
Mental Holds In Idaho



**Idaho Hospital
Association**

Kim C. Stanger

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Preliminaries

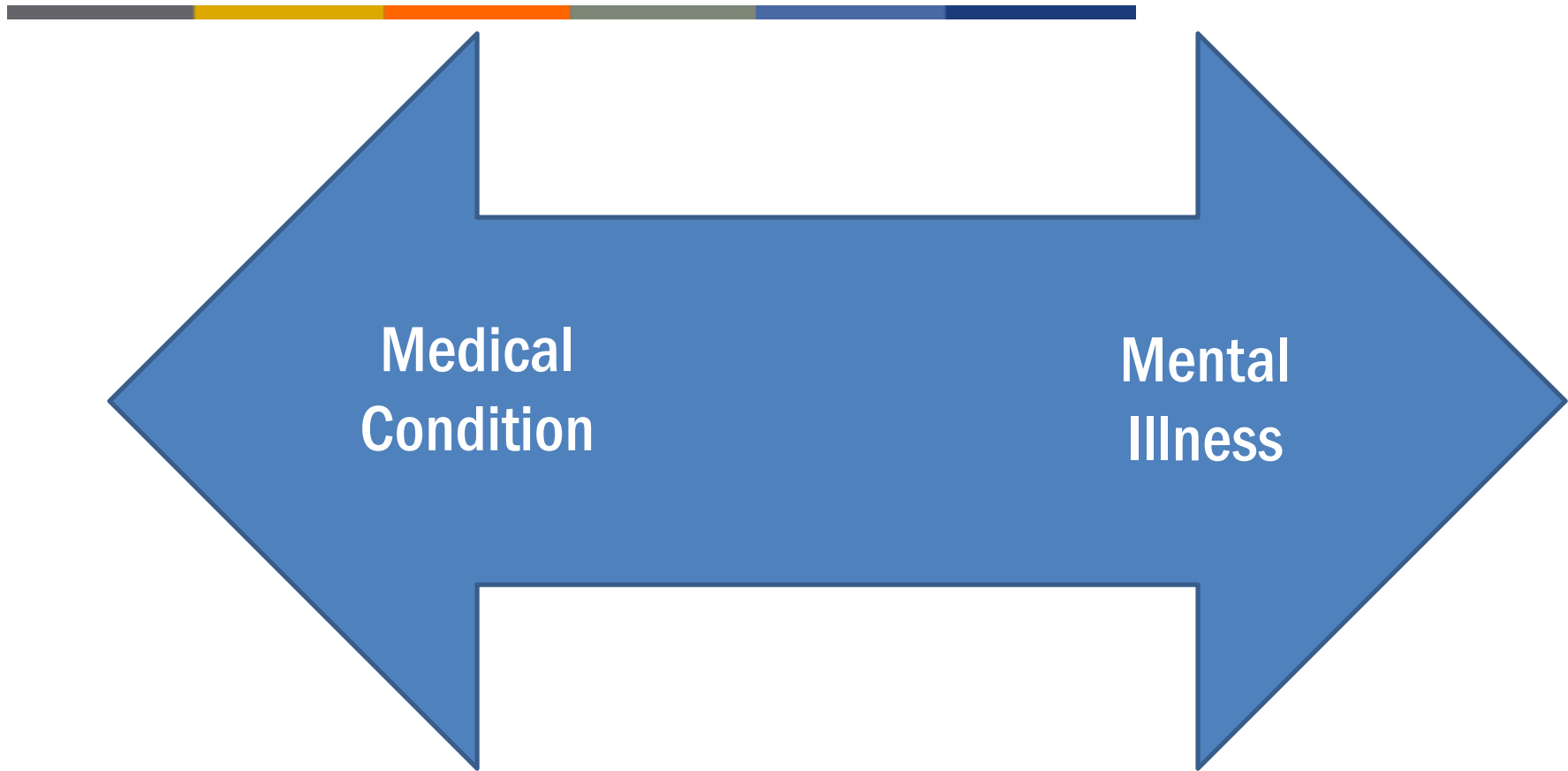
- Written materials
 - Copies of .ppts.
 - Copies of relevant statutes.
 - Article, *Changes to Idaho's "Mental Hold" Laws*
- Submit questions:
 - Using chat feature, or
 - E-mail to kcstanger@Hollandhart.com
- Welcome representatives from the Idaho Dept. of Health and Welfare.

