

A-Engrossed Senate Bill 1552

Ordered by the Senate February 15
Including Senate Amendments dated February 15

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 Senate Interim Committee on Judiciary)

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.

Establishes Advance Directive Rules Adoption Committee for purpose of adopting by rule form of advance directive to be used in this state. Repeals statute setting forth current form of advance directive.

Sets forth alternate form of advance directive that may be used in this state. Sunsets alternate form on January 1, 2020.

For purposes of advance directive law, changes terms "attorney-in-fact" and "alternative attorney-in-fact" to "health care representative" and "alternative health care representative." Clarifies rights and privileges for **health care representatives and** alternative health care [*representative*] **representatives. Clarifies use of term "advance directive." Creates new term "form appointing a health care representative."** Modifies means by which advance directive is executed.

Becomes operative January 1, 2017.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to health care; creating new provisions; amending ORS 97.953, 97.955, 97.959, 127.505, 127.510, 127.515, 127.525, 127.535, 127.545, 127.550, 127.555, 127.565, 127.625, 127.649, 127.658, 127.737, 127.760, 163.193 and 163.206; repealing ORS 127.531; and prescribing an effective date.

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

FORM OF AN ADVANCE DIRECTIVE

(Series Placement)

SECTION 1. Sections 2, 4, 5 and 6 of this 2016 Act are added to and made a part of ORS 127.505 to 127.660.

(Advance Directive Rules Adoption Committee)

SECTION 2. (1) The Advance Directive Rules Adoption Committee is established within the division of the Oregon Health Authority that is charged with public health functions.

(2) The committee consists of 13 members. One voting member shall be the Long Term Care Ombudsman or the designee of the Long Term Care Ombudsman. The other 12 members shall be appointed as follows:

(a) The President of the Senate shall appoint one nonvoting member from among members of the Senate.

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 **(b) The Speaker of the House of Representatives shall appoint one nonvoting member**
2 **from among members of the House of Representatives.**

3 **(c) The Governor shall appoint the following 10 voting members:**

4 **(A) One member who represents primary health care providers.**

5 **(B) One member who represents hospitals.**

6 **(C) One member who is a clinical ethicist affiliated with a hospital or other health care**
7 **facility located in this state, or affiliated with a health care organization offering health care**
8 **services in this state.**

9 **(D) Two members who are health care providers with expertise in palliative or hospice**
10 **care, one of whom is not employed by a hospital or other health care facility, a health care**
11 **organization or an insurer.**

12 **(E) One member who represents individuals with disabilities.**

13 **(F) One member who represents consumers of health care services.**

14 **(G) One member from among members proposed by the Oregon State Bar who is an ex-**
15 **pert in elder law and who has expertise in advising individuals on how to execute an advance**
16 **directive.**

17 **(H) One member from among members proposed by the Oregon State Bar who is an ex-**
18 **pert in estate planning and who has expertise in advising individuals on how to make end-**
19 **of-life decisions.**

20 **(I) One member from among members proposed by the Oregon State Bar who is an ex-**
21 **pert in health law.**

22 **(3) The term of office of each member of the committee is four years, but a member**
23 **serves at the pleasure of the appointing authority. Before the expiration of the term of a**
24 **member, the appointing authority shall appoint a successor whose term begins on January**
25 **1 next following. A member is eligible for reappointment. If there is a vacancy for any cause,**
26 **the appointing authority shall make an appointment to become immediately effective for the**
27 **unexpired term.**

28 **(4) A majority of the voting members of the committee constitutes a quorum for the**
29 **transaction of business.**

30 **(5) Official action by the committee requires the approval of a majority of the voting**
31 **members of the committee.**

32 **(6) The committee shall elect one of its members to serve as chairperson.**

33 **(7) The committee shall meet at times and places specified by the call of the chairperson**
34 **or of a majority of the voting members of the committee, provided that the committee meets**
35 **at least twice a year.**

36 **(8) The committee may adopt rules necessary for the operation of the committee.**

37 **(9) On or before December 1 of each even-numbered year, the committee shall submit a**
38 **report in the manner provided in ORS 192.245 to the interim committees of the Legislative**
39 **Assembly related to health care and judiciary. The report must include the form of an ad-**
40 **advance directive adopted by the committee under section 4 of this 2016 Act, an assessment**
41 **of the efficacy of using that form, any issue presented through use of that form and any**
42 **potential change to that form being considered by the committee.**

43 **(10) Members of the committee are not entitled to compensation, but may be reimbursed**
44 **for actual and necessary travel and other expenses incurred by them in the performance of**
45 **their official duties in the manner and amounts provided for in ORS 292.495. Claims for ex-**

1 penses shall be paid out of funds appropriated to the authority for purposes of the commit-
2 tee.

3 **SECTION 3.** Notwithstanding the term of office specified by section 2 of this 2016 Act,
4 of the voting members first appointed by the Governor to the Advance Directive Rules
5 Adoption Committee:

6 (1) Three shall serve for a term ending January 1, 2019.

7 (2) Three shall serve for a term ending January 1, 2020.

8 (3) Four shall serve for a term ending January 1, 2021.

9 **SECTION 4.** (1) The Advance Directive Rules Adoption Committee established under
10 section 2 of this 2016 Act shall adopt by rule the form of an advance directive to be used in
11 this state. The committee shall review the form not less than once every four years and
12 adopt by rule changes to the form as necessary. Except as otherwise provided by ORS 127.505
13 to 127.660, the form of an advance directive adopted pursuant to this section is the only valid
14 form of an advance directive in this state.

15 (2) At a minimum, the form of an advance directive adopted under this section must
16 contain the following elements:

17 (a) A statement on the purposes of the advance directive, including:

18 (A) A statement on the purpose of the principal appointing a health care representative
19 to make health care decisions for the principal if the principal becomes incapable; and

20 (B) A statement on the purpose of the principal expressing the principal's preferences,
21 values and beliefs with respect to health care necessary to preserve life.

22 (b) A statement that to be effective the advance directive must be:

23 (A) Accepted by signature or other applicable means; and

24 (B) Either witnessed or notarized.

25 (c) A statement that the appointment of a health care representative or of an alternative
26 health care representative must be accepted by the health care representative or the alter-
27 native health care representative to be effective.

28 (d) A statement that the advance directive, once executed, supersedes any previously
29 executed advance directive.

30 (e) The name, birthdate, address and other contact information of the principal.

31 (f) The name, address and other contact information of any health care representative
32 or any alternative health care representative appointed by the principal.

33 (g) A section providing the principal with an opportunity to state the principal's values
34 and beliefs with respect to health care decisions, including the opportunity to describe the
35 principal's wishes, by completing a checklist, by providing instruction through narrative or
36 other means, or by any combination of methods used to describe the principal's wishes, re-
37 garding:

38 (A) When the principal wants all reasonably available health care necessary to preserve
39 life and recover;

40 (B) When the principal wants all reasonably available health care necessary to treat
41 chronic conditions;

42 (C) When the principal wants to specifically limit health care necessary to preserve life
43 and recover, including artificially administered nutrition and hydration, cardiopulmonary
44 resuscitation and transport to a hospital; and

45 (D) When the principal desires comfort care instead of health care necessary to preserve

1 life and recover.

