

Senate Bill 51

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 Governor John A. Kitzhaber for Department of Human Services)

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**.

Makes permanent provisions allowing health care representative to consent to hospitalization of principal for treatment of behavior caused by dementia.

A BILL FOR AN ACT

1
2 Relating to dementia; amending ORS 127.535; and repealing section 4, chapter 381, Oregon Laws
3 2009.

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

5 **SECTION 1.** ORS 127.535, as amended by section 3, chapter 381, Oregon Laws 2009, is amended
6 to read:

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

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

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

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

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

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 the principal were capable for the purposes of the health care decision objected to.

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

5 [(6)] (7) An instrument that would be a valid advance directive except that the instrument is
6 not a form described in ORS 127.515, has expired, is not properly witnessed or otherwise fails to
7 meet the formal requirements of ORS 127.505 to 127.660 shall constitute evidence of the patient's
8 desires and interests.

9 [(7)] (8) A health care representative is a personal representative for the purposes of ORS
10 192.518 to 192.529 and the federal Health Insurance Portability and Accountability Act privacy
11 regulations, 45 C.F.R. parts 160 and 164.

12 **SECTION 2. Section 4, chapter 381, Oregon Laws 2009, is repealed.**

13