TITLE 39 HEALTH AND SAFETY CHAPTER 45 THE MEDICAL CONSENT AND NATURAL DEATH ACT

39-4501.Purposes – Application. (1) The primary purposes of this chapter are:

- (a) To provide and codify Idaho law concerning consent for the furnishing of hospital, medical, dental, or surgical and other health care, treatment or procedures, and concerning what constitutes an informed consent for such health care, treatment or procedures; and
- (b) To provide certainty and clarity in the law of medical consent in the furtherance of high standards of health care and its ready availability in proper cases.
- (2) Nothing in this chapter shall be deemed to amend or repeal the provisions of chapter 3 or chapter 4, title 66, Idaho Code, as those provisions pertain to hospitalization or commitment of the mentally ill, people with mental illness or developmental disability, or the powers of guardians of developmentally disabled persons, nor the provisions of chapter 6, title 18, Idaho Code, pertaining to the provision of examinations, prescriptions, devices and informational materials regarding prevention of pregnancy or pertaining to therapeutic abortions and consent to the performance thereof.
- (3) Nothing in this chapter shall be construed to permit or require the provision of health care for a patient in contravention of the patient's stated or implied objection thereto upon religious grounds nor shall anything in this chapter be construed to require the granting of permission for or on behalf of any patient who is not able to act for himself by his parent, spouse or guardian in violation of the religious beliefs of the patient or the patient's parent or spouse.

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

- (1) "Artificial life-sustaining procedure" means any medical procedure or intervention that utilizes mechanical means to sustain or supplant a vital function which, when applied to a qualified patient, would serve only to artificially prolong life. "Artificial life-sustaining procedure" does not include the administration of pain management medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.
- (2) "Artificial nutrition and hydration" means supplying food and water through a conduit, such as a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily, but does not include assisted feeding, such as spoon feeding or bottle feeding.
- (3) "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.
- (4) "Cardiopulmonary resuscitation" or "CPR" means measures to restore cardiac function and/or to support ventilation in the event of cardiac or respiratory arrest.
- (5) "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.
- (6) "Consent to care" includes refusal to consent to care and/or withholding or withdrawal of care.
- (7) "Directive", <u>"advance directive"</u> or "health care directive" means a document <u>meeting that substantially meets</u> the requirements of section 39-4510(1), Idaho Code, <u>and/or or is</u> a "Physician Orders for Scope of Treatment (POST)" form <u>signed by a physician.</u>, or is another document which represents a competent person's authentic expression of such person's wishes concerning their health care.
- (8) "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.
- (9) "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.
- (10) "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.
- (11) "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.
- (12) "Advanced Practice Professional Nurse" (APPN) means a professional nurse licensed in this state who has gained additional specialized knowledge, skills and experience through a nationally accredited program of study as defined by section 54-1402 and is authorized to perform advanced nursing practice, which may include direct client care that includes assessing, diagnosing, planning, and prescribing pharmacologic and nonpharmacologic therapeutic and corrective measures, health promotion and preventive care as defined by rules of the board. The advanced practice professional nurse collaborates with other health professionals in providing health care.
- (13) Physician Assistant" (PA) means any person who is qualified by specialized education, training, experience and personal character and who has been licensed by the board to render patient services under the direction of a supervising and alternate supervising physician as defined in section 54-1803.
- (124) "Physician orders for scope of treatment (POST) form" means a standardized form that satisfies the requirements of Section 39-4512(A), Idaho Code. signed by a physician, that states a person's treatment wishes.
- (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. Said jewelry may be issued only to persons who have a Physician orders for scope of treatment (POST) complying with section 39-4512A, Idaho Code, stating that the person does not wish to receive cardiopulmonary resuscitation.

- (16) "Surrogate decisionmaker" 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.
- **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.
- **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 by a surrogate decisionmaker in the order of priority set forth hereafter; provided, however, that the surrogate decisionmaker must have sufficient comprehension as required to consent to their own health care under section 39-4503, Idaho Code; and provided further that the surrogate decisionmaker shall not have authority to consent to or refuse health care contrary to the person's advance directives, POST, or wishes expressed by the person while the person was capable of consenting to their own health care:

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:

- (a) The person's legal, court appointed guardian of such person;
- (b) The person named in a the 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 for authorizating the agent to act have been satisfied;
- (c) If married, the person's spouse of such person;
- (d) An adult child of the person;
- (ed) A parent of the such person;
- (f) The person named in a delegation of parental authority executed pursuant to section 15-5-104, Idaho Code;
- (ge) Any relative representing of the person who represents himself or herself to be an appropriate, responsible person to act under the circumstances;

- (\underline{hf}) Any other competent individual representing himself or herself to be responsible for the health care of the such person; or
- (ig) 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 health care provider physician or dentist 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.
- **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 health care provider physician or dentist 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.
- 39-4508.Responsibility for consent and documentation. Obtaining sufficient consent for health care is the duty of the attending physician or dentist health care provider upon whose order or at whose direction the contemplated health care, treatment, or procedure is rendered or of another physician or dentist acting on his or her behalf or actually providing the contemplated care, treatment or procedure; provided however, a licensed hospital 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 documenting such consent by securing the completion and execution of a form or statement in which the giving of consent for such care is documented by or on behalf of the 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.

