

IN THE SENATE

SENATE BILL NO. 1348, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE MEDICAL CONSENT AND NATURAL DEATH ACT; AMENDING SECTION
2 39-4509, IDAHO CODE, TO REVISE LEGISLATIVE INTENT; AMENDING SECTION
3 39-4513, IDAHO CODE, TO REVISE PROVISIONS RELATING TO HEALTH CARE
4 PROVIDERS UNWILLING TO CONFORM TO THE DESIRES OF PATIENTS AND THOSE AU-
5 THORIZED TO CONSENT FOR THEM; AND AMENDING SECTION 39-4514, IDAHO CODE,
6 TO PREVENT THE DISCRIMINATORY DENIAL OF CERTAIN HEALTH CARE INCLUDING
7 ASSISTED FEEDING OR ARTIFICIAL NUTRITION AND HYDRATION UPON CERTAIN
8 CIRCUMSTANCES.
9

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

11 SECTION 1. That Section 39-4509, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 39-4509. STATEMENT OF POLICY -- DEFINITION. For purposes of sections
14 39-4509 through 39-4515, Idaho Code:

15 (1) The legislature recognizes the established common law and the fun-
16 damental right of adult persons to control the decisions relating to the ren-
17 dering of their medical care, including the decision to have life-sustaining
18 procedures withheld or withdrawn. The legislature further finds that modern
19 medical technology has made possible the artificial prolongation of human
20 life beyond natural limits. The legislature further finds that patients are
21 sometimes unable to express their desire to withhold or withdraw such arti-
22 ficial life prolongation procedures which provide nothing medically neces-
23 sary or beneficial to the patient because of the patient's inability to com-
24 municate with the physician.

25 (2) In recognition of the dignity and privacy which patients have a
26 right to expect, the legislature hereby declares that the laws of this state
27 shall recognize the right of a competent person to have his or her wishes for
28 medical treatment and for the withdrawal of artificial life-sustaining pro-
29 cedures carried out even though that person is no longer able to communicate
30 with the physician.

31 (3) It is the intent of the legislature to establish an effective means
32 for such communication. It is not the intent of the legislature that the pro-
33 cedures described in sections 39-4509 through 39-4515, Idaho Code, are the
34 only effective means of such communication, and nothing in sections 39-4509
35 through 39-4515, Idaho Code, shall impair or supersede any legal right or
36 legal responsibility which a person may have to effect the withholding or
37 withdrawal of life-sustaining procedures in any lawful manner, provided
38 that this sentence shall not be construed to authorize any violation of sec-
39 tion 39-4514(3), Idaho Code. Any authentic expression of a person's wishes
40 with respect to health care should be honored.

41 (4) "Competent person" means any emancipated minor or person eighteen
42 (18) or more years of age who is of sound mind.

1 SECTION 2. That Section 39-4513, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 39-4513. IMMUNITY. (1) No emergency medical services personnel,
4 health care provider, facility, or individual employed by, acting as the
5 agent of, or under contract with any such health care provider or facility
6 shall be civilly or criminally liable or subject to discipline for unprofes-
7 sional conduct for acts or omissions carried out or performed in good faith
8 pursuant to the directives in a facially valid POST form or living will or
9 by the holder of a facially valid durable power of attorney or directive for
10 health care.

11 (2) Any physician or other health care provider who for ethical or pro-
12 fessional reasons is incapable or unwilling to conform to the desires of the
13 ~~patient~~ person who may give consent to care for the patient under section
14 39-4504, Idaho Code, as expressed by the procedures set forth in this chapter
15 may, subject to the requirements of section 39-4514(3), Idaho Code, with-
16 draw without incurring any civil or criminal liability provided the physi-
17 cian or other health care provider, before withdrawal of his or her partici-
18 pation, makes a good faith effort to assist the patient in obtaining the ser-
19 vices of another physician or other health care provider who is willing to
20 provide care for the patient in accordance with the patient's expressed or
21 documented wishes.

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

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

34 (5) Health care providers and emergency medical services personnel may
35 disregard the POST form or a POST identification device:

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

39 SECTION 3. That Section 39-4514, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 39-4514. GENERAL PROVISIONS. (1) Application. Except as specifically
42 provided herein, tThis chapter shall have no effect or be in any manner con-
43 strued to apply to persons not executing a living will and durable power of
44 attorney for health care or POST form pursuant to this chapter nor shall it in
45 any manner affect the rights of any such persons or of others acting for or on
46 behalf of such persons to give or refuse to give consent or withhold consent
47 for any medical care, neither shall this chapter be construed to affect chap-
48 ter 3 or chapter 4, title 66, Idaho Code, in any manner.

1 (2) Euthanasia, mercy killing, or assisted suicide. This chapter does
2 not make legal, and in no way condones, euthanasia, mercy killing, or as-
3 sisted suicide or permit an affirmative or deliberate act or omission to end
4 life, other than to allow the natural process of dying.

