

## SENATE AMENDMENTS TO SENATE BILL 1552

By COMMITTEE ON JUDICIARY

February 15

1 On page 1 of the printed bill, line 2, after “97.953,” insert “97.955, 97.959.”

2 In line 3, delete “127.649 and 127.658” and insert “127.555, 127.565, 127.625, 127.649, 127.658,  
3 127.737, 127.760, 163.193 and 163.206”.

4 Delete lines 6 through 25 and delete pages 2 through 20 and insert:

5  
6 **“FORM OF AN ADVANCE DIRECTIVE**  
7 **“(Series Placement)”**  
8

9 **“SECTION 1. Sections 2, 4, 5 and 6 of this 2016 Act are added to and made a part of ORS**  
10 **127.505 to 127.660.**

11  
12 **“(Advance Directive Rules Adoption Committee)”**  
13

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

16 **“(2) The committee consists of 13 members. One voting member shall be the Long Term**  
17 **Care Ombudsman or the designee of the Long Term Care Ombudsman. The other 12 mem-**  
18 **bers shall be appointed as follows:**

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

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

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

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

25 **“(B) One member who represents hospitals.**

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

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

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

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

34 **“(G) One member from among members proposed by the Oregon State Bar who is an**  
35 **expert in elder law and who has expertise in advising individuals on how to execute an ad-**

1 vance directive.

2 “(H) One member from among members proposed by the Oregon State Bar who is an  
3 expert in estate planning and who has expertise in advising individuals on how to make  
4 end-of-life decisions.

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

7 “(3) The term of office of each member of the committee is four years, but a member  
8 serves at the pleasure of the appointing authority. Before the expiration of the term of a  
9 member, the appointing authority shall appoint a successor whose term begins on January  
10 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause,  
11 the appointing authority shall make an appointment to become immediately effective for the  
12 unexpired term.

13 “(4) A majority of the voting members of the committee constitutes a quorum for the  
14 transaction of business.

15 “(5) Official action by the committee requires the approval of a majority of the voting  
16 members of the committee.

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

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

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

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

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

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

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

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

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

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

45 “(2) At a minimum, the form of an advance directive adopted under this section must

1 contain the following elements:

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

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

5 “(B) A statement on the purpose of the principal expressing the principal’s preferences,  
6 values and beliefs with respect to health care necessary to preserve life.

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

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

9 “(B) Either witnessed or notarized.

10 “(c) A statement that the appointment of a health care representative or of an alterna-  
11 tive health care representative must be accepted by the health care representative or the  
12 alternative health care representative to be effective.

13 “(d) A statement that the advance directive, once executed, supersedes any previously  
14 executed advance directive.

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

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

18 “(g) A section providing the principal with an opportunity to state the principal’s values  
19 and beliefs with respect to health care decisions, including the opportunity to describe the  
20 principal’s wishes, by completing a checklist, by providing instruction through narrative or  
21 other means, or by any combination of methods used to describe the principal’s wishes, re-  
22 garding:

23 “(A) When the principal wants all reasonably available health care necessary to preserve  
24 life and recover;

25 “(B) When the principal wants all reasonably available health care necessary to treat  
26 chronic conditions;

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

30 “(D) When the principal desires comfort care instead of health care necessary to pre-  
31 serve life and recover.

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

35 “(i) A section where any health care representative or any alternative health care rep-  
36 resentative appointed by the principal may accept by signature or other means, including,  
37 but not limited to, electronic or verbal means, the advance directive.

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

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

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

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

3  
4                               “(Form for Appointing Health Care Representative  
5                               and Alternative Health Care Representative)  
6

7       “SECTION 5. A form for appointing a health care representative and an alternative  
8 health care representative must be written in substantially the following form:  
9 “

10 \_\_\_\_\_  
11       This form may be used in Oregon to choose a person to make health care decisions for  
12 you if you become too sick to speak for yourself. The person is called a health care repre-  
13 sentative. This form also allows you to express your values, beliefs and preferences for  
14 health care.

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

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

20       **1. ABOUT ME.**

21       Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

22       Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

23       Address: \_\_\_\_\_

24       E-mail: \_\_\_\_\_

25       **2. MY HEALTH CARE REPRESENTATIVE.**

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

28       Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

29       Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

30       Address: \_\_\_\_\_

31       E-mail: \_\_\_\_\_

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

35       **First alternate health care representative:**

36       Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

37       Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

38       Address: \_\_\_\_\_

39       E-mail: \_\_\_\_\_

40       **Second alternate health care representative:**

41       Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

42       Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

43       Address: \_\_\_\_\_

44       E-mail: \_\_\_\_\_

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

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

2 Health care representative (name): \_\_\_\_\_

3 Date \_\_\_\_\_

4 First alternate health care representative (name): \_\_\_\_\_

5 Date \_\_\_\_\_

6 Second alternate health care representative (name): \_\_\_\_\_

7 Date \_\_\_\_\_

8 **4. WITNESS.**

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

10 **A. WITNESS DECLARATION:**

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

16 Witness Name (print): \_\_\_\_\_

17 Signature: \_\_\_\_\_

18 Date: \_\_\_\_\_

19 Witness Name (print): \_\_\_\_\_

20 Signature: \_\_\_\_\_

21 Date: \_\_\_\_\_

22 **B. NOTARY:**

23 State of \_\_\_\_\_

24 County of \_\_\_\_\_

25 Signed or attested before me on \_\_\_\_\_, 2\_\_\_\_, by

26 \_\_\_\_\_.