39-4509.Statement of policy – Definition. For purposes of sections 39-4509 through 39-4515, Idaho Code:

(1) The legislature recognizes the established common law and the fundamental right of 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 prolongation 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 nothing 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-sustaining procedures carried out even though that person is no longer able to communicate with the physician healthcare provider.
- (3) It is the intent of the legislature to establish an effective means for such communication. It is not the intent of the legislature that the procedures described in sections 39-4509 through 39-4515, Idaho Code, are the only effective means of such communication, and nothing in sections 39-4509 through 39-4515, Idaho Code, shall impair or supersede any legal right or legal responsibility which a person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. Any authentic expression of a person's wishes with respect to health care should be honored.
- (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.

§ 39-4510. LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE

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.

* * * *

- **39-4511**<u>A</u>. **Revocation.** (1) A living will and durable power of attorney for health care, or physician orders for scope of treatment (POST) form <u>or other similar advance directive</u> may be revoked at any time by the maker thereof by any of the following methods:
 - (a) By being <u>intentionally</u> 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.
- **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.
- **39-4512A.Physician orders for scope of treatment (POST).** (1) A physician orders for scope of treatment (POST) form is a health care provider order signed by a physician, or by a PA, or by an APPN appropriate in cases where a patient has an incurable or irreversible injury, disease, illness or condition, or where a patient is in a persistent vegetative state. A POST form is also appropriate if such conditions are anticipated. The POST must also be signed by the person, or it must also be signed by the person's surrogate decisionmaker provided that the POST form is not contrary to the person's last known expressed wishes or directions.
- (2) The POST form shall be effective from the date of execution unless otherwise suspended or revoked. If there is a conflict between the person's expressed directives, the POST form, and the decisions of the durable power of attorney representative or surrogate, the orders contained in the POST form shall be followed:
- (3) The attending physician, <u>APPN or PA</u> shall, upon request of the <u>patient</u>, <u>person</u> or <u>the person's surrogate decisionmaker</u>, provide the <u>patient person or surrogate decisionmaker</u> with a copy of the POST form, discuss with the <u>patient person or surrogate decisionmaker</u> the form's content and ramifications and treatment options, and assist the <u>patient person or the surrogate decisionmaker</u> in the completion of the form.
- (4) The attending physician, APPN or PA shall review the POST form:
 - (a) Each time the physician, <u>APPN or PA</u> examines the patient <u>person</u>, or at least every seven (7) days, for patients persons who are hospitalized; and
 - (b) Each time the patient person is transferred from one (1) care setting or care level to another; and

- (c) Any time there is a substantial change in the patient's person's health status; and
- (d) Any time the patient's person's treatment preferences change.

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

- (5) A patient person who has completed a POST form pursuant to this section signed by a physician or for whom a POST has been completed at the request of the person's surrogate decisionmaker pursuant to this section may wear a POST identification device as provided in section 39-4502(13 15), Idaho Code.
- (6) The department of health and welfare shall develop the POST form.
- **39-4512B.Adherence to physician orders for scope of treatment (POST) protocol.** (1) Health care providers and emergency medical services personnel shall comply with a patient's person's physician orders for scope of treatment (POST) instruction when presented with a completed POST form signed by a physician meeting the requirements of section 39-4512A, Idaho Code or when a patient is wearing a proper POST identification device pursuant to section 39-4512A(5), Idaho Code.
- (2) A completed POST form meeting the requirements of section 39-4512A, Idaho Code is deemed to meet the requirements of "Do Not Resuscitate (DNR)" forms of orders at all Idaho health care facilities. Health care providers and emergency medical services personnel shall not require the completion of other forms in order for the patient's person's wishes to be respected.
- (3) Nothing in this chapter is intended to nor shall it prevent physicians or other health care providers from executing or utilizing DNR orders consistent with their licensure; provided, however, that if the person or their surrogate decisionmaker chooses to utilize the POST form, the health care provider shall accept and comply with the POST form, and shall not require the completion of a DNR order in addition to a valid POST form.
- **39-4513.Immunity.** (1) No emergency medical services personnel, health care provider, facility, or individual employed by, acting as the agent of, or under contract with any such health care provider or facility shall be civilly or criminally liable or subject to discipline for unprofessional conduct for acts or omissions carried out or performed in good faith pursuant to the directives in a facially valid POST form, or living will, DNR order or other healthcare directive, or pursuant to a POST identification device as provided in section 39-4512A(5), Idaho Code or by the holder of a facially valid durable power of attorney or directive for health care.
- (2) Any physician or other health care provider who for ethical or professional reasons is incapable or unwilling to conform to the desires of the patient a person as expressed by the procedures set forth in this chapter may withdraw without incurring any civil or criminal liability provided the physician or other health care provider, before withdrawal of his or her participation, makes a good faith effort to assist the patient person in obtaining the services of another physician or other health care provider who is willing to provide care for the patient person in accordance with the patient's person's expressed or documented wishes.
- (3) No person who exercises the responsibilities of a durable power of attorney for health care in good

