

3-13-2020
H 616

MEMO for Review
3/12/2020

RE: Health Care Directives Bill H0616
Idaho Secretary of State's office

Senator Bair,

Thank you for your work on the Health Care Directives Bill H0616. This memo is intended to provide context and background from the office of the Idaho Secretary of State for the "Health Care Directive Registry", (in accordance with 39-4515, Idaho Code, a portion of the MEDICAL CONSENT AND NATURAL DEATH ACT. We at the Secretary of State's office believe this is one program that should be transferred to the Department of Health and Welfare for better synergy and potential to drastically improve the program.

As we are sure you are well aware, a *Health Care Directive*, also known as a *Living Will and Durable Power of Attorney*, expresses an individual's desire for the application of life sustaining measures in an end-of-life scenario.

IT IS OUR VIEW that the time and environment under which this system was originally implemented - and the environment in which it operates today – are two completely different worlds.

- I.C. §39-4515 added the HCDR to the jurisdiction of the SOS in 2005, and originally established a continuously appropriated fund under 39-4515-3, Idaho Code, for the operation of the registry. The fund initially received a grant from Medicaid for \$10,000, a contribution of \$1,000 from Blue Cross and Blue Shield, and the Secretary of State transferred \$35,000 from his budget into the Health Care Directive Fund. There was no appropriation from the legislature. There was an additional contribution from the Idaho Hospital Association in 2007 of \$1000.00. Most expenses incurred to present have come from that fund, and the current balance is approximately \$28,000
- Records show that the fund expenses range from \$1000 to \$5000 per year, based on current usage levels. This varies because supplies have often been purchased with IDSOS general funds for items such as a card printer that was used by multiple programs (Address confidentiality program)
- In 2016 there were only approximately 25000 registrants in the program. Since 2016, local hospitals (St. Lukes/St. Als) have significantly increased in soliciting registrations. This has led to an increase in the consistent flow of applications received weekly by IDSOS and an overall program size approaching or exceeding 43000 registrations.
- IDSOS historically HAS NOT and currently DOES NOT charge for this service, though a fee of "up to \$10" has been authorized by statute under 39-4515. In general, ongoing expenses, except for the purchase of replacement equipment and supplies, have been absorbed into the Secretary of State's budget.

- The HCDR Registry has ALSO become a potential repository option for those with a POST, though at present I cannot see a specific directive for doing so. This may be in conflict with the duty to inspect established by 39-4512C, as it requires a login for a physician to access the system (which can only be obtained from the patient.)

This system was conceived over 15 years ago. We've only had an electronic medical records system for the last 7-8 years. Before that, the patient would carry x-rays and medical charts from doctor to doctor and pay to keep a copy for themselves. The statewide electronic medical records repository has changed that. **It is time for these documents to undergo a similar transformation. Our position is the Secretary of State's office should not continue to be involved in this now expanded and expanding program. It seems that the citizens and the end users (hospitals, physicians) would better be served by a new solution in a new location.**

It would seem to us that DHW is the appropriate **home** for such a program, as they have the single largest group of reasons for ownership:

- They currently operate and secure data under HIPPA regulation. We do not.
- They have existing contact with hospitals, emergency providers, and first responder communities. We do not.
- The DHW is an agency under the purview of the governor's office for both compliance review (hosting, federal HIPPA regulations, etc.) and procurement oversight. We are a constitutional office.
- It is estimated that there (are/will be) 480,000 Idahoans enrolled in the state Medicaid program. This is a potentially huge initial user base to whom they have authority to communicate this tool's availability and value. We, again, do not.
 - Currently, those WITHOUT an HCD/Living Will and for whom life-sustaining measures are not a desire would subject the state to additional expense AGAINST their unexpressed desires and at taxpayer expense.
 - *This approach, however, would make it virtually impossible for the SOS to process the sheer volume of potential registrations within the current system and under current staffing levels.*

It is our recommendation and request that:

DHW take over the HCD Registry as soon as immediately possible by the passage of H0436, with a plan to improve statewide access for physicians and hospitals in a bi-directional manner similar to how electronic medical records are handled, and with similar access.

In the absence of a new approach and new solution to this rapidly growing problem, the office of the Secretary of State would need to request both additional funds for programming development and possibly an additional FTP to service this program in FY 2022, plus consider the implementation of the \$10 filing fee for each submission (allowing for contracting of services), to continue to service the obligation placed on this office by existing statute.



IDAHO
SECRETARY OF STATE
LAWRENCE DENNEY

WE DO NOT BELIEVE THAT TO BE THE MOST PRUDENT APPROACH OVERALL, however we foresee an inability meet our statutory and constitutional obligations otherwise.

Thank you,

Chad Houck, Chief Deputy Sec of State
cc: Lawrence Denney, ID Sec of State