



March 10, 2023

ENGROSSED

HOUSE BILL No. 1458

DIGEST OF HB 1458 (Updated March 8, 2023 2:25 pm - DI 149)

Citations Affected: IC 16-36.

Synopsis: Doctor scope of treatment and do not resuscitate. Provides that a declarant may include a person for whom a proxy has executed an out of hospital do not resuscitate (DNR) declaration if the person: (1) is at least 18 years of age and is certified as a qualified person; (2) is incapacitated or incompetent; and (3) has no representative who is able and available to execute an out of hospital DNR declaration. Defines "incapacitated" as related to an out of hospital DNR declaration. Defines "proxy" as related to an out of hospital DNR declaration and a physician order for scope of treatment (POST). Provides that a person's proxy may execute an out of hospital DNR declaration if certain conditions are met. Creates a declaration and order form to be used by hospitals if the declarant is incapacitated or incompetent. Allows a qualified person's proxy to complete a POST form if the person is incapable of making health care decisions and no representative is able and available to act. Allows a proxy to revoke a POST form or request alternative treatment. Provides that if alternative treatment is requested, the treating medical provider shall review the POST form with the declarant, the declarant's representative, or the proxy who has priority to act for the declarant. Makes conforming changes.

Effective: July 1, 2023.

Barrett, Fleming, Hatfield, Criswell

(SENATE SPONSOR — JOHNSON T)

January 17, 2023, read first time and referred to Committee on Public Health.
January 24, 2023, reported — Do Pass.
January 26, 2023, read second time, ordered engrossed.
January 27, 2023, engrossed.
January 30, 2023, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 27, 2023, read first time and referred to Committee on Judiciary.
March 9, 2023, amended, reported favorably — Do Pass.

EH 1458—LS 7162/DI 149



March 10, 2023

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1458

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 16-36-5-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. As used in this
3 chapter, "declarant" means a person:

4 (1) who has executed an out of hospital DNR declaration under
5 section 11(a) of this chapter; ~~or~~

6 (2) for whom a representative has executed an out of hospital
7 DNR declaration under section 11(b) of this chapter; **or**

8 **(3) for whom a proxy has executed an out of hospital DNR**
9 **declaration under section 11(c) of this chapter;**

10 and for whom an out of hospital DNR order has been written under
11 section 12 of this chapter.

12 SECTION 2. IC 16-36-5-4.2 IS ADDED TO THE INDIANA CODE
13 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2023]: **Sec. 4.2. As used in this chapter and with respect to a**
15 **declarant, "incapacitated" has the meaning set forth in**
16 **IC 16-36-7-15.**

17 SECTION 3. IC 16-36-5-8.1 IS ADDED TO THE INDIANA CODE

EH 1458—LS 7162/DI 149



1 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
2 1, 2023]: **Sec. 8.1. As used in this chapter, "proxy" has the meaning**
3 **set forth in IC 16-36-7-20.**

4 SECTION 4. IC 16-36-5-11, AS AMENDED BY P.L.36-2022,
5 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2023]: Sec. 11. (a) A person who is of sound mind and at least
7 eighteen (18) years of age may execute an out of hospital DNR
8 declaration.

9 (b) A person's representative may execute an out of hospital DNR
10 declaration for the person under this chapter only if the person is:

- 11 (1) at least eighteen (18) years of age; and
- 12 (2) **incapacitated or** incompetent.

13 **(c) If:**

- 14 **(1) a person is at least eighteen (18) years of age and is**
- 15 **certified as a qualified person under section 10 of this**
- 16 **chapter;**
- 17 **(2) the person is incapacitated or incompetent; and**
- 18 **(3) the person has no representative who is able and available**
- 19 **to execute an out of hospital DNR declaration for the person;**
- 20 **then any individual who is the person's proxy under**
- 21 **IC 16-36-7-42(c) and who is available to act and has priority to act**
- 22 **may execute an out of hospital DNR declaration for the person.**

23 ~~(c)~~ **(d)** An out of hospital DNR declaration must meet the following
24 conditions:

- 25 (1) Be voluntary.
- 26 (2) Be in writing.
- 27 (3) Be signed by the person making the declaration or by another
- 28 person in the declarant's presence and at the declarant's express
- 29 direction.
- 30 (4) Be dated.
- 31 (5) Be signed in the presence of at least two (2) competent
- 32 witnesses.

