

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 services and concerning what constitutes an informed consent for such health care services; and

(b) To provide certainty and clarity in the law of medical consent in the furtherance of high standards of health care services and their 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 services 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; am. 2023, ch. 307, sec. 1, p. 922.]

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

(1) "Advance care planning document," "advance directive," "directive," or "health care directive" means a document that:

(a) Substantially meets the requirements of section [39-4510](#)(1), Idaho Code;

(b) Is a POST form; or

(c) Is another document that represents a competent person's authentic expression of such person's wishes concerning health care services.

(2) "Advanced practice registered nurse" 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 non-pharmacologic therapeutic and corrective measures, health promotion, and preventive care as defined by rules of the board of nursing. The advanced practice registered nurse collaborates with other health professionals in providing health care services.

(3) "Artificial life-sustaining treatment" means any medical procedure or intervention that utilizes mechanical means to sustain or supplant a vital function. Artificial life-sustaining treatment 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. [that]

(4) "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.

(5) "Attending licensed independent provider" means the licensed independent practitioner who is selected by, or assigned to, the patient and who has primary responsibility for the treatment and care of the patient.

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

(7) "Comfort care" means treatment that may include oxygen and medicine to relieve pain and symptoms but does not include artificial life support, artificial hydration, and artificial nutrition. Comfort care may be provided in any setting.

(8) "Consent to treatment" means the agreement an individual makes to receive health care services. Consent to treatment also includes:

(a) Refusal to consent to treatment; and

(b) Consent to withholding or withdrawal of health care services.

[that]

(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 agent" means a person named in an advance care planning document to make medical decisions for another person.

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

(12) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease. Health care services may include hospital, medical, dental, surgical, or other services.

(13) "Licensed independent practitioner" means:

(a) An individual licensed as a physician or physician assistant pursuant to [chapter 18, title 54](#), Idaho Code; or

(b) A person licensed as an advanced practice registered nurse pursuant to [chapter 14, title 54](#), Idaho Code.

(14) "Nonbeneficial medical treatment" means treatment:

(a) For a patient whose death, according to the reasonable medical judgment of a licensed independent practitioner, is imminent within hours or a few days regardless of whether the treatment is provided; or

(b) That, according to the reasonable medical judgment of a licensed independent practitioner, will not benefit the patient's condition.

(15) "Persistent vegetative state" means a condition in which a patient:

(a) Is in a state of partial arousal rather than true awareness;

(b) Is completely unresponsive to psychological or physical stimuli;
and

(c) Displays no sign of higher brain function.

(16) "Physician" shall have the same meaning as provided in section [54-1803](#), Idaho Code.

(17) "Physician assistant" shall have the same meaning as provided in section [54-1803](#), Idaho Code.

(18) "POST form" means a form that satisfies the requirements of section [39-4512A](#), Idaho Code.

(19) "POST identification device" means jewelry worn around the wrist, neck, or ankle representing that the wearer has a POST form complying with section [39-4512A](#), Idaho Code, and 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. [that that]

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

[39-4502, added 2007, ch. 196, sec. 2, p. 580; am. 2012, ch. 302, sec. 2, p. 826; am. 2023, ch. 12, sec. 4, p. 50; am. 2023, ch. 307, sec. 2, p. 922.]

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 health care services is competent to consent thereto on his or her own behalf. Any health care provider may provide such health care services in reliance upon such a 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; am. 2023, ch. 307, sec. 3, p. 924.]

39-4504. PERSONS WHO MAY GIVE CONSENT TO CARE FOR OTHERS. (1) Consent for the furnishing of health care services 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 services 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 services contrary to such person's advance care planning document or wishes expressed by such person while the person was capable of consenting to his or her own health care services:

(a) The court-appointed guardian of such person;

(b) The person named in another person's advance care planning document as the health care agent of such person pursuant to section [39-4510](#), Idaho Code, or a similar document authorized by this chapter if the conditions in such advance care planning document 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;

(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 health care services to such person and the person has not communicated and is unable to communicate his or her wishes, the attending health care provider may, in his or her discretion, authorize or provide such health care services, 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 health care services 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 re-desig. 2007, ch. 196, sec. 4, p. 581; am. 2012, ch. 302, sec. 4, p. 827; am. 2023, ch. 307, sec. 4, p. 925.]

