-2-308.2 IS ADDED TO THE INDIANA



1 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 2 [EFFECTIVE JULY 1, 2019]: **Sec. 308.2. "Reasonably available",**  
 3 **for purposes of IC 16-36-7, has the meaning set forth in**  
 4 **IC 16-36-7-19.**

5 SECTION 24. IC 16-18-2-331.4 IS ADDED TO THE INDIANA  
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 7 [EFFECTIVE JULY 1, 2019]: **Sec. 331.4. "Sign", for purposes of**  
 8 **IC 16-36-7, has the meaning set forth in IC 16-36-7-20.**

9 SECTION 25. IC 16-18-2-331.5 IS ADDED TO THE INDIANA  
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 11 [EFFECTIVE JULY 1, 2019]: **Sec. 331.5. "Signature", for purposes**  
 12 **of IC 16-36-7, has the meaning set forth in IC 16-36-7-21.**

13 SECTION 26. IC 16-18-2-354.8 IS ADDED TO THE INDIANA  
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 15 [EFFECTIVE JULY 1, 2019]: **Sec. 354.8. "Treating physician", for**  
 16 **purposes of IC 16-36-7, has the meaning set forth in IC 16-36-7-22.**

17 SECTION 27. IC 16-18-2-378.5 IS ADDED TO THE INDIANA  
 18 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 19 [EFFECTIVE JULY 1, 2019]: **Sec. 378.5. "Written" and "writing",**  
 20 **for purposes of IC 16-36-7, have the meaning set forth in**  
 21 **IC 16-36-7-23.**

22 SECTION 28. IC 16-21-12-4, AS ADDED BY P.L.137-2015,  
 23 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2019]: Sec. 4. As used in this chapter, "health care  
 25 representative" means an individual:

- 26 (1) appointed as the patient's health care representative under
- 27 IC 16-36-1-7;
- 28 (2) appointed as the patient's health care representative under
- 29 IC 16-36-7; or an individual
- 30 (3) holding the patient's health care power of attorney under
- 31 IC 30-5-5-16.

32 However, if the patient has not appointed a health care representative  
 33 under IC 16-36-1-7 or IC 16-36-7 or granted a health care power of  
 34 attorney to an individual under IC 30-5-5-16, the term means an  
 35 individual authorized to consent to health care for the patient under  
 36 ~~IC 16-36-1-5.~~ **IC 16-36-7-41.**

37 SECTION 29. IC 16-21-12-15, AS ADDED BY P.L.137-2015,  
 38 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 39 JULY 1, 2019]: Sec. 15. (a) This chapter may not be construed to  
 40 interfere with the rights of a health care representative appointed under  
 41 IC 16-36-1 or a health care representative appointed under  
 42 IC 16-36-7.



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

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

8 SECTION 30. IC 16-36-1-7, AS AMENDED BY P.L.81-2015,  
 9 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10 JULY 1, 2019]: Sec. 7. (a) An individual who may consent to health  
 11 care under section 3 of this chapter may appoint another representative  
 12 to act for the appointor in matters affecting the appointor's health care.

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

15 (1) Be in writing.

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

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

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

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

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

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

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

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

36 (2) In good faith.

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

40 (1) The appointor.

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

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



1           one.

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

3   revoke:

4           (1) the appointment at any time by notifying the representative

5           orally or in writing; or

6           (2) the authority granted to the representative by notifying the

7           health care provider orally or in writing.

8           SECTION 31. IC 16-36-1.5-5 IS AMENDED TO READ AS

9   FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) This section

10   applies to a patient who:

11           (1) receives mental health services; and

12           (2) is mentally incompetent.

13           (b) A patient described in subsection (a) shall provide consent for

14   mental health treatment through the informed consent of one (1) of the

15   following:

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

17           representative.

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

19           (3) An attorney in fact for health care appointed under

20           IC 30-5-5-16.

21           (4) The patient's health care representative acting in accordance

22           with the patient's psychiatric advance directive as expressed in a

23           psychiatric advance directive executed under IC 16-36-1.7.

24           **(5) The patient's health care representative appointed under**

25           **IC 16-36-7.**

26           SECTION 32. IC 16-36-4-1 IS REPEALED [EFFECTIVE JULY 1,

27   2019]. Sec. 1: (a) ~~As used in this chapter, "life prolonging procedure"~~

28   ~~means any medical procedure, treatment, or intervention that does the~~

29   ~~following:~~

30           ~~(1) Uses mechanical or other artificial means to sustain, restore,~~

31           ~~or supplant a vital function.~~

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

33           ~~(b) The term does not include the performance or provision of any~~

34   ~~medical procedure or medication necessary to provide comfort care or~~

35   ~~to alleviate pain.~~

36           SECTION 33. IC 16-36-4-10 IS AMENDED TO READ AS

37   FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10. The following is the

38   living will declaration form:

39           LIVING WILL DECLARATION

40           Declaration made this \_\_\_\_ day of \_\_\_\_\_ (month, year). I,

41   \_\_\_\_\_, being at least eighteen (18) years of age and of sound

42   mind, willfully and voluntarily make known my desires that my dying



1 shall not be artificially prolonged under the circumstances set forth  
2 below, and I declare:

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

13 \_\_\_\_\_ I wish to receive artificially supplied nutrition and  
14 hydration, even if the effort to sustain life is futile or excessively  
15 burdensome to me.

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

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

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

29 I understand the full import of this declaration.  
30 Signed \_\_\_\_\_

31 \_\_\_\_\_  
32 City, County, and State of Residence

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

39 Witness \_\_\_\_\_ Date \_\_\_\_\_  
40 Witness \_\_\_\_\_ Date \_\_\_\_\_

41 SECTION 34. IC 16-36-5-9 IS AMENDED TO READ AS  
42 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. As used in this



1 chapter, "representative" means a person's:

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

9 SECTION 35. IC 16-36-6-3 IS REPEALED [EFFECTIVE JULY 1,  
 10 2019]. Sec. 3: (a) As used in this chapter, "life prolonging procedure"  
 11 means any medical procedure, treatment, or intervention that does the  
 12 following:

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

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

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

19 SECTION 36. IC 16-36-6-7, AS AMENDED BY THE  
 20 TECHNICAL CORRECTIONS BILL OF THE 2019 GENERAL  
 21 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2019]: Sec. 7. (a) The following individuals may complete a  
 23 POST form:

24 (1) A qualified person who is:

25 (A) either:

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

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

29 (B) of sound mind.

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

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

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

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

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

42 (iii) appointed by a court as the individual's health care



1 representative under IC 16-36-1-8; ~~or~~

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

4 **or**

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

7 (b) In order to complete a POST form, a person described in  
8 subsection (a) and the qualified person's treating physician, advanced  
9 practice **registered** nurse, or physician assistant or the physician's,  
10 advanced practice **registered** nurse's, or physician assistant's designee  
11 must do the following:

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

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

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

20 (1) in good faith; and

21 (2) in:

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

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

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

28 SECTION 37. IC 16-36-6-9, AS AMENDED BY THE  
29 TECHNICAL CORRECTIONS BILL OF THE 2019 GENERAL  
30 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
31 JULY 1, 2019]: Sec. 9. (a) The state department shall develop a  
32 standardized POST form and distribute the POST form.

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

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

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

41 (A) Comfort measures.

42 (B) Limited additional interventions.



