

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

SENATE ENROLLED ACT No. 262

AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 16-18-2-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 29. "Attending physician" means the licensed physician who has the primary responsibility for the treatment and care of the patient. **For purposes of IC 16-36-5, the term includes a physician licensed in another state.**

SECTION 2. IC 16-18-2-48.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 48.5. "Cardiopulmonary resuscitation" or "CPR", for purposes of IC 16-36-5, has the meaning set forth in IC 16-36-5-1.**

SECTION 3. IC 16-18-2-66.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 66.5. "Competent witness", for purposes of IC 16-36-5, has the meaning set forth in IC 16-36-5-2.**

SECTION 4. IC 16-18-2-92.4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 92.4. "Declarant", for purposes of IC 16-36-5, has the meaning set forth in IC 16-36-5-3.**

SECTION 5. IC 16-18-2-99.3 IS ADDED TO THE INDIANA

SEA 262



C
O
P
Y

CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 99.3. "DNR", for purposes of IC 16-36-5, has the meaning set forth in IC 16-36-5-4.**

SECTION 6. IC 16-18-2-163, AS AMENDED BY P.L.188-1995, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 163. (a) "Health care provider", for purposes of IC 16-21 and IC 16-41, means any of the following:

- (1) An individual, a partnership, a corporation, a professional corporation, a facility, or an institution licensed or legally authorized by this state to provide health care or professional services as a licensed physician, a psychiatric hospital, a hospital, a health facility, an emergency ambulance service (IC 16-31-3), a dentist, a registered or licensed practical nurse, a midwife, an optometrist, a pharmacist, a podiatrist, a chiropractor, a physical therapist, a respiratory care practitioner, an occupational therapist, a psychologist, a paramedic, an emergency medical technician, or an advanced emergency technician, or a person who is an officer, employee, or agent of the individual, partnership, corporation, professional corporation, facility, or institution acting in the course and scope of the person's employment.
- (2) A college, university, or junior college that provides health care to a student, a faculty member, or an employee, and the governing board or a person who is an officer, employee, or agent of the college, university, or junior college acting in the course and scope of the person's employment.
- (3) A blood bank, community mental health center, community mental retardation center, community health center, or migrant health center.
- (4) A home health agency (as defined in IC 16-27-1-2).
- (5) A health maintenance organization (as defined in IC 27-13-1-19).
- (6) A health care organization whose members, shareholders, or partners are health care providers under subdivision (1).
- (7) A corporation, partnership, or professional corporation not otherwise qualified under this subsection that:
 - (A) provides health care as one (1) of the corporation's, partnership's, or professional corporation's functions;
 - (B) is organized or registered under state law; and
 - (C) is determined to be eligible for coverage as a health care provider under IC 34-18 for the corporation's, partnership's, or professional corporation's health care function.

Coverage for a health care provider qualified under this subdivision is

C
O
P
Y



limited to the health care provider's health care functions and does not extend to other causes of action.

(b) "Health care provider", for purposes of IC 16-35, has the meaning set forth in subsection (a). However, for purposes of IC 16-35, the term also includes a health facility (as defined in section 167 of this chapter).

(c) "Health care provider", for purposes of IC 16-36-5, means an individual licensed or authorized by this state to provide health care or professional services as:

- (1) a licensed physician;**
- (2) a registered nurse;**
- (3) a licensed practical nurse;**
- (4) an advanced practice nurse;**
- (5) a licensed nurse midwife;**
- (6) a paramedic;**
- (7) an emergency medical technician;**
- (8) an advanced emergency medical technician; or**
- (9) a first responder, as defined under IC 16-18-2-131.**

The term includes an individual who is an employee or agent of a health care provider acting in the course and scope of the individual's employment.

SECTION 7. IC 16-18-2-264.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 264.7. "Out of hospital", for purposes of IC 16-36-5, has the meaning set forth in IC 16-36-5-5.**

SECTION 8. IC 16-18-2-264.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 264.8. "Out of hospital DNR declaration and order", for purposes of IC 16-36-5, has the meaning set forth in IC 16-36-5-6.**

SECTION 9. IC 16-18-2-264.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 264.9. "Out of hospital DNR identification device", for purposes of IC 16-36-5, has the meaning set forth in IC 16-36-5-7.**

SECTION 10. IC 16-18-2-302.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 302.3. "Qualified person", for purposes of IC 16-36-5, has the meaning set forth in IC 16-36-5-8.**

SECTION 11. IC 16-18-2-317 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 317. (a) "Representative", for purposes of IC 16-36-1, has the meaning set forth**

C
O
P
Y



in IC 16-36-1-2.

(b) "Representative", for purposes of IC 16-36-5, has the meaning set forth in IC 16-36-5-9.