33 ~~(d)~~ **(e)** If the requirements concerning presence are met, a competent
34 declarant and all necessary witnesses may complete and sign an out of
35 hospital DNR declaration in two (2) or more tangible, paper
36 counterparts with the declarant's signature placed on one (1) original
37 counterpart and the signatures of the witnesses placed on one (1) or
38 more different tangible, paper counterparts if the text of the out of
39 hospital DNR declaration states that the declaration is being signed in
40 separate counterparts. If an out of hospital DNR declaration is signed
41 in counterparts under this subsection, one (1) or more of the following
42 persons must combine each of the separately signed tangible, paper



counterparts into a single composite document that contains all of the text of the out of hospital DNR declaration, the signature of the declarant, and the signature of each witness:

(1) The declarant.

(2) A health care representative who has been appointed by the declarant **under subsection (b).**

(3) A proxy acting for the declarant under subsection (c).

~~(3)~~ **(4)** A person who supervised the signing of the out of hospital DNR declaration in the person's presence.

~~(4)~~ **(5)** Any other person who was present during the signing of the out of hospital DNR declaration.

The person who combines the separately signed counterparts into a single composite document must do so not later than ten (10) business days after the person receives all of the separately signed tangible, paper counterparts. Any scanned, photocopied, or other accurate copy of the single, composite document shall be treated as validly signed under this subsection if the single, composite document contains the complete text of the out of hospital DNR declaration and all required signatures.

~~(e)~~ **(f)** If physical impairment, physical isolation, or other factors make it impossible or impractical for a declarant to use audiovisual technology to interact with witnesses or to otherwise comply with the requirements concerning presence as defined in section 7.7 of this chapter, the declarant and the witnesses may use telephonic interaction to witness and sign an out of hospital DNR declaration. A potential witness may not, however, be compelled to only use telephonic interaction when participating in the signing or witnessing of an out of hospital DNR declaration under this subsection. If an out of hospital DNR declaration is signed using telephonic interaction under this subsection:

(1) the:

(A) identity of the declarant must be personally known to the witness;

(B) witness must be able to view a government issued, photographic identification of the declarant; or

(C) witness must be able to ask any question of the declarant that:

(i) authenticates the identity of the declarant; and

(ii) establishes the capacity and sound mind of the declarant to the satisfaction of the witness;

(2) the text of the declaration must specify that the declarant and witnesses used telephonic interaction throughout the witnessing



and signing process of the out of hospital DNR declaration; and
 (3) the out of hospital DNR declaration is presumed valid if it
 specifies that the declarant and the witnesses witnessed and
 signed the declaration in compliance with Indiana law.

A health care provider or person who disputes the validity of an out of
 hospital DNR declaration described under this subsection has the
 burden of proving the invalidity of the declaration or noncompliance
 with this subsection, as applicable, by a preponderance of the evidence.

(f) (g) An out of hospital DNR declaration must be issued on the
 form specified in section 15 of this chapter.

SECTION 5. IC 16-36-5-15, AS AMENDED BY P.L.9-2022,
 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 JULY 1, 2023]: 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, advanced practice registered nurse, or
 physician assistant 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
 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.

This declaration was signed by me and by the witnesses in
 compliance with Indiana law and by: [Initial or check only one (1) of



the following spaces]

___ Signing on paper or electronically in each other's direct physical presence.

___ Signing in separate counterparts on paper using two (2) way, real time audiovisual technology.

___ Signing electronically using two (2) way, real time audiovisual technology or telephonic interaction.

___ Signing in separate counterparts on paper using telephonic interaction between me (the declarant) and all witnesses.

I understand the full import of this declaration.

