

TITLE 39
HEALTH AND SAFETY
CHAPTER 45

THE MEDICAL CONSENT AND NATURAL DEATH ACT

39-4503. PERSONS WHO MAY CONSENT TO THEIR OWN CARE. Any person who comprehends the need for, the nature of and the significant risks ordinarily inherent in any contemplated hospital, medical, dental, 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 comprehension at the time of giving the consent.

History:

[(39-4503) 39-4502, added 2005, ch. 120, sec. 2, p. 381; am. and redesig. 2007, ch. 196, sec. 3, p. 581; am. 2012, ch. 302, sec. 3, p. 827.]

TITLE 39
HEALTH AND SAFETY
CHAPTER 45

THE MEDICAL CONSENT AND NATURAL DEATH ACT

39-4504. PERSONS WHO MAY GIVE CONSENT TO CARE FOR OTHERS. (1) Consent for the furnishing of hospital, medical, dental, 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 may be given or refused in the order of priority set forth hereafter; 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 court appointed guardian of such person;
- (b) The person named in 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;
- (g) Any relative of such person who represents himself or herself to be an appropriate, responsible person to act under the circumstances;
- (h) Any other competent individual representing himself or herself to be responsible for the health care of such person; or
- (i) If the 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, surgical or other health care to such person and the person has not communicated and is unable to communicate his or her treatment wishes, the

attending health care provider may, in his or her discretion, authorize and/or provide such health care, as he or she deems appropriate, and all persons, agencies and institutions thereafter furnishing the same, including such 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, 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.

History:

[(39-4504) 39-4503, added 2005, ch. 120, sec. 2, p. 381; am. and redesign. 2007, ch. 196, sec. 4, p. 581; am. 2012, ch. 302, sec. 4, p. 827.]

TITLE 66
STATE CHARITABLE INSTITUTIONS
CHAPTER 3
HOSPITALIZATION OF MENTALLY ILL

66-317. DEFINITIONS. As used in this chapter, terms shall have the following meanings:

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

(2) "Voluntary patient" means an individual admitted to a facility for evaluation pursuant to section 18-211 or 20-520, Idaho Code, or admitted to a facility for observation, diagnosis, evaluation, care or treatment pursuant to section 66-318, Idaho Code.

(3) "Involuntary patient" means an individual committed pursuant to section 18-212, 66-329 or 66-1201, Idaho Code, or committed pursuant to section 16-1619 or 20-520, Idaho Code, and admitted to a facility for the treatment of minors.

(4) "Licensed physician" means an individual licensed under the laws of this state to practice medicine or a medical officer of the government of the United States while in this state in the performance of his official duties.

(5) "Designated examiner" means a psychiatrist, psychologist, psychiatric nurse, or social worker and such other mental health professionals as may be designated in accordance with rules promulgated pursuant to the provisions of chapter 52, title 67, Idaho Code, by the department of health and welfare. Any person designated by the department director will be specially qualified by training and experience in the diagnosis and treatment of mental or mentally related illnesses or conditions.

(6) "Dispositioner" means a designated examiner employed by or under contract with the department of health and welfare and designated by the department director to determine the appropriate location for care and treatment of involuntary patients.

(7) "Facility" means any public or private hospital, sanatorium, institution, mental health center or other organization designated in accordance with rules adopted by the board of health and welfare as

equipped to initially hold, evaluate, rehabilitate or to provide care or treatment, or both, for the mentally ill.

(8) "Lacks capacity to make informed decisions about treatment" means the inability, by reason of mental illness, to achieve a rudimentary understanding after conscientious efforts at explanation of the purpose, nature, and possible significant risks and benefits of treatment.

(9) "Inpatient treatment facility" means a facility in which an individual receives medical and mental treatment for not less than a continuous twenty-four (24) hour period.

(10) "Supervised residential facility" means a facility, other than the individual's home, in which the individual lives and in which there lives, or are otherwise on duty during the times that the individual's presence is expected, persons who are employed to supervise, direct, treat or monitor the individual.