General Rules

- Competent patient has right to decide their own care.
- If patient is incompetent or refuses care, must have authority to hold or treat patient.
 - Advance directive from patient. (IC 39-4504(1))
 - Consent from authorized surrogate. (IC 39-4504(1))
 - Emergency treatment for incompetent patient. (IC 39-4504(1)(i); IC 56-1015).
 - Mental Hold:
 - Adults (IC 66-326)
 - Minors (IC 16-2411)
- Absent authority, may be liable for false imprisonment, kidnapping, battery, lack of informed consent, etc.

Purpose: hold patient while seek court order authorizing commitment for further treatment.

Medical v. Mental Hold?



Medical v. Mental

Medical Issues

- Follow general consent principles in IC 39-4503 and -4504:
 - Competent patient may consent to own care.
 - If patient incompetent, obtain consent from surrogate.
 - If emergency and patient is incompetent, provide necessary care while seek to obtain consent.



Mental Health Issues

- Follow general consent principles in IC 39-4503 and 39-4504; or
- If unable to obtain consent from patient or surrogate, consider:
 - 72-hour administrative hold if patient is in mental health facility per IC 66-320.
 - 24-hour mental hold per IC 66-326.
 - Shelter care for minor per IC 16-2411.

Competent Patient

- Any person who comprehends the need for, the nature of and the significant risks ordinarily inherent in any contemplated health care 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 consent if the consenting person appears to possess such requisite comprehension at the time of giving the consent.

(IC 39-4503)

Incompetent Patient

Consent for health care to any person who is not capable of giving consent or who is a minor may be given or refused in the order of priority set forth below; provided that [1] the surrogate decision maker shall have sufficient comprehension as required to consent to his or her own health care; and [2] the surrogate decision maker shall not have authority to consent to or refuse health care contrary to such person's advance directives or wishes expressed while the person was competent:

- (a) The court appointed guardian of such person;
- (b) The person named in another person's Durable Power of Attorney for Health Care
- (c) If married, the spouse of such person;
- (d) An adult minor of such person;
- (e) A parent of such person;...
- (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.

(IC 39-4504(1))

Incompetent Patient: Emergency

If [1] 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 health care and [2] 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.

(IC 39-4504(1)(i))

Incompetent Patient: Emergency

No physician or hospital licensed in this state shall be subject to civil liability, based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital or health services to any individual regardless of age where [1] that individual is unable to give this consent for any reason and [2] there is no other person reasonably available who is legally authorized to consent to the providing of such care, provided, however, [3] that such person, physician, or hospital has acted in good faith and without knowledge of facts negating consent.

(IC 56-1015)

Consent v. Hold

- No need for “mental hold” if:
 - Competent patient consents to care.
 - Patient is incompetent and surrogate consents to care.
 - Emergency and patient is incompetent and no surrogate available.
 - May need to initiate “mental hold” if:
 - Patient refuses care.
 - Surrogate refuses care.
 - Cannot locate surrogate.
- Purpose: hold patient while initiate court proceedings to authorize commitment of patient.

Mental Holds

- 72-hour administrative hold, IC 66-318 to -322
- 24-hour protective hold, IC 66-326
- Shelter care for minor, IC 16-2411



72-Hour Administrative Hold

- Applies if patient is a “voluntary patient” in a “facility”. (66-320(a))
 - “Facility” = any hospital, institution, mental health center or other organization designated in accordance with rules adopted by health and welfare as equipped to initially hold, evaluate, rehabilitate or provide care or treatment for the mentally ill, e.g.,
 - Psych hospital.
 - Hospital with psych unit. } See IDAPA 16.03.14.470
 - “Voluntary patient” = an individual admitted to a facility for observation, diagnosis, evaluation, care or treatment pursuant to section IC 66-318.
(IC 66-317(7))

72-Hour Administrative Hold

- Only applies if patient admitted voluntarily to facility, i.e.,
 - Patient > 18: patient requests care
 - Emancipated minor: patient requests care
 - Patient > 14: patient requests care + parent/guardian notified
 - Patient < 14: parent/guardian requests care + designated examiner recommends care if inpatient facility
 - Patient lacks capacity to make informed treatment decisions: guardian requests care + designated examiner recommends care if inpatient facility
- Effective July 1, 2017, patient may be admitted by the facility director “or practitioner granted admitting privileges.”
- Facility director or practitioner must refuse admission if patient lacks capacity unless guardian requests care.