27 \_\_\_\_\_

28 Notary Public - State of Oregon

29 **5. MY SIGNATURE.**

30 My signature: \_\_\_\_\_ Date: \_\_\_\_\_

31 " \_\_\_\_\_

32

33

34

“(Temporary Form for Advance Directive)”

35

36 “**SECTION 6.** (1) In lieu of the form of an advance directive adopted by the Advance Di-  
37 rective Rules Adoption Committee under section 4 of this 2016 Act, on or before January 1,  
38 2020, a principal may execute an advance directive that is in a form that is substantially the  
39 same as the form of an advance directive set forth in this section.

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

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

44 " \_\_\_\_\_

45

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

5 • If you have completed an advance directive in the past, this new advance directive will  
6 replace the older directives.

7 • You must sign this form for it to be effective. You must also have it witnessed by two  
8 witnesses or a notary. Your appointment of a health care representative is not effective until  
9 the health care representative accepts the appointment.

10 **1. ABOUT ME.**

11 Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

12 Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

13 Address: \_\_\_\_\_

14 E-mail: \_\_\_\_\_

15 **2. MY HEALTH CARE REPRESENTATIVE.**

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

18 Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

19 Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

20 Address: \_\_\_\_\_

21 E-mail: \_\_\_\_\_

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

25 **First alternate health care representative:**

26 Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

27 Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

28 Address: \_\_\_\_\_

29 E-mail: \_\_\_\_\_

30 **Second alternate health care representative:**

31 Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

32 Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

33 Address: \_\_\_\_\_

34 E-mail: \_\_\_\_\_

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

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

37 Health care representative (name): \_\_\_\_\_

38 Date \_\_\_\_\_

39 First alternate health care representative (name): \_\_\_\_\_

40 Date \_\_\_\_\_

41 Second alternate health care representative (name): \_\_\_\_\_

42 Date \_\_\_\_\_

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

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

1       \_\_\_ To the extent appropriate, my health care representative must follow my in-  
2 instructions.

3       \_\_\_ My instructions are guidelines for my health care representative to consider when  
4 making decisions about my care.

5       \_\_\_ Other instructions: \_\_\_\_\_

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

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

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

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

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

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

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

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

22       \_\_\_ I do not want my life to be prolonged by life support. I also do not want tube feeding  
23 as life support. I want my physician to allow me to die naturally if my physician and another  
24 knowledgeable physician confirm I am in any of the medical conditions listed below.

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

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

30       INITIAL ONE:

31       \_\_\_ I want to receive tube feeding.

32       \_\_\_ I want tube feeding only as my physician recommends.

33       \_\_\_ I DO NOT WANT tube feeding.

34       INITIAL ONE:

35       \_\_\_ I want any other life support that may apply.

36       \_\_\_ I want life support only as my physician recommends.

37       \_\_\_ I DO NOT WANT life support.

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

40       INITIAL ONE:

41       \_\_\_ I want to receive tube feeding.

42       \_\_\_ I want tube feeding only as my physician recommends.

43       \_\_\_ I DO NOT WANT tube feeding.

44       INITIAL ONE:

45       \_\_\_ I want any other life support that may apply.

1       \_\_\_ I want life support only as my physician recommends.

2       \_\_\_ I DO NOT WANT life support.

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

7       **INITIAL ONE:**

8       \_\_\_ I want to receive tube feeding.

9       \_\_\_ I want tube feeding only as my physician recommends.

10      \_\_\_ I DO NOT WANT tube feeding.

11      **INITIAL ONE:**

12      \_\_\_ I want any other life support that may apply.

13      \_\_\_ I want life support only as my physician recommends.

14      \_\_\_ I DO NOT WANT life support.

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

17      **INITIAL ONE:**

18      \_\_\_ I want to receive tube feeding.

19      \_\_\_ I want tube feeding only as my physician recommends.

20      \_\_\_ I DO NOT WANT tube feeding.

21      **INITIAL ONE:**

22      \_\_\_ I want any other life support that may apply.

23      \_\_\_ I want life support only as my physician recommends.

24      \_\_\_ I DO NOT WANT life support.

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

30      **6. WITNESS.**

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

32      **A. WITNESS DECLARATION:**

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

38      **Witness Name (print):** \_\_\_\_\_

39      **Signature:** \_\_\_\_\_

40      **Date:** \_\_\_\_\_

41      **Witness Name (print):** \_\_\_\_\_

42      **Signature:** \_\_\_\_\_

43      **Date:** \_\_\_\_\_

44      **B. NOTARY:**

45      **State of** \_\_\_\_\_



1 County of \_\_\_\_\_

2 Signed or attested before me on \_\_\_\_\_, 2\_\_\_\_, by

3 \_\_\_\_\_

4  
5 Notary Public - State of Oregon

6 **7. MY SIGNATURE.**

7 My signature: \_\_\_\_\_ Date: \_\_\_\_\_

8 “ \_\_\_\_\_

9  
10  
11 **“APPOINTING HEALTH CARE REPRESENTATIVES**  
12 **AND EXECUTING ADVANCE DIRECTIVES**

13  
14 **“SECTION 7.** ORS 127.510 is amended to read:

15 *“127.510. [(1) A capable adult may designate in writing a competent adult to serve as attorney-in-*  
16 *fact for health care. A capable adult may also designate a competent adult to serve as alternative*  
17 *attorney-in-fact if the original designee is unavailable, unable or unwilling to serve as attorney-in-fact*  
18 *at any time after the power of attorney for health care is executed. The power of attorney for health*  
19 *care is effective when it is signed, witnessed and accepted as required by ORS 127.505 to 127.660 and*  
20 *127.995. The attorney-in-fact so appointed shall make health care decisions on behalf of the principal*  
21 *if the principal becomes incapable.]*

