

## Idaho's New Physician Order for Scope of Treatment (POST) Law

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Effective July 1, 2007, the new Physician Order for Scope of Treatment ("POST") form replaces the former "do not resuscitate" ("DNR") and Comfort One programs in documenting and directing the patient's treatment wishes concerning life-sustaining treatment. (See I.C. § 39-4509 *et seq.*). Under former laws, a patient who wanted to limit their life-sustaining care was often required to have multiple directives that applied in different settings, (e.g., a Comfort One that applied to EMS personnel or separate DNR orders for each facility that might render care), thereby confusing the patient and health care providers. The new POST law is intended to simplify the situation by replacing the former directives with one standardized form that applies in all treatment settings. It also provides patients with greater flexibility in expressing their wishes and a process for discussing those wishes with their attending physician.

**The POST Form.** As its name suggests, the POST is a standardized physician order that directs the patient's life-sustaining treatment if the patient lacks capacity to make decisions about their care. The POST is similar to but broader than a traditional DNR order: the POST form allows the patient and the physician to include more specific treatment directions than a traditional DNR. In addition, unlike the Comfort One program, the new POST applies in any care setting, whether at home or in a facility. (I.C. § 39-4514(8)). Thus, the new POST form supplements other advance directives (e.g., a living will or durable power of attorney for healthcare), and replaces the existing DNR/Comfort One model as the standard "do not resuscitate" order in Idaho. (See *id.* at § 39-4512B(2)). All facilities must accept a properly executed POST form as a DNR order, and providers and EMS personnel cannot require additional or alternative forms before honoring the patient's wishes. (*Id.*).

**Obtaining the POST Form.** The new POST form will be available through the Secretary of State's website, [www.idsos.state.id.us](http://www.idsos.state.id.us), by July 1, 2007. Providers will need to send an email to [idahopost@dhw.idaho.gov](mailto:idahopost@dhw.idaho.gov) to request a password that will allow them access to the forms through the website. Once they have a password, providers may complete the POST form online, then print the form for signature. The POST Form and POST Form Instructions can be found at <http://www.teamiha.org/teamiha/CRMS/Publications.cfm>

**Application.** According to the statute, the POST form:

is appropriate in cases where a patient has an incurable or irreversible injury, disease, illness or condition, or where a patient is in a persistent vegetative state. A POST form is also appropriate if such conditions are anticipated.

(I.C. § 39-4512A(1)). This provision is a bit ambiguous in that it is not entirely clear whether the POST form may be completed by a physician if the patient does not have an incurable or irreversible condition. However, because the published POST form incorporates a DNR that may be relevant to patients who are currently healthy, it would appear that a POST form may be requested by and completed for any adult patient. In addition, the POST may be executed where such incurable conditions "are anticipated." Read broadly, everyone probably anticipates or should anticipate such a condition at some future time even if it is decades away. Thus, as a practical matter, it appears that the POST law may apply to all adult patients, whether or not they currently suffer an incurable or irreversible injury.

**Completing and Updating the POST.** Any competent adult patient (or, if the patient is incompetent, their personal representative) may have a POST form executed by the patient's physician. (I.C. § 39-4512A). Upon the patient's request, the attending physician must give the patient a POST form, discuss its ramifications, and help the patient complete the form. (*Id.* at § 39-4512A(3)). Once completed, the POST operates as the physician's standing order. Thereafter, the physician must review the POST (1) each time the physician examines the patient or, if the patient is hospitalized, at least once every seven days; (2) each time the patient is transferred to another care setting or level of care; (3) anytime there is a substantial change in the patient's health status; and/or (4) anytime the patient's treatment preferences change. (*Id.* at § 39-4512A(4)). Where practical, the physician must consult with the patient or the patient's agent, and may execute a new POST as conditions warrant (*Id.*). The statute does not give much guidance on how physicians are to implement these requirements, other than to note that the failure to comply does not vitiate the validity of the POST. (*Id.*). The good news for physicians is that the statute does not include any penalties for a physician's non-compliance with the review requirements. Health care providers and insurers may not condition treatment on the execution of the POST form. (*Id.* at § 39-4514(7)(b)).

**Portability of the POST.** A completed POST is effective in all care settings, including but not limited to hospitals, home care, ambulance, residential care facility, and hospice care. (I.C. § 39-4514(8)(a)). The statute requires that a completed POST form shall be transferred with the patient to other care settings (*id.* at § 39-4514(8)), but does not specify how this is accomplished, e.g., by the provider or the patient. To be safe, the provider should probably transfer the POST form along with other health care records. The original POST document is not required; copies are valid. (*Id.* at § 39-4514(8)(b)).

**Identifying a POST.** A patient with a POST may present the executed POST form, or they may wear identifying wristbands similar to a Comfort One/DNR device. (I.C. § 39-4514(6)(c)). According to DHW, the wristbands will be available from the physician who executes the POST. DHW is exploring other devices, e.g., bracelets, necklaces and anklets. If health care providers (including emergency EMS personnel) are faced with a situation that calls for artificial life sustaining procedures, which situation is not caused by severe trauma or involving mass casualties, the health care providers have a duty to inquire or inspect the patient to determine if they have executed a POST. (*Id.* at § 39-4512C).

