

TITLE 66
STATE CHARITABLE INSTITUTIONS

CHAPTER 4
TREATMENT AND CARE OF THE DEVELOPMENTALLY DISABLED

66-401. LEGISLATIVE INTENT. It is hereby declared by the legislature of the state of Idaho in enacting [chapter 4, title 66](#), Idaho Code, that the citizens of Idaho who have developmental disabilities are entitled to be diagnosed, cared for, and treated in a manner consistent with their legal rights in a manner no more restrictive than for their protection and the protection of society, for a period no longer than reasonably necessary for diagnosis, care, treatment and protection, and to remain at liberty or be cared for privately except when necessary for their protection or the protection of society. Recognizing that every individual has unique needs and differing abilities, it is the purpose of the provisions of this chapter to promote the general welfare of all citizens by establishing a system which permits partially disabled and disabled persons to participate as fully as possible in all decisions which affect them, which assists such persons in meeting the essential requirements for their physical health and safety, protecting their rights, managing their financial resources, and developing or regaining their abilities to the maximum extent possible. The provisions of this chapter shall be liberally construed to accomplish these purposes.

[66-401, added 1982, ch. 59, sec. 7, p. 96; am. 2010, ch. 235, sec. 57, p. 597.]

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

- (1) "Adult" means an individual eighteen (18) years of age or older.
- (2) "Artificial life-sustaining procedures" means any medical procedure or intervention that utilizes mechanical means to sustain or supplant a vital function. Artificial life-sustaining procedures shall not include the administration of medication, and it shall not include the performance of any medical procedure deemed necessary to alleviate pain, or any procedure that could be expected to result in the recovery or long-term survival of the patient and his restoration to consciousness.
- (3) "Department" means the Idaho department of health and welfare.
- (4) "Director" means the director of the department of health and welfare.
- (5) "Developmental disability" means a chronic disability of a person that appears before the age of twenty-two (22) and:
 - (a) Is attributable to an impairment, such as intellectual disability, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and
 - (b) Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and
 - (c) Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services that are of lifelong or extended duration and individually planned and coordinated.

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

(7) "Evaluation committee" means an interdisciplinary team of at least three (3) individuals designated by the director or his designee to evaluate an individual as required by the provisions of this chapter. Each committee must include a physician licensed to practice medicine in the state of Idaho, a licensed social worker or a licensed professional counselor, and a clinical psychologist or such other individual who has a master's degree in psychology as designated by the department director. In a proceeding governed by section [66-404](#), Idaho Code, a licensed independent practitioner may be used instead of a physician. Each committee member must be specially qualified by training and experience in the diagnosis and treatment of persons with a developmental disability.

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

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

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

(a) A licensed physician or physician assistant pursuant to section [54-1803](#), Idaho Code; or

(b) A licensed advanced practice registered nurse pursuant to section [54-1402](#), Idaho Code.

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

(a) A substantial risk that physical harm will be inflicted by the respondent upon his own person as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or

(b) A substantial risk that physical harm will be inflicted by the respondent 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) That the respondent is unable to meet essential requirements for physical health or safety.

(12) "Manage financial resources" means the actions necessary to obtain, administer and dispose of real, personal, intangible or business property, benefits and/or income.

(13) "Meet essential requirements for physical health or safety" means the actions necessary to provide health care, food, clothing, shelter, personal hygiene and/or other care without which serious physical injury or illness would occur.

(14) "Minor" means an individual under age eighteen (18) years.

(15) "Protection and advocacy system" means the agency designated by the governor of the state of Idaho to provide advocacy services for people with disabilities pursuant to 42 U.S.C. 6042.

(16) "Respondent" means the individual subject to judicial proceedings authorized by the provisions of this chapter.

[66-402, added 1982, ch. 59, sec. 7, p. 97; am. 1989, ch. 193, sec. 16, p. 487; am. 1999, ch. 293, sec. 1, p. 733; am. 2000, ch. 274, sec. 151, p. 888; am. 2006, ch. 284, sec. 1, p. 872; am. 2010, ch. 235, sec. 58, p. 598; am. 2011, ch. 102, sec. 8, p. 264; am. 2017, ch. 273, sec. 5, p. 717; am. 2020, ch. 11, sec. 1, p. 17.]

66-403. COURT JURISDICTION. Judicial proceedings authorized by the provisions of this chapter shall be had in the district court of the county where the respondent resides or is found.