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

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

29 **“(b) A capable adult may use the form adopted under section 4 of this 2016 Act or the**  
30 **form set forth in section 5 of this 2016 Act to appoint one or more competent adults to serve**  
31 **as alternative health care representatives for the capable adult. For purposes of ORS 127.505**  
32 **to 127.660, an alternative health care representative has the rights and privileges of a health**  
33 **care representative appointed under paragraph (a) of this subsection, including the rights**  
34 **described in ORS 127.535. An alternative health care representative appointed under this**  
35 **paragraph shall make health care decisions for the principal if:**

36 **“(A) The principal becomes incapable; and**

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

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

44 **“(d) An appointment made under this section is effective when it is accepted by the**  
45 **principal and the health care representative and witnessed or notarized as required by ORS**

1 **127.505 to 127.660.**

2 **“(2) A capable adult may execute an advance directive. The advance directive is effective**  
3 **when it is signed by the principal and witnessed or notarized as required by ORS 127.505 to**  
4 **127.660.**

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

9 **“(a) The principal dies; or**

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

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

15 **“(a) The principal is no longer incapable;**

16 **“(b) The principal dies; or**

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

19 **“(5) A health care provider shall make a copy of an advance directive and a copy of any other**  
20 **instrument a part of the principal’s medical record when a copy of [that] the advance directive or**  
21 **instrument is provided to the principal’s health care provider.**

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

25 **“SECTION 8. ORS 127.515 is amended to read:**

26 **“127.515. (1) An advance directive or a form appointing a health care representative may**  
27 **be executed by a resident or nonresident adult of this state in the manner provided by ORS 127.505**  
28 **to 127.660. [and 127.995.]**

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

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

34 **“[(4) An advance directive must reflect the date of the principal’s signature. To be valid, an ad-**  
35 **vance directive must be witnessed by at least two adults as follows:]**

36 **“[(a) Each witness shall witness either the signing of the instrument by the principal or the**  
37 **principal’s acknowledgment of the signature of the principal.]**

38 **“[(b) Each witness shall make the written declaration as set forth in the form provided in ORS**  
39 **127.531.]**

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

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

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

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

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

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

6 “(2) **An advance directive or a form appointing a health care representative must reflect**  
7 **the date of the principal’s signature or other method of accepting the advance directive or**  
8 **the form appointing a health care representative. To be valid, an advance directive or a form**  
9 **appointing a health care representative must be:**

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

11 “(b) **Notarized by a notary public.**

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

14 “(a) **The principal signing the advance directive or the form appointing a health care**  
15 **representative; or**

16 “(b) **The principal acknowledging the signature of the principal on the advance directive**  
17 **or the form appointing a health care representative or the applicable method by which the**  
18 **principal accepted the advance directive or the form appointing a health care representative.**

19 “(4) **For an advance directive or a form appointing a health care representative to be**  
20 **validated under subsection (2)(a) of this section, the witnesses may not, on the date the ad-**  
21 **vance directive or the form appointing a health care representative is signed or acknowl-**  
22 **edged, be the principal’s attending physician or other health care provider who has primary**  
23 **responsibility for the care and treatment of the principal.**

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

27 “(6) **If an advance directive or a form appointing a health care representative is validated**  
28 **under subsection (2)(a) of this section, and if the principal is a patient in a long term care**  
29 **facility at the time the advance directive or the form appointing a health care representative**  
30 **is executed, one of the witnesses must be an individual who is designated by the facility and**  
31 **qualified as specified by the Department of Human Services by rule.**

32 “[5] (7) **Notwithstanding [subsections (2) to (4)] subsection (2) of this section, an advance di-**  
33 **rective or a form appointing a health care representative that is executed by an adult who [at**  
34 **the time of execution resided in another state,] resides in another state at the time of execution**  
35 **and that is executed in compliance with [the formalities of execution required by] the laws of that**  
36 **state, the laws of the state where the principal [was] is located at the time of execution or the laws**  
37 **of this state[,] is validly executed for the purposes of ORS 127.505 to 127.660 [and 127.995 and may**  
38 **be given effect in accordance with its provisions, subject to the laws of this state].**

39  
40 “**DEFINITIONS**

41  
42 “**SECTION 9.** ORS 127.505 is amended to read:

43 “127.505. As used in ORS 127.505 to 127.660 and 127.995:

44 “(1) ‘Adult’ means an individual who is 18 years of age or older, who has been adjudicated an  
45 emancipated minor or who is married.

1       “(2) ‘Advance directive’ means a document that contains a health care instruction or a power of  
2 attorney for health care.]

3       “(2) ‘Advance directive’ means a document executed by a principal to indicate the  
4 principal’s instructions regarding health care decisions.

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

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

11       “(b) ‘Artificially administered nutrition and hydration’ does not include the usual and typical  
12 provision of nutrition and hydration, such as the provision of nutrition and hydration by cup, hand,  
13 bottle, drinking straw or eating utensil.

14       “(5) ‘Attending physician’ means the physician who has primary responsibility for the care and  
15 treatment of the principal.

16       “[(6) ‘Attorney-in-fact’ means an adult appointed to make health care decisions for a principal un-  
17 der a power of attorney for health care, and includes an alternative attorney-in-fact.]

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

23       “(6) ‘Capable’ means not incapable.

24       “(7) ‘Form appointing a health care representative’ means the portion of the form  
25 adopted under section 4 of this 2016 Act used to appoint a health care representative or an  
26 alternative health care representative or the form set forth in section 5 of this 2016 Act.

