

# Enrolled Senate Bill 16

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CHAPTER .....

AN ACT

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

**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 degenerative conditions, including the use, maintenance, withdrawal or withholding of life-sustaining procedures and the use, maintenance, withdrawal or withholding of artificially administered nutrition and hydration.

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

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

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

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

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

- (a) An attorney-in-fact;
- (b) A person who has authority to make health care decisions for a principal under the provisions of ORS 127.635 (2) or (3); or
- (c) A guardian or other person, appointed by a court to make health care decisions for a principal.

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

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

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

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

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

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

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

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

[(21)] (22) "Principal" means:

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

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

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

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

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

(2) A health care representative is not personally responsible for the cost of health care provided to the principal solely because the health care representative makes health care decisions for the principal.

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

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

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

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

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

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

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

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

(2) A health care representative is not personally responsible for the cost of health care provided to the principal solely because the health care representative makes health care decisions for the principal.

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

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

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

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

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

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

**SECTION 4. The amendments to ORS 127.535 by section 3 of this 2009 Act become operative on January 2, 2012.**

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

Passed by Senate April 27, 2009

Received by Governor:

Repassed by Senate June 5, 2009

.....M.,....., 2009

Approved:

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Secretary of Senate

.....M.,....., 2009

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President of Senate

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Governor

Passed by House June 3, 2009

Filed in Office of Secretary of State:

.....M.,....., 2009

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Speaker of House

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Secretary of State