

Senate Bill 1552

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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**.

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 alternative 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, 127.505, 127.510, 127.515, 127.525, 127.535, 127.545, 127.550, 127.649 and 127.658; 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 Oregon Health Authority.

(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.

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

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

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

2 (B) One member who represents hospitals.

3 (C) One member who is a clinical ethicist affiliated with a hospital or other health care
4 facility located in this state, or affiliated with a health care organization offering health care
5 services in this state.

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

9 (E) One member who represents individuals with disabilities.

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

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

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

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

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

26 (4) A majority of the voting members of the committee constitutes a quorum for the
27 transaction of business.

28 (5) Official action by the committee requires the approval of a majority of the voting
29 members of the committee.

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

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

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

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

41 (10) Members of the committee are not entitled to compensation, but may be reimbursed
42 for actual and necessary travel and other expenses incurred by them in the performance of
43 their official duties in the manner and amounts provided for in ORS 292.495. Claims for ex-
44 penses shall be paid out of funds appropriated to the authority for purposes of the commit-
45 tee.

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

- 4 (1) Three shall serve for a term ending January 1, 2019.
- 5 (2) Three shall serve for a term ending January 1, 2020.
- 6 (3) Four shall serve for a term ending January 1, 2021.

7 **SECTION 4.** (1) The Advance Directive Rules Adoption Committee established under
 8 section 2 of this 2016 Act shall adopt by rule and, at least once every four years, review and
 9 amend as necessary the form of an advance directive to be used in this state. Except as
 10 otherwise provided by ORS 127.505 to 127.660, the form of an advance directive adopted pur-
 11 suant to this section is the only valid form of an advance directive in this state.

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

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

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

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

19 (b) A statement that the advance directive must be signed and either witnessed or no-
 20 tarized for the advance directive to be effective.

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

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

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

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

29 (g) A section providing the principal with an opportunity to state the principal's values
 30 and beliefs with respect to health care decisions, including the opportunity to describe the
 31 principal's wishes, by completing a checklist, by providing instruction through narrative or
 32 by other means, regarding:

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

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

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

40 (D) When the principal desires comfort care instead of health care necessary to preserve
 41 life and recover.

42 (h) A section where the principal and the witnesses or notary may sign or accept by
 43 electronic verification the advance directive.

44 (i) A section where any health care representative or any alternative health care repre-
 45 sentative appointed by the principal may sign or accept by electronic verification the advance

1 directive.

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

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

7 (5) The Oregon Health Authority shall post the form of an advance directive adopted
8 under this section on the website of the authority.

9
10 (Form for Appointing Health Care Representative
11 and Alternative Health Care Representative)
12

13 **SECTION 5.** A power of attorney appointing a health care representative and an alter-
14 native health care representative must be written in substantially the following form:
15

16
17 This form may be used in the State of Oregon to choose a person you would like to make
18 health care decisions for you if you become too sick to speak for yourself. The person is
19 called a health care representative. This form also allows you to express your values, beliefs
20 and preferences for health care.

21 • If you have completed a power of attorney appointing a health care representative and
22 an alternative health care representative in the past, the directions in your new power of
23 attorney will supersede the directions of any older power of attorney.

24 • You must sign this form in order for it to be effective. You must also have it witnessed
25 by two witnesses or a notary.

26 **1. ABOUT ME.**

27 Name: _____ Date of Birth: _____

28 Telephone numbers: (H) _____ (W) _____ (C) _____

29 Current address: _____

30 E-mail: _____

31 **2. MY HEALTH CARE REPRESENTATIVE.**

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

34 Name: _____ Relationship: _____

35 Telephone numbers: (H) _____ (W) _____ (C) _____

36 Current address: _____

37 E-mail: _____

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

41 First alternative health care representative:

42 Name: _____ Relationship: _____

43 Telephone numbers: (H) _____ (W) _____ (C) _____

44 Current address: _____

45 E-mail: _____

Second alternative health care representative:

Name: _____ **Relationship:** _____

Telephone numbers: (H) _____ (W) _____ (C) _____

Current address: _____

E-mail: _____

3. ACCEPTANCE BY MY HEALTH CARE REPRESENTATIVE.

I accept this appointment and agree to serve as health care representative. I have read the accompanying instructions and understand the duties, powers and restrictions of a health care representative.