27       “(8) ‘Health care’ means diagnosis, treatment or care of disease, injury and congenital or de-  
28 generative conditions, including the use, maintenance, withdrawal or withholding of life-sustaining  
29 procedures and the use, maintenance, withdrawal or withholding of artificially administered nutri-  
30 tion and hydration.

31       “(9) ‘Health care decision’ means consent, refusal of consent or withholding or withdrawal of  
32 consent to health care, and includes decisions relating to admission to or discharge from a health  
33 care facility.

34       “(10) ‘Health care facility’ means a health care facility as defined in ORS 442.015, a domiciliary  
35 care facility as defined in ORS 443.205, a residential facility as defined in ORS 443.400, an adult  
36 foster home as defined in ORS 443.705 or a hospice program as defined in ORS 443.850.

37       “[(11) ‘Health care instruction’ or ‘instruction’ means a document executed by a principal to indi-  
38 cate the principal’s instructions regarding health care decisions.]

39       “[(12)] (11) ‘Health care provider’ means a person licensed, certified or otherwise authorized or  
40 permitted by the law of this state to administer health care in the ordinary course of business or  
41 practice of a profession, and includes a health care facility.

42       “[(13)] (12) ‘Health care representative’ means:

43       “[(a) An attorney-in-fact;]

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

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

3 “(c) A guardian or other person, appointed by a court to make health care decisions for a  
4 principal.

5 “[14] (13) ‘Incapable’ means that in the opinion of the court in a proceeding to appoint or  
6 confirm authority of a health care representative, or in the opinion of the principal’s attending  
7 physician, a principal lacks the ability to make and communicate health care decisions to health  
8 care providers, including communication through persons familiar with the principal’s manner of  
9 communicating if those persons are available. [*Capable’ means not incapable.*]

10 “[15] (14) ‘Instrument’ means an advance directive, [*acceptance,*] **form appointing a health**  
11 **care representative**, disqualification, withdrawal, court order, court appointment or other docu-  
12 ment governing health care decisions.

13 “[16] *‘Life support’ means life-sustaining procedures.*]

14 “[17] (15)(a) ‘Life-sustaining procedure’ means any medical procedure, pharmaceutical, medical  
15 device or medical intervention that maintains life by sustaining, restoring or supplanting a vital  
16 function.

17 “(b) ‘Life-sustaining procedure’ does not include routine care necessary to sustain patient  
18 cleanliness and comfort.

19 “[18] (16) ‘Medically confirmed’ means the medical opinion of the attending physician has been  
20 confirmed by a second physician who has examined the patient and who has clinical privileges or  
21 expertise with respect to the condition to be confirmed.

22 “[19] (17) ‘Permanently unconscious’ means completely lacking an awareness of self and ex-  
23 ternal environment, with no reasonable possibility of a return to a conscious state, and that condi-  
24 tion has been medically confirmed by a neurological specialist who is an expert in the examination  
25 of unresponsive individuals.

26 “[20] (18) ‘Physician’ means an individual licensed to practice medicine by the Oregon Medical  
27 Board.

28 “[21] *‘Power of attorney for health care’ means a power of attorney document that authorizes an*  
29 *attorney-in-fact to make health care decisions for the principal when the principal is incapable.*]

30 “[22] (19) ‘Principal’ means:

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

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

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

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

36 “[23] (20) ‘Terminal condition’ means a health condition in which death is imminent irrespec-  
37 tive of treatment, and where the application of life-sustaining procedures or the artificial adminis-  
38 tration of nutrition and hydration serves only to postpone the moment of death of the principal.

39 “[24] *‘Tube feeding’ means artificially administered nutrition and hydration.*]

#### 41 “CONFORMING AMENDMENTS

42  
43 “**SECTION 10.** ORS 127.525 is amended to read:

44 “127.525. [*For an appointment under a power of attorney for health care to be effective, the*  
45 *attorney-in-fact must accept the appointment in writing. Subject to the right of the attorney-in-fact to*

1 *withdraw, the acceptance imposes a duty on the attorney-in-fact to make health care decisions on behalf*  
2 *of the principal at such time as the principal becomes incapable. Until the principal becomes incapable,*  
3 *the attorney-in-fact may withdraw by giving notice to the principal. After the principal becomes inca-*  
4 *pable, the attorney-in-fact may withdraw by giving notice to the health care provider.] For an ap-*  
5 **pointment of a health care representative or an alternative health care representative in a**  
6 **form adopted under section 4 of this 2016 Act or in the form set forth in section 5 of this 2016**  
7 **Act to be effective, the health care representative or the alternative health care represen-**  
8 **tative must accept the appointment as described in ORS 127.510. Subject to the right of the**  
9 **health care representative or an alternative health care representative to withdraw, the ac-**  
10 **ceptance imposes a duty on the health care representative or an alternative health care**  
11 **representative to make health care decisions on behalf of the principal as described in ORS**  
12 **127.510. Until the principal becomes incapable, the health care representative or an alterna-**  
13 **tive health care representative may withdraw by giving notice to the principal. After the**  
14 **principal becomes incapable, the health care representative or an alternative health care**  
15 **representative may withdraw by giving notice to the health care provider.**

16 “**SECTION 11.** ORS 127.535 is amended to read:

17 “127.535. (1) The health care representative has all the authority over the principal’s health care  
18 that the principal would have if not incapable, subject to the limitations of the appointment and ORS  
19 127.540 and 127.580. A health care representative who is known to the health care provider to be  
20 available to make health care decisions has priority over any person other than the principal to act  
21 for the principal [*in all*] **with respect to** health care decisions. A health care representative has  
22 authority to make a health care decision for a principal only when the principal is incapable.