- 1 (C) Full intervention.
- 2 (3) A medical order specifying whether antibiotics should be
- 3 provided to the qualified person.
- 4 (4) A medical order specifying whether artificially administered
- 5 nutrition should be provided to the qualified person.
- 6 (5) A signature line for the treating physician, advanced practice
- 7 **registered** nurse, or physician assistant, including the following
- 8 information:
- 9 (A) The physician's, advanced practice **registered** nurse's, or
- 10 physician assistant's printed name.
- 11 (B) The physician's, advanced practice **registered** nurse's, or
- 12 physician assistant's telephone number.
- 13 (C) The physician's medical license number, advanced practice
- 14 **registered** nurse's nursing license number, or physician
- 15 assistant's state license number.
- 16 (D) The date of the physician's, advanced practice **registered**
- 17 nurse's, or physician assistant's signature.
- 18 As used in this subdivision, "signature" includes an electronic or
- 19 physician, advanced practice **registered** nurse, or physician
- 20 assistant controlled stamp signature.
- 21 (6) A signature line for the qualified person or representative,
- 22 including the following information:
- 23 (A) The qualified person's or representative's printed name.
- 24 (B) The relationship of the representative signing the POST
- 25 form to the qualified person covered by the POST form.
- 26 (C) The date of the signature.
- 27 As used in this subdivision, "signature" includes an electronic
- 28 signature.
- 29 (7) A section presenting the option to allow a declarant to appoint
- 30 a representative (as defined in IC 16-36-1-2) under IC 16-36-1-7
- 31 **or IC 16-36-7** to serve as the declarant's health care
- 32 representative.
- 33 (c) The state department shall place the POST form on its Internet
- 34 web site.
- 35 (d) The state department is not liable for any use or misuse of the
- 36 POST form.
- 37 SECTION 38. IC 16-36-6-20, AS AMENDED BY P.L.2-2014,
- 38 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 39 JULY 1, 2019]: Sec. 20. The execution or revocation of a POST form
- 40 by or for a qualified person does not revoke or impair the validity of
- 41 any of the following:
- 42 (1) A power of attorney that is executed by a qualified person





- 1 when the qualified person is competent.
- 2 (2) Health care powers that are granted to an attorney in fact
- 3 under IC 30-5-5-16 or IC 30-5-5-17.
- 4 (3) An appointment of a health care representative that is
- 5 executed by a qualified person, except to the extent that the POST
- 6 form contains a superseding appointment of a new health care
- 7 representative under section 9(b)(7) of this chapter.
- 8 (4) The authority of a health care representative under ~~IC 16-36-1~~
- 9 **IC 16-36-1-7 or IC 16-36-7** to consent to health care on behalf
- 10 of the qualified person.
- 11 (5) The authority of an attorney in fact holding health care powers
- 12 under IC 30-5-5-16 or IC 30-5-5-17 to issue and enforce
- 13 instructions under IC 30-5-7 concerning the qualified person's
- 14 health care.
- 15 SECTION 39. IC 16-36-7 IS ADDED TO THE INDIANA CODE
- 16 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 17 JULY 1, 2019]:
- 18 **Chapter 7. Health Care Advance Directives**
- 19 **Sec. 1. (a) A death as a result of the withholding or withdrawal**
- 20 **of life prolonging procedures in accordance with:**
- 21 **(1) a declarant's advance directive; or**
- 22 **(2) any provision of this chapter;**
- 23 **does not constitute a suicide.**
- 24 **(b) This chapter does not authorize euthanasia or any**
- 25 **affirmative or deliberate act or omission to end life other than to**
- 26 **permit the natural process of dying.**
- 27 **(c) This chapter does not establish the only legal means that an**
- 28 **individual may use to:**
- 29 **(1) communicate or confirm the individual's wishes or**
- 30 **preferences to receive or refuse life prolonging treatment or**
- 31 **other health care; or**
- 32 **(2) give one (1) or more other persons authority to consent to**
- 33 **health care or make health care decisions on the individual's**
- 34 **behalf.**
- 35 **Sec. 2. As used in this chapter, "advance directive" means a**
- 36 **written declaration of a declarant who:**
- 37 **(1) gives instructions or expresses preferences or desires**
- 38 **concerning any aspect of the declarant's health care or health**
- 39 **information, including the designation of a health care**
- 40 **representative, a living will declaration made under**
- 41 **IC 16-36-4-10, or an anatomical gift made under IC 29-2-16.1;**
- 42 **and**



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



- 1           (2) A health facility licensed under IC 16-28-2 or IC 16-28-3.
- 2           (3) A home health agency licensed under IC 16-27-1.
- 3           (4) A hospice program licensed under IC 16-25-3.
- 4           (5) A hospital licensed under IC 16-21-2.
- 5           (6) A health maintenance organization (as defined in
- 6           IC 27-13-1-19).

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

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

- 14           (1) make health care decisions; and
  - 15           (2) receive health information;
- 16 regarding the declarant. The term includes a person who receives  
 17 and holds validly delegated authority from a designated health care  
 18 representative.

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

21           **Sec. 15.** As used in this chapter, "incapacity" and  
 22 "incapacitated" mean that an individual is unable to communicate  
 23 a willful and knowing health care decision. For the purposes of  
 24 making an anatomical gift, the terms include an individual who is  
 25 deceased.

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

34           **Sec. 17.** As used in this chapter, "minor's declarant" means a  
 35 declarant who is a parent, guardian, or legal custodian of a minor.

36           **Sec. 18.** As used in this chapter, "proxy" means a competent  
 37 adult who:

- 38           (1) has not been expressly designated in a declaration to make  
 39 health care decisions for a particular incapacitated  
 40 individual; and
- 41           (2) is authorized and willing to make health care decisions for  
 42 the individual under section 41 of this chapter.



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

- 3           (1) readily able to be contacted without undue effort; and  
4           (2) willing and able to act in a timely manner considering the  
5           urgency of that individual's health care needs or health  
6           decisions.

7           **Sec. 20.** As used in this chapter, "sign" includes the valid use of  
8 an electronic signature.

9           **Sec. 21.** As used in this chapter, "signature" means the  
10 authorized use of the name of a declarant or other person to  
11 authenticate an electronic record or other writing. The term  
12 includes an electronic signature and an electronic notarial  
13 certificate completed by a notary public.

14           **Sec. 22.** As used in this chapter, "treating physician" means a  
15 licensed physician who is overseeing, directing, or performing  
16 health care to an individual at the pertinent time.

17           **Sec. 23.** As used in this chapter, "written" and "writing" include  
18 the use of any method to inscribe information in or on a tangible  
19 medium or to store the information in an electronic or other  
20 medium that can retrieve, view, and print the information in  
21 perceivable form.

22           **Sec. 24. (a)** Except when an individual has been determined to  
23 be incapacitated under section 33 of this chapter, an individual  
24 may consent to the individual's own health care if the individual is:

- 25           (1) an adult; or  
26           (2) a minor and:  
27           (A) is emancipated;  
28           (B) is:  
29           (i) at least fourteen (14) years of age;  
30           (ii) not dependent on a parent for support;  
31           (iii) living apart from the minor's parents or from an  
32           individual in loco parentis; and  
33           (iv) managing the minor's own affairs;  
34           (C) is or has been married;  
35           (D) is in the military service of the United States; or  
36           (E) is authorized to consent to the health care by another  
37           statute.

38           **(b) If:**

- 39           (1) an individual:  
40           (A) has a signed advance directive that is in effect; and  
41           (B) has not been determined to be incapacitated under  
42           section 33 of this chapter; and



1           (2) the individual's decisions and the health care  
 2           representative's decisions present a material conflict;  
 3           the health care decisions by that individual take precedence over  
 4           decisions made by a health care representative designated in that  
 5           individual's advance directive.

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

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

11           (a);

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

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

18           (d) If:

19           (1) an individual later signs an advance directive under  
 20           section 25 of this chapter; and

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

24           the advance directive controls.

25           Sec. 25. (a) An advance directive signed by or for a declarant  
 26           under this section may accomplish or communicate one (1) or more  
 27           of the following:

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

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

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

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

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

41           (B) acting as a proxy for the declarant under section 41 of  
 42           this chapter; or



- 1           (C) receiving and exercising delegated authority from the  
2           declarant's health care representative.
- 3           (b) An advance directive under this section must be signed by or  
4 for the declarant using one (1) of the following methods:
- 5           (1) Signed by the declarant in the presence of two (2) adult  
6 witnesses or in the presence of a notary public.
- 7           (2) Signing of the declarant's name by another adult  
8 individual at the specific direction of the declarant, in the  
9 declarant's direct physical presence, and in the presence of  
10 the two (2) adult witnesses or a notary public. However, an  
11 individual who signs the declarant's name on the advance  
12 directive may not be a witness, the notary public, or a health  
13 care representative designated in the advance directive.
- 14           (c) An advance directive signed under this section must be  
15 witnessed or acknowledged in one (1) of the following ways:
- 16           (1) Signed in the declarant's direct physical presence by two  
17 (2) adult witnesses, at least one (1) of whom may not be the  
18 spouse or other relative of the declarant.
- 19           (2) Signed or acknowledged by the declarant in the presence  
20 of a notary public, who completes and signs a notarial  
21 certificate under IC 33-42-9-12 and makes it a part of the  
22 advance directive.
- 23           If the advance directive complies with either subdivision (1) or (2),  
24 but contains additional witness signatures or a notarial certificate  
25 that is not needed, the advance directive is still validly witnessed  
26 and acknowledged.
- 27           (d) If a declarant resides in or is located in a jurisdiction other  
28 than Indiana at the time when the declarant signs a writing that  
29 communicates the information described in subsection (a), the  
30 writing must be treated as a validly signed advance directive under  
31 this chapter if the declarant was not incapacitated at the time of  
32 signing and if the writing was:
- 33           (1) signed and witnessed or acknowledged in a manner that  
34 complies with subsections (b) and (c); or
- 35           (2) signed in a manner that complies with the applicable law  
36 of the jurisdiction in which the declarant was residing or was  
37 physically located at the time of signing.
- 38           Sec. 26. An advance directive signed by a declarant under this  
39 section may contain any of the following additional provisions:
- 40           (1) A provision that delays:
- 41           (A) the effectiveness of an instruction or decision by the  
42 declarant; or



