

Quick Reference Guide to the Indiana Advance Directive for Health Care (2021)

Source: Indiana Code, Title 16, Article 36, Chapter 7 (Part of Public Law 50-2021)

Basic elements of the new Indiana advance directive (AD)

- (1) No official or mandatory form for the AD
- (2) Basic permitted and typical contents:
 - (a) Name 1 or more health care representatives (HCRs)
 - (b) State specific health care decisions and/or treatment preferences, including preferences for life-prolonging procedures or palliative care [*The statute contains no limitations on the expression of treatment preferences*]
 - (c) [*Optional*] Disqualify named individual(s) from receiving delegated authority or serving as a HCR
- (3) Signing requirements:
 - (a) Declarant (patient or signer) signs on paper or electronically **OR** directs some adult (not a health care representative and not a witness) to sign declarant's name in declarant's direct presence
 - (b) Declarant signs in the "presence" of 2 adult witnesses **OR** signs in the "presence" of a notary public or other notarial officer [*see back page for ways to satisfy "presence" requirement*]
 - (c) The 2 witnesses **OR** the notarial officer also sign the AD electronically or on paper

Basic presumptions and rules IF the advance directive (AD) does NOT explicitly say otherwise:

- A. The AD and the authority of each named HCR is effective upon signing and remains in effect until the AD is revoked in writing
- B. A later-signed AD supersedes and revokes an earlier-signed AD by the same Declarant
- C. Unless HCRs are listed in order of priority (primary & backup, etc.), 2 or more HCRs named in the same AD have concurrent, equal, and independently exercisable authority and are not required to act jointly
- D. If Declarant still has capacity to consent to health care, orders and instructions by Declarant will control over any decisions by a HCR and any specific instructions stated in in the AD
- E. Any health care representative (HCR) can delegate authority under the AD in writing to any competent adult(s) or other persons (a delegation should be signed in the same manner as an AD)
- F. The HCR has authority to compete anatomical gifts, to authorize an autopsy, and to arrange for burial or cremation of the Declarant's remains after Declarant's death
- G. The HCR can access Declarant's medical records & health information under HIPAA and state law
- H. The HCR has authority to consent to mental health treatment for the Declarant
- I. Each HCR has authority to sign a POST / POLST or an out-of-hospital DNR declaration for Declarant if Declarant is found to be a qualified [eligible] person
- J. The HCR has authority to apply for public benefits (including Medicaid and CHOICE) for Declarant and to access Declarant's financial and asset records for that purpose
- K. Each HCR is entitled to collect reasonable compensation and expense reimbursement for actions taken and services performed for or on behalf of Declarant

Compiled by Jeffrey S. Dible, J.D. and Susan E. Hickman, Ph.D. Health care providers, patient advocacy organizations, bar associations, and social service agencies may reproduce and distribute this guide.

Standard of conduct for each health care representative:

- Defer to Declarant’s personal decisions and judgment at all times when Declarant has capacity to consent to health care and is able to communicate instructions, wishes, and treatment preferences
- Take into account Declarant’s explicit or implied intentions and preferences and make only the health care decisions that Declarant would have made
- Act in good faith and in Declarant’s best interests if Declarant’s specific preferences are not known
- Remain reasonably available to consult with Declarant’s health care providers and to provide informed consent for Declarant if Declarant does not have capacity

Optional provisions that CAN be included in an advance directive (AD) [see I.C. §§ 16-36-7-29 and 16-36-7-34; not a complete list]:

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| <ol style="list-style-type: none"> 1. State a delayed effective date or triggering event (e.g., future incapacity) and/or a specific ending date for the AD or for any HCR’s authority 2. Keep an earlier-signed AD or an earlier-appointed HCR’s authority in effect after a new AD is signed 3. Prohibit or restrict the delegation of authority by the HCR to other specific persons 4. Require another person to witness or approve a revocation of or amendment to the AD 5. Name 2 or more HCRs in a stated order of priority or confirm that they are authorized to act alone and independently | <ol style="list-style-type: none"> 6. Require multiple HCRs to act jointly or on a majority vote basis to exercise some or all health care powers 7. Prohibit an HCR from collecting compensation or state an hourly rate or other standard for determining HCR’s reasonable compensation 8. Designate some person other than a HCR to serve as an advocate or monitor 9. Authorize any person (proxy) who is listed in I.C. §16-36-7-42 and -43 to make a written demand that any HCR provide a written accounting or report of the HCRs actions on behalf of Declarant |
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Methods for signing that satisfy the “presence” requirement between Declarant and the 2 witnesses or between the Declarant and the notarial officer [see I.C. §§ 16-36-7-19 and -28]:

| In-Person Options | | | Remote Options | |
|--|--|--|---|--|
| Declarant and 2 witnesses or | Declarant and 2 witnesses or | Sign identical counterparts on | Declarant and 2 witnesses or | Declarant and 2 witnesses sign with |
| Declarant and the notarial officer sign on paper in direct physical presence of each other | Declarant and the notarial officer sign electronically in direct physical presence of each other | paper; Declarant & witnesses or notary interact using 2-way audiovisual technology; assemble signed counterparts within 10 business days | Declarant and notary sign electronically while interacting using 2-way audiovisual technology | audio-only interaction by telephone during signing |
| | | | | [Witnesses must be able to positively identify Declarant & confirm capacity] |

NOTE: An Indiana notary public must comply with Indiana law and regulations, including regulations for “remote notarial acts,” if Declarant and notary interact at a distance using audiovisual technology.