TITLE 56
PUBLIC ASSISTANCE AND WELFARE

CHAPTER 21
CRISIS RESPONSE FOR PERSONS WITH A NEUROCOGNITIVE DISORDER

56-2101. LEGISLATIVE INTENT. It is the intent of the legislature that persons with a neurocognitive disorder who are in acute crisis due to an unidentified underlying medical condition can get the care they need and return home once the underlying medical condition is resolved. The legislature further intends that state agencies and community partners will collaborate to provide the most dignified care for persons with a neurocognitive disorder.

[(56-2101) 56-1901, added 2024, ch. 264, sec. 1, p. 918; am. and redesig. 2025, ch. 211, sec. 29, p. 1001.]

56-2102. GOVERNMENTAL LIABILITY. All provisions of chapter 9, title 6, Idaho Code, shall apply to any claim of tortious conduct on the part of a person acting or refusing to act in conformance with this chapter.

[(56-2102) 56-1902, added 2024, ch. 264, sec. 1, p. 918; am. and redesig. 2025, ch. 211, sec. 29, p. 1001.]

56-2103. DEFINITIONS. As used in this chapter:

(1) "Department" means the state department of health and welfare.

(2) "Health care provider" means a person licensed, certified, or otherwise authorized by law to administer health care services in the ordinary course of business or practice of a profession, including a physician, physician assistant, and advanced practice registered nurse.

(3) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(4) "Hospital" means a medical hospital as defined in section 39-1301, Idaho Code, including freestanding emergency departments.

(5) "Likely to injure themselves or others" means:

(a) A substantial risk that serious physical harm will be inflicted by the person upon their own person, as evidenced by threats of suicide or threats to inflict serious physical harm on themselves;

(b) A substantial risk that serious physical harm will be inflicted by the person upon another as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(c) The person lacks insight into the need for treatment and is unable or unwilling to comply with treatment based on the person's medical history, clinical observation, or other clinical evidence, and if the person does not receive and comply with treatment, there is a substantial risk that the person will continue to physically, emotionally, or cognitively deteriorate to the point that the person will, in the reasonably near future, inflict serious physical harm on themselves or another person.

(6) "Neurocognitive disorder" has the same meaning as provided in section 66-317(13), Idaho Code, except that for purposes of this chapter neu-

rocognitive disorder does not include decreased mental function due to inappropriate use or abuse of substances or medications.

(7) "Peace officer" means an employee of a law enforcement agency that is a part of or administered by the state or any political subdivision of the state and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic, or highway laws of the state or any political subdivision of the state. Peace officer also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho.

(8) "Protective custody" means when a peace officer detains a person and takes such person to a hospital. The peace officer shall make every reasonable effort to protect the person's health and safety while the peace officer takes reasonable steps to protect the peace officer's safety. Protective custody under this section is not an arrest.

[(56-2103) 56-1903, added 2024, ch. 264, sec. 1, p. 918; am. and redesig. 2025, ch. 211, sec. 29, p. 1001.]

56-2104. PROTECTIVE CUSTODY WITHOUT HEARING. (1) No person shall be taken into protective custody or detained as an alleged emergency patient for observation, diagnosis, evaluation, care or treatment of a neurocognitive disorder unless and until the court has ordered such apprehension and custody pursuant to section 56-2105, Idaho Code; provided, however, that a person may be taken into custody by a peace officer and placed in a hospital, or the person may be detained at a hospital at which the person presented or was brought to receive medical care, if the peace officer or a health care provider in such hospital has reason to believe that person has a neurocognitive disorder and the person's continued liberty poses an imminent danger to themselves or others; provided, under no circumstances shall the person be detained in a nonmedical unit used for the detention of persons charged with or convicted of penal offenses. Whenever a person is taken into custody or detained pursuant to this section without a court order, the evidence supporting the claim that the person with the neurocognitive disorder is an imminent danger to themselves or others must be presented to a duly authorized court within twenty-four (24) hours from the time the person was placed in custody or detained.

