

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 756

BY HEALTH AND WELFARE 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 A
3 SHORT TITLE, TO PROVIDE LEGISLATIVE INTENT, TO DEFINE TERMS, TO PROVIDE
4 DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND WELFARE, TO PRO-
5 VIDE FOR PATIENT AND RESIDENT RIGHTS UNDER CRISIS STANDARDS OF CARE, TO
6 PROVIDE GUIDING PRINCIPLES FOR CRISIS STANDARDS OF CARE, TO PROVIDE FOR
7 CERTAIN REPORTS, AND TO PROVIDE FOR AN OFFICE OF PATIENT OMBUDSMAN; AND
8 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) "Assistance" means aid in meeting daily living needs.

37 (3) "Crisis standards of care" means a substantial change in the usual
38 health care operations and the level of care it is possible to deliver, jus-
39 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 (4) "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 (5) "Department" means the Idaho department of health and welfare.

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

9 (7) "Essential caregiver" means a person designated by a patient or
10 resident to visit the patient or resident at a health care facility.

11 (8) "Health care facility" or "facility" means a hospital, a nursing
12 facility, or an intermediate care facility for individuals with intellec-
13 tual disabilities as defined in chapter 13, title 39, Idaho Code, or a resi-
14 dential care or assisted living facility as defined in chapter 33, title 39,
15 Idaho Code.

16 (9) "Health care services" means services for the diagnosis, preven-
17 tion, treatment, cure, or relief of a health condition, illness, injury, or
18 disease.

19 (10) "Patient" means a person receiving health care services at a health
20 care facility.

21 (11) "Resident" means a person receiving assistance at a health care fa-
22 cility.

23 56-1704. DUTIES OF THE DIRECTOR. The director shall have the power and
24 duty to:

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

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

29 56-1705. PATIENT AND RESIDENT RIGHTS UNDER CRISIS STANDARDS OF
30 CARE. During any period of time in which crisis standards of care are acti-
31 vated:

32 (1) All existing and applicable state and federal patient and resident
33 rights shall be applied. These rights include but are not limited to adher-
34 ence to a patient's or resident's advance directives and access to patient or
35 resident advocates and decision-makers. No patient or resident shall be de-
36 nied life-sustaining nutrition and hydration, except when expressly autho-
37 rized by the patient or resident or the patient's or resident's legal repre-
38 sentative for health care decisions; and

39 (2) A patient or resident in a facility has the right to visitation from
40 essential caregivers while receiving assistance or health care services at
41 a facility, even if other visitors are being excluded by the facility. How-
42 ever, the essential caregiver must follow safety and other protocols imposed
43 by the facility, and a facility may place reasonable restrictions as to where
44 and when the essential caregiver may visit. For purposes of this subsection,
45 a restriction is reasonable if the restriction:

46 (a) Is necessary to prevent the disruption of assistance or health care
47 services to the patient or resident; and

1 (b) Does not interfere with the patient's or resident's general right
2 to visitation by an essential caregiver.

3 56-1706. GUIDING PRINCIPLES UNDER CRISIS STANDARDS OF CARE. A health
4 care facility operating under crisis standards of care must do so according
5 to the following guiding principles:

6 (1) The focus of crisis standards of care is on saving the most lives
7 with limited health care resources, while maintaining equitable health care
8 access for all patients and residents;

9 (2) No patients or residents will be discriminated against based on
10 disability, race, color, national origin, age, sex, gender, or exercise of
11 conscience or religion;

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

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

17 56-1707. DEPARTMENT REPORT -- REPORT BY FACILITIES. Upon activation
18 of crisis standards of care:

19 (1) The director shall within one (1) week of such activation, or as
20 soon as feasible thereafter, make a formal written report to the governor,
21 the president pro tempore of the senate, the speaker of the house of repre-
22 sentatives, the senate health and welfare committee, and the house of rep-
23 resentatives health and welfare committee regarding the exact nature of any
24 shortage driving the need for activation. The written report shall include
25 a mitigation plan that addresses how the state can help support the health
26 care facility in addressing resource shortages to limit the scope and dura-
27 tion of operating under crisis standards of care. If the governor has de-
28 clared a disaster emergency pursuant to chapter 10, title 46, Idaho Code, due
29 to the same or related conditions that necessitated the activation of crisis
30 standards of care, then the director shall also include in the written report
31 recommendations for the use of funds available in the disaster emergency ac-
32 count to mitigate the scarce resource limitations; and

33 (2) Any health care facility operating under crisis standards of care
34 shall provide a daily report to the department on conditions at the facility,
35 including an assessment as to whether crisis standards of care remain neces-
36 sary.

37 56-1708. OFFICE OF PATIENT OMBUDSMAN. If crisis standards of care are
38 declared by the director, there will be established within the governor's
39 office an office of patient ombudsman to receive calls, emails, and written
40 complaints from Idaho patients, residents, or families seeking help in ob-
41 taining health care services. The ombudsman shall advocate for the rights
42 and needs of patients and residents negatively impacted by crisis standards
43 of care. The office shall operate for the duration of the crisis standards
44 of care and shall cease to operate no later than three (3) weeks after the
45 declaration of crisis standards of care is terminated. The ombudsman will
46 be provided with sufficient resources for staffing and advertising. When
47 an office of patient ombudsman has been established, the governor's office

1 shall provide a written report to the president pro tempore of the senate,
2 the speaker of the house of representatives, the senate health and welfare
3 committee, and the house of representatives health and welfare committee
4 that contains the number of contacts received, cases engaged, and resolu-
5 tions obtained by the office of patient ombudsman.

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