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

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

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

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

(12) "Mentally ill" means a person, who as a result of a substantial disorder of thought, mood, perception, orientation, or memory, which grossly impairs judgment, behavior, capacity to recognize and adapt to reality, requires care and treatment at a facility or through outpatient treatment.

(13) "Gravely disabled" means a person who, as the result of mental illness, is:

(a) In danger of serious physical harm due to the person's inability to provide for any of his own basic personal needs, such as nourishment, or essential clothing, medical care, shelter or safety; or

(b) Lacking insight into his need for treatment and is unable or unwilling to comply with treatment and, based on his psychiatric history, clinical observation or other clinical evidence, if he does not receive and comply with treatment, there is a substantial risk he will continue to physically, emotionally or mentally deteriorate to the point that the person will, in the reasonably near future, be in danger of serious physical harm due to the person's inability to provide for any of his own basic personal needs such as nourishment, essential clothing, medical care, shelter or safety.

(14) "Outpatient treatment" means mental health treatment, not involving the continuous supervision of a person in an inpatient setting, that is reasonably designed to alleviate or to reduce a person's mental illness or to maintain or prevent deterioration of the person's physical, mental or emotional functioning. Mental health services or treatment may include, but need not be limited to, taking prescribed medication,

reporting to a facility to permit monitoring of the person's condition, or participating in individual or group therapy.

(15) "Protection and advocacy system" means the agency designated by the governor as the state protection and advocacy system pursuant to 42 U.S.C. section 15043 and 42 U.S.C. sections 10801 et seq.

(16) "Holding proceedings in abeyance" means an alternative to judicial commitment based upon an agreement entered into by all parties, including the proposed patient, and agreed to by the court, providing for voluntary conditions of treatment, which holds in a state of suspension or inactivity the petition for involuntary commitment.

History:

[66-317, added 1951, ch. 290, sec. 1, p. 622; am. 1959, ch. 207, sec. 1, p. 439; am. 1969, ch. 187, sec. 1, p. 552; am. 1972, ch. 44, sec. 1, p. 67; am. 1973, ch. 173, sec. 1, p. 363; am. 1974, ch. 165, sec. 5, p. 1405; am. 1981, ch. 114, sec. 9, p. 174; am. 1982, ch. 59, sec. 6, p. 95; am. 1986, ch. 84, sec. 1, p. 243; am. 1998, ch. 90, sec. 1, p. 315; am. 2001, ch. 107, sec. 21, p. 370; am. 2002, ch. 128, sec. 1, p. 357; am. 2003, ch. 249, sec. 2, p. 643; am. 2004, ch. 315, sec. 1, p. 885; am. 2005, ch. 391, sec. 59, p. 1315; am. 2006, ch. 214, sec. 2, p. 645; am. 2008, ch. 331, sec. 1, p. 910.]

TITLE 66
STATE CHARITABLE INSTITUTIONS
CHAPTER 3
HOSPITALIZATION OF MENTALLY ILL

66-318. AUTHORITY TO ADMIT VOLUNTARY PATIENTS - DENIAL OF ADMISSION. (1) The director of any facility may admit as a voluntary patient the following persons for observation, diagnosis, evaluation, care or treatment of mental illness:

- (a) Any person who is eighteen (18) years of age or older;
- (b) Any individual fourteen (14) to eighteen (18) years of age who may apply to be admitted for observation, diagnosis, evaluation, care or treatment and the facility director will notify the parent, parents or guardian of the individual of the admission; a parent or guardian may apply for the individual's release and the facility director will release the patient within three (3) days, excluding Saturdays, Sundays and legal holidays, of the application for discharge, unless the time period for diagnosis, evaluation, care or treatment is extended pursuant to section 66-320, Idaho Code;
- (c) Any emancipated minor;
- (d) Any individual under fourteen (14) years of age upon application of the individual's parent or guardian, provided that admission to an inpatient facility shall require a recommendation for admission by a designated examiner;
- (e) Any individual who lacks capacity to make informed decisions about treatment upon application of the individual's guardian; provided that admission to an inpatient facility shall require a recommendation for admission by a designated examiner; or
- (f) Any individual confined for examination pursuant to section 18-211 or 20-520, Idaho Code.