Health care representative (signature): _____

Date _____

First alternative health care representative (signature): _____

Date _____

Second alternative health care representative (signature): _____

Date _____

4. MY SIGNATURE.

My signature: _____ **Date:** _____

5. WITNESSES OR NOTARY.

Witness declaration: I declare that the person completing this form is personally known to me or has provided proof of identity, has signed or acknowledges the person's signature on the document in my presence and appears to be not under duress. In addition, I declare that I am not the health care representative or alternative health care representative appointed in Part 2, and I am not the person's primary health care provider.

Witness Name (print): _____

Signature: _____

Date: _____

Witness Name (print): _____

Signature: _____

Date: _____

NOTARY:

State of _____

County of _____

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

Notary Public - State of Oregon

(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.

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

3 (3) The form of an advance directive executed as described in subsection (1) of this sec-
4 tion is as follows:

5 _____
6
7 This form may be used in the State of Oregon to choose a person you would like to make
8 health care decisions for you if you become too sick to speak for yourself. The person is
9 called a health care representative. This form also allows you to express your values, beliefs
10 and preferences for health care.

11 • If you have completed an advance directive in the past, the directions in your new ad-
12 vance directive will supersede the directions of any older directives.

13 • You must sign this form in order for it to be effective. You must also have it witnessed
14 by two witnesses or a notary. If you appoint a health care representative, that person also
15 must sign.

16 **1. ABOUT ME.**

17 Name: _____ Date of Birth: _____

18 Telephone numbers: (H) _____ (W) _____ (C) _____

19 Current address: _____

20 E-mail: _____

21 **2. MY HEALTH CARE REPRESENTATIVE.**

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

24 Name: _____ Relationship: _____

25 Telephone numbers: (H) _____ (W) _____ (C) _____

26 Current address: _____

27 E-mail: _____

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

31 **First alternative health care representative:**

32 Name: _____ Relationship: _____

33 Telephone numbers: (H) _____ (W) _____ (C) _____

34 Current address: _____

35 E-mail: _____

36 **Second alternative health care representative:**

37 Name: _____ Relationship: _____

38 Telephone numbers: (H) _____ (W) _____ (C) _____

39 Current address: _____

40 E-mail: _____

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

42 I accept this appointment and agree to serve as health care representative. I have read
43 the accompanying instructions and understand the duties, powers and restrictions of a
44 health care representative.

45 Health care representative (signature): _____

1 Date _____

2 First alternative health care representative (signature): _____

3 Date _____

4 Second alternative health care representative (signature): _____

5 Date _____

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

7 If you wish to give directions to your health care representative about your health care
8 decisions, initial one of the following two statements:

9 ___ My health care representative must follow my instructions unless my medical pro-
10 vider says my instructions are not consistent with medical standards.

11 ___ My instructions are guidelines for my health care representative to consider when
12 making decisions about my care, but my health care representative should use discretion as
13 the health situation requires.

14 **5. DIRECTION REGARDING END OF LIFE CARE.**

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

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

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

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

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

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

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

30 ___ I do not want my life to be prolonged by life support. I also do not want tube feeding
31 as life support. I want my doctors to allow me to die naturally if my doctor and another
32 knowledgeable doctor confirm I am in any of the medical conditions listed below.

33 **B. Additional Directions Regarding End of Life Care.** Here are my desires about my
34 health care if my doctor and another knowledgeable doctor confirm that I am in a medical
35 condition described below:

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

38 INITIAL ONE:

39 ___ I want to receive tube feeding.

40 ___ I want tube feeding only as my physician recommends.

