

IC 16-36-3

Chapter 3. Consent to Medical Treatment of Incompetent

IC 16-36-3-1

Appropriate facility defined

Sec. 1. As used in this chapter, "appropriate facility" has the meaning set forth in IC 12-7-2-82(3).

As added by P.L.2-1993, SEC.19.

IC 16-36-3-2

Superintendent defined

Sec. 2. As used in this chapter, "superintendent" has the meaning set forth in IC 12-7-2-188(3).

As added by P.L.2-1993, SEC.19.

IC 16-36-3-3

Methods of consent

Sec. 3. The methods of consent set forth in this chapter do not exclude other lawful methods of consent or require consent in an emergency.

As added by P.L.2-1993, SEC.19.

IC 16-36-3-4

Consent by superintendent of facility

Sec. 4. Consent to medical or surgical treatment of a patient at an appropriate facility may be given by the superintendent under the procedures in this chapter.

As added by P.L.2-1993, SEC.19.

IC 16-36-3-5

Second medical opinion

Sec. 5. If the superintendent and the patient's treating physician determine that:

- (1) the patient is incompetent to give informed consent to medical or surgical treatment, even though the patient has never been so adjudicated by a court; and
- (2) the treatment is medically necessary;

the superintendent shall obtain a second opinion on the issues listed in subdivisions (1) and (2) from a licensed physician independent of the appropriate facility.

As added by P.L.2-1993, SEC.19.

IC 16-36-3-6

Second opinion specialist list

Sec. 6. In obtaining a second opinion as required by section 5 of this chapter, the superintendent shall compile a list of licensed physicians, organized by specialty. The superintendent must use an appropriate specialist from the list whenever possible. The physician

chosen to give a second opinion must not be the same physician later chosen to perform the surgery that was the subject of the second opinion, unless an emergency exists.

As added by P.L.2-1993, SEC.19.

IC 16-36-3-7

Notice to relatives or friends of patient

Sec. 7. The superintendent shall attempt to notify by certified mail any known relatives or friends of the patient of the patient's condition, the treatment determined to be necessary by the superintendent and the treating physician, and the result of the independent second opinion. To the extent possible given the urgency of the circumstances, the superintendent shall allow a reasonable time within which to receive responses of persons notified and shall consider the responses received before taking final action.

As added by P.L.2-1993, SEC.19.

IC 16-36-3-8

Concurring second opinion; procedure

Sec. 8. If the superintendent has followed the procedures in sections 4, 5, 6, and 7 of this chapter and the second opinion obtained under section 5 of this chapter concurs with the original determination of the superintendent and the patient's treating physician, the superintendent may give consent to the medical or surgical treatment of the patient.

As added by P.L.2-1993, SEC.19.

IC 16-36-3-9

Superintendent immune from liability

Sec. 9. A superintendent who, without malice, bad faith, or negligence, discloses confidential information in connection with the superintendent's compliance with section 7 of this chapter or consents to medical or surgical treatment of a patient after following the procedures required by this chapter is immune from any civil or criminal liability that might otherwise be imposed as a result of disclosing confidential information or giving or withholding the consent.

As added by P.L.2-1993, SEC.19.

IC 16-36-3-10

Report of medical treatments approved

Sec. 10. The superintendent shall compile a report of all medically necessary treatments approved under this chapter during each calendar quarter and send the report to the director of the division of mental health and addiction or the director of the division of disability and rehabilitative services not more than one (1) month after the end of that quarter. The report must contain the following information:

- (1) The name of the patient.

- (2) The type of action taken.
- (3) The date of the action.
- (4) The reason for the action.
- (5) The names of the treating physician, the physician independent of the appropriate facility, and any other physician who entered an opinion that was contrary to the treating physician's opinion.

As added by P.L.2-1993, SEC.19. Amended by P.L.40-1994, SEC.65; P.L.215-2001, SEC.83; P.L.141-2006, SEC.89.