(2) The director of any facility must refuse admission to any applicant under this section whenever:

(a) The applicant is determined not to be in need of observation, diagnosis, evaluation, care or treatment at the facility;

(b) The applicant is determined to lack capacity to make informed decisions about treatment unless the application is made by a guardian with authority to consent to treatment; or

(c) The applicant's welfare or the welfare of society, or both, are better protected by the provisions of section 66-329, Idaho Code.

History:

[66-318, added 1951, ch. 290, sec. 2, p. 622; am. 1959, ch. 207, sec. 2, p. 439; am. 1972, ch. 44, sec. 2, p. 67; am. 1973, ch. 173, sec. 2, p. 363; am. 1981, ch. 114, sec. 10, p. 175; am. 2004, ch. 23, sec. 9, p. 30; am. 2006, ch. 214, sec. 3, p. 647.]

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66-319. RELEASE OF VOLUNTARY INPATIENTS. The director of an inpatient facility shall release any person, admitted in accordance with the procedure outlined in section 66-318, Idaho Code, whose continued care or treatment is no longer appropriate. If upon evaluation at the facility, it is determined that the patient is mentally ill and is likely to injure himself or others or is gravely disabled, the director of the facility shall institute appropriate judicial proceedings for continued care and treatment. In the case of persons confined pursuant to section 20-520 or 18-211, Idaho Code, upon completion of the examination, the sheriff of the county from which the defendant was committed shall be notified and the defendant shall continue to be confined at the facility for transportation back to the county. In those cases of persons admitted upon the application of a guardian, those persons shall be released upon the termination of the guardian's authority to consent to treatment.

History:

[66-319, added 1951, ch. 290, sec. 3, p. 622; am. 1959, ch. 207, sec. 3, p. 439; am. 1973, ch. 173, sec. 3, p. 363; am. 1981, ch. 114, sec. 11, p. 176; am. 2004, ch. 23, sec. 10, p. 30.]

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66-320. RIGHT TO RELEASE ON APPLICATION - EXCEPTIONS. (a) A voluntary patient admitted in accordance with the procedure outlined in section 66-318, Idaho Code, who requests his release or whose release is requested, in writing, by his legal guardian, parent, spouse, or adult next of kin shall be released except that:

(1) if the patient was admitted on his own application and the request for release is made by a person other than the patient, release may be conditioned upon the agreement of the patient thereto, and

(2) if the patient, by reason of his age, was admitted on the application of another person, his release prior to becoming sixteen (16) years of age may be conditioned upon the consent of his parent or guardian, or

(3) if the director of the facility determines that the patient should be hospitalized under the provisions of this chapter, the patient may be detained up to three (3) days, excluding Saturdays, Sundays and legal holidays, for the purpose of examination by a designated examiner and the filing of an application for continued care and treatment.

(b) Notwithstanding any other provision of this chapter, judicial proceedings authorized by this chapter shall not be commenced with respect to a voluntary patient unless release of the patient has been requested by himself or the individual who applied for his admission.

(c) The date and time of any request for release under this section shall be entered in the patient's clinical record. If the request for release is denied, the reasons for denial also shall be entered in the patient's clinical record.

(d) A patient admitted for examination pursuant to section 20-520 or 18-211, Idaho Code, may not be released except for purposes of transportation back to the court ordering, or party authorizing, the examination.

History:

[66-320, added 1951, ch. 290, sec. 4, p. 622; am. 1973, ch. 173, sec. 4, p. 363; am. 1981, ch. 114, sec. 12, p. 177; am. 1986, ch. 84, sec. 2, p. 245; am. 2004, ch. 23, sec. 11, p. 31.]

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66-322. APPOINTMENT OF GUARDIAN FOR INDIVIDUALS LACKING CAPACITY TO MAKE INFORMED DECISIONS ABOUT TREATMENT - JUDICIAL PROCEDURE . (a) Proceedings for the appointment of a guardian of a mentally ill person may be commenced by the filing of a written petition with a court of competent jurisdiction by a friend, relative, spouse or guardian of the proposed patient, by a licensed physician, licensed clinical psychologist, prosecuting attorney, or other public official of a municipality, county or of the state of Idaho, or by the director of any facility in which such patient may be.