Signed _____

Printed name _____

City and State of Residence _____

IF THE DECLARANT IS INCAPACITATED OR INCOMPETENT, the adult who signed above for the declarant is the: [Initial or check only one (1) of the following spaces]

___ **Court appointed guardian of the declarant's person.**

___ **Agent or attorney in fact (POA) under the declarant's health care power of attorney.**

___ **Health care representative for the declarant under a written advance directive or other written appointment.**

___ **Proxy for the declarant (state relationship to declarant)**

Address and other optional contact information for guardian, agent, representative, or proxy who signed for the declarant:

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, advanced practice registered nurse, or physician assistant 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 Physician/APRN/PA license number _____

SECTION 6. IC 16-36-5-18, AS AMENDED BY P.L.50-2021, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 18. (a) A declarant may at any time revoke an out of hospital DNR declaration and order by any of the following:

(1) A signed, dated writing.

(2) Physical cancellation or destruction of the declaration and order by the declarant or another in the declarant's presence and at the declarant's direction.

(3) An oral expression by the declarant of intent to revoke.

(b) A declarant's representative may revoke an out of hospital DNR declaration and order under this chapter only if the declarant is **incapacitated or incompetent. If the declarant is incapacitated or incompetent and has no representative who is able and available to act, a proxy for the declarant who has priority to act under IC 16-36-7-42(c) may revoke an out of hospital DNR declaration and order for that declarant, subject to the proxy's responsibilities under IC 16-36-7-42(d).**

(c) A revocation is effective upon communication to a health care provider.

(d) A health care provider to whom the revocation of an out of hospital DNR declaration and order is communicated shall immediately notify the declarant's attending physician, advanced practice registered nurse, or physician assistant, if known, of the revocation.

(e) An attending physician, advanced practice registered nurse, or physician assistant notified of the revocation of an out of hospital DNR declaration and order shall immediately:

(1) add the revocation to the declarant's medical file, noting the time, date, and place of revocation, if known, and the time, date, and place that the physician, advanced practice registered nurse, or physician assistant was notified;

(2) cancel the out of hospital DNR declaration and order by entering the word "VOID" on each page of the out of hospital DNR declaration and order in the declarant's medical file; and

(3) notify any health care facility staff responsible for the declarant's care of the revocation.



SECTION 7. IC 16-36-5-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 21. (a) If a declarant is **incapacitated or** incompetent at the time of the decision to withhold or withdraw CPR, an out of hospital DNR declaration and order executed under this chapter is presumed to be valid.

(b) For purposes of this chapter, a health care provider may presume in the absence of actual notice to the contrary that the declarant was of sound mind when the out of hospital DNR declaration and order was executed.

(c) The fact that a declarant executed an out of hospital declaration may not be considered as an indication of the declarant's mental ~~incompetency~~. **incapacity or incompetence.**

SECTION 8. IC 16-36-5-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 27. A person who knowingly or intentionally:

(1) physically cancels or destroys an out of hospital DNR declaration and order without the declarant's consent;

(2) physically cancels or destroys an out of hospital DNR declaration and order without the declarant's representative's consent if the declarant is **incapacitated or** incompetent; or

(3) falsifies or forges a revocation of another person's out of hospital DNR declaration and order;

commits a Class B misdemeanor.

SECTION 9. IC 16-36-6-2, AS AMENDED BY P.L.10-2019, SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. As used in this chapter, "declarant" means a qualified person:

(1) who has completed a POST form under section 7(a)(1) of this chapter; ~~or~~

(2) for whom a representative has completed a POST form under section 7(a)(2) of this chapter; ~~or~~

(3) for whom a proxy has completed a POST form under section 7(a)(3) of this chapter;

and whose treating physician, advanced practice registered nurse, or physician assistant has executed a POST form under section 8 of this chapter.

SECTION 10. IC 16-36-6-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 4.5. As used in this chapter, "proxy" has the meaning set forth in IC 16-36-7-20.**

SECTION 11. IC 16-36-6-7, AS AMENDED BY P.L.50-2021, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2023]: Sec. 7. (a) The following individuals may complete a POST form:

(1) A qualified person who is:

(A) either:

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

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

(B) of sound mind.

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

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

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

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

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

(iii) appointed by a court as the individual's health care representative under IC 16-36-1-8;

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

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

(3) Any individual who is the qualified person's proxy under IC 16-36-7-42(c) and who is available to act and has priority to act, if the qualified person:

(A) has been determined to be incapable of making decisions about the qualified person's health care by a treating physician, advanced practice registered nurse, or physician assistant acting in good faith; and

(B) has no representative who is described in subdivision (2) who is able and available to act for the qualified person.

