

Things are Changing: IN Advance Directive Law Updates

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Learning Objectives

Describe

Describe changes created by the 2021 Indiana Advance Directive overhaul bill

Describe

Describe responsibility and authority for a Health Care Representative

Identify

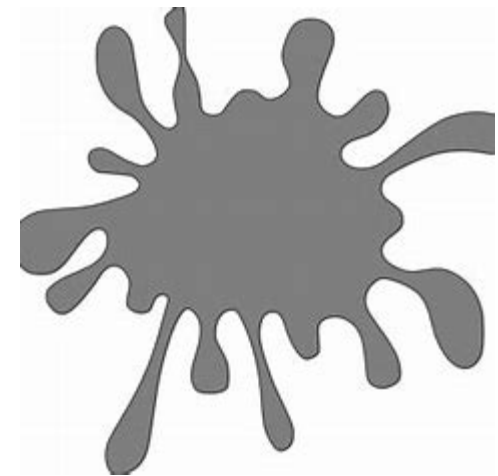
Identify individuals who can make decisions for the patient if a Health Care Representative is not named

Why all these changes?

- Conflicting Statutes
- Multiple Methods to appoint a legal representative
- Outdated language
- Covid 19
- Senate Enrolled Act 204 in 2021

When does this take effect?

- All the changes are in effect now – they were as of July 1, 2021
- All signature changes **MUST** occur as of January 1, 2023
- All old forms have been grandfathered in



Signature Requirements

- Every new Advance Directive must be signed by the declarant (or a representative) AND 2 Witnesses or a Notary
 - The witnesses cannot be the named HCR
 - Only 1 witness can be a family member

No Set Form to share values and preferences

I, Robyn Axel-Adams, am willing to try aggressive life sustaining measures for a time limited trial. I do not want a Peg-tube. I do not want to go to an L-TAC. If it gets to this point, my body is Sending you a message that I am dying, Please let me die.

EXAMPLE

I trust the Palliative Care Doctors and Providers.

Robyn Axel-Adams
Sept 5, 2022

Walter C. Lee
9-7-22

Janie Montz
09/07/22

Your Conversation Starter Guide

How to talk about what matters to you and have a say in your health care.



the conversation project



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Verbal AD are legal

- To a health care provider*
- In the direct physical presence
- Document:
 - Who was in the room, when it happened
 - Provide as much detail as possible
- Get a written AD if possible
- Revoking an AD verbally is also permitted

Definitions:

Health Care Provider:

- Any person licensed, certified, or authorized by law to administer health care* in the ordinary course of business or practice of a profession.
- *As of 9/20, legal is still determining who, besides an MD, DO, NP, or PA is considered a provider

In the Presence of

- Directly present with each other in the same physical space
- Able to interact in real time through any audiovisual technology
- Able to speak and hear through telephonic interaction when declarant can be identified

Where to Document the verbal AD

○ In Cerner

- Power Notes
- Advance Directives
 - Use the =goals_of_care template
 - Or simply free text
 - Who was named, who were the witnesses, anyone else in the room?

*Type: ADVANCE DIRECTIVE
*Date: 09/07/2022 0754 EDT
Subject: verbal AD
*Author: AxelAdams, Robyn M
Status: In Progress
Associated Providers: [Modify](#)

Just a Health Care Representative

- The Health Care POA is gone
- The Role of the HCR and HC POA are being rolled into the HCR

Can name more than 1 HCR

- Can order them
 - This is what our new form does
- Can say they have equal and independent authority
- Just name more than 1



Responsibility of HCR

Take	Take into account the intentions/preferences/values of the patient
Act in	Act in the best interest of the patient if preferences are not known
Be	Be Reasonably available
Act in	Act in a timely manner considering the urgency of the needs or health decisions

Authority of HCR

Provide consent

Be provided access to appropriate health information of the patient

Can apply for benefits on behalf of the patient

What if the HCR doesn't want to do it?

- **They need to inform**

- the patient
- the provider
- *the legal representation (if form completed by a lawyer)*

- **Can delegate someone else (unless AD explicitly says otherwise)**

- Delegation needs to be in writing (signed and witnessed)
- If do not want to delegate – then goes to the proxy list

