

IN THE SENATE

SENATE BILL NO. 1090, As Amended

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO HEALTH CARE; AMENDING SECTION 39-4503, IDAHO CODE, TO REVISE
2 PROVISIONS REGARDING PERSONS WHO MAY CONSENT TO THEIR OWN HEALTH CARE;
3 AMENDING SECTION 39-4511A, IDAHO CODE, TO REVISE PROVISIONS REGARD-
4 ING REVOCATION OF AN ADVANCE DIRECTIVE; AMENDING SECTION 39-4511B,
5 IDAHO CODE, TO REVISE PROVISIONS REGARDING SUSPENSION OF AN ADVANCE
6 DIRECTIVE; AMENDING SECTION 39-4514, IDAHO CODE, TO REVISE PROVISIONS
7 REGARDING PRESUMED CONSENT TO RESUSCITATION AND TO MAKE TECHNICAL COR-
8 RECTIONS; AMENDING SECTION 66-402, IDAHO CODE, TO REVISE DEFINITIONS;
9 AND AMENDING SECTION 66-405, IDAHO CODE, TO REVISE PROVISIONS REGARDING
10 ORDER IN PROTECTIVE PROCEEDINGS FOR CERTAIN DEVELOPMENTALLY DISABLED
11 PERSONS.
12

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

14 SECTION 1. That Section 39-4503, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 39-4503. PERSONS WHO MAY CONSENT TO THEIR OWN CARE. Any person, in-
17 cluding one who is developmentally disabled and not a respondent as defined
18 in section 66-402, Idaho Code, who comprehends the need for, the nature of
19 and the significant risks ordinarily inherent in any contemplated hospi-
20 tal, medical, dental, surgical or other health care, treatment or procedure
21 is competent to consent thereto on his or her own behalf. Any health care
22 provider may provide such health care and services in reliance upon such a
23 consent if the consenting person appears to the health care provider secur-
24 ing the consent to possess such requisite comprehension at the time of giving
25 the consent.

26 SECTION 2. That Section 39-4511A, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 39-4511A. REVOCATION OF ADVANCE DIRECTIVE. (1) A living will and
29 durable power of attorney for health care or physician orders for scope of
30 treatment (POST) form or other ~~similar~~ advance directive may be revoked at
31 any time by the maker thereof by any of the following methods:

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

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

37 (c) By an oral expression by the maker thereof expressing his intent to
38 revoke; or

39 (d) By any other action that clearly manifests the maker's intent to re-
40 voke the advance directive.

1 (2) ~~The maker of the revoked living will and durable power of attorney~~
 2 ~~for health care advance directive~~ is responsible for notifying his health
 3 care provider of the revocation. A health care provider who does not have ac-
 4 tual knowledge of the revocation is entitled to rely on an otherwise appar-
 5 ently valid advance directive as though it had not been revoked.

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

11 SECTION 3. That Section 39-4511B, Idaho Code, be, and the same is hereby
 12 amended to read as follows:

13 39-4511B. SUSPENSION OF ADVANCE DIRECTIVE. (1) A living will and
 14 durable power of attorney for health care, physician orders for scope of
 15 treatment (POST) form or other ~~similar~~ advance directive may be suspended at
 16 any time by the maker thereof by any of the following methods:

17 (a) By a written, signed suspension by the maker thereof expressing his
 18 intent to suspend; ~~or~~

19 (b) By an oral expression by the maker thereof expressing his intent to
 20 suspend; or

21 (c) By any other action that clearly manifests the maker's intent to
 22 suspend the advance directive.

23 (2) A health care provider who does not have actual knowledge of the
 24 suspension is entitled to rely on an otherwise apparently valid advance di-
 25 rective as though it had not been suspended.

26 (3) Upon meeting the termination terms of the suspension, as defined
 27 by the written or oral expression by the maker, the conditions set forth in
 28 the living will and durable power of attorney, physician orders for scope of
 29 treatment (POST) or other ~~similar~~ advance directive will resume.