(b) The petition shall state the name and last known address of the proposed patient; the name and address of either the spouse, next of kin or friend of the proposed patient; whether a guardian of the proposed patient has been previously appointed under the laws of this or any other state and, if so, the name and address of the guardian and the circumstances of such appointment; and a precise statement showing that the proposed patient is mentally ill, that treatment is available for such illness, and that the proposed patient lacks capacity to make informed decisions about treatment.

(c) Any such petition shall be accompanied by a certificate of a licensed physician or licensed clinical psychologist stating that the physician or psychologist has personally examined the proposed patient within the last fourteen (14) days and is of the opinion: (i) that the proposed patient is mentally ill, (ii) that in the absence of treatment the immediate prognosis is for major distress of the proposed patient which will result in serious mental or physical deterioration of the proposed patient, (iii) that treatment is available which is likely to avoid serious mental or physical deterioration of the proposed patient,

and (iv) that the proposed patient lacks capacity to make informed decisions about treatment; or by a written statement by the physician or psychologist that the proposed patient has refused to submit to an examination.

(d) Upon receipt of a petition, the court shall within forty-eight (48) hours appoint another licensed physician or licensed clinical psychologist to make a personal examination of the proposed patient, or if the proposed patient has not been examined, the court shall appoint two (2) licensed physicians or licensed clinical psychologists to make individual personal examinations of the proposed patient and may order the proposed patient to submit to an immediate examination. Within seventy-two (72) hours, the physician or psychologist shall file with the court certificates described in subparagraph (c) above, if necessary.

(e) Upon receipt of such petition and certificates, the court shall appoint a time and place for hearing not more than seven (7) days from receipt of such certificates and thereupon give written notice to the proposed patient. The notice shall include a copy of the petition and certificates and notice of the proposed patient's right to be represented by an attorney, or if indigent, to be represented by a court-appointed attorney. Notice of the time and place of the hearing shall also be given to the petitioner.

(f) An opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel in accordance with chapter 8, title 19, Idaho Code.

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

(h) The proposed patient and the petitioner shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. At the hearing, any existing provision of law prohibiting the disclosure of confidential communications between the examining physician or psychologist and the proposed patient shall not apply and the physicians or psychologists who examined the proposed patient shall be competent witnesses to testify as to the proposed patient's condition. The proposed patient shall be required to be present at the hearing, and be free from drugs likely to impair the proposed patient's ability to communicate with counsel or understand the proceedings, unless the right to be present or free from drugs is knowingly and voluntarily waived by the patient or unless the presence of the patient at the hearing would unduly disrupt the judicial proceedings. A record of the proceedings shall be made as for other civil hearings. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and the rules of evidence.

(i) The court shall appoint a person other than the treating professional to act in the proposed patient's best interest with authority to consent to treatment, if, upon completion of the hearing and consideration of the record, the court finds by clear and convincing evidence that:

(1) The proposed patient has a severe and reliably diagnosable mental illness;

(2) Without treatment, the immediate prognosis is for major distress resulting in serious mental or physical deterioration of the proposed patient;

- (3) Treatment is available for such illness;
- (4) The proposed patient lacks capacity to make informed decisions about treatment; and
- (5) The relative risks and benefits of treatment or nontreatment are such that a reasonable person would consent to treatment.

The court shall consider appointing persons to give consent in the following priority: the proposed patient's spouse, next of kin, friend or if the proposed patient's spouse, next of kin or friend are unable or unwilling, another appropriate person not associated with the facility where the person is being, or shall be treated.

(j) The appointed person shall have authority to consent to treatment, including treatment at a facility. Upon approval of the court, the appointed person may pay the costs of treatment from the patient's money and tangible property deliverable to or received by the patient during the period of the appointed person's authority, and may apply for any benefits to which the patient is entitled. In the exercise of his powers, the appointed person is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by section 15-7-302, Idaho Code. The appointment shall continue for a period of seven (7) weeks or until the court determines that the patient no longer lacks capacity to make informed decisions about treatment, whichever is shorter.