(2) If the court finds there is reason to believe the person is likely to have a neurocognitive disorder and is imminently dangerous to themselves or others pursuant to subsection (1) of this section, the court shall issue a temporary protective placement custody order requiring the person to be held in a hospital and requiring an examination of the person by a health care provider in such hospital within twenty-four (24) hours of the entry of the order of the court. Under no circumstances shall the person be detained in a nonmedical unit used for the detention of persons charged with or convicted of penal offenses.

(3) Where an examination is required pursuant to subsection (2) of this section, the health care provider in such hospital shall make findings and report to the court within twenty-four (24) hours of the examination.

(4) If at any time after the person is placed in protective custody the health care provider in such hospital conducting the examination determines the person no longer meets criteria for protective custody, the person shall be deemed to be a voluntary patient and subject to release.

(5) If the health care provider in such hospital finds, in an examination pursuant to this section, that the person is likely to have a neurocognitive disorder and is likely to injure themselves or others, the prosecuting attorney shall file, within twenty-four (24) hours of the examination of the person, a petition with the court requesting the person's continued protective placement pending review proceedings pursuant to section 56-2105, Idaho Code.

(6) Upon the receipt of such a petition, the court shall order the person's detention to await hearing, which shall be within five (5) days, including Saturdays, Sundays, and legal holidays, of the protective placement order. If no petition is filed within twenty-four (24) hours of the examination described in subsection (5) of this section, the person shall be released from the protective placement.

(7) Upon taking a person into custody, a good faith effort shall be made to provide notice to the person's legal guardian, parent, spouse, or adult next of kin of the person's physical whereabouts and the reasons for taking the person into custody.

(8) Nothing in this section shall preclude a hospital from transferring a person who has been detained pursuant to this section to another hospital that is willing to accept the transferred person for purposes of observation, diagnosis, evaluation, care, or treatment.

[(56-2104) 56-1904, added 2024, ch. 264, sec. 1, p. 918; am. 2025, ch. 180, sec. 1, p. 850; am. and redesig. 2025, ch. 211, sec. 29, p. 1002.]

56-2105. PROTECTIVE CUSTODY UPON COURT ORDER -- JUDICIAL PROCEDURE. (1) Proceedings by a hospital for the involuntary care and treatment of persons likely to have a neurocognitive disorder who are in acute crisis due to an underlying medical condition may be commenced by the filing of a written application for emergency protective placement with a court of competent jurisdiction by a friend, relative, spouse, or guardian of the person, by a health care provider practicing in a hospital, by a prosecuting attorney or other public official of a municipality, county, or the state of Idaho, or by the director of any facility in which such person may be located.

(2) The application for emergency protective placement shall state the name and last known address of the person; the name and address of the spouse, guardian, next of kin, or friend of the person; whether the person can be cared for privately in the event a hold is not ordered; whether the person is, at the time of the application, a voluntary patient; whether the person has applied for release; and a simple and precise statement of the facts showing that the person is likely to have a neurocognitive disorder and is either likely to injure themselves or others.

(3) Any such application for emergency protective placement shall be accompanied by a certificate of a health care provider practicing in such hospital stating that a health care provider practicing in such hospital has personally examined the person within the last fourteen (14) days and is of the opinion that the person has a neurocognitive disorder and is likely to injure themselves or others and lacks capacity to make informed decisions about treatment or by a written statement by the applicant that the person has refused to submit to examination by a health care provider practicing in such hospital.

(4) Upon receipt of an application for emergency protective placement, the court shall, within forty-eight (48) hours, order another health care provider practicing in such hospital to make a personal examination of the

person, or if the person has not been examined, the court shall appoint two (2) health care providers practicing in such hospital to make individual personal examinations of the person and may order the person to submit to an immediate examination. If neither is a physician, the court shall order a physical examination of the person. The health care provider practicing in such hospital shall report to the court findings within the following seventy-two (72) hours as to the medical condition of the person and the need for custody, care, or treatment by a hospital. The reports shall be in the form of written certificates that shall be filed with the court. The court may terminate the proceedings and dismiss the application without taking any further action in the event the reports are to the effect that the person is not likely to injure themselves or others due to a neurocognitive disorder. If the proceedings are terminated, the person shall be released immediately.