- 1           **(B) the effectiveness of the authority of a designated health**  
 2           **care representative;**  
 3           **until a stated date or the occurrence of a specifically defined**  
 4           **event.**  
 5           **(2) If the advance directive explicitly provides that a health**  
 6           **care decision or instruction or the authority of one (1) or**  
 7           **more health care representatives is to be effective upon the**  
 8           **future incapacity, disability, or incompetence of the declarant,**  
 9           **a provision that:**  
 10           **(A) specifies the person or persons who are authorized to**  
 11           **make the determination of incapacity, disability, or**  
 12           **incompetence and the evidence or information to be used**  
 13           **for the determination;**  
 14           **(B) is not more stringent than the procedure described in**  
 15           **section 33 of this chapter; and**  
 16           **(C) does not allow a medical determination by a physician,**  
 17           **psychologist, or other health care professional to be**  
 18           **superseded by the subjective judgment or veto of another**  
 19           **person or by nonmedical evidence regarding the**  
 20           **declarant's capacity or incapacity.**  
 21           **(3) A provision that terminates the authority of a designated**  
 22           **health care representative on:**  
 23           **(A) a stated date; or**  
 24           **(B) upon the occurrence of a specifically defined event.**  
 25           **(4) A provision that designates two (2) or more health care**  
 26           **representatives as having authority to make health care**  
 27           **decisions for the declarant in different areas or with respect**  
 28           **to different health care issues.**  
 29           **(5) A provision that designates two (2) or more health care**  
 30           **representatives as having authority to act individually to**  
 31           **make health care decisions for the declarant in a specified**  
 32           **order of priority.**  
 33           **(6) A provision that designates two (2) or more health care**  
 34           **representatives and permits them to act individually and**  
 35           **independently, or that requires them to act jointly, on a**  
 36           **majority vote basis, or under a combination of requirements**  
 37           **to make all health care decisions or specified health care**  
 38           **decisions for the declarant. The advance directive may include**  
 39           **a provision for a successor health care representative to act**  
 40           **according to different requirements.**  
 41           **(7) A provision that states a fee or presumptive reasonable**  
 42           **hourly rate for the compensation that a health care**



1 representative may collect for acting on behalf of the  
 2 declarant or providing caregiving services to the declarant.

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

6 (9) A provision that prohibits the advance directive from  
 7 being orally revoked by the declarant or that requires a  
 8 professional adviser or other additional person to witness,  
 9 ratify, or approve an oral or written revocation or  
 10 amendment of the advance directive.

11 (10) A provision that:

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

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

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

18 (A) receive:

19 (i) health information about the declarant; and

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

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

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

29 (12) Any other provision concerning the:

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

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

32 Sec. 27. (a) The state department of health shall develop a  
 33 sample form for an advance directive that is consistent with this  
 34 chapter. The sample form must contain the following sample  
 35 provisions:

36 (1) A provision that states a declarant's wishes or preferences  
 37 about providing, continuing, terminating, or refusing life  
 38 prolonging procedures, palliative care, comfort care, or  
 39 assistance with activities of daily living.

40 (2) A provision that designates one (1) or more health care  
 41 representatives to make health care decisions for a declarant  
 42 or to receive health information on behalf of a declarant, or





- 1           **both.**  
 2           **The sample form may include boxes that can be checked, signed, or**  
 3           **initialed to select provisions that are optional but permitted under**  
 4           **section 26 of this chapter.**  
 5           **(b) A declarant is not required to use any official or unofficial**  
 6           **form to prepare and sign a valid advance directive.**  
 7           **Sec. 28. A complete copy of the signed and witnessed or**  
 8           **notarized advance directive must be given to each health care**  
 9           **representative who:**  
 10           **(1) is specifically designated by name in the advance directive;**  
 11           **and**  
 12           **(2) has authority to make health care decisions that are**  
 13           **immediately effective under the explicit terms of the advance**  
 14           **directive or under section 32(1) of this chapter.**  
 15           **If the advance directive is signed with electronic signatures, a**  
 16           **complete copy that is generated or converted from the original**  
 17           **electronic record and that is viewable and printable is valid and**  
 18           **may be relied upon as the equivalent to the original.**  
 19           **Sec. 29. (a) A minor's parent, legal custodian, or legal guardian**  
 20           **may act as the minor's declarant to sign an advance directive on**  
 21           **behalf of the minor and to designate one (1) or more competent**  
 22           **adults to serve as a health care representative to make health care**  
 23           **decisions for the minor. Except as provided in this section, an**  
 24           **advance directive signed for a minor and with respect to its proper**  
 25           **execution, implementation, and interpretation must comply with**  
 26           **the requirements in sections 25, 30, 31, and 32 of this chapter. A**  
 27           **minor may not execute or revoke an advance directive, but for all**  
 28           **other purposes under this chapter a competent minor may act as**  
 29           **the declarant.**  
 30           **(b) A designation of a health care representative for a minor is**  
 31           **not invalid solely because it was made before the birth of the**  
 32           **minor, if the minor is identified by name and expected or estimated**  
 33           **date of birth.**  
 34           **(c) An advance directive signed for a minor by a minor's**  
 35           **declarant remains in effect until:**  
 36           **(1) the occurrence of an expiration date or other triggering**  
 37           **event for expiration that is stated explicitly in the minor's**  
 38           **advance directive;**  
 39           **(2) a written revocation by the minor's declarant that**  
 40           **complies with section 30 of this chapter; or**  
 41           **(3) except as provided in subsection (d), when the minor has**  
 42           **attained the age of eighteen (18) years.**



1           (d) An advance directive signed for a minor by a minor's  
2 declarant expires ninety-one (91) days after the minor becomes  
3 eighteen (18) years of age unless any of the following occur within  
4 ninety (90) days after the minor becomes eighteen (18) years of  
5 age:

6           (1) The individual confirms in a signed writing that the  
7 advance directive remains in effect and attaches that writing  
8 to a copy of the advance directive.

9           (2) A probate court with jurisdiction over the individual holds  
10 a hearing upon notice to the individual and enters an order  
11 that:

12           (A) determines that the individual who has attained  
13 eighteen (18) years of age is incapacitated; and

14           (B) states that the advance directive on behalf of the minor  
15 remains in effect until a later order revokes the advance  
16 directive or finds that the individual is no longer  
17 incapacitated.

18           Sec. 30. (a) The declarant who signs an advance directive,  
19 including a minor's declarant who signs an advance directive on  
20 behalf of a minor, may revoke that advance directive by any of the  
21 following:

22           (1) Signing, in a manner that complies with section 25(b) and  
23 25(c) of this chapter, another advance directive that explicitly  
24 revokes or supersedes the previous advance directive or all  
25 previous advance directives signed by that declarant.

26           (2) Signing, in a manner that complies with section 25(b) and  
27 25(c) of this chapter, a document that:

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

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

33           (3) Unless the advance directive explicitly states that oral  
34 revocation is prohibited, orally expressing the declarant's  
35 present intention to revoke the advance directive in the direct  
36 physical presence of a health care provider.

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

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

42           (2) health care providers may continue to rely on health care



1           decisions by the health care representative.