(k) Upon petition of the appointed person, authority to consent may be continued for an additional seven (7) week period, if the court again enters the findings required by subparagraph (i) above. The petition for continued authority shall be accompanied by the certificate of the treating professional meeting the requirements of subparagraph (c) above. The petition for continued authority and physician's certificate shall be served upon the patient and the patient's attorney. If the proposed patient objects to the continued authority, the court shall conduct a hearing, following notice of the time and place of such hearing to the petitioner, the proposed patient and the proposed patient's attorney.

(l) Proceedings for appointment of a person with authority to consent under this section may be consolidated with proceedings for the involuntary care of the proposed patient under section 66-329, Idaho Code, provided, however, that appointment of a person with authority to consent under this section shall terminate the proceedings for the involuntary care under section 66-329, Idaho Code.

(m) No more than two (2) petitions with authority to consent shall be granted under subsection (i) of this section within any twelve (12) month period, provided that other proceedings under this chapter or the Uniform Probate Code shall be permitted.

(n) The person with authority to consent appointed pursuant to this section shall not be personally responsible for the cost of care or treatment rendered the mentally ill individual, simply by reason of the authority granted by this section.

History:

[66-322, added 1981, ch. 114, sec. 13, p. 178.]

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66-326. DETENTION WITHOUT HEARING. (1) No person shall be taken into custody or detained as an alleged emergency patient for observation, diagnosis, evaluation, care or treatment of mental illness unless and until the court has ordered such apprehension and custody under the provisions outlined in section 66-329, Idaho Code; provided, however, that a person may be taken into custody by a peace officer and placed in a facility, or the person may be detained at a hospital at which the person presented or was brought to receive medical or mental health care, if the peace officer or a physician medical staff member of such hospital or a physician's assistant or advanced practice registered nurse practicing in such hospital has reason to believe that the person is gravely disabled due to mental illness or the person's continued liberty poses an imminent danger to that person or others, as evidenced by a threat of substantial physical harm; provided, under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses. For purposes of this section, the term "peace officer" shall include state probation and parole officers exercising their authority to supervise probationers and parolees. Whenever a person is taken into custody or detained under this section without court order, the evidence supporting the claim of grave disability due to mental illness or imminent danger must be presented to a duly authorized court within twenty-four (24) hours from the time the individual was placed in custody or detained.

(2) If the court finds the individual to be gravely disabled due to mental illness or imminently dangerous under subsection (1) of this section, the court shall issue a temporary custody order requiring the person to be held in a facility, and requiring an examination of the person by a designated examiner within twenty-four (24) hours of the entry of the order of the court. Under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses.

(3) Where an examination is required under subsection (2) of this section, the designated examiner shall make his findings and report to the court within twenty-four (24) hours of the examination.

(4) If the designated examiner finds, in his examination under this section, that the person is mentally ill, and either is likely to injure himself or others or is gravely disabled due to mental illness, the prosecuting attorney shall file, within twenty-four (24) hours of the examination of the person, a petition with the court requesting the patient's detention pending commitment proceedings pursuant to the provisions of section 66-329, Idaho Code. Upon the receipt of such a petition, the court shall order his detention to await hearing which shall be within five (5) days (including Saturdays, Sundays and legal holidays) of the detention order. If no petition is filed within twenty-four (24) hours of the designated examiner's examination of the person, the person shall be released from the facility.

(5) Any person held in custody under the provisions of this section shall have the same protection and rights which are guaranteed to a person already committed to the department director. Upon taking a person into custody, notice shall be given to the person's immediate relatives of the person's physical whereabouts and the reasons for detaining or taking the person into custody.

(6) Nothing in this section shall preclude a hospital from transferring a person who has been detained under this section to another

facility that is willing to accept the transferred individual for purposes of observation, diagnosis, evaluation, care or treatment.

History:

[(66-326) 1976, ch. 365, sec. 1, p. 1200; am. and redesig. 1981, ch. 114, sec. 19, p. 185; am. 1991, ch. 210, sec. 1, p. 494; am. 1998, ch. 341, sec. 1, p. 1089; am. 2006, ch. 91, sec. 1, p. 265; am. 2006, ch. 214, sec. 5, p. 648.; am. 2013, ch. 293, sec. 2, p. 771.]