23 “(2) A health care representative is not personally responsible for the cost of health care pro-  
24 vided to the principal solely because the health care representative makes health care decisions for  
25 the principal.

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

32 “(4) In making health care decisions, the health care representative has a duty to act consist-  
33 ently with the desires of the principal as expressed in the principal’s advance directive, or as oth-  
34 erwise made known by the principal to the health care representative at any time. If the principal’s  
35 desires are unknown, the health care representative has a duty to act in [*what*] **a manner that** the  
36 health care representative in good faith believes to be **in** the best interests of the principal.

37 “(5) ORS 127.505 to 127.660 do not authorize a health care representative or health care pro-  
38 vider to withhold or withdraw life-sustaining procedures or artificially administered nutrition and  
39 hydration in any situation if the principal manifests an objection to the health care decision. If the  
40 principal objects to such a health care decision, the health care provider shall proceed as though  
41 the principal [*were*] **is** capable [*for the purposes of*] **with respect to** the health care decision [*ob-*  
42 *jected to*].

43 “(6) An instrument that would be a valid advance directive **or form appointing a health care**  
44 **representative** except that the instrument [*is not a form described in ORS 127.515, has*] **is** expired,  
45 is not properly witnessed or otherwise fails to meet the formal requirements of ORS 127.505 to

1 127.660 shall constitute evidence of the patient's desires and interests.

2 "(7) A health care representative is a personal representative for the purposes of ORS 192.553  
3 to 192.581 and the federal Health Insurance Portability and Accountability Act privacy regulations,  
4 45 C.F.R. parts 160 and 164.

5 "**SECTION 12.** ORS 127.545 is amended to read:

6 "127.545. (1) An advance directive or a health care decision by a health care representative may  
7 be revoked:

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

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

12 "(2) Revocation is effective upon communication by the principal to the attending physician or  
13 health care provider, or to the health care representative. If the revocation is communicated to the  
14 health care representative, and the principal is incapable and is under the care of a health care  
15 provider known to the representative, the health care representative must promptly inform the at-  
16 tending physician or health care provider of the revocation.

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

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

23 "**(4) Unless the advance directive provides otherwise:**

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

25 "[*(5) (b) [Unless the advance directive provides otherwise,] The directions as to health care de-*  
26 *isions in [a valid] an advance directive supersede:*

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

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

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

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

32 "**(a) Execution of a form appointing a health care representative revokes any prior form**  
33 **appointing a health care representative;**

34 "**(b) Valid appointment of a health care representative or an alternative health care**  
35 **representative under ORS 127.510 supersedes:**

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

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

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

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

42 "[*(a) (A) If [both the attorney-in-fact and the alternative attorney-in-fact] the appointed health*  
43 **care representative and all appointed alternative health care representatives** have withdrawn;

44 or

45 "[*(b) (B) If the [power of attorney] form appointing a health care representative names the*

1 principal's spouse as *[attorney-in-fact]* **the health care representative or an alternative health**  
2 **care representative**, a petition for dissolution or annulment of marriage is filed and the principal  
3 does not reaffirm the appointment *[in writing]* after the filing of the petition.

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

8 “(b) If the principal has both a valid *[health care instruction]* **advance directive**, or a valid  
9 *[power of attorney for health care]* **form appointing a health care representative**, and a declaration  
10 for mental health treatment made in accordance with ORS 127.700 to 127.737, and if the directions  
11 reflected in those documents are inconsistent, the directions contained in the declaration for mental  
12 health treatment governs to the extent of the inconsistency.

13 “[9)] **(7)** Any reinstatement of an advance directive **or a form appointing a health care rep-**  
14 **resentative** must be in writing.

15 “**SECTION 13.** ORS 127.550 is amended to read:

16 “127.550. (1) A health care decision made by an individual who is authorized to make the deci-  
17 sion under ORS 127.505 to 127.660 *[and 127.995]* is effective immediately and does not require judi-  
18 cial approval.

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

21 “(a) Determining whether a principal is incapable.

22 “(b) Determining whether an appointment of the health care representative or *[a health care*  
23 *instruction]* **an advance directive** is valid or has been suspended, reinstated, revoked or terminated.

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

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

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

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

31 “(g) Determining whether the acts or proposed acts of the health care representative are clearly  
32 inconsistent with the desires of the principal as made known to the health care representative, or  
33 where the desires of the principal are unknown or unclear, whether the acts or proposed acts of the  
34 health care representative are clearly contrary to the best interests of the principal.

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

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

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

44 “(a) The principal.

45 “(b) The health care representative.



