LEGISLATURE OF THE STATE OF IDAHO

Sixty-first Legislature Second Regular Session - 2012

IN THE SENATE

SENATE BILL NO. 1348

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE MEDICAL CONSENT AND NATURAL DEATH ACT; PROVIDING A SHORT TITLE; AMENDING SECTION 39-4509, IDAHO CODE, TO REVISE LEGISLATIVE INTENT; AMENDING SECTION 39-4513, IDAHO CODE, TO REVISE PROVISIONS RELATING TO HEALTH CARE PROVIDERS UNWILLING TO CONFORM TO THE DESIRES OF PATIENTS AND THOSE AUTHORIZED TO CONSENT FOR THEM; AND AMENDING SECTION 39-4514, IDAHO CODE, TO PREVENT THE DISCRIMINATORY DENIAL OF CERTAIN HEALTH CARE INCLUDING ASSISTED FEEDING OR ARTIFICIAL NUTRITION AND HYDRATION.

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

SECTION 1. SHORT TITLE. This act shall be known and may be cited as the "Discrimination in Denial of Life-Preserving Treatment Act."

SECTION 2. 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 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relating to the rendering of their medical care, including the decision to have life-sustaining procedures withheld or withdrawn.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, provided that this sentence shall not be construed to authorize any violation of sec-

tion 39-4514(2), Idaho Code. 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 3. 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 or by the holder of a facially valid durable power of attorney or directive for health care.

(2) Any physician or other health care provider who for ethical or professional reasons is incapable or unwilling to conform to the desires of the patient or person who may give consent to care for the patient under section 39-4504, Idaho Code, as expressed by the procedures set forth in this chapter may, subject to the requirements of section 39-4514(2), Idaho Code, withdraw without incurring any civil or criminal liability provided the physician or other health care provider, before withdrawal of his or her participation, makes a good faith effort to assist the patient in obtaining the services of another physician or other health care provider who is willing to provide care for the patient in accordance with the patient's expressed or documented wishes.

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

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

(5) Health care providers and emergency medical services personnel may disregard the POST form or a POST identification device:

(a) If they believe in good faith that the order has been revoked; or

(b) To avoid oral or physical confrontation; or

(c) If ordered to do so by the attending physician.

SECTION 4. That Section 39-4514, Idaho Code, be, and the same is hereby amended to read as follows:

39-4514. GENERAL PROVISIONS. (1) Application. This chapter shall have no effect or be in any manner construed to apply to persons not executing a living will and durable power of attorney for health care or POST form pur-

suant to this chapter nor shall it in any manner affect the rights of any such persons or of others acting for or on behalf of such persons to give or refuse to give consent or withhold consent for any medical care, neither shall this chapter be construed to affect chapter 3 or chapter 4, title 66, Idaho Code, in any manner.

(2) Euthanasia, mercy killing, or assisted suicide. This chapter does not make legal, and in no way condones, euthanasia, mercy killing, or assisted suicide or permit an affirmative or deliberate act or omission to end life, other than to allow the natural process of dying. Assisted feeding or artificial nutrition and hydration may not be denied if, in reasonable medical judgment, its denial would hasten or result in the death of the patient and if its provision is directed by a competent patient in accordance with section 39-4503, Idaho Code, by a patient's health care directive under section 39-4510, Idaho Code, or by a patient's surrogate decision maker in accordance with section 39-4504, Idaho Code. Health care whose denial, in reasonable medical judgment, would hasten or result in the death of the patient, and that is directed by a competent patient in accordance with section 39-4503, Idaho Code, by a patient's health care directive under section 39-4510, Idaho Code, or by a patient's surrogate decision maker in accordance with section 39-4504, Idaho Code, may not be denied:

(a) On the basis of a view that treats extending the life of an elderly, disabled or terminally ill individual as of lower value than extending the life of an individual who is younger, nondisabled or not terminally ill; or

(b) On the basis of the health care provider's disagreement with how the patient or individual authorized to act on the patient's behalf values the trade-off between extending the length of the patient's life and the risk of disability.

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

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

(a) A completed living will for that person is in effect, pursuant to section 39-4510, Idaho Code, and the person is in a terminal condition or persistent vegetative state; or

(b) A completed durable power of attorney for health care for that person is in effect, 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 proper POST identification pursuant to section 39-4502(13), Idaho Code.

(5) Futile care. Nothing in this chapter shall be construed to require medical treatment that is medically inappropriate or futile; provided that this subsection does not authorize any violation of subsection (2) of this section.

(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.

(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 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 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.

(9) 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.

(10) 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.