Inform HCR



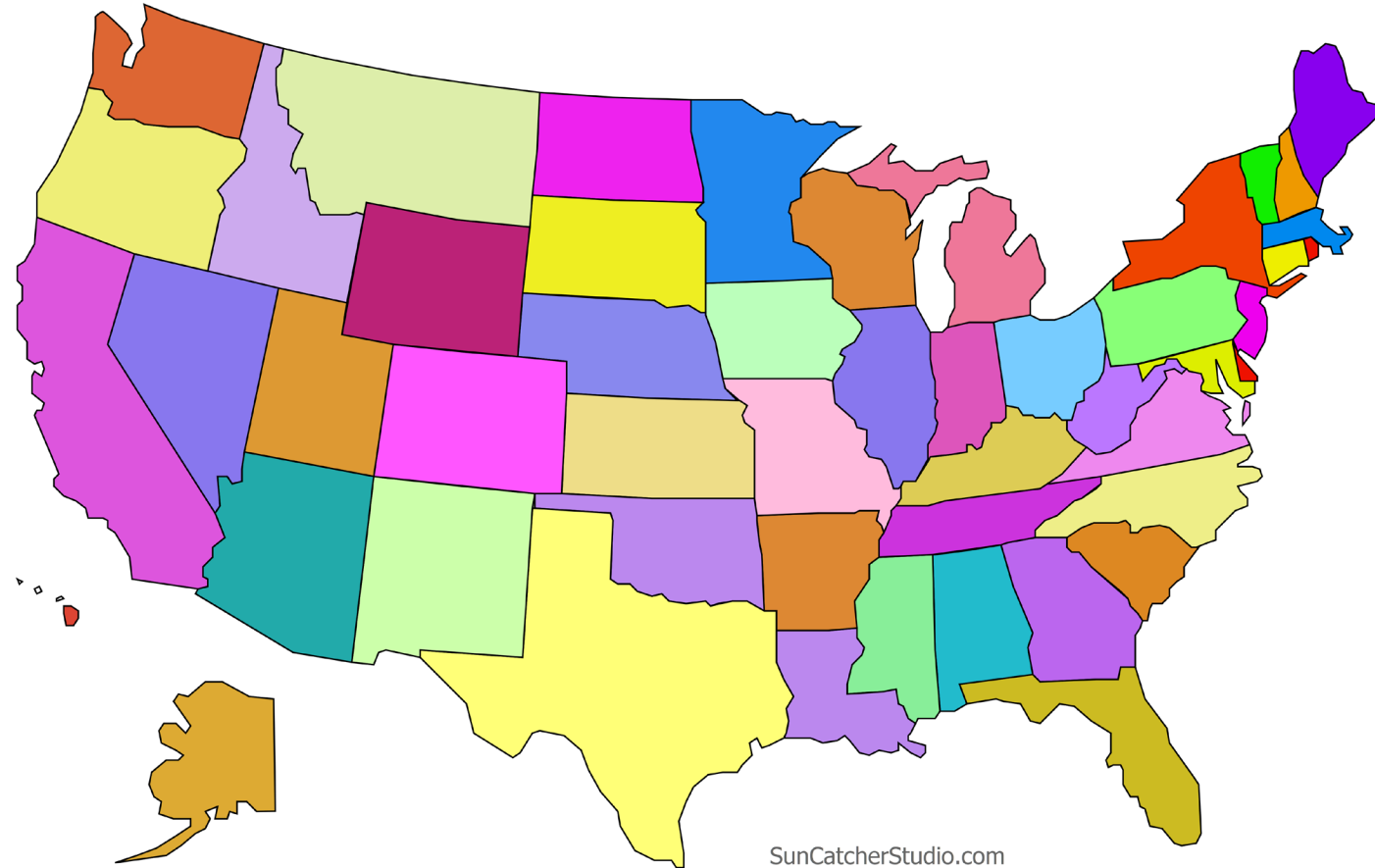
Transfer pt to another provider

Provider does not have the duty to look for or identify another provider who will accept

- If transfer is unadvisable – then follow your dispute resolution process

**If provider is
not willing
to comply**

Other state's forms are OK!



New Signing Options

1

Declarant and 2 witnesses or notary sign on paper in the presence of each other

2

Declarant and 2 witnesses or notary sign electronically in the presence of each other

New Remote Signing Options

3

Sign electronically during a video call

4

Sign (exact same) paper copies of the form during a video call. The signed copies must be assembled into one document within 10 business days after they have been received

5

Sign during a phone call that includes the patient and two witnesses. The witnesses must be able to confirm it is the patient

Health Care Provider is protected

- A health care provider who acts in good faith reliance on an advance directive or a decision made by a healthcare representative with apparent authority is immune from liability to the patient and to the patient's heirs to the same extent as if the provider had dealt directly with the patient had the patient been competent and not incapacitated.

New AD Form



INDIANA HEALTH CARE REPRESENTATIVE:

A Health Care Representative is a person chosen by you to make healthcare decisions, including end-of- life decisions, if you are unable to make your own. It is a good idea to talk with this person about your preferences ahead of time. A doctor will determine if you are unable to make your own decisions.