[66-403, added 1982, ch. 59, sec. 7, p. 98.]

66-404. PROCEEDINGS FOR APPOINTMENT OF GUARDIANS AND CONSERVATORS. (1) A person with a developmental disability or any person interested in his welfare may petition for a finding of legal disability or partial legal disability and appointment of a guardian or co-guardians, or conservator or co-conservators, or both.

(2) The petition shall:

- (a) State the names and addresses of the persons entitled to notice under subsection (4) of this section;
- (b) Describe the impairments showing the respondent is developmentally disabled, the respondent's ability to receive, evaluate and communicate information, and the respondent's ability to manage financial resources and meet essential requirements for physical health or safety;
- (c) State the nature and scope of guardianship and/or conservatorship services sought;
- (d) Describe the respondent's financial condition, including significant assets, income and ability to pay for the costs of judicial proceedings; and
- (e) State if the appointment is made by will pursuant to section [15-5-301](#), Idaho Code, and the name(s) and address(es) of the person(s) named in the will to be guardian.

(3) Upon filing of a petition, the court shall set a date for a hearing, appoint an attorney to represent the respondent in the proceedings unless the respondent has an attorney, and authorize an evaluation committee to examine the respondent, interview the proposed guardians and/or conservators and report to the court in writing. All reports shall be under oath or affirmation and shall comply with Idaho supreme court rules.

(4) Notice of the time and place of the hearing on the petition together with a copy of the petition shall be served no less than fourteen (14) days before the hearing on:

- (a) The respondent;
- (b) The respondent's spouse, parents and adult children, or if none, the respondent's closest relative, if any can be found; and
- (c) Any person who is currently serving as guardian, conservator or who is providing care for the respondent.

Notice shall be served personally if the person to be served can be found within the state. If the person to be served cannot be found within the state, service shall be accomplished by registered mail to such person's last known address.

(5) The respondent is entitled to be present at the hearing in person, to present evidence, call and cross-examine witnesses, and to see or hear all evidence in the proceeding.

(6) At the hearing the court shall:

- (a) Determine whether the respondent has a developmental disability;
- (b) Evaluate the respondent's ability to meet essential requirements for physical health or safety and manage financial resources;
- (c) Evaluate the ability of the proposed guardian and/or conservator to act in the respondent's best interests to manage the respondent's financial resources and meet essential requirements for the respondent's physical health or safety;
- (d) Determine the nature and scope of guardianship or conservatorship services necessary to protect and promote the respondent's well-being;
- (e) Evaluate the ability of the respondent or those legally responsible to pay the costs associated with the judicial proceedings and fix responsibility therefor; and
- (f) (i) As an alternative to appointing one (1) guardian or one (1) conservator, the court may appoint no more than two (2) co-guardians or no more than two (2) co-conservators if the court finds:
 1. The appointment of co-guardians or co-conservators will best serve the interests of the person with a developmental disability; and
 2. The persons to be appointed as co-guardians or co-conservators will work together cooperatively to serve the best interests of the person with a developmental disability.
- (ii) The parents of a person with a developmental disability shall have preference over all other persons for appointment as co-guardians or co-conservators, unless the court finds that the parents are unwilling to serve as co-guardians or co-conservators, or are not capable of adequately serving the best interests of the person with a developmental disability; and
- (iii) If the court appoints co-guardians or co-conservators, the court shall also determine whether the co-guardians or co-conservators:
 1. May act independently;
 2. May act independently but must act jointly in specified matters; or
 3. Must act jointly.

The determination by the court must be stated in the order of appointment and in the letters of guardianship or conservatorship.

(7) No individual shall be appointed as guardian or conservator of an incapacitated person unless all of the following first occurs:

- (a) The proposed guardian or conservator has submitted to and paid for a criminal history and background check conducted pursuant to section [56-1004A](#) (2) and (3), Idaho Code;
- (b) In the case of a petition for guardianship and pursuant to an order of the court so requiring, any individual who resides in the incapacitated person's proposed residence has submitted, at the proposed guardian's expense, to a criminal history and background check conducted pursuant to section [56-1004A](#) (2) and (3), Idaho Code;
- (c) The findings of such criminal history and background checks have been made available to the evaluation committee by the department of health and welfare; and

(d) The proposed guardian or conservator provided a report of his or her civil judgments and bankruptcies to the evaluation committee and all others entitled to notice of the guardianship or conservatorship proceeding pursuant to subsection (4) of this section.