1           “(c) The spouse, parent, sibling or adult child of the principal.  
2           “(d) An adult relative or adult friend of the principal who is familiar with the desires of the  
3 principal.  
4           “(e) The guardian of the principal.  
5           “(f) The conservator of the principal.  
6           “(g) The attending physician or health care provider of the principal.  
7           “(4) A petition under this section shall be filed in the circuit court in the county in which the  
8 principal resides or is located.  
9           “(5) Any of the determinations described in this section may be made by the court as a part of  
10 a protective proceeding under ORS chapter 125 if a guardian or temporary guardian has been ap-  
11 pointed for the principal, or if the petition seeks the appointment of a guardian or a temporary  
12 guardian for the principal.  
13           “**SECTION 14.** ORS 127.555 is amended to read:  
14           “127.555. (1) If there is more than one physician caring for a principal, the principal shall des-  
15 ignate one physician as the attending physician. If the principal is incapable, the health care rep-  
16 resentative for the principal shall designate the attending physician.  
17           “(2) Health care representatives, and persons who are acting under a reasonable belief that they  
18 are health care representatives, shall not be guilty of any criminal offense, or subject to civil li-  
19 ability, or in violation of any professional oath, affirmation or standard of care for any action taken  
20 in good faith as a health care representative.  
21           “(3) A health care provider acting or declining to act in reliance on the health care decision  
22 made in an advance directive, made by an attending physician under ORS 127.635 (3), or made by  
23 a person who the provider believes is the health care representative for an incapable principal, is  
24 not subject to criminal prosecution, civil liability or professional disciplinary action on the grounds  
25 that the health care decision is unauthorized unless the provider:  
26           “(a) Fails to satisfy a duty that ORS 127.505 to 127.660 [*and 127.995*] place on the provider;  
27           “(b) Acts without medical confirmation as required under ORS 127.505 to 127.660 [*and 127.995*];  
28           “(c) Knows or has reason to know that the requirements of ORS 127.505 to 127.660 [*and*  
29 *127.995*] have not been satisfied; or  
30           “(d) Acts after receiving notice that:  
31           “(A) The authority or decision on which the provider relied is revoked, suspended, superseded  
32 or subject to other legal infirmity;  
33           “(B) A court challenge to the health care decision or the authority relied on in making the  
34 health care decision is pending; or  
35           “(C) The health care representative has withdrawn or has been disqualified.  
36           “(4) The immunities provided by this section do not apply to:  
37           “(a) The manner of administering health care pursuant to a health care decision made by the  
38 health care representative or by [*a health care instruction*] **an advance directive**; or  
39           “(b) The manner of determining the health condition or incapacity of the principal.  
40           “(5) A health care provider who determines that a principal is incapable is not subject to crim-  
41 inal prosecution, civil liability or professional disciplinary action for failing to follow that principal’s  
42 direction except for a failure to follow a principal’s manifestation of an objection to a health care  
43 decision under ORS 127.535 (5).  
44           “**SECTION 15.** ORS 127.565 is amended to read:  
45           “127.565. (1) In following [*a health care instruction*] **an advance directive** or the decision of a

1 health care representative, a health care provider shall exercise the same independent medical  
2 judgment that the health care provider would exercise in following the decisions of the principal if  
3 the principal were capable.

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

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

13 “(4) Nothing in ORS 127.505 to 127.660 [*and 127.995*] is intended to impair or supersede any  
14 conflicting federal statute.

15 “**SECTION 16.** ORS 127.625 is amended to read:

16 “127.625. (1) No health care provider shall be under any duty, whether by contract, by statute  
17 or by any other legal requirement to participate in the withdrawal or withholding of life-sustaining  
18 procedures or of artificially administered nutrition or hydration.

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

21 “(a) The health care provider shall promptly notify the health care representative, if there is a  
22 health care representative;

23 “(b) If the authority or decision of the health care representative is in dispute, the health care  
24 representative or provider may seek the guidance of the court in the manner provided in ORS  
25 127.550;

26 “(c) If the **health care** representative’s authority or decision is not in dispute, the **health care**  
27 representative shall make a reasonable effort to transfer the principal to the care of another phy-  
28 sician or health care provider; and

29 “(d) If there is no health care representative for an incapable patient, and the health care de-  
30 cisions are not in dispute, the health care provider shall, without abandoning the patient, either  
31 discharge the patient or make a reasonable effort to locate a different health care provider and  
32 authorize the transfer of the patient to that provider.

33 “**SECTION 17.** ORS 127.649 is amended to read:

34 “127.649. (1) Subject to the provisions of ORS 127.652 and 127.654, all health care organizations  
35 shall maintain written policies and procedures, applicable to all capable adults who are receiving  
36 health care by or through the health care organization, that provide for:

37 “(a) Delivering to those individuals the following information and materials, in written form,  
38 without recommendation:

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

43 “(B) Information on the policies of the health care organization with respect to the implemen-  
44 tation of the rights of the individual under [*Oregon law*] **the laws of this state** to make health care  
45 decisions;

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

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

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

8 “(b) Documenting in a prominent place in the individual’s medical record whether the individual  
9 has executed an advance directive **or a form appointing a health care representative.**

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

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

15 “(2) A health care organization [*need not furnish a copy of an advance directive to an  
16 individual*] **does not need to deliver materials described in subsection (1)(a)(C) of this section**  
17 if the health care organization has reason to believe that the individual [*has received a copy of an  
18 advance directive in the form set forth in ORS 127.531 within*] **has received materials described in  
19 subsection (1)(a)(C) of this section during** the preceding 12-month period or has previously exe-  
20 cuted an advance directive **or a form appointing a health care representative.**

21 “**SECTION 18.** ORS 127.737 is amended to read:

22 “127.737. [(1)] ORS 127.525, 127.550, 127.565, 127.570, 127.575 and 127.995 apply to a declaration  
23 for mental health treatment.

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

26 “**SECTION 19.** ORS 127.760 is amended to read:

27 “127.760. (1) As used in this section:

28 “(a) ‘Health care instruction’ means a document executed by a patient to indicate the patient’s  
29 instructions regarding health care decisions[, *including an advance directive or power of attorney for  
30 health care executed under ORS 127.505 to 127.660*].

31 “(b) ‘Health care provider’ means a person licensed, certified or otherwise authorized by the law  
32 of this state to administer health care in the ordinary course of business or practice of a profession.

33 “(c) ‘Hospital’ has the meaning given that term in ORS 442.015.

34 “(d) ‘Mental health treatment’ means convulsive treatment, treatment of mental illness with  
35 psychoactive medication, psychosurgery, admission to and retention in a health care facility for care  
36 or treatment of mental illness, and related outpatient services.