SECTION 12. IC 16-36-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 5. Out of Hospital Do Not Resuscitate Declarations

Sec. 1. As used in this chapter, "cardiopulmonary resuscitation" or "CPR" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation, including:

- (1) cardiac compression;
- (2) endotracheal intubation and other advanced airway management;
- (3) artificial ventilation;
- (4) defibrillation;
- (5) administration of cardiac resuscitation medications; and
- (6) related procedures.

The term does not include the Heimlich maneuver or a similar procedure used to expel an obstruction from the throat.

Sec. 2. As used in this chapter, "competent witness" means a person at least eighteen (18) years of age who is not:

- (1) the person who signed an out of hospital DNR declaration on behalf of and at the direction of the declarant;
- (2) a parent, spouse, or child of the declarant;
- (3) entitled to any part of the declarant's estate; or
- (4) directly financially responsible for the declarant's medical care.

For purposes of subdivision (3), a person is not considered to be entitled to any part of the declarant's estate solely by virtue of being nominated as a personal representative or as the attorney for the estate in the declarant's will.

Sec. 3. As used in this chapter, "declarant" means a person:

- (1) who has executed an out of hospital DNR declaration under section 11(a) of this chapter; or
- (2) for whom a representative has executed an out of hospital DNR declaration under section 11(b) of this chapter;

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

Sec. 4. As used in this chapter, "DNR" means do not resuscitate.

Sec. 5. As used in this chapter, "out of hospital" refers to a location other than:

- (1) an acute care hospital licensed under IC 16-21-2; or

SEA 262



C
O
P
Y

(2) a health facility licensed under IC 16-28.

Sec. 6. As used in this chapter, "out of hospital DNR declaration and order" means a document executed under sections 11 and 12 of this chapter.

Sec. 7. As used in this chapter, "out of hospital DNR identification device" means a device developed by the emergency medical services commission under section 17 of this chapter.

Sec. 8. As used in this chapter, "qualified person" means an individual certified as a qualified person under section 10 of this chapter.

Sec. 9. As used in this chapter, "representative" means a person's:

- (1) legal guardian or other court appointed representative responsible for making health care decisions for the person;
- (2) health care representative under IC 16-36-1; or
- (3) attorney in fact for health care appointed under IC 30-5-5-16.

Sec. 10. An attending physician may certify that a patient is a qualified person if the attending physician determines, in accordance with reasonable medical standards, that one (1) of the following conditions is met:

- (1) The person has a terminal condition (as defined in IC 16-36-4-5).
- (2) The person has a medical condition such 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.

Sec. 11. (a) A person who is of sound mind and at least eighteen (18) years of age may execute an out of hospital DNR declaration.

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

- (1) at least eighteen (18) years of age; and
- (2) incompetent.

(c) An out of hospital DNR declaration must meet the following conditions:

- (1) Be voluntary.
- (2) Be in writing.
- (3) Be signed by the person making the declaration or by another person in the declarant's presence and at the declarant's express direction.

C
O
P
Y



(4) Be dated.

(5) Be signed in the presence of at least two (2) competent witnesses.

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

Sec. 12. An out of hospital DNR order:

(1) may be issued only by the declarant's attending physician; and

(2) may be issued only if both of the following apply:

(A) The attending physician has determined the patient is a qualified person.

(B) The patient has executed an out of hospital DNR declaration under section 11 of this chapter.

Sec. 13. (a) An attending physician who does not issue an out of hospital DNR order for a patient who is a qualified person may transfer the patient to another physician, who may issue an out of hospital DNR order, unless:

(1) the attending physician has reason to believe the patient's declaration was not validly executed, or there is evidence the patient no longer intends the declaration to be enforced; and

(2) the patient is unable to validate the declaration.

(b) Notwithstanding section 10 of this chapter, if an attending physician, after reasonable investigation, does not find any other physician willing to honor the patient's out of hospital DNR declaration and issue an out of hospital DNR order, the attending physician may refuse to issue an out of hospital DNR order.

(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

C
O
P
Y



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:

(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.

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.

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,

C
o
p
y



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.

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 _____

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



C
o
p
y

medical file; and

(2) by the declarant or the declarant's representative.

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.

(c) The device developed under subsection (a) is not a substitute for the out of hospital DNR declaration and order.

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 incompetent.

(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, if known, of the revocation.

(e) An attending physician 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 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.