(8) The provisions of paragraphs (a) and (d) of subsection (7) of this section shall not apply to an institution nor to a legal or commercial entity.

(9) Each proposed guardian and conservator and each appointed guardian and conservator shall immediately report any change in his or her criminal history and any material change in the information required by subsection (7) of this section to the evaluation committee, all others entitled to notice of the guardianship or conservatorship proceeding pursuant to subsection (4) of this section and to the court.

[66-404, added 1982, ch. 59, sec. 7, p. 98; am. 2009, ch. 86, sec. 2, p. 237; am. 2013, ch. 262, sec. 5, p. 644; am. 2017, ch. 261, sec. 6, p. 649; am. 2020, ch. 122, sec. 1, p. 377.]

66-404A. TEMPORARY GUARDIANS. (1) The court may appoint a temporary guardian if it finds:

- (a) A petition for guardianship under section [66-404](#), Idaho Code, has been filed, but a guardian has not yet been appointed;
- (b) Substantial evidence the person has a developmental disability;
- (c) By a preponderance of the evidence an emergency exists that will likely result in immediate and substantial harm to the person's health, safety or welfare; and
- (d) No other person appears to have the ability, authority and willingness to act.

(2) When a person is under guardianship, the court may appoint a temporary guardian if it finds:

- (a) Substantial evidence that the guardian is not performing the guardian's duties; and
- (b) By a preponderance of the evidence, an emergency exists that will likely result in immediate and substantial harm to the person's health, safety or welfare.

The authority of a guardian previously appointed by the court is suspended as long as a temporary guardian has authority. The court must hold a hearing before the expiration of the temporary guardian's authority and may enter any appropriate order.

(3) (a) A temporary guardian may be appointed without notice or hearing if the court finds from a statement under oath that the person will be immediately and substantially harmed before notice can be given or a hearing held.

(b) If the court appoints a temporary guardian without notice, notice of the appointment must be given to those designated in section [66-404](#)(4), Idaho Code, within seventy-two (72) hours after the appointment. The notice must inform interested persons of the right to request a hearing. The court must hold a hearing on the appropriateness of the appointment within ten (10) days after request by an interested person.

(c) The temporary guardian's authority may not exceed ninety (90) days, unless extended for good cause. The powers of the temporary guardian must be limited to those necessary to protect the immediate health, safety or welfare of the person until such time as a hearing may be held in the matter.

(d) A temporary guardian must make reports as the court requires.

[66-404A, added 2017, ch. 261, sec. 7, p. 652.]

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

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

(3) If it is determined that the respondent has a developmental disability and is unable to manage some financial resources or meet some essential requirements for physical health or safety, the court may appoint a partial guardian and/or partial conservator on behalf of the respondent. An order establishing partial guardianship or partial conservatorship shall define the powers and duties of the partial guardian or partial conservator so as to permit the respondent to meet essential requirements for physical health or safety and to manage financial resources commensurate with his ability to do so, and shall specify all legal restrictions to which he is subject. A respondent for whom a partial guardianship or partial conservatorship has been appointed under this chapter retains all legal and civil rights except those which have by court order been limited or which have been specifically granted to the partial guardian or partial conservator by the court.

(4) If it is determined that the respondent has a developmental disability and is unable to manage financial resources or meet essential requirements for physical health or safety even with the appointment of a partial guardian or partial conservator, the court may appoint a total guardian and/or total conservator.

(5) In the event that more than one (1) person seeks to be appointed guardian and/or conservator, the court shall appoint the person or persons most capable of serving on behalf of the respondent; the court shall not customarily or ordinarily appoint the department or any other organization or individual, public or private, that is or is likely to be providing services to the respondent. If an appointment of a guardian is made by will pursuant to section [15-5-301](#), Idaho Code, such appointment shall be entitled to preference as the guardian under this chapter, if the person so appointed by will is capable of serving on behalf of the respondent and the court finds that it is not in the best interests of the respondent to appoint a different person as guardian.