2 (h) A section where the principal and the witnesses or notary may accept by signature
3 or other means, including, but not limited to, electronic or verbal means, the advance di-
4 rective.

5 (i) A section where any health care representative or any alternative health care repre-
6 sentative appointed by the principal may accept by signature or other means, including, but
7 not limited to, electronic or verbal means, the advance directive.

8 (3) In adopting the form of an advance directive under this section, the committee shall
9 use plain language.

10 (4) In adopting the form of an advance directive under this section, the committee shall
11 use the components of the form for appointing a health care representative or an alternative
12 health care representative set forth in section 5 of this 2016 Act.

13 (5) A principal may attach supplementary material to an advance directive. In addition
14 to the form of an advance directive adopted under this section, supplementary material at-
15 tached to an advance directive under this subsection is a part of the advance directive.

16 (6) The Oregon Health Authority shall post the form of an advance directive adopted
17 under this section on the website of the authority.

18
19 (Form for Appointing Health Care Representative
20 and Alternative Health Care Representative)
21

22 **SECTION 5. A form for appointing a health care representative and an alternative health**
23 **care representative must be written in substantially the following form:**
24

25
26 This form may be used in Oregon to choose a person to make health care decisions for
27 you if you become too sick to speak for yourself. The person is called a health care repre-
28 sentative. This form also allows you to express your values, beliefs and preferences for
29 health care.

30 • If you have completed a form appointing a health care representative in the past, this
31 new form will replace any older form. Your appointment of a health care representative is
32 not effective until the health care representative accepts the appointment.

33 • You must sign this form for it to be effective. You must also have it witnessed by two
34 witnesses or a notary.

35 **1. ABOUT ME.**

36 Name: _____ Date of Birth: _____

37 Telephone numbers: (Home)_____ (Work)_____ (Cell)_____

38 Address: _____

39 E-mail: _____

40 **2. MY HEALTH CARE REPRESENTATIVE.**

41 I choose the following person as my health care representative to make health care de-
42 cisions for me if I can't speak for myself.

43 Name: _____ Relationship: _____

44 Telephone numbers: (Home)_____ (Work)_____ (Cell)_____

45 Address: _____

1 E-mail: _____

2 I choose the following people to be my alternate health care representatives if my first
3 choice is not available to make health care decisions for me or if I cancel the first health
4 care representative's appointment.

5 First alternate health care representative:

6 Name: _____ Relationship: _____

7 Telephone numbers: (Home)_____ (Work)_____ (Cell)_____

8 Address: _____

9 E-mail: _____

10 Second alternate health care representative:

11 Name: _____ Relationship: _____

12 Telephone numbers: (Home)_____ (Work)_____ (Cell)_____

13 Address: _____

14 E-mail: _____

15 **3. ACCEPTANCE BY MY HEALTH CARE REPRESENTATIVE.**

16 I accept this appointment and agree to serve as health care representative.

17 Health care representative (name): _____

18 Date _____

19 First alternate health care representative (name): _____

20 Date _____

21 Second alternate health care representative (name): _____

22 Date _____

23 **4. WITNESS.**

24 **COMPLETE A OR B WHEN YOU SIGN.**

25 **A. WITNESS DECLARATION:**

26 The person completing this form is personally known to me or has provided proof of
27 identity, has signed or acknowledged the person's signature on the document in my presence
28 and appears to be not under duress. In addition, I am not the person's health care repre-
29 sentative or alternate health care representative, and I am not the person's primary health
30 care provider.

31 Witness Name (print): _____

32 Signature: _____

33 Date: _____

34 Witness Name (print): _____

35 Signature: _____

36 Date: _____

37 **B. NOTARY:**

38 State of _____

39 County of _____

40 Signed or attested before me on _____, 2____, by

41 _____

42 _____

43 Notary Public - State of Oregon

44 **5. MY SIGNATURE.**

45 My signature: _____ Date: _____

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(Temporary Form for Advance Directive)

SECTION 6. (1) In lieu of the form of an advance directive adopted by the Advance Directive Rules Adoption Committee under section 4 of this 2016 Act, on or before January 1, 2020, a principal may execute an advance directive that is in a form that is substantially the same as the form of an advance directive set forth in this section.

(2) Notwithstanding section 4 (1) of this 2016 Act, the form of an advance directive set forth in this section is a valid form of an advance directive in this state.

(3) The form of an advance directive executed as described in subsection (1) of this section is as follows:

This form may be used in Oregon to choose a person to make health care decisions for you if you become too sick to speak for yourself. The person is called a health care representative. This form also allows you to express your values, beliefs and preferences for health care.

- If you have completed an advance directive in the past, this new advance directive will replace the older directives.
- You must sign this form for it to be effective. You must also have it witnessed by two witnesses or a notary. Your appointment of a health care representative is not effective until the health care representative accepts the appointment.

1. ABOUT ME.

Name: _____ Date of Birth: _____
Telephone numbers: (Home)_____ (Work)_____ (Cell)_____
Address: _____
E-mail: _____

2. MY HEALTH CARE REPRESENTATIVE.

I choose the following person as my health care representative to make health care decisions for me if I can't speak for myself.

Name: _____ Relationship: _____
Telephone numbers: (Home)_____ (Work)_____ (Cell)_____
Address: _____
E-mail: _____

I choose the following people to be my alternate health care representatives if my first choice is not available to make health care decisions for me or if I cancel the first health care representative's appointment.

First alternate health care representative:
Name: _____ Relationship: _____
Telephone numbers: (Home)_____ (Work)_____ (Cell)_____
Address: _____
E-mail: _____

Second alternate health care representative:

1 Name: _____ Relationship: _____

2 Telephone numbers: (Home)_____ (Work)_____ (Cell)_____

3 Address: _____

4 E-mail: _____

5 **3. ACCEPTANCE BY MY HEALTH CARE REPRESENTATIVE.**

6 I accept this appointment and agree to serve as health care representative.

7 Health care representative (name): _____

8 Date _____

9 First alternate health care representative (name): _____

10 Date _____

11 Second alternate health care representative (name): _____

12 Date _____

13 **4. DIRECTIONS TO MY HEALTH CARE REPRESENTATIVE.**

14 If you wish to give directions to your health care representative about your health care
15 decisions, initial one of the following three statements:

16 ___ To the extent appropriate, my health care representative must follow my in-
17 structions.

18 ___ My instructions are guidelines for my health care representative to consider when
19 making decisions about my care.

20 ___ Other instructions: _____

21 **5. DIRECTIONS REGARDING END OF LIFE CARE.**

22 In filling out these directions, keep the following in mind:

23 • The term “as my physician recommends” means that you want your physician to use
24 life support if your physician believes it could be helpful, and that you want your physician
25 to discontinue life support if your physician believes it is not helping your health condition
26 or symptoms.

27 • The term “life support” means any medical treatment that maintains life by sustaining,
28 restoring or replacing a vital function.

29 • The term “tube feeding” means artificially administered food and water.

30 • If you refuse tube feeding, you should understand that malnutrition, dehydration and
31 death will probably result.

32 • You will receive care for your comfort and cleanliness no matter what choices you
33 make.

34 A. Statement Regarding End of Life Care. You may initial the statement below if you
35 agree with it. If you initial the statement you may, but do not have to, list one or more
36 conditions for which you do not want to receive life support.

