

B-Engrossed
Senate Bill 16

Ordered by the House May 29
Including Senate Amendments dated April 22 and House Amendments
dated May 29

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.

[Specifies that dementia is not mental illness for purposes of actions that health care representative may take on behalf of person executing advance health care directive.]

Authorizes health care representative to consent on behalf of person with dementia to hospitalization for period not to exceed 18 days. Sunsets on January 2, 2012.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to advance directives for health care; creating new provisions; amending ORS 127.505 and
3 127.535; and declaring an emergency.

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

5 **SECTION 1.** ORS 127.505 is amended to read:

6 127.505. As used in ORS 127.505 to 127.660 and 127.995:

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

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

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

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

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

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

22 (7) "**Dementia**" means a degenerative condition that causes progressive deterioration of
23 intellectual functioning and other cognitive skills, including but not limited to aphasia,
24 apraxia, memory, agnosia and executive functioning, that leads to a significant impairment
25 in social or occupational function and that represents a significant decline from a previous

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 **level of functioning. Diagnosis is by history and physical examination.**

2 [(7)] (8) "Health care" means diagnosis, treatment or care of disease, injury and congenital or
3 degenerative conditions, including the use, maintenance, withdrawal or withholding of life-sustaining
4 procedures and the use, maintenance, withdrawal or withholding of artificially administered nutri-
5 tion and hydration.

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

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

12 [(10)] (11) "Health care instruction" or "instruction" means a document executed by a principal
13 to indicate the principal's instructions regarding health care decisions.

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

17 [(12)] (13) "Health care representative" means:

18 (a) An attorney-in-fact;

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

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

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

28 [(14)] (15) "Instrument" means an advance directive, acceptance, disqualification, withdrawal,
29 court order, court appointment or other document governing health care decisions.

30 [(15)] (16) "Life support" means life-sustaining procedures.

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

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

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

42 [(19)] (20) "Physician" means an individual licensed to practice medicine by the Oregon Medical
43 Board.

44 [(20)] (21) "Power of attorney for health care" means a power of attorney document that au-
45 thORIZES an attorney-in-fact to make health care decisions for the principal when the principal is

1 incapable.

2 [(21)] **(22)** “Principal” means:

3 (a) An adult who has executed an advance directive;

4 (b) A person of any age who has a health care representative;

5 (c) A person for whom a health care representative is sought; or

6 (d) A person being evaluated for capability who will have a health care representative if the
7 person is determined to be incapable.

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

11 [(23)] **(24)** “Tube feeding” means artificially administered nutrition and hydration.

12 **SECTION 2.** ORS 127.535 is amended to read:

13 127.535. (1) The health care representative has all the authority over the principal’s health care
14 that the principal would have if not incapable, subject to the limitations of the appointment and ORS
15 127.540 and 127.580. A health care representative who is known to the health care provider to be
16 available to make health care decisions has priority over any person other than the principal to act
17 for the principal in all health care decisions. A health care representative has authority to make a
18 health care decision for a principal only when the principal is incapable.

19 (2) A health care representative is not personally responsible for the cost of health care pro-
20 vided to the principal solely because the health care representative makes health care decisions for
21 the principal.

22 (3) Except to the extent the right is limited by the appointment or any federal law, a health care
23 representative for an incapable principal has the same right as the principal to receive information
24 regarding the proposed health care, to receive and review medical records and to consent to the
25 disclosure of medical records. The right of the health care representative to receive this information
26 is not a waiver of any evidentiary privilege or any right to assert confidentiality with respect to
27 others.

28 (4) In making health care decisions, the health care representative has a duty to act consistently
29 with the desires of the principal as expressed in the principal’s advance directive, or as otherwise
30 made known by the principal to the health care representative at any time. If the principal’s desires
31 are unknown, the health care representative has a duty to act in what the health care represen-
32 tative in good faith believes to be the best interests of the principal.