37 “(2)(a)(A) A hospital may appoint a health care provider who has received training in health  
38 care ethics, including identification and management of conflicts of interest and acting in the best  
39 interest of the patient, to give informed consent to medically necessary health care services on be-  
40 half of a patient admitted to the hospital in accordance with subsection (3) of this section.

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

45 “(b) A hospital may appoint a multidisciplinary committee with ethics as a core component of

1 the duties of the committee, or a hospital ethics committee, to participate in making decisions about  
2 giving informed consent to medically necessary health care services on behalf of a patient admitted  
3 to the hospital in accordance with subsection (3) of this section.

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

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

9 “(b) The hospital has performed a reasonable search, in accordance with the hospital’s policy for  
10 locating relatives and friends of a patient, for a health care representative appointed under ORS  
11 127.505 to 127.660 or an adult relative or adult friend of the patient who is capable of making health  
12 care decisions for the patient, including contacting social service agencies of the Oregon Health  
13 Authority or the Department of Human Services if the hospital has reason to believe that the pa-  
14 tient has a case manager with the authority or the department, and has been unable to locate any  
15 person who is capable of making health care decisions for the patient; and

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

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

22 “(5) A person appointed under subsection (2) of this section may not consent on a patient’s be-  
23 half to:

24 “(a) Mental health treatment;

25 “(b) Sterilization;

26 “(c) Abortion;

27 “(d) Except as provided in ORS 127.635 (3), the withholding or withdrawal of life-sustaining  
28 procedures as defined in ORS 127.505; or

29 “(e) Except as provided in ORS 127.580 (2), the withholding or withdrawal of artificially admin-  
30 istered nutrition and hydration, as defined in ORS 127.505, other than hyperalimentation, necessary  
31 to sustain life.

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

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

38 “**SECTION 20.** ORS 97.953 is amended to read:

39 “97.953. As used in ORS 97.951 to 97.982:

40 “(1) ‘Adult’ means an individual who is 18 years of age or older.

41 “(2) ‘Agent’ means [an]:

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

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

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

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

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

7           “(6)(a) ‘Disinterested witness’ means a witness other than:  
8           “(A) A spouse, child, parent, sibling, grandchild, grandparent or guardian of the individual who  
9 makes, amends, revokes or refuses to make an anatomical gift; or  
10           “(B) An adult who exhibited special care and concern for the individual.

11           “(b) ‘Disinterested witness’ does not include a person to whom an anatomical gift could pass  
12 under ORS 97.969.

13           “(7) ‘Document of gift’ means a donor card or other record used to make an anatomical gift. The  
14 term includes a statement, symbol or designation on a driver license, identification card or donor  
15 registry.

16           “(8) ‘Donor’ means an individual whose body or body part is the subject of an anatomical gift.

17           “(9) ‘Donor registry’ means a centralized database that contains records of anatomical gifts and  
18 amendments to or revocations of anatomical gifts.

19           “(10) ‘Driver license’ means a license or permit issued under ORS 807.021, 807.040, 807.200,  
20 807.280 or 807.730, regardless of whether conditions are attached to the license or permit.

21           “(11) ‘Eye bank’ means an organization licensed, accredited or regulated under federal or state  
22 law to engage in the recovery, screening, testing, processing, storage or distribution of human eyes  
23 or portions of human eyes.

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

26           “(13) ‘Hospital’ means a facility licensed as a hospital under the law of any state or a facility  
27 operated as a hospital by the United States, a state or a subdivision of a state.

28           “(14) ‘Identification card’ means the card issued under ORS 807.021, 807.400 or 807.730, or a  
29 comparable provision of the motor vehicle laws of another state.

30           “(15) ‘Know’ means to have actual knowledge.

31           “(16) ‘Minor’ means an individual who is under 18 years of age.

32           “(17) ‘Organ procurement organization’ means an organization designated by the Secretary of  
33 the United States Department of Health and Human Services as an organ procurement organization.

34           “(18) ‘Parent’ means a parent whose parental rights have not been terminated.

35           “(19) ‘Physician’ means an individual authorized to practice medicine or osteopathy under the  
36 law of any state.

37           “(20) ‘Procurement organization’ means an eye bank, organ procurement organization or tissue  
38 bank.

39           “(21) ‘Prospective donor’ means an individual who is dead or near death and has been deter-  
40 mined by a procurement organization to have a body part that could be medically suitable for  
41 transplantation, therapy, research or education. The term does not include an individual who has  
42 made a refusal.

43           “(22) ‘Reasonably available’ means able to be contacted by a procurement organization without  
44 undue effort and willing and able to act in a timely manner consistent with existing medical criteria  
45 necessary for the making of an anatomical gift.

1 “(23) ‘Recipient’ means an individual into whose body a decedent’s body part has been or is in-  
2 tended to be transplanted.

3 “(24) ‘Record’ means information that is inscribed on a tangible medium or that is stored in an  
4 electronic or other medium and is retrievable in perceivable form.

5 “(25) ‘Refusal’ means a record that expressly states an intent to prohibit other persons from  
6 making an anatomical gift of an individual’s body or body part.

7 “(26) ‘Sign’ means, with the present intent to authenticate or adopt a record:

8 “(a) To execute or adopt a tangible symbol; or

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

10 “(27) ‘State’ means a state of the United States, the District of Columbia, Puerto Rico, the  
11 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the  
12 United States.

13 “(28) ‘Technician’ means an individual determined to be qualified to remove or process body  
14 parts by an appropriate organization that is licensed, accredited or regulated under federal or state  
15 law. The term includes an enucleator.