39-4505. BLOOD TESTING. (1) A licensed independent practitioner 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 licensed independent practitioner 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 that 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; am. 2023, ch. 307, sec. 5, p. 925.]

39-4506. SUFFICIENCY OF CONSENT. Consent, or refusal to consent, for the furnishing of health care services 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 services, 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.

[(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; am. 2023, ch. 307, sec. 6, p. 926.]

39-4507. FORM OF CONSENT. It is not essential to the validity of any consent for the furnishing of health care services 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 health care services 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 health care services, and the advice and disclosures of the attending licensed independent practitioner 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; am. 2023, ch. 307, sec. 7, p. 926.]

39-4508. RESPONSIBILITY FOR CONSENT AND DOCUMENTATION. Obtaining sufficient consent for health care services is the duty of the attending licensed independent practitioner upon whose order or at whose direction the contemplated health care services are rendered; provided however, a licensed hospital and any employee of a health care provider, acting with the approval of such an attending licensed independent practitioner 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 re-desig. 2007, ch. 196, sec. 8, p. 583; am. 2012, ch. 302, sec. 6, p. 828; am. 2023, ch. 307, sec. 8, p. 927.]

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 health care, including the decision to have artificial life-sustaining treatment 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-sustaining treatment that provides nothing medically necessary or beneficial to the person because of the person's inability to communicate with the attending licensed independent practitioner.

(2) In recognition of the dignity and privacy that 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 health care services and for the withdrawal of artificial life-sustaining treatment carried out even though that person is no longer able to communicate with the attending licensed independent practitioner.

(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 that a person may have to effect the withholding or withdrawal of artificial life-sustaining treatment 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 services 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 re-desig. 2007, ch. 196, sec. 9, p. 584; am. 2012, ch. 302, sec. 7, p. 829; am. 2012, ch. 305, sec. 1, p. 844; am. 2023, ch. 307, sec. 9, p. 927.]

39-4510. ADVANCE CARE PLANNING DOCUMENT. (1) Any competent person aged eighteen (18) years or older may execute an advance care planning document (ACPD). Such document must contain the mandatory elements set forth in this section. Any provisions of an ACPD that are left blank by a person executing the document shall be deemed intentional and shall not invalidate the document. The department of health and welfare may create and promulgate an optional form for the ACPD. Such form is not mandatory. To be considered a valid ACPD, a document must include:

- (a) The person's name, date of birth, telephone number, and mailing address;
- (b) The signature of the person for whom the ACPD is created or the authorized agent of such person; and
- (c) The date on which the document was signed.

(2) An ACPD may but is not required to include the following:

- (a) The electronic mail address of the person executing the ACPD;
- (b) Nomination of one (1) or more persons to act as a health care agent;
- (c) The name, mailing address, electronic mail address, and telephone number of any person nominated as a health care agent, as well as such person's relationship to the person executing the ACPD;
- (d) Resuscitation instructions;
- (e) Instructions regarding pregnancy;
- (g) Instructions for the release of information protected by the federal health insurance portability and accountability act;
- (h) Instructions for end-of-life care;
- (i) A description of treatment objectives;
- (j) The names and contact information of witnesses to the execution of the ACPD; and
- (k) Notarization.

[39-4510, added 2023, ch. 307, sec. 11, p. 928.]

39-4511A. REVOCATION OF ADVANCE CARE PLANNING DOCUMENT. (1) An advance care planning document (ACPD) may be revoked at any time by the maker thereof by any of the following methods:

- (a) By being intentionally canceled, defaced, obliterated, 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 by 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 ACPD.

