

TITLE 39  
HEALTH AND SAFETY

CHAPTER 45  
THE MEDICAL CONSENT AND NATURAL DEATH ACT

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

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

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

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

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

[39-4501, added 2005, ch. 120, sec. 2, p. 380; am. 2006, ch. 214, sec. 1, p. 645; am. 2007, ch. 196, sec. 1, p. 579; am. 2012, ch. 302, sec. 1, p. 825.]

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

(1) "Advanced practice professional nurse" (APPN) means a professional nurse licensed in this state who has gained additional specialized knowledge, skills and experience through a nationally accredited program of study as defined by section 54-1402, Idaho Code, and is authorized to perform advanced nursing practice, which may include direct client care such as assessing, diagnosing, planning and prescribing pharmacologic and nonpharmacologic therapeutic and corrective measures, health promotion and preventive care as defined by rules of the board of nursing. The advanced practice professional nurse collaborates with other health professionals in providing health care.

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

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

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

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

(6) "Comfort care" means treatment and care to provide comfort and cleanliness. "Comfort care" includes:

(a) Oral and body hygiene;

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

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

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

(7) "Consent to care" includes refusal to consent to care and/or withdrawal of care.

(8) "Directive," "advance directive" or "health care directive" means a document that substantially meets the requirements of section 39-4510(1), Idaho Code, or is a "Physician Orders for Scope of Treatment" (POST) form or is another document which represents a competent person's authentic expression of such person's wishes concerning his or her health care.

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

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

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

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

(13) "Physician assistant" (PA) means any person, as defined in section 54-1803, Idaho Code, who is qualified by specialized education, training, experience and personal character and who has been licensed by the board of medicine to render patient services under the direction of a supervising and alternate supervising physician.

(14) "Physician orders for scope of treatment (POST) form" means a form that satisfies the requirements of section 39-4512A, Idaho Code.

(15) "Physician orders for scope of treatment (POST) identification device" means standardized jewelry which can be worn around the wrist, neck or ankle, and which has been approved by the department of health and welfare. Such jewelry shall be issued only to persons who have a POST form complying with section 39-4512A, Idaho Code, stating that such person has chosen "Do

Not Resuscitate: Allow Natural Death (No Code/DNR/DNAR) : No CPR or advanced cardiac life support interventions" or the equivalent choice.

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

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

[39-4502, added 2007, ch. 196, sec. 2, p. 580; am. 2012, ch. 302, sec. 2, p. 826.]

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

[(39-4503) 39-4502, added 2005, ch. 120, sec. 2, p. 381; am. and redesign. 2007, ch. 196, sec. 3, p. 581; am. 2012, ch. 302, sec. 3, p. 827; am. 2017, ch. 273, sec. 1, p. 713.]

39-4504. PERSONS WHO MAY GIVE CONSENT TO CARE FOR OTHERS. (1) Consent for the furnishing of hospital, medical, dental, surgical or other health care, treatment or procedures to any person who is not then capable of giving such consent as provided in this chapter or who is a minor may be given or refused in the order of priority set forth hereafter; provided however, that the surrogate decision maker shall have sufficient comprehension as required to consent to his or her own health care pursuant to the provisions of section 39-4503, Idaho Code; and provided further that the surrogate decision maker shall not have authority to consent to or refuse health care contrary to such person's advance directives, POST or wishes expressed by such person while the person was capable of consenting to his or her own health care:

- (a) The court appointed guardian of such person;
- (b) The person named in another person's "Living Will and Durable Power of Attorney for Health Care" pursuant to section 39-4510, Idaho Code, or a similar document authorized by this chapter if the conditions in such living will for authorizing the agent to act have been satisfied;
- (c) If married, the spouse of such person;
- (d) An adult child of such person;
- (e) A parent of such person;
- (f) The person named in a delegation of parental authority executed pursuant to section 15-5-104, Idaho Code;
- (g) Any relative of such person who represents himself or herself to be an appropriate, responsible person to act under the circumstances;
- (h) Any other competent individual representing himself or herself to be responsible for the health care of such person; or
- (i) If the person presents a medical emergency or there is a substantial likelihood of his or her life or health being seriously endangered

by withholding or delay in the rendering of such hospital, medical, dental, surgical or other health care to such person and the person has not communicated and is unable to communicate his or her treatment wishes, the attending health care provider may, in his or her discretion, authorize and/or provide such health care, as he or she deems appropriate, and all persons, agencies and institutions thereafter furnishing the same, including such health care provider, may proceed as if informed, valid consent therefor had been otherwise duly given.