37 ___ I do not want my life to be prolonged by life support. I also do not want tube feeding
38 as life support. I want my physician to allow me to die naturally if my physician and another
39 knowledgeable physician confirm I am in any of the medical conditions listed below.

40 B. Additional Directions Regarding End of Life Care. Here are my desires about my
41 health care if my physician and another knowledgeable physician confirm that I am in a
42 medical condition described below:

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

45 INITIAL ONE:

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

4 INITIAL ONE:

- 5 I want any other life support that may apply.
- 6 I want life support only as my physician recommends.
- 7 I DO NOT WANT life support.

8 **b. Permanently Unconscious. If I am unconscious and it is very unlikely that I will ever**
9 **become conscious again:**

10 INITIAL ONE:

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

14 INITIAL ONE:

- 15 I want any other life support that may apply.
- 16 I want life support only as my physician recommends.
- 17 I DO NOT WANT life support.

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

22 INITIAL ONE:

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

26 INITIAL ONE:

- 27 I want any other life support that may apply.
- 28 I want life support only as my physician recommends.
- 29 I DO NOT WANT life support.

30 **d. Extraordinary Suffering. If life support would not help my medical condition and would**
31 **make me suffer permanent and severe pain:**

32 INITIAL ONE:

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

36 INITIAL ONE:

- 37 I want any other life support that may apply.
- 38 I want life support only as my physician recommends.
- 39 I DO NOT WANT life support.

40 **C. Additional Instruction. You may attach to this document any writing or recording of**
41 **your thoughts and values related to health care decisions. These attachments will serve as**
42 **guidelines for health care providers. Attachments may include a description of what you**
43 **would like to happen if you are close to death, if you are permanently unconscious, if you**
44 **are suffering permanent and severe pain or if you have an advanced progressive illness.**

45 **6. WITNESS.**

COMPLETE A OR B WHEN YOU SIGN.

A. WITNESS DECLARATION:

The person completing this form is personally known to me or has provided proof of identity, has signed or acknowledged the person's signature on the document in my presence and appears to be not under duress. In addition, I am not the person's health care representative or alternate health care representative, and I am not the person's primary health care provider.

Witness Name (print): _____

Signature: _____

Date: _____

Witness Name (print): _____

Signature: _____

Date: _____

B. NOTARY:

State of _____

County of _____

Signed or attested before me on _____, 2____, by

_____.

Notary Public - State of Oregon

7. MY SIGNATURE.

My signature: _____ Date: _____

**APPOINTING HEALTH CARE REPRESENTATIVES
AND EXECUTING ADVANCE DIRECTIVES**

SECTION 7. ORS 127.510 is amended to read:

127.510. [(1) 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 attorney-in-fact so appointed shall make health care decisions on behalf of the principal if the principal becomes incapable.]

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

(1)(a) A capable adult may use the form adopted under section 4 of this 2016 Act or the form set forth in section 5 of this 2016 Act to appoint a competent adult to serve as the health care representative for the capable adult. A health care representative appointed under this paragraph shall make health care decisions for the principal if the principal becomes incapable.

(b) A capable adult may use the form adopted under section 4 of this 2016 Act or the form set forth in section 5 of this 2016 Act to appoint one or more competent adults to serve as

1 alternative health care representatives for the capable adult. For purposes of ORS 127.505
2 to 127.660, an alternative health care representative has the rights and privileges of a health
3 care representative appointed under paragraph (a) of this subsection, including the rights
4 described in ORS 127.535. An alternative health care representative appointed under this
5 paragraph shall make health care decisions for the principal if:

6 (A) The principal becomes incapable; and

7 (B) The health care representative appointed under paragraph (a) of this subsection is
8 unable, unwilling or unavailable to make timely health care decisions for the principal.

9 (c) For purposes of paragraph (b) of this subsection, the health care representative ap-
10 pointed under paragraph (a) of this subsection is unavailable to make timely health care de-
11 cisions for the principal if the health care representative is not available to answer questions
12 for the health care provider in person, by telephone or by another means of direct commu-
13 nication.

14 (d) An appointment made under this section is effective when it is accepted by the prin-
15 cipal and the health care representative and witnessed or notarized as required by ORS
16 127.505 to 127.660.

17 (2) A capable adult may execute an advance directive. The advance directive is effective
18 when it is signed by the principal and witnessed or notarized as required by ORS 127.505 to
19 127.660.

20 (3) Unless the period of time that an advance directive **or a form appointing a health care**
21 **representative** is *[to be]* effective is limited by the terms of the advance directive **or the form**
22 **appointing a health care representative**, the advance directive *[shall continue]* **or the form ap-**
23 **pointing a health care representative continues** in effect until:

24 (a) The principal dies; or

25 (b) The advance directive **or the form appointing a health care representative** is revoked,
26 suspended or superseded pursuant to ORS 127.545.

27 (4) Notwithstanding subsection (3) of this section, if the principal is incapable at the expiration
28 of the term of the advance directive **or the form appointing a health care representative**, the
29 advance directive **or the form appointing a health care representative** continues in effect until:

30 (a) The principal is no longer incapable;

31 (b) The principal dies; or

32 (c) The advance directive **or the form appointing a health care representative** is revoked,
33 suspended or superseded pursuant to the provisions of ORS 127.545.

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

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

40 **SECTION 8.** ORS 127.515 is amended to read:

41 127.515. (1) An advance directive **or a form appointing a health care representative** may be
42 executed by a resident or nonresident adult of this state in the manner provided by ORS 127.505 to
43 127.660. *[and 127.995.]*

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

1 tion).]

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

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

6 [(a) Each witness shall witness either the signing of the instrument by the principal or the
7 principal's acknowledgment of the signature of the principal.]

8 [(b) Each witness shall make the written declaration as set forth in the form provided in ORS
9 127.531.]

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

11 [(A) A relative of the principal by blood, marriage or adoption;]

12 [(B) A person who at the time the advance directive is signed would be entitled to any portion of
13 the estate of the principal upon death under any will or by operation of law; or]

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

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

18 [(e) If the principal is a patient in a long term care facility at the time the advance directive is
19 executed, one of the witnesses must be an individual designated by the facility and having any quali-
20 fications that may be specified by the Department of Human Services by rule.]

