

IN THE SENATE

SENATE BILL NO. 1294

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO THE MEDICAL CONSENT AND NATURAL DEATH ACT; AMENDING SECTION 39-4501, IDAHO CODE, TO REVISE PROVISIONS RELATING TO PEOPLE WITH MENTAL ILLNESS OR DEVELOPMENTAL DISABILITY AND TO REVISE TERMINOLOGY; AMENDING SECTION 39-4502, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-4503, IDAHO CODE, TO REVISE PROVISIONS RELATING TO PEOPLE WHO MAY CONSENT TO THEIR OWN CARE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-4504, IDAHO CODE, TO REVISE PROVISIONS RELATING TO PEOPLE WHO MAY GIVE CONSENT TO CARE FOR OTHERS, TO PROVIDE FOR LIMITS ON AUTHORITY FOR A SURROGATE DECISION MAKER AND TO REVISE WHO CAN BE A SURROGATE DECISION MAKER; AMENDING SECTION 39-4506, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-4508, IDAHO CODE, TO REVISE PROVISIONS RELATING TO RESPONSIBILITY FOR CONSENT AND DOCUMENTATION AND TO REVISE TERMINOLOGY; AMENDING SECTION 39-4509, IDAHO CODE, TO REVISE TERMINOLOGY AND TO REVISE A DEFINITION; AMENDING SECTION 39-4510, IDAHO CODE, TO PROVIDE FOR ADVANCED PRACTICE PROFESSIONAL NURSES AND PHYSICIAN ASSISTANTS IN INCORPORATION OF A LIVING WILL AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-4511, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REVISE PROVISIONS RELATING TO DOCUMENTS THAT CAN REVOKE A LIVING WILL AND TO REVISE TERMINOLOGY; AMENDING CHAPTER 45, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-4511B, IDAHO CODE, TO PROVIDE FOR SUSPENSION AND RESUMPTION OF A LIVING WILL; AMENDING SECTION 39-4512A, IDAHO CODE, TO REVISE PROVISIONS RELATING TO WHO CAN SIGN AND REVIEW A PHYSICIAN ORDER FOR SCOPE OF TREATMENT FORM, TO REVISE PROVISIONS RELATING TO WHEN A PHYSICIAN ORDER FOR SCOPE OF TREATMENT SHALL BE EFFECTIVE, TO REVISE PROVISIONS RELATING TO WHO MAY WEAR A PHYSICIAN ORDER FOR SCOPE OF TREATMENT IDENTIFICATION DEVICE, TO REVISE TERMINOLOGY AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 39-4512B, IDAHO CODE, TO PROVIDE CODE REFERENCES, TO REVISE TERMINOLOGY AND TO PROVIDE FOR A DO NOT RESUSCITATE ORDER IN CONJUNCTION WITH THE PROVISIONS OF THIS CHAPTER; AMENDING SECTION 39-4513, IDAHO CODE, TO PROVIDE FOR A DO NOT RESUSCITATE ORDER OR PHYSICIAN ORDER FOR SCOPE OF TREATMENT IDENTIFICATION DEVICE IN IMMUNITY FROM LIABILITY AND TO REVISE TERMINOLOGY; AMENDING SECTION 39-4514, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES, TO REVISE PROVISIONS RELATING TO PRESUMED CONSENT TO RESUSCITATION AND EXISTING DIRECTIVES AND TO REVISE TERMINOLOGY; AND AMENDING SECTION 66-405, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-4501, Idaho Code, be, and the same is hereby amended to read as follows:

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

3 (a) To provide and codify Idaho law concerning consent for the furnish-
4 ing of hospital, medical, dental, ~~or~~ surgical and other health care,
5 treatment or procedures, and concerning what constitutes an informed
6 consent for such health care, treatment or procedures; and

7 (b) To provide certainty and clarity in the law of medical consent in
8 the furtherance of high standards of health care and its ready avail-
9 ability in proper cases.

10 (2) Nothing in this chapter shall be deemed to amend or repeal the pro-
11 visions of chapter 3 or chapter 4, title 66, Idaho Code, as those provisions
12 pertain to hospitalization or commitment of the mentally ill people with
13 mental illness or developmental disability or the powers of guardians of
14 developmentally disabled persons, nor the provisions of chapter 6, title
15 18, Idaho Code, pertaining to the provision of examinations, prescriptions,
16 devices and informational materials regarding prevention of pregnancy or
17 pertaining to therapeutic abortions and consent to the performance thereof.

