

IN THE SENATE

SENATE BILL NO. 1114

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO HEALTH CARE TREATMENT AND CONSENT; AMENDING SECTION  
2 39-4501, IDAHO CODE, TO REVISE CHAPTER APPLICATION; AMENDING  
3 SECTION 39-4502, IDAHO CODE, TO DEFINE TERMS; AMENDING SECTION  
4 39-4503, IDAHO CODE, TO REVISE WHO MAY GIVE CONSENT TO THEIR  
5 OWN CARE AND TO PROVIDE FOR CONSENT TO OTHER HEALTH CARE,  
6 TREATMENT OR PROCEDURE; AMENDING SECTION 39-4504, IDAHO CODE,  
7 TO PROVIDE FOR CONSENT BY OTHERS FOR OTHER HEALTH CARE,  
8 TREATMENT OR PROCEDURES, TO PROVIDE FOR CONSENT FOR CERTAIN  
9 PERSONS BY A SURROGATE DECISION MAKER, TO REMOVE CERTAIN  
10 COMPETENT PERSONS FROM THE APPLICATION OF THE SECTION, TO  
11 REVISE THE ORDER OF PRIORITY OF CERTAIN CONSENTS AND TO PROVIDE  
12 CORRECT TERMINOLOGY; AMENDING CHAPTER 45, TITLE 39, IDAHO CODE,  
13 BY THE ADDITION OF A NEW SECTION 39-4504A, IDAHO CODE, TO PROVIDE  
14 FOR THE WITHHOLDING OR WITHDRAWING OF HEALTH TREATMENT AND  
15 TO PROVIDE FOR VOLUNTARY ETHICS COMMITTEE REVIEW; AMENDING  
16 CHAPTER 45, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION  
17 39-4504B, IDAHO CODE, TO PROVIDE AUTHORIZATION FOR EMERGENCY  
18 MEDICAL TREATMENT; AMENDING SECTION 39-4506, IDAHO CODE, TO  
19 REVISE THE CARE, TREATMENT OR PROCEDURES FOR WHICH CONSENT  
20 IS PROVIDED, TO REVISE TO WHOM CONSENT IS GIVEN OR BY WHOM  
21 IT IS SECURED AND TO REVISE THE REQUIREMENTS FOR THE VALIDITY  
22 OF CERTAIN CONSENTS; AMENDING SECTION 39-4508, IDAHO CODE, TO  
23 PROVIDE FOR OBTAINING SUFFICIENT CONSENTS AND TO REVISE WHO  
24 HAS THE DUTY TO OBTAIN CERTAIN CONSENTS; AMENDING SECTION  
25 39-4509, IDAHO CODE, TO REVISE WHO HAS THE RIGHT TO CONTROL  
26 CERTAIN HEALTH CARE DECISIONS; AMENDING SECTION 39-4511, IDAHO  
27 CODE, TO PROVIDE FOR REVOCATION OF OTHER SIMILAR ADVANCE  
28 DIRECTIVES; AMENDING SECTION 39-4512A, IDAHO CODE, TO PROVIDE FOR  
29 SURROGATE DECISION MAKER INVOLVEMENT IN MATTERS INVOLVING  
30 PHYSICIAN ORDERS FOR SCOPE OF TREATMENT, TO REMOVE THE PERSON'S  
31 EXPRESSED DIRECTIVES FROM A CONFLICT PROVISION AND TO PROVIDE A  
32 CORRECT CODE REFERENCE; AMENDING SECTION 39-4512B, IDAHO CODE,  
33 TO CLARIFY TERMINOLOGY AND TO PROVIDE FOR THE APPLICATION OF  
34 "DO NOT RESUSCITATE" ORDERS IN RELATIONSHIP TO PHYSICIAN ORDERS  
35 FOR SCOPE OF TREATMENT FORMS; AMENDING SECTION 39-4513, IDAHO  
36 CODE, TO PROVIDE CERTAIN IMMUNITIES WITH REGARD TO CERTAIN "DO  
37 NOT RESUSCITATE" ORDERS OR OTHER HEALTH CARE DIRECTIVES AND  
38 TO PROVIDE FOR THE DISREGARD OF "DO NOT RESUSCITATE" ORDERS BY  
39 CERTAIN PERSONS UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION  
40 39-4514, IDAHO CODE, TO PROVIDE FOR CHAPTER APPLICATION WITH  
41