(5) If the health care provider practicing in such hospital certifies a belief that the person is likely to injure themselves or others due to a neurocognitive disorder, the judge shall issue an order authorizing any health officer, peace officer, or director of a facility to take the person to a hospital in the community in which the person is residing or to the nearest hospital to await the hearing, and for good cause, may authorize treatment during such period. Under no circumstances shall the person be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses.

(6) Upon receipt of such application for emergency protective placement by the health care provider practicing in such hospital, the court shall appoint a time and place for a hearing not more than seven (7) days from the receipt of such certificates and thereupon give written notice of such time and place of such hearing, together with a copy of the application, the health care provider's certificates, and notice of the person's right to be represented by an attorney or, if indigent, to be represented by a court-appointed attorney to the applicant, and to the person and the person's spouse, guardian, next of kin, or friend. With the consent of the person and the person's attorney, the hearing may be held immediately. Upon motion of the petitioner, or upon motion of the person and the person's attorney, and for good cause shown, the court may continue the hearing up to an additional seven (7) days during which time, for good cause shown, the court may authorize treatment.

(7) An opportunity to be represented by counsel shall be afforded to every person and, if neither the person nor others provide counsel, the court shall appoint counsel in accordance with chapter 8, title 19, Idaho Code, no later than the time the application for emergency protective placement is received by the court.

(8) If the protective placement is commenced under this section, the hearing shall be held in a manner and at a suitable place not likely to have a harmful effect on the person's physical or mental health. Venue for the hearing shall be in the county of residence of the person or in the county where the person was found immediately prior to commencement of such proceedings.

(9) In all proceedings under this section, any existing provision of the law prohibiting the disclosure of confidential communications between the person and the health care provider practicing in such hospital shall not apply and any health care provider practicing in such hospital who shall have examined the person shall be a competent witness to testify as to the person's condition.

(10) The person, the applicant, and any other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses. The person may, after consulting with the person's attorney, request to waive the person's presence at court. The court may waive the presence of the person if the mental or physical state of the person is such that the person's presence at the hearing would be detrimental to the person's health or would unduly disrupt the proceedings. A record of the proceedings shall be made as for other civil hearings. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure. The court shall receive all relevant and material evidence consistent with the rules of evidence.

(11) If, upon completion of the hearing and consideration of the record, and after consideration of reasonable alternatives, the court finds by clear and convincing evidence that the person likely has a neurocognitive disorder and is likely to injure themselves or others, the court shall order the person to be placed under protective custody of a suitable medical hospital for observation, care, and treatment for an indeterminate period of time not to exceed seven (7) days.

(12) The order of protective placement shall state whether the person lacks capacity to make informed decisions about treatment and the name and address of the person's attorney, spouse, guardian, adult next of kin, or friend.

(13) If the person has no spouse or guardian and if the person has property that may not be cared for by the person while confined at a hospital, the court shall appoint a guardian ad litem for the purpose of preserving the person's estate, pending further guardianship or conservatorship proceedings.

[(56-2105) 56-1905, added 2024, ch. 264, sec. 1, p. 920; am. and redesig. 2025, ch. 211, sec. 29, p. 1003.]

56-2106. DUTY TO REPORT INSTANCES OF EMERGENCY PROTECTIVE PLACEMENT. (1) Hospitals shall report all placements in which persons are placed in emergency protective placement pursuant to section 56-2104 or 56-2105, Idaho Code, or an involuntary hold pursuant to section 66-326 or 66-329, Idaho Code, but determined by a health care provider to likely have a neurocognitive disorder and not mental illness to the department every quarter. Reports shall be due to the department on the last day of the month immediately following the end of the quarter, with the first report due April 30, 2025.

(2) Any and all patient information submitted as a part of a report required under this section shall be protected and de-identified according to state and federal privacy laws.

