

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 712

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO THE CRISIS STANDARDS OF CARE ACT; AMENDING TITLE 56, IDAHO CODE,  
2 BY THE ADDITION OF A NEW CHAPTER 17, TITLE 56, IDAHO CODE, TO PROVIDE  
3 A SHORT TITLE, TO PROVIDE LEGISLATIVE INTENT, TO DEFINE TERMS, TO PRO-  
4 VIDE DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND WELFARE, TO  
5 PROVIDE FOR PATIENT RIGHTS UNDER CRISIS STANDARDS OF CARE, TO PROVIDE  
6 GUIDING PRINCIPLES FOR CRISIS STANDARDS OF CARE, TO PROVIDE FOR A HEALTH  
7 CARE FACILITY MITIGATION PLAN, TO PROVIDE FOR A CERTAIN REPORT, AND TO  
8 PROVIDE FOR AN OFFICE OF PATIENT OMBUDSMAN; AND DECLARING AN EMERGENCY.  
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Title 56, Idaho Code, be, and the same is hereby amended  
12 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
13 ter 17, Title 56, Idaho Code, and to read as follows:

14 CHAPTER 17  
15 CRISIS STANDARDS OF CARE ACT

16 56-1701. SHORT TITLE. This chapter shall be known and may be cited as  
17 the "Crisis Standards of Care Act."

18 56-1702. LEGISLATIVE INTENT. The Idaho legislature recognizes the  
19 need for the department of health and welfare to prepare for various public  
20 health crises and natural disasters and carry out response activities when a  
21 public health crisis or natural disaster occurs. The legislature recognizes  
22 the legitimacy of preparing emergency plans and guidance to provide the most  
23 benefit possible when health care resources are limited as a result of a  
24 public health crisis or natural disaster. However, the department of health  
25 and welfare is charged with the responsibility of limiting the duration and  
26 scope of operating in crisis standards of care by using all measures that are  
27 available and within its authority. The department is further charged with  
28 the responsibility of developing long-term capacity strategies to reason-  
29 ably prepare for future surges in health care demand. Such strategies shall  
30 recognize the pace of Idaho's population growth.

31 56-1703. DEFINITIONS. As used in this chapter:

32 (1) "Activation" means a declaration by the director of the department  
33 of health and welfare that health care facilities may operate under crisis  
34 standards of care as necessary when scarce resource limitations preclude op-  
35 erating under usual standards of care.

36 (2) "Crisis standards of care" means a substantial change in the usual  
37 health care operations and the level of care it is possible to deliver, jus-  
38 tified by specific circumstances and formally declared by a state government

1 in recognition that crisis operations will be in effect for a sustained pe-  
2 riod.

3 (3) "Declaration" means the issuance by the director of the department  
4 of health and welfare of a declaration or documentation that crisis stan-  
5 dards of care have been activated in a particular region or statewide.

6 (4) "Department" means the Idaho department of health and welfare.

7 (5) "Director" means the director of the Idaho department of health and  
8 welfare.

9 (6) "Health care facilities" means hospitals, nursing facilities, and  
10 intermediate care facilities for individuals with intellectual disabili-  
11 ties as defined in chapter 13, title 39, Idaho Code, and residential care and  
12 assisted living facilities as defined in chapter 33, title 39, Idaho Code.

13 56-1704. DUTIES OF THE DIRECTOR. The director shall have the power and  
14 duty to:

15 (1) Declare that crisis standards of care are activated in a region or  
16 statewide if conditions warrant a declaration; and

17 (2) Promulgate rules that are necessary to carry out the policies and  
18 purposes of this chapter.