My name (also known as “Declarant”):

Full Legal Name

Date of Birth (MM/DD/YYYY)

My Health Care Representative can make decisions for me if I cannot make and share my own health care decisions. My Health Care Representative must follow my wishes and values. My values include my ideas about dignity and quality of life. If my Health Care Representative does not know my wishes, my Health Care Representative must act in good faith and make decisions in my best interests. These decisions include but are not limited to:

- Agreeing to medical treatment
- Refusing medical treatment
- Stopping medical treatment
- Arranging comfort care

I want the following person to be my Health Care Representative (HCR):

HCR Name

HCR Phone Number

If my primary HCR named above is not able or available to act for me, I want the following person to be my backup Health Care Representative:

Backup HCR Name

Backup HCR Phone Number



Declarant Name: _____

REQUIRED SIGNATURES:

By signing this form, I cancel and revoke every health care power of attorney I signed in the past.

Signature (Declarant)

Date

Printed Name (Declarant)

This form must be either signed by 2 adult witnesses (below left) or notarized (below right) to be legally valid.

SIGNATURE OF 2 ADULT WITNESSES

Each of the undersigned Witnesses confirms that he or she has received satisfactory proof of the identity of the Declarant and is satisfied that the Declarant is of sound mind and has the capacity to sign the above Advance Directive. **At least one of the undersigned Witnesses is not a spouse or other relative of the Declarant.**

Signature of Adult Witness 1

Printed Name of Adult Witness 1

Date

Signature of Adult Witness 2

Printed Name of Adult Witness 2

Date

NOTARIZATION

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public, personally appeared _____ [*name of signing Declarant*], who acknowledged the execution of the foregoing Advance Directive as his or her voluntary act, and who, having been duly sworn, stated that any representations therein are true.

Witness my hand and Notarial Seal on this _____ day of _____, 20____.

Signature of Notary Public

Notary's Printed Name (*if not on seal*)

Commission Number (*if not on seal*)

Commission Expires (*if not on seal*)

Notary's County of Residence



The new IN AD form – patient preferences

OPTIONAL STATEMENT OF PREFERENCES:

I would like to provide some additional guidance for my Health Care Representative on my end-of-life preferences. (Please select only one option below).

- ☐ The ***quality of my life*** is more important than the length of my life. If I am unable to make my own decisions and my attending physician believes that I will not recover, I do not want treatments to prolong my life or delay my death. Instead, I would want treatment or care to make me comfortable and to relieve me of pain.
- ☐ ***Staying alive*** is more important to me, no matter how sick I am or how unlikely my chances for recovery are. I want my life to be prolonged to the greatest extent possible, in accordance with reasonable medical standards.
- ☐ I choose to NOT complete this section at this time.

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Our ultimate
goal

To have Goal
Concurrent Care

What Matters
Most to You

Quick Reference Guide



Indiana University Health

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

Legal Terms:

Declarant: A Competent adult who has executed an Advance Directive

Proxy: Previously known as Default Surrogate Decision Maker

Reasonably Available: Contacted without undue effort; willing to act in a timely manner considering urgency of Health Care needs or decisions

Best Interest: Promotion of the individual's welfare, based on consideration of material factors, including relief of suffering, preservation or restoration of function, and quality of life.

All AD forms signed after 1/1/2023, must comply with the new statute. Any forms signed before 1/1/2023, are still valid and must be accepted.

Basic elements of the advance directive (AD) document

- (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 instructions, including and not limited to life-prolonging procedures and/or palliative care in various settings (including end of life); no limitations in statute on what can be stated
- (3) Signing requirements: (See back for more details)
 - (a) Declarant (Patient) signs on paper or electronically **OR** directs an adult (not a health care representative and not a witness) to sign declarant's name in declarant's direct presence



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Patient Education





Indiana State Department of Health

2 North Meridian Street
Indianapolis, Indiana 46204

March 1999
Revised May 2004
Revised July 1, 2013

ADVANCE DIRECTIVES

YOUR RIGHT TO DECIDE

The purpose of this brochure is to inform you if you have an advance directive, you can direct your medical care and treatment in the event you are unable to communicate for yourself. This brochure 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?



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**No longer on the State's website.
NOT Up to date**



Advance care planning: What matters most to you in future healthcare decisions

What is advance care planning?

It is a process to help any adult, at any stage of health, understand and share their goals and preferences regarding future medical care. This will help your healthcare team, family and friends know what you want in case of a sudden medical crisis, accident or serious illness. A part of advance care planning may involve completing an advance directive.