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

(1) Discuss the qualified person's goals and treatment options



available to the qualified person based on the qualified person's health.

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

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

(1) in good faith; and

(2) in:

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

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

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

SECTION 12. IC 16-36-6-8, AS AMENDED BY P.L.10-2019, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) A POST form may be executed only by an individual's treating physician, advanced practice registered nurse, or physician assistant and only if:

(1) the treating physician, advanced practice registered nurse, or physician assistant has determined that:

(A) the individual is a qualified person; and

(B) the medical orders contained in the individual's POST form are reasonable and medically appropriate for the individual; and

(2) the qualified person, ~~or~~ representative, **or proxy** has completed the POST form in accordance with section 7 of this chapter.

(b) A POST form is effective if the following conditions are met:

(1) The POST form contains the qualified person's name and code status orders.

(2) The treating physician, advanced practice registered nurse, or physician assistant and the qualified person, ~~or~~ representative, **or proxy** have signed and dated the POST form.

(3) The POST form is in English.

(c) A qualified person who is unable to sign the POST form may direct another person, in the presence of the treating physician, advanced practice registered nurse, or physician assistant and the qualified person, to sign the POST form on the qualified person's behalf.

SECTION 13. IC 16-36-6-9, AS AMENDED BY P.L.50-2021,



SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. (a) The state department shall develop a standardized POST form and distribute the POST form.

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

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

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

(A) Comfort measures.

(B) Limited additional interventions.

(C) Full intervention.

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

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

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

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

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

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

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

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

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

(A) The **printed name of the** qualified ~~person's or representative's printed name: person, representative, or proxy who signed the POST form.~~

(B) The relationship of the representative ~~or proxy~~ signing the POST form to the qualified person covered by the POST form.

(C) The date of the signature.

As used in this subdivision, "signature" includes an electronic



signature.

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

(c) The state department shall place the POST form on its ~~Internet web site.~~ **website.**

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

SECTION 14. IC 16-36-6-11, AS AMENDED BY P.L.10-2019, SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11. (a) A declarant or representative subject to subsection (b) may at any time revoke a POST form by any of the following:

(1) A signed and dated writing.

(2) Physical cancellation or destruction of the POST form by:

(A) the declarant;

(B) the representative; or

(C) another individual at the direction of the declarant or representative.

(3) An oral expression by the declarant or representative of an intent to revoke the POST form.

(b) A representative may revoke the POST form only if:

(1) the declarant is incapable of making decisions regarding the declarant's health care; and

(2) the representative acts:

(A) in good faith; and

(B) in:

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

(ii) the best interests of the qualified person, if the qualified person's express or implied intentions are not known.

(c) If:

(1) a declarant, the declarant's proxy, or the declarant's representative completed and signed a POST form;

(2) the declarant who signed the POST form is incapable of making decisions regarding the declarant's health care; and

(3) no representative appointed by the declarant is able or reasonably available to act to revoke the POST form;

then a proxy who has priority to act for the declarant under IC 16-36-7-42(c) may act for the declarant to revoke the POST form. A proxy who revokes a POST form under this subsection



1 **must comply with IC 16-36-7-42(d).**

2 ~~(c)~~ **(d)** A revocation of a POST form under this section is effective
3 upon communication of the revocation to a health care provider.

4 ~~(d)~~ **(e)** Upon communication of the revocation of a POST form
5 under this section, the health care provider shall immediately notify the
6 declarant's treating physician, advanced practice registered nurse, or
7 physician assistant, if known, of the revocation.

8 ~~(e)~~ **(f)** Upon notification of the revocation of a POST form to the
9 treating physician, advanced practice registered nurse, or physician
10 assistant under subsection ~~(d)~~; **(e)**, the declarant's treating physician,
11 advanced practice registered nurse, or physician assistant shall as soon
12 as possible do the following:

13 (1) Add the revocation to the declarant's medical record with the
14 following information:

15 (A) The time, date, and place of revocation of the POST form
16 by the declarant, representative, **proxy**, or other individual at
17 the direction of the declarant, ~~or~~ representative, **or proxy**.

