

IN THE SENATE

SENATE BILL NO. 1114

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO HEALTH CARE TREATMENT AND CONSENT; AMENDING SECTION 39-4501, IDAHO CODE, TO REVISE CHAPTER APPLICATION; AMENDING SECTION 39-4502, IDAHO CODE, TO DEFINE TERMS; AMENDING SECTION 39-4503, IDAHO CODE, TO REVISE WHO MAY GIVE CONSENT TO THEIR OWN CARE AND TO PROVIDE FOR CONSENT TO OTHER HEALTH CARE, TREATMENT OR PROCEDURE; AMENDING SECTION 39-4504, IDAHO CODE, TO PROVIDE FOR CONSENT BY OTHERS FOR OTHER HEALTH CARE, TREATMENT OR PROCEDURES, TO PROVIDE FOR CONSENT FOR CERTAIN PERSONS BY A SURROGATE DECISION MAKER, TO REMOVE CERTAIN COMPETENT PERSONS FROM THE APPLICATION OF THE SECTION, TO REVISE THE ORDER OF PRIORITY OF CERTAIN CONSENTS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING CHAPTER 45, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-4504A, IDAHO CODE, TO PROVIDE FOR THE WITHHOLDING OR WITHDRAWING OF HEALTH TREATMENT AND TO PROVIDE FOR VOLUNTARY ETHICS COMMITTEE REVIEW; AMENDING CHAPTER 45, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-4504B, IDAHO CODE, TO PROVIDE AUTHORIZATION FOR EMERGENCY MEDICAL TREATMENT; AMENDING SECTION 39-4506, IDAHO CODE, TO REVISE THE CARE, TREATMENT OR PROCEDURES FOR WHICH CONSENT IS PROVIDED, TO REVISE TO WHOM CONSENT IS GIVEN OR BY WHOM IT IS SECURED AND TO REVISE THE REQUIREMENTS FOR THE VALIDITY OF CERTAIN CONSENTS; AMENDING SECTION 39-4508, IDAHO CODE, TO PROVIDE FOR OBTAINING SUFFICIENT CONSENTS AND TO REVISE WHO HAS THE DUTY TO OBTAIN CERTAIN CONSENTS; AMENDING SECTION 39-4509, IDAHO CODE, TO REVISE WHO HAS THE RIGHT TO CONTROL CERTAIN HEALTH CARE DECISIONS; AMENDING SECTION 39-4511, IDAHO CODE, TO PROVIDE FOR REVOCATION OF OTHER SIMILAR ADVANCE DIRECTIVES; AMENDING SECTION 39-4512A, IDAHO CODE, TO PROVIDE FOR SURROGATE DECISION MAKER INVOLVEMENT IN MATTERS INVOLVING PHYSICIAN ORDERS FOR SCOPE OF TREATMENT, TO REMOVE THE PERSON'S EXPRESSED DIRECTIVES FROM A CONFLICT PROVISION AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 39-4512B, IDAHO CODE, TO CLARIFY TERMINOLOGY AND TO PROVIDE FOR THE APPLICATION OF "DO NOT RESUSCITATE" ORDERS IN RELATIONSHIP TO PHYSICIAN ORDERS FOR SCOPE OF TREATMENT FORMS; AMENDING SECTION 39-4513, IDAHO CODE, TO PROVIDE CERTAIN IMMUNITIES WITH REGARD TO CERTAIN "DO NOT RESUSCITATE" ORDERS OR OTHER HEALTH CARE DIRECTIVES AND TO PROVIDE FOR THE DISREGARD OF "DO NOT RESUSCITATE" ORDERS BY CERTAIN PERSONS UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 39-4514, IDAHO CODE, TO PROVIDE FOR CHAPTER APPLICATION WITH

REGARD TO OTHER HEALTH CARE DIRECTIVES, TO PROVIDE A CORRECT CODE REFERENCE, TO REMOVE A PROVISION RELATED TO FUTILE CARE, TO PROVIDE FOR LIBERAL CONSTRUCTION OF THE SECTION TO GIVE CERTAIN EFFECT, TO PROVIDE FOR APPLICATION OF "DO NOT RESUSCITATE" ORDERS WITH REGARD TO CERTAIN TYPES OF INSURANCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 66-401, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 66-402, IDAHO CODE, TO REVISE DEFINITIONS AND TO DELETE AN OBSOLETE CODE CITATION; AMENDING SECTION 66-405, IDAHO CODE, TO REVISE THE AUTHORITY OF GUARDIANS REGARDING CERTAIN CONSENTS, TO REVISE THE CIRCUMSTANCE UNDER WHICH A HEALTH CARE PROVIDER OR CAREGIVER MAY WITHHOLD OR WITHDRAW CERTAIN TREATMENTS, TO PERMIT A GUARDIAN OR PHYSICIAN TO SUBMIT CERTAIN ISSUES TO AN ETHICS COMMITTEE, TO PROVIDE FOR CERTAIN IMMUNITIES, TO CLARIFY THE APPLICATION OF THE SECTION AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 66-408, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 66-412, IDAHO CODE, TO PROVIDE CERTAIN SURROGATE DECISION MAKERS THE RIGHT TO REFUSE SPECIFIC MODES OF TREATMENT OR HABILITATION, TO REVISE THE HEAD OF A FACILITY'S DISCRETION TO DENY THE RIGHT TO REFUSE TREATMENT OR HABILITATION, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING SEVERABILITY.

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

SECTION 1. That Section 39-4501, Idaho Code, be, and the same is hereby amended to read as follows:

39-4501. PURPOSES – APPLICATION. (1) The primary purposes of this chapter are:
 (a) To provide and codify Idaho law concerning consent for the furnishing of hospital, medical, dental, ~~or~~ surgical and other health care, treatment or procedures, and concerning what constitutes an informed consent for such care, treatment or procedures; and
 (b) To provide certainty and clarity in the law of medical consent in the furtherance of high standards of health care and its ready availability in proper cases.
 (2) Nothing in this chapter shall be deemed to amend or repeal the provisions of chapter 3 or chapter 4, title 66, Idaho Code, as those provisions pertain to hospitalization or commitment of the mentally ill people with mental illness or developmental disability or the powers of guardians of developmentally disabled persons, nor the provisions of chapter 6, title 18, Idaho Code, pertaining to the provision of examinations, prescriptions, devices and informational materials regarding prevention of pregnancy or pertaining to therapeutic abortions and consent to the performance thereof.
 (3) Nothing in this chapter shall be construed to permit or require the provision of health care for a patient in contravention of the patient's stated or implied objection thereto upon religious grounds nor shall anything in this chapter be construed to require the granting of permission for or on behalf of any patient who is not able to act for himself by his parent, spouse or guardian in violation of the religious beliefs of the patient or the patient's parent or spouse.