21 **(2) An advance directive or a form appointing a health care representative must reflect**
22 **the date of the principal's signature or other method of accepting the advance directive or**
23 **the form appointing a health care representative. To be valid, an advance directive or a form**
24 **appointing a health care representative must be:**

25 **(a) Witnessed and signed by at least two adults; or**

26 **(b) Notarized by a notary public.**

27 **(3) If an advance directive or a form appointing a health care representative is validated**
28 **under subsection (2)(a) of this section, each witness must witness:**

29 **(a) The principal signing the advance directive or the form appointing a health care rep-**
30 **resentative; or**

31 **(b) The principal acknowledging the signature of the principal on the advance directive**
32 **or the form appointing a health care representative or the applicable method by which the**
33 **principal accepted the advance directive or the form appointing a health care representative.**

34 **(4) For an advance directive or a form appointing a health care representative to be**
35 **validated under subsection (2)(a) of this section, the witnesses may not, on the date the ad-**
36 **advance directive or the form appointing a health care representative is signed or acknowl-**
37 **edged, be the principal's attending physician or other health care provider who has primary**
38 **responsibility for the care and treatment of the principal.**

39 **(5) If an advance directive or a form appointing a health care representative is validated**
40 **under subsection (2)(a) of this section, neither witness may be a health care representative**
41 **or an alternative health care representative appointed under ORS 127.510 for the principal.**

42 **(6) If an advance directive or a form appointing a health care representative is validated**
43 **under subsection (2)(a) of this section, and if the principal is a patient in a long term care**
44 **facility at the time the advance directive or the form appointing a health care representative**
45 **is executed, one of the witnesses must be an individual who is designated by the facility and**

1 **qualified as specified by the Department of Human Services by rule.**

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

9
10 **DEFINITIONS**

11
12 **SECTION 9.** ORS 127.505 is amended to read:

13 127.505. As used in ORS 127.505 to 127.660 and 127.995:

14 (1) “Adult” means an individual who is 18 years of age or older, who has been adjudicated an
15 emancipated minor or who is married.

16 [(2) “Advance directive” means a document that contains a health care instruction or a power of
17 attorney for health care.]

18 (2) “Advance directive” means a document executed by a principal to indicate the
19 principal’s instructions regarding health care decisions.

20 (3) “Appointment” means [*a power of attorney for health care*] **the portion of the form adopted**
21 **under section 4 of this 2016 Act used to appoint a health care representative or an alterna-**
22 **tive health care representative, the form set forth in section 5 of this 2016 Act,** letters of
23 guardianship or a court order appointing a health care representative.

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

26 (b) “Artificially administered nutrition and hydration” does not include the usual and typical
27 provision of nutrition and hydration, such as the provision of nutrition and hydration by cup, hand,
28 bottle, drinking straw or eating utensil.

29 (5) “Attending physician” means the physician who has primary responsibility for the care and
30 treatment of the principal.

31 [(6) “Attorney-in-fact” means an adult appointed to make health care decisions for a principal under
32 a power of attorney for health care, and includes an alternative attorney-in-fact.]

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

38 (6) “Capable” means not incapable.

39 (7) “Form appointing a health care representative” means the portion of the form
40 adopted under section 4 of this 2016 Act used to appoint a health care representative or an
41 alternative health care representative or the form set forth in section 5 of this 2016 Act.

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

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

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

7 [(11) "Health care instruction" or "instruction" means a document executed by a principal to indi-
8 cate the principal's instructions regarding health care decisions.]

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

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

13 [(a) An attorney-in-fact;]

14 (a) **A competent adult appointed to be a health care representative or an alternative**
15 **health care representative under ORS 127.510.**

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

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

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

25 [(15)] (14) "Instrument" means an advance directive, [*acceptance,*] **form appointing a health**
26 **care representative**, disqualification, withdrawal, court order, court appointment or other docu-
27 ment governing health care decisions.

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

29 [(17)] (15)(a) "Life-sustaining procedure" means any medical procedure, pharmaceutical, medical
30 device or medical intervention that maintains life by sustaining, restoring or supplanting a vital
31 function.

32 (b) "Life-sustaining procedure" does not include routine care necessary to sustain patient
33 cleanliness and comfort.

34 [(18)] (16) "Medically confirmed" means the medical opinion of the attending physician has been
35 confirmed by a second physician who has examined the patient and who has clinical privileges or
36 expertise with respect to the condition to be confirmed.

37 [(19)] (17) "Permanently unconscious" means completely lacking an awareness of self and ex-
38 ternal environment, with no reasonable possibility of a return to a conscious state, and that condi-
39 tion has been medically confirmed by a neurological specialist who is an expert in the examination
40 of unresponsive individuals.

41 [(20)] (18) "Physician" means an individual licensed to practice medicine by the Oregon Medical
42 Board.

43 [(21) "Power of attorney for health care" means a power of attorney document that authorizes an
44 attorney-in-fact to make health care decisions for the principal when the principal is incapable.]

45 [(22)] (19) "Principal" means:

- 1 (a) An adult who has executed an advance directive;
- 2 (b) A person of any age who has a health care representative;
- 3 (c) A person for whom a health care representative is sought; or
- 4 (d) A person being evaluated for capability who will have a health care representative if the
- 5 person is determined to be incapable.

6 [(23)] (20) "Terminal condition" means a health condition in which death is imminent irrespec-
7 tive of treatment, and where the application of life-sustaining procedures or the artificial adminis-
8 tration of nutrition and hydration serves only to postpone the moment of death of the principal.

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

10
11 **CONFORMING AMENDMENTS**

12
13 **SECTION 10.** ORS 127.525 is amended to read:

14 127.525. *[For an appointment under a power of attorney for health care to be effective, the*
15 *attorney-in-fact must accept the appointment in writing. Subject to the right of the attorney-in-fact to*
16 *withdraw, the acceptance imposes a duty on the attorney-in-fact to make health care decisions on behalf*
17 *of the principal at such time as the principal becomes incapable. Until the principal becomes incapable,*
18 *the attorney-in-fact may withdraw by giving notice to the principal. After the principal becomes inca-*
19 *pable, the attorney-in-fact may withdraw by giving notice to the health care provider.]* **For an ap-**
20 **pointment of a health care representative or an alternative health care representative in a**
21 **form adopted under section 4 of this 2016 Act or in the form set forth in section 5 of this 2016**
22 **Act to be effective, the health care representative or the alternative health care represen-**
23 **tative must accept the appointment as described in ORS 127.510. Subject to the right of the**
24 **health care representative or an alternative health care representative to withdraw, the ac-**
25 **ceptance imposes a duty on the health care representative or an alternative health care**
26 **representative to make health care decisions on behalf of the principal as described in ORS**
27 **127.510. Until the principal becomes incapable, the health care representative or an alterna-**
28 **tive health care representative may withdraw by giving notice to the principal. After the**
29 **principal becomes incapable, the health care representative or an alternative health care**
30 **representative may withdraw by giving notice to the health care provider.**

31 **SECTION 11.** ORS 127.535 is amended to read:

32 127.535. (1) The health care representative has all the authority over the principal's health care
33 that the principal would have if not incapable, subject to the limitations of the appointment and ORS
34 127.540 and 127.580. A health care representative who is known to the health care provider to be
35 available to make health care decisions has priority over any person other than the principal to act
36 for the principal *[in all]* **with respect to** health care decisions. A health care representative has
37 authority to make a health care decision for a principal only when the principal is incapable.

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

41 (3) Except to the extent **that** the right is limited by the appointment or *[any]* federal law **or**
42 **regulation**, a health care representative for an incapable principal has the same right as the prin-
43 cipal to receive information regarding the proposed health care, to receive and review medical re-
44 cords and to consent to the disclosure of medical records. The right of the health care
45 representative to receive this information is not a waiver of any evidentiary privilege or any right

1 to assert confidentiality with respect to others.

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

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

13 (6) An instrument that would be a valid advance directive **or form appointing a health care**
14 **representative** except that the instrument *[is not a form described in ORS 127.515, has]* **is** expired,
15 is not properly witnessed or otherwise fails to meet the formal requirements of ORS 127.505 to
16 127.660 shall constitute evidence of the patient's desires and interests.