2           (c) A declarant, including a minor's declarant, who has signed  
3 a valid advance directive may amend or restate that advance  
4 directive in a writing that is signed in compliance with section  
5 25(b) of this chapter and witnessed or acknowledged in compliance  
6 with section 25(c) of this chapter. The amendment or restatement  
7 may take any action that could have been included in the former or  
8 original advance directive.

9           Sec. 31. (a) Except when the terms of the advance directive  
10 explicitly prohibit or restrict delegation, a health care  
11 representative who is designated by name in an advance directive  
12 may make a written delegation of some or all of the health care  
13 representative's authority to one (1) or more other competent  
14 adults or other persons, on a temporary or open ended basis as  
15 stated in the written delegation document.

16           (b) A written delegation document under this section must be  
17 signed in compliance with section 25(b) of this chapter and  
18 witnessed or acknowledged in compliance with section 25(c) of this  
19 chapter.

20           (c) A written delegation of authority that does not state an  
21 expiration date continues until it is revoked, in a manner  
22 complying with section 30 of this chapter, by the competent  
23 declarant or by the health care representative who signed the  
24 written delegation.

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

30           Sec. 32. An advance directive, including an advance directive  
31 signed by a minor's declarant for a minor, must be interpreted to  
32 carry out the known or demonstrable intent of the declarant. The  
33 following presumptions apply to an advance directive unless the  
34 terms of the advance directive explicitly prevent a presumption  
35 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 acknowledgement in compliance with section 25 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 health care**  
 6 **representative designated in it continues until the death of the**  
 7 **declarant or until an earlier valid revocation of the advance**  
 8 **directive.**
- 9 **(3) If an advance directive designates two (2) or more health**  
 10 **care representatives and does not specify that:**
- 11 **(A) the health care representative's respective authority to**  
 12 **act is subject to an order of priority; or**
- 13 **(B) the health care representatives must act jointly or on**  
 14 **a majority vote basis;**
- 15 **each health care representative has concurrent authority to**  
 16 **act individually and independently to make health care**  
 17 **decisions for the declarant.**
- 18 **(4) If:**
- 19 **(A) an individual signs more than one (1) advance directive**  
 20 **at different times; and**
- 21 **(B) the later signed advance directive does not explicitly**  
 22 **state that it revokes, restates, or amends the previous**  
 23 **advance directive;**
- 24 **the authority of all health care representatives who are**  
 25 **designated in the advance directives must be treated as**  
 26 **concurrently effective.**
- 27 **(5) Unless the advance directive explicitly provides otherwise,**  
 28 **each health care representative who is designated in an**  
 29 **advance directive continues to have authority after the death**  
 30 **of the declarant to the following:**
- 31 **(A) Make anatomical gifts on the declarant's behalf,**  
 32 **subject to any previous written direction by the declarant.**
- 33 **(B) Request or authorize an autopsy.**
- 34 **(C) Make plans for the disposition of the declarant's body,**  
 35 **including executing a funeral planning declaration on**  
 36 **behalf of the declarant under IC 29-2-19.**
- 37 **(6) Each health care representative who is designated in an**  
 38 **advance directive and who has current authority to act is a**  
 39 **personal representative of the declarant for purposes of 45**  
 40 **CFR Parts 160 through 164.**
- 41 **(7) If an advance directive explicitly provides that the**  
 42 **authority of one (1) or more health care representatives is to**



1 be effective upon the future incapacity, disability, or  
 2 incompetence of the declarant but if the advance directive  
 3 does not specify a method or procedure for determining the  
 4 incapacity, disability, incompetence of the declarant:

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

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

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

20 (9) If the advance directive is silent on the issue of  
 21 compensation for a health care representative designated in  
 22 the advance directive, then each health care representative is  
 23 entitled to receive the following:

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

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

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

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

42 (A) the health care representative's authority becomes



1           effective when a determination of the declarant's  
2           incapacity is noted in the declarant's medical records  
3           under section 33(c) of this chapter; and

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

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

12           **(12) If:**

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

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

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

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

23           **(13) Unless explicitly limited or prohibited in the advance**  
24           **directive, each person who could serve as a proxy for the**  
25           **declarant under sections 41 and 42 of this chapter, if an**  
26           **advance directive had not existed, has the right to make a**  
27           **written demand for and to receive a narrative description or**  
28           **other appropriate accounting of the actions taken and**  
29           **decisions made by a health care representative under the**  
30           **advance directive. Notwithstanding any provision in the**  
31           **advance directive, a health care representative who prepares**  
32           **a narrative description or accounting in response to a written**  
33           **demand is entitled to reasonable compensation for the time**  
34           **and effort spent in doing so.**

35           **(14) Notwithstanding any provision in the advance directive,**  
36           **if a declarant is not competent to amend or revoke the**  
37           **declarant's advance directive, then a person who could serve**  
38           **as a proxy for the declarant under sections 41 and 42 of this**  
39           **chapter has the right to petition a probate court with**  
40           **jurisdiction over the declarant for any of the following relief:**

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



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

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

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

13           **Before issuing an order under this subdivision, the court must**  
 14           **hold a hearing after notice to the declarant, to each health**  
 15           **care representative, and any other person whose rights or**  
 16           **authority could be affected by the order, and to any persons**  
 17           **who have the highest priority under sections 41 and 42 of this**  
 18           **chapter to serve as a proxy for the declarant if an advance**  
 19           **directive had not existed. An order issued under this**  
 20           **subdivision must be guided by the declarant's best interests**  
 21           **and the declarant's known or demonstrable intent.**

22           **Sec. 33. (a) A declarant is presumed to be capable of making**  
 23           **health care decisions for the declarant unless the declarant is**  
 24           **determined to be incapacitated. The declarant's wishes are**  
 25           **controlling while a declarant has decision making capacity. Each**  
 26           **physician or health care provider must clearly communicate to a**  
 27           **declarant who has decision making capacity the treatment plan**  
 28           **and any change to the treatment plan before implementation of the**  
 29           **plan or the change to the plan. Incapacity may not be inferred**  
 30           **from a person's voluntary or involuntary hospitalization for**  
 31           **mental illness or from the person's intellectual disability.**

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

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

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

41           **then the health care provider has the same right to refuse to carry**  
 42           **out that decision as if that decision were made and communicated**



1 directly by the declarant at a time when the declarant was not  
2 incapacitated.

3 (c) If a declarant's capacity to make health care decisions or  
4 provide informed consent is in question, the declarant's treating  
5 physician shall evaluate the declarant's capacity and, if the treating  
6 physician concludes that the declarant lacks capacity, enter that  
7 evaluation in the declarant's medical record. If the treating  
8 physician has a question as to whether the declarant lacks capacity,  
9 another physician shall evaluate the declarant's capacity, and if the  
10 second physician agrees that the declarant lacks the capacity to  
11 make health care decisions or provide informed consent, the health  
12 care facility shall enter both physicians' evaluations in the  
13 declarant's medical record.

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

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

20 Sec. 34. If:

- 21 (1) a health care representative's authority becomes effective;  
22 and  
23 (2) the health care representative is not the declarant's  
24 spouse;

25 the health care representative shall notify the declarant's spouse  
26 and adult children about the designation and status of the health  
27 care representative, unless the advance directive explicitly directs  
28 the health care representative not to make that notification.

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

- 34 (1) The authority to act for the declarant and to make all  
35 health care decisions for the declarant at all times when the  
36 health care representative's authority is in effect, subject to  
37 the right of the competent declarant to act directly and  
38 personally.  
39 (2) The authority and responsibility to be reasonably available  
40 to consult with appropriate health care providers to provide  
41 informed consent.  
42 (3) The authority and responsibility to act in good faith and





1           make only health care decisions for the declarant that the  
 2           health care representative believes the declarant would have  
 3           made under the circumstances if the declarant were capable  
 4           of making the decisions, taking into account the express or  
 5           implied intentions of the declarant or if the declarant's  
 6           express or implied intentions are not known, the declarant's  
 7           best interests.

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

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

13          (6) The authority to apply for public benefits, including  
 14          Medicaid and the community and home options to  
 15          institutional care for the elderly and disabled (CHOICE)  
 16          program, for the declarant and have access to information  
 17          regarding the declarant's income, assets, and banking and  
 18          financial records to the extent required to make application.  
 19          A health care provider or health care facility may not make  
 20          the application a condition of continued care if the declarant,  
 21          if capable of deciding, would have refused to apply for the  
 22          public benefits.