(4) Nothing in this chapter shall be construed to require health care that is medically inappropriate or futile.

SECTION 2. That Section 39-4502, Idaho Code, be, and the same is hereby amended to read as follows:

39-4502. DEFINITIONS. As used in this chapter:

(1) "Artificial life-sustaining procedure" means any medical procedure or intervention that utilizes mechanical means to sustain or supplant a vital function which, when applied to a qualified patient, would serve only to artificially prolong life. "Artificial life-sustaining procedure" does not include the administration of pain management medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

(2) "Artificial nutrition and hydration" means supplying food and water through a conduit, such as a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily, but does not include assisted feeding, such as spoon feeding or bottle feeding.

(3) "Attending physician" means the physician licensed by the state board of medicine who is selected by, or assigned to, the patient and who has primary responsibility for the treatment and care of the patient.

(4) "Cardiopulmonary resuscitation" or "CPR" means measures to restore cardiac function and/or to support ventilation in the event of cardiac or respiratory arrest.

(5) "Comfort care" means treatment and care to provide comfort and cleanliness. "Comfort care" includes:

- (a) Oral and body hygiene;
- (b) Reasonable efforts to offer food and fluids orally;
- (c) Medication, positioning, warmth, appropriate lighting and other measures to relieve pain and suffering; and
- (d) Privacy and respect for the dignity and humanity of the patient.

(6) "Consent to care" includes refusal to consent to care and/or withholding or withdrawal of care.

(7) "Directive" or "health care directive" means a document ~~meeting~~ that substantially meets the requirements of section 39-4510(1), Idaho Code, ~~and/or~~ a "Physician Orders for Scope of Treatment (POST)" form signed by a physician or other similar document that represents a competent person's authentic expression of such person's wishes concerning their health care.

(8) "Emancipated minor" means a person who is less than eighteen (18) years of age:

- (a) Who is or has been married;
- (b) Who is serving or has served in the active military;
- (c) Whose circumstances indicate that the parent-child relationship has been renounced and that the minor is living on his or her own without dependence on parental support; or
- (d) Who has been declared by a court of competent jurisdiction to be emancipated.

Pregnancy does not, by itself, emancipate the minor.

(9) "Emergency medical services personnel" means personnel engaged in providing initial emergency medical assistance including, but not limited to, first responders, emergency medical technicians and paramedics.

(910) "Health care provider" or "provider" means any person or entity licensed, certified, or otherwise authorized by law to administer health care in the ordinary course of business or practice of a profession, including emergency or other medical services personnel.

(101) "Persistent vegetative state" means an irreversible state that has been medically confirmed by a neurological specialist who is an expert in the examination of nonresponsive individuals in which the person has intact brain stem function but no higher cortical function and no awareness of self or environment.

(112) "Physician" means a person who holds a current active license to practice medicine and surgery or osteopathic medicine and surgery in Idaho and is in good standing with no restriction upon or actions taken against his or her license.

(123) "Physician orders for scope of treatment (POST) form" means a standardized form containing orders by a physician that states a person's treatment wishes.

(134) "Physician orders for scope of treatment (POST) identification device" means standardized jewelry which can be worn around the wrist, neck or ankle, and which has been approved by the department of health and welfare.

(15) "Surrogate decision maker" means the person authorized to consent to or refuse the health care for another person as specified in section 39-4504(1), Idaho Code.

(146) "Terminal condition" means an incurable or irreversible condition which, without the administration of life-sustaining procedures, will, in the opinion of a physician, result in death if it runs its usual course.

(17) "Unemancipated minor" means a minor who is not an emancipated minor.

SECTION 3. That Section 39-4503, Idaho Code, be, and the same is hereby amended to read as follows:

39-4503. PERSONS WHO MAY CONSENT TO THEIR OWN CARE. Any person ~~of ordinary intelligence and awareness sufficient for him or her generally to~~ who comprehends the need for, the nature of and the significant risks ordinarily inherent in, any contemplated hospital, medical, dental, ~~or surgical~~ or other health care, treatment or procedure is competent to consent thereto on his or her own behalf. Any health care provider may provide such health care and services in reliance upon such a consent if the consenting person appears to the health care provider securing the consent to possess such requisite ~~intelligence and awareness~~ comprehension at the time of giving the consent.

SECTION 4. That Section 39-4504, Idaho Code, be, and the same is hereby amended to read as follows:

39-4504. PERSONS WHO MAY GIVE CONSENT TO CARE FOR OTHERS. (1) Consent for the furnishing of hospital, medical, dental, ~~or surgical~~ or other health care, treatment or procedures to any ~~person~~ patient who is not then capable of giving such consent as provided in this chapter or who is an unemancipated minor or incompetent person incapable of giving consent, may be given or refused by a surrogate decision maker in the order of priority set forth hereafter ~~unless the patient is a competent person who has refused to give such consent, and provided further that this subsection shall not be deemed to authorize any person to override the express refusal by a competent patient to give such consent himself; provided~~ however, that the surrogate decision maker must have sufficient comprehension as required to consent to his own health care under section 39-4503, Idaho Code; and provided further,

that the surrogate decision maker shall not have authority to consent to or refuse health care contrary to the patient's advance directives or wishes expressed by the patient while the patient was capable of consenting to his own health care:

- (a) The patient's legal, court appointed guardian ~~of such person~~;
 - (b) The person named in ~~a~~ the patient's "Living Will and Durable Power of Attorney for Health Care" pursuant to section 39-4510, Idaho Code, or a similar document authorized by this chapter if the conditions for authorizing the agent to act have been satisfied;
 - (c) If married, the patient's spouse ~~of such person~~;
 - (d) A parent of ~~such person~~ the patient;
 - (e) An adult child of the patient;
 - (f) The person named in a delegation of parental authority executed pursuant to section 15-5-104, Idaho Code;
 - (g) The stepparent of a patient;
 - (h) Any relative ~~representing~~ of the patient who represents himself or herself to be an appropriate, responsible person to act under the circumstances, provided that greater deference shall be given to those relatives with closer familial relationships to the patient;
 - (~~fi~~) Any other competent individual representing himself or herself to be responsible for the health care of ~~such person~~ the patient; or
 - (~~gj~~) If the ~~subject person~~ patient presents a medical emergency or there is a substantial likelihood of his or her life or health being seriously endangered by withholding or delay in the rendering of such hospital, medical, dental, ~~or~~ surgical or other health care to such patient and the ~~subject person~~ patient has not communicated and is unable to communicate his or her treatment wishes, the attending ~~physician or dentist~~ health care provider may, in his or her discretion, authorize and/or provide such health care, treatment or procedure as he or she deems appropriate, and all persons, agencies and institutions thereafter furnishing the same, including such ~~physician or dentist~~ health care provider, may proceed as if informed, valid consent therefor had been otherwise duly given.
- (2) No person who, in good faith, gives consent or authorization for the provision of hospital, medical, dental, ~~or~~ surgical or other health care, treatment or procedures to another person as provided by this chapter shall be subject to civil liability therefor.
- (3) No health care provider who, in good faith, obtains consent from a person pursuant to either section 39-4503 or 39-4504(1), Idaho Code, shall be subject to civil liability therefor.

SECTION 5. That Chapter 45, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-4504A, Idaho Code, and to read as follows:

39-4504A. WITHHOLDING OR WITHDRAWING HEALTH TREATMENT – VOLUNTARY ETHICS COMMITTEE REVIEW. (1) If the attending physician believes that the treatment requested by a patient, the patient's advance directive or the patient's surrogate decision maker is medically inappropriate or futile, the attending physician or health care facility in which the patient is admitted may request that an ethics committee of the health care facility review the facts and circumstances to determine if the requested treatment is medically inappropriate or futile.

(2) The ethics committee shall be comprised of at least two (2) physicians, and such other persons as the health care facility shall appoint. The attending physician may appear at

1 the ethics committee meeting to explain the facts and circumstances of the case but may not
2 participate as a member of the ethics committee.

3 (3) The patient or his legally authorized surrogate decision maker shall be given the
4 opportunity to attend the ethics committee meeting and explain the basis for his or her request
5 for treatment. The patient or surrogate decision maker shall be given prior notice of the ethics
6 committee meeting at least twenty-four (24) hours before the ethics committee meeting unless
7 the patient or surrogate decision maker waives such prior notice. The patient or surrogate
8 decision maker shall not be entitled to be present during the ethics committee's deliberations.
9 The ethics committee shall provide to the patient or surrogate decision maker a written
10 explanation of the ethics committee's determination.

11 (4) If the ethics committee agrees with the attending physician that the treatment
12 requested by the patient, the patient's advance directive or surrogate decision maker is
13 medically inappropriate or futile, the attending physician and health care facility shall take
14 reasonable action to assist the patient or surrogate decision maker to arrange the patient's
15 transfer within fifteen (15) days to another health care provider selected by the patient or
16 surrogate decision maker who is willing to assume the treatment of the patient. The health
17 care facility shall provide reasonably necessary life-sustaining treatment within the capacity
18 and capability of the health care facility until the patient is transferred or until the expiration
19 of the fifteen (15) day period described above, whichever occurs first. Following the patient's
20 transfer or upon expiration of the fifteen (15) day period described above, whichever occurs
21 first, the attending physician and health care facility shall not be obligated to provide additional
22 treatment that has been determined to be medically inappropriate or futile by the ethics
23 committee. The patient or his surrogate decision maker shall remain responsible for the costs
24 incurred in transferring the patient to another health care provider in addition to the cost of any
25 health care provided prior to the transfer.

26 (5) If the patient or surrogate decision maker disagrees with the ethics committee
27 determination, the patient or surrogate decision maker shall cooperate with the health care
28 facility to arrange the transfer of the patient to another health care provider within fifteen (15)
29 days following the ethics committee determination. The patient or surrogate decision maker
30 may petition the district court in which the health care facility is located to lengthen the time
31 to effect an appropriate transfer; provided however, that the district court shall extend the time
32 only if the court finds, by a preponderance of the evidence, that there is a reasonable probability
33 that the patient or surrogate decision maker will be able to transfer the patient to another
34 qualified health care provider who is willing to provide the treatment requested by the patient
35 or surrogate decision maker within the extension requested by the patient or surrogate decision
36 maker.

37 (6) If an ethics committee has determined that the requested treatment is medically
38 inappropriate or futile, but the patient is later readmitted to the health care facility within six (6)
39 months following such ethics committee determination, the attending physician may rely on the
40 prior ethics committee determination and withhold or withdraw treatment consistent with the
41 prior ethics committee determination if the attending physician and one (1) physician member
42 of the ethics committee determine that the patient's condition either has not improved or has
43 deteriorated since the prior ethics committee determination and that the prior ethics committee
44 determination still applies to the patient's condition, and they document their conclusion in the
45 medical chart.

(7) A health care provider or surrogate decision maker who complies with the provisions of this section shall be immune from criminal or civil liability for withholding or withdrawing health care that has been determined by the ethics committee to be medically inappropriate or futile. The health care facility and any person who participates in the ethics committee review or determination shall also be immune from criminal or civil liability for actions taken in good faith in connection with the ethics committee review or determination.

(8) The ethics committee review as provided in this section shall be purely voluntary. Nothing in this chapter shall require a health care facility to establish or utilize an ethics committee, nor shall this chapter require a health care provider or surrogate decision maker to submit a matter to the ethics committee before withdrawing or withholding health care to a patient.

SECTION 6. That Chapter 45, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-4504B, Idaho Code, and to read as follows:

39-4504B. AUTHORIZATION FOR EMERGENCY MEDICAL TREATMENT. (1) A district court may authorize the emergency medical treatment of a patient by a health care provider if:

- (a) The patient lacks capacity to consent to his own health care under section 39-4503, Idaho Code;
- (b) The patient has not executed an advance directive relating to the treatment he should receive under the circumstances;
- (c) The patient's surrogate decision maker refuses to consent to reasonably necessary treatment; and
- (d) A physician informs the court orally or in writing that, in his or her professional opinion, there is a substantial likelihood that the patient's life or health will be seriously endangered or the patient's bodily function will be seriously impaired unless immediate treatment is rendered.

(2) If time allows in a situation under subsection (1) of this section, the court shall cause every effort to be made to grant the surrogate decision maker an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the patient's life or bodily function.

(3) In making its order under subsection (1) of this section, the court shall take into consideration any treatment being given the patient by prayer through spiritual means alone, if the patient and/or his surrogate decision maker are adherents of a bona fide religious denomination that relies exclusively on this form of treatment in lieu of medical treatment.