**Complying with the POST.** If there is either a valid POST form signed by a physician or the patient is wearing a POST identification device, the provider generally must follow the POST with respect to life-sustaining treatment. (See I.C. § 39-4512B(1)). The POST is a physician order, and should be followed like other orders. The POST form generally requires that patients with a POST be given comfort care even if they elect to have life-sustaining treatment withheld, which comfort care includes hygiene, reasonable efforts to offer food and fluids orally, measures to relieve pain, privacy and respect. (*Id.* at §§ 39-4502(5) and 4514(3)). There is a presumption that the patient consents to and requests cardiopulmonary resuscitation absent a contrary directive in a properly executed living will, DPAHC, or POST. (*Id.* at § 39-4514(4)).

**Disregarding the POST.** Health care providers may disregard the POST form or identification device if: (1) they believe the POST has been revoked; (2) to avoid oral or physical confrontation; or (3) if so ordered by the attending physician. (I.C. § 39-4513(5)). In addition, nothing in the POST statute requires a health care provider to pursue treatment considered medically inappropriate or futile. (*Id.* at § 39-4514(5)). If a provider cannot or is unwilling to honor the POST directives due to ethical or professional reasons, the provider should make a good faith effort to assist the patient in transferring the patient's care to another provider before withdrawing from the case. (*Id.* at § 39-4513(2)).

**Idaho Health Care Directive Registry.** Although not required, a patient's POST form may be registered in Idaho's new Health Care Directive Registry along with living wills or DPAHCs, thereby allowing health care providers to confirm the existence of a POST. (See I.C. §§ 39-

4513(4), 4514(9), and 4515). To register the POST, download the registration form at [www.idsos.state.id.us](http://www.idsos.state.id.us).

**Revocation.** As with a living will or DPAHC, the maker of a POST form may revoke it at anytime by expressing his or her intent verbally, in writing, or by destroying the form. (I.C. § 39-4511(1)).

**Conflicts Among Directives.** The statute provides that if there is a conflict between the POST form, the patient's expressed directives, or the directions of a personal representative or person identified in a DPAHC, the POST form controls. (I.C. § 39-4512A(2)). This section is a bit curious in that the POST purportedly trumps the patient's expressed directives; however, as a general rule, health care providers should always follow a competent patient's expressed directives. Idaho Code § 39-4509(3) expressly states that health care directives, including a POST,

should not impair or supersede any legal right ... which a person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. *Any authentic expression of a person's wishes with respect to health care should be honored.*

(Emphasis added; see also *id.* at § 39-4514(1)). As a practical matter, a patient's subsequent directives (whether oral or otherwise) that conflict with the POST should be construed as a revocation of the POST, thereby enabling the health care professional to comply with a competent patient's subsequent wishes. (See *id.* at § 39-4511(1)).

**Effect of Prior DNR/Comfort One.** Effective July 1, 2007, the POST law repeals and replaces Idaho's former law concerning DNRs, I.C. § 56-1020 *et seq.* The net effect is that as of July 1, 2007, new DNRs should be written according to the POST form. As for DNRs, Comfort One's, and similar documents that were executed prior to July 1, 2007, they are still valid so long as they complied with the former law when executed. (*Id.* at § 39-4514(6)). Similarly, directives from other states are valid in Idaho so long as they "substantially comply" with Idaho's POST requirements. (*Id.*). Unfortunately, it may be difficult for a health care provider to determine whether such a directive "substantially complies" with the POST requirements; however, this provision has been in the law for years with regard to advance directives, and, apparently, has not created major concerns.

**Immunity.** Health care providers are generally immune from liability for actions taken in reliance on what appears to be a facially valid POST form. (I.C. § 39-4513; see *id.* at § 39-4511(3)). Similarly, providers are generally immune from liability for failing to act on a revocation unless the provider had actual knowledge of the revocation. (*Id.* at § 39-4511(3)).

**Physician Without Privileges.** Some hospitals have questioned the validity of a POST if the physician who executed the POST form does not have privileges at the hospital. Although the statute does not address this situation, the Attorney General's office has commented informally that the POST would still be valid because the statute mandates compliance with the POST without regard to the physician's privileges.

**Next Steps.** Health care providers should take necessary steps to implement the new POST law as soon as possible. Physicians and facilities should make sure they have access to the new POST forms through the state website. Effective July 1, 2007, providers should stop using alternative or contrary DNR forms in favor of the new POST forms. Upon the patient's request, they must provide the patient with a new POST form. Providers should review and revise internal policies to accommodate the new forms and requirements, and should educate staff concerning the new rules. Finally, while not required, providers may want to consider encouraging competent patients to execute the new POST form to replace old DNR orders, thereby facilitating uniformity to the extent possible.

If you have further questions about the POST law, please contact Kim Stanger at (208) 388-4843 or [kcs@hteh.com](mailto:kcs@hteh.com).

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