18 (B) The time, date, and place the treating physician, advanced
19 practice registered nurse, or physician assistant was notified of
20 the revocation of the POST form.

21 (2) Cancel the POST form that is being revoked by conspicuously
22 noting in the declarant's medical records that the declarant's POST
23 form has been voided.

24 (3) Notify any health care personnel responsible for the care of
25 the declarant of the revocation of the POST form.

26 (4) Notify the physician, advanced practice registered nurse, or
27 physician assistant who signed the POST form of the revocation
28 through the contact information for the physician, advanced
29 practice registered nurse, or physician assistant indicated on the
30 form.

31 SECTION 15. IC 16-36-6-12, AS AMENDED BY P.L.10-2019,
32 SECTION 77, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 JULY 1, 2023]: Sec. 12. (a) A declarant, or, subject to ~~subsection~~
34 **subsections (b) and (c)**, a representative **or a proxy**, may, at any time,
35 request alternative treatment to the treatment specified on the POST
36 form.

37 (b) A representative may request alternative treatment only if the
38 declarant is incapable of making decisions concerning the declarant's
39 health care.

40 **(c) A proxy who has priority to act for the declarant under**
41 **IC 16-36-7-42(c) may request alternative treatment if:**

42 **(1) the declarant is incapable of making decisions concerning**



1 **the declarant's health care; and**

2 **(2) no representative appointed by the declarant is able and**
 3 **reasonably available to act on behalf of the declarant.**

4 ~~(c)~~ **(d)** A health care provider to whom a request for alternative
 5 treatment is communicated shall, as soon as possible, notify the
 6 declarant's treating physician, advanced practice registered nurse, or
 7 physician assistant, if known, of the request.

8 ~~(d)~~ **(e)** The treating physician, advanced practice registered nurse,
 9 or physician assistant who is notified under subsection ~~(e)~~ **(d)** of a
 10 request for alternative treatment shall do the following as soon as
 11 possible:

12 (1) Include a written, signed note of the request in the declarant's
 13 medical records with the following information:

14 (A) The time, date, and place of the request by the declarant,
 15 **or representative, or proxy.**

16 (B) The time, date, and place that the treating physician,
 17 advanced practice registered nurse, or physician assistant was
 18 notified of the request.

19 (2) Review the POST form with:

20 ~~(A) the declarant, or representative and execute a new POST~~
 21 ~~form, if needed: if the declarant is capable of making~~
 22 **decisions concerning the declarant's health care;**

23 **(B) the declarant's representative, if the declarant is**
 24 **incapable of making decisions concerning the declarant's**
 25 **health care; or**

26 **(C) a proxy who has priority to act for the declarant, if the**
 27 **declarant is incapable of making decisions concerning the**
 28 **declarant's health care and no appointed representative is**
 29 **able or reasonably available to act for the declarant;**

30 **and execute a new POST form, if needed.**

31 SECTION 16. IC 16-36-6-15, AS AMENDED BY P.L.10-2019,
 32 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2023]: Sec. 15. (a) Except as otherwise provided in this
 34 chapter, the medical orders included in a POST form executed under
 35 this chapter are effective in all settings. A health care provider shall
 36 comply with a declarant's POST form that is apparent and immediately
 37 available to the provider unless the provider:

38 (1) believes the POST form was not validly executed under this
 39 chapter;

40 (2) believes in good faith that the declarant, the representative, **a**
 41 **proxy**, or another individual at the request of the declarant, ~~or~~
 42 **representative, or proxy** has revoked the POST form as provided



1 in section 11 of this chapter;

2 (3) believes in good faith that the declarant, ~~or~~ representative, **or**
 3 **a proxy** has made a request for alternative treatment as provided
 4 in section 12 of this chapter;

5 (4) believes it would be medically inappropriate to provide the
 6 intervention included in the declarant's POST form; or

7 (5) has religious or moral beliefs that conflict with the POST
 8 form.

9 (b) A health care provider is not required to provide medical
 10 treatment that is contrary to a declarant's POST form that has been
 11 executed in accordance with this chapter.

