

# Senate Bill 193

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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**.

Amends advance directive law. Clarifies rights and privileges of alternative attorney-in-fact. Changes requirements for witnesses. Deletes language setting forth form of advance directive and replaces with language describing form of advance directive. Clarifies provisions providing for exemption from liability.

## A BILL FOR AN ACT

Relating to advance directives; creating new provisions; and amending ORS 127.505, 127.510, 127.515, 127.531, 127.535, 127.555 and 127.649.

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

## EXECUTING ADVANCE DIRECTIVES

**SECTION 1.** ORS 127.510 is amended to read:

127.510. (1)(a) A capable adult may designate in writing a competent adult to serve as attorney-in-fact for health care. *[A capable adult may also designate a competent adult to serve as alternative attorney-in-fact if the original designee is unavailable, unable or unwilling to serve as attorney-in-fact at any time after the power of attorney for health care is executed. The power of attorney for health care is effective when it is signed, witnessed and accepted as required by ORS 127.505 to 127.660 and 127.995. The]* **An** attorney-in-fact *[so]* appointed **under this section** shall make health care decisions *[on behalf of]* **for** the principal if the principal becomes incapable.

**(b) A capable adult may designate in writing a competent adult to serve as alternative attorney-in-fact for health care. For purposes of ORS 127.505 to 127.660, an alternative attorney-in-fact has the rights and privileges of an attorney-in-fact, including the rights described in ORS 127.535. An alternative attorney-in-fact appointed under this section shall make health care decisions for the principal if the principal becomes incapable and the attorney-in-fact is unable, unwilling or unavailable to make timely health care decisions. For purposes of this paragraph, an attorney-in-fact is unavailable to make timely health care decisions if the attorney-in-fact is not available to answer questions for the health care provider in person, by telephone or by another means of direct communication.**

**(c) The power of attorney for health care is effective when it is signed, witnessed and accepted as required by ORS 127.505 to 127.660.**

(2) A capable adult may execute a health care instruction. The instruction *[shall be]* **is** effective when it is signed and witnessed as required by ORS 127.505 to 127.660 *[and 127.995]*.

(3) Unless the period of time that an advance directive is *[to be]* effective is limited by the terms

**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 the advance directive, the advance directive *[shall continue]* **continues** in effect until:

2 (a) The principal dies; or

3 (b) The advance directive is revoked, suspended or superseded pursuant to ORS 127.545.

4 (4) Notwithstanding subsection (3) of this section, if the principal is incapable at the expiration  
5 of the term of the advance directive, the advance directive continues in effect until:

6 (a) The principal is no longer incapable;

7 (b) The principal dies; or

8 (c) The advance directive is revoked, suspended or superseded pursuant to the provisions of ORS  
9 127.545.

10 (5) A health care provider shall make a copy of an advance directive and **a copy of** any other  
11 instrument a part of the principal's medical record when a copy of *[that]* **the** instrument is provided  
12 to the principal's health care provider.

13 (6) Notwithstanding subsections (3)(a) and (4)(b) of this section, **an advance directive remains**  
14 **in effect with respect to** an anatomical gift, as defined in ORS 97.953, *[made on an advance direc-*  
15 *tive is effective]* **after the principal dies.**

16 **SECTION 2.** ORS 127.515 is amended to read:

17 127.515. (1) An advance directive may be executed by a resident or nonresident adult of this  
18 state in the manner provided by ORS 127.505 to 127.660 *[and 127.995].*

19 *[(2) A power of attorney for health care must be in the form provided by Part B of the advance*  
20 *directive form set forth in ORS 127.531, or must be in the form provided by ORS 127.530 (1991 Edi-*  
21 *tion).]*

22 *[(3) A health care instruction must be in the form provided by Part C of the advance directive form*  
23 *set forth in ORS 127.531, or must be in the form provided by ORS 127.610 (1991 Edition).]*

24 *[(4)]* **(2)** An advance directive must reflect the date of the principal's signature. To be valid, an  
25 advance directive must be witnessed **and signed** by at least two adults as follows:

26 (a) Each witness shall witness either the signing of the instrument by the principal or the  
27 principal's acknowledgment of the signature of the principal.

