

IN THE SENATE

SENATE BILL NO. 1247, As Amended

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO HEALTH; AMENDING TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW
2 CHAPTER 19, TITLE 56, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT, TO PRO-
3 VIDE FOR GOVERNMENTAL LIABILITY, TO DEFINE TERMS, TO ESTABLISH PROVI-
4 SIONS REGARDING PROTECTIVE CUSTODY WITHOUT HEARINGS, TO ESTABLISH PRO-
5 VISIONS REGARDING JUDICIAL PROCEDURE FOR PROTECTIVE CUSTODY UPON COURT
6 ORDER, TO REQUIRE REPORTING OF INSTANCES OF EMERGENCY PROTECTIVE PLACE-
7 MENT, AND TO ESTABLISH PROVISIONS REGARDING RESPONSIBILITY FOR COSTS OF
8 PROTECTIVE CUSTODY AND CARE OF PATIENTS; AND DECLARING AN EMERGENCY AND
9 PROVIDING AN EFFECTIVE DATE.
10

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Title 56, Idaho Code, be, and the same is hereby amended
13 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
14 ter 19, Title 56, Idaho Code, and to read as follows:

15 CHAPTER 19

16 CRISIS RESPONSE FOR PERSONS WITH A NEUROCOGNITIVE DISORDER

17 56-1901. LEGISLATIVE INTENT. It is the intent of the legislature that
18 persons with a neurocognitive disorder who are in acute crisis due to an
19 unidentified underlying medical condition can get the care they need and
20 return home once the underlying medical condition is resolved. The leg-
21 islature further intends that state agencies and community partners will
22 collaborate to provide the most dignified care for persons with a neurocog-
23 nitive disorder.

24 56-1902. GOVERNMENTAL LIABILITY. All provisions of chapter 9, title
25 6, Idaho Code, shall apply to any claim of tortious conduct on the part of a
26 person action or refusing to act in conformance with this chapter.

27 56-1903. DEFINITIONS. As used in this chapter:

28 (1) "Department" means the state department of health and welfare.

29 (2) "Health care provider" means a person licensed, certified, or
30 otherwise authorized by law to administer health care services in the ordi-
31 nary course of business or practice of a profession, including a physician,
32 physician assistant, and advanced practice registered nurse.

33 (3) "Health care services" means services for the diagnosis, preven-
34 tion, treatment, cure, or relief of a health condition, illness, injury, or
35 disease.

36 (4) "Hospital" means a medical hospital as defined in section 39-1301,
37 Idaho Code, including freestanding emergency departments.

38 (5) "Likely to injure themselves or others" means:

1 (a) A substantial risk that serious physical harm will be inflicted by
2 the person upon their own person, as evidenced by threats of suicide or
3 threats to inflict serious physical harm on themselves;

4 (b) A substantial risk that serious physical harm will be inflicted by
5 the person upon another as evidenced by behavior that has caused such
6 harm or that places another person or persons in reasonable fear of sus-
7 taining such harm; or

8 (c) The person lacks insight into the need for treatment and is unable
9 or unwilling to comply with treatment based on the person's medical
10 history, clinical observation, or other clinical evidence, and if the
11 person does not receive and comply with treatment, there is a substan-
12 tial risk that the person will continue to physically, emotionally,
13 or cognitively deteriorate to the point that the person will, in the
14 reasonably near future, inflict serious physical harm on themselves or
15 another person.

16 (6) "Neurocognitive disorder" has the same meaning as provided in sec-
17 tion 66-317(13), Idaho Code, except that for purposes of this chapter neu-
18 rocognitive disorder does not include decreased mental function due to inap-
19 propriate use or abuse of substances or medications.

