

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO  
SENATE BILL 1552**

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

3 In line 3, delete “127.649 and 127.658” and insert “127.555, 127.565, 127.625,  
4 127.649, 127.658, 127.737, 127.760, 163.193 and 163.206”.

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

6  
7 **“FORM OF AN ADVANCE DIRECTIVE**

8  
9 **“(Series Placement)**

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

13  
14 **“(Advance Directive Rules Adoption Committee)**

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

19 **“(2) The committee consists of 13 members. One voting member  
20 shall be the Long Term Care Ombudsman or the designee of the Long  
21 Term Care Ombudsman. The other 12 members shall be appointed as**

1 follows:

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

4 “(b) The Speaker of the House of Representatives shall appoint one  
5 nonvoting member from among members of the House of Represen-  
6 tatives.

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

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

9 “(B) One member who represents hospitals.

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

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

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

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

18 “(G) One member from among members proposed by the Oregon  
19 State Bar who is an expert in elder law and who has expertise in ad-  
20 vising individuals on how to execute an advance directive.

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

24 “(I) One member from among members proposed by the Oregon  
25 State Bar who is an expert in health law.

26 “(3) The term of office of each member of the committee is four  
27 years, but a member serves at the pleasure of the appointing author-  
28 ity. Before the expiration of the term of a member, the appointing  
29 authority shall appoint a successor whose term begins on January 1  
30 next following. A member is eligible for reappointment. If there is a

1 vacancy for any cause, the appointing authority shall make an ap-  
2 pointment to become immediately effective for the unexpired term.

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

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

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

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

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

14 “(9) On or before December 1 of each even-numbered year, the  
15 committee shall submit a report in the manner provided in ORS 192.245  
16 to the interim committees of the Legislative Assembly related to  
17 health care and judiciary. The report must include the form of an ad-  
18 vance directive adopted by the committee under section 4 of this 2016  
19 Act, an assessment of the efficacy of using that form, any issue pre-  
20 sented through use of that form and any potential change to that form  
21 being considered by the committee.

22 “(10) Members of the committee are not entitled to compensation,  
23 but may be reimbursed for actual and necessary travel and other ex-  
24 penses incurred by them in the performance of their official duties in  
25 the manner and amounts provided for in ORS 292.495. Claims for ex-  
26 penses shall be paid out of funds appropriated to the authority for  
27 purposes of the committee.

28 **“SECTION 3.** Notwithstanding the term of office specified by sec-  
29 tion 2 of this 2016 Act, of the voting members first appointed by the  
30 Governor to the Advance Directive Rules Adoption Committee:

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

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

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

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

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

14       **“(a) A statement on the purposes of the advance directive, includ-**  
15 **ing:**

16       **“(A) A statement on the purpose of the principal appointing a**  
17 **health care representative to make health care decisions for the prin-**  
18 **cipal if the principal becomes incapable; and**

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

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

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

24       **“(B) Either witnessed or notarized.**

25       **“(c) A statement that the appointment of a health care represen-**  
26 **tative or of an alternative health care representative must be accepted**  
27 **by the health care representative or the alternative health care rep-**  
28 **resentative to be effective.**

29       **“(d) A statement that the advance directive, once executed, super-**  
30 **sedes any previously executed advance directive.**

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

3       “(f) The name, address and other contact information of any health  
4 care representative or any alternative health care representative ap-  
5 pointed by the principal.

6       “(g) A section providing the principal with an opportunity to state  
7 the principal’s values and beliefs with respect to health care decisions,  
8 including the opportunity to describe the principal’s wishes, by com-  
9 pleting a checklist, by providing instruction through narrative or  
10 other means, or by any combination of methods used to describe the  
11 principal’s wishes, regarding:

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

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

16       “(C) When the principal wants to specifically limit health care  
17 necessary to preserve life and recover, including artificially adminis-  
18 tered nutrition and hydration, cardiopulmonary resuscitation and  
19 transport to a hospital; and

20       “(D) When the principal desires comfort care instead of health care  
21 necessary to preserve life and recover.

22       “(h) A section where the principal and the witnesses or notary may  
23 accept by signature or other means, including, but not limited to,  
24 electronic or verbal means, the advance directive.

25       “(i) A section where any health care representative or any alterna-  
26 tive health care representative appointed by the principal may accept  
27 by signature or other means, including, but not limited to, electronic  
28 or verbal means, the advance directive.

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

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

5       “(5) A principal may attach supplementary material to an advance  
6 directive. In addition to the form of an advance directive adopted un-  
7 der this section, supplementary material attached to an advance di-  
8 rective under this subsection is a part of the advance directive.