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

25 SECTION 2. That Section 39-4502, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 39-4502. DEFINITIONS. As used in this chapter:

28 (1) "Advanced practice professional nurse" (APPN) means a professional
29 nurse licensed in this state who has gained additional specialized knowl-
30 edge, skills and experience through a nationally accredited program of study
31 as defined by section 54-1402, Idaho Code, and is authorized to perform ad-
32 vanced nursing practice, which may include direct client care such as as-
33 sessing, diagnosing, planning and prescribing pharmacologic and nonpharma-
34 cologic therapeutic and corrective measures, health promotion and preven-
35 tive care as defined by rules of the board of nursing. The advanced practice
36 professional nurse collaborates with other health professionals in provid-
37 ing health care.

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

45 (23) "Artificial nutrition and hydration" means supplying food and wa-
46 ter through a conduit, such as a tube or intravenous line, where the recipi-
47 ent is not required to chew or swallow voluntarily, but does not include as-
48 sisted feeding, such as spoon feeding or bottle feeding.

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

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

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

(a) Oral and body hygiene;

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

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

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

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

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

(89) "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.

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

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

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

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

(124) "Physician orders for scope of treatment (POST) form" means a standardized form ~~containing orders by a physician that states a person's treatment wishes that satisfies the requirements of section 39-4512A, Idaho Code.~~

(135) "Physician orders for scope of treatment (POST) identification device" means standardized jewelry which can be worn around the wrist, neck or ankle, and which has been approved by the department of health and welfare. Such jewelry shall be issued only to persons who have a POST form com-

plying with section 39-4512A, Idaho Code, stating that such person has chosen "Do Not Resuscitate: Allow Natural Death (No Code/DNR/DNAR): No CPR or advanced cardiac life support interventions" or the equivalent choice.

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

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

SECTION 3. That Section 39-4503, Idaho Code, be, and the same is hereby amended to read as follows:

39-4503. PERSONS WHO MAY CONSENT TO THEIR OWN CARE. Any person ~~of ordinary intelligence and awareness sufficient for him or her generally to who~~ comprehends the need for, the nature of and the significant risks ordinarily inherent in, any contemplated hospital, medical, dental, ~~or~~ surgical or other health care, treatment or procedure is competent to consent thereto on his or her own behalf. Any health care provider may provide such health care and services in reliance upon such a consent if the consenting person appears to the health care provider securing the consent to possess such requisite ~~intelligence and awareness comprehension~~ at the time of giving the consent.

SECTION 4. That Section 39-4504, Idaho Code, be, and the same is hereby amended to read as follows:

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

(a) The ~~legal~~ court appointed guardian of such person;

(b) The person named in ~~a~~ another person's "Living Will and Durable Power of Attorney for Health Care" pursuant to section 39-4510, Idaho Code, or a similar document authorized by this chapter if the conditions in such living will for authorizing the agent to act have been satisfied;

(c) If married, the spouse of such person;

(d) An adult child of such person;

(e) A parent of such person;

(f) The person named in a delegation of parental authority executed pursuant to section 15-5-104, Idaho Code;

(eg) Any relative ~~representing~~ of such person who represents himself or herself to be an appropriate, responsible person to act under the circumstances;

(fh) Any other competent individual representing himself or herself to be responsible for the health care of such person; or

(gi) If the ~~subject~~ person presents a medical emergency or there is a substantial likelihood of his or her life or health being seriously endangered by withholding or delay in the rendering of such hospital, medical, dental, ~~or~~ surgical or other health care to such ~~patient~~ person and the ~~subject~~ person has not communicated and is unable to communicate his or her treatment wishes, the attending ~~physician or dentist~~ health care provider may, in his or her discretion, authorize and/or provide such health care, treatment or procedure as he or she deems appropriate, and all persons, agencies and institutions thereafter furnishing the same, including such ~~physician or dentist~~ health care provider, may proceed as if informed, valid consent therefor had been otherwise duly given.