(2) No person who, in good faith, gives consent or authorization for the provision of hospital, medical, dental, surgical or other health care, treatment or procedures to another person as provided by this chapter shall be subject to civil liability therefor.

(3) No health care provider who, in good faith, obtains consent from a person pursuant to either section 39-4503 or 39-4504(1), Idaho Code, shall be subject to civil liability therefor.

[(39-4504) 39-4503, added 2005, ch. 120, sec. 2, p. 381; am. and redesign. 2007, ch. 196, sec. 4, p. 581; am. 2012, ch. 302, sec. 4, p. 827.]

39-4505. BLOOD TESTING. (1) A physician may consent to ordering tests of a patient's or a deceased person's blood or other body fluids for the presence of blood-transmitted or body fluid-transmitted viruses or diseases without the prior consent of the patient if:

(a) There has been or is likely to be a significant exposure to the patient's or a deceased person's blood or body fluids by a person providing emergency or medical services to such patient which may result in the transmittal of a virus or disease; and

(b) The patient is unconscious or incapable of giving informed consent and the physician is unable to obtain consent pursuant to section 39-4504, Idaho Code.

(2) The department of health and welfare shall promulgate rules identifying the blood-transmitted or body fluid-transmitted viruses or diseases for which blood tests or body fluid tests can be ordered under this section and defining the term "significant exposure" as provided in this section.

(3) Results of tests conducted under this section which confirm the presence of a blood-transmitted or body fluid-transmitted virus or disease shall be reported to the director of the department of health and welfare in the name of the patient or deceased person. The department records containing such test results shall be used only by public health officials who must conduct investigations. The exposed person shall only be informed of the results of the test and shall not be informed of the name of the patient or deceased person. Protocols shall be established by hospitals to maintain confidentiality while disseminating the necessary test result information to persons who may have a significant exposure to blood or other body fluids and to maintain records of such tests to preserve the confidentiality of the test results.

(4) Any person who willfully or maliciously discloses the results of a test conducted under this section, except pursuant to a written authorization by the person whose blood was tested or by such person's authorized representative, or as otherwise authorized by law, shall be guilty of a misdemeanor.

[(39-4505) 39-4504, added 2005, ch. 120, sec. 2, p. 382; am. and redesign. 2007, ch. 196, sec. 5, p. 582.]

39-4506. SUFFICIENCY OF CONSENT. Consent, or refusal to consent, for the furnishing of health care, treatment or procedures shall be valid in all respects if the person giving or refusing the consent is sufficiently aware of pertinent facts respecting the need for, the nature of, and the significant risks ordinarily attendant upon such a person receiving such care, as to permit the giving or withholding of such consent to be a reasonably informed decision. Any such consent shall be deemed valid and so informed if the health care provider to whom it is given or by whom it is secured has made such disclosures and given such advice respecting pertinent facts and considerations as would ordinarily be made and given under the same or similar circumstances, by a like health care provider of good standing practicing in the same community. As used in this section, the term "in the same community" refers to that geographic area ordinarily served by the licensed general hospital at or nearest to which such consent is given.

[(39-4506) 39-4505, added 2005, ch. 120, sec. 2, p. 382; am. and redesign. 2007, ch. 196, sec. 6, p. 583; am. 2012, ch. 302, sec. 5, p. 828.]

39-4507. FORM OF CONSENT. It is not essential to the validity of any consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures that the consent be in writing or any other specific form of expression; provided however, when the giving of such consent is recited or documented in writing and expressly authorizes the care, treatment or procedures to be furnished, and when such writing or form has been executed or initialed by a person competent to give such consent for himself or another, such written consent, in the absence of convincing proof that it was secured maliciously or by fraud, is presumed to be valid for the furnishing of such care, treatment or procedures, and the advice and disclosures of the attending physician or dentist, as well as the level of informed awareness of the giver of such consent, shall be presumed to be sufficient.

