

Senate Bill 16

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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 **as introduced**.

Adds authorization of short-term hospitalization for treatment of dementia to actions that health care representative may make on behalf of person executing advance health care directive.

A BILL FOR AN ACT

1
2 Relating to advance directives for health care; amending ORS 127.505, 127.531 and 127.540.

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

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

5 127.505. As used in ORS 127.505 to 127.660 and 127.995:

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

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

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

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

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

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

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

26 [(7)] (8) "Health care" means diagnosis, treatment or care of disease, injury and congenital or
27 degenerative conditions, including the use, maintenance, withdrawal or withholding of life-sustaining
28 procedures, [and] the use, maintenance, withdrawal or withholding of artificially administered nu-
29 trition and hydration **and short-term hospitalization for behavior caused by dementia.**

30 [(8)] (9) "Health care decision" means consent, refusal of consent or withholding or withdrawal

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 of consent to health care, and includes decisions relating to admission to or discharge from a health
 2 care facility.

3 [(9)] (10) "Health care facility" means a health care facility as defined in ORS 442.015, a
 4 domiciliary care facility as defined in ORS 443.205, a residential facility as defined in ORS 443.400,
 5 an adult foster home as defined in ORS 443.705 or a hospice program as defined in ORS 443.850.

6 [(10)] (11) "Health care instruction" or "instruction" means a document executed by a principal
 7 to indicate the principal's instructions regarding health care decisions.

8 [(11)] (12) "Health care provider" means a person licensed, certified or otherwise authorized or
 9 permitted by the law of this state to administer health care in the ordinary course of business or
 10 practice of a profession, and includes a health care facility.

11 [(12)] (13) "Health care representative" means:

12 (a) An attorney-in-fact;

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

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

17 [(13)] (14) "Incapable" means that in the opinion of the court in a proceeding to appoint or
 18 confirm authority of a health care representative, or in the opinion of the principal's attending
 19 physician, a principal lacks the ability to make and communicate health care decisions to health
 20 care providers, including communication through persons familiar with the principal's manner of
 21 communicating if those persons are available. "Capable" means not incapable.

22 [(14)] (15) "Instrument" means an advance directive, acceptance, disqualification, withdrawal,
 23 court order, court appointment or other document governing health care decisions.

24 [(15)] (16) "Life support" means life-sustaining procedures.

25 [(16)] (17) "Life-sustaining procedure" means any medical procedure, pharmaceutical, medical
 26 device or medical intervention that maintains life by sustaining, restoring or supplanting a vital
 27 function. "Life-sustaining procedure" does not include routine care necessary to sustain patient
 28 cleanliness and comfort.

29 [(17)] (18) "Medically confirmed" means the medical opinion of the attending physician has been
 30 confirmed by a second physician who has examined the patient and who has clinical privileges or
 31 expertise with respect to the condition to be confirmed.

32 [(18)] (19) "Permanently unconscious" means completely lacking an awareness of self and ex-
 33 ternal environment, with no reasonable possibility of a return to a conscious state, and that condi-
 34 tion has been medically confirmed by a neurological specialist who is an expert in the examination
 35 of unresponsive individuals.

36 [(19)] (20) "Physician" means an individual licensed to practice medicine by the Oregon Medical
 37 Board.

38 [(20)] (21) "Power of attorney for health care" means a power of attorney document that au-
 39 thorizes an attorney-in-fact to make health care decisions for the principal when the principal is
 40 incapable.

41 [(21)] (22) "Principal" means:

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

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

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

45 (d) A person being evaluated for capability who will have a health care representative if the

1 person is determined to be incapable.

2 [(22)] (23) "Terminal condition" means a health condition in which death is imminent irrespec-
3 tive of treatment, and where the application of life-sustaining procedures or the artificial adminis-
4 tration of nutrition and hydration serves only to postpone the moment of death of the principal.

5 [(23)] (24) "Tube feeding" means artificially administered nutrition and hydration.