41 ___ I DO NOT WANT tube feeding.

42 INITIAL ONE:

43 ___ I want any other life support that may apply.

44 ___ I want life support only as my physician recommends.

45 ___ I want NO life support.

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

3 INITIAL ONE:

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

7 INITIAL ONE:

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

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

15 INITIAL ONE:

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

19 INITIAL ONE:

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

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

25 INITIAL ONE:

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

29 INITIAL ONE:

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

33 **C. Additional Instruction.** In the space provided below insert a description of what you
34 want done, or attach instructions for what you want done, if you are close to death, perma-
35 nently unconscious or suffering permanent and severe pain or if you have an advanced pro-
36 gressive illness.

37 **6. MY SIGNATURE.**

38 My signature: _____ Date: _____

39 **7. WITNESSES OR NOTARY.**

40 Witness declaration: I declare that the person completing this form is personally known
41 to me or has provided proof of identity, has signed or acknowledges the person's signature
42 on the document in my presence and appears to be not under duress. In addition, I declare
43 that I am not the health care representative or alternative health care representative ap-
44 pointed in Part 2, and I am not the person's primary health care provider.

45 Witness Name (print): _____

1 **Signature:** _____
2 **Date:** _____
3 **Witness Name (print):** _____
4 **Signature:** _____
5 **Date:** _____
6 **NOTARY:**
7 **State of** _____
8 **County of** _____
9 **Signed or attested before me on** _____, 20____, **by** _____
10 _____
11 **Notary Public - State of Oregon**

12
13
14
15 **APPOINTING HEALTH CARE REPRESENTATIVES**
16 **AND EXECUTING ADVANCE DIRECTIVES**
17

18 **SECTION 7.** ORS 127.510 is amended to read:

19 127.510. [(1) *A capable adult may designate in writing a competent adult to serve as attorney-in-fact*
20 *for health care. A capable adult may also designate a competent adult to serve as alternative*
21 *attorney-in-fact if the original designee is unavailable, unable or unwilling to serve as attorney-in-fact*
22 *at any time after the power of attorney for health care is executed. The power of attorney for health*
23 *care is effective when it is signed, witnessed and accepted as required by ORS 127.505 to 127.660 and*
24 *127.995. The attorney-in-fact so appointed shall make health care decisions on behalf of the principal*
25 *if the principal becomes incapable.*]

26 **(1)(a) A capable adult may use a power of attorney for health care to appoint a competent**
27 **adult to serve as the health care representative for the capable adult. A health care repre-**
28 **sentative appointed under this paragraph shall make health care decisions for the principal**
29 **if the principal becomes incapable.**

30 **(b) A capable adult may use a power of attorney for health to appoint in writing one or**
31 **more competent adults to serve as alternative health care representatives for the capable**
32 **adult. For purposes of ORS 127.505 to 127.660, an alternative health care representative has**
33 **the rights and privileges of a health care representative appointed under paragraph (a) of**
34 **this subsection, including the rights described in ORS 127.535. An alternative health care**
35 **representative appointed under this paragraph shall make health care decisions for the**
36 **principal if:**

37 **(A) The principal becomes incapable; and**

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

40 **(c) For purposes of paragraph (b) of this subsection, the health care representative ap-**
41 **pointed under paragraph (a) of this subsection is unavailable to make timely health care de-**
42 **isions for the principal if the health care representative is not available to answer questions**
43 **for the health care provider in person, by telephone or by another means of direct commu-**
44 **nication.**

45 **(d) The power of attorney for health care is effective when it is signed, witnessed or**

1 **notorized, and accepted as required by ORS 127.505 to 127.560.**

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

5 (3) Unless the period of time that an advance directive is [*to be*] effective is limited by the terms
6 of the advance directive, the advance directive [*shall continue*] **continues** in effect until:

7 (a) The principal dies; or

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

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

11 (a) The principal is no longer incapable;

12 (b) The principal dies; or

13 (c) The advance directive is revoked, suspended or superseded pursuant to the provisions of ORS
14 127.545.