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

32 39-4514. GENERAL PROVISIONS. (1) Application. Except as specifically
 33 provided herein, sections 39-4510 through 39-4512B, Idaho Code, shall have
 34 no effect or be in any manner construed to apply to persons not executing a
 35 living will and durable power of attorney for health care, POST form or other
 36 health care directive pursuant to this chapter nor shall these sections in
 37 any manner affect the rights of any such persons or of others acting for or on
 38 behalf of such persons to give or refuse to give consent or withhold consent
 39 for any medical care; neither shall sections 39-4510 through 39-4512B, Idaho
 40 Code, be construed to affect chapter 3 or chapter 4, title 66, Idaho Code, in
 41 any manner.

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

1 (3) Withdrawal of care. Assisted feeding or artificial nutrition and
2 hydration may not be withdrawn or denied if its provision is directed by a
3 competent patient in accordance with section 39-4503, Idaho Code, by a pa-
4 tient's health care directive under section 39-4510, Idaho Code, or by a pa-
5 tient's surrogate decision-maker in accordance with section 39-4504, Idaho
6 Code. Health care necessary to sustain life or to provide appropriate com-
7 fort for a patient other than assisted feeding or artificial nutrition and
8 hydration may not be withdrawn or denied if its provision is directed by a
9 competent patient in accordance with section 39-4503, Idaho Code, by a pa-
10 tient's health care directive under section 39-4510, Idaho Code, or by a pa-
11 tient's surrogated decision-maker in accordance with section 39-4504, Idaho
12 Code, unless such care would be futile care as defined in subsection (6) of
13 this section. Except as specifically provided in chapters 3 and 4, title 66,
14 Idaho Code, health care, assisted feeding or artificial nutrition and hydra-
15 tion, the denial of which is directed by a competent patient in accordance
16 with section 39-4503, Idaho Code, by a patient's health care directive un-
17 der section 39-4510, Idaho Code, or by a patient's surrogate decision-maker
18 in accordance with section 39-4504, Idaho Code, shall be withdrawn and de-
19 nial in accordance with a valid directive. This subsection does not require
20 provision of treatment to a patient if it would require denial of the same or
21 similar treatment to another patient.

22 (4) Comfort care. Persons caring for a person for whom artificial life-
23 sustaining procedures or artificially administered nutrition and hydration
24 are withheld or withdrawn shall provide comfort care as defined in section
25 39-4502, Idaho Code.

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

28 ~~(a) A completed durable power of attorney for health care or living will~~
29 ~~for that person is in effect, pursuant to section 39-4510, Idaho Code,~~
30 ~~in which the person has stated that he or she does not wish to receive~~
31 ~~cardiopulmonary resuscitation, and any terms set forth in the durable~~
32 ~~power of attorney for health care or living will upon which such state-~~
33 ~~ment is conditioned have been met; or CPR is contrary to the person's ad-~~
34 ~~advance directive and/or POST;~~

35 (b) The person's surrogate decision-maker has communicated the per-
36 son's unconditional wishes not to receive CPR;

37 (c) The person's surrogate decision-maker has communicated the per-
38 son's conditional wishes not to receive cardiopulmonary resuscitation
39 CPR and any terms on which the wishes not to receive cardiopulmonary re-
40 suscitation are conditioned those conditions have been met; or

41 (ed) The person has a physician orders for scope of treatment (POST)
42 form that meets the requirements of section 39-4512A, Idaho Code,
43 stating that the person does not wish to receive cardiopulmonary resus-
44 citation and any terms on which the statement is conditioned have been
45 met and/or has a proper POST identification device pursuant to section
46 39-4502(15), Idaho Code; or

47 (e) The attending health care provider has executed a DNR order consis-
48 ting with the person's prior expressed wishes or the directives of the
49 legally authorized surrogate decision-maker.