6 **SECTION 2.** ORS 127.531 is amended to read:

7 127.531. (1) The form of an advance directive executed by an Oregon resident must be the same
8 as the form set forth in this section to be valid. In any place in the form that requires the initials
9 of the principal, any mark by the principal is effective to indicate the principal's intent.

10 (2) An advance directive shall be in the following form:

11 _____
12
13 ADVANCE DIRECTIVE

14 YOU DO NOT HAVE TO FILL OUT AND SIGN THIS FORM

15 PART A: IMPORTANT INFORMATION ABOUT THIS ADVANCE DIRECTIVE

16 This is an important legal document. It can control critical decisions about your health care.
17 Before signing, consider these important facts:

18 Facts About Part B

19 (Appointing a Health Care Representative)

20 You have the right to name a person to direct your health care when you cannot do so. This
21 person is called your "health care representative." You can do this by using Part B of this form.
22 Your representative must accept on Part E of this form.

23 You can write in this document any restrictions you want on how your representative will make
24 decisions for you. Your representative must follow your desires as stated in this document or oth-
25 erwise made known. If your desires are unknown, your representative must try to act in your best
26 interest. Your representative can resign at any time.

27 Facts About Part C

28 (Giving Health Care Instructions)

29 You also have the right to give instructions for health care providers to follow if you become
30 unable to direct your care. You can do this by using Part C of this form.

31 Facts About Completing This Form

32 This form is valid only if you sign it voluntarily and when you are of sound mind. If you do not
33 want an advance directive, you do not have to sign this form.

34 Unless you have limited the duration of this advance directive, it will not expire. If you have
35 set an expiration date, and you become unable to direct your health care before that date, this ad-
36 vance directive will not expire until you are able to make those decisions again.

37 You may revoke this document at any time. To do so, notify your representative and your health
38 care provider of the revocation.

39 Despite this document, you have the right to decide your own health care as long as you are
40 able to do so.

41 If there is anything in this document that you do not understand, ask a lawyer to explain it to
42 you.

43 You may sign PART B, PART C, or both parts. You may cross out words that don't express your
44 wishes or add words that better express your wishes. Witnesses must sign PART D.

45 Print your NAME, BIRTHDATE AND ADDRESS here:

1 _____

2 (Name)

3

4 _____

5 (Birthdate)

6

7 _____

8

9 _____

10 (Address)

11 Unless revoked or suspended, this advance directive will continue for:

12

13 INITIAL ONE:

14 ___ My entire life

15 ___ Other period (___ Years)

16 PART B: APPOINTMENT OF HEALTH CARE REPRESENTATIVE

17 I appoint _____ as my health care representative. My representative's ad-
18 dress is _____ and telephone number is _____.

19 I appoint _____ as my alternate health care representative. My alternate's
20 address is _____ and telephone number is _____.

21 I authorize my representative (or alternate) to direct my health care when I can't do so.

22

23 NOTE: You may not appoint your doctor, an employee of your doctor, or an owner, operator or
24 employee of your health care facility, unless that person is related to you by blood, marriage or
25 adoption or that person was appointed before your admission into the health care facility.

26

27 1. Limits. Special Conditions or Instructions:

28

29

30

31

32

33

34 INITIAL IF THIS APPLIES:

35 ___ I have executed a Health Care Instruction or Directive to Physicians. My representative is
36 to honor it.

37

38 2. Life Support. "Life support" refers to any medical means for maintaining life, including pro-
39 cedures, devices and medications. If you refuse life support, you will still get routine measures to
40 keep you clean and comfortable.

41

42 INITIAL IF THIS APPLIES:

43 ___ My representative MAY decide about life support for me. (If you don't initial this space,
44 then your representative MAY NOT decide about life support.)

45

3. Tube Feeding. One sort of life support is food and water supplied artificially by medical device, known as tube feeding.