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

11  
12                   “(Form for Appointing Health Care Representative  
13                   and Alternative Health Care Representative)  
14

15       “SECTION 5. A form for appointing a health care representative  
16 and an alternative health care representative must be written in sub-  
17 stantially the following form:

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

23       • If you have completed a form appointing a health care represen-  
24 tative in the past, this new form will replace any older form. Your  
25 appointment of a health care representative is not effective until the  
26 health care representative accepts the appointment.

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

29       1. ABOUT ME.

30       Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

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

2 Address: \_\_\_\_\_

3 E-mail: \_\_\_\_\_

4 **2. MY HEALTH CARE REPRESENTATIVE.**

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

7 Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

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

9 Address: \_\_\_\_\_

10 E-mail: \_\_\_\_\_

11 I choose the following people to be my alternate health care repre-  
12 sentatives if my first choice is not available to make health care de-  
13 cisions for me or if I cancel the first health care representative's  
14 appointment.

15 **First alternate health care representative:**

16 Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

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

18 Address: \_\_\_\_\_

19 E-mail: \_\_\_\_\_

20 **Second alternate health care representative:**

21 Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

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

23 Address: \_\_\_\_\_

24 E-mail: \_\_\_\_\_

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

26 I accept this appointment and agree to serve as health care repre-  
27 sentative.

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

29 Date \_\_\_\_\_

30 **First alternate health care representative**

1 (name): \_\_\_\_\_

2 Date \_\_\_\_\_

3 Second alternate health care representative

4 (name): \_\_\_\_\_

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

6 **4. WITNESS.**

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

8 **A. WITNESS DECLARATION:**

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

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

16 **Signature:** \_\_\_\_\_

17 **Date:** \_\_\_\_\_

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

19 **Signature:** \_\_\_\_\_

20 **Date:** \_\_\_\_\_

21 **B. NOTARY:**

22 **State of** \_\_\_\_\_

23 **County of** \_\_\_\_\_

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

25 \_\_\_\_\_.

26 \_\_\_\_\_

27 **Notary Public - State of Oregon**

28 **5. MY SIGNATURE.**

29 **My signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

30 " \_\_\_\_\_



1                                   “(Temporary Form for Advance Directive)  
2

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

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

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

13           **“ \_\_\_\_\_**

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

18           **• If you have completed an advance directive in the past, this new**  
19 **advance directive will replace the older directives.**

20           **• You must sign this form for it to be effective. You must also have**  
21 **it witnessed by two witnesses or a notary. Your appointment of a**  
22 **health care representative is not effective until the health care repre-**  
23 **sentative accepts the appointment.**

24           **1. ABOUT ME.**

25           **Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_**

26           **Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_**

27           **Address: \_\_\_\_\_**

28           **E-mail: \_\_\_\_\_**

29           **2. MY HEALTH CARE REPRESENTATIVE.**

30           **I choose the following person as my health care representative to**

1 **make health care decisions for me if I can't speak for myself.**

2 **Name:** \_\_\_\_\_ **Relationship:** \_\_\_\_\_

3 **Telephone numbers: (Home)**\_\_\_\_\_ **(Work)**\_\_\_\_\_ **(Cell)**\_\_\_\_\_

4 **Address:** \_\_\_\_\_

5 **E-mail:** \_\_\_\_\_

6 **I choose the following people to be my alternate health care repre-**  
7 **sentatives if my first choice is not available to make health care de-**  
8 **isions for me or if I cancel the first health care representative's**  
9 **appointment.**

10 **First alternate health care representative:**

11 **Name:** \_\_\_\_\_ **Relationship:** \_\_\_\_\_

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

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

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

15 **Second alternate health care representative:**

16 **Name:** \_\_\_\_\_ **Relationship:** \_\_\_\_\_

17 **Telephone numbers: (Home)**\_\_\_\_\_ **(Work)**\_\_\_\_\_ **(Cell)**\_\_\_\_\_

18 **Address:** \_\_\_\_\_

19 **E-mail:** \_\_\_\_\_

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

21 **I accept this appointment and agree to serve as health care repre-**  
22 **sentative.**

23 **Health care representative (name):** \_\_\_\_\_

24 **Date** \_\_\_\_\_

25 **First alternate health care representative**  
26 **(name):** \_\_\_\_\_

27 **Date** \_\_\_\_\_

28 **Second alternate health care representative**  
29 **(name):** \_\_\_\_\_

30 **Date** \_\_\_\_\_

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

2       **If you wish to give directions to your health care representative**  
3 **about your health care decisions, initial one of the following three**  
4 **statements:**

5       **\_\_\_ To the extent appropriate, my health care representative must**  
6 **follow my instructions.**

7       **\_\_\_ My instructions are guidelines for my health care representative**  
8 **to consider when making decisions about my care.**

9       **\_\_\_ Other instructions: \_\_\_\_\_**

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

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

12       **• The term “as my physician recommends” means that you want**  
13 **your physician to use life support if your physician believes it could**  
14 **be helpful, and that you want your physician to discontinue life sup-**  
15 **port if your physician believes it is not helping your health condition**  
16 **or symptoms.**