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

29          (c) If, after a declarant has designated one (1) or more health  
 30          care representatives in an advance directive, a court appoints a  
 31          guardian of the declarant's person, the authority of each  
 32          designated health care representative continues unless the  
 33          appointing court modifies or revokes the authority of one (1) or  
 34          more health care representatives after a hearing upon notice under  
 35          section 32(14) of this chapter. The court may order a health care  
 36          representative to make appropriate or specified reports to the  
 37          guardian of the declarant's person or property.

38          Sec. 36. (a) A health care provider furnished with a copy of a  
 39          declarant's advance directive shall make the declarant's advance  
 40          directive a part of the declarant's medical records. If a change in  
 41          or termination of the advance directive becomes known to the  
 42          health care provider, the change or termination must be noted in



1 the declarant's medical records.

2 (b) If a health care provider believes that an individual may lack  
3 the capacity to give informed consent to health care, then, until the  
4 individual is determined to have capacity under section 33 of this  
5 chapter, the health care provider shall consult with:

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

7 or

8 (2) if a health care representative has not been designated or  
9 if a health care representative is not reasonably available to  
10 act, a proxy under section 41 of this chapter;

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

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

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

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

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

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

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

37 **Sec. 37. If a health care representative designated in an advance  
38 directive has authority to:**

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

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

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

42 under either the explicit provisions of the advance directive or



1 section 32(5) of this chapter, the anatomical gift, autopsy, or  
2 remains disposition is considered the act of the declarant or of the  
3 person who has legal authority to make the necessary decisions.

4 Sec. 38. (a) A health care provider shall give a health care  
5 representative authorized to receive information under an advance  
6 directive the same access as the declarant has to examine and copy  
7 the declarant's health information and medical records, including  
8 records relating to mental health and other medical conditions held  
9 by a physician or other health care provider.

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

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

16 Sec. 39. A health care provider or other person who acts in good  
17 faith reliance on an advance directive or on a health care decision  
18 made by a health care representative is immune from liability to  
19 the declarant and to the declarant's heirs or other successors in  
20 interest to the same extent as if the health care provider or other  
21 person had dealt directly with the declarant and if the declarant  
22 had been competent and not incapacitated.

23 Sec. 40. (a) A health care representative designated in an  
24 advance directive may furnish to a health care provider or other  
25 person an affidavit that states, to the best knowledge of the health  
26 care representative:

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

30 (2) that the declarant is alive;

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

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

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

42 (6) that the relevant powers granted to the health care



1           representative have not been altered or terminated.  
 2       An affidavit under this section must be signed, sworn to, and  
 3       acknowledged by the health care representative in the presence of  
 4       a notary public or if the health care representative swears or  
 5       affirms to the accuracy of the affidavit's contents under the  
 6       penalties for perjury.

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

- 8               (1) relies on an affidavit described in subsection (a); and  
 9               (2) acts in good faith;

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

13       Sec. 41. (a) For purposes of this section the term "declarant"  
 14       includes an individual who has not executed an advance directive.

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

- 17               (1) the declarant has not executed an advance directive under  
 18               this chapter; or  
 19               (2) the declarant has executed an advance directive and the  
 20               health care representative designated in the advance directive  
 21               is not willing, able, or reasonably available to make health  
 22               care decisions for the declarant.

23       (c) Except as provided in section 42 of this chapter, health care  
 24       decisions may be made for the declarant by any of the following  
 25       individuals to act as a proxy, in the following decreasing order of  
 26       priority, if an individual in a prior class is not reasonably available,  
 27       willing, and competent to act:

- 28               (1) The judicially appointed guardian of the declarant or a  
 29               health care representative appointed under IC 16-36-1-8 or  
 30               section 32(14) of this chapter.  
 31               (2) A spouse.  
 32               (3) An adult child.  
 33               (4) A parent.  
 34               (5) An adult sibling.  
 35               (6) A grandparent.  
 36               (7) An adult grandchild.  
 37               (8) The nearest other adult relative in the next degree of  
 38               kinship who is not listed in subdivisions (2) through (7).  
 39               (9) A friend who:  
 40                       (A) is an adult;  
 41                       (B) has maintained regular contact with the individual;  
 42               and



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

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

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

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

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

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

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

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

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

Sec. 42. The following individuals may not serve as a proxy under section 41 of this chapter:

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



- 1           **advance directive.**
- 2           **(2) A spouse who:**
- 3               **(A) is legally separated; or**
- 4               **(B) has a petition for dissolution, legal separation, or**
- 5               **annulment of marriage that is pending in a court;**
- 6           **from the individual.**
- 7           **(3) An individual who is subject to a protective order or other**
- 8           **court order that directs that individual to avoid contact with**
- 9           **the declarant.**
- 10          **(4) An individual who is subject to a pending criminal charge**
- 11          **in which the declarant was the alleged victim.**

12          **Sec. 43. If a declarant has become and remains incapacitated**  
 13          **and has previously executed a valid advance directive under this**  
 14          **chapter and executed:**

- 15               **(1) an appointment of a health care representative executed**
- 16               **under IC 16-36-1 before January 1, 2023;**
- 17               **(2) a durable power of attorney granting health care powers**
- 18               **and executed under IC 30-5 before January 1, 2023; or**
- 19               **(3) a similar advance directive executed by the declarant**
- 20               **under the laws of another state in which the declarant was**
- 21               **physically present at the time of signing; and**

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

29          SECTION 40. IC 16-39-2-9 IS AMENDED TO READ AS  
 30          FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. (a) For the purposes  
 31          of this chapter, the following persons are entitled to exercise the  
 32          patient's rights on the patient's behalf:

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

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



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

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

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

9 SECTION 41. IC 23-14-31-26, AS AMENDED BY P.L.190-2016,  
10 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
11 JULY 1, 2019]: Sec. 26. (a) Except as provided in subsection (c), the  
12 following persons, in the priority listed, have the right to serve as an  
13 authorizing agent:

14 (1) A person:

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

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

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

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

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

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

38 (4) The decedent's surviving adult child or, if more than one (1)  
39 adult child is surviving, the majority of the adult children.  
40 However, less than half of the surviving adult children have the  
41 rights under this subdivision if the adult children have used  
42 reasonable efforts to notify the other surviving adult children of



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





- 1 remains; and  
 2 (B) attests in writing that a good faith effort has been made to  
 3 contact any living individuals described in subdivisions (1)  
 4 through (9).  
 5 (11) In the case of an indigent or other individual whose final  
 6 disposition is the responsibility of the state or township, the  
 7 following may serve as the authorizing agent:  
 8 (A) If none of the persons identified in subdivisions (1)  
 9 through (10) are available:  
 10 (i) a public administrator, including a responsible township  
 11 trustee or the trustee's designee; or  
 12 (ii) the coroner.  
 13 (B) A state appointed guardian.  
 14 However, an indigent decedent may not be cremated if a  
 15 surviving family member objects to the cremation or if cremation  
 16 would be contrary to the religious practices of the deceased  
 17 individual as expressed by the individual or the individual's  
 18 family.  
 19 (12) In the absence of any person under subdivisions (1) through  
 20 (11), any person willing to assume the responsibility as the  
 21 authorizing agent, as specified in this article.  
 22 (b) When a body part of a nondeceased individual is to be cremated,  
 23 a representative of the institution that has arranged with the crematory  
 24 authority to cremate the body part may serve as the authorizing agent.  
 25 (c) If:  
 26 (1) the death of the decedent appears to have been the result of:  
 27 (A) murder (IC 35-42-1-1);  
 28 (B) voluntary manslaughter (IC 35-42-1-3); or  
 29 (C) another criminal act, if the death does not result from the  
 30 operation of a vehicle; and  
 31 (2) the coroner, in consultation with the law enforcement agency  
 32 investigating the death of the decedent, determines that there is a  
 33 reasonable suspicion that a person described in subsection (a)  
 34 committed the offense;  
 35 the person referred to in subdivision (2) may not serve as the  
 36 authorizing agent.  
 37 (d) The coroner, in consultation with the law enforcement agency  
 38 investigating the death of the decedent, shall inform the crematory  
 39 authority of the determination referred to in subsection (c)(2).  
 40 (e) If a person vested with a right under subsection (a) does not  
 41 exercise that right not later than seventy-two (72) hours after the person  
 42 receives notification of the death of the decedent, the person forfeits the



1 person's right to determine the final disposition of the decedent's  
 2 remains, and the right to determine final disposition passes to the next  
 3 person described in subsection (a).