(IC 66-318)

72-Hour Administrative Hold

- Facility director may hold a patient who has requested release, or whose release has been requested by surrogate, if:
 - Patient was voluntarily admitted to facility,
 - Patient or authorized surrogate requests release in writing, and
 - Facility director believes that patient should be detained up to 3 days (excluding Saturdays, Sundays, and holidays) for purpose of –
 - Obtaining designated exam, and
 - Initiating commitment proceedings.

(IC 66-320(3))

72-Hour Administrative Hold

- Document that criteria satisfied.
 - Patient was voluntarily admitted.
 - Patient now seeks to leave.
 - Facts that show patient should be hospitalized against their will.
- Director of facility initiates hold.
- Within 3 days (excluding Saturday, Sunday and holidays) –
 - Obtain designated exam.
 - Initiate application to provide continuing care.

24-Hour Protective Hold



24-Hour Protective Hold

- 24-hour mental hold at hospital may be initiated by:
 - a peace officer, or
 - medical staff member, physician’s assistant, or advanced practice registered nurse at a hospital to which person is brought for care,
- if the officer or practitioner 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.

(IC 66-326)

24-Hour Protective Hold

"Mentally ill" = 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.

(IC 66-317(12))

24-Hour Protective Hold

" Gravely disabled " = a person who, as 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.

(IC 66-317(13))

24-Hour Protective Hold

"Likely to injure himself or others" =

- (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.

(IC 66-317(11))

24-Hour Protective Hold

IC 66-326 does not apply to an individual who:

- has epilepsy,
- has a developmental disability,
- has a physical disability,
- has an intellectual disability,
- is impaired by chronic alcoholism or drug abuse, or
- is aged,

unless in addition to such condition, such person is mentally ill.

(IC 66-329(13))

24-Hour Protective Hold

- Notice must be given to patient's immediate relatives of:
 - Patient's whereabouts.
 - Reasons for detaining persons.

(IC 66-326(5))

- Not clear who must give notice.
- Hospital should ensure notice is given.

24-Hour Protective Hold

- W/in 24 hours of hold: petition court for temporary hold.
 - If court orders exam: continue to hold.
 - Consider including order to provide necessary treatment.
 - If court denies exam: release unless other basis to hold, e.g.,
 - Patient consents.
 - Patient is incompetent and surrogate consents.
- W/in 24 hours of court order: designated exam and report to court addressing whether patient is mentally ill and either gravely disabled or likely to injure self and others.
- W/in 24 hours of exam: prosecutor initiates commitment proceedings.
- Upon receipt, court orders detention for up to 5 days for hearing.
- If no petition filed w/in 24 hours of exam, release patient.

(IC 66-326)

24-Hour Protective Hold

- **Cannot hold patient in non-medical unit used for detention of individuals charged with or convicted of a crime.**

(IC 66-326)

- **However, if patient is engaging in criminal behavior (e.g., assault) police may need to charge patient with crime and remove patient from hospital.**

Mental Hold: Restraints

- Hospital may use restraints or seclusion if necessary to for patient's safety or safety of others.
 - Chemical restraints.
 - Physical restraints.

(IC 66-345)

- Hospital should follow its normal restraint policies.
 - *See* CMS conditions of participation.

Mental Hold: Transfers

- **Hospital may transfer mental hold patient to another facility so long as it complies with EMTALA.** (See IC 66-324, 66-326(6)).
 - Must use appropriate means and personnel.
 - Receiving facility must agree to transfer.
(42 CFR 489.24)
- **Under EMTALA, hospital with specialized capabilities may not refuse transfer unless it is on diversion.**
 - “Specialized capabilities” = capabilities and capacity.
 - Does not apply if patient was an inpatient.
(42 CFR 489.24)

Mental Hold: Limited Immunity

- Applies to detaining, failing to detain, diagnosing, transporting, treating or releasing patient per the mental hold law.
- To get immunity, must –
 - Comply with procedure in chapter, and
 - Act in good faith and without gross negligence.