(4) After entering any authorization under subsection (1) of this section, the court shall reduce the circumstances, finding and authorization to a writing and enter the writing in the records of the court and shall cause a copy of the authorization to be given to the health care provider who was involved.

(5) Oral authorization by the court is sufficient for care or treatment to be given and shall be accepted by any health care provider. No health care provider shall be subject to criminal or civil liability for rendering health care in reliance on the court's authorization, and any function performed thereunder shall be regarded as if it were performed with the surrogate decision maker's authorization.

(6) Nothing in this chapter shall impose a duty upon a health care provider to initiate proceedings under this section if a surrogate decision maker refuses treatment.

SECTION 7. That Section 39-4506, Idaho Code, be, and the same is hereby amended to read as follows:

39-4506. SUFFICIENCY OF CONSENT. Consent, or refusal to consent, for the furnishing of ~~hospital, medical, dental or surgical~~ health care, treatment or procedures shall be valid in all respects if the person giving or refusing the consent is sufficiently aware of pertinent facts respecting the need for, the nature of, and the significant risks ordinarily attendant upon, such a patient receiving such care, as to permit the giving or withholding of such consent to be a reasonably informed decision. Any such consent shall be deemed valid and so informed if the ~~physician or dentist~~ health care provider to whom it is given or by whom it is secured has made such disclosures and given such advice respecting pertinent facts and considerations as would ordinarily be made and given under the same or similar circumstances, by a like ~~physician or dentist~~ health care provider of good standing practicing in the same community and has communicated such disclosures and advice in a manner reasonably likely to be understood by the person giving or refusing consent. As used in this section, the term "in the same community" refers to that geographic area ordinarily served by the licensed general hospital at or nearest to which such consent is given.

SECTION 8. That Section 39-4508, Idaho Code, be, and the same is hereby amended to read as follows:

39-4508. RESPONSIBILITY FOR CONSENT AND DOCUMENTATION. Obtaining sufficient consent for health care is the duty of the attending ~~physician or dentist or of another physician or dentist acting on his or her behalf or actually providing~~ health care provider upon whose order or at whose direction the contemplated health care, treatment or procedure is rendered; provided however, a licensed hospital and any medical or dental office employee, acting with the approval of such an attending or other ~~physician or dentist~~ individual health care provider, may perform the ministerial act of documenting such consent by securing the completion and execution of a form or statement in which the giving of consent for such care is documented by or on behalf of the patient. In performing such a ministerial act, the hospital or medical or dental office employee shall not be deemed to have engaged in the practice of medicine or dentistry.

SECTION 9. That Section 39-4509, Idaho Code, be, and the same is hereby amended to read as follows:

39-4509. STATEMENT OF POLICY – DEFINITION. For purposes of sections 39-4509 through 39-4515, Idaho Code:

(1) The legislature recognizes the established common law and the fundamental right of ~~adult~~ competent persons to control the decisions relating to the rendering of their medical care, including the decision to have life-sustaining procedures withheld or withdrawn. The legislature further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits. The legislature further finds that patients are sometimes unable to express their desire to withhold or withdraw such artificial life prolongation procedures which provide nothing medically necessary or beneficial to the patient because of the patient's inability to communicate with the physician.

(2) In recognition of the dignity and privacy which patients have a right to expect, the legislature hereby declares that the laws of this state shall recognize the right of a competent person to have his or her wishes for medical treatment and for the withdrawal of artificial life-sustaining procedures carried out even though that person is no longer able to communicate with the physician.

(3) It is the intent of the legislature to establish an effective means for such communication. It is not the intent of the legislature that the procedures described in sections 39-4509 through 39-4515, Idaho Code, are the only effective means of such communication, and nothing in sections 39-4509 through 39-4515, Idaho Code, shall impair or supersede any legal right or legal responsibility which a person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. Any authentic expression of a person's wishes with respect to health care should be honored.

(4) "Competent person" means any emancipated minor or person eighteen (18) or more years of age who is of sound mind.

SECTION 10. That Section 39-4511, Idaho Code, be, and the same is hereby amended to read as follows:

39-4511. REVOCATION. (1) A living will and durable power of attorney for health care, ~~or~~ physician orders for scope of treatment (POST) form or other similar advance directive may be revoked at any time by the maker thereof by any of the following methods:

(a) By being canceled, defaced, obliterated or burned, torn, or otherwise destroyed by the maker thereof, or by some person in his presence and by his direction;

(b) By a written, signed revocation of the maker thereof expressing his intent to revoke; or

(c) By an oral expression by the maker thereof expressing his intent to revoke.

(2) The maker of the revoked living will and durable power of attorney for health care is responsible for notifying his physician of the revocation.

(3) There shall be no criminal or civil liability on the part of any person for the failure to act upon a revocation of a living will and durable power of attorney for health care, ~~or~~ physician orders for scope of treatment (POST) form or other similar advance directive made pursuant to this section unless that person has actual knowledge of the revocation.

SECTION 11. That Section 39-4512A, Idaho Code, be, and the same is hereby amended to read as follows:

39-4512A. PHYSICIAN ORDERS FOR SCOPE OF TREATMENT (POST). (1) A physician orders for scope of treatment (POST) form is appropriate in cases where a patient has an incurable or irreversible injury, disease, illness or condition, or where a patient is in a persistent vegetative state. A POST form is also appropriate if such conditions are anticipated. A patient's surrogate decision maker may have a POST form executed for the patient by the patient's attending physician, provided that the POST form is not contrary to the patient's prior expressed wishes or directions.

(2) The POST form shall be effective from the date of execution unless otherwise revoked. If there is a conflict between ~~the person's expressed directives,~~ the POST form, and the decisions of the durable power of attorney representative or surrogate decision maker, the orders contained in the POST form shall be followed.

(3) The attending physician shall, upon request of the patient or surrogate decision maker, provide the patient or surrogate decision maker with a copy of the POST form, discuss with the patient or surrogate decision maker the form's content and ramifications and treatment options, and assist the patient or the surrogate decision maker in the completion of the form.

(4) The attending physician shall review the POST form:

(a) Each time the physician examines the patient, or at least every seven (7) days, for patients who are hospitalized; and

(b) Each time the patient is transferred from one (1) care setting or care level to another; and

(c) Any time there is a substantial change in the patient's health status; and

(d) Any time the patient's treatment preferences change.