(2) The maker of the revoked ACPD is responsible for notifying his health care providers 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 ACPD 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 an ACPD 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; am. 2023, ch. 307, sec. 12, p. 928.]

39-4511B. SUSPENSION OF ADVANCE CARE PLANNING DOCUMENT. (1) An advance care planning document (ACPD) 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 ACPD.

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

(3) There shall be no criminal or civil liability on the part of any person for the failure to act upon a suspension of an ACPD made pursuant to this chapter unless that person has actual knowledge of the suspension.

(4) Upon meeting the termination terms of the suspension, if any, as defined by the written or oral expression by the maker, the conditions set forth in the ACPD will resume.

[39-4511B, added 2012, ch. 302, sec. 10, p. 834; am. 2017, ch. 273, sec. 3, p. 714; am. 2023, ch. 307, sec. 13, p. 929.]

39-4512. EXECUTION OF ADVANCE CARE PLANNING DOCUMENT. An advance care planning document shall be effective from the date of execution until it is revoked or replaced. Nothing in this chapter shall be construed to prevent a competent person from reexecuting an advance care planning document at any time.

[39-4512, added 2005, ch. 120, sec. 2, p. 389; am. 2023, ch. 307, sec. 14, p. 929.]

39-4512A. PHYSICIAN ORDERS FOR SCOPE OF TREATMENT (POST). (1) A POST form is an order regarding scope of treatment signed by a licensed independent practitioner and a person or the person's surrogate decision-maker, provided that the POST form shall not be contrary to the person's last known expressed wishes or directions.

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

(3) A licensed independent practitioner must, 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) 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](#), Idaho Code.

(5) The department of health and welfare shall develop, promulgate, and revise as needed a recommended POST form.

[39-4512A, added 2007, ch. 196, sec. 13, p. 590; am. 2012, ch. 302, sec. 11, p. 835; am. 2023, ch. 307, sec. 15, p. 929.]

39-4512B. ADHERENCE TO POST PROTOCOL. (1) Health care providers shall comply with a person's 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](#), 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 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 licensed independent practitioners 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 licensed independent practitioner 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; am. 2023, ch. 307, sec. 16, p. 930.]

39-4512C. DUTY TO INSPECT. Health care providers shall make reasonable efforts to inquire as to whether the patient has completed a 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; am. 2023, ch. 307, sec. 17, p. 930.]

39-4513. IMMUNITY. (1) No licensed independent practitioner, emergency medical services personnel, other 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 advance care planning document, DNR order, or other health care directive, or pursuant to a POST identification device as provided for in section [39-4512A](#), Idaho Code.

(2) Any licensed independent practitioner or other health care provider who for ethical or professional reasons is unwilling to conform to the desires of the patient or the patient's surrogate decision-maker may, subject to the requirements of section [39-4514](#)(3), Idaho Code, withdraw without incurring any civil or criminal liability provided the licensed independent practitioner or other health care provider, before withdrawal of his or her participation, makes a good faith effort to assist the patient in obtaining the services of another licensed independent practitioner or other health care provider who is willing to provide care for the patient in accordance with the patient's expressed or documented wishes.

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

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

(5) Licensed independent practitioners and other health care providers 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;

- (b) To avoid oral or physical confrontation; or
- (c) If ordered to do so by a licensed independent practitioner.

[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; am. 2023, ch. 307, sec. 18, p. 931.]

39-4514. GENERAL PROVISIONS. (1) Application. Except as specifically provided in this section, sections [39-4510](#) through [39-4512B](#), Idaho Code, shall have no effect or be in any manner construed to apply to persons not executing an advance care planning document 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 health care services; 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 advance care planning document under section [39-4510](#), Idaho Code, or by a patient's surrogate decision-maker in accordance with section [39-4504](#), Idaho Code. Health care services 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 advance care planning document under section [39-4510](#), Idaho Code, or by a patient's surrogate decision-maker in accordance with section [39-4504](#), Idaho Code, unless such care would be nonbeneficial medical treatment. Except as specifically provided in chapters 3 and 4, [title 66](#), Idaho Code, health care services, 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 advance care planning document 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 advance care planning document.