INITIAL IF THIS APPLIES:

— My representative MAY decide about tube feeding for me. (If you don't initial this space, then your representative MAY NOT decide about tube feeding.)

4. Short-term Hospitalization for Behavior Caused by Dementia. Dementia is the progressive deterioration of intellectual functioning and other cognitive skills that leads to a significant impairment in social or occupational function and that represents a significant decline from a previous level of functioning. It can cause a person to act in ways that are dangerous to the person or to others. Short-term hospitalization for psychiatric treatment may decrease or eliminate these behaviors.

INITIAL IF THIS APPLIES:

— My representative MAY decide about short-term hospitalization for me for up to _____ days to treat behavior caused by dementia. (If you don't initial this space, then your representative MAY NOT decide about short-term hospitalization for behavior caused by dementia.)

(Date)

SIGN HERE TO APPOINT A HEALTH CARE REPRESENTATIVE

(Signature of person making appointment)

PART C: HEALTH CARE INSTRUCTIONS

NOTE: In filling out these instructions, keep the following in mind:

- The term “as my physician recommends” means that you want your physician to try life support **or short-term hospitalization** if your physician believes it could be helpful and then discontinue it if it is not helping your health condition or symptoms.
- “Life support” and “tube feeding” are defined in Part B above.
- If you refuse tube feeding, you should understand that malnutrition, dehydration and death will probably result.
- You will get care for your comfort and cleanliness, no matter what choices you make.
- You may either give specific instructions by filling out Items 1 to 4 below, or you may use

1 the general instruction provided by Item 5.

2

- 3 • **Dementia is explained in Part B above. It can cause a person to act in ways that are**
 4 **dangerous to the person or to others. Short-term hospitalization for psychiatric**
 5 **treatment may decrease or eliminate these behaviors.**

6

7 Here are my desires about my health care if my doctor and another knowledgeable doctor con-
 8 firm that I am in a medical condition described below:

9 1. Close to Death. If I am close to death and life support would only postpone the moment of
 10 my death:

11

12 A. INITIAL ONE:

- 13 — I want to receive tube feeding.
 14 — I want tube feeding only as my physician recommends.
 15 — I DO NOT WANT tube feeding.

16

17 B. INITIAL ONE:

- 18 — I want any other life support that may apply.
 19 — I want life support only as my physician recommends.
 20 — I want NO life support.

21 2. Permanently Unconscious. If I am unconscious and it is very unlikely that I will ever become
 22 conscious again:

23

24 A. INITIAL ONE:

- 25 — I want to receive tube feeding.
 26 — I want tube feeding only as my physician recommends.
 27 — I DO NOT WANT tube feeding.

28

29 B. INITIAL ONE:

- 30 — I want any other life support that may apply.
 31 — I want life support only as my physician recommends.
 32 — I want NO life support.

33

34 3. Advanced Progressive Illness. If I have a progressive illness that will be fatal and is in an
 35 advanced stage, and I am consistently and permanently unable to communicate by any means,
 36 swallow food and water safely, care for myself and recognize my family and other people, and it is
 37 very unlikely that my condition will substantially improve:

38

39 A. INITIAL ONE:

- 40 — I want to receive tube feeding.
 41 — I want tube feeding only as my physician recommends.
 42 — I DO NOT WANT tube feeding.

43

44 B. INITIAL ONE:

- 45 — I want any other life support that may apply.

1 — I want life support only as my physician recommends.

2 — I want NO life support.

3

4 4. Extraordinary Suffering. If life support would not help my medical condition and would make
5 me suffer permanent and severe pain:

6

7 A. INITIAL ONE:

8 — I want to receive tube feeding.

9 — I want tube feeding only as my physician recommends.

10 — I DO NOT WANT tube feeding.

11

12 B. INITIAL ONE:

13 — I want any other life support that may apply.

14 — I want life support only as my physician recommends.

15 — I want NO life support.

16

17 5. General Instruction.