Failure to meet these review requirements does not affect the POST form's validity or enforceability. As conditions warrant, the physician may issue a superseding POST form. The physician shall, whenever practical, consult with the patient or the patient's ~~agent~~ surrogate decision maker.

(5) A patient who has completed a POST form signed by a physician or for whom a POST form has been completed at the request of his surrogate decision maker may wear a POST identification device as provided in section 39-4502(134), Idaho Code.

(6) The department of health and welfare shall develop the POST form.

SECTION 12. That Section 39-4512B, Idaho Code, be, and the same is hereby amended to read as follows:

39-4512B. ADHERENCE TO PHYSICIAN ORDERS FOR SCOPE OF TREATMENT (POST) PROTOCOL. (1) Health care providers and emergency medical services personnel shall comply with a patient's physician orders for scope of treatment (POST) instruction when presented with a completed POST form signed by a physician or when a patient is wearing a proper POST identification device pursuant to section 39-4512A(5), Idaho Code.

(2) A completed POST form is deemed to meet the requirements of "Do Not Resuscitate (DNR)" ~~forms of orders at~~ all Idaho health care facilities. Health care providers and emergency medical services personnel shall not require the completion of other forms in order for the patient's wishes to be respected.

(3) Nothing in this chapter is intended to nor shall it prevent physicians or other health care providers from executing or utilizing DNR orders consistent with their licensure; provided however, that if the patient or his surrogate decision maker chooses to utilize the POST form, the health care provider shall accept and comply with the POST form and shall not require the completion of a DNR order in addition to a valid POST form.

SECTION 13. That Section 39-4513, Idaho Code, be, and the same is hereby amended to read as follows:

39-4513. IMMUNITY. (1) No emergency medical services personnel, health care provider, facility, or individual employed by, acting as the agent of, or under contract with any such health care provider or facility shall be civilly or criminally liable or subject to discipline for unprofessional conduct for acts or omissions carried out or performed in good faith pursuant to the directives in a facially valid POST form, ~~or~~ living will, "Do Not Resuscitate (DNR)" order or other health care directive that appears to represent a competent person's wishes and

1 directions concerning his health care, or by the holder of a facially valid durable power of
2 attorney or directive for health care.

3 (2) Any physician or other health care provider who for ethical or professional reasons is
4 incapable or unwilling to conform to the desires of the patient as expressed by the procedures
5 set forth in this chapter may withdraw without incurring any civil or criminal liability provided
6 the physician or other health care provider, before withdrawal of his or her participation, makes
7 a good faith effort to assist the patient in obtaining the services of another physician or other
8 health care provider who is willing to provide care for the patient in accordance with the
9 patient's expressed or documented wishes.

10 (3) No person who exercises the responsibilities of a durable power of attorney for health
11 care in good faith shall be subject to civil or criminal liability as a result.

12 (4) Neither the registration of a health care directive in the health care directive registry
13 under section 39-4515, Idaho Code, nor the revocation of such a directive requires a health care
14 provider to request information from that registry. The decision of a health care provider to
15 request or not to request a health care directive document from the registry shall be immune
16 from civil or criminal liability. A health care provider who in good faith acts in reliance on
17 a facially valid health care directive received from the health care directive registry shall be
18 immune from civil or criminal liability for those acts done in such reliance.

19 (5) Health care providers and emergency medical services personnel may disregard the
20 POST form, ~~or a~~ POST identification device or DNR order:

- 21 (a) If they believe in good faith that the order has been revoked; ~~or~~
- 22 (b) To avoid oral or physical confrontation; or
- 23 (c) If ordered to do so by the attending physician.

24 SECTION 14. That Section 39-4514, Idaho Code, be, and the same is hereby amended to
25 read as follows:

26 39-4514. GENERAL PROVISIONS. (1) Application. This chapter shall have no effect
27 or be in any manner construed to apply to persons not executing a living will and durable
28 power of attorney for health care, ~~or~~ POST form or other health care directive pursuant to this
29 chapter nor shall it in any manner affect the rights of any such persons or of others acting for or
30 on behalf of such persons to give or refuse to give consent or withhold consent for any medical
31 care, neither shall this chapter be construed to affect chapter 3 or chapter 4, title 66, Idaho
32 Code, in any manner.

33 (2) Euthanasia, mercy killing, or assisted suicide. This chapter does not make legal, and
34 in no way condones, euthanasia, mercy killing, or assisted suicide or permit an affirmative or
35 deliberate act or omission to end life, other than to allow the natural process of dying.

36 (3) Comfort care. Individuals caring for a patient for whom artificial life-sustaining
37 procedures or artificially administered nutrition and hydration are withheld or withdrawn shall
38 provide comfort care as defined in section 39-4502, Idaho Code.

39 (4) Presumed consent to resuscitation. There is a presumption in favor of consent to
40 cardiopulmonary resuscitation (CPR) unless:

- 41 (a) A completed living will for that person is in effect, pursuant to section 39-4510,
42 Idaho Code, and the person is in a terminal condition or persistent vegetative state; ~~or~~
- 43 (b) A completed durable power of attorney for health care for that person is in effect,
44 pursuant to section 39-4510, Idaho Code, in which the person has indicated that he or she

does not wish to receive cardiopulmonary resuscitation, or his or her representative has determined that the person would not wish to receive cardiopulmonary resuscitation; ~~or~~

(c) The patient has a completed physician orders for scope of treatment (POST) form indicating otherwise and/or a proper POST identification device pursuant to section 39-4502(134), Idaho Code;

(d) The attending physician has executed a "Do Not Resuscitate (DNR)" order consistent with the person's prior expressed wishes or the directives of the legally authorized surrogate decision maker; or

(e) CPR would otherwise be contrary to the competent patient's other health care directive.

~~(5) Futile care. Nothing in this chapter shall be construed to require medical treatment that is medically inappropriate or futile.~~

~~(6)~~ Existing directives and directives from other states. A health care directive executed prior to July 1, 2007, but which was in the living will, durable power of attorney for health care, DNR, or POST form pursuant to prior Idaho law at the time of execution, or in another form that contained the elements set forth in this chapter at the time of execution, shall be deemed to be in compliance with this chapter. Health care directives or similar documents executed in another state that substantially comply with this chapter shall be deemed to be in compliance with this chapter. The provisions of this section shall be liberally construed to give the effect to any authentic expression of the patient's prior wishes or directives concerning his health care.

~~(7)~~ Insurance.

(a) The making of a living will and/or durable power of attorney for health care, ~~or~~ physician orders for scope of treatment (POST) form or DNR order pursuant to this chapter shall not restrict, inhibit or impair in any manner the sale, procurement or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of artificial life-sustaining procedures from an insured patient, notwithstanding any term of the policy to the contrary.