15 (5) A health care provider shall make a copy of an advance directive and **a copy of** any other
16 instrument **providing health care instructions** a part of the principal's medical record when a
17 copy of [*that*] **the advance directive or** instrument is provided to the principal's health care pro-
18 vider.

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

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

23 127.515. (1) An advance directive may be executed by a resident or nonresident adult of this
24 state in the manner provided by ORS 127.505 to 127.660. [*and 127.995.*]

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

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

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

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

34 [(b) Each witness shall make the written declaration as set forth in the form provided in ORS
35 127.531.]

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

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

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

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

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) If the principal is a patient in a long term care facility at the time the advance directive is
45 executed, one of the witnesses must be an individual designated by the facility and having any quali-

1 *fications that may be specified by the Department of Human Services by rule.]*

2 **(2) An advance directive must reflect the date of the principal's signature. To be valid,**
 3 **an advance directive must be:**

- 4 **(a) Witnessed and signed by at least two adults; or**
- 5 **(b) Notarized by a notary public.**

6 **(3) If an advance directive is validated under subsection (2)(a) of this section, each wit-**
 7 **ness must witness either the principal signing the advance directive or the principal ac-**
 8 **knowledging the signature of the principal on the advance directive.**

9 **(4) For an advance directive to be validated under subsection (2)(a) of this section, the**
 10 **witnesses may not, on the date the advance directive is signed or acknowledged, be the**
 11 **principal's attending physician or other health care provider who has primary responsibility**
 12 **for the care and treatment of the principal.**

13 **(5) If an advance directive is validated under subsection (2)(a) of this section, neither**
 14 **witness may be the health care representative appointed under ORS 127.510 or an alternative**
 15 **health care representative appointed under ORS 127.510.**

16 **(6) If an advance directive is validated under subsection (2)(a) of this section, and if the**
 17 **principal is a patient in a long term care facility at the time the advance directive is exe-**
 18 **cuted, one of the witnesses must be an individual who is designated by the facility and**
 19 **qualified as specified by the Department of Human Services by rule.**

20 *[(5)] (7) Notwithstanding [subsections (2) to (4)] subsection (2) of this section, an advance di-*
 21 *rective **that is** executed by an adult who [at the time of execution resided in another state,] **resides***
 22 ***in another state at the time of execution and that is executed** in compliance with [the formal-*
 23 *ities of execution required by] the laws of that state, the laws of the state where the principal [was]*
 24 ***is** located at the time of execution or the laws of this state[,] is validly executed for the purposes*
 25 *of ORS 127.505 to 127.660 [and 127.995 and may be given effect in accordance with its provisions,*
 26 *subject to the laws of this state].*

27
 28 **DEFINITIONS**

29
 30 **SECTION 9.** ORS 127.505 is amended to read:

31 127.505. As used in ORS 127.505 to 127.660 and 127.995:

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

34 (2) "Advance directive" means a document that contains a health care instruction or **a docu-**
 35 **ment that contains** a power of attorney for health care.

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

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

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

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

45 *[(6) "Attorney-in-fact" means an adult appointed to make health care decisions for a principal under*

1 *a power of attorney for health care, and includes an alternative attorney-in-fact.]*

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

7 **(6) “Capable” means not incapable.**

8 [(8)] (7) “Health care” means diagnosis, treatment or care of disease, injury and congenital or
9 degenerative conditions, including the use, maintenance, withdrawal or withholding of life-sustaining
10 procedures and the use, maintenance, withdrawal or withholding of artificially administered nutri-
11 tion and hydration.

12 [(9)] (8) “Health care decision” means consent, refusal of consent or withholding or withdrawal
13 of consent to health care, and includes decisions relating to admission to or discharge from a health
14 care facility.