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

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

11 (1) a court order; or

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

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

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

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

28 SECTION 42. IC 23-14-55-2, AS AMENDED BY P.L.190-2016,  
 29 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 30 JULY 1, 2019]: Sec. 2. (a) Except as provided in subsection (c), the  
 31 owner of a cemetery is authorized to inter, entomb, or inurn the body  
 32 or cremated remains of a deceased human upon the receipt of a written  
 33 authorization of an individual who professes either of the following:

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

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



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



1 of the same degree of kinship of their intentions and are not  
 2 aware of any opposition to the final disposition instructions by  
 3 more than half of the individuals who are of the same degree  
 4 of kinship.

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

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

18 (J) If none of the persons described in clauses (A) through (I)  
 19 are available, any other person willing to act and arrange for  
 20 the final disposition of the decedent's remains, including a  
 21 funeral home that:

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

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

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

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

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

42 (c) If:



- 1 (1) the death of the decedent appears to have been the result of:  
 2 (A) murder (IC 35-42-1-1);  
 3 (B) voluntary manslaughter (IC 35-42-1-3); or  
 4 (C) another criminal act, if the death does not result from the  
 5 operation of a vehicle; and  
 6 (2) the coroner, in consultation with the law enforcement agency  
 7 investigating the death of the decedent, determines that there is a  
 8 reasonable suspicion that a person described in subsection (a)  
 9 committed the offense;  
 10 the person referred to in subdivision (2) may not authorize the  
 11 disposition of the decedent's body or cremated remains.  
 12 (d) The coroner, in consultation with the law enforcement agency  
 13 investigating the death of the decedent, shall inform the cemetery  
 14 owner of the determination referred to in subsection (c)(2).  
 15 (e) If a person vested with a right under subsection (a) does not  
 16 exercise that right not less than seventy-two (72) hours after the person  
 17 receives notification of the death of the decedent, the person forfeits the  
 18 person's right to determine the final disposition of the decedent's  
 19 remains and the right to determine final disposition passes to the next  
 20 person described in subsection (a).  
 21 (f) A cemetery owner has the right to rely, in good faith, on the  
 22 representations of a person listed in subsection (a) that any other  
 23 individuals of the same degree of kinship have been notified of the  
 24 final disposition instructions.  
 25 (g) If there is a dispute concerning the disposition of a decedent's  
 26 remains, a cemetery owner is not liable for refusing to accept the  
 27 remains of the decedent until the cemetery owner receives:  
 28 (1) a court order; or  
 29 (2) a written agreement signed by the disputing parties;  
 30 that determines the final disposition of the decedent's remains. If a  
 31 cemetery agrees to shelter the remains of the decedent while the parties  
 32 are in dispute, the cemetery may collect any applicable fees for storing  
 33 the remains, including legal fees that are incurred.  
 34 (h) Any cause of action filed under this section must be filed in the  
 35 probate court in the county where the decedent resided, unless the  
 36 decedent was not a resident of Indiana.  
 37 (i) A spouse seeking a judicial determination under subsection  
 38 (a)(1)(C)(i) that the decedent and spouse were reconciled before the  
 39 decedent's death may petition the court having jurisdiction over the  
 40 dissolution or separation proceeding to make this determination by  
 41 filing the petition under the same cause number as the dissolution or  
 42 separation proceeding. A spouse who files a petition under this



1 subsection is not required to pay a filing fee.

2 SECTION 43. IC 25-15-9-18, AS AMENDED BY P.L.190-2016,  
3 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2019]: Sec. 18. (a) Except as provided in subsection (b), the  
5 following persons, in the order of priority indicated, have the authority  
6 to designate the manner, type, and selection of the final disposition of  
7 human remains, to make arrangements for funeral services, and to  
8 make other ceremonial arrangements after an individual's death:

9 (1) A person:

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

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

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

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

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

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

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

41 (5) The decedent's surviving parent or parents. If one (1) of the  
42 parents is absent, the parent who is present has the rights under



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



- 1 disposition is the responsibility of the state or township, the  
 2 following:
- 3 (A) If none of the persons identified in subdivisions (1)  
 4 through (10) is available:
- 5 (i) a public administrator, including a responsible township  
 6 trustee or the trustee's designee; or  
 7 (ii) the coroner.
- 8 (B) A state appointed guardian.
- 9 (b) If:
- 10 (1) the death of the decedent appears to have been the result of:
- 11 (A) murder (IC 35-42-1-1);  
 12 (B) voluntary manslaughter (IC 35-42-1-3); or  
 13 (C) another criminal act, if the death does not result from the  
 14 operation of a vehicle; and
- 15 (2) the coroner, in consultation with the law enforcement agency  
 16 investigating the death of the decedent, determines that there is a  
 17 reasonable suspicion that a person described in subsection (a)  
 18 committed the offense;
- 19 the person referred to in subdivision (2) may not authorize or designate  
 20 the manner, type, or selection of the final disposition of human  
 21 remains.
- 22 (c) The coroner, in consultation with the law enforcement agency  
 23 investigating the death of the decedent, shall inform the cemetery  
 24 owner or crematory authority of the determination under subsection  
 25 (b)(2).
- 26 (d) If the decedent had filed a protection order against a person  
 27 described in subsection (a) and the protection order is currently in  
 28 effect, the person described in subsection (a) may not authorize or  
 29 designate the manner, type, or selection of the final disposition of  
 30 human remains.
- 31 (e) A law enforcement agency shall determine if the protection order  
 32 is in effect. If the law enforcement agency cannot determine the  
 33 existence of a protection order that is in effect, the law enforcement  
 34 agency shall consult the protective order registry established under  
 35 IC 5-2-9-5.5.
- 36 (f) If a person vested with a right under subsection (a) does not  
 37 exercise that right not later than seventy-two (72) hours after the person  
 38 receives notification of the death of the decedent, the person forfeits the  
 39 person's right to determine the final disposition of the decedent's  
 40 remains and the right to determine final disposition passes to the next  
 41 person described in subsection (a).
- 42 (g) A funeral home has the right to rely, in good faith, on the





1 representations of a person listed in subsection (a) that any other  
 2 individuals of the same degree of kinship have been notified of the  
 3 final disposition instructions.

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

7 (1) a court order; or

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

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

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

23 SECTION 44. IC 29-2-16.1-1, AS AMENDED BY P.L.198-2016,  
 24 SECTION 659, IS AMENDED TO READ AS FOLLOWS  
 25 [EFFECTIVE JULY 1, 2019]: Sec. 1. The following definitions apply  
 26 throughout this chapter:

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

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

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

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

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

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

42 (5) "Decedent":



- 1 (A) means a deceased individual whose body or body part is  
 2 or may be the source of an anatomical gift; and  
 3 (B) includes:  
 4 (i) a stillborn infant; and  
 5 (ii) except as restricted by any other law, a fetus.
- 6 (6) "Disinterested witness" means an individual other than a  
 7 spouse, child, sibling, grandchild, grandparent, or guardian of the  
 8 individual who makes, amends, revokes, or refuses to make an  
 9 anatomical gift or another adult who exhibited special care and  
 10 concern for the individual. This term does not include a person to  
 11 whom an anatomical gift could pass under section 10 of this  
 12 chapter.
- 13 (7) "Document of gift" means a donor card or other record used  
 14 to make an anatomical gift, including a statement or symbol on a  
 15 driver's license, identification, or donor registry.
- 16 (8) "Donor" means an individual whose body or body part is the  
 17 subject of an anatomical gift.
- 18 (9) "Donor registry" means:  
 19 (A) a data base maintained by:  
 20 (i) the bureau of motor vehicles; or  
 21 (ii) the equivalent agency in another state;  
 22 (B) the Donate Life Indiana Registry maintained by the  
 23 Indiana Donation Alliance Foundation; or  
 24 (C) a donor registry maintained in another state;  
 25 that contains records of anatomical gifts and amendments to or  
 26 revocations of anatomical gifts.
- 27 (10) "Driver's license" means a license or permit issued by the  
 28 bureau of motor vehicles to operate a vehicle.
- 29 (11) "Eye 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 human  
 32 eyes or portions of human eyes.
- 33 (12) "Guardian" means an individual appointed by a court to  
 34 make decisions regarding the support, care, education, health, or  
 35 welfare of an individual. The term does not include a guardian ad  
 36 litem.
- 37 (13) "Hospital" means a facility licensed as a hospital under the  
 38 laws of any state or a facility operated as a hospital by the United  
 39 States, a state, or a subdivision of a state.
- 40 (14) "Identification card" means an identification card issued by  
 41 the bureau of motor vehicles.
- 42 (15) "Minor" means an individual under eighteen (18) years of