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

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

SECTION 5. That Section 39-4506, Idaho Code, be, and the same is hereby amended to read as follows:

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

SECTION 6. That Section 39-4508, Idaho Code, be, and the same is hereby amended to read as follows:

39-4508. RESPONSIBILITY FOR CONSENT AND DOCUMENTATION. Obtaining sufficient consent for health care is the duty of the attending ~~physician~~

~~or dentist or of another physician or dentist acting on his or her behalf~~
~~or actually providing the contemplated care, treatment or procedure~~
~~health care provider upon whose order or at whose direction the contemplated health~~
~~care, treatment or procedure is rendered;~~ provided however, a licensed hos-
 pital and any ~~medical or dental office~~ employee of a health care provider,
 acting with the approval of such an attending or other ~~physician or dentist~~
~~individual health care provider,~~ may perform the ministerial act of docu-
 menting 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 ~~patient~~ person. In performing such a ministerial act, the
 hospital or ~~medical or dental office~~ health care provider employee shall not
 be deemed to have engaged in the practice of medicine or dentistry.

SECTION 7. That Section 39-4509, Idaho Code, be, and the same is hereby
 amended to read as follows:

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 fun-
 damental right of ~~adult~~ competent persons to control the decisions relating
 to the rendering of their medical care, including the decision to have life-
 sustaining procedures withheld or withdrawn. The legislature further finds
 that modern medical technology has made possible the artificial prolonga-
 tion of human life beyond natural limits. The legislature further finds that
~~patients~~ persons are sometimes unable to express their desire to withhold or
 withdraw such artificial life prolongation procedures which provide noth-
 ing medically necessary or beneficial to the ~~patient~~ person because of the
~~patient's~~ person's inability to communicate with the ~~physician~~ health care
provider.

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

(3) It is the intent of the legislature to establish an effective means
 for such communication. It is not the intent of the legislature that the pro-
 cedures 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 le-
 gal responsibility which a person may have to effect the withholding or with-
 drawal of life-sustaining procedures in any lawful manner. Any authentic
 expression of a person's wishes with respect to health care should be hon-
 ored.

(4) "Competent person" means any ~~emancipated minor or person eighteen~~
~~(18) or more years of age who is of sound mind~~ who meets the requirements of
section 39-4503, Idaho Code.

SECTION 8. That Section 39-4510, Idaho Code, be, and the same is hereby
 amended to read as follows:

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

LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Date of Directive:.....

Name of person executing Directive:

Address of person executing Directive:

A LIVING WILL

A Directive to Withhold or to Provide Treatment

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

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

1. That such injury, disease, illness or condition is terminal; and

2. That the application of artificial life-sustaining procedures would serve only to prolong artificially my life; and

3. That my death is imminent, whether or not artificial life-sustaining procedures are utilized; or

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

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

Check one box and initial the line after such box:

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

OR

☐..... I direct that all medical treatment, care and procedures, including artificial life-sustaining procedures, be withheld or withdrawn, except that nutrition and hydration, whether artificial or nonartificial shall not be withheld or withdrawn from me if, as a result, I would likely die primarily

from malnutrition or dehydration rather than from my injury, disease, illness or condition, as follows: (If none of the following boxes are checked and initialed, then both nutrition and hydration, of any nature, whether artificial or nonartificial, shall be administered.)

Check one box and initial the line after such box:

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

OR

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

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

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

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

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

OR

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

A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

1. DESIGNATION OF HEALTH CARE AGENT. None of the following may be designated as your agent: (1) your treating health care provider; (2) a nonrelative employee of your treating health care provider; (3) an operator of a community care facility; or (4) a nonrelative employee of an operator of a community

care facility. If the agent or an alternate agent designated in this Directive is my spouse, and our marriage is thereafter dissolved, such designation shall be thereupon revoked.

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

Name of Health Care Agent:

Address of Health Care Agent:

Telephone Number of Health Care Agent:

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

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

3. GENERAL STATEMENT OF AUTHORITY GRANTED. I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this Directive or otherwise made known to my agent including, but not limited to, my desires concerning obtaining or refusing or withdrawing artificial life-sustaining care, treatment, services and procedures, including such desires set forth in a living will, Physician Orders for Scope of Treatment (POST) form, or similar document executed by me, if any. (If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning artificial life-sustaining care, treatment, services and procedures. You can also include a statement of your desires concerning other matters relating to your health care, including a list of one or more persons whom you designate to be able to receive medical information about you and/or to be allowed to visit you in a medical institution. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to

1 limit in any other way the authority given your agent by this Directive, you
2 should state the limits in the space below. If you do not state any limits,
3 your agent will have broad powers to make health care decisions for you,
4 except to the extent that there are limits provided by law.) In exercising
5 the authority under this durable power of attorney for health care, my agent
6 shall act consistently with my desires as stated below and is subject to
7 the special provisions and limitations stated in my Physician Orders for
8 Scope of Treatment (POST) form, a living will, or similar document executed
9 by me, if any. Additional statement of desires, special provisions, and
10 limitations:.....(You may attach additional pages or
11 documents if you need more space to complete your statement.)