15 [(10)] (9) “Health care facility” means a health care facility as defined in ORS 442.015, a
16 domiciliary care facility as defined in ORS 443.205, a residential facility as defined in ORS 443.400,
17 an adult foster home as defined in ORS 443.705 or a hospice program as defined in ORS 443.850.

18 [(11)] (10) “Health care instruction” or “instruction” means a document executed by a principal
19 to indicate the principal’s instructions regarding health care decisions.

20 [(12)] (11) “Health care provider” means a person licensed, certified or otherwise authorized or
21 permitted by the law of this state to administer health care in the ordinary course of business or
22 practice of a profession, and includes a health care facility.

23 [(13)] (12) “Health care representative” means:

24 [(a) *An attorney-in-fact;*]

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

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

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

31 [(14)] (13) “Incapable” means that in the opinion of the court in a proceeding to appoint or
32 confirm authority of a health care representative, or in the opinion of the principal’s attending
33 physician, a principal lacks the ability to make and communicate health care decisions to health
34 care providers, including communication through persons familiar with the principal’s manner of
35 communicating if those persons are available. [*“Capable” means not incapable.*]

36 [(15)] (14) “Instrument” means an advance directive, acceptance, disqualification, withdrawal,
37 court order, court appointment or other document governing health care decisions.

38 [(16) *“Life support” means life-sustaining procedures.*]

39 [(17)] (15)(a) “Life-sustaining procedure” means any medical procedure, pharmaceutical, medical
40 device or medical intervention that maintains life by sustaining, restoring or supplanting a vital
41 function.

42 (b) “Life-sustaining procedure” does not include routine care necessary to sustain patient
43 cleanliness and comfort.

44 [(18)] (16) “Medically confirmed” means the medical opinion of the attending physician has been
45 confirmed by a second physician who has examined the patient and who has clinical privileges or

1 expertise with respect to the condition to be confirmed.

2 [(19)] (17) “Permanently unconscious” means completely lacking an awareness of self and ex-
 3 ternal environment, with no reasonable possibility of a return to a conscious state, and that condi-
 4 tion has been medically confirmed by a neurological specialist who is an expert in the examination
 5 of unresponsive individuals.

6 [(20)] (18) “Physician” means an individual licensed to practice medicine by the Oregon Medical
 7 Board.

8 [(21)] (19) “Power of attorney for health care” means a [power of attorney document that au-
 9 thorizes an attorney-in-fact to make health care decisions for the principal when the principal is inca-
 10 pable] **document by which a capable adult may appoint a health care representative and**
 11 **alternative health care representatives.**

12 [(22)] (20) “Principal” means:

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

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

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

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

18 [(23)] (21) “Terminal condition” means a health condition in which death is imminent irrespec-
 19 tive of treatment, and where the application of life-sustaining procedures or the artificial adminis-
 20 tration of nutrition and hydration serves only to postpone the moment of death of the principal.

21 [(24) “Tube feeding” means artificially administered nutrition and hydration.]

22
 23 **CONFORMING AMENDMENTS**
 24

25 **SECTION 10.** ORS 127.525 is amended to read:

26 127.525. For an appointment under a power of attorney for health care to be effective, the
 27 [attorney-in-fact] **health care representative or the alternative health care representative** must
 28 accept the appointment in writing **as described in ORS 127.510.** Subject to the right of the
 29 [attorney-in-fact] **health care representative or an alternative health care representative** to
 30 withdraw, the acceptance imposes a duty on the [attorney-in-fact] **health care representative or**
 31 **an alternative health care representative** to make health care decisions on behalf of the principal
 32 [at such time as the principal becomes incapable] **as described in ORS 127.510.** Until the principal
 33 becomes incapable, the [attorney-in-fact] **health care representative or an alternative health care**
 34 **representative** may withdraw by giving notice to the principal. After the principal becomes inca-
 35 pable, the [attorney-in-fact] **health care representative or an alternative health care represen-**
 36 **tative** may withdraw by giving notice to the health care provider.