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



- 1 (28) "Sign" means, with the present intent to authenticate or adopt  
 2 a record:  
 3 (A) to execute or adopt a tangible symbol; or  
 4 (B) to attach to or logically associate with the record an  
 5 electronic symbol, sound, or process.
- 6 (29) "State" means a state of the United States, the District of  
 7 Columbia, Puerto Rico, the United States Virgin Islands, or any  
 8 territory or insular possession subject to the jurisdiction of the  
 9 United States.
- 10 (30) "Technician" means an individual determined to be qualified  
 11 to remove or process parts by an appropriate organization that is  
 12 licensed, accredited, or regulated under federal or state law. The  
 13 term includes an eye enucleator.
- 14 (31) "Tissue" means a part of the human body other than an organ  
 15 or an eye. The term does not include blood or other bodily fluids  
 16 unless the blood or bodily fluids are donated for the purpose of  
 17 research or education.
- 18 (32) "Tissue bank" means a person that is licensed, accredited, or  
 19 regulated under federal or state law to engage in the recovery,  
 20 screening, testing, processing, storage, or distribution of tissue.
- 21 (33) "Transplant hospital" means a hospital that furnishes organ  
 22 transplants and other medical and surgical specialty services  
 23 required for the care of organ transplant patients.
- 24 SECTION 45. IC 29-2-16.1-3, AS ADDED BY P.L.147-2007,  
 25 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 26 JULY 1, 2019]: Sec. 3. Subject to section 7 of this chapter, an  
 27 anatomical gift of a donor's body or part may be made during the life  
 28 of the donor for the purpose of transplantation, therapy, research, or  
 29 education in the manner provided in section 4 of this chapter by:  
 30 (1) the donor, if the donor is an adult or if the donor is a minor  
 31 and is:  
 32 (A) emancipated; or  
 33 (B) authorized under state law to apply for a driver's license  
 34 because the donor is at least sixteen (16) years of age;  
 35 (2) an agent, **a health care representative, or a proxy (as**  
 36 **defined by IC 16-36-7-18)** of the donor, unless the health care  
 37 power of attorney, **advance directive**, or other record prohibits  
 38 the agent from making an anatomical gift;  
 39 (3) a parent of the donor, if the donor is not emancipated; or  
 40 (4) the donor's guardian.
- 41 SECTION 46. IC 29-2-19-10, AS ADDED BY P.L.143-2009,  
 42 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2019]: Sec. 10. The provisions of a declarant's most recent  
 2 declaration prevail over any other document executed by the declarant  
 3 concerning any preferences described in section 9 of this chapter.  
 4 However, this section may not be construed to invalidate a power of  
 5 attorney executed under IC 30-5-5 or an appointment of a health care  
 6 representative under IC 16-36-1 **or IC 16-36-7** with respect to any  
 7 power or duty belonging to the attorney in fact or health care  
 8 representative that is not related to a preference described in section 9  
 9 of this chapter.

10 SECTION 47. IC 29-2-19-17, AS AMENDED BY P.L.190-2016,  
 11 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 JULY 1, 2019]: Sec. 17. The right to control the disposition of a  
 13 decedent's body, to make arrangements for funeral services, and to  
 14 make other ceremonial arrangements after an individual's death  
 15 devolves on the following, in the priority listed:

16 (1) A person:

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

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

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

29 (3) The decedent's surviving spouse.

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

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

42 (6) The decedent's surviving sibling or, if more than one (1)



1 sibling is surviving, the majority of the surviving siblings.  
 2 However, less than half of the surviving siblings have the rights  
 3 under this subdivision if the siblings have used reasonable efforts  
 4 to notify the other surviving siblings of their intentions and are  
 5 not aware of any opposition to the final disposition instructions by  
 6 more than half of the surviving siblings.

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

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

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

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

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

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

39 SECTION 48. IC 29-3-8.5-9, AS AMENDED BY P.L.72-2010,  
 40 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 41 JULY 1, 2019]: Sec. 9. A volunteer advocates for seniors program or  
 42 a volunteer advocates for incapacitated adults program under this



1 chapter is not authorized to consent to or refuse health care (as defined  
2 in ~~IC 16-36-1-1~~ **IC 16-36-7-9**) for an individual if:

3 (1) a spouse, a parent, an adult child, or an adult sibling of the  
4 individual or the individual's religious superior, if the individual  
5 is a member of a religious order, is available, capable, and  
6 suitable to consent to or refuse the health care on behalf of the  
7 individual; or

8 (2) the individual has previously:

9 (A) appointed a health care representative under ~~IC 16-36-1~~;  
10 **IC 16-36-1-7 or IC 16-36-7**;

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

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

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

15 SECTION 49. IC 29-3-9-1, AS AMENDED BY P.L.74-2016,  
16 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
17 JULY 1, 2019]: Sec. 1. (a) As used in this section, "department" means  
18 the department of child services established by IC 31-25-1-1.

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

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

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

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

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

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

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

36 (2) petition the court to request the authority to petition for  
37 dissolution of marriage, legal separation, or annulment of  
38 marriage on behalf of a protected person as provided under  
39 section 12.2 of this chapter.

40 (e) **Subject to IC 30-5-5-16**, a person having a power of attorney  
41 executed under subsection (c) has and shall exercise, for the period  
42 during which the power is effective, all other authority of the parent or



1 guardian respecting the health care, support, custody, or property of the  
 2 minor or protected person except any authority expressly excluded in  
 3 the written instrument delegating the power. The parent or guardian  
 4 remains responsible for any act or omission of the person having the  
 5 power of attorney with respect to the affairs, property, and person of the  
 6 minor or protected person as though the power of attorney had never  
 7 been executed.

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

13 (g) Any child who is the subject of a power of attorney executed  
 14 under subsection (c) is not considered to be placed in foster care. The  
 15 parties to a power of attorney executed under subsection (c), including  
 16 a child, a protected person, a parent or guardian of a child or protected  
 17 person, or an attorney-in-fact, are not, as a result of the execution of the  
 18 power of attorney, subject to any foster care requirements or foster care  
 19 licensing regulations.

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

27 (i) A parent who:

28 (1) is a member in the:

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

32 (B) commissioned corps of the:

33 (i) National Oceanic and Atmospheric Administration; or

34 (ii) Public Health Service of the United States Department  
 35 of Health and Human Services;

36 detailed by proper authority for duty with the Army or Navy of  
 37 the United States; or

38 (2) is required to:

39 (A) enter or serve in the active military service of the United  
 40 States under a call or order of the President of the United  
 41 States; or

42 (B) serve on state active duty;





1 may delegate the powers designated in subsection (c) for a period  
 2 longer than twelve (12) months if the parent is on active duty service.  
 3 However, the term of delegation may not exceed the term of active duty  
 4 service plus thirty (30) days. The power of attorney must indicate that  
 5 the parent is required to enter or serve in the active military service of  
 6 the United States and include the estimated beginning and ending dates  
 7 of the active duty service.

8 (j) Except as otherwise stated in the power of attorney delegating  
 9 powers under this section, a delegation of powers under this section  
 10 may be revoked at any time by a written instrument of revocation that:

11 (1) identifies the power of attorney revoked; and

12 (2) is signed by the:

13 (A) parent of a minor; or

14 (B) guardian of a protected person;

15 who executed the power of attorney.

16 SECTION 50. IC 29-3-9-4.5, AS ADDED BY P.L.6-2010,  
 17 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 18 JULY 1, 2019]: Sec. 4.5. (a) After notice to interested persons and  
 19 upon authorization of the court, a guardian may, if the protected person  
 20 has been found by the court to lack testamentary capacity, do any of the  
 21 following:

22 (1) Make gifts.

23 (2) Exercise any power with respect to transfer on death or  
 24 payable on death transfers that is described in IC 30-5-5-7.5.