[(39-4507) 39-4506, added 2005, ch. 120, sec. 2, p. 383; am. and redesign. 2007, ch. 196, sec. 7, p. 583.]

39-4508. RESPONSIBILITY FOR CONSENT AND DOCUMENTATION. Obtaining sufficient consent for health care is the duty of the attending health care provider upon whose order or at whose direction the contemplated health care, treatment or procedure is rendered; provided however, a licensed hospital and any employee of a health care provider, acting with the approval of such an attending or other individual health care provider, may perform the ministerial act of documenting such consent by securing the completion and execution of a form or statement in which the giving of consent for such care is documented by or on behalf of the person. In performing such a ministerial act, the hospital or health care provider employee shall not be deemed to have engaged in the practice of medicine or dentistry.

[(39-4508) 39-4507, added 2005, ch. 120, sec. 2, p. 383; am. and redesign. 2007, ch. 196, sec. 8, p. 583; am. 2012, ch. 302, sec. 6, p. 828.]

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

(1) The legislature recognizes the established common law and the fundamental right of competent persons to control the decisions relating to the rendering of their medical care, including the decision to have life-sustaining procedures withheld or withdrawn. The legislature further finds that modern medical technology has made possible the artificial

prolongation of human life beyond natural limits. The legislature further finds that persons are sometimes unable to express their desire to withhold or withdraw such artificial life prolongation procedures which provide nothing medically necessary or beneficial to the person because of the person's inability to communicate with the health care provider.

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

(3) It is the intent of the legislature to establish an effective means for such communication. It is not the intent of the legislature that the procedures described in sections 39-4509 through 39-4515, Idaho Code, are the only effective means of such communication, and nothing in sections 39-4509 through 39-4515, Idaho Code, shall impair or supersede any legal right or legal responsibility which a person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner, provided that this sentence shall not be construed to authorize any violation of section 39-4514(3), Idaho Code. Any authentic expression of a person's wishes with respect to health care should be honored.

(4) "Competent person" means any person who meets the requirements of section 39-4503, Idaho Code.

[(39-4509) 39-4508, added 2005, ch. 120, sec. 2, p. 383; am. and redesign. 2007, ch. 196, sec. 9, p. 584; am. 2012, ch. 302, sec. 7, p. 829; am. 2012, ch. 305, sec. 1, p. 844.]

39-4510. LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE. (1) Any competent person may execute a document known as a "Living Will and Durable Power of Attorney for Health Care." Such document shall be in substantially the following form, or in another form that contains the elements set forth in this chapter. Any portions of the "Living Will and Durable Power of Attorney for Health Care" which are left blank by the person executing the document shall be deemed to be intentional and shall not invalidate the document.

LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Date of Directive: .....

Name of person executing Directive:REPLACE DOL TAG HERE

Address of person executing Directive:REPLACE DOL TAG HERE

A LIVING WILL

A Directive to Withhold or to Provide Treatment

1. I willfully and voluntarily make known my desire that my life shall not be prolonged artificially under the circumstances set forth below. This Directive shall only be effective if I am unable to communicate my instructions and:

- a. I have an incurable or irreversible injury, disease, illness or condition, and a medical doctor who has examined me has certified:

1. That such injury, disease, illness or condition is terminal; and
2. That the application of artificial life-sustaining procedures would serve only to prolong artificially my life; and
3. That my death is imminent, whether or not artificial life-sustaining procedures are utilized; or

b. I have been diagnosed as being in a persistent vegetative state.

In such event, I direct that the following marked expression of my intent be followed, and that I receive any medical treatment or care that may be required to keep me free of pain or distress.

Check one box and initial the line after such box:

..... I direct that all medical treatment, care and procedures necessary to restore my health and sustain my life be provided to me. Nutrition and hydration, whether artificial or nonartificial, shall not be withheld or withdrawn from me if I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness or condition.

OR

..... I direct that all medical treatment, care and procedures, including artificial life-sustaining procedures, be withheld or withdrawn, except that nutrition and hydration, whether artificial or nonartificial shall not be withheld or withdrawn from me if, as a result, I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness or condition, as follows: (If none of the following boxes are checked and initialed, then both nutrition and hydration, of any nature, whether artificial or nonartificial, shall be administered.)