19 56-1705. PATIENT RIGHTS UNDER CRISIS STANDARDS OF CARE. During any pe-  
20 riod of time in which crisis standards of care are activated, all existing  
21 patient rights shall be honored. These rights include but are not limited to  
22 adherence to a patient's living will, a right to informed consent, and ac-  
23 cess to in-person patient advocates and decision-makers. No patient shall  
24 be denied life-sustaining food and water, except when expressly authorized  
25 by the patient or the patient's legal representative for health care deci-  
26 sions. Activation of crisis standards of care does not exempt health care  
27 facilities that are:

28 (1) Licensed by the state from the patient rights and grievance re-  
29 quirements found in IDAPA 16.03.14.220 and IDAPA 16.03.14.225 or successor  
30 rules; or

31 (2) Federally certified by the centers for medicare and medicaid ser-  
32 vices from meeting the conditions of participation related to patient rights  
33 found at 42 CFR 482.13 or in a successor regulation.

34 56-1706. GUIDING PRINCIPLES UNDER CRISIS STANDARDS OF CARE. A health  
35 care facility operating under crisis standards of care must do so according  
36 to the following guiding principles:

37 (1) The focus of crisis standards of care is on saving the most lives  
38 with limited health care resources, while maintaining equitable health care  
39 access for all patients;

40 (2) No patients will be discriminated against based on disability,  
41 race, color, national origin, age, sex, gender, or exercise of conscience or  
42 religion;

43 (3) In determining candidacy for treatment or access to critical care  
44 resources, categorical exclusions are prohibited; and

45 (4) Decisions regarding candidacy for treatment should be based on  
46 individualized assessments using the best available objective medical evi-  
47 dence.

1           56-1707. HEALTH CARE FACILITY MITIGATION PLAN. Upon activation of  
2 crisis standards of care, a health care facility that requested such acti-  
3 vation shall submit to the director within one (1) week of such activation,  
4 or as soon as feasible thereafter, a plan for mitigation of the underlying  
5 health care shortages driving the need for crisis standards of care. The  
6 plan shall include a statement regarding the known and likely impacts the  
7 crisis standards of care have on the availability and quality of health care  
8 in the affected areas as well as a projected timeline for increasing capacity  
9 sufficient to end the need for crisis standards of care.

10           56-1708. DEPARTMENT REPORT. Upon activation of crisis standards of  
11 care, the director shall within one (1) week of such activation, or as soon as  
12 feasible thereafter, make a formal written report to the governor, the pres-  
13 ident pro tempore of the senate, the speaker of the house of representatives,  
14 the senate health and welfare committee, and the house of representatives  
15 health and welfare committee regarding the exact nature of any shortage  
16 driving the need for activation. The written report shall include a miti-  
17 gation plan that addresses how the state can help support the health care  
18 facility in addressing resource shortages to limit the scope and duration  
19 of operating under crisis standards of care. If the governor has declared  
20 a disaster emergency pursuant to chapter 10, title 46, Idaho Code, due to  
21 the same or related conditions that necessitated the activation of crisis  
22 standards of care, then the director shall also include in the written report  
23 recommendations for the use of funds available in the disaster emergency  
24 account to mitigate the scarce resource limitations.

25           56-1709. OFFICE OF PATIENT OMBUDSMAN. If crisis standards of care are  
26 declared by the director, there will be established within the governor's  
27 office an office of patient ombudsman to receive calls, emails, and written  
28 complaints from Idaho patients or families seeking help in obtaining health  
29 care services. The ombudsman shall advocate for the rights and needs of pa-  
30 tients negatively impacted by crisis standards of care. The office shall op-  
31 erate for the duration of the crisis standards of care and shall cease to op-  
32 erate no later than three (3) weeks after the declaration of crisis standards  
33 of care is terminated. When an office of patient ombudsman has been estab-  
34 lished, the governor's office shall provide a written report to the presi-  
35 dent pro tempore of the senate, the speaker of the house of representatives,  
36 the senate health and welfare committee, and the house of representatives  
37 health and welfare committee that contains the number of contacts received,  
38 cases engaged, and resolutions obtained by the office of patient ombudsman.

39           SECTION 2. An emergency existing therefor, which emergency is hereby  
40 declared to exist, this act shall be in full force and effect on and after its  
41 passage and approval.