(4) Comfort care. Persons caring for a person for whom artificial life-sustaining treatment 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 care planning document;
- (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](#), Idaho Code; or

(e) The licensed independent practitioner has executed a DNR order.

(6) Nonbeneficial medical treatment. Nothing in this chapter shall be construed to require nonbeneficial medical treatment; provided that this subsection does not authorize any violation of subsection (3) of this section.

(7) Existing advance care planning documents. Any advance care planning document that contained the elements set forth in this chapter at the time of execution 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 health care services.

(8) Insurance.

(a) The making of an advance care planning document or a 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 treatment from an insured person, notwithstanding any term of the policy to the contrary.

(b) No licensed independent practitioner, 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 an advance care planning document or a DNR order as a condition for being insured for, or receiving, health care services.

(9) Portability and copies.

(a) A 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 or suspension pursuant to section [39-4511A](#), Idaho Code, or new orders are issued by a licensed independent practitioner.

(b) A photostatic, facsimile, or electronic copy of a valid POST form may be treated as an original by a licensed independent practitioner or other health care provider.

(10) Registration. An advance care planning document or the revocation or replacement of an advance care planning document meeting the requirements of this chapter may be registered with the department of health and welfare pursuant to section [39-4515](#), Idaho Code. Failure to register the advance care planning document shall not affect the validity of the advance care planning document.

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

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; am. 2020, ch. 297, sec. 2, p. 858; am. 2023, ch. 307, sec. 19, p. 932.]

39-4515. HEALTH CARE DIRECTIVE REGISTRY. (1) The department of health and welfare shall create and maintain a health care directive registry. The health care directive registry shall be accessible through a web-based platform. The information contained in such registry shall include: the full name of the person executing the advance care planning document as stated in such document, the person's date of birth, telephone number, and mailing address, and the date the advance care planning document was executed. The registry shall be made available twenty-four (24) hours a day, seven (7) days a week and shall incorporate advance care planning documents previously submitted to the secretary of state. A person may register with the department of health and welfare an advance care planning document or a revocation of an advance care planning document by submitting the document or revocation, completing and submitting an informational registration form as required by the department of health and welfare, and paying the department the fee that the department may require for registering an advance care planning document. The person may register either online or by submitting the registration form in the mail. The person who submits a document for registration pursuant to this section by mail shall provide a return address. The department of health and welfare may charge and collect a fee not to exceed ten dollars (\$10.00) for the filing of an advance care planning document. All fees collected for the filing of an advance care planning document shall be deposited into the health care directive registry fund. No fee shall be charged for revoking an advance care planning document.

(2) The department of health and welfare 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 or 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.

(3) The department of health and welfare is not required to review an advance care planning document or replacement 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.

(4) The department of health and welfare shall delete an advance care planning document and the informational registration form from the health care directive registry when the department of health and welfare receives:

- (a) Written notification to remove an advance care planning document signed by the maker thereof or that person's surrogate decision-maker; or
- (b) Verification from the bureau of vital records and health statistics of the department of health and welfare that the person who executed the advance care planning document is deceased. The deletion under this paragraph shall be performed not less than once every two (2) years.

(5) Neither the department of health and welfare 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.

(6) 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 department of health and welfare, and used to support, promote, and maintain the health care directive registry. The fund shall consist of fees paid by persons registering advance care planning documents under this section and income from investment from the fund, gifts, grants, bequests, and other forms of voluntary donations. On notice from the department of health and welfare, 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; am. 2020, ch. 297, sec. 3, p. 860; am. 2023, ch. 307, sec. 20, p. 934.]

39-4516. LIFE-SUSTAINING TREATMENT FOR UNEMANCIPATED MINORS. (1) This section shall be known and may be cited as "Simon's Law."