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

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

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

12 (7) Existing directives and directives from other states. A health
13 care directive executed prior to July 1, 2012, but which was in the living
14 will, durable power of attorney for health care, DNR, or POST form pursuant
15 to prior Idaho law at the time of execution, or in another form that contained
16 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 sim-
18 ilar documents executed in another state that substantially comply with this
19 chapter shall be deemed to be in compliance with this chapter. This section
20 shall be liberally construed to give the effect to any authentic expression
21 of the person's prior wishes or directives concerning his or her health care.

22 (8) Insurance.

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

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

39 (9) Portability and copies.

40 (a) A physician orders for scope of treatment (POST) form that meets the
41 requirements of section 39-4512A, Idaho Code, shall be transferred with
42 the person to, and be effective in, all care settings including, but not
43 limited to, home care, ambulance or other transport, hospital, residen-
44 tial care facility, and hospice care. The POST form shall remain in ef-
45 fect until such time as there is a valid revocation pursuant to section
46 39-4511A, Idaho Code, or new orders are issued by a physician, APPN or
47 PA.

48 (b) A photostatic, facsimile or electronic copy of a valid physician
49 orders for scope of treatment (POST) form may be treated as an original

1 by a health care provider or by an institution receiving or treating a
2 person.

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

8 (11) Rulemaking authority.

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

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

14 SECTION 5. That Section 66-402, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 66-402. DEFINITIONS. As used in this chapter:

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

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

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

26 (4) "Director" means the director of the department of health and wel-
27 fare.

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

30 (a) Is attributable to an impairment, such as intellectual disability,
31 cerebral palsy, epilepsy, autism or other condition found to be closely
32 related to or similar to one (1) of these impairments that requires sim-
33 ilar treatment or services, or is attributable to dyslexia resulting
34 from such impairments; and

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

39 (c) Reflects the need for a combination and sequence of special, in-
40 terdisciplinary or generic care, treatment or other services which are
41 of lifelong or extended duration and individually planned and coordi-
42 nated.

43 (6) "Emancipated minor" means an individual between fourteen (14) and
44 eighteen (18) years of age who has been married or whose circumstances indi-
45 cate that the parent-child relationship has been renounced.

46 (7) "Evaluation committee" means an interdisciplinary team of at least
47 three (3) individuals designated by the director or his designee to evaluate
48 an individual as required by the provisions of this chapter. Each committee
49 must include a physician licensed to practice medicine in the state of Idaho,

1 a licensed social worker and a clinical psychologist or such other individ-
 2 ual who has a master's degree in psychology as designated by the department
 3 director. Each committee member must be specially qualified by training and
 4 experience in the diagnosis and treatment of persons with a developmental
 5 disability.

6 (8) "Facility" means the southwest Idaho treatment center, a nursing
 7 facility, an intermediate care facility, an intermediate care facility for
 8 people with intellectual disabilities, a licensed residential or assisted
 9 living facility, a group foster home, other organizations licensed to pro-
 10 vide twenty-four (24) hour care, treatment and training to the developmen-
 11 tally disabled, a mental health center, or an adult and child development
 12 center.

13 (9) "Lacks capacity to make informed decisions" means the inability, by
 14 reason of developmental disability, to achieve a rudimentary understanding
 15 of the purpose, nature, and possible risks and benefits of a decision, after
 16 conscientious efforts at explanation, but shall not be evidenced by improv-
 17 ident decisions within the discretion allowed nondevelopmentally disabled
 18 individuals.

19 (10) "Licensed independent practitioner" or "LIP" means:

20 (a) A licensed physician or physician assistant pursuant to section
 21 54-1803, Idaho Code; or

22 (b) A licensed advance practice registered nurse pursuant to section
 23 54-1402, Idaho Code.