17 (7) A health care representative is a personal representative for the purposes of ORS 192.553 to
18 192.581 and the federal Health Insurance Portability and Accountability Act privacy regulations, 45
19 C.F.R. parts 160 and 164.

20 **SECTION 12.** ORS 127.545 is amended to read:

21 127.545. (1) An advance directive or a health care decision by a health care representative may
22 be revoked:

23 (a) If the advance directive or health care decision involves the decision to withhold or with-
24 draw life-sustaining procedures or artificially administered nutrition and hydration, at any time and
25 in any manner by which the principal is able to communicate the intent to revoke; or

26 (b) At any time and in any manner by a capable principal.

27 (2) Revocation is effective upon communication by the principal to the attending physician or
28 health care provider, or to the health care representative. If the revocation is communicated to the
29 health care representative, and the principal is incapable and is under the care of a health care
30 provider known to the representative, the health care representative must promptly inform the at-
31 tending physician or health care provider of the revocation.

32 (3) Upon learning *[of]* **about** the revocation, the *[health care provider or]* attending physician
33 **or health care provider** shall cause the revocation to be made a part of the principal's medical
34 records.

35 *[(4) Execution of a valid power of attorney for health care revokes any prior power of attorney for*
36 *health care. Unless the health care instruction provides otherwise, execution of a valid health care in-*
37 *struction revokes any prior health care instruction.]*

38 **(4) Unless the advance directive provides otherwise:**

39 **(a) Execution of an advance directive revokes any prior advance directive; and**

40 *[(5)]* **(b)** *[Unless the advance directive provides otherwise,]* The directions as to health care deci-
41 sions in *[a valid]* **an** advance directive supersede:

42 *[(a)]* **(A)** Any directions contained in a previous court appointment or advance directive; and

43 *[(b)]* **(B)** Any prior inconsistent expression of desires with respect to health care decisions.

44 *[(6) Unless the power of attorney for health care provides otherwise, valid appointment of an*
45 *attorney-in-fact for health care supersedes:]*

1 **(5) Unless the form appointing a health care representative provides otherwise:**

2 **(a) Execution of a form appointing a health care representative revokes any prior form**
3 **appointing a health care representative;**

4 **(b) Valid appointment of a health care representative or an alternative health care rep-**
5 **resentative under ORS 127.510 supersedes:**

6 [(a)] **(A)** Any power of a guardian or other person appointed by a court to make health care
7 decisions for the protected person; and

8 [(b)] **(B)** Any other prior appointment or designation of a health care representative[.]; **and**

9 [(7) *Unless the power of attorney for health care expressly provides otherwise, a power of attorney*
10 *for health care is suspended:*]

11 **(c) A form appointing a health care representative is suspended:**

12 [(a)] **(A)** If [*both the attorney-in-fact and the alternative attorney-in-fact*] **the appointed health**
13 **care representative and all appointed alternative health care representatives** have withdrawn;
14 or

15 [(b)] **(B)** If the [*power of attorney*] **form appointing a health care representative** names the
16 principal's spouse as [*attorney-in-fact*] **the health care representative or an alternative health**
17 **care representative**, a petition for dissolution or annulment of marriage is filed and the principal
18 does not reaffirm the appointment [*in writing*] after the filing of the petition.

19 [(8)(a)] **(6)(a)** If the principal has both a valid [*health care instruction*] **advance directive** and a
20 valid [*power of attorney for health care*] **form appointing a health care representative**, and if the
21 directions reflected in those documents are inconsistent, the document last executed governs to the
22 extent of the inconsistency.

23 (b) If the principal has both a valid [*health care instruction*] **advance directive**, or a valid [*power*
24 *of attorney for health care*] **form appointing a health care representative**, and a declaration for
25 mental health treatment made in accordance with ORS 127.700 to 127.737, and if the directions re-
26 flected in those documents are inconsistent, the directions contained in the declaration for mental
27 health treatment governs to the extent of the inconsistency.

28 [(9)] **(7)** Any reinstatement of an advance directive **or a form appointing a health care rep-**
29 **resentative** must be in writing.

30 **SECTION 13.** ORS 127.550 is amended to read:

31 127.550. (1) A health care decision made by an individual who is authorized to make the decision
32 under ORS 127.505 to 127.660 [*and 127.995*] is effective immediately and does not require judicial
33 approval.

34 (2) A petition may be filed under ORS 127.505 to 127.660 [*and 127.995*] for any one or more of
35 the following purposes:

36 (a) Determining whether a principal is incapable.

37 (b) Determining whether an appointment of the health care representative or [*a health care in-*
38 *struction*] **an advance directive** is valid or has been suspended, reinstated, revoked or terminated.

39 (c) Determining whether the acts or proposed acts of the health care representative breach any
40 duty of the representative and whether those acts should be enjoined.

41 (d) Declaring that an individual is authorized to act as a health care representative.

42 (e) Disqualifying the health care representative upon a determination of the court that the
43 health care representative has violated, failed to perform or is unable to perform the duties under
44 ORS 127.535 (4).

45 (f) Approving any health care decision that by law requires court approval.

1 (g) Determining whether the acts or proposed acts of the health care representative are clearly
2 inconsistent with the desires of the principal as made known to the health care representative, or
3 where the desires of the principal are unknown or unclear, whether the acts or proposed acts of the
4 health care representative are clearly contrary to the best interests of the principal.

5 (h) Declaring that a [*power of attorney for health care*] **form appointing a health care repre-**
6 **sentative is suspended or** revoked upon a determination by the court that the [*attorney-in-fact*]
7 **appointed health care representative or any appointed alternative health care representative**
8 has made a health care decision for the principal that authorized anything illegal. A suspension or
9 revocation of a [*power of attorney*] **form appointing a health care representative** under this par-
10 agraph shall be in the discretion of the court.

11 (i) Considering any other matter that the court determines needs to be decided for the pro-
12 tection of the principal.

13 (3) A petition may be filed by any of the following:

14 (a) The principal.

15 (b) The health care representative.

16 (c) The spouse, parent, sibling or adult child of the principal.

17 (d) An adult relative or adult friend of the principal who is familiar with the desires of the
18 principal.

19 (e) The guardian of the principal.

20 (f) The conservator of the principal.

21 (g) The attending physician or health care provider of the principal.

22 (4) A petition under this section shall be filed in the circuit court in the county in which the
23 principal resides or is located.

24 (5) Any of the determinations described in this section may be made by the court as a part of
25 a protective proceeding under ORS chapter 125 if a guardian or temporary guardian has been ap-
26 pointed for the principal, or if the petition seeks the appointment of a guardian or a temporary
27 guardian for the principal.

28 **SECTION 14.** ORS 127.555 is amended to read:

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

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

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

41 (a) Fails to satisfy a duty that ORS 127.505 to 127.660 [*and 127.995*] place on the provider;

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

43 (c) Knows or has reason to know that the requirements of ORS 127.505 to 127.660 [*and*
44 *127.995*] have not been satisfied; or

45 (d) Acts after receiving notice that:

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

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

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

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

7 (a) The manner of administering health care pursuant to a health care decision made by the
8 health care representative or by [a *health care instruction*] **an advance directive**; or

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

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

14 **SECTION 15.** ORS 127.565 is amended to read:

15 127.565. (1) In following [a *health care instruction*] **an advance directive** or the decision of a
16 health care representative, a health care provider shall exercise the same independent medical
17 judgment that the health care provider would exercise in following the decisions of the principal if
18 the principal were capable.