18 INITIAL IF THIS APPLIES:

19 — I do not want my life to be prolonged by life support. I also do not want tube feeding as life
20 support. I want my doctors to allow me to die naturally if my doctor and another know-
21 ledgeable doctor confirm I am in any of the medical conditions listed in Items 1 to 4 above.

22

23 6. Additional Conditions or Instructions.

24

25

26

27

28

29

30 (Insert description of what you want done.)

31

32 **7. Dementia. Here are my desires about short-term hospitalization if my physician re-**
33 **commends that I receive short-term hospitalization to treat behavior caused by dementia:**

34

35 **INITIAL ONE:**

36 **— I want short-term hospitalization for behavior caused by dementia.**

37 **— I want short-term hospitalization for behavior caused by dementia only as my physi-**
38 **cian recommends.**

39 **— I DO NOT WANT short-term hospitalization for behavior caused by dementia.**

40

41 [7.] **8. Other Documents.** A “health care power of attorney” is any document you may have
42 signed to appoint a representative to make health care decisions for you.

43

44 **INITIAL ONE:**

45 — I have previously signed a health care power of attorney. I want it to remain in effect unless

- 1 I appointed a health care representative after signing the health care power of attorney.
- 2 — I have a health care power of attorney, and I REVOKE IT.
- 3 — I DO NOT have a health care power of attorney.

4
5 _____

6 (Date)

7 SIGN HERE TO GIVE INSTRUCTIONS

8
9 _____

10 (Signature)

11 _____

12
13 PART D: DECLARATION OF WITNESSES

14 We declare that the person signing this advance directive:

- 15 (a) Is personally known to us or has provided proof of identity;
- 16 (b) Signed or acknowledged that person’s signature on this advance directive in our presence;
- 17 (c) Appears to be of sound mind and not under duress, fraud or undue influence;
- 18 (d) Has not appointed either of us as health care representative or alternative representative;
- 19 and
- 20 (e) Is not a patient for whom either of us is attending physician.

21 Witnessed By:

22
23 _____

24 (Signature of (Printed Name
25 Witness/Date) of Witness)

26
27 _____

28 (Signature of (Printed Name
29 Witness/Date) of Witness)

30
31 NOTE: One witness must not be a relative (by blood, marriage or adoption) of the person signing
32 this advance directive. That witness must also not be entitled to any portion of the person’s estate
33 upon death. That witness must also not own, operate or be employed at a health care facility where
34 the person is a patient or resident.

35 _____

36
37 PART E: ACCEPTANCE BY HEALTH CARE REPRESENTATIVE

38 I accept this appointment and agree to serve as health care representative. I understand I must
39 act consistently with the desires of the person I represent, as expressed in this advance directive
40 or otherwise made known to me. If I do not know the desires of the person I represent, I have a duty
41 to act in what I believe in good faith to be that person’s best interest. I understand that this docu-
42 ment allows me to decide about that person’s health care only while that person cannot do so. I
43 understand that the person who appointed me may revoke this appointment. If I learn that this
44 document has been suspended or revoked, I will inform the person’s current health care provider if
45 known to me.

1 _____
2 (Signature of Health Care Representative/Date)

3 _____
4 _____

5 (Printed name)
6 _____

7 _____
8 (Signature of Alternate Health Care Representative/Date)

9 _____
10 _____

11 (Printed name)
12 _____

13 _____
14 **SECTION 3.** ORS 127.540 is amended to read:

15 127.540. ORS 127.505 to 127.660 and 127.995 do not authorize an appointed health care repre-
16 sentative to make a health care decision with respect to any of the following on behalf of the prin-
17 cipal:

18 (1) Admission to or retention in a health care facility for care or treatment of mental illness
19 **except for short-term treatment for behavior caused by dementia.**

20 (2) Convulsive treatment.

21 (3) Psychosurgery.

22 (4) Sterilization.

23 (5) Abortion.

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

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

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

28 (A) A terminal condition.

29 (B) Permanently unconscious.

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

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

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

38 _____