

Advance Directives

YOUR RIGHT TO DECIDE

The purpose of this brochure is to inform you of ways that you can direct your medical care and treatment in the event that you are unable to communicate for yourself. This information covers:

- What is an advance directive?
- Are advance directives required?
- What happens if you do not have an advance directive?
- What are the different types of advance directives?

The Importance of Advance Directives

Each time you visit your physician, you make decisions regarding your personal health care. You tell your physician about your medical problems. Your physician makes a diagnosis and informs you about available medical treatment. You then decide what treatment to accept. That process works until you are unable to decide what treatments to accept or become unable to communicate your decisions. Diseases common to aging such as dementia or Alzheimer's disease may take away your ability to decide and communicate your health care wishes. Even young people can have strokes or accidents that may keep them from making their own health care decisions. Advance directives are a way to manage your future health care when you cannot speak for yourself.

What is an Advance Directive?

"Advance directive" is a term that refers to your spoken and written instructions about your future medical care and treatment. By stating your health care choices in an advance directive, you help your family and physician understand your wishes about your medical care. Indiana law pays special attention to advance directives.

Advance directives are normally one or more documents that list your health care instructions. An advance directive may name a person of your choice to make health care choices for you when



you cannot make the choices for yourself. If you want, you may use an advance directive to prevent certain people from making health care decisions on your behalf.

Your advance directive will not take away your right to decide your current health care, as long as you are able to decide and express your own decisions. Your advance directive will only be used when you are unable to communicate or when your physician decides that you no longer have the capacity to make your own choices.

Are Advance Directives Required?

Advance directives are not required. Your physician or hospital cannot require you to make an advance directive if you do not want one. No one may discriminate against you if you do not sign one. Physicians and hospitals often encourage patients to complete advance directive documents to gain information about health care choices so that wishes can be followed.

What Happens if You Do Not Have an Advance Directive?

If you do not have an advance directive that either states your treatment preferences or identifies a decision-maker

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and are unable to choose medical care or treatment, Indiana law decides who can do this for you. Indiana Code § 16-36-1-5 prioritizes a list of individuals who can make health care decisions for you.

What Types of Advance Directives are Recognized by Indiana?

- Talking directly to your physician and family
- Organ and tissue donation
- Health care representative
- Living will declaration or life-prolonging procedures declaration
- Psychiatric advance directives
- Out of hospital do not resuscitate declaration and order
- Physician orders for scope of treatment (POST)
- Power of attorney
- Funeral planning declaration

Talking to your Physician and Family

One of the most important things to do is to talk about your health care wishes with your physician. Your physician can follow your wishes only if he or she knows what your wishes are. By discussing your wishes with your physician, your physician will record your choices in your medical chart so that there is a record available for future reference. Your physician will follow your verbal instructions even if you do not complete a written advance directive. However, this does not cover all situations. Your physician may not be available when choices need to be made. Other health care providers may not have a copy of the medical records maintained by your physician and therefore would not know about any verbal instructions given by you to your physician. In addition, spoken instructions provide no written evidence and carry less weight than written instructions if there is a disagreement over your care. Writing down your health care choices in an advance directive document makes your wishes clear.

If you have written advance directives, it is important that you give a copy to your physician. He or she will keep it in your medical chart. Your physician can write orders in your medical chart based on your written advance directives or your spoken instructions. For instance, if you have a fatal disease and do not want cardiopulmonary resuscitation (CPR), your physician will need to write a “do not resuscitate” (DNR) order in your chart. The order makes the hospital staff aware of your wishes. Because most people have several health care providers, you should discuss your wishes with all of your providers and give

each provider a copy of your advance directive, particularly if you receive health care across multiple health systems with different medical records.

It is difficult to talk with family about dying or being unable to communicate. However, it is important to talk with your family about your wishes and ask them to follow your wishes. You do not always know when or where an illness or accident will occur. It is likely that your family would be the first ones called in an emergency. They are the best source of providing advance directives to a health care provider.

Organ and Tissue Donation

Donating your organs is a way to help others. Making your wishes concerning organ donation clear to your physician and family is an important first step. This lets them know that you wish to be an organ donor. Organ donation is controlled by the Indiana Uniform Anatomical Gift Act found at Indiana Code § 29-2-16.1. People who want to donate organs must register as an organ donor. You can do this by visiting www.DonateLifeIndiana.org or asking for your driver’s license to be marked accordingly when you renew it at a BMV branch. If you do not have a written document for organ donation, someone else will make the decision for you.

Health Care Representative

A “health care representative” is a person you choose to make health care decisions for you when you cannot. To choose a health care representative, you must fill out an appointment of health care representative document that names the person you choose to act for you; it also allows you to name a backup representative. Your health care representative may agree to or refuse medical care and treatments when you are unable to do so. Your representative will make these choices based on your advance directive. If you want, in certain cases and in consultation with your physician, your health care representative may decide if food, water or respiration should be given artificially as part of your medical treatment.