19 (2) No person shall be required either to execute or to refrain from executing an advance di-
20 rective **or appointing a health care representative** as a criterion for insurance. No health care
21 provider shall condition the provision of health care or otherwise discriminate against an individual
22 based on whether or not the individual has executed an advance directive **or has appointed a**
23 **health care representative.**

24 (3) No existing or future policy of insurance shall be legally impaired or invalidated in any
25 manner by actions taken under ORS 127.505 to 127.660 [and 127.995]. No person shall be discrimi-
26 nated against in premium or contract rates because of the existence or absence of an advance di-
27 rective or appointment of a health care representative.

28 (4) Nothing in ORS 127.505 to 127.660 [and 127.995] is intended to impair or supersede any
29 conflicting federal statute.

30 **SECTION 16.** ORS 127.625 is amended to read:

31 127.625. (1) No health care provider shall be under any duty, whether by contract, by statute
32 or by any other legal requirement to participate in the withdrawal or withholding of life-sustaining
33 procedures or of artificially administered nutrition or hydration.

34 (2) If a health care provider is unable or unwilling to carry out [a *health care instruction*] **an**
35 **advance directive** or the decisions of the health care representative, the following provisions apply:

36 (a) The health care provider shall promptly notify the health care representative, if there is a
37 health care representative;

38 (b) If the authority or decision of the health care representative is in dispute, the health care
39 representative or provider may seek the guidance of the court in the manner provided in ORS
40 127.550;

41 (c) If the **health care** representative's authority or decision is not in dispute, the **health care**
42 representative shall make a reasonable effort to transfer the principal to the care of another phy-
43 sician or health care provider; and

44 (d) If there is no health care representative for an incapable patient, and the health care deci-
45 sions are not in dispute, the health care provider shall, without abandoning the patient, either dis-

1 charge the patient or make a reasonable effort to locate a different health care provider and
2 authorize the transfer of the patient to that provider.

3 **SECTION 17.** ORS 127.649 is amended to read:

4 127.649. (1) Subject to the provisions of ORS 127.652 and 127.654, all health care organizations
5 shall maintain written policies and procedures, applicable to all capable adults who are receiving
6 health care by or through the health care organization, that provide for:

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

9 (A) Information on the rights of the individual under [*Oregon law*] **the laws of this state** to
10 make health care decisions, including the right to accept or refuse medical or surgical treatment
11 and the right to execute [*advance directives*] **an advance directive or a form appointing a health**
12 **care representative;**

13 (B) Information on the policies of the health care organization with respect to the implementa-
14 tion of the rights of the individual under [*Oregon law*] **the laws of this state** to make health care
15 decisions;

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

19 **(C) Materials necessary to execute an advance directive or a form appointing a health**
20 **care representative; and**

21 (D) The name of a person who can provide additional information concerning [*the forms for*]
22 advance directives **and forms appointing a health care representative.**

23 (b) Documenting in a prominent place in the individual's medical record whether the individual
24 has executed an advance directive **or a form appointing a health care representative.**

25 (c) Ensuring compliance by the health care organization with [*Oregon law relating to advance*
26 *directives*] **the laws of this state governing advance directives and forms appointing a health**
27 **care representative.**

28 (d) Educating the staff and the community on issues relating to advance directives **and forms**
29 **appointing a health care representative.**

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

36 **SECTION 18.** ORS 127.737 is amended to read:

37 127.737. [(1)] ORS 127.525, 127.550, 127.565, 127.570, 127.575 and 127.995 apply to a declaration
38 for mental health treatment.

39 [(2) *For purposes of this section only, a declaration shall be considered a power of attorney for*
40 *health care, without regard to whether the declaration appoints an attorney-in-fact.*]

41 **SECTION 19.** ORS 127.760 is amended to read:

42 127.760. (1) As used in this section:

43 (a) "Health care instruction" means a document executed by a patient to indicate the patient's
44 instructions regarding health care decisions[, *including an advance directive or power of attorney for*
45 *health care executed under ORS 127.505 to 127.660*].

1 (b) "Health care provider" means a person licensed, certified or otherwise authorized by the law
2 of this state to administer health care in the ordinary course of business or practice of a profession.

3 (c) "Hospital" has the meaning given that term in ORS 442.015.

4 (d) "Mental health treatment" means convulsive treatment, treatment of mental illness with
5 psychoactive medication, psychosurgery, admission to and retention in a health care facility for care
6 or treatment of mental illness, and related outpatient services.

7 (2)(a)(A) A hospital may appoint a health care provider who has received training in health care
8 ethics, including identification and management of conflicts of interest and acting in the best inter-
9 est of the patient, to give informed consent to medically necessary health care services on behalf
10 of a patient admitted to the hospital in accordance with subsection (3) of this section.

11 (B) If a person appointed under subparagraph (A) of this paragraph is the patient's attending
12 physician, the hospital must also appoint another health care provider who meets the requirements
13 of subparagraph (A) of this paragraph to participate in making decisions about giving informed
14 consent to health care services on behalf of the patient.

15 (b) A hospital may appoint a multidisciplinary committee with ethics as a core component of the
16 duties of the committee, or a hospital ethics committee, to participate in making decisions about
17 giving informed consent to medically necessary health care services on behalf of a patient admitted
18 to the hospital in accordance with subsection (3) of this section.

19 (3) A person appointed by a hospital under subsection (2) of this section may give informed
20 consent to medically necessary health care services on behalf of and in the best interest of a patient
21 admitted to the hospital if:

22 (a) In the medical opinion of the attending physician, the patient lacks the ability to make and
23 communicate health care decisions to health care providers;

24 (b) The hospital has performed a reasonable search, in accordance with the hospital's policy for
25 locating relatives and friends of a patient, for a health care representative appointed under ORS
26 127.505 to 127.660 or an adult relative or adult friend of the patient who is capable of making health
27 care decisions for the patient, including contacting social service agencies of the Oregon Health
28 Authority or the Department of Human Services if the hospital has reason to believe that the pa-
29 tient has a case manager with the authority or the department, and has been unable to locate any
30 person who is capable of making health care decisions for the patient; and

31 (c) The hospital has performed a reasonable search for and is unable to locate any health care
32 instruction executed by the patient.

33 (4) Notwithstanding subsection (3) of this section, if a patient's wishes regarding health care
34 services were made known during a period when the patient was capable of making and communi-
35 cating health care decisions, the hospital and the person appointed under subsection (2) of this
36 section shall comply with those wishes.

37 (5) A person appointed under subsection (2) of this section may not consent on a patient's behalf
38 to:

39 (a) Mental health treatment;

40 (b) Sterilization;

41 (c) Abortion;

42 (d) Except as provided in ORS 127.635 (3), the withholding or withdrawal of life-sustaining pro-
43 cedures as defined in ORS 127.505; or

44 (e) Except as provided in ORS 127.580 (2), the withholding or withdrawal of artificially admin-
45 istered nutrition and hydration, as defined in ORS 127.505, other than hyperalimentation, necessary

1 to sustain life.

