

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Indiana

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR
MEDICAL ASSISTANCE

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

There are four Indiana laws that pertain to advance directives: the Health Care Consent Act, the Living Will Act, the Powers of Attorney Act, and the Out of Hospital Do Not Resuscitate Declarations Act. These laws may be used singly or in combination. The following is a condensed version of each law:

Indiana Health Care Consent Act

Pursuant to IC 16-36-1, the Indiana Health Care Consent Act, a patient can (1) appoint a health care representative to make decisions regarding the patient's own medical treatments when the patient is no longer able; and (2) delegate authority to someone to consent to health care for another, such as a child. To appoint a health care representative for the patient's own health care, the patient must put the appointment in writing, sign it, and have the signature witnessed by another adult. The patient may specify terms and conditions on the authority delegated. To delegate the authority to consent to health care for another, the delegation must be in writing, signed by the delegate, and witnessed by an adult. The delegation may specify conditions on the authority delegated.

Indiana Living Will Act

Pursuant to IC 16-36-4, the Indiana Living Will Act, a patient may execute one of two kinds of legal documents for use in the event the patient has a terminal condition and becomes unable to give medical instructions. The first, the Living Will Declaration, is used if the patient wants to tell his/her doctor and family that certain life-prolonging medical treatments should not be used, so that the patient can be allowed to die naturally from the terminal condition. The second of these documents, the Life-Prolonging Procedures Declaration, can be used if the patient wants all possible life-prolonging medical treatments used to extend the patient's life.

For either of these documents to be effective, the document must be in writing, voluntarily signed by the patient (or someone the patient directs to sign in the patient's presence), and witnessed by two adults. Both a Living Will Declaration and a Life-Prolonging Procedures Declaration can be revoked orally, in writing, or by the patient's act of physically canceling or destroying the declaration. The revocation is effective, however, only when the patient's doctor is informed.

Pursuant to IC 16-36-4-10, a copy of the Form of Declaration is included at Attachment 4.34-A, Pages 3 and 3a.

IC 16-36-4-13 allows a physician to refuse to use, withhold, or withdraw life-prolonging procedures if, after reasonable investigation, he/she finds no other physician willing to honor the patient's declaration.

Indiana Out of Hospital Do Not Resuscitate Declarations Act

Pursuant to IC 16-36-5, the Out of Hospital Do Not Resuscitate Declarations Act, a person with a terminal condition, outside of a hospital or health facility, may direct that cardiopulmonary resuscitation procedures be withheld or withdrawn, and the person permitted to die naturally.

In order to be effective, an out of hospital DNR declaration must be voluntary, in writing, signed by the person making the declaration (or by another person in his presence and at his express direction), dated, and signed in the presence of at least two competent witnesses. The declaration may be revoked orally, in writing, or by the person canceling or destroying the declaration. The revocation is effective, however, only when the person's doctor is informed.

Pursuant to IC 16-36-5-15, a copy of the Form of Declaration is included at Attachment 4.34-A, Pages 4 and 4a.

Indiana Powers of Attorney Act

IC 30-5, the Indiana Power of Attorney Act, defines how a patient can give someone the power to act for the patient in a myriad of situations, including health care. The person appointed by the patient does not have to be an attorney; however, the power of attorney must be in writing and signed in the presence of a notary public. The power of attorney must articulate who is the patient's attorney in fact, and state exactly what powers the patient wants and does not want to give the attorney in fact. Since the attorney in fact may choose not to act for the patient, the patient may wish to consult with the person before making the appointment.

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16-36-4-10 Form of living will declaration

Sec. 10. The following is the living will declaration form:

LIVING WILL DECLARATION

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

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

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

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

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

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

I understand the full import of this declaration.

Signed _____
City, County, and State of Residence _____

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

Witness _____ Date _____

Witness _____ Date _____

As added by P.L.2-1993, SEC.19. Amended by P.L.99-1994, SEC.2.

16-36-4-11 Form of life-prolonging procedures will declaration

Sec. 11. The following is the life prolonging procedures will declaration form:

LIFE PROLONGING PROCEDURES DECLARATION

Declaration made this ____ day of ____ (month, year). I, _____, being at least eighteen (18) years of age and of sound mind, willfully and voluntarily make known my desire that if at any time I have an incurable injury, disease, or illness determined to be a terminal condition I request the use of life prolonging procedures that would extend my life. This includes appropriate nutrition and hydration, the administration of medication,

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and the performance of all other medical procedures necessary to extend my life, to provide comfort care, or to alleviate pain.