Choosing a health care representative is part of the Indiana Health Care Consent Act, found at Indiana Code § 16-36-1. The advance directive naming a health care representative must be in writing, signed by you and witnessed by another adult. Your health care representative must make the decisions in your best interest.

Living Will and Life-Prolonging Procedures

Living Will Declaration: This document is used to tell your physician and family that life-prolonging treatments should not be

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used so that you are allowed to die naturally. Your living will does not have to prohibit all life-prolonging treatments. It should list your specific choices. For example, your living will may state that you do not want to be placed on a respirator but that you want a feeding tube for nutrition. You may even specify that someone else should make the decision for you.

Life-Prolonging Procedures Declaration: This document is the opposite of a living will. You can use this document if you want all life-prolonging medical treatments used to extend your life.

Both of these documents can be canceled orally, in writing or by destroying the declaration yourself. The cancellation takes effect only when you tell your physician. For either of these documents to be used, there must be two adult witnesses, and the document must be in writing and signed by you or someone who has permission to sign your name in your presence.

Psychiatric Advance Directive

A person with a history of mental illness and treatment may be interested in a psychiatric advance directive. This is a written document that expresses your preferences and consent to treatment measures for a specific diagnosis. The directive sets forth the care and treatment of a mental illness during periods of incapacity. This directive requires certain items in order for the directive to be valid, including approval from and signature of your treating psychiatrist. Indiana Code § 16-36-1.7 provides the requirements for this type of advance directive.

Out of Hospital Do Not Resuscitate Declaration and Order

In a hospital, if you have a terminal condition and you do not want CPR, your physician will write a “do not resuscitate” order in your medical chart. If you are not in a hospital when an emergency occurs, the emergency medical personnel or the hospital where you are sent likely would not have a physician’s order to implement your directives, unless you’ve completed a POST. For situations outside of a hospital, the out of hospital do not resuscitate declaration and order is used to state your wishes. The out of hospital do not resuscitate declaration and order is found at Indiana Code § 16-36-5 and must be signed between you and your physician; you must be considered a qualified patient who needs this directive.

The law allows a qualified person to say he or she does not want CPR given if the heart or lungs stop working in a location that is not a hospital. This declaration may override other advance directives. The declaration may be canceled by you at any time by a signed and dated writing, by destroying or canceling the

document, or by communicating to health care providers at the scene your desire to cancel the order. Emergency medical services (EMS) may have procedures in place for marking your home so they know you have an order. Consider contacting your local EMS provider to find out their procedures.

Physician Orders for Scope of Treatment (POST)

A “physician orders for scope of treatment” (also referred to as POST) is a direct physician order for a person with at least one of the following:

1. An advanced chronic progressive illness
2. An advanced chronic progressive frailty
3. A condition caused by injury, disease or illness from which, to a reasonable degree of medical certainty, there can be no recovery and death will occur from the condition within a short period without the provision of life-prolonging procedures
4. A medical condition that, if the person were to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful or within a short period the person would experience repeated cardiac or pulmonary failure resulting in death

In consultation with you or your legal representative, your physician will write orders that reflect your wishes with regard to cardiopulmonary resuscitation (CPR), medical interventions (comfort measures, limited additional interventions or full treatment), antibiotics and artificially administered nutrition. The Indiana POST form is available on the Indiana State Department of Health website at www.in.gov/isdh/25880.htm.

The POST form must be in English and signed and dated by you (or your legal representative) and your physician, nurse practitioner or physician assistant to be valid. The original form is your personal property and you should keep it. Paper, facsimile (fax) or electronic copies of a valid POST form are as valid as the original. Your physician is required to keep a copy of your POST form in your medical record, or if the POST form is executed in a health facility, the facility must maintain a copy of the form in the medical record. The POST form may be used in any setting. The POST statute is found at Indiana Code § 16-36-6.

Executed POST forms may be revoked at any time by any of the following:

1. A signed and dated writing by you or your legal representative
2. Physical cancellation or destruction of the POST form by you or your legal representative
3. Another individual at the direction of you or your legal representative

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4. An oral expression by you or your legal representative of intent to revoke the POST form

The revocation is effective upon communication of the revocation to a health care provider.

Power of Attorney

A “power of attorney” (also referred to as a “durable power of attorney”) is another kind of advance directive. This document is used to grant another person decision making over your affairs. Your power of attorney document may cover financial matters, give health care authority or both. The legal term for the person you choose is “attorney in fact.” Your attorney in fact does not have to be an attorney. Your attorney in fact can be any adult you trust. Your attorney in fact is given the power to act for you only in the ways that you list in the document. The document must:

1. Name the person you want as your attorney in fact.
2. List the situations which give the attorney in fact the power to act.
3. List the powers you want to give.
4. List the powers you do not want to give.