2 (6) If the person appointed under subsection (2) of this section knows the patient's religious
3 preference, the person shall make reasonable efforts to confer with a member of the clergy of the
4 patient's religious tradition before giving informed consent to health care services on behalf of the
5 patient.

6 (7) A person appointed under subsection (2) of this section is not a health care representative
7 as defined in ORS 127.505.

8 **SECTION 20.** ORS 97.953 is amended to read:

9 97.953. As used in ORS 97.951 to 97.982:

10 (1) "Adult" means an individual who is 18 years of age or older.

11 (2) "Agent" means [an]:

12 (a) [Attorney-in-fact as that term is defined in ORS 127.505] **A health care representative or**
13 **an alternative health care representative appointed under ORS 127.510;** or

14 (b) **An** individual expressly authorized to make an anatomical gift on the principal's behalf by
15 any record signed by the principal.

16 (3) "Anatomical gift" means a donation of all or part of a human body to take effect after the
17 donor's death for the purpose of transplantation, therapy, research or education.

18 (4) "Body part" means an organ, an eye or tissue of a human being. The term does not include
19 the whole body.

20 (5) "Decedent" means a deceased individual whose body or body part is or may be the source
21 of an anatomical gift, and includes a stillborn infant or a fetus.

22 (6)(a) "Disinterested witness" means a witness other than:

23 (A) A spouse, child, parent, sibling, grandchild, grandparent or guardian of the individual who
24 makes, amends, revokes or refuses to make an anatomical gift; or

25 (B) An adult who exhibited special care and concern for the individual.

26 (b) "Disinterested witness" does not include a person to whom an anatomical gift could pass
27 under ORS 97.969.

28 (7) "Document of gift" means a donor card or other record used to make an anatomical gift. The
29 term includes a statement, symbol or designation on a driver license, identification card or donor
30 registry.

31 (8) "Donor" means an individual whose body or body part is the subject of an anatomical gift.

32 (9) "Donor registry" means a centralized database that contains records of anatomical gifts and
33 amendments to or revocations of anatomical gifts.

34 (10) "Driver license" means a license or permit issued under ORS 807.021, 807.040, 807.200,
35 807.280 or 807.730, regardless of whether conditions are attached to the license or permit.

36 (11) "Eye bank" means an organization licensed, accredited or regulated under federal or state
37 law to engage in the recovery, screening, testing, processing, storage or distribution of human eyes
38 or portions of human eyes.

39 (12) "Guardian" means a person appointed by a court to make decisions regarding the support,
40 care, education, health or welfare of an individual. "Guardian" does not include a guardian ad litem.

41 (13) "Hospital" means a facility licensed as a hospital under the law of any state or a facility
42 operated as a hospital by the United States, a state or a subdivision of a state.

43 (14) "Identification card" means the card issued under ORS 807.021, 807.400 or 807.730, or a
44 comparable provision of the motor vehicle laws of another state.

45 (15) "Know" means to have actual knowledge.

1 (16) "Minor" means an individual who is under 18 years of age.

2 (17) "Organ procurement organization" means an organization designated by the Secretary of
3 the United States Department of Health and Human Services as an organ procurement organization.

4 (18) "Parent" means a parent whose parental rights have not been terminated.

5 (19) "Physician" means an individual authorized to practice medicine or osteopathy under the
6 law of any state.

7 (20) "Procurement organization" means an eye bank, organ procurement organization or tissue
8 bank.

9 (21) "Prospective donor" means an individual who is dead or near death and has been deter-
10 mined by a procurement organization to have a body part that could be medically suitable for
11 transplantation, therapy, research or education. The term does not include an individual who has
12 made a refusal.

13 (22) "Reasonably available" means able to be contacted by a procurement organization without
14 undue effort and willing and able to act in a timely manner consistent with existing medical criteria
15 necessary for the making of an anatomical gift.

16 (23) "Recipient" means an individual into whose body a decedent's body part has been or is in-
17 tended to be transplanted.

18 (24) "Record" means information that is inscribed on a tangible medium or that is stored in an
19 electronic or other medium and is retrievable in perceivable form.

20 (25) "Refusal" means a record that expressly states an intent to prohibit other persons from
21 making an anatomical gift of an individual's body or body part.

22 (26) "Sign" means, with the present intent to authenticate or adopt a record:

23 (a) To execute or adopt a tangible symbol; or

24 (b) To attach to or logically associate with the record an electronic symbol, sound or process.

25 (27) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
26 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the
27 United States.

28 (28) "Technician" means an individual determined to be qualified to remove or process body
29 parts by an appropriate organization that is licensed, accredited or regulated under federal or state
30 law. The term includes an enucleator.

31 (29) "Tissue" means a portion of the human body other than an organ or an eye. The term does
32 not include blood unless the blood is donated for the purpose of research or education.

33 (30) "Tissue bank" means a person that is licensed, accredited or regulated under federal or
34 state law to engage in the recovery, screening, testing, processing, storage or distribution of tissue.

35 (31) "Transplant hospital" means a hospital that furnishes organ transplants and other medical
36 and surgical specialty services required for the care of transplant patients.

37 **SECTION 21.** ORS 97.955 is amended to read:

38 97.955. (1) Subject to ORS 97.963, a donor may make an anatomical gift of a donor's body or body
39 part during the life of the donor for the purpose of transplantation, therapy, research or education.

40 (2) An anatomical gift may be made in the manner provided in ORS 97.957 by:

41 (a) The donor, if the donor is an adult or if the donor is a minor and is:

42 (A) Emancipated; or

43 (B) Authorized under ORS 807.280 to apply for an instruction driver permit because the donor
44 is at least 15 years of age;

45 (b) An agent of the donor, unless the [power of attorney for health care] **form appointing a**

1 **health care representative, as defined in ORS 127.505**, or other record prohibits the agent from
2 making an anatomical gift;

3 (c) A parent of the donor, if the donor is an unemancipated minor; or

4 (d) The donor's guardian.

5 **SECTION 22.** ORS 97.959 is amended to read:

6 97.959. (1) Except as provided in subsection (7) or (8) of this section, an anatomical gift made
7 under ORS 97.957 may be amended or revoked only by the donor in accordance with the provisions
8 of this section and may not be amended or revoked by any other person otherwise authorized to
9 make, amend or revoke a gift under ORS 97.963 or 97.967.

10 (2) A donor or other person authorized to amend or revoke an anatomical gift under subsection
11 (7) or (8) of this section may amend or revoke an anatomical gift by:

12 (a) A record signed by:

13 (A) The donor;

14 (B) The other person; or

15 (C) Subject to subsection (3) of this section, another individual acting at the direction of the
16 donor or the other person if the donor or other person is physically unable to sign; or

17 (b) A later-executed document of gift that amends or revokes a previous anatomical gift or por-
18 tion of an anatomical gift, either expressly or by inconsistency.

19 (3) A record signed pursuant to subsection (2)(a)(C) of this section must:

20 (a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who
21 have signed at the request of the donor or the other person; and

22 (b) State that it has been signed and witnessed as required in this subsection.

23 (4) A donor or other person authorized to revoke an anatomical gift under subsection (7) or (8)
24 of this section may revoke an anatomical gift by the destruction or cancellation of the document
25 of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the
26 gift.