- Agreeing to medical treatment
- Refusing medical treatment
- Stopping medical treatment
- Arranging for comfort care

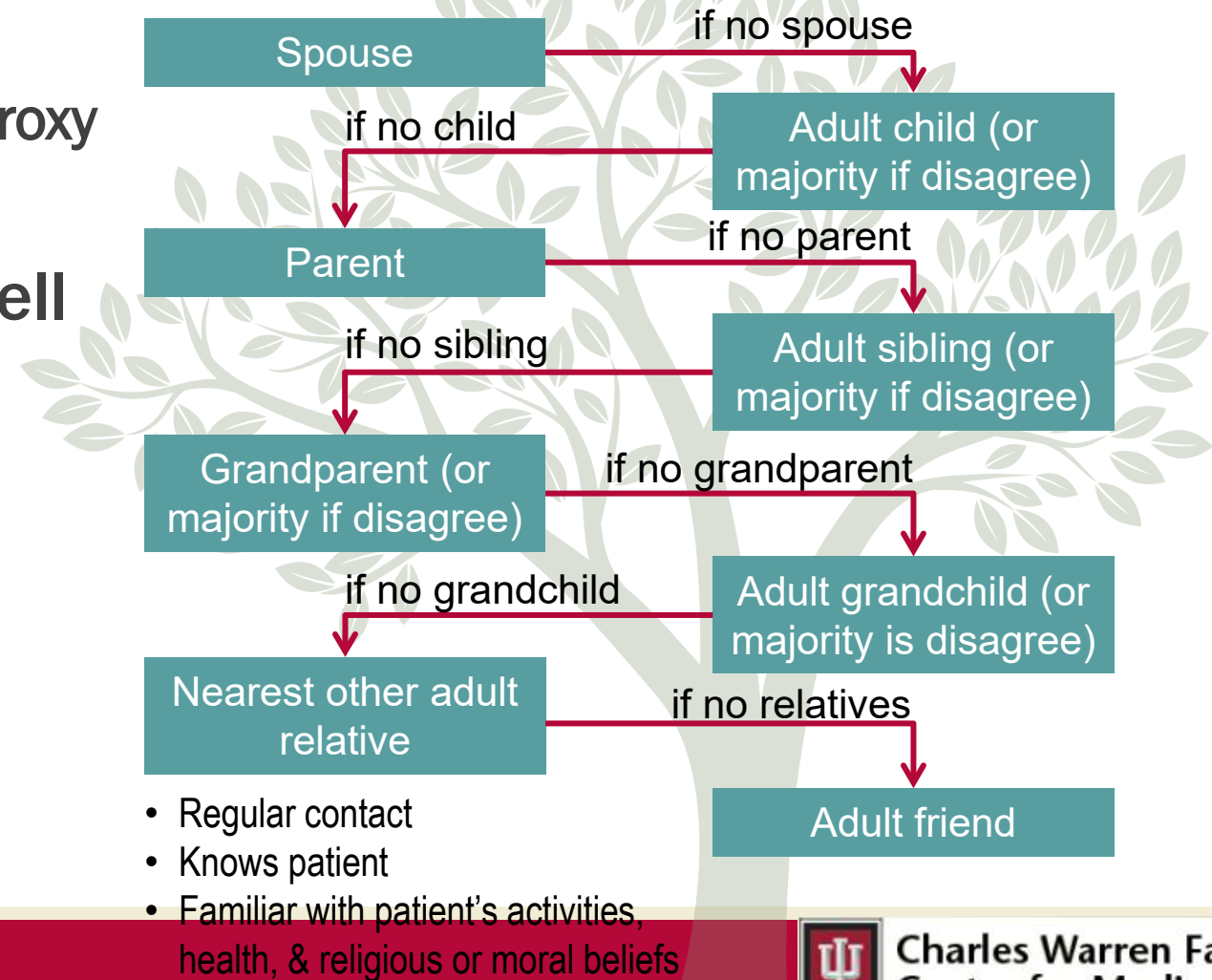
How to select a healthcare representative

Encourage conversations

- What does a good day look like to you?
- What do you hope for with your disease, as it progresses
 - And if those hopes are not able to happen
- Tell me about previous hospital experiences you or a loved one have had. What did you learn from those?
- Can you tell me about any cultural or spiritual practices that help to inform your healthcare decisions.

Items that did not change

- If no HCR is named
 - (these people are now called **Proxy Decision makers**)
- This applies to minors as well
 - (starting at the Parent level)
- Those who cannot serve
- Same responsibility
 - Follow pt's values/preferences
 - Act in their best interest



Items that did not change

- The most recently signed AD is the one in effect
- AD only go into affect when a patient loses capacity (and decision making goes back to the patient if they regain capacity)

Other pieces addressed in this law that are not AD



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Physician Order Scope of Treatment – Reminder!

- This is a physician's order – no need to ask families
- Only an appointed HCR can sign (or change) a POST
- Need more info? www.Indianapost.org

Out of Hospital DNR

- PA and NP can now sign

Questions?!

- Robyn Axel-Adams

- raxelada@iuhealth.org

- Forms

- FCME@iuhealth.org