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

38 127.535. (1) The health care representative has all the authority over the principal’s health care
 39 that the principal would have if not incapable, subject to the limitations of the appointment and ORS
 40 127.540 and 127.580. A health care representative who is known to the health care provider to be
 41 available to make health care decisions has priority over any person other than the principal to act
 42 for the principal [in all] **with respect to** health care decisions. A health care representative has
 43 authority to make a health care decision for a principal only when the principal is incapable.

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

1 the principal.

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

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

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

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

23 (7) A health care representative is a personal representative for the purposes of ORS 192.553 to
 24 192.581 and the federal Health Insurance Portability and Accountability Act privacy regulations, 45
 25 C.F.R. parts 160 and 164.

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

27 127.545. (1) An advance directive or a health care decision by a health care representative may
 28 be revoked:

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

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

33 (2) Revocation is effective upon communication by the principal to the attending physician or
 34 health care provider, or to the health care representative. If the revocation is communicated to the
 35 health care representative, and the principal is incapable and is under the care of a health care
 36 provider known to the representative, the health care representative must promptly inform the at-
 37 tending physician or health care provider of the revocation.

38 (3) Upon learning of the revocation, the health care provider or attending physician shall cause
 39 the revocation to be made a part of the principal's medical records.

40 (4) Execution of a valid power of attorney for health care revokes any prior power of attorney
 41 for health care. Unless the health care instruction provides otherwise, execution of a valid health
 42 care instruction revokes any prior health care instruction.

43 (5) Unless the advance directive provides otherwise, the directions as to health care decisions
 44 in a valid advance directive supersede:

45 (a) Any directions contained in a previous court appointment or advance directive; and

1 (b) Any prior inconsistent expression of desires with respect to health care decisions.

2 (6) Unless the power of attorney for health care provides otherwise, valid appointment of [*an*
3 *attorney-in-fact for health care*] **a health care representative or an alternative health care rep-**
4 **resentative under ORS 127.510** supersedes:

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

7 (b) Any other prior appointment or designation of a health care representative.

8 (7) Unless the power of attorney for health care expressly provides otherwise, a power of at-
9 torney for health care is suspended:

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

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

16 (8)(a) If the principal has both a valid health care instruction and a valid power of attorney for
17 health care, and if the directions reflected in those documents are inconsistent, the document last
18 executed governs to the extent of the inconsistency.

19 (b) If the principal has both a valid health care instruction, or a valid power of attorney for
20 health care, and a declaration for mental health treatment made in accordance with ORS 127.700
21 to 127.737, and if the directions reflected in those documents are inconsistent, the directions con-
22 tained in the declaration for mental health treatment governs to the extent of the inconsistency.

23 (9) Any reinstatement of an advance directive must be in writing.

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

25 127.550. (1) A health care decision made by an individual who is authorized to make the decision
26 under ORS 127.505 to 127.660 and 127.995 is effective immediately and does not require judicial ap-
27 proval.

28 (2) A petition may be filed under ORS 127.505 to 127.660 and 127.995 for any one or more of the
29 following purposes:

30 (a) Determining whether a principal is incapable.

31 (b) Determining whether an appointment of the health care representative or a health care in-
32 struction is valid or has been suspended, reinstated, revoked or terminated.

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

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

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

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

40 (g) Determining whether the acts or proposed acts of the health care representative are clearly
41 inconsistent with the desires of the principal as made known to the health care representative, or
42 where the desires of the principal are unknown or unclear, whether the acts or proposed acts of the
43 health care representative are clearly contrary to the best interests of the principal.

44 (h) Declaring that a power of attorney for health care is revoked upon a determination by the
45 court that the [*attorney-in-fact*] **appointed health care representative or any appointed alterna-**

1 **tive health care representative** has made a health care decision for the principal that authorized
 2 anything illegal. A suspension or revocation of a power of attorney under this paragraph shall be
 3 in the discretion of the court.

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

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

7 (a) The principal.

8 (b) The health care representative.

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

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

12 (e) The guardian of the principal.