33 (5) ORS 127.505 to 127.660 do not authorize a health care representative or health care provider
34 to withhold or withdraw life-sustaining procedures or artificially administered nutrition and hy-
35 dration in any situation if the principal manifests an objection to the health care decision. If the
36 principal objects to such a health care decision, the health care provider shall proceed as though
37 the principal were capable for the purposes of the health care decision objected to.

38 **(6) Notwithstanding ORS 127.540, a health care representative has authority to consent**
39 **to hospitalization of the principal for a period not to exceed 18 days for treatment of behavior**
40 **caused by dementia.**

41 [(6)] **(7)** An instrument that would be a valid advance directive except that the instrument is
42 not a form described in ORS 127.515, has expired, is not properly witnessed or otherwise fails to
43 meet the formal requirements of ORS 127.505 to 127.660 shall constitute evidence of the patient’s
44 desires and interests.

45 [(7)] **(8)** A health care representative is a personal representative for the purposes of ORS

1 192.518 to 192.529 and the federal Health Insurance Portability and Accountability Act privacy
2 regulations, 45 C.F.R. parts 160 and 164.

3 **SECTION 3.** ORS 127.535, as amended by section 2 of this 2009 Act, is amended to read:

4 127.535. (1) The health care representative has all the authority over the principal's health care
5 that the principal would have if not incapable, subject to the limitations of the appointment and ORS
6 127.540 and 127.580. A health care representative who is known to the health care provider to be
7 available to make health care decisions has priority over any person other than the principal to act
8 for the principal in all health care decisions. A health care representative has authority to make a
9 health care decision for a principal only when the principal is incapable.

10 (2) A health care representative is not personally responsible for the cost of health care pro-
11 vided to the principal solely because the health care representative makes health care decisions for
12 the principal.

13 (3) Except to the extent the right is limited by the appointment or any federal law, a health care
14 representative for an incapable principal has the same right as the principal to receive information
15 regarding the proposed health care, to receive and review medical records and to consent to the
16 disclosure of medical records. The right of the health care representative to receive this information
17 is not a waiver of any evidentiary privilege or any right to assert confidentiality with respect to
18 others.

19 (4) In making health care decisions, the health care representative has a duty to act consistently
20 with the desires of the principal as expressed in the principal's advance directive, or as otherwise
21 made known by the principal to the health care representative at any time. If the principal's desires
22 are unknown, the health care representative has a duty to act in what the health care represen-
23 tative in good faith believes to be the best interests of the principal.

24 (5) ORS 127.505 to 127.660 do not authorize a health care representative or health care provider
25 to withhold or withdraw life-sustaining procedures or artificially administered nutrition and hy-
26 dration in any situation if the principal manifests an objection to the health care decision. If the
27 principal objects to such a health care decision, the health care provider shall proceed as though
28 the principal were capable for the purposes of the health care decision objected to.

29 *[(6) Notwithstanding ORS 127.540, a health care representative has authority to consent to*
30 *hospitalization of the principal for a period not to exceed 18 days for treatment of behavior caused by*
31 *dementia.]*

32 *[(7)]* (6) An instrument that would be a valid advance directive except that the instrument is
33 not a form described in ORS 127.515, has expired, is not properly witnessed or otherwise fails to
34 meet the formal requirements of ORS 127.505 to 127.660 shall constitute evidence of the patient's
35 desires and interests.

36 *[(8)]* (7) A health care representative is a personal representative for the purposes of ORS
37 192.518 to 192.529 and the federal Health Insurance Portability and Accountability Act privacy
38 regulations, 45 C.F.R. parts 160 and 164.

39 **SECTION 4. The amendments to ORS 127.535 by section 3 of this 2009 Act become oper-**
40 **ative on January 2, 2012.**

41 **SECTION 5. This 2009 Act being necessary for the immediate preservation of the public**
42 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
43 **on its passage.**

44