12 5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MEN-
13 TAL HEALTH.

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

25 B. HIPAA Release Authority. My agent shall be treated as I would be with
26 respect to my rights regarding the use and disclosure of my individually
27 identifiable health information or other medical records. This release
28 authority applies to any information governed by the Health Insurance
29 Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45
30 CFR 160 through 164. I authorize any physician, health care professional,
31 dentist, health plan, hospital, clinic, laboratory, pharmacy, or other cov-
32 ered health care provider, any insurance company, and the MIB Group, Inc.
33 (formerly the Medical Information Bureau, Inc.) or other health care clear-
34 inghouse that has provided treatment or services to me, or that has paid for
35 or is seeking payment from me for such services, to give, disclose and re-
36 lease to my agent, without restriction, all of my individually identifiable
37 health information and medical records regarding any past, present or future
38 medical or mental health condition, including all information relating to
39 the diagnosis of HIV/AIDS, sexually transmitted diseases, mental illness,
40 and drug or alcohol abuse. The authority given my agent shall supersede
41 any other agreement that I may have made with my health care providers to
42 restrict access to or disclosure of my individually identifiable health
43 information. The authority given my agent has no expiration date and shall
44 expire only in the event that I revoke the authority in writing and deliver it
45 to my health care provider.

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

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

21 A. First Alternate Agent:

22 Name
 23 Address
 24 Telephone Number

25 B. Second Alternate Agent:

26 Name
 27 Address
 28 Telephone Number

29 C. Third Alternate Agent:

30 Name
 31 Address
 32 Telephone Number

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

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

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

40
 41 Signature

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

SECTION 9. That Section 39-4511, Idaho Code, be, and the same is hereby amended to read as follows:

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

(a) By being intentionally canceled, defaced, obliterated or burned, torn, or otherwise destroyed by the maker thereof, or by some person in his presence and by his direction;

(b) By a written, signed revocation of the maker thereof expressing his intent to revoke; or

(c) By an oral expression by the maker thereof expressing his intent to revoke.

(2) The maker of the revoked living will and durable power of attorney for health care is responsible for notifying his ~~physician~~ health care provider of the revocation.

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

SECTION 10. That Chapter 45, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-4511B, Idaho Code, and to read as follows:

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

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

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

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

SECTION 11. That Section 39-4512A, Idaho Code, be, and the same is hereby amended to read as follows:

39-4512A. PHYSICIAN ORDERS FOR SCOPE OF TREATMENT (POST). (1) A physician orders for scope of treatment (POST) form is ~~appropriate in cases where a patient has an incurable or irreversible injury, disease, illness~~

1 ~~or condition, or where a patient is in a persistent vegetative state. A~~
 2 ~~POST form is also appropriate if such conditions are anticipated a health~~
 3 ~~care provider order signed by a physician or by a PA or by an APPN. The POST~~
 4 ~~form must also be signed by the person, or it must be signed by the person's~~
 5 ~~surrogate decision maker provided that the POST form is not contrary to the~~
 6 ~~person's last known expressed wishes or directions.~~

7 (2) The POST form shall be effective from the date of execution unless
 8 otherwise ~~suspended or~~ revoked. If there is a conflict between the person's
 9 expressed directives, the POST form, and the decisions of the durable power
 10 of attorney representative or surrogate, the orders contained in the POST
 11 form shall be followed.

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

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

20 (a) Each time the physician, APPN or PA examines the ~~patient person~~, or
 21 at least every seven (7) days, for ~~patients persons~~ who are hospital-
 22 ized; and

23 (b) Each time the ~~patient person~~ is transferred from one (1) care set-
 24 ting or care level to another; and

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

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

28 Failure to meet these review requirements does not affect the POST form's va-
 29 lidity or enforceability. As conditions warrant, the physician, APPN or PA
 30 may issue a superseding POST form. The physician, APPN or PA shall, whenever
 31 practical, consult with the ~~patient person~~ or the ~~patient's agent person's~~
 32 ~~surrogate decision maker~~.

