

“POST” IT TO ENHANCE HEALTH CARE ADVANCE DIRECTIVES

(Indiana’s Relatively New Physician Orders for Scope of Treatment)

I. POST Enacted.

A. Effective July 1, 2013 (HEA No. 1182)

- “Physician order for scope of treatment”.
- My earlier concern has been alleviated by what will be a supplementary process.
- E.g., use by a health care representative may make it less likely that a “life-prolonging procedure” will be utilized.

B. Definitions.

- New Chapter 6 is added to health care provisions of Title 16.
- “Declarant” means a “qualified person” who has executed a POST form, or for whom a representative has completed a POST form, and whose treating physician has likewise executed the POST form, all in compliance with Chapter 6.
- A “qualified person” is one who has an advanced chronic progressive illness or frailty, or 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 within a short period without the provision of life-prolonging procedures.

- Under the Living Wills and Life Prolonging Procedures Act (Chapter 4), a “declarant” means a person who has executed a living will declaration, and a “qualified patient” means a patient who has been certified as a qualified patient by the attending physician, i.e., has been diagnosed as having a terminal condition.
- Chapter 4 defines a “terminal condition” as 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 terminal condition within a short period of time without the provision of life-prolonging procedures.

C. Process:

- The qualified person and his treating physician (or designee) must discuss goals and treatment options and complete the POST form based on the person’s preferences determined during the discussion.
- A representative acting for a qualified person must act in good faith and in accordance with the qualified

person's intentions, if known, or in the best interest of the qualified person, if intentions are unknown.

- A copy of the executed POST form is to be maintained in the qualified person's medical file.
- The treating physician and the qualified person or representative must sign and date the POST form for it to be effective.

D. The ISDH has developed and posted online a POST form which meets the statutory requirements:

- Specifying whether CPR should be performed if QP is in cardiopulmonary arrest.
- Specifying the level of medical intervention, including comfort measures, limited additional interventions, or full intervention.
- Specifying whether antibiotics should be provided.
- Specifying whether artificially administered nutrition should be provided.
- Allows declarant to appoint a health care representative.

E. Distribution of POST form.

- POST form is the personal property of the declarant.
- Physician who executes POST form maintains a copy in declarant's medical records.
- If executed at a health care facility, a copy of the POST form shall be maintained in the facility's medical records.
- Facsimile, paper or electronic copy is treated the same as an original document.
- A provider, facility, or entity acting in good faith will not be considered to have knowledge of a POST form solely on the basis of the form's entry into the medical record.

F. Declarant or representative may request alternative treatment to that specified in the POST form.

- Representative may request only if the declarant is incapable of making decisions.
- Health care provider receiving request for alternative treatment shall, if possible, notify the declarant's treating physician, if known.
- Treating physician who is notified of a request for alternative treatment shall review the POST form with the declarant or representative and execute a new POST form, if needed.

- G. A health provider or any interested person may petition the probate court for relief under I.C. 16-36-1-8:
- If medical orders set forth in a POST form are inconsistent, or
 - Believed to be inconsistent with declarant's known preferences, or
 - If they are not in the declarant's best interest.
- H. Medical orders executed in a POST form are effective in all settings. Health care providers shall comply with the POST form unless:
- The provider believes the POST form was not validly executed,
 - Believes in good faith that the declarant, the representative, or another individual at the request of the declarant or the representative has revoked a POST form,
 - Believes in good faith that the declarant or the representative has made a request for alternative treatment,
 - Believes that it would be medically inappropriate, or

- Has religious or moral beliefs that conflict with the POST form.
 - Treating physician shall discuss the order with the declarant before carrying out or implementing a medical order indicated in the POST form.
- I. Execution or revocation of a POST form does not revoke or impair the validity of a power of attorney, health care powers, or the appointment of a health care representative, except to the extent the POST form contains a superceding appointment.
- J. Other issues and questions:
- It is problematic that the POST form will not have the same degree of protection afforded to other medical orders in a medical record.
 - Refer to the ISDH website and links in the materials.
- K. Refer to Exhibit “B” containing instructions to provide guidance for health professionals.
- Clarifies that the POST form does not replace health care advance directives but puts them into action by translating the patient’s treatment wishes into a medical order, and helps to insure transfer of appropriate

information among health care professionals and across care settings.

- Clarifies that it is intended to be used for patients when the answer is “no” to the question “Would I be surprised if this patient died in the next 12 months?”
- The form is highly recommended for hospitalized patients being discharged to nursing homes, home with hospice, or home health care, or for nursing home residents either at the time of admission or during quarterly care planning.
- Clarifies that the POST form can be completed by either emancipated or mature minors, parents in behalf of minor children, and judicially appointed guardians and representatives.
- Next-of-kin are not authorized to fill out a POST form unless they are a guardian, health care representative, or health care power of attorney.
- Strongly recommends that the POST form be printed on the prescribed pink paper to assure its recognizability and that it can be quickly found in an emergency.
- Patient does not need a separate DNR order since the POST Act establishes the Indiana POST form as a legally recognized means of “do not resuscitate.”

Because the POST form remains with the patient, it will suffice as a DNR for patients who are confined as well as those who are released to return home. However, the Indiana Out-of-Hospital DNR Order form is still legally valid.

- The POST form cannot be signed by a Nurse Practitioner or a Physician's Assistant. However, they can be prepared by others designated by the treating physician (including social workers, chaplains and other health care professionals).
- The POST form should be reviewed when the patient is transferred from one health care facility to another or when there is a change in his or her medical condition.
- The POST form can be revoked with a verbal expression of intent and is effective when communicated to the health care provider. It is cancelled by making a note in the patient's medical record.
- Recommends that if the patient resides at home, the POST form should be kept with the patient's medication or on the refrigerator. Health care facilities should keep the POST form as the first page in a person's medical record. If the patient is a nursing home resident, the nursing home may choose to keep the original when the patient is transferred to a hospital for admission and send a copy of the original POST form with the patient.