28 *[(b) Each witness shall make the written declaration as set forth in the form provided in ORS*  
29 *127.531.]*

30 *[(c)]* **(b)** One of the witnesses shall be a person who is not:

31 (A) A relative of the principal by blood, marriage or adoption;

32 (B) A person who, *[at the time the advance directive is signed would be]* **on the date the advance**  
33 **directive is signed, is** entitled to any portion of the estate of the principal upon death under  
34 *[any]* a will or by operation of law; *[or]*

35 *[(C) An owner, operator or employee of a health care facility where the principal is a patient or*  
36 *resident.]*

37 **(C) The principal's attending physician on the date the advance directive is signed;**

38 **(D) A person who provides health care services to the principal on the date the advance**  
39 **directive is signed; or**

40 **(E) A person who has the administrative responsibility of billing the principal for health**  
41 **care services on the date the advance directive is signed.**

42 *[(d) The attorney-in-fact for health care or alternative attorney-in-fact may not be a witness. The*  
43 *principal's attending physician at the time the advance directive is signed may not be a witness.]*

44 *[(e)]* **(c)** If the principal is a patient in a long term care facility at the time the advance directive  
45 is executed, one of the witnesses must be an individual **who is** designated by the facility *[and having*

1 any qualifications that may be] **and qualified as** specified by the Department of Human Services by  
2 rule.

3 [(5)] **(3)** Notwithstanding [subsections (2) to (4)] **subsection (2)** of this section, an advance di-  
4 rective **that is** executed by an adult who [at the time of execution resided in another state,] **resides**  
5 **in another state at the time of execution and is executed** in compliance with the formalities of  
6 execution required by the laws of that state, the laws of the state where the principal [was] **is** lo-  
7 cated at the time of execution or the laws of this state, is validly executed for the purposes of ORS  
8 127.505 to 127.660 [and 127.995 and may be given effect in accordance with its provisions, subject to  
9 the laws of this state].

10 **SECTION 3.** Section 4 of this 2015 Act is added to and made a part of ORS 127.505 to  
11 **127.660.**

12 **SECTION 4.** (1) If the principal is incapable, the designated attorney-in-fact and alterna-  
13 tive attorney-in-fact, if any, withdraw under ORS 127.525 and the health care representative,  
14 if any, is disqualified under ORS 127.520, a health care provider may make health care deci-  
15 sions for the principal in accordance with any health care instruction in an advance direc-  
16 tive.

17 (2) A person may not bring a cause of action against a health care provider who acts in  
18 accordance with the provisions of this section.

19  
20 **FORM OF ADVANCE DIRECTIVE**

21  
22 **SECTION 5.** ORS 127.531 is amended to read:

23 127.531. [(1) The form of an advance directive executed by an Oregon resident must be the same  
24 as the form set forth in this section to be valid. In any place in the form that requires the initials of  
25 the principal, any mark by the principal is effective to indicate the principal's intent.]

26 [(2) An advance directive shall be in the following form:]

27 [ \_\_\_\_\_ ]

28  
29 ADVANCE DIRECTIVE

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

31 PART A: IMPORTANT INFORMATION ABOUT THIS ADVANCE DIRECTIVE

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

34 Facts About Part B

35 (Appointing a Health Care Representative)

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

39 You can write in this document any restrictions you want on how your representative will make  
40 decisions for you. Your representative must follow your desires as stated in this document or otherwise  
41 made known. If your desires are unknown, your representative must try to act in your best interest.  
42 Your representative can resign at any time.

43 Facts About Part C

44 (Giving Health Care Instructions)

45 You also have the right to give instructions for health care providers to follow if you become unable

1 to direct your care. You can do this by using Part C of this form.

2 Facts About Completing This Form

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

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

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

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

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

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

15 Print your NAME, BIRTHDATE AND ADDRESS here:

16 \_\_\_\_\_  
17

18 (Name)

19 \_\_\_\_\_  
20

21 (Birthdate)

22 \_\_\_\_\_  
23

24 \_\_\_\_\_  
25

26 (Address)

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

28  
29 INITIAL ONE:

30 — My entire life

31 — Other period (\_\_\_ Years)

32 PART B: APPOINTMENT OF HEALTH CARE REPRESENTATIVE

33 I appoint \_\_\_\_\_ as my health care representative. My representative's ad-  
34 dress is \_\_\_\_\_ and telephone number is \_\_\_\_\_

35 I appoint \_\_\_\_\_ as my alternate health care representative. My alternate's  
36 address is \_\_\_\_\_ and telephone number is \_\_\_\_\_

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

38  
39 NOTE: You may not appoint your doctor, an employee of your doctor, or an owner, operator or em-  
40 ployee of your health care facility, unless that person is related to you by blood, marriage or adoption  
41 or that person was appointed before your admission into the health care facility.