25 (3) Convey, release, or disclaim contingent and expectant  
 26 interests in property, including marital property rights and any  
 27 right of survivorship incident to joint tenancy or tenancy by the  
 28 entireties.

29 (4) Exercise or release a power of appointment.

30 (5) Create a revocable or irrevocable trust of all or part of the  
 31 property of the estate, including a trust that extends beyond the  
 32 duration of the guardianship.

33 (6) Revoke or amend a trust that is revocable by the protected  
 34 person.

35 (7) Exercise rights to elect options and change beneficiaries under  
 36 insurance policies, retirement plans, and annuities.

37 (8) Surrender an insurance policy or annuity for its cash value.

38 (9) Exercise any right to an elective share in the estate of the  
 39 protected person's deceased spouse.

40 (10) Renounce or disclaim any interest by testate or intestate  
 41 succession or by transfer inter vivos.

42 (b) Before approving a guardian's exercise of a power listed in



1 subsection (a), the court shall consider primarily the decision that the  
 2 protected person would have made, to the extent that the decision of  
 3 the protected person can be ascertained. If the protected person has a  
 4 will, the protected person's distribution of assets under the will is prima  
 5 facie evidence of the protected person's intent. The court shall also  
 6 consider:

7 (1) the financial needs of the protected person and the needs of  
 8 individuals who are dependent on the protected person for  
 9 support;

10 (2) the interests of creditors;

11 (3) the possible reduction of income taxes, estate taxes,  
 12 inheritance taxes, or other federal, state, or local tax liabilities;

13 (4) the eligibility of the protected person for governmental  
 14 assistance;

15 (5) the protected person's previous pattern of giving or level of  
 16 support;

17 (6) the protected person's existing estate plan, if any;

18 (7) the protected person's life expectancy and the probability that  
 19 the guardianship will terminate before the protected person's  
 20 death; and

21 (8) any other factor the court considers relevant.

22 (c) A guardian may examine and receive, at the expense of the  
 23 guardian, copies of the following documents of the protected person:

24 (1) A will.

25 (2) A trust.

26 (3) A power of attorney.

27 (4) A health care appointment.

28 **(5) An advance directive.**

29 ~~(5)~~ **(6)** Any other estate planning document.

30 SECTION 51. IC 30-5-5-16, AS AMENDED BY P.L.81-2015,  
 31 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32 JULY 1, 2019]: Sec. 16. (a) This section does not prohibit an individual  
 33 capable of consenting to the individual's own health care or to the  
 34 health care of another from consenting to health care administered in  
 35 good faith under the religious tenets and practices of the individual  
 36 requiring health care.

37 (b) Language conferring general authority with respect to health  
 38 care powers means the principal authorizes the attorney in fact to do  
 39 the following:

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

42 (2) Consent to or refuse health care for the principal who is an



- 1 individual in accordance with IC 16-36-4 and IC 16-36-1 by
- 2 properly executing and attaching to the power of attorney a
- 3 declaration or appointment, or both.
- 4 (3) Admit or release the principal from a hospital or health care
- 5 facility.
- 6 (4) Have access to records, including medical records, concerning
- 7 the principal's condition.
- 8 (5) Make anatomical gifts on the principal's behalf.
- 9 (6) Request an autopsy.
- 10 (7) Make plans for the disposition of the principal's body,
- 11 including executing a funeral planning declaration on behalf of
- 12 the principal in accordance with IC 29-2-19.

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

- 18 **(1) health care powers; and**
- 19 **(2) nonhealth care powers under this chapter;**
- 20 **to an attorney in fact, the health care powers are void, but all other**  
 21 **powers granted by the power of attorney will remain effective and**  
 22 **enforceable under this article.**

23 SECTION 52. IC 30-5-5-17 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 17. (a) If the attorney  
 25 in fact has the authority to consent to or refuse health care under  
 26 section ~~16(2)~~ **16(b)(2)** of this chapter, the attorney in fact may be  
 27 empowered to ask in the name of the principal for health care to be  
 28 withdrawn or withheld when it is not beneficial or when any benefit is  
 29 outweighed by the demands of the treatment and death may result. To  
 30 empower the attorney in fact to act under this section, the following  
 31 language must be included in an appointment under IC 16-36-1 **or**  
 32 **IC 16-36-7** in substantially the same form set forth below:

33 I authorize my health care representative to make decisions in my  
 34 best interest concerning withdrawal or withholding of health care.  
 35 If at any time based on my previously expressed preferences and  
 36 the diagnosis and prognosis my health care representative is  
 37 satisfied that certain health care is not or would not be beneficial  
 38 or that such health care is or would be excessively burdensome,  
 39 then my health care representative may express my will that such  
 40 health care be withheld or withdrawn and may consent on my  
 41 behalf that any or all health care be discontinued or not instituted,  
 42 even if death may result.



1 My health care representative must try to discuss this decision  
 2 with me. However, if I am unable to communicate, my health care  
 3 representative may make such a decision for me, after  
 4 consultation with my physician or physicians and other relevant  
 5 health care givers. To the extent appropriate, my health care  
 6 representative may also discuss this decision with my family and  
 7 others to the extent they are available.

8 (b) Nothing in this section may be construed to authorize  
 9 euthanasia.

10 SECTION 53. IC 30-5-7-2 IS AMENDED TO READ AS  
 11 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) A health care  
 12 provider furnished with a copy of a declaration under IC 16-36-4 or an  
 13 appointment under IC 16-36-1 or **IC 16-36-7** shall make the  
 14 documents a part of the principal's medical records.

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

18 SECTION 54. IC 30-5-7-3 IS AMENDED TO READ AS  
 19 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. Whenever a health  
 20 care provider believes a patient may lack the capacity to give informed  
 21 consent to health care the provider considers necessary, the provider  
 22 shall consult with the attorney in fact who has power to act for the  
 23 patient under IC 16-36-4, IC 16-36-1, **IC 16-36-7**, or this article.

24 SECTION 55. IC 30-5-8-6 IS AMENDED TO READ AS  
 25 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. **Subject to**  
 26 **IC 16-36-7**, appointments made under this article, IC 16-36-4, **and**  
 27 **IC 16-36-1**, **and IC 16-36-7** can be made concurrently and will be  
 28 given full effect under the law. However, the appointments may be  
 29 executed independently and remain valid in their own right.

30 SECTION 56. IC 34-30-2-75.6 IS ADDED TO THE INDIANA  
 31 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 32 [EFFECTIVE JULY 1, 2019]: **Sec. 75.6. IC 16-36-7-39 (Concerning**  
 33 **a health care provider's or other person's reliance on an advance**  
 34 **directive).**

35 SECTION 57. IC 34-30-2-75.7 IS ADDED TO THE INDIANA  
 36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 37 [EFFECTIVE JULY 1, 2019]: **Sec. 75.7. IC 16-36-7-40 (Concerning**  
 38 **a health care provider's or other person's reliance on an affidavit**  
 39 **regarding an advance directive or decision of a health care**  
 40 **representative).**

41 SECTION 58. IC 35-42-1-2.5, AS AMENDED BY P.L.158-2013,  
 42 SECTION 412, IS AMENDED TO READ AS FOLLOWS



- 1 [EFFECTIVE JULY 1, 2019]: Sec. 2.5. (a) This section does not apply  
2 to the following:
- 3 (1) A licensed health care provider who administers, prescribes,  
4 or dispenses medications or procedures to relieve a person's pain  
5 or discomfort, even if the medication or procedure may hasten or  
6 increase the risk of death, unless such medications or procedures  
7 are intended to cause death.
- 8 (2) The withholding or withdrawing of medical treatment or  
9 life-prolonging procedures by a licensed health care provider,  
10 including pursuant to IC 16-36-4 (living wills and life-prolonging  
11 procedures), IC 16-36-1 (health care consent), **IC 16-36-7**  
12 **(advance directive)**, or IC 30-5 (~~power~~ **(health care power** of  
13 attorney).
- 14 (b) A person who has knowledge that another person intends to  
15 commit or attempt to commit suicide and who intentionally does either  
16 of the following commits assisting suicide, a Level 5 felony:
- 17 (1) Provides the physical means by which the other person  
18 attempts or commits suicide.
- 19 (2) Participates in a physical act by which the other person  
20 attempts or commits suicide.

