

NEW Indiana Advance Directive Law Educational Sheet for Health Care Professionals

What is an advance directive?

- **An advance directive (AD) is a legal document a patient can use to:**
 - Appoint a health care representative (HCR) to speak on his/her behalf in the event of a loss of decisional capacity; and
 - Express healthcare decisions and/or treatment preferences for future care.

What is in the new Indiana advance directive statute (SEA 204)?

- **Flexibility in how future health care decisions and/or treatment preferences are documented.**
 - There is no required language that must be included and there is no longer an official or mandatory state form.
- **Updated signing requirements for advance directive forms.**
 - Signature of the Patient: The patient must sign the form. The patient can also direct someone else to sign it in his/her direct presence (e.g., if unable to sign).¹
 - Signature of Two Adult Witnesses or Notary: The form must also be signed by either (2) adult witnesses or a notarial officer (such a notary public).
 - Electronic signature: An AD can be signed on paper or electronically.
- **New remote signing options when people are not in the same physical location:**
 - Sign electronically during a video call that includes the patient and two adult witnesses or a notary public.
 - Sign paper copies of the form during a video call that includes the patient and two adult witnesses or a notary (“signed in counterparts”). The signed copies must be assembled into one document within 10 business days of receipt.
 - Sign during a phone call that includes the patient and two witnesses. The witnesses must be able to confirm it is the patient and confirm capacity.
- **The new Health Care Representative (HCR) combines the roles of the HCR and power of attorney for health care under prior Indiana law.**
 - The new HCR requires a patient signature + 2 witnesses or a notary public.
 - The HCR must defer to the patient when the patient has capacity. If the patient loses capacity, the HCR must take the patient’s known or implied preferences into account when making decisions and if unknown, the HCR must act in the patient’s best interests.
 - The HCR can act on behalf of a patient without capacity including accessing patient medical records, signing POST, and applying for public benefits among other responsibilities.

¹ The person who signs at the patient’s direction cannot be one of the witnesses, the notarial officer, or one of the named health care representatives.

Were there any other changes that are important to know about?

- **Advanced practice registered nurses and physician assistants may now sign the Indiana Out-of-Hospital Do Not Resuscitate order form.**
 - This change is consistent with a 2018 change that allows advance practice providers to sign the POST (Physician Orders for Scope of Treatment).

Why were these changes needed?

- **This is the first comprehensive update to Indiana’s advance directive statute in almost 30 years.**
 - The old advance directive laws were spread out across three statutes. These statutes included vague and conflicting language.
 - The old statutes required use of outdated living will language that was unhelpful in the clinical setting and framed options as all or nothing.
 - There were two ways for someone to appoint a legal representative for health care decisions. The differences were poorly understood and created confusion.
 - COVID-19 made requirements for “in the direct presence” signing impossible for many.
 - Indiana’s requirements were increasingly out of step with the rest of the country.

When do these changes take effect?

- This legislation takes effect on July 1, 2021, meaning a person with decisional capacity can sign a new AD. Starting January 1, 2023, everyone must follow the new law.
- Advance directives completed before January 1, 2023 under the old laws will remain legally valid and do not need to be updated unless by the patient.
- A later-signed advance directive is presumed to revoke and replace all earlier ones signed by the same patient, unless the later AD specifically says otherwise.
- The advance directive that is most recently signed by the patient is the one that controls.

Where can I get more information?

- The [Indiana State Department of Health Advance Directives Resource Center](#) contains links to forms that meet the state requirements as well as a sample health care representative appointment form.
- [Indianapost.org](#) has sample advance directives that can be used in addition to links to national forms that meet state requirements.
- These changes were created by the passage of [Indiana Senate Enrolled Act 204](#).