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

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

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

26 39-4501. PURPOSES – APPLICATION. (1) The primary purposes of this chapter are:

27 (a) To provide and codify Idaho law concerning consent for the furnishing of hospital,  
 28 medical, dental, ~~or~~ surgical and other health care, treatment or procedures, and concerning  
 29 what constitutes an informed consent for such care, treatment or procedures; and

30 (b) To provide certainty and clarity in the law of medical consent in the furtherance of  
 31 high standards of health care and its ready availability in proper cases.

32 (2) Nothing in this chapter shall be deemed to amend or repeal the provisions of  
 33 chapter 3 or chapter 4, title 66, Idaho Code, as those provisions pertain to hospitalization or  
 34 commitment of the mentally ill people with mental illness or developmental disability or the  
 35 powers of guardians of developmentally disabled persons, nor the provisions of chapter 6,  
 36 title 18, Idaho Code, pertaining to the provision of examinations, prescriptions, devices and  
 37 informational materials regarding prevention of pregnancy or pertaining to therapeutic abortions  
 38 and consent to the performance thereof.

39 (3) Nothing in this chapter shall be construed to permit or require the provision of health  
 40 care for a patient in contravention of the patient's stated or implied objection thereto upon  
 41 religious grounds nor shall anything in this chapter be construed to require the granting of  
 42 permission for or on behalf of any patient who is not able to act for himself by his parent,  
 43 spouse or guardian in violation of the religious beliefs of the patient or the patient's parent or  
 44 spouse.

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

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

5        39-4502. DEFINITIONS. As used in this chapter:

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

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

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

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

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

23        (a) Oral and body hygiene;

24        (b) Reasonable efforts to offer food and fluids orally;

25        (c) Medication, positioning, warmth, appropriate lighting and other measures to relieve  
 26 pain and suffering; and

27        (d) Privacy and respect for the dignity and humanity of the patient.

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

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

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

36        (a) Who is or has been married;

37        (b) Who is serving or has served in the active military;

38        (c) Whose circumstances indicate that the parent-child relationship has been renounced  
 39 and that the minor is living on his or her own without dependence on parental support; or

40        (d) Who has been declared by a court of competent jurisdiction to be emancipated.

41 Pregnancy does not, by itself, emancipate the minor.

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

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

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

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

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

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

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

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

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

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

24 39-4503. PERSONS WHO MAY CONSENT TO THEIR OWN CARE. Any person ~~of~~  
25 ~~ordinary intelligence and awareness sufficient for him or her generally to~~ who comprehends  
26 the need for, the nature of and the significant risks ordinarily inherent in, any contemplated  
27 hospital, medical, dental, ~~or~~ or other health care, treatment or procedure is competent  
28 to consent thereto on his or her own behalf. Any health care provider may provide such  
29 health care and services in reliance upon such a consent if the consenting person appears to the  
30 health care provider securing the consent to possess such requisite ~~intelligence and awareness~~  
31 comprehension at the time of giving the consent.

