



April 29, 2015

TO: Senator Laurie Monnes Anderson, Chair
Senate Health Care Committee
FR: Bob Joondeph, Executive Director
RE: HB 2368

Disability Rights Oregon (DRO) is Oregon's federally-funded *Protection and Advocacy* office that provides legal-based advocacy services to Oregonians with disabilities.

Oregon law provides for two kinds of advance directives for health care. One type mostly concerns end-of-life decisions but also covers all health and mental health services. The other type is specifically designed for mental health treatment: inpatient, convulsive and medications. It is called a "Declaration for Mental Health Treatment."

Both types of advance directives allow a person to designate another person to make health care decisions for them if they become mentally incapable of deciding for themselves. They also allow a person to give specific instructions regarding their wishes for care if they become incapacitated.

Of the two documents, the Declaration for Mental Health Treatment is much more limited in the scope of decisions it permits and is specific to the need for decision making when a person is in severe psychiatric crisis. If a person has signed a Declaration, it is very likely that they have specifically considered how they would like decisions made under those circumstances. However, it is possible that the person also has a more general advance directive that either names a different representative or gives different instructions.

The law does not say which document should take precedence when a person has both types, and the two don't agree. This bill would clarify that when there is a conflict between the documents, the Declaration prevails. The rationale for this preference is that the Declaration is more specific to psychiatric decisions, it is shorter in its duration (3 years from execution), and the broader advance directive does not specifically mention mental health treatment on the face of its required form.

Because clarity in the law is desirable, we believe it makes sense to specify which document takes precedence in the event of conflicting provisions. For the reasons stated above, the Declaration should be controlling when there is a conflict.

Thank you for the opportunity to submit this testimony.