

TITLE 66

STATE CHARITABLE INSTITUTIONS  
CHAPTER 6  
**DECLARATIONS FOR MENTAL HEALTH TREATMENT**

**66-601. DEFINITIONS.** For the purposes of this chapter, the following definitions shall apply:

(1) "Agent" means an adult properly appointed to make mental health treatment decisions for a principal under a declaration for mental health treatment and also means an alternative agent.

(2) "Attending physician" means the licensed physician who has primary responsibility for the care and treatment of the declarant.

(3) "Facility" means:

(a) A designated treatment facility, as defined in section 66-317(g), Idaho Code;

(b) A nursing home; or

(c) An assisted living home.

(4) "Incapable" means that, by order of a court in a guardianship proceeding under section 66-322, Idaho Code, or in the opinion of two (2) physicians that include a psychiatrist, or in the opinion of a physician and a professional mental health clinician, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.

(5) "Mental health treatment" means electroconvulsive treatment, treatment with psychotropic medication or short-term admission to a treatment facility for a period not to exceed seventeen (17) days.

(6) "Mental illness" means a substantial disorder of thought, mood, perception, orientation or memory, which grossly impairs judgment, behavior, or capacity to recognize and adapt to reality.

(7) "Professional mental health clinician" means an individual who holds an earned master's level or higher degree in social work from an accredited program; a registered nurse with an earned master's degree or higher degree in nursing with a specialization in psychiatric or mental health nursing from an accredited program; an individual who holds an earned master's level or higher degree in psychology from an accredited program; or an individual who holds an earned master's level or higher degree in counseling, marriage and family therapy or other closely related degree. Additionally, professionals in each category must have at least two (2) years experience in a clinical mental health setting.

**66-602. DECLARATIONS FOR MENTAL HEALTH TREATMENT.**

(1) A competent adult may make a declaration of preferences or instructions regarding mental health treatment. The preferences or instructions may include consent to or refusal of mental health treatment. The declaration shall name an attorney-in-fact (agent) and an alternative agent whose authority continues in effect as long as the declaration appointing the agent is in effect or until the agent has withdrawn. If a declaration for mental health treatment has been invoked and is in effect, the declaration remains effective until the principal is no longer incapable.

(2) A declaration for mental health treatment continues in effect until revoked. A declaration may be revoked in whole or in part at any time by the principal if the principal is not incapable. A revocation is effective when a capable principal communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the principal's medical record.

**66-603. DESIGNATION OF AGENT.** (1) A declaration may designate a competent adult to act as agent to make decisions about mental health treatment. An alternative agent may also be designated to act as agent if the original designee is unable or unwilling to act at any time.

(2) The following may not serve as agent:

- (a) The attending physician, mental health service provider, or an employee of the physician or provider, who is not related to the principal by blood, marriage or adoption;
- (b) An owner, operator or employee of a health care facility in which the principal is a patient or resident who is not related to the principal by blood, marriage or adoption.

(3) The designation of an agent under this section supersedes a previous designation of an agent regarding mental health treatment unless otherwise specifically provided in the declaration.

**66-604. SIGNATURE -- WITNESSES.** (1) A declaration is effective only if it is signed by the principal and two (2) competent adult witnesses. The witnesses must attest that the principal is personally known to them, signed the declaration in their presence, appears to be of sound mind, and is not under duress, fraud or undue influence.

(2) The following may not serve as a witness to the signing of a declaration:

- (a) The attending physician or mental health service provider or a relative of the physician or provider;
- (b) An owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident; or
- (c) A person related to the principal by blood, marriage or adoption.

**66-605. OPERATION OF DECLARATION.** (1) A declaration becomes operative when it is delivered to the principal's physician or mental health treatment provider and remains valid until revoked. The physician or provider shall act in accordance with an operative declaration when the principal has been found to be incapable. The physician or provider shall continue to obtain the principal's informed consent to all mental health treatment decisions if the principal is capable of providing informed consent or refusal.