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

34 39-4504. PERSONS WHO MAY GIVE CONSENT TO CARE FOR OTHERS. (1)  
35 Consent for the furnishing of hospital, medical, dental, ~~or~~ or other health care,  
36 treatment or procedures to any ~~person~~ patient who is not then capable of giving such consent  
37 as provided in this chapter or who is an unemancipated minor or incompetent person incapable  
38 of giving consent, may be given or refused by a surrogate decision maker in the order of  
39 priority set forth hereafter ~~unless the patient is a competent person who has refused to give such~~  
40 ~~consent, and provided further that this subsection shall not be deemed to authorize any person~~  
41 ~~to override the express refusal by a competent patient to give such consent himself; provided~~  
42 however, that the surrogate decision maker must have sufficient comprehension as required  
43 to consent to his own health care under section 39-4503, Idaho Code; and provided further,

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

- 4 (a) The patient's legal, court appointed guardian ~~of such person~~;  
 5 (b) The person named in ~~a~~ the patient's "Living Will and Durable Power of Attorney for  
 6 Health Care" pursuant to section 39-4510, Idaho Code, or a similar document authorized  
 7 by this chapter if the conditions for authorizing the agent to act have been satisfied;  
 8 (c) If married, the patient's spouse ~~of such person~~;  
 9 (d) A parent of ~~such person~~ the patient;  
 10 (e) An adult child of the patient;  
 11 (f) The person named in a delegation of parental authority executed pursuant to section  
 12 15-5-104, Idaho Code;  
 13 (g) The stepparent of a patient;  
 14 (h) Any relative ~~representing~~ of the patient who represents himself or herself to be  
 15 an appropriate, responsible person to act under the circumstances, provided that greater  
 16 deference shall be given to those relatives with closer familial relationships to the patient;  
 17 (~~f~~) Any other competent individual representing himself or herself to be responsible for  
 18 the health care of ~~such person~~ the patient; or  
 19 (~~g~~) If the ~~subject person~~ patient presents a medical emergency or there is a substantial  
 20 likelihood of his or her life or health being seriously endangered by withholding or  
 21 delay in the rendering of such hospital, medical, dental, ~~or~~ surgical or other health care  
 22 to such patient and the ~~subject person~~ patient has not communicated and is unable to  
 23 communicate his or her treatment wishes, the attending ~~physician or dentist~~ health care  
 24 provider may, in his or her discretion, authorize and/or provide such health care, treatment  
 25 ~~or procedure~~ as he or she deems appropriate, and all persons, agencies and institutions  
 26 thereafter furnishing the same, including such ~~physician or dentist~~ health care provider,  
 27 may proceed as if informed, valid consent therefor had been otherwise duly given.  
 28 (2) No person who, in good faith, gives consent or authorization for the provision of  
 29 hospital, medical, dental, ~~or~~ surgical or other health care, treatment or procedures to another  
 30 person as provided by this chapter shall be subject to civil liability therefor.  
 31 (3) No health care provider who, in good faith, obtains consent from a person pursuant to  
 32 either section 39-4503 or 39-4504(1), Idaho Code, shall be subject to civil liability therefor.

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

36 39-4504A. WITHHOLDING OR WITHDRAWING HEALTH TREATMENT –  
 37 VOLUNTARY ETHICS COMMITTEE REVIEW. (1) If the attending physician believes that  
 38 the treatment requested by a patient, the patient's advance directive or the patient's surrogate  
 39 decision maker is medically inappropriate or futile, the attending physician or health care  
 40 facility in which the patient is admitted may request that an ethics committee of the health care  
 41 facility review the facts and circumstances to determine if the requested treatment is medically  
 42 inappropriate or futile.

43 (2) The ethics committee shall be comprised of at least two (2) physicians, and such  
 44 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.

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

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

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

15 39-4504B. AUTHORIZATION FOR EMERGENCY MEDICAL TREATMENT. (1) A  
 16 district court may authorize the emergency medical treatment of a patient by a health care  
 17 provider if:

18 (a) The patient lacks capacity to consent to his own health care under section 39-4503,  
 19 Idaho Code;

20 (b) The patient has not executed an advance directive relating to the treatment he should  
 21 receive under the circumstances;

22 (c) The patient's surrogate decision maker refuses to consent to reasonably necessary  
 23 treatment; and

24 (d) A physician informs the court orally or in writing that, in his or her professional  
 25 opinion, there is a substantial likelihood that the patient's life or health will be seriously  
 26 endangered or the patient's bodily function will be seriously impaired unless immediate  
 27 treatment is rendered.