24 (11) "Likely to injure himself or others" means:

25 (a) A substantial risk that physical harm will be inflicted by the re-
 26 spondent upon his own person as evidenced by threats or attempts to com-
 27 mit suicide or inflict physical harm on himself; or

28 (b) A substantial risk that physical harm will be inflicted by the re-
 29 spondent upon another as evidenced by behavior which has caused such
 30 harm or which places another person or persons in reasonable fear of
 31 sustaining such harm; or

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

34 (11~~2~~) "Manage financial resources" means the actions necessary to ob-
 35 tain, administer and dispose of real, personal, intangible or business prop-
 36 erty, benefits and/or income.

37 (12~~3~~) "Meet essential requirements for physical health or safety" means
 38 the actions necessary to provide health care, food, clothing, shelter, per-
 39 sonal hygiene and/or other care without which serious physical injury or
 40 illness would occur.

41 (13~~4~~) "Minor" means an individual ~~seventeen (17) years of~~ under age ~~or~~
 42 ~~less~~ eighteen (18) years.

43 (14~~5~~) "Protection and advocacy system" means the agency designated by
 44 the governor of the state of Idaho to provide advocacy services for people
 45 with disabilities pursuant to 42 U.S.C. section 6042.

46 (15~~6~~) "Respondent" means the individual subject to judicial proceed-
 47 ings authorized by the provisions of this chapter.

48 SECTION 6. That Section 66-405, Idaho Code, be, and the same is hereby
 49 amended to read as follows:

1 66-405. ORDER IN PROTECTIVE PROCEEDINGS. (1) If it is determined that
2 the respondent does not have a developmental disability but appears in need
3 of protective services, the court may cause the proceeding to be expanded or
4 altered for consideration under the uniform probate code.

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

8 (3) If it is determined that the respondent has a developmental dis-
9 ability and is unable to manage some financial resources or meet some es-
10 sential requirements for physical health or safety, the court may appoint
11 a partial guardian and/or partial conservator on behalf of the respondent.
12 An order establishing partial guardianship or partial conservatorship shall
13 define the powers and duties of the partial guardian or partial conserva-
14 tor so as to permit the respondent to meet essential requirements for physi-
15 cal health or safety and to manage financial resources commensurate with his
16 ability to do so, and shall specify all legal restrictions to which he is sub-
17 ject. A person respondent for whom a partial guardianship or partial conser-
18 vatorship has been appointed under this chapter retains all legal and civil
19 rights except those which have by court order been limited or which have been
20 specifically granted to the partial guardian or partial conservator by the
21 court.

22 (4) If it is determined that the respondent has a developmental dis-
23 ability and is unable to manage financial resources or meet essential re-
24 quirements for physical health or safety even with the appointment of a par-
25 tial guardian or partial conservator, the court may appoint a total guardian
26 and/or total conservator.

27 (5) In the event that more than one (1) person seeks to be appointed
28 guardian and/or conservator, the court shall appoint the person or persons
29 most capable of serving on behalf of the respondent; the court shall not cus-
30 tomarily or ordinarily appoint the department or any other organization or
31 individual, public or private, that is or is likely to be providing services
32 to the respondent. If an appointment of a guardian is made by will pursuant
33 to section 15-5-301, Idaho Code, such appointment shall be entitled to pref-
34 erence as the guardian under this chapter, if the person so appointed by will
35 is capable of serving on behalf of the respondent and the court finds that it
36 is not in the best interests of the respondent to appoint a different person
37 as guardian.

38 (6) Subject to the limitations of the provisions of subsection (7) of
39 this section, guardians or conservators may have any of the duties and powers
40 as provided in sections 15-5-312(1) (a) through (d), 15-5-424 and 15-5-425,
41 Idaho Code, and as specified in the order. A guardian shall be required to
42 report to the court at least annually on the status of the ~~person with a de-~~
43 ~~velopmental disability~~ respondent. A conservator shall be required to file
44 with the court an inventory within ninety (90) days of appointment, an ac-
45 counting at least annually, and a final accounting at the termination of the
46 appointment of the conservator. All required inventories, accountings and
47 reports shall be under oath or affirmation and shall comply with the Idaho
48 supreme court rules. The court may require a conservator to submit to a phys-
49 ical check of the estate in his control, to be made in any manner the court may
50 specify.