20 (7) "Peace officer" means an employee of a law enforcement agency that
21 is a part of or administered by the state or any political subdivision of the
22 state and whose duties include and primarily consist of the prevention and
23 detection of crime and the enforcement of penal, traffic, or highway laws
24 of the state or any political subdivision of the state. Peace officer also
25 means an employee of a police or law enforcement agency of a federally recog-
26 nized Indian tribe who has satisfactorily completed the peace officer stan-
27 dards and training academy and has been deputized by a sheriff of a county or
28 a chief of police of a city of the state of Idaho.

29 (8) "Protective custody" means when a peace officer detains a person
30 and takes such person to a hospital. The peace officer shall make every rea-
31 sonable effort to protect the person's health and safety while the peace of-
32 ficer takes reasonable steps to protect the peace officer's safety. Protec-
33 tive custody under this section is not an arrest.

34 56-1904. PROTECTIVE CUSTODY WITHOUT HEARING. (1) No person shall be
35 taken into protective custody or detained as an alleged emergency patient
36 for observation, diagnosis, evaluation, care or treatment of a neurocogni-
37 tive disorder unless and until the court has ordered such apprehension and
38 custody pursuant to section 56-1905, Idaho Code; provided, however, that a
39 person may be taken into custody by a peace officer and placed in a hospital,
40 or the person may be detained at a hospital at which the person presented or
41 was brought to receive medical care, if the peace officer or a health care
42 provider in such hospital has reason to believe that person has a neurocogni-
43 tive disorder and the person is likely to injure themselves or others; pro-
44 vided, under no circumstances shall the person be detained in a nonmedical
45 unit used for the detention of persons charged with or convicted of penal of-
46 fenses. Whenever a person is taken into custody or detained pursuant to this
47 section without a court order, the evidence supporting the claim that the
48 person with the neurocognitive disorder is likely to injure themselves or

1 others must be presented to a duly authorized court within twenty-four (24)
2 hours from the time the person was placed in custody or detained.

3 (2) If the court finds there is reason to believe the person is likely
4 to have a neurocognitive disorder and likely to injure themselves or others
5 pursuant to subsection (1) of this section, the court shall issue a temporary
6 protective placement custody order requiring the person to be held in a hos-
7 pital and requiring an examination of the person by a health care provider in
8 such hospital within twenty-four (24) hours of the entry of the order of the
9 court. Under no circumstances shall the person be detained in a nonmedical
10 unit used for the detention of persons charged with or convicted of penal of-
11 fenses.

12 (3) Where an examination is required pursuant to subsection (2) of this
13 section, the health care provider in such hospital shall make findings and
14 report to the court within twenty-four (24) hours of the examination.

15 (4) If at any time after the person is placed in protective custody the
16 health care provider in such hospital conducting the examination determines
17 the person no longer meets criteria for protective custody, the person shall
18 be deemed to be a voluntary patient and subject to release.

19 (5) If the health care provider in such hospital finds, in an examina-
20 tion pursuant to this section, that the person is likely to have a neurocog-
21 nitive disorder and is likely to injure themselves or others, the prosecut-
22 ing attorney shall file, within twenty-four (24) hours of the examination of
23 the person, a petition with the court requesting the person's continued pro-
24 tective placement pending review proceedings pursuant to section 56-1905,
25 Idaho Code.

26 (6) Upon the receipt of such a petition, the court shall order the per-
27 son's detention to await hearing, which shall be within five (5) days, in-
28 cluding Saturdays, Sundays, and legal holidays, of the protective placement
29 order. If no petition is filed within twenty-four (24) hours of the exami-
30 nation described in subsection (5) of this section, the person shall be re-
31 leased from the protective placement.

32 (7) Upon taking a person into custody, a good faith effort shall be made
33 to provide notice to the person's legal guardian, parent, spouse, or adult
34 next of kin of the person's physical whereabouts and the reasons for taking
35 the person into custody.

36 (8) Nothing in this section shall preclude a hospital from transferring
37 a person who has been detained pursuant to this section to another hospital
38 that is willing to accept the transferred person for purposes of observa-
39 tion, diagnosis, evaluation, care, or treatment.