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

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

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

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

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

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

3 39-4506. SUFFICIENCY OF CONSENT. Consent, or refusal to consent, for the  
4 furnishing of ~~hospital, medical, dental or surgical~~ health care, treatment or procedures shall  
5 be valid in all respects if the person giving or refusing the consent is sufficiently aware  
6 of pertinent facts respecting the need for, the nature of, and the significant risks ordinarily  
7 attendant upon, such a patient receiving such care, as to permit the giving or withholding of  
8 such consent to be a reasonably informed decision. Any such consent shall be deemed valid  
9 and so informed if the ~~physician or dentist~~ health care provider to whom it is given or by whom  
10 it is secured has made such disclosures and given such advice respecting pertinent facts and  
11 considerations as would ordinarily be made and given under the same or similar circumstances,  
12 by a like ~~physician or dentist~~ health care provider of good standing practicing in the same  
13 community and has communicated such disclosures and advice in a manner reasonably likely to  
14 be understood by the person giving or refusing consent. As used in this section, the term "in  
15 the same community" refers to that geographic area ordinarily served by the licensed general  
16 hospital at or nearest to which such consent is given.

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

19 39-4508. RESPONSIBILITY FOR CONSENT AND DOCUMENTATION. Obtaining  
20 sufficient consent for health care is the duty of the attending ~~physician or dentist or of another~~  
21 ~~physician or dentist acting on his or her behalf or actually providing~~ health care provider upon  
22 whose order or at whose direction the contemplated health care, treatment or procedure is  
23 rendered; provided however, a licensed hospital and any medical or dental office employee,  
24 acting with the approval of such an attending or other ~~physician or dentist~~ individual health  
25 care provider, may perform the ministerial act of documenting such consent by securing the  
26 completion and execution of a form or statement in which the giving of consent for such care  
27 is documented by or on behalf of the patient. In performing such a ministerial act, the hospital  
28 or medical or dental office employee shall not be deemed to have engaged in the practice of  
29 medicine or dentistry.

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

32 39-4509. STATEMENT OF POLICY – DEFINITION. For purposes of sections  
33 39-4509 through 39-4515, Idaho Code:

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

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

6 (3) It is the intent of the legislature to establish an effective means for such  
 7 communication. It is not the intent of the legislature that the procedures described in sections  
 8 39-4509 through 39-4515, Idaho Code, are the only effective means of such communication,  
 9 and nothing in sections 39-4509 through 39-4515, Idaho Code, shall impair or supersede  
 10 any legal right or legal responsibility which a person may have to effect the withholding or  
 11 withdrawal of life-sustaining procedures in any lawful manner. Any authentic expression of a  
 12 person's wishes with respect to health care should be honored.

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

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

17 39-4511. REVOCATION. (1) A living will and durable power of attorney for health  
 18 care, ~~or~~ physician orders for scope of treatment (POST) form or other similar advance directive  
 19 may be revoked at any time by the maker thereof by any of the following methods:

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

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

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

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

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

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

33 39-4512A. PHYSICIAN ORDERS FOR SCOPE OF TREATMENT (POST). (1) A  
 34 physician orders for scope of treatment (POST) form is appropriate in cases where a patient  
 35 has an incurable or irreversible injury, disease, illness or condition, or where a patient is in a  
 36 persistent vegetative state. A POST form is also appropriate if such conditions are anticipated.  
 37 A patient's surrogate decision maker may have a POST form executed for the patient by the  
 38 patient's attending physician, provided that the POST form is not contrary to the patient's prior  
 39 expressed wishes or directions.

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

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

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

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

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

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

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

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

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

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

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

22 39-4512B. ADHERENCE TO PHYSICIAN ORDERS FOR SCOPE OF TREATMENT  
 23 (POST) PROTOCOL. (1) Health care providers and emergency medical services personnel  
 24 shall comply with a patient's physician orders for scope of treatment (POST) instruction when  
 25 presented with a completed POST form signed by a physician or when a patient is wearing a  
 26 proper POST identification device pursuant to section 39-4512A(5), Idaho Code.