13 (f) The conservator of the principal.

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

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

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

21 **SECTION 14.** ORS 127.649 is amended to read:

22 127.649. (1) Subject to the provisions of ORS 127.652 and 127.654, all health care organizations
 23 shall maintain written policies and procedures, applicable to all capable adults who are receiving
 24 health care by or through the health care organization, that provide for:

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

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

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

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

35 **(C) Materials necessary to execute an advance directive; and**

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

38 (b) Documenting in a prominent place in the individual's medical record whether the individual
 39 has executed an advance directive.

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

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

43 (2) A health care organization [need not furnish a copy of an advance directive to an individual]
 44 **does not need to deliver materials described in subsection (1)(a)(C) of this section** if the health
 45 care organization has reason to believe that the individual [has received a copy of an advance di-

1 *rective in the form set forth in ORS 127.531 within] has received materials described in subsection*
 2 **(1)(a)(C) of this section during** the preceding 12-month period or has previously executed an ad-
 3 vance directive.

4 **SECTION 15.** ORS 97.953 is amended to read:

5 97.953. As used in ORS 97.951 to 97.982:

6 (1) “Adult” means an individual who is 18 years of age or older.

7 (2) “Agent” means *[an]*:

8 (a) *[Attorney-in-fact as that term is defined in ORS 127.505]* **A health care representative or**
 9 **an alternative health care representative appointed in a power of attorney for health care**
 10 **under ORS 127.510;** or

11 (b) **An** individual expressly authorized to make an anatomical gift on the principal’s behalf by
 12 any record signed by the principal.

13 (3) “Anatomical gift” means a donation of all or part of a human body to take effect after the
 14 donor’s death for the purpose of transplantation, therapy, research or education.

15 (4) “Body part” means an organ, an eye or tissue of a human being. The term does not include
 16 the whole body.

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

19 (6)(a) “Disinterested witness” means a witness other than:

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

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

23 (b) “Disinterested witness” does not include a person to whom an anatomical gift could pass
 24 under ORS 97.969.

25 (7) “Document of gift” means a donor card or other record used to make an anatomical gift. The
 26 term includes a statement, symbol or designation on a driver license, identification card or donor
 27 registry.

28 (8) “Donor” means an individual whose body or body part is the subject of an anatomical gift.

29 (9) “Donor registry” means a centralized database that contains records of anatomical gifts and
 30 amendments to or revocations of anatomical gifts.

31 (10) “Driver license” means a license or permit issued under ORS 807.021, 807.040, 807.200,
 32 807.280 or 807.730, regardless of whether conditions are attached to the license or permit.

33 (11) “Eye bank” means an organization licensed, accredited or regulated under federal or state
 34 law to engage in the recovery, screening, testing, processing, storage or distribution of human eyes
 35 or portions of human eyes.

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

38 (13) “Hospital” means a facility licensed as a hospital under the law of any state or a facility
 39 operated as a hospital by the United States, a state or a subdivision of a state.

40 (14) “Identification card” means the card issued under ORS 807.021, 807.400 or 807.730, or a
 41 comparable provision of the motor vehicle laws of another state.

42 (15) “Know” means to have actual knowledge.

43 (16) “Minor” means an individual who is under 18 years of age.

44 (17) “Organ procurement organization” means an organization designated by the Secretary of
 45 the United States Department of Health and Human Services as an organ procurement organization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34
35 **REPEALS**

36
37 **SECTION 16. ORS 127.531 is repealed.**

38 **SECTION 17. Section 6 of this 2016 Act is repealed on January 1, 2020.**

39
40 **SAVINGS CLAUSES AND APPLICABILITY**

41
42 **SECTION 18. ORS 127.658 is amended to read:**

43 127.658. (1) ORS 127.505 to 127.660 [and 127.995] **as enacted, the repeal of any statute that**
44 **is a part of ORS 127.505 to 127.660 and subsequent amendments to the provisions of ORS**
45 **127.505 to 127.660** do not impair or supersede any power of attorney for health care, directive to