Check one box and initial the line after such box:

- A.  ..... Only hydration of any nature, whether artificial or nonartificial, shall be administered;
- B.  ..... Only nutrition, of any nature, whether artificial or nonartificial, shall be administered;
- C.  ..... Both nutrition and hydration, of any nature, whether artificial or nonartificial shall be administered.

OR

..... I direct that all medical treatment, care and procedures be withheld or withdrawn, including withdrawal of the administration of artificial nutrition and hydration.

2. If I have been diagnosed as pregnant, this Directive shall have no force during the course of my pregnancy.

3. I understand the full importance of this Directive and am mentally competent to make this Directive. No participant in the making of this Directive or in its being carried into effect shall be held responsible in any way for complying with my directions.

4. Check one box and initial the line after such box:

..... I have discussed these decisions with my physician, advanced practice professional nurse or physician assistant and have also completed a Physician Orders for Scope of Treatment (POST) form that contains directions that may be more specific than, but are compatible with, this Directive. I hereby approve of those orders and incorporate them herein as if fully set forth.

OR

..... I have not completed a Physician Orders for Scope of Treatment (POST) form. If a POST form is later signed by my physician, advanced practice professional nurse or physician assistant, then this living will shall be deemed modified to be compatible with the terms of the POST form.

A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

1. DESIGNATION OF HEALTH CARE AGENT. None of the following may be designated as your agent: (1) your treating health care provider; (2) a nonrelative employee of your treating health care provider; (3) an operator of a community care facility; or (4) a nonrelative employee of an operator of a community care facility. If the agent or an alternate agent designated in this Directive is my spouse, and our marriage is thereafter dissolved, such designation shall be thereupon revoked.

I do hereby designate and appoint the following individual as my attorney in fact (agent) to make health care decisions for me as authorized in this Directive. (Insert name, address and telephone number of one individual only as your agent to make health care decisions for you.)

Name of Health Care Agent:REPLACE DOL TAG HERE

Address of Health Care Agent:REPLACE DOL TAG HERE

Telephone Number of Health Care Agent:REPLACE DOL TAG HERE

For the purposes of this Directive, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service or procedure to maintain, diagnose or treat an individual's physical condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this portion of this Directive, I create a durable power of attorney for health care. This power of attorney shall not be affected by my subsequent incapacity. This power shall be effective only when I am unable to communicate rationally.

3. GENERAL STATEMENT OF AUTHORITY GRANTED. I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this Directive or otherwise made known to my agent including, but not limited to, my desires concerning obtaining or refusing or withdrawing artificial life-sustaining care, treatment, services and procedures, including such desires set forth in a living



will, Physician Orders for Scope of Treatment (POST) form, or similar document executed by me, if any. (If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning artificial life-sustaining care, treatment, services and procedures. You can also include a statement of your desires concerning other matters relating to your health care, including a list of one or more persons whom you designate to be able to receive medical information about you and/or to be allowed to visit you in a medical institution. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this Directive, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.) In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated in my Physician Orders for Scope of Treatment (POST) form, a living will, or similar document executed by me, if any. Additional statement of desires, special provisions, and limitations:.....(You may attach additional pages or documents if you need more space to complete your statement.)

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH.

A. General Grant of Power and Authority. Subject to any limitations in this Directive, my agent has the power and authority to do all of the following: (1) Request, review and receive any information, verbal or written, regarding my physical or mental health including, but not limited to, medical and hospital records; (2) Execute on my behalf any releases or other documents that may be required in order to obtain this information; (3) Consent to the disclosure of this information; and (4) Consent to the donation of any of my organs for medical purposes. (If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

B. HIPAA Release Authority. My agent shall be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160 through 164. I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other

covered health care provider, any insurance company, and the MIB Group, Inc. (formerly the Medical Information Bureau, Inc.) or other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse. The authority given my agent shall supersede any other agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

6. SIGNING DOCUMENTS, WAIVERS AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this Directive to make, my agent has the power and authority to execute on my behalf all of the following: (a) Documents titled, or purporting to be, a "Refusal to Permit Treatment" and/or a "Leaving Hospital Against Medical Advice"; and (b) Any necessary waiver or release from liability required by a hospital or physician.