33 (5) A ~~patient person~~ who has completed a POST form ~~signed by a physician~~
 34 ~~pursuant to the provisions of this section or for whom a POST form has been~~
 35 ~~completed at the request of his or her surrogate decision maker~~ may wear a
 36 POST identification device as provided in section 39-4502(135), Idaho Code.

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

38 SECTION 12. That Section 39-4512B, Idaho Code, be, and the same is
 39 hereby amended to read as follows:

40 39-4512B. ADHERENCE TO PHYSICIAN ORDERS FOR SCOPE OF TREATMENT (POST)
 41 PROTOCOL. (1) Health care providers and emergency medical services per-
 42 sonnel shall comply with a ~~patient's person's~~ physician orders for scope
 43 of treatment (POST) instruction when presented with a ~~completed~~ POST form
 44 ~~signed by a physician that meets the requirements of section 39-4512A, Idaho~~
 45 ~~Code, or when a patient person is wearing a proper POST identification device~~
 46 ~~pursuant to section 39-4512A(5), Idaho Code.~~

47 (2) A ~~completed~~ POST form ~~that meets the requirements of section~~
 48 ~~39-4512A, Idaho Code, is deemed to meet the requirements of "Do Not Resus-~~
 49 ~~citate (DNR)" forms of orders at all Idaho health care facilities. Health~~

1 care providers and emergency medical services personnel shall not require
2 the completion of other forms in order for the ~~patient's~~ person's wishes to
3 be respected.

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

10 SECTION 13. That Section 39-4513, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 39-4513. IMMUNITY. (1) No emergency medical services personnel,
13 health care provider, facility, or individual employed by, acting as the
14 agent of, or under contract with any such health care provider or facility
15 shall be civilly or criminally liable or subject to discipline for unprofes-
16 sional conduct for acts or omissions carried out or performed in good faith
17 pursuant to the directives in a facially valid POST form, ~~or living will or~~
18 ~~by the holder of a facially valid durable power of attorney or directive for~~
19 ~~health care, DNR order or other health care directive, or pursuant to a POST~~
20 ~~identification device as provided for in section 39-4512A(5), Idaho Code.~~

21 (2) Any physician or other health care provider who for ethical or
22 professional reasons is incapable or unwilling to conform to the desires of
23 the ~~patient~~ person as expressed by the procedures set forth in this chapter
24 may withdraw without incurring any civil or criminal liability provided the
25 physician or other health care provider, before withdrawal of his or her
26 participation, makes a good faith effort to assist the ~~patient~~ person in
27 obtaining the services of another physician or other health care provider
28 who is willing to provide care for the ~~patient~~ person in accordance with the
29 ~~patient's~~ person's expressed or documented wishes.

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

33 (4) Neither the registration of a health care directive in the health
34 care directive registry under section 39-4515, Idaho Code, nor the revoca-
35 tion of such a directive requires a health care provider to request informa-
36 tion from that registry. The decision of a health care provider to request
37 or not to request a health care directive document from the registry shall be
38 immune from civil or criminal liability. A health care provider who in good
39 faith acts in reliance on a facially valid health care directive received
40 from the health care directive registry shall be immune from civil or crim-
41 inal liability for those acts done in such reliance.

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

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

47 SECTION 14. That Section 39-4514, Idaho Code, be, and the same is hereby
48 amended to read as follows:

1 39-4514. GENERAL PROVISIONS. (1) Application. ~~This chapter~~ Sections
 2 39-4510 through 39-4512B, Idaho Code, shall have no effect or be in any man-
 3 ner construed to apply to persons not executing a living will and durable
 4 power of attorney for health care, ~~or~~ POST form or other health care di-
 5 rective pursuant to this chapter nor shall it these sections in any manner
 6 affect the rights of any such persons or of others acting for or on behalf
 7 of such persons to give or refuse to give consent or withhold consent for
 8 any medical care; ~~neither shall this chapter sections 39-4510 through~~
 9 39-4512B, Idaho Code, be construed to affect chapter 3 or chapter 4, title
 10 66, Idaho Code, in any manner.