42  
43 1. Limits. Special Conditions or Instructions:

44 \_\_\_\_\_  
45

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*INITIAL IF THIS APPLIES:*

— *I have executed a Health Care Instruction or Directive to Physicians. My representative is to honor it.*

2. *Life Support.* *“Life support” refers to any medical means for maintaining life, including procedures, devices and medications. If you refuse life support, you will still get routine measures to keep you clean and comfortable.*

*INITIAL IF THIS APPLIES:*

— *My representative MAY decide about life support for me. (If you don’t initial this space, then your representative MAY NOT decide about life support.)*

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.)*

\_\_\_\_\_  
*(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 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 the general instruction provided by Item 5.

Here are my desires about my health care if my doctor and another knowledgeable doctor confirm that I am in a medical condition described below:

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

A. INITIAL ONE:

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

B. INITIAL ONE:

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

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

A. INITIAL ONE:

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

B. INITIAL ONE:

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

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

A. INITIAL ONE:

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

B. INITIAL ONE:

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

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

3  
4 A. INITIAL ONE:

- 5 — *I want to receive tube feeding.*
- 6 — *I want tube feeding only as my physician recommends.*
- 7 — *I DO NOT WANT tube feeding.*

8  
9 B. INITIAL ONE:

- 10 — *I want any other life support that may apply.*
- 11 — *I want life support only as my physician recommends.*
- 12 — *I want NO life support.*

13  
14 5. General Instruction.

15 INITIAL IF THIS APPLIES:

- 16 — *I do not want my life to be prolonged by life support. I also do not want tube feeding as life*
- 17 *support. I want my doctors to allow me to die naturally if my doctor and another knowledge-*
- 18 *able doctor confirm I am in any of the medical conditions listed in Items 1 to 4 above.*

19  
20 6. Additional Conditions or Instructions.

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21  
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23  
24  
25  
26  
27 *(Insert description of what you want done.)*

28  
29 7. Other Documents. *A “health care power of attorney” is any document you may have signed to*  
30 *appoint a representative to make health care decisions for you.*

31  
32 INITIAL ONE:

- 33 — *I have previously signed a health care power of attorney. I want it to remain in effect unless*
- 34 *I appointed a health care representative after signing the health care power of attorney.*
- 35 — *I have a health care power of attorney, and I REVOKE IT.*
- 36 — *I DO NOT have a health care power of attorney.*

37  
38 \_\_\_\_\_

39 *(Date)*

40 SIGN HERE TO GIVE INSTRUCTIONS

41  
42 \_\_\_\_\_

43 *(Signature)*

44  
45 \_\_\_\_\_

PART D: DECLARATION OF WITNESSES

We declare that the person signing this advance directive:

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

Witnessed By:

_____	_____
(Signature of	(Printed Name
Witness/Date)	of Witness)

_____	_____
(Signature of	(Printed Name
Witness/Date)	of Witness)

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

PART E: ACCEPTANCE BY HEALTH CARE REPRESENTATIVE

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

\_\_\_\_\_  
(Signature of Health Care Representative/Date)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Signature of Alternate Health Care Representative/Date)

\_\_\_\_\_  
(Printed name)

[ \_\_\_\_\_ ]



1 (1) The form of an advance directive executed by the principal may include one or more  
 2 of the following:

3 (a) Designation of a competent adult to serve as attorney-in-fact for health care.

4 (b) Designation of a competent adult to serve as alternative attorney-in-fact for health  
 5 care.

6 (c) Health care instruction in the form of a checklist of health care choices, such as  
 7 whether the principal would want life-sustaining hydration, life-sustaining food, extraor-  
 8 dinary life-saving measures or other treatment.

9 (d) Health care instruction in the form of an explanation of the principal's health care  
 10 choices, including any information about the basis for those choices, such as the principal's  
 11 religious beliefs, other beliefs or principles or any other guidance provided with respect to  
 12 the choices.

13 (2) A checklist of health care choices that is presented to a person by the person's at-  
 14 tending physician is a valid advance directive.

15 (3) An explanation of a person's health care choices may include, by reference, an au-  
 16 thoritative document of an organized religion for the purpose of providing information about  
 17 the principal's health care choices.