(6) Subject to the limitations of the provisions of subsection (7) of this section, guardians or conservators may have any of the duties and powers as provided in sections [15-5-312](#)(1) (a) through (d), [15-5-424](#) and [15-5-425](#), Idaho Code, and as specified in the order. A guardian shall be required to report to the court at least annually on the status of the respondent. A conservator shall be required to file with the court an inventory within ninety (90) days of appointment, an accounting at least annually, and a final accounting at the termination of the appointment of the conservator. All required inventories, accountings and reports shall be under oath or affirmation and shall comply with the Idaho supreme court rules. The court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

(7) Except as otherwise provided in subsection (8) of this section, a guardian appointed under this chapter shall have no authority to refuse or withhold consent for medically necessary treatment when the effect of withholding such treatment would seriously endanger the life or health and well-being of the respondent. To withhold or attempt to withhold consent for such treatment may be cause for removal of the guardian. Except as otherwise provided in subsection (8) of this section, no health care provider or caregiver shall, based on such guardian's direction or refusal to consent to care, withhold or withdraw such treatment for a respondent. If the health care provider cannot obtain valid consent for such medically necessary treatment from the guardian, the health care provider or caregiver shall provide the medically necessary treatment as authorized by section [39-4504](#) (1) (i), Idaho Code.

(8) A guardian appointed under this chapter may consent to withholding or withdrawing treatment other than appropriate nutrition or hydration to a respondent, and a health care provider may withhold or withdraw such treatment in reliance upon such consent, when in the treating LIP's reasonable medical judgment any of the following circumstances apply:

- (a) The attending LIP and at least one (1) other LIP certifies that the respondent is chronically and irreversibly comatose;
- (b) The treatment would merely prolong dying, would not be effective in ameliorating or correcting all of the respondent's life-threatening conditions, or would otherwise be futile in terms of the survival of the respondent; or
- (c) The treatment would be virtually futile in terms of the survival of the respondent and would be inhumane under such circumstances.

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

If adult protective services or the protection and advocacy system determines that withholding of medical treatment violates the provisions of this section, they may petition the court for an ex parte order to provide or continue the medical treatment in question. If the court finds, based on affidavits or other evidence, that there is probable cause to believe that the withholding of medical treatment in a particular case violates the provisions of this section, and that the life or health of the patient is endangered thereby, the court shall issue an ex parte order to continue or to provide the treatment until such time as the court can hear evidence from the parties involved. Petitions for court orders under this section shall be expedited by the courts and heard as soon as possible. No bond shall be required of a petitioner under this section.

(10) No partial or total guardian or partial or total conservator appointed under the provisions of this section may without specific approval of the court in a proceeding separate from that in which such guardian or conservator was appointed:

- (a) Consent to medical or surgical treatment the effect of which permanently prohibits the conception of children by the respondent unless the treatment or procedures are necessary to protect the physical

health of the respondent and would be prescribed for a person who does not have a developmental disability;

- (b) Consent to experimental surgery, procedures or medications; or
- (c) Delegate the powers granted by the order.

(11) Nothing in this section shall affect the rights of a competent patient or surrogate decision-maker to withhold or withdraw treatment pursuant to section [39-4514](#), Idaho Code, unless the patient is a respondent as defined in section [66-402](#), Idaho Code.

[66-405, added 1982, ch. 59, sec. 7, p. 100; am. 1999, ch. 293, sec. 2, p. 734; am. 2005, ch. 120, sec. 8, p. 394; am. 2007, ch. 196, sec. 19, p. 594; am. 2008, ch. 74, sec. 5, p. 198; am. 2009, ch. 86, sec. 3, p. 238; am. 2012, ch. 302, sec. 15, p. 838; am. 2013, ch. 262, sec. 6, p. 645; am. 2014, ch. 164, sec. 7, p. 465; am. 2017, ch. 273, sec. 6, p. 718.]

66-406. JUDICIAL PROCEDURE FOR COMMITMENT TO DIRECTOR. (1) Proceedings for the involuntary care and treatment of developmentally disabled persons by the department may be commenced by the filing of a written application with a court of competent jurisdiction by a friend, relative, spouse or guardian of the respondent, or by a licensed physician, prosecuting attorney or other public official, or the head of the facility in which the respondent may be.

(2) The application shall state the name and last known address of the respondent; the name and address of either the respondent's spouse, guardian, next of kin or friend; whether the respondent can be cared for privately in the event commitment is not ordered; and a simple and precise statement of facts showing that the respondent is developmentally disabled and likely to injure himself or others.

(3) Any application shall be accompanied by a report of an evaluation committee stating that the committee has examined the respondent within the last fourteen (14) days and is of the opinion that the respondent is developmentally disabled and likely to injure himself or others; or a written statement by the committee that the respondent has refused to submit to examination.

