

## HOUSE AMENDMENTS TO A-ENGROSSED SENATE BILL 16

By COMMITTEE ON HEALTH CARE

May 29

1 On page 1 of the printed A-engrossed bill, line 2, after “care;” delete the rest of the line and  
2 insert “creating new provisions; amending ORS 127.505 and 127.535; and declaring an emergency.”.

3 On page 3, delete lines 10 through 34 and insert:

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

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

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

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

20 “(4) In making health care decisions, the health care representative has a duty to act consist-  
21 ently with the desires of the principal as expressed in the principal’s advance directive, or as oth-  
22 erwise made known by the principal to the health care representative at any time. If the principal’s  
23 desires are unknown, the health care representative has a duty to act in what the health care rep-  
24 resentative in good faith believes to be the best interests of the principal.

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

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

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

1 desires and interests.

2 “[(7)] (8) A health care representative is a personal representative for the purposes of ORS  
3 192.518 to 192.529 and the federal Health Insurance Portability and Accountability Act privacy  
4 regulations, 45 C.F.R. parts 160 and 164.

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

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

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

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

21 “(4) In making health care decisions, the health care representative has a duty to act consist-  
22 ently with the desires of the principal as expressed in the principal’s advance directive, or as oth-  
23 erwise made known by the principal to the health care representative at any time. If the principal’s  
24 desires are unknown, the health care representative has a duty to act in what the health care rep-  
25 resentative in good faith believes to be the best interests of the principal.

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

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

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

38 “[(8)] (7) A health care representative is a personal representative for the purposes of ORS  
39 192.518 to 192.529 and the federal Health Insurance Portability and Accountability Act privacy  
40 regulations, 45 C.F.R. parts 160 and 164.

41 “**SECTION 4. The amendments to ORS 127.535 by section 3 of this 2009 Act become op-**  
42 **erative on January 2, 2012.**

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