12 (c) If a declarant is capable of making health care decisions, the
 13 declarant's treating physician, advanced practice registered nurse, or
 14 physician assistant, before carrying out or implementing a medical
 15 order indicated in the declarant's POST form, shall discuss the order
 16 with the declarant to reaffirm or amend the order on the POST form.
 17 For purposes of this subsection, a minor who is not authorized to
 18 consent to health care under IC 16-36-1-3(a)(2) is not capable of
 19 consenting to health care. This subsection applies regardless of whether
 20 the POST form was signed by the declarant or representative.

21 (d) A health care provider who is unable to implement or carry out
 22 the orders of a POST form shall transfer care of the declarant to another
 23 health care provider who is able to implement or carry out the orders.
 24 However, a health care provider who refuses to implement the medical
 25 orders included in an executed POST form is not required to transfer
 26 care of the declarant if any of the circumstances in subsection (a)(1)
 27 through (a)(4) have occurred.

28 (e) The treating physician, advanced practice registered nurse, or
 29 physician assistant is responsible for coordinating the transfer of care
 30 of a declarant in the circumstances in subsection (d). If the treating
 31 physician, advanced practice registered nurse, or physician assistant,
 32 after a reasonable attempt, is unable to find a physician, advanced
 33 practice registered nurse, or physician assistant willing to implement
 34 or carry out the medical orders included in the declarant's POST form,
 35 the treating physician, advanced practice registered nurse, or physician
 36 assistant may decline to implement or carry out the medical orders.

37 (f) If, under this section, the treating physician, advanced practice
 38 registered nurse, or physician assistant does not transfer a declarant or
 39 implement the medical orders included in the declarant's POST form
 40 and the declarant is competent, the treating physician, advanced
 41 practice registered nurse, or physician assistant shall attempt to
 42 ascertain the declarant's preferences for medical care by discussing the



1 preferences with the declarant. If the declarant is incompetent to act,
 2 the treating physician, advanced practice registered nurse, or physician
 3 assistant shall attempt to ascertain the declarant's preferences for
 4 medical care by consulting with the following individuals:

5 (1) The treating physician, advanced practice registered nurse, or
 6 physician assistant shall consult with any representative who is
 7 available, willing, and competent to act.

8 (2) If the declarant does not have a representative or if a
 9 representative is not available, willing, and competent to act, the
 10 treating physician, advanced practice registered nurse, or
 11 physician assistant shall consult with any of the following
 12 individuals who are available, willing, and competent to act:

13 ~~(A) The declarant's spouse.~~

14 ~~(B) An adult child of the declarant; or, if the declarant has~~
 15 ~~more than one (1) adult child; a majority of the children who~~
 16 ~~are reasonably available for consultation.~~

17 ~~(C) A parent of the declarant.~~

18 ~~(D) (A) An adult sibling of the declarant; or, if the declarant~~
 19 ~~has more than one (1) adult sibling; a majority of the siblings~~
 20 ~~who are reasonably available for consultation. A proxy for the~~
 21 ~~declarant who is reasonably available, willing, and~~
 22 ~~competent to act and who has the highest priority under~~
 23 ~~IC 16-36-7-42(c).~~

24 ~~(E) (B) An If no proxy for the declarant is reasonably~~
 25 ~~available, willing, or competent to act, another individual~~
 26 ~~with firsthand knowledge of the declarant's intentions.~~

27 (g) An individual described in subsection (f) shall act according to
 28 the declarant's intentions, if known, or in the best interest of the
 29 declarant.

30 (h) The physician, advanced practice registered nurse, or physician
 31 assistant shall list the names of the individuals described in subsection
 32 (f) who were consulted and the information received by the individuals
 33 in the declarant's medical record.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1458, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1458 as introduced.)

BARRETT

Committee Vote: Yeas 13, Nays 0

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1458, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 11, line 34, after "declarant" insert "**, the declarant's proxy,**".
and when so amended that said bill do pass.

(Reference is to HB 1458 as printed January 24, 2023.)

BROWN L, Chairperson

Committee Vote: Yeas 10, Nays 0.