18 (4) An advance directive may be executed electronically as part of the principal's elec-  
 19 tronic medical record, provided that the signatures required under ORS 127.515 are obtained  
 20 either by electronic means or on a document that references the electronic medical record.

21 (5) A state agency may not, by rule or otherwise, prescribe the form or content of an  
 22 advance directive.

23  
 24 **LIABILITY**

25  
 26 **SECTION 6.** ORS 127.555 is amended to read:

27 127.555. (1) If there is more than one physician caring for a principal, the principal shall desig-  
 28 nate one physician as the attending physician. If the principal is incapable, the health care repre-  
 29 sentative for the principal shall designate the attending physician.

30 (2) Health care representatives, and persons who are acting under a reasonable belief that they  
 31 are health care representatives, shall not be guilty of any criminal offense, or subject to civil li-  
 32 ability, or in violation of any professional oath, affirmation or standard of care for any action taken  
 33 in good faith as a health care representative[.], **including:**

34 (a) **Relying on any health care instruction in an advance directive; and**

35 (b) **Consenting to or providing treatment on the basis of a health care instruction in an**  
 36 **advance directive that takes the form of an explanation of health care decisions, even if the**  
 37 **advance directive does not specifically mention the treatment.**

38 (3) A health care provider acting or declining to act in reliance on the health care decision  
 39 made in an advance directive, made by an attending physician under ORS 127.635 (3), or made by  
 40 a person who the provider believes is the health care representative for an incapable principal, is  
 41 not subject to criminal prosecution, civil liability or professional disciplinary action on the grounds  
 42 that the health care decision is unauthorized unless the provider:

43 (a) Fails to satisfy a duty [*that*] **of a health care provider** ORS 127.505 to 127.660 [*and 127.995*  
 44 *place on the provider*];

45 (b) Acts without medical confirmation as required under ORS 127.505 to 127.660 [*and 127.995*];

1 (c) Knows or has reason to know that the requirements of ORS 127.505 to 127.660 [*and*  
2 *127.995*] have not been satisfied; or

3 (d) Acts after receiving notice that:

4 (A) The authority or decision on which the provider relied is revoked, suspended, superseded  
5 or subject to other legal infirmity;

6 (B) A court challenge to the health care decision or the authority relied on in making the health  
7 care decision is pending; or

8 (C) The health care representative has withdrawn or has been disqualified.

9 (4) The immunities provided by this section do not apply to:

10 (a) The manner of administering health care pursuant to a health care decision made by the  
11 health care representative or by a health care instruction; or

12 (b) The manner of determining the health condition or incapacity of the principal.

13 (5) A health care provider who determines that a principal is incapable is not subject to criminal  
14 prosecution, civil liability or professional disciplinary action for failing to follow that principal's  
15 direction except for a failure to follow a principal's manifestation of an objection to a health care  
16 decision under ORS 127.535 (5).

17  
18 **CONFORMING AMENDMENTS**

19  
20 **SECTION 7.** ORS 127.505 is amended to read:

21 127.505. As used in ORS 127.505 to 127.660 and 127.995:

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

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

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

28 (4)(a) "Artificially administered nutrition and hydration" means a medical intervention to pro-  
29 vide food and water by tube, mechanical device or other medically assisted method.

30 (b) "Artificially administered nutrition and hydration" does not include the usual and typical  
31 provision of nutrition and hydration, such as the provision of nutrition and hydration by cup, hand,  
32 bottle, drinking straw or eating utensil.

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

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

37 [(7) "*Dementia*" means a degenerative condition that causes progressive deterioration of intellectual  
38 functioning and other cognitive skills, including but not limited to aphasia, apraxia, memory, agnosia  
39 and executive functioning, that leads to a significant impairment in social or occupational function and  
40 that represents a significant decline from a previous level of functioning. Diagnosis is by history and  
41 physical examination.]

42 (7) "**Capable**" means **not incapable**.

43 (8) "Health care" means diagnosis, treatment or care of disease, injury and congenital or de-  
44 generative conditions, including the use, maintenance, withdrawal or withholding of life-sustaining  
45 procedures and the use, maintenance, withdrawal or withholding of artificially administered nutri-

1 tion and hydration.

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

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

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

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

13 (13) "Health care representative" means:

14 (a) An attorney-in-fact;

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

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

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

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

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

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

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

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

38 [(20)] (19) "Physician" means an individual licensed to practice medicine by the Oregon Medical  
39 Board.