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

16 (8) A guardian appointed under this chapter may consent to withholding
 17 or ~~withdrawal of artificial life-sustaining procedures,~~ only if the respon-
 18 dent withdrawing treatment other than appropriate nutrition or hydration to
 19 a respondent, and a health care provider may withhold or withdraw such treat-
 20 ment in reliance upon such consent, when in the treating LIP's reasonable
 21 medical judgment any of the following circumstances apply:

22 (a) ~~Has an incurable injury, disease, illness or condition, cer-~~
 23 ~~tified by the respondent's attending physician and at least one (1)~~
 24 ~~other physician to be terminal such that the application of artificial~~
 25 ~~life-sustaining procedures would not result in the possibility of sav-~~
 26 ~~ing or significantly prolonging the life of the respondent, and would~~
 27 ~~only serve to prolong the moment of the respondent's death for a period~~
 28 ~~of hours, days or weeks, and where both physicians certify that death~~
 29 ~~is imminent, whether or not the life-sustaining procedures are used;~~
 30 ~~or~~ The attending LIP and at least one (1) other LIP certifies that the
 31 respondent is chronically and irreversibly comatose;

32 (b) ~~Has been diagnosed by the respondent's attending physician and~~
 33 ~~at least one (1) other physician as being in a persistent vegetative~~
 34 ~~state which is irreversible and from which the respondent will never~~
 35 ~~regain consciousness~~ The treatment would merely prolong dying, would
 36 not be effective in ameliorating or correcting all of the respondent's
 37 life-threatening conditions, or would otherwise be futile in terms of
 38 the survival of the respondent; or

39 (c) The treatment would be virtually futile in terms of the survival of
 40 the respondent and would be inhumane under such circumstances.

41 (9) Any person who has information that medically necessary treatment
 42 of a respondent has been withheld or withdrawn in violation of this section
 43 may report such information to adult protective services or to the Idaho
 44 protection and advocacy system for people with developmental disabilities,
 45 which shall have the authority to investigate the report and in appropriate
 46 cases to seek a court order to ensure that medically necessary treatment is
 47 provided.

48 If adult protective services or the protection and advocacy system de-
 49 termines that withholding of medical treatment violates the provisions of
 50 this section, they may petition the court for an ex parte order to provide

1 or continue the medical treatment in question. If the court finds, based on
2 affidavits or other evidence, that there is probable cause to believe that
3 the withholding of medical treatment in a particular case violates the pro-
4 visions of this section, and that the life or health of the patient is en-
5 dangered thereby, the court shall issue an ex parte order to continue or to
6 provide the treatment until such time as the court can hear evidence from the
7 parties involved. Petitions for court orders under this section shall be ex-
8 pedited by the courts and heard as soon as possible. No bond shall be re-
9 quired of a petitioner under this section.

10 (10) No partial or total guardian or partial or total conservator ap-
11 pointed under the provisions of this section may without specific approval
12 of the court in a proceeding separate from that in which such guardian or con-
13 servator was appointed:

14 (a) Consent to medical or surgical treatment the effect of which per-
15 manently prohibits the conception of children by the respondent unless
16 the treatment or procedures are necessary to protect the physical
17 health of the respondent and would be prescribed for a person who does
18 not have a developmental disability;

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

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

21 (11) Nothing in this section shall affect the rights of a competent
22 patient or surrogate decision-maker to withhold or withdraw treatment pur-
23 suant to section 39-4514, Idaho Code, unless the patient is a respondent as
24 defined in section 66-402, Idaho Code.