(2) Upon being presented with a declaration, a physician or other provider shall make the declaration a part of the principal's medical record if a physician-patient relationship has previously been established. If no physician-patient relationship has previously been established, nothing in this statute, or rules adopted pursuant thereto, may be read to require the establishment of physician-patient relationship in contradiction to the existing requirements of reasonable medical practice. When acting under authority of a declaration, a physician or provider shall comply with it to the fullest extent possible consistent with reasonable medical practice, the availability of treatments requested, and applicable law. If the physician or other provider is unwilling at any time to comply with the declaration, the physician or provider may withdraw from providing treatment consistent with the exercise of independent medical judgment by promptly notifying the principal and the agent and documenting the notification in the principal's medical record.

**66-606. POWERS OF AGENT.** (1) An agent who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the principal only when the principal is incapable. The decisions must be consistent with desires the principal has expressed in the declaration.

(2) Except to the extent the right is limited by the declaration or any federal law, an agent has the same right as the principal to receive information regarding the proposed mental health treatment and to receive, review and consent to disclosure of medical records relating to that treatment. This right of access does not waive any evidentiary privilege.

(3) In exercising authority under the declaration, the agent has a duty to act consistently with the desires of the principal as expressed in the declaration. If the principal's desires are not expressed in the declaration and not otherwise known by the agent, the agent has a duty to act in what the agent in good faith believes to be the best interest of the principal.

(4) An agent is not subject to criminal prosecution, civil liability or professional disciplinary action for an action taken in good faith under a declaration for mental health treatment. The agent is not, as a result of acting in that capacity, personally liable for the cost of treatment provided to the principal.

**66-607. WITHDRAWAL.** An agent may withdraw by giving notice to the principal. If a principal is incapable, the agent may withdraw by giving notice to the attending physician or provider. The attending physician or provider shall note the withdrawal as part of the principal's medical record, and may continue treatment in accordance with the declaration to the extent such treatment is consistent with reasonable medical practice. A person who has withdrawn under the provision of this section may rescind the withdrawal by executing an acceptance after the date of the withdrawal. A person who rescinds a withdrawal shall give notice to the principal if the principal is capable or to the principal's health care provider if the principal is incapable.

**66-608. LIMITATIONS.** A person may not be required to execute or to refrain from executing a declaration as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of discharge from a health care facility.

**66-609. ACTIONS CONTRARY TO DECLARATION.** The physician or provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in a declaration for mental health treatment only:

- (1) If the principal is committed to a treatment facility under section 66-329, Idaho Code; or
- (2) In cases of emergency endangering life or health.

**66-610. RELATION TO OTHER STATUTES.** A declaration does not limit any authority provided in this chapter either to take a person into custody or to admit, retain or treat a person in a health care facility.

**66-611. LIMITED IMMUNITY.** A physician or provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of a declaration is not subject to criminal prosecution, civil liability or professional disciplinary action resulting from a subsequent finding of a declaration's invalidity.

**66-612. PENALTY.** It is a misdemeanor for a person to knowingly alter, forge, conceal or destroy a declaration, or the reinstatement or revocation of a declaration. In this section, "knowingly" has the meaning given in section 18-101 5., Idaho Code.

**66-613. FORM OF DECLARATION.** A declaration for mental health treatment shall contain the following language, or language that is substantially similar.

**NOTICE TO PERSON MAKING A DECLARATION FOR MENTAL HEALTH TREATMENT.** This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

(1) This document allows you to make decisions in advance about three (3) types of mental health treatment: psychotropic medication, electroconvulsive therapy, and short-term (up to seventeen (17) days) admission to a treatment facility. The instructions that you include in this declaration will be followed only if a court, two (2) physicians that include a psychiatrist, or a physician and a professional mental health clinician believe that you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments.

(2) You may also appoint a person as your agent to make these treatment decisions for you if you become incapable. The person you appoint has a duty to act consistent with your desires as stated in this document or, if your desires are not stated or otherwise made known to the agent, to act in a manner consistent with what the person in good faith believes to be in your best interest. For the appointment to be effective, the person you appoint must accept the appointment in writing. The person also has the right to withdraw from acting as your agent at any time.

(3) This document will continue in effect until revoked. You have the right to revoke this document in whole or in part at any time you have not been determined to be incapable. **YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED INCAPABLE BY A COURT, TWO**

**(2) PHYSICIANS THAT INCLUDE A PSYCHIATRIST, OR A PHYSICIAN AND A PROFESSIONAL MENTAL HEALTH CLINICIAN.** A revocation is effective when it is communicated to your attending physician or other provider.

(4) If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration will not be valid unless it is signed by two (2) qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.