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

I understand the full import of this declaration.

Signed _____

City, County, and State of
Residence

The declarant has been personally known to me, and I believe (him/her) to be of sound mind. I am competent and at least eighteen (18) years of age.

Witness _____ Date _____

Witness _____ Date _____
As added by P.L.2-1993, SEC.19.

16-36-4-12 Revocation of living will declaration or life-prolonging procedures will declaration

Sec. 12. (a) A living will declaration or a life prolonging procedures will declaration may be revoked at any time by the declarant by any of the following:

- (1) A signed, dated writing.
- (2) Physical cancellation or destruction of the declaration by the declarant or another in the declarant's presence and at the declarant's direction.
- (3) An oral expression of intent to revoke.

(b) A revocation is effective when communicated to the attending physician.

(c) No civil or criminal liability is imposed upon a person for failure to act upon a revocation unless the person had actual knowledge of the revocation.

(d) The revocation of a life prolonging procedures will declaration is not evidence that the declarant desires to have life prolonging procedures withheld or withdrawn. As added by P.L.2-1993, SEC.19.

16-36-4-13 Certification of qualified patient; procedure where physician refuses to honor declaration

Sec. 13. (a) The attending physician shall immediately certify in writing that a person is a qualified patient if the following conditions are met:

- (1) The attending physician has diagnosed the patient as having a terminal condition.
- (2) The patient has executed a living will declaration or a life prolonging procedures will declaration in accordance with this chapter and was of sound mind at the time of the execution.

(b) The attending physician shall include a copy of the certificate in the patient's medical records.

(c) It is lawful for the attending physician to withhold or withdraw life prolonging procedures from a qualified patient if that patient properly executed a living will declaration under this chapter.

(d) A health care provider or an employee under the direction of a health care provider who:

- (1) in good faith; and
- (2) in accordance with reasonable medical standards;

participates in the withholding or withdrawing of life prolonging procedures from a qualified

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

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

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

(3) The patient's spouse.

(4) An adult child of the patient or a majority of any adult children of the patient who are reasonably available for consultation.

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

(6) The patient's clergy.

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

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

(e) The attending physician acting under subsection (c) shall list the names of the individuals described in subsection (c) who were consulted and include the information received in the patient's medical file.

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

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

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

(g) An out of hospital DNR order must be issued on the form specified in section 15 of this chapter. *As added by P.L.148-1999, SEC.12.*

16-36-5-14 Effect of declaration during pregnancy

Sec. 14. An out of hospital DNR declaration and order of a declarant known to be pregnant has no effect during the declarant's pregnancy. *As added by P.L.148-1999, SEC.12.*

16-36-5-15 Form

Sec. 15. An out of hospital DNR declaration and order must be in substantially the following form:

**OUT OF HOSPITAL DO NOT
RESUSCITATE DECLARATION
AND ORDER**

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

**OUT OF HOSPITAL DO NOT
RESUSCITATE DECLARATION**

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

My attending physician has certified that I am a qualified person, meaning that I have a terminal condition or a medical condition such that, if I suffer cardiac or pulmonary failure, resuscitation would be unsuccessful or within a short period I would experience repeated

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cardiac or pulmonary failure resulting in death.

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

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

I understand the full import of this declaration.

Signed _____
Printed name _____

City and State of Residence _____

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

Witness _____
Printed name _____ Date _____
Witness _____
Printed name _____ Date _____

OUT OF HOSPITAL DO NOT RESUSCITATE ORDER

I, _____, the attending physician of _____, have certified the

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

Signed _____ Date _____
Printed name _____
Medical license number _____

As added by P.L.148-1999, SEC.12.

16-36-5-16 Copies of declaration and order

Sec. 16. Copies of the out of hospital DNR declaration and order must be kept:

- (1) by the declarant's attending physician in the declarant's medical file; and
- (2) by the declarant or the declarant's representative.

As added by P.L.148-1999, SEC.12.

16-36-5-17 Identification devices

Sec. 17. (a) The emergency medical services commission shall develop an out of hospital DNR identification device that must be:

- (1) a necklace or bracelet; and
- (2) inscribed with:
 - (A) the declarant's name;
 - (B) the declarant's date of birth; and
 - (C) the words "Do Not Resuscitate".

(b) An out of hospital DNR identification device may be created for a declarant only after an out of hospital DNR declaration and order has been executed by a declarant and an attending physician.

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