(IC 66-341)

Shelter Care for Minors



Shelter Care for Minors

- Some prosecutors take the position that:
 - Adults: apply 24-hour mental hold per IC 66-326.
 - Hold patient to obtain designated exam to determine whether patient should be committed.
 - Minors: apply shelter care per IC 16-2411.
 - Hold minor long enough to either:
 - Notify parent/guardian, or
 - If parent/guardian refuse care, notify police to initiate protective hold.
- Note: standards may differ.

Shelter Care for Minors

- An unemancipated minor may be detained by a physician, physician's assistant or advanced practice nurse at a hospital if:
 - an emergency condition exists, and
 - the person has probable cause to believe that minor 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
 - immediate detention and treatment is necessary to prevent harm to the minor or others.

(IC 16-2411(1)-(2))

Shelter Care for Minors

- **“Emergency” = a situation in which the minor’s condition, as evidenced by recent behavior, poses a significant threat to the health or safety of the minor, his family or others, or poses a serious risk of substantial deterioration in the minor’s condition which cannot be eliminated by the use of supportive services or intervention by the minor’s parents, or mental health professionals, and treatment in the community while the minor remains in his family home.**

(IC 16-2403(6))

Shelter Care for Minors

"Serious emotional disturbance" = an emotional or behavioral disorder, or a neuropsychiatric condition which results in a serious disability, and which requires sustained treatment interventions, and causes the minor'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.**

(IC 16-2403(13))

Shelter Care for Minors

"Likely to cause harm to himself or to suffer substantial mental or physical deterioration" = as evidenced by recent behavior, the minor:

- (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.

(IC 16-2403(10))

Shelter Care for Minors

“Likely to cause harm to others” = as evidenced by recent behavior causing, attempting, or threatening such harm with the apparent ability to complete the act, a minor is likely to cause physical injury or physical abuse to another person.

(IC 16-2403(11))

Shelter Care for Minors

- **If the hospital does not have an appropriate facility to provide emergency mental health care, it may cause the minor to be transported to an appropriate treatment facility.**

(IC 16-2411(2))

Shelter Care for Minors

- 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

(IC 16-2411(2))

Shelter Care for Minors

- A minor may not be detained against the parent/guardian's explicit direction unless the minor is taken into protective custody by a peace officer.
- A minor may be detained for a reasonable period of time necessary for a peace officer to be summoned to the hospital to make a determination whether he/she should initiate protective custody.
- If police officer takes minor into protective custody, the police shall immediately transport the minor to a treatment facility or mental health program approved by DHW for that purpose.

(IC 16-2411(2))

24-Hour Mental Hold v. Shelter Care

24-Hour Mental Hold per 66-326

- Applies to adults and maybe minors.
- Hold long enough to obtain designated exam and, if warranted, commitment proceedings.

Shelter Care per 26-2411

- Applies to unemancipated minors.
- Hold long enough to notify parent/guardian.
- If parent/guardian refuse care, may hold long enough to notify police and let police initiate mental hold.

Shelter Care for Minors

- **Healthcare professional shall take reasonable precautions to safeguard and preserve personal property of the minor unless a parent, guardian or responsible relative is able to do so.**

(IC 16-2411(4))

Hospitals Offering Psych Services



Hospitals Offering Psych Services

- If the hospital offers psychiatric service it shall be organized, staffed and equipped to provide inpatient and outpatient treatment to the mentally ill per IDAPA 16.03.14.470, e.g.,
 - Staffing
 - Services provided
 - Treatment plans
 - Psych unit space
 - Records
 - Policies and procedures

Hospitals Offering Psych Services

- DHW has indicated that it will not cite non-psych hospitals for providing care while attempting to transfer patient to a psych unit.
 - EMTALA requires stabilizing treatment or appropriate transfer.
 - Document efforts to transfer patient.
- DHW may allow hospitals to provide limited psych services (e.g., through telemedicine) to help stabilize patients pending transfer to a psych hospital.

Summary



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Medical Issues

- Follow general consent principles in IC 39-4503 and -4504:
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Questions:



Kim C. Stanger
Holland & Hart LLP
208-383-3913
kcstanger@hollandhart.com