(3) The hospital shall report:

(a) The number of emergency protective placements that were placed at a hospital by a health care provider;

(b) The number of emergency protective placements that were placed at a hospital by a peace officer;

(c) The number of emergency protective placements that were made for persons determined to have an underlying medical reason for placement in the hospital who also had a neurocognitive disorder;

(d) The number of emergency protective placements that were made for persons who did not have a neurocognitive disorder;

(e) For emergency protective placements made for persons who did not have a medical reason for placement in the hospital other than a neurocognitive disorder, how many had a length of stay after the emergency protective placement ended at the hospital that was:

(i) Between zero (0) and five (5) days;
(ii) Between six (6) and ten (10) days;
(iii) Between eleven (11) and thirty (30) days;
(iv) Between thirty-one (31) and sixty (60) days;
(v) Between sixty-one (61) and ninety (90) days; and
(vi) More than ninety (90) days; and

(f) For emergency protective placements made for persons who had a medical reason for placement in the hospital other than a neurocognitive disorder, how many had a length of stay after the emergency protective placement ended at the hospital that was:

(i) Between zero (0) and five (5) days;
(ii) Between six (6) and ten (10) days;
(iii) Between eleven (11) and thirty (30) days;
(iv) Between thirty-one (31) and sixty (60) days;
(v) Between sixty-one (61) and ninety (90) days; and
(vi) More than ninety (90) days.

(4) The department shall include a summary of all reports made pursuant to subsection (1) of this section in the annual report on Alzheimer's disease and related dementias as required in section 39-2701, Idaho Code.

[(56-2106) 56-1906, added 2024, ch. 264, sec. 1, p. 922; am. and redesig. 2025, ch. 211, sec. 29, p. 1004.]

56-2107. RESPONSIBILITY FOR COSTS OF PROTECTIVE CUSTODY AND CARE OF PATIENTS. (1) As used in this section:

(a) "Protective custody period" means a period that begins when a person is taken into custody pursuant to sections 56-2104 and 56-2105, Idaho Code, and ends when the patient is released from protective custody.

(b) "Routine medical care" includes care provided during the protective custody period that includes hospital costs, including routine board, room, and support services.

(c) "Third-party applicant" means a person other than a patient who completes, signs, and files an application for medicaid on behalf of the patient. A third-party applicant may be an adult who is a member of the patient's family or household, the patient's authorized representative, or, if the patient is incapacitated, someone, including an agent of a facility, who is acting responsibly for the patient.

(2) In instances where the person placed in protective custody is released with no underlying medical conditions in addition to the person's neurocognitive disorder having been identified, costs associated with the protective custody shall be the responsibility of the person placed in protective custody, subject to the department of health and welfare's determination of the person's ability to pay all or any part of such costs. The department shall:

(a) Determine costs pursuant to section 39-3140, Idaho Code;

(b) Inquire to determine if the person has insurance, including medical assistance provided under the state plan for medicaid as authorized by title XIX of the social security act, as amended; and

(c) Report its findings to the court.

(3) The court may order a person to pay costs consistent with this section.

(4) To the extent possible, the costs of routine medical care incurred during protective custody shall be assigned to a person's health insurance, including medical assistance provided under the state plan for medicaid as authorized by title XIX of the social security act, as amended. If a person may be eligible for medicaid but has not applied, a third-party applicant, including an agent at a hospital where a person is taken into custody or detained under this chapter, may submit a medicaid application to the department of health and welfare. The medical care provided while the person is in protective custody shall be presumed to be medically necessary for purposes of determining reimbursement for that care by third-party payers.

(5) Remaining costs for routine medical care shall be apportioned as follows:

(a) The department of health and welfare shall pay providers at the rate established by medicaid or its managed care organization. If, based on the department of health and welfare's determination under subsection (2) of this section, the person is able to pay a portion of the medical costs, the person shall reimburse the department consistent with the department's determination of costs pursuant to section 39-3140, Idaho Code; or

(b) Costs for routine medical care during the protective placement period shall be paid by the department of health and welfare, consistent with the process described in paragraph (a) of this subsection.

[(56-2107) 56-1907, added 2024, ch. 264, sec. 1, p. 922; am. and redesig. 2025, ch. 110, sec. 14, p. 582.]