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

43 [(22)] (21) "Principal" means:

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

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

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

2 (d) A person being evaluated for capability who will have a health care representative if the  
3 person is determined to be incapable.

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

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

8 **SECTION 8.** ORS 127.535 is amended to read:

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

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

18 (3) Except to the extent **that** the right is limited by the appointment or [*any*] federal law **or**  
19 **regulation**, a health care representative for an incapable principal has the same right as the prin-  
20 cipal to receive information regarding the proposed health care, to receive and review medical re-  
21 cords and to consent to the disclosure of medical records. The right of the health care  
22 representative to receive this information is not a waiver of any evidentiary privilege or any right  
23 to assert confidentiality with respect to others.

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

29 (5) ORS 127.505 to 127.660 do not authorize a health care representative or health care provider  
30 to withhold or withdraw life-sustaining procedures or artificially administered nutrition and hy-  
31 dration in any situation if the principal manifests an objection to the health care decision. If the  
32 principal objects to such a health care decision, the health care provider shall proceed as though  
33 the principal [*were*] **is** capable [*for the purposes of*] **with respect to** the health care decision [*ob-*  
34 *jected to*].

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

39 (7) A health care representative is a personal representative for the purposes of ORS 192.553 to  
40 192.581 and the federal Health Insurance Portability and Accountability Act privacy regulations, 45  
41 C.F.R. parts 160 and 164.

42 **SECTION 9.** ORS 127.649 is amended to read:

43 127.649. (1) Subject to the provisions of ORS 127.652 and 127.654, all health care organizations  
44 shall maintain written policies and procedures, applicable to all capable adults who are receiving  
45 health care by or through the health care organization, that provide for:

1 (a) Delivering to those individuals the following information and materials, in written form,  
 2 without recommendation:

3 (A) Information on the rights of the individual under Oregon law to make health care decisions,  
 4 including the right to accept or refuse medical or surgical treatment and the right to execute ad-  
 5 vance directives;

6 (B) Information on the policies of the health care organization with respect to the implementa-  
 7 tion of the rights of the individual under Oregon law to make health care decisions;

8 [(C) A copy of the advance directive set forth in ORS 127.531, along with a disclaimer on the first  
 9 line of the first page of each form in at least 16-point boldfaced type stating “You do not have to fill  
 10 out and sign this form.”; and]

11 **(C) Materials necessary to execute an advance directive described in ORS 127.531; and**

12 (D) The name of a person who can provide additional information concerning [the forms for]  
 13 advance directives.

14 (b) Documenting in a prominent place in the individual’s medical record whether the individual  
 15 has executed an advance directive.

16 (c) Ensuring compliance by the health care organization with Oregon law relating to advance  
 17 directives.

18 (d) Educating the staff and the community on issues relating to advance directives.

19 (2) A health care organization [need not furnish a copy of an advance directive to an individual]  
 20 **does not need to deliver materials described in subsection (1)(a)(C) of this section** if the health  
 21 care organization has reason to believe that the individual [has received a copy of an advance di-  
 22 rective in the form set forth in ORS 127.531 within] **has received materials described in subsection**  
 23 **(1)(a)(C) of this section during** the preceding 12-month period or has previously executed an ad-  
 24 vance directive.

25  
 26 **APPLICABILITY**

27  
 28 **SECTION 10. The amendments to ORS 127.510 by section 1 of this 2015 Act apply to des-**  
 29 **ignations made before, on or after the effective date of this 2015 Act.**

30 **SECTION 11. The amendments to ORS 127.515 by section 2 of this 2015 Act apply to ad-**  
 31 **vance directives executed on or after the effective date of this 2015 Act.**

32 **SECTION 12. The amendments to ORS 127.531 by section 5 of this 2015 Act do not inval-**  
 33 **idate any advance directive executed before the effective date of this 2015 Act.**

34 **SECTION 13. Section 4 of this 2015 Act and the amendments to ORS 127.555 by section**  
 35 **6 of this 2015 Act apply to causes of action brought before, on or after the effective date of**  
 36 **this 2015 Act.**

37  
 38 **UNIT CAPTIONS**

39  
 40 **SECTION 14. The unit captions used in this 2015 Act are provided only for the conven-**  
 41 **ience of the reader and do not become part of the statutory law of this state or express any**  
 42 **legislative intent in the enactment of this 2015 Act.**