Sec. 19. (a) A health care provider shall withhold or discontinue

C
O
P
Y



CPR to a patient in an out of hospital location if the health care provider has actual knowledge of:

- (1) an original or a copy of a signed out of hospital DNR declaration and order executed by the patient; or**
- (2) an out of hospital DNR identification device worn by the patient or in the patient's possession.**

(b) A health care provider shall disregard an out of hospital DNR declaration and order and perform CPR if:

- (1) the declarant is conscious and states a desire for resuscitative measures;**
- (2) the health care provider believes in good faith that the out of hospital DNR declaration and order has been revoked;**
- (3) the health care provider is ordered by the attending physician to disregard the out of hospital DNR declaration and order; or**
- (4) the health care provider believes in good faith that the out of hospital DNR declaration and order must be disregarded to avoid verbal or physical confrontation at the scene.**

(c) A health care provider transporting a declarant shall document on the transport form:

- (1) the presence of an out of hospital DNR declaration and order;**
- (2) the attending physician's name; and**
- (3) the date the out of hospital DNR declaration and order was signed.**

(d) An out of hospital DNR identification device must accompany a declarant whenever the declarant is transported.

Sec. 20. A health care provider who in good faith and in accordance with reasonable medical standards:

- (1) participates in the withholding or withdrawal of CPR from a declarant:**
 - (A) by whom an out of hospital DNR declaration and order has been executed under this chapter; or**
 - (B) who has revoked an out of hospital DNR declaration and order when the health care provider has no notice of the revocation; or**
- (2) provides CPR to a declarant:**
 - (A) when the health care provider has no notice of the out of hospital DNR declaration and order; or**
 - (B) after a revocation of an out of hospital DNR declaration and order;**

is not subject to criminal or civil liability and may not be found to

C
O
P
Y



have committed an act of unprofessional conduct.

Sec. 21. (a) If a declarant is 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.

Sec. 22. (a) A person may challenge the validity of an out of hospital DNR declaration and order by filing a petition for review in a court in the county in which the declarant resides.

(b) A petition filed under subsection (a) must include the name and address of the declarant's attending physician.

(c) A court in which a petition is filed under subsection (a) may declare an out of hospital DNR declaration and order void if the court finds that the out of hospital DNR declaration and order was executed:

- (1)** when the declarant was incapacitated due to insanity, mental illness, mental deficiency, duress, undue influence, fraud, excessive use of drugs, confinement, or other disability;
- (2)** contrary to the declarant's wishes; or
- (3)** when the declarant was not a qualified person.

(d) If a court finds that the out of hospital DNR declaration and order is void, the court shall cause notice of the finding to be sent to the declarant's attending physician.

(e) Upon notice under subsection (d), the declarant's attending physician shall follow the procedures under section 18(e) of this chapter.

Sec. 23. (a) A death caused by the withholding or withdrawal of CPR under this chapter does not constitute a suicide.

(b) The execution of an out of hospital DNR declaration and order under this chapter does not affect the sale, issuance, or terms of a life insurance policy.

(c) A policy of life insurance is not legally impaired or invalidated by the execution of an out of hospital DNR declaration and order or by the withholding or withdrawal of CPR from an insured declarant, notwithstanding any term of the policy to the contrary.



(d) An out of hospital DNR declaration and order may not be considered in the establishment of insurance premiums for a declarant.

(e) A person may not require another person to execute an out of hospital DNR declaration and order as a condition for being insured for or receiving health care services.

(f) This chapter does not impair or supersede any legal right or legal responsibility that a person may have to effect the withholding or withdrawal of CPR in a lawful manner.

Sec. 24. This chapter does not create any presumption concerning the intent of a person who has not executed an out of hospital DNR declaration and order to consent to the withholding or withdrawal of CPR if a terminal condition exists, or if a medical condition exists such that the outcome of performing CPR would have the results specified in section 10(2) of this chapter.

Sec. 25. This chapter does not authorize euthanasia or any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

Sec. 26. The act of withholding or withdrawing CPR, when done under:

- (1) an out of hospital DNR declaration and order issued under this chapter;
- (2) a court order or decision of a court appointed guardian; or
- (3) a good faith medical decision by the attending physician that the patient has a terminal illness;

is not an intervening force and does not affect the chain of proximate cause between the conduct of a person that placed the patient in a terminal condition and the patient's death.

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

commits a Class B misdemeanor.

Sec. 28. (a) A person who knowingly or intentionally:

- (1) falsifies or forges the out of hospital DNR declaration and order of another person with intent to cause the withholding or withdrawal of CPR; or
- (2) conceals or withholds personal knowledge of the

C
O
P
Y



revocation of an out of hospital DNR declaration and order with intent to cause the withholding or withdrawal of CPR; commits a Class C felony.

(b) A person who commits an offense described in this section is subject to IC 29-1-2-12.1.

SECTION 13. IC 35-43-5-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 13. Certain offenses concerning forgery and other deceptions involving out of hospital do not resuscitate declarations and orders are described in IC 16-36-5.**

C
o
p
y