7. DESIGNATION OF ALTERNATE AGENTS. (You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1 above, in the event that agent is unable or ineligible to act as your agent. If an alternate agent you designate is your spouse, he or she becomes ineligible to act as your agent if your marriage is thereafter dissolved.) If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this Directive, such persons to serve in the order listed below:

A. First Alternate Agent:

NameREPLACE DOL TAG HERE

AddressREPLACE DOL TAG HERE

Telephone NumberREPLACE DOL TAG HERE

B. Second Alternate Agent:

NameREPLACE DOL TAG HERE

AddressREPLACE DOL TAG HERE

Telephone NumberREPLACE DOL TAG HERE

C. Third Alternate Agent:

NameREPLACE DOL TAG HERE

AddressREPLACE DOL TAG HERE

Telephone NumberREPLACE DOL TAG HERE

8. PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney for health care.

DATE AND SIGNATURE OF PRINCIPAL. (You must date and sign this Living Will and Durable Power of Attorney for Health Care.)

I sign my name to this Statutory Form Living Will and Durable Power of Attorney for Health Care on the date set forth at the beginning of this Form at..... (City, State).....

.....  
Signature

(2) A health care directive meeting the requirements of subsection (1) of this section may be registered with the secretary of state pursuant to the provisions of section 39-4515, Idaho Code. Failure to register the health care directive shall not affect the validity of the health care directive.

[39-4510, added 2005, ch. 120, sec. 2, p. 384; am. 2006, ch. 67, sec. 3, p. 203; am. 2007, ch. 196, sec. 11, p. 584; am. 2012, ch. 302, sec. 8, p. 830.]

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

- (a) By being intentionally canceled, defaced, obliterated or burned, torn, or otherwise destroyed by the maker thereof, or by some person in his presence and by his direction;
- (b) By a written, signed revocation of the maker thereof expressing his intent to revoke;
- (c) By an oral expression by the maker thereof expressing his intent to revoke; or
- (d) By any other action that clearly manifests the maker's intent to revoke the advance directive.

(2) The maker of the revoked advance directive is responsible for notifying his health care provider of the revocation. A health care provider who does not have actual knowledge of the revocation is entitled to rely on an otherwise apparently valid advance directive as though it had not been revoked.

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

[(39-4511A) 39-4511, added 2005, ch. 120, sec. 2, p. 389; am. 2006, ch. 67, sec. 4, p. 208; am. 2007, ch. 196, sec. 12, p. 590; am. and redesign. 2012, ch. 302, sec. 9, p. 834; am. 2017, ch. 273, sec. 2, p. 714.]

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

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

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

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

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

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

[39-4511B, added 2012, ch. 302, sec. 10, p. 834; am. 2017, ch. 273, sec. 3, p. 714.]

39-4512. EXECUTION OF LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE. A "Living Will and Durable Power of Attorney for Health Care" shall be effective from the date of execution unless otherwise revoked. Nothing in this chapter shall be construed to prevent a competent person from reexecuting a "Living Will and Durable Power of Attorney for Health Care" at any time.

[39-4512, added 2005, ch. 120, sec. 2, p. 389.]

39-4512A. PHYSICIAN ORDERS FOR SCOPE OF TREATMENT (POST). (1) A physician orders for scope of treatment (POST) form is a health care provider order signed by a physician or by a PA or by an APPN. The POST form must also be signed by the person, or it must be signed by the person's surrogate decision maker provided that the POST form is not contrary to the person's last known expressed wishes or directions.

(2) The POST form shall be effective from the date of execution unless suspended or revoked.

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

(4) The attending physician, APPN or PA shall review the POST form:

(a) Each time the physician, APPN or PA examines the person, or at least every seven (7) days, for persons who are hospitalized; and

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

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

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

Failure to meet these review requirements does not affect the POST form's validity or enforceability. As conditions warrant, the physician, APPN or PA may issue a superseding POST form. The physician, APPN or PA shall, whenever practical, consult with the person or the person's surrogate decision maker.

(5) A person who has completed a POST form pursuant to the provisions of this section or for whom a POST form has been completed at the request of

his or her surrogate decision maker may wear a POST identification device as provided in section 39-4502(15), Idaho Code.