TITLE 16
JUVENILE PROCEEDINGS
CHAPTER 24

CHILDREN'S MENTAL HEALTH SERVICES

16-2403. DEFINITIONS. As used in this chapter:

(1) "Child" means an individual less than eighteen (18) years of age and not emancipated by either marriage or legal proceeding.

(2) "Consistent with the least restrictive alternative principle" means that services are delivered in the setting which places the fewest restrictions on the personal liberty of the child, and provides the greatest integration with individuals who do not have disabilities, in typical and age appropriate, school, community and family environments, which is consistent with safe, effective and cost-effective treatment for the child and family.

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

(4) "Designated examiner" means a psychiatrist, psychologist, psychiatric nurse, or social worker and such other mental health professionals as may be designated in accordance with rules promulgated pursuant to the provisions of chapter 52, title 67, Idaho Code, by the department of health and welfare. Any person designated by the department director will be specially qualified by training and experience in the diagnosis and treatment of mental or mentally related illnesses or conditions.

(5) "Director" means the director of the state department of health and welfare.

(6) "Emergency" means a situation in which the child's condition, as evidenced by recent behavior, poses a significant threat to the health or safety of the child, his family or others, or poses a serious risk of substantial deterioration in the child's condition which cannot be eliminated by the use of supportive services or intervention by the child's parents, or mental health professionals, and treatment in the community while the child remains in his family home.

(7) "Informed consent to treatment" means a knowing and voluntary decision to undergo a specific course of treatment, evidenced in writing, and made by an emancipated child, or a child's parent, or guardian, who has the capacity to make an informed decision, after the staff of the facility or other provider of treatment have explained the nature and effects of the proposed treatment.

(8) "Involuntary treatment" means treatment, services and placement of children provided without consent of the parent of a child, under the authority of a court order obtained pursuant to this chapter, as directed by an order of disposition issued by a designated employee of the department of health and welfare under section 16-2415, Idaho Code.

(9) "Lacks capacity to make an informed decision concerning treatment" means that the parent is unable to understand the nature and effects of hospitalization or treatment, or is unable to engage in a rational decision-making process regarding such hospitalization or treatment, as evidenced by an inability to weigh the risks and benefits, despite conscientious efforts to explain them in terms that the parent can understand.

(10) "Likely to cause harm to himself or to suffer substantial mental or physical deterioration" means that, as evidenced by recent behavior, the child:

(a) Is likely in the near future to inflict substantial physical injury upon himself; or

(b) Is likely to suffer significant deprivation of basic needs such as food, clothing, shelter, health or safety; or

(c) Will suffer a substantial increase or persistence of symptoms of mental illness or serious emotional disturbance which is likely to result in an inability to function in the community without risk to his safety or well-being or the safety or well-being of others, and which cannot be treated adequately with available home and community-based outpatient services.

(11) "Likely to cause harm to others" means that, as evidenced by recent behavior causing, attempting, or threatening such harm with the apparent ability to complete the act, a child is likely to cause physical injury or physical abuse to another person.

(12) "Protection and advocacy system" means the agency designated by the governor as the state protection and advocacy system pursuant to 42 U.S.C. 6042 and 42 U.S.C. 10801 et seq.

(13) "Serious emotional disturbance" means an emotional or behavioral disorder, or a neuropsychiatric condition which results in a serious disability, and which requires sustained treatment interventions, and causes the child's functioning to be impaired in thought, perception, affect or behavior. A disorder shall be considered to "result in a serious disability" if it causes substantial impairment of functioning in family, school or community. A substance abuse disorder does not, by itself, constitute a serious emotional disturbance, although it may coexist with serious emotional disturbance.

(14) "Special therapy" means any treatment modality used to treat children with serious emotional disturbances which is subject to restrictions or special conditions imposed by the department of health and welfare rules.

(15) "Surrogate parent" means any person appointed to act in the place of the parent of a child for purposes of developing an individual education program under the authority of the individuals with disabilities education act, 20 U.S.C. 1400 et seq., as amended.