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

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

20 “(31) ‘Transplant hospital’ means a hospital that furnishes organ transplants and other medical  
21 and surgical specialty services required for the care of transplant patients.

22 “**SECTION 21.** ORS 97.955 is amended to read:

23 “97.955. (1) Subject to ORS 97.963, a donor may make an anatomical gift of a donor’s body or  
24 body part during the life of the donor for the purpose of transplantation, therapy, research or edu-  
25 cation.

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

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

28 “(A) Emancipated; or

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

31 “(b) An agent of the donor, unless the *[power of attorney for health care]* **form appointing a**  
32 **health care representative, as defined in ORS 127.505**, or other record prohibits the agent from  
33 making an anatomical gift;

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

35 “(d) The donor’s guardian.

36 “**SECTION 22.** ORS 97.959 is amended to read:

37 “97.959. (1) Except as provided in subsection (7) or (8) of this section, an anatomical gift made  
38 under ORS 97.957 may be amended or revoked only by the donor in accordance with the provisions  
39 of this section and may not be amended or revoked by any other person otherwise authorized to  
40 make, amend or revoke a gift under ORS 97.963 or 97.967.

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

43 “(a) A record signed by:

44 “(A) The donor;

45 “(B) The other person; or

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

3 “(b) A later-executed document of gift that amends or revokes a previous anatomical gift or  
4 portion of an anatomical gift, either expressly or by inconsistency.

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

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

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

9 “(4) A donor or other person authorized to revoke an anatomical gift under subsection (7) or (8)  
10 of this section may revoke an anatomical gift by the destruction or cancellation of the document  
11 of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the  
12 gift.

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

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

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

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

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

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

25 “**SECTION 23.** ORS 163.193 is amended to read:

26 “163.193. (1) A person commits the crime of assisting another person to commit suicide if the  
27 person knowingly sells, or otherwise transfers for consideration, any substance or object, that is  
28 capable of causing death, to another person for the purpose of assisting the other person to commit  
29 suicide.

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

31 “(a) Acting pursuant to a court order, an advance directive or [*power of attorney for health*  
32 *care*] **form for appointing a health care representative** pursuant to ORS 127.505 to 127.660 or a  
33 POLST, as defined in ORS 127.663;

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

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

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

38 “**SECTION 24.** ORS 163.206 is amended to read:

39 “163.206. ORS 163.200 and 163.205 do not apply:

40 “(1) To a person acting pursuant to a court order, an advance directive or a [*power of attorney*  
41 *for health care*] **form for appointing a health care representative** pursuant to ORS 127.505 to  
42 127.660 or a POLST, as defined in ORS 127.663;

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

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

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

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

7  
8 **“REPEALS**

9  
10 **“SECTION 25. ORS 127.531 is repealed.**

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

12  
13 **“SAVINGS CLAUSES AND APPLICABILITY**

14  
15 **“SECTION 27. ORS 127.658 is amended to read:**

16 *“127.658. [(1) ORS 127.505 to 127.660 and 127.995 do not impair or supersede any power of attor-*  
17 *ney for health care, directive to physicians or health care instruction in effect before November 4,*  
18 *1993.]*

19 *“[(2) Any power of attorney for health care or directive to physicians executed before November*  
20 *4, 1993, shall be governed by the provisions of ORS 127.505 to 127.660 and 127.995, except that:]*

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

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

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

29 *“[(3) A health care organization, as defined in ORS 127.646, that on November 4, 1993, has printed*  
30 *materials with the information and forms which were required by ORS 127.649, prior to November 4,*  
31 *1993, may use such printed materials until December 1, 1993.]*

32 **“(1) ORS 127.505 to 127.660 as enacted, the repeal of any statute that was a part of ORS**  
33 **127.505 to 127.660 and subsequent amendments to the provisions of ORS 127.505 to 127.660 do**  
34 **not impair or supersede any advance directive, form appointing a health care representative**  
35 **or directive to physicians executed in accordance with:**

36 **“(a) The provisions of ORS 127.505 to 127.660; or**

37 **“(b) The provisions of ORS 127.505 to 127.660 or any other statute governing an advance**  
38 **directive, a form appointing a health care representative or a directive to physicians that**  
39 **was in effect on the date that the advance directive, the form appointing a health care rep-**  
40 **resentative or the directive to physicians was executed.**

41 **“(2) An advance directive, a form appointing a health care representative or a directive**  
42 **to physicians executed on, before or after the operative date specified in section 30 of this**  
43 **2016 Act shall be governed by the provisions of ORS 127.505 to 127.660, except that the ad-**  
44 **advance directive, the form appointing a health care representative or the directive to physi-**  
45 **cians is valid if it complies with either:**



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

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

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

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

12

13

#### “OPERATIVE DATE

14

15       “SECTION 30. (1) Sections 1 to 6 of this 2016 Act, the amendments to statutes by sections  
16       7 to 24 and 27 of this 2016 Act and the repeal of ORS 127.531 by section 25 of this 2016 Act  
17       become operative on January 1, 2017.

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

25

26

#### “UNIT CAPTIONS

27

28       “SECTION 31. The unit captions used in this 2016 Act are provided only for the conven-  
29       ience of the reader and do not become part of the statutory law of this state or express any  
30       legislative intent in the enactment of this 2016 Act.

31

32

#### “EFFECTIVE DATE

33

34       “SECTION 32. This 2016 Act takes effect on the 91st day after the date on which the 2016  
35       regular session of the Seventy-eighth Legislative Assembly adjourns sine die.”.

36