(b) No physician, health care facility or other health care provider and no health care service plan, insurer issuing disability insurance, self-insured employee plan, welfare benefit plan or nonprofit hospital service plan shall require any person to execute a living will and durable power of attorney for health care, ~~or~~ physician orders for scope of treatment (POST) form or DNR order as a condition for being insured for, or receiving, health care services.

~~(8)~~ Portability and copies.

(a) A completed physician orders for scope of treatment (POST) form signed by a physician shall be transferred with the patient to, and be effective in, all care settings including, but not limited to, home care, ambulance or other transport, hospital, residential care facility, and hospice care. The POST form shall remain in effect until such time as there is a valid revocation pursuant to section 39-4511, Idaho Code, or new orders are issued by a physician.

(b) A photostatic, facsimile or electronic copy of a valid physician orders for scope of treatment (POST) form may be treated as an original by a health care provider or by an institution receiving or treating a patient.

(98) Registration. A directive or the revocation of a directive meeting the requirements of this chapter may be registered with the secretary of state pursuant to section 39-4515, Idaho Code. Failure to register the health care directive shall not affect the validity of the health care directive.

(109) Rulemaking authority.

(a) The department of health and welfare shall adopt those rules and protocols necessary to administer the provisions of this chapter.

(b) In the adoption of a physician orders for scope of treatment (POST) or DNR protocol, the department shall adopt standardized POST identification to be used statewide.

SECTION 15. That Section 66-401, Idaho Code, be, and the same is hereby amended to read as follows:

66-401. LEGISLATIVE INTENT. It is hereby declared by the legislature of the state of Idaho in enacting chapter 4, title 66, Idaho Code, that the developmentally ~~handicapped~~ disabled citizens of the state are entitled to be diagnosed, cared for, and treated in a manner consistent with their legal rights in a manner no more restrictive than for their protection and the protection of society, for a period no longer than reasonably necessary for diagnosis, care, treatment and protection, and to remain at liberty or be cared for privately except when necessary for their protection or the protection of society. Recognizing that every individual has unique needs and differing abilities, it is the purpose of the provisions of this chapter to promote the general welfare of all citizens by establishing a system which permits partially disabled and disabled persons to participate as fully as possible in all decisions which affect them, which assists such persons in meeting the essential requirements for their physical health and safety, protecting their rights, managing their financial resources, and developing or regaining their abilities to the maximum extent possible. The provisions of this chapter shall be liberally construed to accomplish these purposes.

SECTION 16. That Section 66-402, Idaho Code, be, and the same is hereby amended to read as follows:

66-402. DEFINITIONS. As used in this chapter:

(1) "Adult" means an individual eighteen (18) years of age or older.

(2) "Artificial life-sustaining procedures" means any medical procedure or intervention which utilizes mechanical means to sustain or supplant a vital function. Artificial life-sustaining procedures shall not include the administration of medication, and it shall not include the performance of any medical procedure deemed necessary to alleviate pain, or any procedure which could be expected to result in the recovery or long-term survival of the patient and his restoration to consciousness.

(3) "Department" means the Idaho department of health and welfare.

(4) "Director" means the director of the department of health and welfare.

(5) "Developmental disability" means a chronic disability of a person which appears before the age of twenty-two (22) years of age and:

(a) Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these

1 impairments that requires similar treatment or services, or is attributable to dyslexia
2 resulting from such impairments; and

3 (b) Results in substantial functional limitations in three (3) or more of the following
4 areas of major life activity: self-care, receptive and expressive language, learning,
5 mobility, self-direction, capacity for independent living, or economic self-sufficiency; and

6 (c) Reflects the need for a combination and sequence of special, interdisciplinary or
7 generic care, treatment or other services which are of lifelong or extended duration and
8 individually planned and coordinated.

9 (6) "Emancipated minor" means an individual between fourteen (14) and eighteen (18)
10 years of age who has been married or whose circumstances indicate that the parent-child
11 relationship has been renounced.

12 (7) "Evaluation committee" means an interdisciplinary team of at least three (3)
13 individuals designated by the director or his designee to evaluate an individual as required by
14 the provisions of this chapter. Each committee must include a physician licensed to practice
15 medicine in the state of Idaho, a licensed social worker and a clinical psychologist or such
16 other individual who has a master's degree in psychology as designated by the department
17 director. Each committee member must be specially qualified by training and experience in the
18 diagnosis and treatment of persons with a developmental disability.

19 (8) "Facility" means the Idaho state school and hospital, a nursing facility, an
20 intermediate care facility, an intermediate care facility for the mentally retarded, a licensed
21 residential or assisted living facility, a group foster home, other such organizations licensed to
22 provide twenty-four (24) hour care, treatment and training to the developmentally disabled, a
23 mental health center, or an adult and child development center. "Facility" does not include
24 general acute care hospitals.

25 (9) "Lacks capacity to make informed decisions" means the inability, by reason of
26 developmental disability, to ~~achieve a rudimentary understanding of the purpose~~ comprehend
27 the need for, nature of, and possible the significant risks and benefits of a decision ordinarily
28 inherent in any contemplated health care, after conscientious efforts at explanation, but shall
29 not be evidenced by improvident decisions within the discretion allowed nondevelopmentally
30 disabled individuals.

31 (10) "Likely to injure himself or others" means:

32 (a) A substantial risk that physical harm will be inflicted by the respondent upon his own
33 person as evidenced by threats or attempts to commit suicide or inflict physical harm on
34 himself; or

35 (b) A substantial risk that physical harm will be inflicted by the respondent upon another
36 as evidenced by behavior which has caused such harm or which places another person or
37 persons in reasonable fear of sustaining such harm; or

38 (c) That the respondent is unable to meet essential requirements for physical health or
39 safety.

40 (11) "Manage financial resources" means the actions necessary to obtain, administer and
41 dispose of real, personal, intangible or business property, benefits and/or income.

42 (12) "Meet essential requirements for physical health or safety" means the actions
43 necessary to provide health care, food, clothing, shelter, personal hygiene and/or other care
44 without which serious physical injury or illness would occur.

45 (13) "Minor" means an individual seventeen (17) years of age or less.

1 (14) "Protection and advocacy system" means the agency designated by the governor of
 2 the state of Idaho to provide advocacy services for people with disabilities ~~pursuant to 42 USC~~
 3 ~~section 6042.~~

4 (15) "Respondent" means the individual subject to judicial proceedings authorized by the
 5 provisions of this chapter.