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

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

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

22 (a) ~~A completed living will for that person is in effect, pursuant to~~
 23 ~~section 39-4510, Idaho Code, and the person is in a terminal condition~~
 24 ~~or persistent vegetative state; or~~

25 ~~(b) A completed durable power of attorney for health care or living will~~
 26 ~~for that person is in effect, pursuant to section 39-4510, Idaho Code,~~
 27 ~~in which the person has indicated stated that he or she does not wish to~~
 28 ~~receive cardiopulmonary resuscitation, and any terms set forth in the~~
 29 ~~durable power of attorney for health care or living will upon which such~~
 30 ~~statement is conditioned have been met; or~~

31 ~~(b) his or her representative~~ The person's surrogate decision maker has
 32 determined that communicated the person's would not wishes not to re-
 33 ceive cardiopulmonary resuscitation and any terms on which the wishes
 34 not to receive cardiopulmonary resuscitation are conditioned have been
 35 met; or

36 (c) ~~The patient person has a completed physician orders for scope of~~
 37 ~~treatment (POST) form indicating otherwise that meets the requirements~~
 38 ~~of section 39-4512A, Idaho Code, stating that the person does not wish~~
 39 ~~to receive cardiopulmonary resuscitation and any terms on which the~~
 40 ~~statement is conditioned have been met and/or has a proper POST identi-~~
 41 ~~fication device pursuant to section 39-4502(135), Idaho Code.~~

42 (5) Futile care. Nothing in this chapter shall be construed to require
 43 medical treatment that is medically inappropriate or futile.

44 (6) Existing directives and directives from other states. A health
 45 care directive executed prior to July 1, 2007, but which was in the living
 46 will, durable power of attorney for health care, DNR, or POST form pursuant
 47 to prior Idaho law at the time of execution, or in another form that contained
 48 the elements set forth in this chapter at the time of execution, shall be
 49 deemed to be in compliance with this chapter. Health care directives or sim-
 50 ilar documents executed in another state that substantially comply with this

chapter shall be deemed to be in compliance with this chapter. This section shall be liberally construed to give the effect to any authentic expression of the person's prior wishes or directives concerning his or her health care.

(7) Insurance.

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

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

(8) Portability and copies.

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

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

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

(10) Rulemaking authority.

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

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

SECTION 15. That Section 66-405, Idaho Code, be, and the same is hereby amended to read as follows:

66-405. ORDER IN PROTECTIVE PROCEEDINGS. (1) If it is determined that the respondent is not developmentally disabled but appears in need of pro-

1 tective services, the court may cause the proceeding to be expanded or al-
2 tered for consideration under the uniform probate code.

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

6 (3) If it is determined that the respondent is developmentally disabled
7 and is unable to manage some financial resources or meet some essential re-
8 quirements for physical health or safety, the court may appoint a partial
9 guardian and/or partial conservator on behalf of the respondent. An order
10 establishing partial guardianship or partial conservatorship shall define
11 the powers and duties of the partial guardian or partial conservator so as
12 to permit the respondent to meet essential requirements for physical health
13 or safety and to manage financial resources commensurate with his ability
14 to do so, and shall specify all legal restrictions to which he is subject.
15 A person for whom a partial guardianship or partial conservatorship has
16 been appointed under this chapter retains all legal and civil rights except
17 those which have by court order been limited or which have been specifically
18 granted to the partial guardian or partial conservator by the court.

19 (4) If it is determined that the respondent is developmentally disabled
20 and is unable to manage financial resources or meet essential requirements
21 for physical health or safety even with the appointment of a partial guardian
22 or partial conservator, the court may appoint a total guardian and/or total
23 conservator.

24 (5) In the event that more than one (1) person seeks to be appointed
25 guardian and/or conservator, the court shall appoint the person or persons
26 most capable of serving on behalf of the respondent; the court shall not cus-
27 tomarily or ordinarily appoint the department or any other organization or
28 individual, public or private, that is or is likely to be providing services
29 to the respondent. If an appointment of a guardian is made by will pursuant
30 to section 15-5-301, Idaho Code, such appointment shall be entitled to pref-
31 erence as the guardian under this chapter, if the person so appointed by will
32 is capable of serving on behalf of the respondent and the court finds that it
33 is not in the best interests of the respondent to appoint a different person
34 as guardian.