27 (5) A donor may amend or revoke an anatomical gift that was not made in a will by any form
28 of communication during a terminal illness or injury addressed to at least two adults, at least one
29 of whom is a disinterested witness.

30 (6) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner
31 provided for amendment or revocation of wills or as provided in subsection (4) of this section.

32 (7) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably
33 available may revoke or amend an anatomical gift of the donor's body or body part.

34 (8) An agent or guardian of a donor may amend or revoke an anatomical gift only if:

35 (a) The agent or guardian made the gift under ORS 97.955 (2)(b) or (d); or

36 (b) *[The power of attorney for health care]* **The form appointing a health care representative,**
37 **as defined in ORS 127.505**, or other record appointing the agent expressly authorizes the agent to
38 amend or revoke anatomical gifts.

39 **SECTION 23.** ORS 163.193 is amended to read:

40 163.193. (1) A person commits the crime of assisting another person to commit suicide if the
41 person knowingly sells, or otherwise transfers for consideration, any substance or object, that is
42 capable of causing death, to another person for the purpose of assisting the other person to commit
43 suicide.

44 (2) This section does not apply to a person:

45 (a) Acting pursuant to a court order, an advance directive or *[power of attorney for health*

1 *care*] **form for appointing a health care representative** pursuant to ORS 127.505 to 127.660 or a
2 POLST, as defined in ORS 127.663;

3 (b) Withholding or withdrawing life-sustaining procedures or artificially administered nutrition
4 and hydration pursuant to ORS 127.505 to 127.660; or

5 (c) Acting in accordance with the provisions of ORS 127.800 to 127.897.

6 (3) Assisting another person to commit suicide is a Class B felony.

7 **SECTION 24.** ORS 163.206 is amended to read:

8 163.206. ORS 163.200 and 163.205 do not apply:

9 (1) To a person acting pursuant to a court order, an advance directive or a [*power of attorney*
10 *for health care*] **form for appointing a health care representative** pursuant to ORS 127.505 to
11 127.660 or a POLST, as defined in ORS 127.663;

12 (2) To a person withholding or withdrawing life-sustaining procedures or artificially adminis-
13 tered nutrition and hydration pursuant to ORS 127.505 to 127.660;

14 (3) When a competent person refuses food, physical care or medical care;

15 (4) To a person who provides an elderly person or a dependent person who is at least 18 years
16 of age with spiritual treatment through prayer from a duly accredited practitioner of spiritual
17 treatment as provided in ORS 124.095, in lieu of medical treatment, in accordance with the tenets
18 and practices of a recognized church or religious denomination of which the elderly or dependent
19 person is a member or an adherent; or

20 (5) To a duly accredited practitioner of spiritual treatment as provided in ORS 124.095.

21
22 **REPEALS**

23
24 **SECTION 25.** ORS 127.531 is repealed.

25 **SECTION 26.** Section 6 of this 2016 Act is repealed on January 1, 2020.

26
27 **SAVINGS CLAUSES AND APPLICABILITY**

28
29 **SECTION 27.** ORS 127.658 is amended to read:

30 127.658. [(1) ORS 127.505 to 127.660 and 127.995 do not impair or supersede any power of attorney
31 for health care, directive to physicians or health care instruction in effect before November 4, 1993.]

32 [(2) Any power of attorney for health care or directive to physicians executed before November 4,
33 1993, shall be governed by the provisions of ORS 127.505 to 127.660 and 127.995, except that:]

34 [(a) The directive to physicians or power of attorney for health care shall be valid if it complies
35 with the provisions of either ORS 127.505 to 127.660 and 127.995 or the statutes in effect as of the date
36 of execution;]

37 [(b) The terms in a directive to physicians in the form prescribed by ORS 127.610 (1991 Edition)
38 or predecessor statute have those meanings given in ORS 127.605 (1991 Edition) or predecessor statute
39 in effect at the time of execution; and]

40 [(c) The terms in a power of attorney for health care in the form prescribed by ORS 127.530 (1991
41 Edition) have those meanings given in ORS 127.505 in effect at the time of execution.]

42 [(3) A health care organization, as defined in ORS 127.646, that on November 4, 1993, has printed
43 materials with the information and forms which were required by ORS 127.649, prior to November 4,
44 1993, may use such printed materials until December 1, 1993.]

45 (1) **ORS 127.505 to 127.660 as enacted, the repeal of any statute that was a part of ORS**

1 127.505 to 127.660 and subsequent amendments to the provisions of ORS 127.505 to 127.660 do
2 not impair or supersede any advance directive, form appointing a health care representative
3 or directive to physicians executed in accordance with:

4 (a) The provisions of ORS 127.505 to 127.660; or

5 (b) The provisions of ORS 127.505 to 127.660 or any other statute governing an advance
6 directive, a form appointing a health care representative or a directive to physicians that
7 was in effect on the date that the advance directive, the form appointing a health care rep-
8 resentative or the directive to physicians was executed.

9 (2) An advance directive, a form appointing a health care representative or a directive
10 to physicians executed on, before or after the operative date specified in section 30 of this
11 2016 Act shall be governed by the provisions of ORS 127.505 to 127.660, except that the ad-
12 vance directive, the form appointing a health care representative or the directive to physi-
13 cians is valid if it complies with either:

14 (a) The provisions of ORS 127.505 to 127.660; or

15 (b) The provisions of ORS 127.505 to 127.660 or any other statute governing an advance
16 directive, a form appointing a health care representative or a directive to physicians that
17 was in effect on the date that the advance directive, the form appointing a health care rep-
18 resentative or the directive to physicians was executed.

19 **SECTION 28.** The amendments to ORS 127.510 by section 7 of this 2016 Act apply to ap-
20 pointments made before, on or after the operative date specified in section 30 of this 2016
21 Act.

22 **SECTION 29.** The amendments to ORS 127.515 by section 8 of this 2016 Act apply to ad-
23 vance directives and forms appointing a health care representative that are executed on or
24 after the operative date specified in section 30 of this 2016 Act.

25
26 **OPERATIVE DATE**

27
28 **SECTION 30.** (1) Sections 1 to 6 of this 2016 Act, the amendments to statutes by sections
29 7 to 24 and 27 of this 2016 Act and the repeal of ORS 127.531 by section 25 of this 2016 Act
30 become operative on January 1, 2017.

31 (2) The Advance Directive Rules Adoption Committee and the Oregon Health Authority
32 may take any action before the operative date specified in subsection (1) of this section that
33 is necessary to enable the committee and the authority to exercise, on and after the opera-
34 tive date specified in subsection (1) of this section, all the duties, powers and functions con-
35 ferred on the committee and authority by sections 1 to 6 of this 2016 Act, the amendments
36 to statutes by sections 7 to 24 and 27 of this 2016 Act and the repeal of ORS 127.531 by section
37 25 of this 2016 Act.

38
39 **UNIT CAPTIONS**

40
41 **SECTION 31.** The unit captions used in this 2016 Act are provided only for the conven-
42 ience of the reader and do not become part of the statutory law of this state or express any
43 legislative intent in the enactment of this 2016 Act.

44
45 **EFFECTIVE DATE**

1 **SECTION 32.** This 2016 Act takes effect on the 91st day after the date on which the 2016
2 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.
3 _____