1 physicians or health care instruction in effect [*before November 4, 1993*] **on or before the operative**
 2 **date specified in section 22 of this 2016 Act.**

3 (2) [*Any*] A power of attorney for health care [*or*], directive to physicians **or health care in-**
 4 **struction** executed [*before November 4, 1993,*] **on or before the operative date of this 2016 Act**
 5 shall be governed by the provisions of ORS 127.505 to 127.660 [*and 127.995*], except that:

6 (a) The **power of attorney for health care**, directive to physicians [*or power of attorney for*
 7 *health care shall be*] **or health care instruction is** valid if it complies with **either**:

8 (A) The provisions of [*either*] ORS 127.505 to 127.660 [*and 127.995 or the statutes in effect as of*
 9 *the date of execution*]; **or**

10 (B) **The provisions of ORS 127.505 to 127.660 or any other statute governing the power**
 11 **of attorney for health care, directive to physicians or health care instruction that was in**
 12 **effect on the date that the power of attorney for health care, directive to physicians or**
 13 **health care instruction was executed;**

14 (b) The terms in a directive to physicians in the form prescribed by ORS 127.610 (1991 Edition)
 15 or **any predecessor statute of ORS 127.610 (1991 Edition)** have [*those*] **the** meanings given in ORS
 16 127.605 (1991 Edition) or **any predecessor statute of ORS 127.605 (1991 Edition)** as the statute
 17 **was** in effect [*at the time of execution*] **on the date that the directive to physicians was**
 18 **executed;** and

19 (c) The terms in a power of attorney for health care in the form prescribed by ORS 127.530 (1991
 20 Edition) have [*those*] **the** meanings given in ORS 127.505 as **that statute was** in effect [*at the time*
 21 *of execution*] **on the date the power of attorney for health care was executed.**

22 [(3) *A health care organization, as defined in ORS 127.646, that on November 4, 1993, has printed*
 23 *materials with the information and forms which were required by ORS 127.649, prior to November 4,*
 24 *1993, may use such printed materials until December 1, 1993.*]

25 **SECTION 19.** The repeal of section 6 of this 2016 Act by section 17 of this 2016 Act does
 26 **not impair or supersede any advance directive executed in the form set forth in section 6 of**
 27 **this 2016 Act before January 1, 2020.**

28 **SECTION 20.** The amendments to ORS 127.510 by section 7 of this 2016 Act apply to des-
 29 **ignations made before, on or after the operative date specified in section 22 of this 2016 Act.**

30 **SECTION 21.** The amendments to ORS 127.515 by section 8 of this 2016 Act apply to ad-
 31 **vance directives executed on or after the operative date specified in section 22 of this 2016**
 32 **Act.**

33 34 OPERATIVE DATE

35
36 **SECTION 22.** (1) Sections 1 to 6 of this 2016 Act, the amendments to statutes by sections
 37 **7 to 15 and 18 of this 2016 Act and the repeal of ORS 127.531 by section 16 of this 2016 Act**
 38 **become operative on January 1, 2017.**

39 (2) **The Advance Directive Rules Adoption Committee and the Oregon Health Authority**
 40 **may take any action before the operative date specified in subsection (1) of this section that**
 41 **is necessary to enable the committee and the authority to exercise, on and after the opera-**
 42 **tive date specified in subsection (1) of this section, all the duties, powers and functions con-**
 43 **ferred on the committee and authority by sections 1 to 6 of this 2016 Act, the amendments**
 44 **to statutes by sections 7 to 15 and 18 of this 2016 Act and the repeal of ORS 127.531 by section**
 45 **16 of this 2016 Act.**

UNIT CAPTIONS

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SECTION 23. The unit captions used in this 2016 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2016 Act.

EFFECTIVE DATE

SECTION 24. This 2016 Act takes effect on the 91st day after the date on which the 2016 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.