35 (6) Subject to the limitations of the provisions of subsection (7) of
36 this section, guardians or conservators may have any of the duties and powers
37 as provided in sections 15-5-312(1) (a) through (d), 15-5-424 and 15-5-425,
38 Idaho Code, and as specified in the order. Any order appointing a partial or
39 total guardian or partial or total conservator under the provisions of this
40 section must require a report to the court at least annually. In addition to
41 such other requirements imposed by law or order, the report shall include:

42 (a) A description of the respondent's current mental, physical and so-
43 cial condition;

44 (b) The respondent's present address and living arrangement;

45 (c) A description of any significant changes in the capacity of the re-
46 spondent to meet essential requirements for physical health or safety
47 or to manage financial resources;

48 (d) A description of services being provided the respondent;

49 (e) A description of significant actions taken by the guardian or con-
50 servator during the reporting period;

1 (f) Any significant problems relating to the guardianship or conserva-
2 torship;

3 (g) A complete financial statement of the financial resources under the
4 control or supervision of the guardian or conservator; and

5 (h) A description of the need for continued guardianship or conserva-
6 torship services.

7 (7) No guardian appointed under this chapter shall have the authority
8 to refuse or withhold consent for medically necessary treatment when the
9 effect of withholding such treatment would seriously endanger the life or
10 health and well-being of the person with a developmental disability. To
11 withhold or attempt to withhold such treatment shall constitute neglect
12 of the person and be cause for removal of the guardian. No physician or
13 caregiver shall withhold or withdraw such treatment for a respondent whose
14 condition is not terminal or whose death is not imminent. If the physician
15 or caregiver cannot obtain valid consent for medically necessary treatment
16 from the guardian, he shall provide the medically necessary treatment as
17 authorized by section 39-4504(1) (g), Idaho Code.

18 (8) A guardian appointed under this chapter may consent to withholding
19 or withdrawal of artificial life-sustaining procedures, only if the respon-
20 dent:

21 (a) Has an incurable injury, disease, illness or condition, cer-
22 tified by the respondent's attending physician and at least one (1)
23 other physician to be terminal such that the application of artificial
24 life-sustaining procedures would not result in the possibility of sav-
25 ing or significantly prolonging the life of the respondent, and would
26 only serve to prolong the moment of the respondent's death for a period
27 of hours, days or weeks, and where both physicians certify that death is
28 imminent, whether or not the life-sustaining procedures are used; or

29 (b) Has been diagnosed by the respondent's attending physician and at
30 least one (1) other physician as being in a persistent vegetative state
31 which is irreversible and from which the respondent will never regain
32 consciousness.

33 (9) Any person, who has information that medically necessary treatment
34 of a respondent has been withheld or withdrawn, may report such information
35 to adult protective services or to the Idaho protection and advocacy system
36 for people with developmental disabilities, who shall have the authority to
37 investigate the report and in appropriate cases to seek a court order to en-
38 sure that medically necessary treatment is provided.

39 If adult protective services or the protection and advocacy system de-
40 termines that withholding of medical treatment violates the provisions of
41 this section, they may petition the court for an ex parte order to provide
42 or continue the medical treatment in question. If the court finds, based on
43 affidavits or other evidence, that there is probable cause to believe that
44 the withholding of medical treatment in a particular case violates the pro-
45 visions of this section, and that the life or health of the patient is en-
46 dangered thereby, the court shall issue an ex parte order to continue or to
47 provide the treatment until such time as the court can hear evidence from the
48 parties involved. Petitions for court orders under this section shall be ex-
49 pedited by the courts and heard as soon as possible. No bond shall be re-
50 quired of a petitioner under this section.

1 (10) No partial or total guardian or partial or total conservator ap-
2 pointed under the provisions of this section may without specific approval
3 of the court in a proceeding separate from that in which such guardian or con-
4 servator was appointed:

5 (a) Consent to medical or surgical treatment the effect of which per-
6 manently prohibits the conception of children by the respondent unless
7 the treatment or procedures are necessary to protect the physical
8 health of the respondent and would be prescribed for a person who is not
9 developmentally disabled;

10 (b) Consent to experimental surgery, procedures or medications; or

11 (c) Delegate the powers granted by the order.