

MIEC New Law Alert

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New Law Alert – Idaho

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The Idaho Legislature enacted a number of new laws affecting physicians, other health care professionals and patients. All new laws took effect 7/1/12 unless otherwise indicated.

Medical Consent and Natural Death Act: SB 1294: authored by the Health and Welfare Committee

Amends multiple sections of Idaho Code

In existing law, in the course of updating the Medical Consent and Natural Death Act (originally two separate acts), a form called the “Physician Orders for Scope of Treatment,” commonly called a “POST” was developed and language added to the Act to set the terms and conditions for the POST. This form in part was designed to replace “Do Not Resuscitate” (DNR) and “Do Not Intubate” (DNI) orders by doctors with a form that was much more flexible and which was portable, going with the person into all settings, and was binding on all treating personnel. Additionally, the form gave a number of more detailed options than either the Living Will and Durable Power of Attorney for Health Care or DNR and DNI orders would supply, thereby giving the person more

control over their medical treatment.

The new law clarifies the interaction between the POST and other medical directives, such as the Living Will and Durable Power of Attorney for Health Care.

PAs and APPNs included:

Allowed signers of the POST are expanded to include Physician Assistants (PAs) and Advance Practice Professional Nurses (APPNs), and the definition of the POST form “Physicians Orders for Scope of Treatment” has been changed to include APPNs and PAs.

A “health care provider” may now also authorize emergency care in certain situations in which the patient cannot give consent. The attending health care provider may, in his or her discretion, authorize and/or provide such healthcare as he or she deems appropriate in a medical emergency or when there is a substantial likelihood of the patient’s life or health being seriously endangered by withholding or delay in the rendering of such hospital, medical, dental, surgical or other health care to the patient and the patient has not communicated and is unable to communicate his or her treatment wishes.

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Temporary Suspension: A new section has been added regarding suspension of a Living Will, Durable Power of Attorney for Healthcare, POST form or other similar advance directive. Any of these may be suspended at any time by the maker thereof by any of the following methods:

- By written, signed suspension by the maker thereof expressing his intent to suspend; or
- By an oral expression by the maker thereof expressing his intent to suspend.

The conditions set forth in the Living Will and Durable Power of Attorney, Physician Orders for Scope of Treatment or other similar advance directive will resume upon meeting the termination terms of the suspension, as defined by the written or oral expression by the maker.

Identification jewelry: The new law also specifies that POST identification jewelry shall be issued to persons who have a POST form stating that such person has chosen “Do Not Resuscitate: Allow Natural Death (No Code/DNR/DNAR): No CPR or advanced cardiac life support interventions” or the equivalent choice.

Persons who may give consent to care for others: A surrogate decision maker shall not have authority to consent to or refuse healthcare contrary to a person’s advance directives, POST or wishes expressed while the person was capable of consenting to his or her own health care.

In addition, definitions of who may give consent to care for others are expanded to include an adult child (after the spouse and before the parent).

Sufficiency of consent: Consent or refusal shall be considered valid in all respects if “informed refusal” or “informed consent” are obtained:

“Consent or refusal 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 person receiving such care, as to permit the giving or withholding of such consent to be a reasonably informed decision.”

Consent shall be deemed valid if the “healthcare provider” (formerly limited to 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 healthcare provider of good standing practicing in the same community.

Responsibility for consent and documentation: The healthcare provider (formerly limited to physician or dentist) upon whose order or at whose direction the contemplated care or treatment is rendered is responsible for obtaining and documenting consent. However, a licensed hospital and any employee of a healthcare provider may perform the ministerial act of documenting consent by securing the completion and execution of a form or statement to that effect, so long as they are acting with the approval of the healthcare provider.

No DNR required with valid POST form: If the person or person’s surrogate decision maker chooses to utilize the POST form,

the healthcare 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.

*Contact: Robert L. Aldridge
Phone: (208) 336-9880*

Controlled substance prescriptions database: HB 439 authored by Health and Welfare Committee

Amending sections 37-2726 and 37-2730A, Idaho Code.

Practitioners licensed in states other than Idaho often provide medical services to Idaho residents, especially in Idaho’s neighboring states. This new law:

- Clarifies that the Board of Pharmacy is allowed to provide Prescription Monitoring Program (PMP) data to licensed practitioners, whether licensed in Idaho or another state;
- The penalty for misuse of the PMP is a misdemeanor;
- Provides for violations and penalties relating to the failure to safeguard certain user accounts, login names and passwords;
- Allows pharmacists PMP access when providing pharmaceutical care services;
- Allows the Board of Pharmacy to block or deny access to certain controlled substances prescription databases data if the board has reason to believe that access to the data is or may be used illegally; and
- Allows the Board of Pharmacy to distribute unsolicited reports to pharmacists and practitioners, when the release of information may be of assistance in preventing or avoiding

inappropriate use of controlled substances.

Access to the controlled substance database is clarified to include other states' licensing entities, and pharmacists and practitioners licensed in other states. Access must still be granted to the extent the information relates specifically to a current patient of the practitioner to whom the practitioner is prescribing or considering prescribing any controlled substance.

Any person with access to the board's online prescription monitoring program pursuant to a board issued user account, login name and password who intentionally shares or recklessly fails to safeguard his user account, login name and password, resulting in another person not authorized to receive or use such information under the provisions of any state or federal law, rule or regulation obtaining information from the controlled substances prescriptions database, shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months or by a fine not to exceed two thousand dollars or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.