(4) Upon receipt of an application for commitment not accompanied by an evaluation committee report, the court shall, within forty-eight (48) hours, order the respondent to submit to an examination. The evaluation committee shall report to the court its findings within three (3) working days of the order.

(5) If it is determined by the evaluation committee that the respondent is developmentally disabled and likely to injure himself or others pending the hearing, the court may issue an order authorizing a department employee, peace officer, or head of a facility to take the respondent to a facility in the community in which the respondent is residing or to the nearest facility to await the hearing and for good cause may authorize treatment during such period subject to the provisions of section [66-412](#)(4), Idaho Code.

(6) Upon receipt of the application and evaluation committee report, the court shall appoint a time and place for a hearing which shall be held not more than seven (7) days from receipt of the report and give written notice of the time and place of the hearing together with a copy of the application, evaluation committee report, and notice of the respondent's right to be represented by an attorney, or if indigent, to be represented by a court-appointed attorney, to the applicant, to the respondent, and to either the respondent's spouse, guardian, next of kin or friend, if other than the appli-

cant. With the consent of the respondent and his attorney, the hearing may be held immediately. Upon motion for good cause shown and with the respondent's consent, the court may continue the hearing up to an additional fourteen (14) days.

(7) An opportunity to be represented by counsel shall be afforded to every respondent, and if neither the respondent nor others provide counsel, the court will appoint the counsel in accordance with [chapter 8, title 19](#), Idaho Code.

(8) The hearing shall be held at a facility, at the respondent's home, or at any other suitable place not likely to have a harmful effect on the respondent's physical or mental health.

(9) In all proceedings under the provisions of this section, any existing provision of law prohibiting the disclosure of confidential communications between any member of the evaluation committee and the respondent shall not apply.

(10) The respondent, the applicant, and any other person 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 respondent shall be required to be present at the hearing free from drugs likely to impair the respondent's ability to communicate or understand the proceedings, unless the court determines that the mental or physical state of the respondent is such that his presence at the hearing free from drugs would be detrimental to the respondent'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 an informal manner consistent with orderly procedure and rules of evidence.

(11) If, upon completion of the hearing and consideration of the record, the court finds by clear and convincing evidence that the respondent:

- (a) Is developmentally disabled; and
- (b) Because of such condition is likely to injure himself or others; and
- (c) Lacks capacity to make informed decisions about treatment;

the court shall order the respondent committed to the custody of the director for an indeterminate period of time not to exceed three (3) years. The director or his designee shall determine within forty-eight (48) hours the least restrictive available placement consistent with the needs of each respondent committed under the provisions of this section and make arrangement for placement in that setting.

(12) Nothing in the provisions of this chapter or in any rules or regulations adopted pursuant hereto shall be construed to authorize the commitment of an individual who can be properly cared for privately with the help of willing and able family or friends.

(13) The order of commitment shall state the name and address of the respondent's attorney, and either the respondent's spouse, guardian, adult next of kin or friend, if any.

[66-406, added 1982, ch. 59, sec. 7, p. 101.]

66-407. CHANGE IN DISPOSITION. (1) Upon the recommendation of the head of a facility providing services to a respondent committed to the custody of the director under section [66-406](#), Idaho Code, the director or his designee may redetermine the least restrictive available facility for any such respondent.

(2) Notice of any change in disposition shall be filed with the committing court, the respondent's attorney and either the respondent's spouse, guardian, adult next of kin or friend, if any.

(3) The respondent may appeal any change in disposition to a more restrictive level of care to the committing court or the court of the county in which such respondent is found within thirty (30) days of notice of the change in disposition. The court shall consider the treatment and need for protection of the respondent and may affirm or modify the change in disposition.

[66-407, added 1982, ch. 59, sec. 7, p. 103.]

66-408. PETITION FOR REEXAMINATION OF ORDER OF GUARDIANSHIP OR COMMITMENT. All respondents admitted to a residential facility upon application of their parent or guardian or committed to the director shall be entitled to an annual review of their placement by an evaluation committee upon request therefor by the respondent, the respondent's guardian or attorney. In addition, all respondents committed pursuant to section [66-406](#), Idaho Code, or for whom an order for guardianship or conservatorship has been issued pursuant to section [66-405](#), Idaho Code, shall be entitled to a reexamination of the order for or conditions of their commitment, guardianship or conservatorship on their own petition, or that of their legal guardian, parent, attorney or friend, to the district court of the county in which the order was issued or in which they are found. Upon receipt of the petition, the court shall determine whether the conditions justifying the order or its conditions continue to exist.