6 (16) "Surrogate decision maker" means the person authorized to consent to or refuse the
 7 health care for another person as specified in section 39-4504(1), Idaho Code.

8 SECTION 17. That Section 66-405, Idaho Code, be, and the same is hereby amended to
 9 read as follows:

10 66-405. ORDER IN PROTECTIVE PROCEEDINGS. (1) If it is determined that the
 11 respondent is not developmentally disabled but appears in need of protective services, the
 12 court may cause the proceeding to be expanded or altered for consideration under the uniform
 13 probate code.

14 (2) If it is determined that the respondent is able to manage financial resources and meet
 15 essential requirements for physical health or safety, the court shall dismiss the petition.

16 (3) If it is determined that the respondent is developmentally disabled and is unable
 17 to manage some financial resources or meet some essential requirements for physical health
 18 or safety, the court may appoint a partial guardian and/or partial conservator on behalf of
 19 the respondent. An order establishing partial guardianship or partial conservatorship shall
 20 define the powers and duties of the partial guardian or partial conservator so as to permit the
 21 respondent to meet essential requirements for physical health or safety and to manage financial
 22 resources commensurate with his ability to do so, and shall specify all legal restrictions to
 23 which he is subject. A person for whom a partial guardianship or partial conservatorship has
 24 been appointed under this chapter retains all legal and civil rights except those which have
 25 by court order been limited or which have been specifically granted to the partial guardian or
 26 partial conservator by the court.

27 (4) If it is determined that the respondent is developmentally disabled and is unable to
 28 manage financial resources or meet essential requirements for physical health or safety even
 29 with the appointment of a partial guardian or partial conservator, the court may appoint a total
 30 guardian and/or total conservator.

31 (5) In the event that more than one (1) person seeks to be appointed guardian and/or
 32 conservator, the court shall appoint the person or persons most capable of serving on behalf of
 33 the respondent; the court shall not customarily or ordinarily appoint the department or any other
 34 organization or individual, public or private, that is or is likely to be providing services to the
 35 respondent.

36 (6) Subject to the limitations of the provisions of subsection (7) of this section, guardians
 37 or conservators may have any of the duties and powers as provided in sections 15-5-312(1)(a)
 38 through (d), 15-5-424 and 15-5-425, Idaho Code, and as specified in the order. Any order
 39 appointing a partial or total guardian or partial or total conservator under the provisions of
 40 this section must require a report to the court at least annually. In addition to such other
 41 requirements imposed by law or order, the report shall include:

42 (a) A description of the respondent's current mental, physical and social condition;

43 (b) The respondent's present address and living arrangement;

44 (c) A description of any significant changes in the capacity of the respondent to meet
 45 essential requirements for physical health or safety or to manage financial resources;

- (d) A description of services being provided the respondent;
- (e) A description of significant actions taken by the guardian or conservator during the reporting period;
- (f) Any significant problems relating to the guardianship or conservatorship;
- (g) A complete financial statement of the financial resources under the control or supervision of the guardian or conservator; and
- (h) A description of the need for continued guardianship or conservatorship services.

(7) No guardian appointed under this chapter shall have the authority to refuse or withhold consent for medically necessary treatment when the effect of withholding such treatment would seriously endanger the life or health and well-being of ~~the person with a developmental disability~~ a respondent. To withhold or attempt to withhold such treatment shall constitute neglect of the ~~person~~ respondent and be cause for removal of the guardian. ~~No physician~~ Except as otherwise provided in subsection (8) of this section, no health care provider or caregiver shall, based on such guardian's direction or refusal to consent to care, withhold or withdraw such treatment for a respondent ~~whose condition is not terminal or whose death is not imminent~~. If the ~~physician~~ health care provider or caregiver cannot obtain valid consent for medically necessary treatment from the guardian, ~~he~~ the health care provider or caregiver shall provide the medically necessary treatment as authorized by section 39-4504(1)(g), Idaho Code.

(8) Notwithstanding the provisions of subsection (7) of this section, aA guardian appointed under this chapter may consent to withholding or ~~withdrawal of artificial life sustaining procedures, only if the respondent~~ withdrawing treatment, other than appropriate nutrition, hydration or medication, to a respondent, and a health care provider or caregiver may withhold or withdraw such treatment in reliance upon such consent, when, in the treating physician's reasonable medical judgment, any of the following circumstances apply:

- ~~(a) Has an incurable injury, disease, illness or condition, certified by the respondent's attending physician and at least one (1) other physician to be terminal such that the application of artificial life sustaining procedures would not result in the possibility of saving or significantly prolonging the life of the respondent, and would only serve to prolong the moment of the respondent's death for a period of hours, days or weeks, and where both physicians certify that death is imminent, whether or not the life sustaining procedures are used; or~~
- ~~(b) Has been diagnosed by the respondent's attending physician and at least one (1) other physician as being~~ The respondent is in a persistent vegetative state, as defined in section 39-4502(11), Idaho Code, which is irreversible and from which the respondent will never regain consciousness;
- (b) The respondent is chronically and irreversibly comatose;
- (c) The provision of such treatment would merely prolong dying, would not be effective in ameliorating or correcting all of the respondent's life-threatening conditions, or would otherwise be futile in terms of the survival of the respondent; or
- (d) The provision of such treatment would be virtually futile in terms of the survival of the respondent, and the treatment itself under such circumstances would be inhumane.

(9) A guardian or physician who seeks to determine whether the conditions in subsection (8) of this section have been satisfied may, but is not required to, submit the issue to an ethics committee pursuant to the process set forth in section 39-4504A, Idaho Code. If the ethics committee determines that the conditions in subsection (8) of this section are satisfied, the guardian may consent to and/or the physician may withhold or withdraw treatment consistent

1 with the ethics committee's determination. A guardian and any health care provider who
 2 comply with the provisions of this subsection shall be immune from criminal or civil liability
 3 for withholding or withdrawing treatment that has been determined by the ethics committee to
 4 satisfy the conditions in subsection (8) of this section.

5 (10) Any person, who has information that medically necessary treatment of a respondent
 6 has been withheld or withdrawn in violation of the provisions of this section, may report such
 7 information to adult protective services or to the Idaho protection and advocacy system for
 8 people with developmental disabilities, who shall have the authority to investigate the report
 9 and in appropriate cases to seek a court order to ensure that medically necessary treatment is
 10 provided.