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

[39-4512A, added 2007, ch. 196, sec. 13, p. 590; am. 2012, ch. 302, sec. 11, p. 835.]

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

(2) A POST form that meets the requirements of section 39-4512A, Idaho Code, is deemed to meet the requirements of "Do Not Resuscitate (DNR)" orders at all Idaho health care facilities. Health care providers and emergency medical services personnel shall not require the completion of other forms in order for the person's wishes to be respected.

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

[39-4512B, added 2007, ch. 196, sec. 14, p. 591; am. 2012, ch. 302, sec. 12, p. 835.]

39-4512C. DUTY TO INSPECT. Health care providers and emergency medical services personnel shall make reasonable efforts to inquire as to whether the patient has completed a physician orders for scope of treatment (POST) form and inspect the patient for a POST identification device when presented with a situation calling for artificial life-sustaining treatment not caused by severe trauma or involving mass casualties and with no indication of homicide or suicide.

[39-4512C, added 2007, ch. 196, sec. 15, p. 591.]

39-4513. IMMUNITY. (1) No emergency medical services personnel, health care provider, facility, or individual employed by, acting as the agent of, or under contract with any such health care provider or facility shall be civilly or criminally liable or subject to discipline for unprofessional conduct for acts or omissions carried out or performed in good faith pursuant to the directives in a facially valid POST form, living will, DNR order or other health care directive, or pursuant to a POST identification device as provided for in section 39-4512A(5), Idaho Code.

(2) Any physician or other health care provider who for ethical or professional reasons is incapable or unwilling to conform to the desires of the person who may give consent to care for the patient under section 39-4504, Idaho Code, as expressed by the procedures set forth in this chapter may, subject to the requirements of section 39-4514(3), Idaho Code, withdraw without incurring any civil or criminal liability provided the physician or other health care provider, before withdrawal of his or her participation, makes a good faith effort to assist the person in obtaining the services of another physician or other health care provider who is willing to provide

care for the person in accordance with the person's expressed or documented wishes.

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

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

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

- (a) If they believe in good faith that the order has been revoked; or
- (b) To avoid oral or physical confrontation; or
- (c) If ordered to do so by the attending physician.

[39-4513, added 2005, ch. 120, sec. 2, p. 389; am. 2006, ch. 67, sec. 5, p. 208; am. 2007, ch. 196, sec. 16, p. 591; am. 2012, ch. 302, sec. 13, p. 836; am. 2012, ch. 305, sec. 2, p. 844.]

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

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

(3) Withdrawal of care. Assisted feeding or artificial nutrition and hydration may not be withdrawn or denied if its provision is directed by a competent patient in accordance with section 39-4503, Idaho Code, by a patient's health care directive under section 39-4510, Idaho Code, or by a patient's surrogate decision-maker in accordance with section 39-4504, Idaho Code. Health care necessary to sustain life or to provide appropriate comfort for a patient other than assisted feeding or artificial nutrition and hydration may not be withdrawn or denied if its provision is directed by a competent patient in accordance with section 39-4503, Idaho Code, by a patient's health care directive under section 39-4510, Idaho Code, or by a patient's surrogated decision-maker in accordance with section 39-4504, Idaho Code, unless such care would be futile care as defined in subsection (6) of this section. Except as specifically provided in chapters 3 and 4, title 66, Idaho Code, health care, assisted feeding or artificial nutrition and hydration, the denial of which is directed by a competent patient in accordance

with section 39-4503, Idaho Code, by a patient's health care directive under section 39-4510, Idaho Code, or by a patient's surrogate decision-maker in accordance with section 39-4504, Idaho Code, shall be withdrawn and denied in accordance with a valid directive. This subsection does not require provision of treatment to a patient if it would require denial of the same or similar treatment to another patient.

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

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

(a) CPR is contrary to the person's advance directive and/or POST;

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

(c) The person's surrogate decision-maker has communicated the person's conditional wishes not to receive CPR and those conditions have been met;

(d) The person has a proper POST identification device pursuant to section 39-4502(15), Idaho Code; or

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

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

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

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

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

(8) Insurance.