40 56-1905. PROTECTIVE CUSTODY UPON COURT ORDER -- JUDICIAL PROCE-
41 DURE. (1) Proceedings by a hospital for the involuntary care and treatment of
42 persons likely to have a neurocognitive disorder who are in acute crisis due
43 to an underlying medical condition may be commenced by the filing of a writ-
44 ten application for emergency protective placement with a court of competent
45 jurisdiction by a friend, relative, spouse, or guardian of the person, by a
46 health care provider practicing in a hospital, by a prosecuting attorney or
47 other public official of a municipality, county, or the state of Idaho, or by
48 the director of any facility in which such person may be located.

1 (2) The application for emergency protective placement shall state the
2 name and last known address of the person; the name and address of the spouse,
3 guardian, next of kin, or friend of the person; whether the person can be
4 cared for privately in the event a hold is not ordered; whether the person is,
5 at the time of the application, a voluntary patient; whether the person has
6 applied for release; and a simple and precise statement of the facts show-
7 ing that the person is likely to have a neurocognitive disorder and is either
8 likely to injure themselves or others.

9 (3) Any such application for emergency protective placement shall be
10 accompanied by a certificate of a health care provider practicing in such
11 hospital stating that a health care provider practicing in such hospital has
12 personally examined the person within the last fourteen (14) days and is of
13 the opinion that the person has a neurocognitive disorder and is likely to
14 injure themselves or others and lacks capacity to make informed decisions
15 about treatment or by a written statement by the applicant that the person
16 has refused to submit to examination by a health care provider practicing in
17 such hospital.

18 (4) Upon receipt of an application for emergency protective placement,
19 the court shall, within forty-eight (48) hours, order another health care
20 provider practicing in such hospital to make a personal examination of the
21 person, or if the person has not been examined, the court shall appoint two
22 (2) health care providers practicing in such hospital to make individual
23 personal examinations of the person and may order the person to submit to an
24 immediate examination. If neither is a physician, the court shall order a
25 physical examination of the person. The health care provider practicing in
26 such hospital shall report to the court findings within the following sev-
27 enty-two (72) hours as to the medical condition of the person and the need
28 for custody, care, or treatment by a hospital. The reports shall be in the
29 form of written certificates that shall be filed with the court. The court
30 may terminate the proceedings and dismiss the application without taking any
31 further action in the event the reports are to the effect that the person is
32 not likely to injure themselves or others due to a neurocognitive disorder.
33 If the proceedings are terminated, the person shall be released immediately.

34 (5) If the health care provider practicing in such hospital certifies a
35 belief that the person is likely to injure themselves or others due to a neu-
36 rocognitive disorder, the judge shall issue an order authorizing any health
37 officer, peace officer, or director of a facility to take the person to a hos-
38 pital in the community in which the person is residing or to the nearest hos-
39 pital to await the hearing, and for good cause, may authorize treatment dur-
40 ing such period. Under no circumstances shall the person be detained in a
41 nonmedical unit used for the detention of individuals charged with or con-
42 victed of penal offenses.

43 (6) Upon receipt of such application for emergency protective place-
44 ment by the health care provider practicing in such hospital, the court
45 shall appoint a time and place for a hearing not more than seven (7) days from
46 the receipt of such certificates and thereupon give written notice of such
47 time and place of such hearing, together with a copy of the application, the
48 health care provider's certificates, and notice of the person's right to be
49 represented by an attorney or, if indigent, to be represented by a court-ap-
50 pointed attorney to the applicant, and to the person and the person's spouse,

1 guardian, next of kin, or friend. With the consent of the person and the
2 person's attorney, the hearing may be held immediately. Upon motion of the
3 petitioner, or upon motion of the person and the person's attorney, and for
4 good cause shown, the court may continue the hearing up to an additional
5 seven (7) days during which time, for good cause shown, the court may autho-
6 rize treatment.