[66-408, added 1982, ch. 59, sec. 7, p. 103; am. 2010, ch. 235, sec. 59, p. 599.]

66-409. AUTHORITY TO ADMIT DEVELOPMENTALLY DISABLED PERSONS. The head of any facility licensed under state law, or a practitioner granted admitting privileges by the facility's bylaws and other process by which the facility's governing body and medical staff exercise oversight, such as through credentialing and competency review, is authorized to admit for observation, diagnosis, care or treatment any developmentally disabled person for services provided by that facility.

[66-409, added 1982, ch. 59, sec. 7, p. 103; am. 2017, ch. 278, sec. 4, p. 729.]

66-410. PROCEDURE UPON APPLICATION TO A RESIDENTIAL FACILITY. Upon receipt of an application for admission to a residential facility, the head of such facility licensed under state law shall have the application reviewed or approved by an evaluation committee. The facility head may admit any developmentally disabled individual pending review by the evaluation committee for a period not to exceed thirty (30) days. The evaluation committee shall determine whether the individual is in need of observation, diagnosis, care or treatment at the facility, whether there are other facilities or services less restrictive of personal liberty available and interview and examine the individual for whom admission is sought. The evaluation committee must carefully probe the individual's background using all available sources including, but not limited to, parents, schools and other social agencies. If the head of the facility determines that the

individual is not in need of observation, diagnosis, care or treatment at the facility, or determines that there are other facilities or services less restrictive of personal liberty available, the head of the facility shall, within three (3) days, discharge the individual.

[66-410, added 1982, ch. 59, sec. 7, p. 103.]

66-411. REVIEW AND DISCHARGE. (1) The head of each residential facility shall, following admission, examine or cause to be examined every resident, and determine whether to discharge each resident from the facility. A similar review shall be conducted annually thereafter. A report of each review and determination of every respondent committed to the director shall be sent to the committing court, respondent's attorney, and either the respondent's spouse, guardian, adult next of kin or friend, or if none, the respondent's resident representative.

(2) Whenever it is determined that the respondent is no longer developmentally disabled or likely to injure himself or others, the director or his designee shall terminate the commitment and make a report thereof to the court which issued the order.

[66-411, added 1982, ch. 59, sec. 7, p. 104.]

66-412. RIGHTS IN FACILITIES. (1) Every developmentally disabled person admitted to any facility shall be entitled to humane care and treatment.

(2) A developmentally disabled person shall not be put in isolation. Mechanical restraints shall not be applied unless it is determined to be necessary for the safety of that person or the safety of others. Every use of a mechanical restraint, or time out for therapeutic purposes, and the reasons therefore [therefor], shall be made a part of the permanent record of the person under the signature of the facility head.

(3) Every developmentally disabled person has the following rights:

- (a) To be free from mental and physical abuse including that which arises from acts of negligence;
- (b) To reside in the environment or setting that is least restrictive of personal liberties in which appropriate treatment can be provided;
- (c) To communicate by sealed mail, telephone, or otherwise with persons inside or outside the facility, to have access to reasonable amounts of letter writing material and postage and to have access to private areas to make telephone calls and receive visitors;
- (d) To receive visitors at all reasonable times and to associate freely with persons of his own choice;
- (e) To wear his own clothes, keep and use his own personal possessions including toilet articles, keep and be allowed to spend a reasonable sum of his own money for personal expenses and small purchases, and have access to individual storage space for his own use;
- (f) To have free access to established procedures to voice grievances and to recommend changes in the policies and/or services being offered at the facility;
- (g) To practice his religion;
- (h) To be informed of his medical and habilitative condition, of services available in the facility and the charges therefor;
- (i) To have reasonable access to all records concerning himself; and
- (j) Unless limited by prior court order, to exercise all civil rights, including the right to dispose of property, except property described

in subsection (e) of this section, execute instruments, make purchases, enter into contractual arrangements, and vote.

