

A-Engrossed
Senate Bill 16

Ordered by the Senate April 22
Including Senate Amendments dated April 22

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Health and Human Services for Maureen Nash, M.D., M.S.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Adds authorization of short-term hospitalization for treatment of dementia to] **Specifies that dementia is not mental illness for purposes of** actions that health care representative may *[make]* **take** on behalf of person executing advance health care directive.

A BILL FOR AN ACT

Relating to advance directives for health care; amending ORS 127.505 and 127.540.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 127.505 is amended to read:

127.505. As used in ORS 127.505 to 127.660 and 127.995:

(1) "Adult" means an individual who is 18 years of age or older, who has been adjudicated an emancipated minor or who is married.

(2) "Advance directive" means a document that contains a health care instruction or a power of attorney for health care.

(3) "Appointment" means a power of attorney for health care, letters of guardianship or a court order appointing a health care representative.

(4) "Artificially administered nutrition and hydration" means a medical intervention to provide food and water by tube, mechanical device or other medically assisted method. "Artificially administered nutrition and hydration" does not include the usual and typical provision of nutrition and hydration, such as the provision of nutrition and hydration by cup, hand, bottle, drinking straw or eating utensil.

(5) "Attending physician" means the physician who has primary responsibility for the care and treatment of the principal.

(6) "Attorney-in-fact" means an adult appointed to make health care decisions for a principal under a power of attorney for health care, and includes an alternative attorney-in-fact.

(7) "Dementia" means a degenerative condition that causes progressive deterioration of intellectual functioning and other cognitive skills, including but not limited to aphasia, apraxia, memory, agnosia and executive functioning, that leads to a significant impairment in social or occupational function and that represents a significant decline from a previous level of functioning. Diagnosis is by history and physical examination.

[(7)] **(8) "Health care" means diagnosis, treatment or care of disease, injury and congenital or**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 degenerative conditions, including the use, maintenance, withdrawal or withholding of life-sustaining
2 procedures and the use, maintenance, withdrawal or withholding of artificially administered nutri-
3 tion and hydration.

4 [(8)] (9) “Health care decision” means consent, refusal of consent or withholding or withdrawal
5 of consent to health care, and includes decisions relating to admission to or discharge from a health
6 care facility.

7 [(9)] (10) “Health care facility” means a health care facility as defined in ORS 442.015, a
8 domiciliary care facility as defined in ORS 443.205, a residential facility as defined in ORS 443.400,
9 an adult foster home as defined in ORS 443.705 or a hospice program as defined in ORS 443.850.

10 [(10)] (11) “Health care instruction” or “instruction” means a document executed by a principal
11 to indicate the principal’s instructions regarding health care decisions.

12 [(11)] (12) “Health care provider” means a person licensed, certified or otherwise authorized or
13 permitted by the law of this state to administer health care in the ordinary course of business or
14 practice of a profession, and includes a health care facility.

15 [(12)] (13) “Health care representative” means:

16 (a) An attorney-in-fact;

17 (b) A person who has authority to make health care decisions for a principal under the pro-
18 visions of ORS 127.635 (2) or (3); or

19 (c) A guardian or other person, appointed by a court to make health care decisions for a prin-
20 cipal.

21 [(13)] (14) “Incapable” means that in the opinion of the court in a proceeding to appoint or
22 confirm authority of a health care representative, or in the opinion of the principal’s attending
23 physician, a principal lacks the ability to make and communicate health care decisions to health
24 care providers, including communication through persons familiar with the principal’s manner of
25 communicating if those persons are available. “Capable” means not incapable.

26 [(14)] (15) “Instrument” means an advance directive, acceptance, disqualification, withdrawal,
27 court order, court appointment or other document governing health care decisions.

28 [(15)] (16) “Life support” means life-sustaining procedures.

29 [(16)] (17) “Life-sustaining procedure” means any medical procedure, pharmaceutical, medical
30 device or medical intervention that maintains life by sustaining, restoring or supplanting a vital
31 function. “Life-sustaining procedure” does not include routine care necessary to sustain patient
32 cleanliness and comfort.

33 [(17)] (18) “Medically confirmed” means the medical opinion of the attending physician has been
34 confirmed by a second physician who has examined the patient and who has clinical privileges or
35 expertise with respect to the condition to be confirmed.

36 [(18)] (19) “Permanently unconscious” means completely lacking an awareness of self and ex-
37 ternal environment, with no reasonable possibility of a return to a conscious state, and that condi-
38 tion has been medically confirmed by a neurological specialist who is an expert in the examination
39 of unresponsive individuals.

40 [(19)] (20) “Physician” means an individual licensed to practice medicine by the Oregon Medical
41 Board.

42 [(20)] (21) “Power of attorney for health care” means a power of attorney document that au-
43 thORIZES an attorney-in-fact to make health care decisions for the principal when the principal is
44 incapable.

45 [(21)] (22) “Principal” means:

- 1 (a) An adult who has executed an advance directive;
- 2 (b) A person of any age who has a health care representative;
- 3 (c) A person for whom a health care representative is sought; or
- 4 (d) A person being evaluated for capability who will have a health care representative if the
- 5 person is determined to be incapable.

6 [(22)] (23) "Terminal condition" means a health condition in which death is imminent irrespec-
7 tive of treatment, and where the application of life-sustaining procedures or the artificial adminis-
8 tration of nutrition and hydration serves only to postpone the moment of death of the principal.

9 [(23)] (24) "Tube feeding" means artificially administered nutrition and hydration.

10 **SECTION 2.** ORS 127.540 is amended to read:

11 127.540. ORS 127.505 to 127.660 and 127.995 do not authorize an appointed health care repre-
12 sentative to make a health care decision with respect to any of the following on behalf of the prin-
13 cipal:

14 (1) Admission to or retention in a health care facility for care or treatment of mental illness.
15 **For purposes of this section, dementia and behavior caused by dementia are not mental ill-**
16 **ness.**

17 (2) Convulsive treatment.

18 (3) Psychosurgery.

19 (4) Sterilization.

20 (5) Abortion.

21 (6) Withholding or withdrawing of a life-sustaining procedure unless:

22 (a) The appointed health care representative has been given authority to make decisions on
23 withholding or withdrawing life-sustaining procedures; or

24 (b) The principal has been medically confirmed to be in one of the following conditions:

25 (A) A terminal condition.

26 (B) Permanently unconscious.

27 (C) A condition in which administration of life-sustaining procedures would not benefit the
28 principal's medical condition and would cause permanent and severe pain.

29 (D) A progressive, debilitating illness that will be fatal and is in its advanced stages, and the
30 principal is consistently and permanently unable to communicate, swallow food and water safely,
31 care for the principal, and recognize the principal's family and other people, and there is no rea-
32 sonable chance that the principal's underlying condition will improve.

33 (7) Withholding or withdrawing artificially administered nutrition and hydration, other than
34 hyperalimentation, necessary to sustain life except as provided in ORS 127.580.

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