7 (7) An opportunity to be represented by counsel shall be afforded to ev-
8 ery person and, if neither the person nor others provide counsel, the court
9 shall appoint counsel in accordance with chapter 8, title 19, Idaho Code, no
10 later than the time the application for emergency protective placement is
11 received by the court.

12 (8) If the protective placement is commenced under this section, the
13 hearing shall be held in a manner and at a suitable place not likely to have
14 a harmful effect on the person's physical or mental health. Venue for the
15 hearing shall be in the county of residence of the person or in the county
16 where the person was found immediately prior to commencement of such pro-
17 ceedings.

18 (9) In all proceedings under this section, any existing provision of
19 the law prohibiting the disclosure of confidential communications between
20 the person and the health care provider practicing in such hospital shall not
21 apply and any health care provider practicing in such hospital who shall have
22 examined the person shall be a competent witness to testify as to the per-
23 son's condition.

24 (10) The person, the applicant, and any other persons to whom notice is
25 required to be given shall be afforded an opportunity to appear at the hear-
26 ing to testify and to present and cross-examine witnesses. The person may,
27 after consulting with the person's attorney, request to waive the person's
28 presence at court. The court may waive the presence of the person if the men-
29 tal or physical state of the person is such that the person's presence at the
30 hearing would be detrimental to the person's health or would unduly disrupt
31 the proceedings. A record of the proceedings shall be made as for other civil
32 hearings. The hearing shall be conducted in as informal a manner as may be
33 consistent with orderly procedure. The court shall receive all relevant and
34 material evidence consistent with the rules of evidence.

35 (11) If, upon completion of the hearing and consideration of the record,
36 and after consideration of reasonable alternatives, the court finds by clear
37 and convincing evidence that the person likely has a neurocognitive disorder
38 and is likely to injure themselves or others, the court shall order the per-
39 son to be placed under protective custody of a suitable medical hospital for
40 observation, care, and treatment for an indeterminate period of time not to
41 exceed seven (7) days.

42 (12) The order of protective placement shall state whether the person
43 lacks capacity to make informed decisions about treatment and the name and
44 address of the person's attorney, spouse, guardian, adult next of kin, or
45 friend.

46 (13) If the person has no spouse or guardian and if the person has prop-
47 erty that may not be cared for by the person while confined at a hospital,
48 the court shall appoint a guardian ad litem for the purpose of preserving the
49 person's estate, pending further guardianship or conservatorship proceed-
50 ings.

1 56-1906. DUTY TO REPORT INSTANCES OF EMERGENCY PROTECTIVE PLACE-
 2 MENT. (1) Hospitals shall report all placements in which persons are placed
 3 in emergency protective placement pursuant to section 56-1904 or 56-1905,
 4 Idaho Code, or an involuntary hold pursuant to section 66-326 or 66-329,
 5 Idaho Code, but determined by a health care provider to likely have a neu-
 6 rocognitive disorder and not mental illness to the department every quarter.
 7 Reports shall be due to the department on the last day of the month immedi-
 8 ately following the end of the quarter, with the first report due April 30,
 9 2025.

10 (2) Any and all patient information submitted as a part of a report re-
 11 quired under this section shall be protected and de-identified according to
 12 state and federal privacy laws.

13 (3) The hospital shall report:

14 (a) The number of emergency protective placements that were placed at a
 15 hospital by a health care provider;

16 (b) The number of emergency protective placements that were placed at a
 17 hospital by a peace officer;

18 (c) The number of emergency protective placements that were made for
 19 persons determined to have an underlying medical reason for placement
 20 in the hospital who also had a neurocognitive disorder;

21 (d) The number of emergency protective placements that were made for
 22 persons who did not have a neurocognitive disorder;

23 (e) For emergency protective placements made for persons who did not
 24 have a medical reason for placement in the hospital other than a neu-
 25 rocognitive disorder, how many had a length of stay after the emergency
 26 protective placement ended at the hospital that was:

27 (i) Between zero (0) and five (5) days;

