

IN THE SENATE

SENATE BILL NO. 1063

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO THE MEDICAL CONSENT AND NATURAL DEATH ACT; AMENDING SECTION  
2 39-4514, IDAHO CODE, TO REVISE PROVISIONS RELATING TO WHEN HEALTH CARE  
3 MAY NOT BE WITHDRAWN OR DENIED AND TO MAKE A TECHNICAL CORRECTION.  
4

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

6 SECTION 1. That Section 39-4514, Idaho Code, be, and the same is hereby  
7 amended to read as follows:

8 39-4514. GENERAL PROVISIONS. (1) Application. Except as specifically  
9 provided herein, Sections 39-4510 through 39-4512B, Idaho Code, shall have  
10 no effect or be in any manner construed to apply to persons not executing a  
11 living will and durable power of attorney for health care, POST form or other  
12 health care directive pursuant to this chapter nor shall these sections in  
13 any manner affect the rights of any such persons or of others acting for or on  
14 behalf of such persons to give or refuse to give consent or withhold consent  
15 for any medical care; neither shall sections 39-4510 through 39-4512B, Idaho  
16 Code, be construed to affect chapter 3 or chapter 4, title 66, Idaho Code, in  
17 any manner.

18 (2) Euthanasia, mercy killing, or assisted suicide. This chapter  
19 does not make legal, and in no way condones, euthanasia, mercy killing, or  
20 assisted suicide or permit an affirmative or deliberate act or omission to  
21 end life, including any act or omission described in section 18-4017, Idaho  
22 Code, other than to allow the natural process of dying.

23 (3) Withdrawal of care. Assisted feeding or artificial nutrition and  
24 hydration may not be withdrawn or denied if its provision is directed by a  
25 competent patient in accordance with section 39-4503, Idaho Code, by a pa-  
26 tient's health care directive under section 39-4510, Idaho Code, or by a pa-  
27 tient's surrogate decision maker in accordance with section 39-4504, Idaho  
28 Code. Health care necessary to sustain life or to provide appropriate com-  
29 fort for a patient other than assisted feeding or artificial nutrition and  
30 hydration may not be withdrawn or denied if its provision is directed by a  
31 competent patient in accordance with section 39-4503, Idaho Code, by a pa-  
32 tient's health care directive under section 39-4510, Idaho Code, or by a pa-  
33 tient's surrogated decision maker in accordance with section 39-4504, Idaho  
34 Code, unless such care would be futile care as defined in subsection (6) of  
35 this section. Except as specifically provided in chapters 3 and 4, title 66,  
36 Idaho Code, health care, assisted feeding or artificial nutrition and hydra-  
37 tion, the denial of which is directed by a competent patient in accordance  
38 with section 39-4503, Idaho Code, by a patient's health care directive un-  
39 der section 39-4510, Idaho Code, or by a patient's surrogate decision maker  
40 in accordance with section 39-4504, Idaho Code, shall be withdrawn and de-  
41 nied in accordance with a valid directive. This subsection does not require

1 provision of treatment to a patient if it would require denial of the same or  
2 similar treatment to another patient.

3 (4) Comfort care. Persons caring for a person for whom artificial life-  
4 sustaining procedures or artificially administered nutrition and hydration  
5 are withheld or withdrawn shall provide comfort care as defined in section  
6 39-4502, Idaho Code.

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

9 (a) A completed durable power of attorney for health care or living will  
10 for that person is in effect, pursuant to section 39-4510, Idaho Code,  
11 in which the person has stated that he or she does not wish to receive  
12 cardiopulmonary resuscitation, and any terms set forth in the durable  
13 power of attorney for health care or living will upon which such state-  
14 ment is conditioned have been met; or

15 (b) The person's surrogate decision maker has communicated the per-  
16 son's wishes not to receive cardiopulmonary resuscitation and any terms  
17 on which the wishes not to receive cardiopulmonary resuscitation are  
18 conditioned have been met; or

19 (c) The person has a physician orders for scope of treatment (POST) form  
20 that meets the requirements of section 39-4512A, Idaho Code, stating  
21 that the person does not wish to receive cardiopulmonary resuscita-  
22 tion and any terms on which the statement is conditioned have been met  
23 and/or has a proper POST identification device pursuant to section  
24 39-4502(15), Idaho Code.

25 (6) Futile care. Nothing in this chapter shall be construed to require  
26 medical treatment that is medically inappropriate or futile; provided that  
27 this subsection does not authorize any violation of subsection (3) of this  
28 section. Futile care does not include comfort care. Futile care is a course  
29 of treatment:

30 (a) For a patient with a terminal condition, for whom, in reasonable  
31 medical judgment, death is imminent within hours or at most a few days  
32 whether or not the medical treatment is provided and that in reasonable  
33 medical judgment will not improve the patient's condition; or

34 (b) The denial of which in reasonable medical judgment will not result  
35 in or hasten the patient's death.

36 (7) Existing directives and directives from other states. A health  
37 care directive executed prior to July 1, 2012, but which was in the living  
38 will, durable power of attorney for health care, DNR, or POST form pursuant  
39 to prior Idaho law at the time of execution, or in another form that contained  
40 the elements set forth in this chapter at the time of execution, shall be  
41 deemed to be in compliance with this chapter. Health care directives or sim-  
42 ilar documents executed in another state that substantially comply with this  
43 chapter shall be deemed to be in compliance with this chapter. This section  
44 shall be liberally construed to give the effect to any authentic expression  
45 of the person's prior wishes or directives concerning his or her health care.

46 (8) Insurance.

47 (a) The making of a living will and/or durable power of attorney for  
48 health care, physician orders for scope of treatment (POST) form, or DNR  
49 order pursuant to this chapter shall not restrict, inhibit or impair in  
50 any manner the sale, procurement or issuance of any policy of life in-

1 surance, nor shall it be deemed to modify the terms of an existing pol-  
2 icy of life insurance. No policy of life insurance shall be legally im-  
3 paired or invalidated in any manner by the withholding or withdrawal of  
4 artificial life-sustaining procedures from an insured person, notwith-  
5 standing any term of the policy to the contrary.

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

13 (9) Portability and copies.

14 (a) A physician orders for scope of treatment (POST) form that meets the  
15 requirements of section 39-4512A, Idaho Code, shall be transferred with  
16 the person to, and be effective in, all care settings including, but not  
17 limited to, home care, ambulance or other transport, hospital, residen-  
18 tial care facility, and hospice care. The POST form shall remain in ef-  
19 fect until such time as there is a valid revocation pursuant to section  
20 39-4511A, Idaho Code, or new orders are issued by a physician, APPN or  
21 PA.

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

26 (10) Registration. A directive or the revocation of a directive meet-  
27 ing the requirements of this chapter may be registered with the secretary  
28 of state pursuant to section 39-4515, Idaho Code. Failure to register the  
29 health care directive shall not affect the validity of the health care direc-  
30 tive.

31 (11) Rulemaking authority.

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

34 (b) In the adoption of a physician orders for scope of treatment (POST)  
35 or DNR protocol, the department shall adopt standardized POST identifi-  
36 cation devices to be used statewide.