11 If adult protective services or the protection and advocacy system determines that
 12 withholding of medical treatment violates the provisions of this section, they may petition the
 13 court for an ex parte order to provide or continue the medical treatment in question. If the
 14 court finds, based on affidavits or other evidence, that there is probable cause to believe that the
 15 withholding of medical treatment in a particular case violates the provisions of this section, and
 16 that the life or health of the patient is endangered thereby, the court shall issue an ex parte order
 17 to continue or to provide the treatment until such time as the court can hear evidence from the
 18 parties involved. Petitions for court orders under this section shall be expedited by the courts
 19 and heard as soon as possible. No bond shall be required of a petitioner under this section.

20 ~~(10)~~ (11) No partial or total guardian or partial or total conservator appointed under the
 21 provisions of this section may without specific approval of the court in a proceeding separate
 22 from that in which such guardian or conservator was appointed:

23 (a) Consent to medical or surgical treatment the effect of which permanently prohibits
 24 the conception of children by the respondent unless the treatment or procedures are
 25 necessary to protect the physical health of the respondent and would be prescribed for a
 26 person who is not developmentally disabled;

27 (b) Consent to experimental surgery, procedures or medications; or

28 (c) Delegate the powers granted by the order.

29 (12) Subsections (7) through (10) of this section shall apply only to those situations in
 30 which a guardian has been appointed for a respondent under the provisions of this chapter.
 31 Nothing in this section shall be deemed to apply to the consent to, refusal, withholding or
 32 withdrawal of health care or treatment of a person who may have a developmental disability,
 33 but for whom no guardian has been appointed under this chapter. In such cases, the authority
 34 to consent to, refuse, withhold or withdraw health care or treatment shall be determined by
 35 chapter 45, title 39, Idaho Code, or such other statute as is applicable to the circumstances.

36 SECTION 18. That Section 66-408, Idaho Code, be, and the same is hereby amended to
 37 read as follows:

38 66-408. PETITION FOR REEXAMINATION OF ORDER OF GUARDIANSHIP
 39 OR COMMITMENT. All respondents admitted to a residential facility upon application of
 40 their parent or guardian or committed to the director shall be entitled to an annual review
 41 of their placement by an evaluation committee upon request therefor by the respondent, the
 42 respondent's guardian or attorney. In addition, all respondents committed pursuant to section
 43 66-406, Idaho Code, or for whom an order for guardianship or conservatorship has been issued
 44 pursuant to section 66-405, Idaho Code, shall be entitled to a reexamination of the order for
 45 or conditions of their commitment, guardianship or conservatorship on their own petition, or

1 that of their legal guardian, parent, attorney or friend, to the district court of the county in
 2 which the order was issued or in which they are found. Upon receipt of the petition, the court
 3 shall determine whether the conditions justifying the order or its conditions continue to exist.
 4 Within three (3) years of the effective date of this chapter, the department shall petition for the
 5 reexamination of all individuals committed prior to the effective date of this chapter as being
 6 ~~mentally retarded or mentally deficient~~ developmentally disabled and whose commitments have
 7 not been terminated.

8 SECTION 19. That Section 66-412, Idaho Code, be, and the same is hereby amended to
 9 read as follows:

10 66-412. RIGHTS IN FACILITIES. (1) Every developmentally disabled person admitted
 11 to any facility shall be entitled to humane care and treatment.

12 (2) A developmentally disabled person shall not be put in isolation. Mechanical
 13 restraints shall not be applied unless it is determined to be necessary for the safety of that
 14 person or the safety of others. Every use of a mechanical restraint, or time out for therapeutic
 15 purposes, and the reasons ~~therefore~~ therefor, shall be made a part of the permanent record of
 16 the person under the signature of the facility head.

17 (3) Every developmentally disabled person has the following rights:

18 (a) To be free from mental and physical abuse including that which arises from acts of
 19 negligence;

20 (b) To reside in the environment or setting that is least restrictive of personal liberties in
 21 which appropriate treatment can be provided;

22 (c) To communicate by sealed mail, telephone, or otherwise with persons inside or
 23 outside the facility, to have access to reasonable amounts of letter writing material and
 24 postage and to have access to private areas to make telephone calls and receive visitors;

25 (d) To receive visitors at all reasonable times and to associate freely with persons of his
 26 own choice;

27 (e) To wear his own clothes, keep and use his own personal possessions including toilet
 28 articles, keep and be allowed to spend a reasonable sum of his own money for personal
 29 expenses and small purchases, and have access to individual storage space for his own
 30 use;

31 (f) To have free access to established procedures to voice grievances and to recommend
 32 changes in the policies and/or services being offered at the facility;

33 (g) To practice his religion;

34 (h) To be informed of his medical and habilitative condition, of services available in the
 35 facility and the charges therefor;

36 (i) To have reasonable access to all records concerning himself; and

37 (j) Unless limited by prior court order, to exercise all civil rights, including the right to
 38 dispose of property, except property described in subsection (e) of this section, execute
 39 instruments, make purchases, enter into contractual arrangements, and vote.

40 (4) Adult and emancipated minor developmentally disabled ~~individuals~~ persons or a
 41 parent, ~~or~~ guardian or other legally authorized surrogate decision maker with authority to
 42 consent to treatment with respect to the minor child or ward, shall have the right to refuse
 43 specific modes of treatment or habilitation. The head of a facility may, in the exercise of his
 44 discretion, deny the right to refuse treatment or habilitation only in cases of emergency, where
 45 the life or health and well-being of the developmentally disabled person may be threatened

1 by the lack of treatment or habilitation, or when a court has determined that an adult or
2 emancipated minor lacks the capacity to make informed decisions about treatment and there
3 is no guardian or other legally authorized surrogate decision maker with authority to consent
4 to treatment. A statement explaining the reasons for any such denial shall immediately be
5 entered in the individual's permanent record and in the case of respondents committed under
6 section 66-406, Idaho Code, copies of the statement shall be sent to the committing court, the
7 respondent's attorney and ~~either the respondent's spouse, guardian, adult next of kin or friend~~
8 other legally authorized surrogate decision maker.

9 (5) A list of the rights contained in this section and section 66-413, Idaho Code, shall
10 be prominently posted in all facilities and explained as far as possible to each developmentally
11 disabled individual.

12 SECTION 20. The provisions of this act are hereby declared to be severable and if
13 any provision of this act or the application of such provision to any person or circumstance is
14 declared invalid for any reason, such declaration shall not affect the validity of the remaining
15 portions of this act.