5 (3) Withdrawal of care. Assisted feeding or artificial nutrition and
6 hydration may not be withdrawn or denied if its provision is directed by a
7 competent patient in accordance with section 39-4503, Idaho Code, by a pa-
8 tient's health care directive under section 39-4510, Idaho Code, or by a pa-
9 tient's surrogate decision maker in accordance with section 39-4504, Idaho
10 Code. Health care other than assisted feeding or artificial nutrition and
11 hydration may not be withdrawn or denied if its provision is directed by a
12 competent patient in accordance with section 39-4503, Idaho Code, by a pa-
13 tient's health care directive under section 39-4510, Idaho Code, or by a pa-
14 tient's surrogated decision maker in accordance with section 39-4504, Idaho
15 Code, unless such care would be futile care as defined in subsection (6) of
16 this section. Except as specifically provided in chapters 3 and 4, title 66,
17 Idaho Code, health care, assisted feeding or artificial nutrition and hydra-
18 tion, the denial of which is directed by a competent patient in accordance
19 with section 39-4503, Idaho Code, by a patient's health care directive un-
20 der section 39-4510, Idaho Code, or by a patient's surrogate decision maker
21 in accordance with section 39-4504, Idaho Code, shall be withdrawn and de-
22 nieed in accordance with a valid directive. This subsection does not require
23 provision of treatment to a patient if it would require denial of the same or
24 similar treatment to another patient.

25 (34) Comfort care. Individuals caring for a patient for whom artifi-
26 cial life-sustaining procedures or artificially administered nutrition and
27 hydration are withheld or withdrawn shall provide comfort care as defined in
28 section 39-4502, Idaho Code.

29 (45) Presumed consent to resuscitation. There is a presumption in fa-
30 vor of consent to cardiopulmonary resuscitation (CPR) unless:

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

34 (b) A completed durable power of attorney for health care for that per-
35 son is in effect, pursuant to section 39-4510, Idaho Code, in which the
36 person has indicated that he or she does not wish to receive cardiopul-
37 monary resuscitation, or his or her representative has determined that
38 the person would not wish to receive cardiopulmonary resuscitation; or

39 (c) The patient has a completed physician orders for scope of treat-
40 ment (POST) form indicating otherwise and/or proper POST identifica-
41 tion pursuant to section 39-4502(13), Idaho Code.

42 (56) Futile care. Nothing in this chapter shall be construed to require
43 medical treatment that is medically inappropriate or futile; provided that
44 this subsection does not authorize any violation of subsection (3) of this
45 section. Futile care does not include comfort care. Futile care is a course
46 of treatment:

47 (a) For a patient with a terminal condition, for whom, in reasonable
48 medical judgment, death is imminent within hours or at most a few days
49 whether or not the medical treatment is provided and that in reasonable
50 medical judgment will not improve the patient's condition; or

1 (b) The denial of which in reasonable medical judgment will not result
2 in or hasten the patient's death.

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

11 ~~(78)~~ Insurance.

12 (a) The making of a living will and/or durable power of attorney for
13 health care or physician orders for scope of treatment (POST) form pur-
14 suant to this chapter shall not restrict, inhibit or impair in any man-
15 ner the sale, procurement or issuance of any policy of life insurance,
16 nor shall it be deemed to modify the terms of an existing policy of life
17 insurance. No policy of life insurance shall be legally impaired or in-
18 validated in any manner by the withholding or withdrawal of artificial
19 life-sustaining procedures from an insured patient, notwithstanding
20 any term of the policy to the contrary.

21 (b) No physician, health care facility or other health care provider
22 and no health care service plan, insurer issuing disability insurance,
23 self-insured employee plan, welfare benefit plan or nonprofit hospi-
24 tal service plan shall require any person to execute a living will and
25 durable power of attorney for health care or physician orders for scope
26 of treatment (POST) form as a condition for being insured for, or re-
27 ceiving, health care services.

28 ~~(89)~~ Portability and copies.

29 (a) A completed physician orders for scope of treatment (POST) form
30 signed by a physician shall be transferred with the patient to, and be
31 effective in, all care settings including, but not limited to, home
32 care, ambulance or other transport, hospital, residential care facil-
33 ity, and hospice care. The POST form shall remain in effect until such
34 time as there is a valid revocation pursuant to section 39-4511, Idaho
35 Code, or new orders are issued by a physician.

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

40 ~~(910)~~ Registration. A directive or the revocation of a directive meet-
41 ing the requirements of this chapter may be registered with the secretary
42 of state pursuant to section 39-4515, Idaho Code. Failure to register the
43 health care directive shall not affect the validity of the health care direc-
44 tive.

45 ~~(101)~~ Rulemaking authority.

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

48 (b) In the adoption of a physician orders for scope of treatment (POST)
49 or DNR protocol, the department shall adopt standardized POST identifi-
50 cation to be used statewide.