



Secretary of State State of Indiana

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SB 204 Telephonic Witnesses

Senate Bill 204 was signed into law by Governor Holcomb on April 16, 2021 and will go into effect on July 1, 2021. This bill makes many changes regarding how advanced health care directives are obtained in Indiana. One change effectuated by SB 204 is the allowance of telephonic witnessing in relation to the creation of advance health care directives. State law formerly required a witness to be physically present when witnessing the creation of an advance health care directive. Despite these changes, SB 204 did not alter the physical presence requirement placed on notaries under IC 33-42. In fact, SB 204 specifically states in new code section IC 16-37-7-18:

“...with respect to interactions between a declarant and a notarial officer, “observe” means that the notarial officer is able to see and hear, in real time, the declarant’s actions and expressions of intent either in the declarant’s physical presence or through audiovisual communications as defined in IC 33-42-0.5-5.”

Furthermore, the legislation provides a definition of “presence” in new section IC 16-36-7-19(b) that conforms with the definition of “appearance” as provided in IC 33-42. SB 204 defines presence as:

“...throughout the process of signing, acknowledging, and notarizing the advance directive...the declarant and notarial officer are (A) directly present with each other in the same physical space; or (B) able to interact with each other in real time through use of any audiovisual technology, now known or later developed, whose use complies with IC 33-42.”

A remote notary involved in the creation of an advance health care directive must utilize audio visual communication, defined in IC 33-42-0.5-5 as “...real time, two-way, visual and auditory communication through technology.” As such, a notary would **never** be permitted to conduct telephonic notarization. SB 204 also updates code sections related to advance health care directives to acknowledge remote notarizations and incorporate them into existing practices.

Since 2020, Indiana has permitted remote notarization. However, only notaries public, who are authorized as remote notaries by the Secretary of State, may perform remote notarizations. In addition, remote notarizations must be performed on Secretary of State approved Remote Technology Vendor platforms. Indiana remote notaries are governed by IC 33-42 and 75 IAC 7.