faith shall be subject to civil or criminal liability as a result.

- (4) Neither the registration of a health care directive in the health care directive registry under section 39-4515, Idaho Code, nor the revocation of such a directive requires a health care provider to request information from that registry. The decision of a health care provider to request or not to request a health care directive document from the registry shall be immune from civil or criminal liability. A health care provider who in good faith acts in reliance on a facially valid health care directive received from the health care directive registry shall be immune from civil or criminal liability for those acts done in such reliance.
- (5) Health care providers and emergency medical services personnel may disregard the POST form or a POST identification device or a DNR order:
 - (a) If they believe in good faith that the order has been revoked; or
 - (b) To avoid oral or physical confrontation; or
 - (c) If ordered to do so by the attending physician.
- **39-4514.General provisions.** (1) Application. Sections 39-4510 through 39-4512B This chapter shall have no effect or be in any manner construed to apply to persons not executing a living will and durable power of attorney for health care, or POST form or other health care directive pursuant to this chapter nor shall they it in any manner affect the rights of any such persons or of others acting for or on behalf of such persons to give or refuse to give consent or withhold consent for any medical care; neither shall sections 39-4510 through 39-4512B this chapter be construed to affect chapter 3 or chapter 4, title 66, Idaho Code, in any manner.
- (2) Euthanasia, mercy killing, or assisted suicide. This chapter does not make legal, and in no way condones, euthanasia, mercy killing, or assisted suicide or permit an affirmative or deliberate act or omission to end life, including any act or omission described in section 18-4017, Idaho Code, other than to allow the natural process of dying.
- (3) Comfort care. Individuals Persons caring for a patient person for whom artificial life-sustaining procedures or artificially administered nutrition and hydration are withheld or withdrawn shall provide comfort care as defined in section 39-4502, Idaho Code.
- (4) Presumed consent to resuscitation. There is a presumption in favor of consent to cardiopulmonary resuscitation (CPR) unless:
 - (a) A completed living will for that person is in effect, pursuant to section 39-4510, Idaho Code, and the person is in a terminal condition or persistent vegetative state; or
 - (b) A completed durable power of attorney for health care <u>or living will</u> for that person is in effect, pursuant to section 39-4510, Idaho Code, in which the person has <u>indicated</u> that he or she does not wish to receive cardiopulmonary resuscitation <u>and any terms set forth in the durable power of attorney for health care or living will upon which that statement is conditioned have been <u>met</u>;; or</u>
 - (b) his or her the person's representative surrogate decision maker has determined communicated that the person's would not wishes not to receive cardiopulmonary resuscitation and any terms

on which the wishes not to receive cardiopulmonary resuscitation are conditioned have been meet; or

- (c) The patient has a completed physician orders for scope of treatment (POST) form <u>meeting</u> the requirements of section 39-4512A, Idaho Code stating that the person does not wish to receive cardiopulmonary resuscitation and any terms on which the statement is conditioned have been met indicating otherwise and/or <u>has a proper POST identification device</u> pursuant to section 39-4502(13 15), Idaho Code.
- (5) Futile care. Nothing in this chapter shall be construed to require medical treatment that is medically inappropriate or futile.
- (6) Existing directives and directives from other states. A health care directive executed prior to July 1, 2007, but which was in the living will, durable power of attorney for health care, DNR, or POST form pursuant to prior Idaho law at the time of execution, or in another form that contained the elements set forth in this chapter at the time of execution, shall be deemed to be in compliance with this chapter. Health care directives or similar documents executed in another state that substantially comply with this chapter shall be deemed to be in compliance with this chapter. This section shall be liberally construed to give effect to any authentic expression of the person's prior wishes or directives concerning their 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 <u>meeting the requirements</u> of section 39-4512A, Idaho Code signed by a physician 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 39-4511, 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.