28 (ii) Between six (6) and ten (10) days;

29 (iii) Between eleven (11) and thirty (30) days;

30 (iv) Between thirty-one (31) and sixty (60) days;

31 (v) Between sixty-one (61) and ninety (90) days; and

32 (vi) More than ninety (90) days; and

33 (f) For emergency protective placements made for persons who had a med-
 34 ical reason for placement in the hospital other than a neurocognitive
 35 disorder, how many had a length of stay after the emergency protective
 36 placement ended at the hospital that was:

37 (i) Between zero (0) and five (5) days;

38 (ii) Between six (6) and ten (10) days;

39 (iii) Between eleven (11) and thirty (30) days;

40 (iv) Between thirty-one (31) and sixty (60) days;

41 (v) Between sixty-one (61) and ninety (90) days; and

42 (vi) More than ninety (90) days.

43 (4) The department shall include a summary of all reports made pursuant
 44 to subsection (1) of this section in the annual report on Alzheimer's disease
 45 and related dementias as required in section 39-2701, Idaho Code.

46 56-1907. RESPONSIBILITY FOR COSTS OF PROTECTIVE CUSTODY AND CARE OF
 47 PATIENTS. (1) As used in this section:

48 (a) "Protective custody period" means a period that begins when a per-
 49 son is taken into custody pursuant to sections 56-1904 and 56-1905,

1 Idaho Code, and ends when the patient is released from protective cus-
2 tody.

3 (b) "Routine medical care" includes care provided during the protec-
4 tive custody period that includes hospital costs, including routine
5 board, room, and support services.

6 (c) "Third-party applicant" means a person other than a patient who
7 completes, signs, and files an application for medicaid on behalf of the
8 patient. A third-party applicant may be an adult who is a member of the
9 patient's family or household, the patient's authorized representa-
10 tive, or, if the patient is incapacitated, someone, including an agent
11 of a facility, who is acting responsibly for the patient.

12 (2) In instances where the person placed in protective custody is re-
13 leased with no underlying medical conditions in addition to the person's
14 neurocognitive disorder having been identified, costs associated with the
15 protective custody shall be the responsibility of the person placed in
16 protective custody, subject to the department of health and welfare's deter-
17 mination of the person's ability to pay all or any part of such costs. The
18 department shall:

19 (a) Use the state-approved fee determination form and sliding fee
20 schedule described in rules promulgated by the department to determine
21 the person's ability to pay;

22 (b) Inquire to determine if the person has insurance, including medical
23 assistance provided under the state plan for medicaid as authorized by
24 title XIX of the social security act, as amended; and

25 (c) Report its findings to the court.

26 (3) The court may order a person to pay costs consistent with this sec-
27 tion.

28 (4) To the extent possible, the costs of routine medical care incurred
29 during protective custody shall be assigned to a person's health insurance,
30 including medical assistance provided under the state plan for medicaid as
31 authorized by title XIX of the social security act, as amended. If a person
32 may be eligible for medicaid but has not applied, a third-party applicant,
33 including an agent at a hospital where a person is taken into custody or de-
34 tained under this chapter, may submit a medicaid application to the depart-
35 ment of health and welfare. The medical care provided while the person is in
36 protective custody shall be presumed to be medically necessary for purposes
37 of determining reimbursement for that care by third-party payers.

38 (5) Remaining costs for routine medical care shall be apportioned as
39 follows:

40 (a) The department of health and welfare shall pay providers at the rate
41 established by medicaid or its managed care organization. If, based on
42 the department of health and welfare's determination under subsection
43 (2) of this section, the person is able to pay a portion of the medical
44 costs, the person shall reimburse the department consistent with the
45 department's sliding fee schedule; or

46 (b) Costs for routine medical care during the protective placement pe-
47 riod shall be paid by the department of health and welfare, consistent
48 with the process described in paragraph (a) of this subsection.

1 SECTION 2. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after
3 October 1, 2024.