The person you name as your power of attorney is not required to accept the responsibility. Prior to executing a power of attorney document, you should talk with the person to ensure that he or she is willing to serve. A power of attorney document may be used to designate a health care representative. Health care powers are granted in the power of attorney document by naming your attorney in fact as your health care representative under the Health Care Consent Act or by referring to the Living Will Act. When a power of attorney document is used to name a health care representative, this person is referred to as your health care power of attorney. A health care power of attorney generally serves the same role as a health care representative. Including health care powers could allow your attorney in fact to:

1. Make choices about your health care.
2. Sign health care contracts for you.
3. Admit or release you from hospitals or other health facilities.
4. Look at or get copies of your medical records.
5. Do a number of other things in your name such as making anatomical gifts, approving an autopsy and making plans for disposition.

The Indiana Powers of Attorney Act is found at Indiana Code § 30-5. Your power of attorney document must be in writing and signed in the presence of a notary public. You can cancel

a power of attorney at any time but only by signing a written cancellation and having the cancellation delivered to your attorney in fact.

Funeral Planning Declaration

A funeral planning declaration allows you to specify your wishes concerning funeral planning and burial method. This declaration requires you to appoint a designee to carry out your wishes. It can be included within or added to a power of attorney or completed as a separate document. If completing as a separate document, it must be in writing, signed by you and witnessed by two adults who are not your spouse, parent or child, or any one entitled to your estate.

Which Advance Directive or Directives Should Be Used?

The choice of advance directives depends on what you are trying to do. The advance directives listed may be used alone or together. Although an attorney is not required, you may want to talk with one before you sign an advance directive. The laws are complex, and it is always wise to talk to an attorney about questions and your legal choices. An attorney is often helpful in advising you on complex family matters and making sure that your documents are correctly done under Indiana law. An attorney may be helpful if you live in more than one state during the year. An attorney can advise you whether advance directives completed in another state are recognized in Indiana.

Can I Change My Mind After I Write an Advance Directive?

It is important to discuss your advance directives with your family and health care providers. Your health care wishes cannot be followed unless someone knows your wishes. You may change or cancel your advance directives at any time as long as you are of sound mind. If you change your mind, you need to tell your family, health care representative, power of attorney and health care providers. You might have to cancel your decision in writing for it to become effective. Always be sure to talk directly with your physician and tell him/her your exact wishes.

Are There Forms to Help in Writing These Documents?

Advance directive forms are available from many sources. Most physicians, hospitals and health care facilities can provide you with forms or refer you to a source. These groups often have the information on their websites. You should be aware that forms may not cover everything you want done. Forms may need to be

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changed to meet your needs. Although advance directives do not require an attorney, you may wish to consult with one before you try to write one of the more complex legal documents listed. Several of the forms are specified by statute. Those forms may be found on the Indiana State Department of Health Advance Directives Resource Center at www.in.gov/isdh/25880.htm. The following forms are available on that website:

- Living will declaration
- Life-prolonging procedures declaration
- Out of hospital do not resuscitate declaration and order
- Physician orders for scope of treatment (POST)

What Should I Do With My Advance Directive if I Choose to Have One?

Make sure that your health care representative, immediate family members, physician, attorney and other health care providers know that you have an advance directive. Be sure to tell them where it is located. You should ask your physician and other health care providers to make your advance directives part of your permanent medical chart. If you have a power of attorney, you should give a copy of your advance directives to your attorney in fact. You may wish to keep a small card in your purse or wallet that states that you have an advance directive, where it is located, and who to contact for your attorney in fact or health care representative, if you have named one.

Additional Information

For additional information on advance directives, visit the Indiana State Department of Health Advanced Directives Resource Center located at www.in.gov/isdh/25880.htm. The site includes links to state forms, this information, links to Indiana statutes and links to other websites.

The Indiana State Department of Health website, www.in.gov/isdh, contains a wealth of information about public health.

Summary of Advance Directives

- You have the right to choose the medical care and treatment you receive. Advance directives help make sure you have a say in your future health care and treatment if you become unable to communicate.
- Even if you do not have written advance directives, it is important to make sure your physician and family are aware of your health care wishes.

- No one can discriminate against you for signing, or not signing, an advance directive. An advance directive is, however, your way to control your future medical treatment.
- This information was prepared by the Indiana State Department of Health as an overview of advance directives. The Indiana State Department of Health attorneys cannot give you legal advice concerning living wills or advance directives. You should talk with your personal lawyer or representative for advice and assistance in this matter.