*Contact: Representative John Rusche
Office: Board of Pharmacy
Phone: (208) 334-2356*

Prohibiting economic credentialing of medical staff membership: HB 541 by Business Committee

Addition of section 39-1392g, Idaho Code

As delivery of medical care is consolidating, it is important that patients have the opportunity to

be treated by their physicians regardless of what hospital they are in. In order to provide care in a hospital, a physician needs to be credentialed by that hospital to ensure that he or she is properly licensed and has the appropriate skills to provide care in the hospital. This new law clarifies that hospitals can establish their own criteria for medical staff membership but cannot deny medical staff membership to someone merely because that doctor also practices elsewhere, has an ownership interest in another facility such as an ambulatory surgical center or specialty hospital, or because that doctor is a competitor of other doctors on the hospital medical staff.

Nothing in this section shall require a health care organization to grant privileges to an application for services that are subject to an exclusive contract or not offered in that facility.

*Contact: Ken McClure
Phone: (208) 388-1200*

Validity of prescription drug orders: HB 503 by Health and Welfare Committee

Amending section 54-1733, Idaho Code

This new law clarifies that there are limited and very specific situations where it is appropriate for a healthcare provider to write a prescription for an individual with whom that provider does not have an established provider-patient relationship. There are seven specific situations set forth in this legislation, each of which follow well-established methods of care in the health care community, as well as best practices established by Centers for Disease Control and Prevention (CDC) guidelines.

A prescriber may prescribe or perform any of the following activities for a patient with whom the prescriber does not have a prescriber-patient relationship under the following circumstances:

- 1) Writing initial admission orders for a newly hospitalized patient;
- 2) Writing a prescription for a patient of another prescriber for whom the prescriber is taking call;
- 3) Writing a prescription for a patient examined by a physician assistant, advanced practice registered nurse or other licensed practitioner with whom the prescriber has a supervisory or collaborative relationship;
- 4) Writing a prescription for medication on a short-term basis for a new patient prior to the patient's first appointment;
- 5) In emergency situations where life or health of the patient is in imminent danger;
- 6) In emergencies that constitute an immediate threat to the public health including, but not limited to, empiric treatment or prophylaxis to prevent or control an infectious disease outbreak;
- 7) If a prescriber makes a diagnosis of a sexually transmitted disease in a patient, the prescriber may prescribe or dispense antibiotics to the infected patient's named sexual partner or partners for treatment of the sexually transmitted disease as recommended by the most current Centers for Disease Control and Prevention guidelines.

Contact: Susie Pouliot
Office: Idaho Medical Association
Phone: (208) 344-7888

Certified Medication Assistant background checks: SB 1262

Amending section 54-1406A, Idaho Code

Existing law provides that an individual registered as a nursing assistant on the Nursing Assistant Registry maintained by the Idaho Department of Health and Welfare, may, with additional education and training, become a certified medication assistant (MA-C) permitted to administer medications as prescribed by an authorized provider, within certain parameters, and under the supervision of a licensed nurse. The new law requires all applicants for certification or recertification to submit a fingerprint-based criminal history check of both the Idaho central criminal data base and the Federal Bureau of Investigation criminal history database.

Contact: Sandra Evans
Office: Board of Nursing
Phone: (208) 577-2482

Board of Nursing: Alternatives to formal discipline: SB 1260

Amending section 54-1404, Idaho Code

The Idaho Board of Nursing has been charged with the duty to establish alternatives to formal disciplinary action including a practice remediation program to educate and remediate nurses as a result of nursing practice deficiencies.

Contact: Sandra Evans
Office: Board of Nursing
Phone: (208) 577-2482

End of life withdrawal of care: SB 1348 by State Affairs Committee

Amending sections 39-4509, 39-4513, and 39-4514, Idaho Code

It is the purpose of this legislation to protect patients from involuntary denial of food and fluids, and from involuntary denial of life-preserving medical treatment. Before this law was passed, any doctor or other healthcare provider could refuse to provide a patient life-preserving medical treatment, including artificial nutrition and hydration, so long as such was deemed “medically inappropriate” or “futile,” terms that were not defined in the law.

Moreover, under existing law any doctor or other healthcare provider unwilling to conform to the desires of the patient could withdraw once the provider has made a good faith effort to assist in obtaining the services of another healthcare provider willing to provide the desired care, whether or not the patient’s care has actually successfully been transferred to another healthcare provider willing to give the patient the desired medical treatment, food or fluids. The new law also clarifies that this applies not only to the patient’s desires, but also to the person who may give consent to care for the patient. Assisted feeding or artificial nutrition and hydration may not be withdrawn or denied if its provision is directed by a competent patient, by a patient’s healthcare directive, or by a patient’s surrogate decision maker. Healthcare other than assisted feeding or artificial nutrition and hydration may not be withdrawn or denied if its provision is directed by a competent patient, by a patient’s health care directive, or

by a patient’s surrogated decision maker unless such care would be futile care.

On the other hand, except as provided elsewhere in the Idaho Code for mentally ill persons and those with developmental disabilities, the new law requires their withdrawal when directed by the patient, the patient’s advance directive, or the patient’s surrogate. The legislation does not require provision of treatment to a patient if it would require denial of the same or similar treatment to another patient.

The new law provides clarification on the definition of “futile care.” Futile care does not include comfort care. Futile care is specifically defined as a course of treatment:

- (a) for a patient with a terminal condition for whom, in reasonable medical judgment, death is imminent within hours or at most a few days whether or not the medical treatment is provided and that in reasonable medical judgment will not improve the patient’s condition; or
- (b) the denial of which in reasonable medical judgment will not result in or hasten the patient’s death.

Contact: Senator Sheryl L. Nuxoll
Phone: (208) 332-1000

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