(16) "Teens at risk" means individuals attending Idaho secondary public schools who have been identified as expressing or exhibiting indications of depression, suicidal inclination, emotional trauma, substance abuse or other behaviors or symptoms that indicate the existence of, or that may lead to, the development of mental illness or substance abuse.

(17) "Treatment facility" means a facility or program meeting applicable licensing standards, that has been approved for the provisions of services under this chapter by the department of health and welfare.

History:

[16-2403, added 1997, ch. 404, sec. 1, p. 1284; am. 2003, ch. 249, sec. 1, p. 642; am. 2007, ch. 309, sec. 1, p. 870; am. 2008, ch. 219, sec. 1, p. 678.]

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JUVENILE PROCEEDINGS
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CHILDREN'S MENTAL HEALTH SERVICES

16-2411. EMERGENCY MENTAL HEALTH RESPONSE AND EVALUATION – TEMPORARY DETENTION BY A PEACE OFFICER OR HEALTH CARE PROFESSIONAL. (1) A peace officer may take a child into protective custody and immediately transport the child to a treatment facility for emergency mental health evaluation in the absence of a court order if and only if the officer determines that an emergency situation exists as defined in this chapter, and the officer has probable cause to believe, based on personal observation and investigation, representation of the child's parents or the recommendation of a mental health professional, that the child is suffering from serious emotional disturbance as a result of which he is likely to cause harm to himself or others or is manifestly unable to preserve his health or safety with the supports and assistance available to him and that immediate detention and treatment is necessary to prevent harm to the child or others.

(2) For purposes of this section, "health care professional" means a physician, physician's assistant or advanced practice registered nurse, any one (1) of whom then is practicing in a hospital. A health care professional may detain a child if such person determines that an emergency situation exists as defined in this chapter, and such person has probable cause to believe that the child is suffering from a serious emotional disturbance as a result of which he is likely to cause harm to himself or others or is manifestly unable to preserve his health or safety with the supports and assistance available to him and that immediate detention and treatment is necessary to prevent harm to the child or others. If the hospital does not have an appropriate facility to provide emergency mental health care, it may cause the child to be transported to an appropriate treatment facility. The health care professional shall notify the parent or legal guardian, if known, as soon as possible and shall document in the patient's chart the efforts to contact the parent or legal guardian. If the parent or legal guardian cannot be located or contacted, the health care professional shall cause a report to be filed as soon as possible and in no case later than twenty-four (24) hours with the Idaho department of health and welfare or an appropriate law enforcement agency. The child may not be detained against the parent or legal guardian's explicit direction unless the child is taken into protective custody pursuant to subsection (1) of this section, except that the child may be detained for a reasonable period of time necessary for a peace officer to be summoned to the hospital to make a determination under subsection (1) of this section.

(3) If a child has been taken into protective custody by a peace officer under the provisions of this section, the officer shall immediately transport the child to a treatment facility or mental health program, such as a regional mental health center, a mobile crisis intervention program, or a therapeutic foster care facility, provided such

center's program or facility has been approved by the regional office of the department for that purpose. The department shall make a list of approved facilities available to law enforcement agencies.

(4) Upon taking the child into protective custody or detaining the child pursuant to this section, the officer or health care professional shall take reasonable precautions to safeguard and preserve the personal property of the child unless a parent or guardian or responsible relative is able to do so. Upon presenting a child to a treatment facility, the officer shall inform the staff in writing of the facts that caused him to detain the child and shall specifically state whether the child is otherwise subject to being held for juvenile or criminal offenses.

(5) If the child who is being detained by a peace officer is not released to the child's parent, guardian or custodian, the law enforcement agency shall contact the child's parent, guardian or custodian as soon as possible, and in no case later than twenty-four (24) hours, and shall notify the child's parent, guardian or custodian of his status, location and the reasons for the detention of the child. If the parents cannot be located or contacted, efforts to comply with this section and the reasons for failure to make contact shall be documented in the child's record.

History:

[16-2411, added 1997, ch. 404, sec. 1, p. 1288; am. 2013, ch. 293, sec. 1, p. 770.]