(2) As used in this section:

(a) "Order not to resuscitate" means a licensed independent practitioner's order that resuscitative measures shall not be provided to a person under a licensed independent practitioner's care in the event the person is found to have cardiopulmonary cessation. Order not to resuscitate shall include but is not limited to orders written as "do not resuscitate," "do not allow resuscitation," "do not allow resuscitative measures," "DNAR," "DNR," "allow natural death," or "AND";

(b) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent licensed independent practitioner who is knowledgeable about a patient's case and the treatment possibilities with respect to the medical conditions involved; and

(c) "Unemancipated minor" means a minor who is not married or is not in active military service.

(3) An order not to resuscitate, an order to withhold artificial life-sustaining treatment, an order to withhold artificial nutrition and hydration, and a similar licensed independent practitioner's order shall not be instituted, either orally or in writing, unless at least one (1) parent or legal guardian of an unemancipated minor who is a patient or resident of a hospital or health care facility under whose care the unemancipated minor has been admitted has first been notified of the licensed independent practitioner's intent to institute such an order, and reasonable attempts have been made to notify any other parent or legal guardian, provided such parent or guardian is reasonably available and has custodial or visitation rights. Such notification must be provided both orally and in writing to at least one (1) parent or legal guardian of the unemancipated minor patient unless, in the licensed independent practitioner's reasonable medical judgment, the urgency of the decision requires reliance on only providing the information orally. Such notification must also include informing the parent or legal guardian of the forty-eight (48) hour provision in subsection (5) of this section. Unless the parent or legal guardian agrees with the implementation of the following orders, an order not to resuscitate, an order to withhold artificial life-sustaining treatment, an order to withhold artificial nutrition and hydration, or a similar licensed independent practitioner's order shall not be instituted, either orally or in writing, until at least

forty-eight (48) hours after oral and written notice have been provided to at least one (1) parent or legal guardian in accordance with this section. The provision of such notification must be contemporaneously recorded in the patient's medical record, specifying by whom and to whom the notification was given, the date and time of its provision, and whether it was provided in writing as well. When only one (1) parent or guardian has been notified, the nature of reasonable attempts to inform another parent or guardian, or the reason why such attempts were not made, must also be contemporaneously recorded in the unemancipated minor patient's medical record.

(4) The requirements of subsection (3) of this section shall not apply after seventy-two (72) hours of diligent efforts have been made by the health care provider, without success, to contact and notify at least one (1) known parent or legal guardian of the unemancipated minor patient of the intent to implement an order not to resuscitate, an order to withhold artificial life-sustaining treatment, an order to withhold artificial nutrition and hydration, or a similar licensed independent practitioner's order.

(5) Within forty-eight (48) hours of being notified of the intent to institute an order not to resuscitate, an order to withhold artificial life-sustaining treatment, an order to withhold artificial nutrition and hydration, or a similar licensed independent practitioner's order according to subsection (3) of this section, a parent or legal guardian shall be entitled to request a transfer of the unemancipated minor patient or resident to another facility or discharge. If a transfer is requested by a parent or legal guardian, the hospital or health care facility under whose care the unemancipated minor is admitted must continue provision of artificial life-sustaining treatment and life-sustaining artificial nutrition and hydration for a minimum of fifteen (15) days after the transfer request has been made known and make every reasonable effort to assist the requesting parent or legal guardian in the transfer process. The hospital or health care facility's duties and financial obligations regarding transfer shall be governed by existing state law, applicable rules or regulations, hospital policy, and relevant third-party payment contracts.

(6) If a transfer cannot be arranged and executed within fifteen (15) days from the parent's or guardian's request to transfer, an order not to resuscitate, an order to withhold artificial life-sustaining treatment, an order to withhold artificial nutrition and hydration, or a similar licensed independent practitioner's order may be instituted.

(7) Nothing in this section shall be construed to limit the rights pursuant to section [39-4503](#), [39-4504](#), [39-4509](#), or [39-4510](#), Idaho Code.

[39-4516, added 2020, ch. 337, sec. 1, p. 980; am. 2023, ch. 307, sec. 21, p. 935.]