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

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

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

38 39-4513. IMMUNITY. (1) No emergency medical services personnel, health care  
 39 provider, facility, or individual employed by, acting as the agent of, or under contract with any  
 40 such health care provider or facility shall be civilly or criminally liable or subject to discipline  
 41 for unprofessional conduct for acts or omissions carried out or performed in good faith pursuant  
 42 to the directives in a facially valid POST form, ~~or~~ living will, "Do Not Resuscitate (DNR)"  
 43 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

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

3 (c) The patient has a completed physician orders for scope of treatment (POST) form  
 4 indicating otherwise and/or a proper POST identification device pursuant to section  
 5 39-4502(134), Idaho Code;

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

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

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

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

22 ~~(7)~~ Insurance.

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

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

37 ~~(8)~~ Portability and copies.

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

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

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

5 (109) Rulemaking authority.

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

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

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

13 66-401. LEGISLATIVE INTENT. It is hereby declared by the legislature of the state  
 14 of Idaho in enacting chapter 4, title 66, Idaho Code, that the developmentally ~~handicapped~~  
 15 disabled citizens of the state are entitled to be diagnosed, cared for, and treated in a manner  
 16 consistent with their legal rights in a manner no more restrictive than for their protection  
 17 and the protection of society, for a period no longer than reasonably necessary for diagnosis,  
 18 care, treatment and protection, and to remain at liberty or be cared for privately except when  
 19 necessary for their protection or the protection of society. Recognizing that every individual  
 20 has unique needs and differing abilities, it is the purpose of the provisions of this chapter to  
 21 promote the general welfare of all citizens by establishing a system which permits partially  
 22 disabled and disabled persons to participate as fully as possible in all decisions which affect  
 23 them, which assists such persons in meeting the essential requirements for their physical  
 24 health and safety, protecting their rights, managing their financial resources, and developing or  
 25 regaining their abilities to the maximum extent possible. The provisions of this chapter shall be  
 26 liberally construed to accomplish these purposes.

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

29 66-402. DEFINITIONS. As used in this chapter:

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

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

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

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

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

41 (a) Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy,  
 42 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;

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

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

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

- 25 (a) ~~Has an incurable injury, disease, illness or condition, certified by the respondent's~~  
 26 ~~attending physician and at least one (1) other physician to be terminal such that the~~  
 27 ~~application of artificial life sustaining procedures would not result in the possibility of~~  
 28 ~~saving or significantly prolonging the life of the respondent, and would only serve to~~  
 29 ~~prolong the moment of the respondent's death for a period of hours, days or weeks, and~~  
 30 ~~where both physicians certify that death is imminent, whether or not the life sustaining~~  
 31 ~~procedures are used; or~~  
 32 (b) ~~Has been diagnosed by the respondent's attending physician and at least one (1) other~~  
 33 ~~physician as being~~ The respondent is in a persistent vegetative state, as defined in section  
 34 39-4502(11), Idaho Code, which is irreversible and from which the respondent will never  
 35 regain consciousness;  
 36 (b) The respondent is chronically and irreversibly comatose;  
 37 (c) The provision of such treatment would merely prolong dying, would not be effective  
 38 in ameliorating or correcting all of the respondent's life-threatening conditions, or would  
 39 otherwise be futile in terms of the survival of the respondent; or  
 40 (d) The provision of such treatment would be virtually futile in terms of the survival of  
 41 the respondent, and the treatment itself under such circumstances would be inhumane.

42 (9) A guardian or physician who seeks to determine whether the conditions in subsection  
 43 (8) of this section have been satisfied may, but is not required to, submit the issue to an ethics  
 44 committee pursuant to the process set forth in section 39-4504A, Idaho Code. If the ethics  
 45 committee determines that the conditions in subsection (8) of this section are satisfied, the  
 46 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 (101) 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 ~~therefor~~ 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.