(a) The making of a living will and/or durable power of attorney for health care, physician orders for scope of treatment (POST) form, or DNR order pursuant to this chapter shall not restrict, inhibit or impair in any manner the sale, procurement or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of

artificial life-sustaining procedures from an insured person, notwithstanding any term of the policy to the contrary.

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

(9) Portability and copies.

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

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

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

(11) Rulemaking authority.

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

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

[39-4514, added 2005, ch. 120, sec. 2, p. 389; am. 2007, ch. 196, sec. 17, p. 592; am. 2012, ch. 302, sec. 14, p. 836; am. 2012, ch. 305, sec. 3, p. 845; am. 2013, ch. 151, sec. 1, p. 349; am. 2013, ch. 187, sec. 5, p. 450; am. 2017, ch. 273, sec. 4, p. 714.]

39-4515. HEALTH CARE DIRECTIVE REGISTRY. (1) The secretary of state shall create and maintain a health care directive registry. The health care directive registry shall be accessible through a website maintained by the secretary of state. The information contained in such registry shall include: the full name of the person executing the health care directive as stated in the directive, a file identification number unique to the person executing the directive, and the date the directive was executed.

(2) A person may register with the secretary of state a health care directive or a revocation of a health care directive by submitting the directive or revocation, completing and submitting an informational registration form as required by the secretary of state, and paying the secretary of state the fee which the secretary of state may require for registering a health care directive. The person who submits a document for registration pursuant to this section shall provide a return address.



(3) The secretary of state may charge and collect a fee not to exceed ten dollars (\$10.00) for the filing of a health care directive. All fees collected for the filing of a health care directive shall be deposited into the health care directive registry fund. No fee shall be charged for revoking a health care directive.

(4) Upon receipt of the registration form, the secretary of state shall:

(a) Create a digital reproduction of the health care directive or the revocation document and the informational registration form;

(b) Enter these digitally reproduced documents into the health care directive registry database;

(c) Assign each entry a unique identification file number and password;

(d) Return the original health care directive or revocation thereof to the person who submitted the document;

(e) Provide to the person who submitted the document a printed record of the information entered into the database, the identification file number under which it was entered, the password assigned to that identification file number; and

(f) Provide to the person who submitted the document a wallet-sized card that contains the name of the person executing the health care directive as it appears on the document, the identification file number assigned to the registration, and the password assigned to the identification file number.

(5) The registry established under this section shall be accessible only by entering the identification file number and the assigned password on the health care directive registry website.

(6) The secretary of state and those granted access to the health care directive registry shall use information contained in the registry only for purposes prescribed in this section. No person granted access to the registry shall use the information for commercial solicitations or in any fraudulent or improper way. Any commercial solicitation, fraudulent or improper use of information contained in the registry shall constitute a violation of this section and a violation of the Idaho consumer protection act.

(7) The secretary of state is not required to review a health care directive or revocation thereof to ensure that the document complies with any applicable and statutory requirements. Entry of a document into the health care directive registry pursuant to this section does not create a presumption favoring the validity of the document.

(8) The secretary of state shall delete a health care directive and the informational registration form from the health care directive registry when the secretary of state receives:

(a) A revocation of a health care directive signed by the maker thereof or that person's legal representative along with the identification file number and assigned password; or

(b) Verification from the bureau of health policy and vital statistics of the Idaho department of health and welfare that the person who executed the health care directive is deceased. The deletion under this paragraph shall be performed not less than once every two (2) years. The bureau of health policy and vital statistics of the Idaho department of health and welfare shall share its registry of death certificates with the secretary of state in order to permit the secretary of state to fulfill its responsibilities under this paragraph.

(9) Neither the secretary of state nor the state of Idaho shall be subject to civil liability for any claims or demands arising out of the administration or operation of the health care directive registry.

(10) There is hereby created in the state treasury the health care directive registry fund, the moneys of which shall be continuously appropriated, administered by the secretary of state and used to support, promote and maintain the health care directive registry. The fund shall consist of fees paid by persons registering health care directives under this section and income from investment from the fund, gifts, grants, bequests and other forms of voluntary donations. On notice from the secretary of state, the state treasurer shall invest and divest moneys in the fund, and moneys earned from such investment shall be credited to the fund.

[39-4515, added 2006, ch. 67, sec. 6, p. 209.]