(4) Adult and emancipated minor developmentally disabled individuals or a parent or guardian with authority to consent to treatment with respect to the minor child or ward, shall have the right to refuse specific modes of treatment or habilitation. The head of a facility may deny the right to refuse treatment or habilitation only in cases of emergency or when a court has determined that an adult or emancipated minor lacks the capacity to make informed decisions about treatment and there is no guardian with authority to consent to treatment. A statement explaining the reasons for any such denial shall immediately be entered in the individual's permanent record and in the case of respondents committed under section [66-406](#), Idaho Code, copies of the statement shall be sent to the committing court, the respondent's attorney and either the respondent's spouse, guardian, adult next of kin or friend.

(5) A list of the rights contained in this section and section [66-413](#), Idaho Code, shall be prominently posted in all facilities and explained as far as possible to each developmentally disabled individual.

[66-412, added 1982, ch. 59, sec. 7, p. 104.]

66-413. INDIVIDUAL TREATMENT PLAN. (1) The head of a facility shall establish or obtain for each developmentally disabled resident or client a current individual treatment plan. This plan shall be placed in the resident's or client's permanent file and shall describe:

- (a) The resident's or client's disabilities;
- (b) The goals of care and treatment at the facility;
- (c) The modes of care and treatment to be employed;
- (d) The location least restrictive of personal liberty in which appropriate services can be provided;
- (e) The written approval of the plan by the head of the facility or his designee;
- (f) Changes to the original plan;
- (g) A discharge plan including, if the resident or client has been committed to the director, a recommendation concerning legal status upon discharge; and
- (h) A statement by the head of the facility or his designee that the plan has been explained, as far as possible, to the resident or client and that a copy of the plan and of subsequent changes has been mailed to the last known address of the known parents, legal guardian or next of kin of the resident or client.

(2) Each facility shall take reasonable efforts to include the resident or client and parents of minor residents or clients, legal guardians of clients or residents who lack capacity to make informed decisions about treatment or the resident's or client's duly appointed resident representative in the development of the plan, and provide for a system by which the client or resident may secure an independent review of the treatment plan.

(3) If, in the judgment of the head of any facility, the client or resident is unable to manage financial resources, is unable to meet essential requirements for physical health or safety, or lacks capacity to make informed decisions, he shall encourage guardianship or conservatorship proceedings under the provisions of this chapter.

[66-413, added 1982, ch. 59, sec. 7, p. 105.]

66-414. DEVELOPMENTALLY DISABLED PERSONS WITH ASSETS SUFFICIENT TO PAY EXPENSES -- LIABILITY OF RELATIVES. (1) When a developmentally disabled person has been admitted to a state operated facility voluntarily or involuntarily, the director of the facility may cause an inquiry to be made as to the financial circumstances of that person and of the relatives of that person as legally liable for his support, and if it is found that the person or his relatives are able to pay the charges for the care and treatment of the resident or client in the facility in whole or in part, it shall be the duty of the head of the facility to collect the expenses and charges and if necessary to institute in the name of the state a civil suit against the person or persons so liable.

(2) The respondent in judicial proceedings authorized by the provisions of this chapter in which a total or partial guardian, total or partial conservator or commitment has been appointed or ordered, or the applicant in such proceedings if no total or partial guardian, total or partial conservator or commitment is appointed or ordered shall be legally liable for the costs associated with such proceedings, including court appointed counsel and evaluation.

(3) The following relatives shall be bound by law to provide for the expenses and charges for judicial proceedings and for the care and treatment of such developmentally disabled persons: the husband for the wife, the wife for the husband and the parent for his or her minor child or children.

[66-414, added 1982, ch. 59, sec. 7, p. 106.]

66-415. RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP OR CONSERVATORSHIP. The receipt and acceptance of a foreign guardianship or conservatorship of a developmentally disabled person shall be regulated as set forth under [chapter 9, title 15](#), Idaho Code.

[66-415, added 2008, ch. 73, sec. 6, p. 194.]

66-416. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO A FOREIGN JURISDICTION. The transfer of a guardianship or conservatorship of a developmentally disabled person to a foreign jurisdiction shall be regulated as set forth under [chapter 10, title 15](#), Idaho Code.

[66-416, added 2008, ch. 73, sec. 6, p. 194.]

66-417. TEMPORARY RECOGNITION OF FOREIGN GUARDIANSHIP OR CONSERVATORSHIP OF DEVELOPMENTALLY DISABLED PERSON. The temporary recognition of a foreign guardianship or conservatorship of a developmentally disabled person shall be regulated as set forth under [chapter 11, title 15](#), Idaho Code.

[66-417, added 2008, ch. 73, sec. 6, p. 194.]