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

19       **• The term “tube feeding” means artificially administered food and**  
20 **water.**

21       **• If you refuse tube feeding, you should understand that**  
22 **malnutrition, dehydration and death will probably result.**

23       **• You will receive care for your comfort and cleanliness no matter**  
24 **what choices you make.**

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

29       **\_\_\_ I do not want my life to be prolonged by life support. I also do**  
30 **not want tube feeding as life support. I want my physician to allow**

1 me to die naturally if my physician and another knowledgeable physi-  
2 cian confirm I am in any of the medical conditions listed below.

3 **B. Additional Directions Regarding End of Life Care.** Here are my  
4 desires about my health care if my physician and another knowledg-  
5 eable physician confirm that I am in a medical condition described be-  
6 low:

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

9 **INITIAL ONE:**

10  I want to receive tube feeding.

11  I want tube feeding only as my physician recommends.

12  I DO NOT WANT tube feeding.

13 **INITIAL ONE:**

14  I want any other life support that may apply.

15  I want life support only as my physician recommends.

16  I DO NOT WANT life support.

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

19 **INITIAL ONE:**

20  I want to receive tube feeding.

21  I want tube feeding only as my physician recommends.

22  I DO NOT WANT tube feeding.

23 **INITIAL ONE:**

24  I want any other life support that may apply.

25  I want life support only as my physician recommends.

26  I DO NOT WANT life support.

27 **c. Advanced Progressive Illness.** If I have a progressive illness that  
28 will be fatal and is in an advanced stage, and I am consistently and  
29 permanently unable to communicate by any means, swallow food and  
30 water safely, care for myself and recognize my family and other peo-

1 ple, and it is very unlikely that my condition will substantially im-  
2 prove:

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 DO NOT WANT life support.

11 **d. Extraordinary Suffering. If life support would not help my med-  
12 ical condition and would make me suffer permanent and severe pain:**

13 **INITIAL ONE:**

14  I want to receive tube feeding.

15  I want tube feeding only as my physician recommends.

16  I DO NOT WANT tube feeding.

17 **INITIAL ONE:**

18  I want any other life support that may apply.

19  I want life support only as my physician recommends.

20  I DO NOT WANT life support.

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

28 **6. WITNESS.**

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

30 **A. WITNESS DECLARATION:**

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

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

8 Signature: \_\_\_\_\_

9 Date: \_\_\_\_\_

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

11 Signature: \_\_\_\_\_

12 Date: \_\_\_\_\_

13 **B. NOTARY:**

14 State of \_\_\_\_\_

15 County of \_\_\_\_\_

16 Signed or attested before me on \_\_\_\_\_, 2\_\_\_\_, by  
17 \_\_\_\_\_.

18 \_\_\_\_\_

19 Notary Public - State of Oregon

20 **7. MY SIGNATURE.**

21 My signature: \_\_\_\_\_ Date: \_\_\_\_\_

22 “ \_\_\_\_\_

23

24 **“APPOINTING HEALTH CARE REPRESENTATIVES**  
25 **AND EXECUTING ADVANCE DIRECTIVES**

26

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

28 *“127.510. [(1) A capable adult may designate in writing a competent adult*  
29 *to serve as attorney-in-fact for health care. A capable adult may also designate*  
30 *a competent adult to serve as alternative attorney-in-fact if the original*

1 *designee is unavailable, unable or unwilling to serve as attorney-in-fact at any*  
2 *time after the power of attorney for health care is executed. The power of at-*  
3 *torney for health care is effective when it is signed, witnessed and accepted*  
4 *as required by ORS 127.505 to 127.660 and 127.995. The attorney-in-fact so*  
5 *appointed shall make health care decisions on behalf of the principal if the*  
6 *principal becomes incapable.]*

7 *“(2) A capable adult may execute a health care instruction. The instruc-*  
8 *tion shall be effective when it is signed and witnessed as required by ORS*  
9 *127.505 to 127.660 and 127.995.]*

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

16 **“(b) A capable adult may use the form adopted under section 4 of**  
17 **this 2016 Act or the form set forth in section 5 of this 2016 Act to ap-**  
18 **point one or more competent adults to serve as alternative health care**  
19 **representatives for the capable adult. For purposes of ORS 127.505 to**  
20 **127.660, an alternative health care representative has the rights and**  
21 **privileges of a health care representative appointed under paragraph**  
22 **(a) of this subsection, including the rights described in ORS 127.535.**  
23 **An alternative health care representative appointed under this para-**  
24 **graph shall make health care decisions for the principal if:**

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

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

29 **“(c) For purposes of paragraph (b) of this subsection, the health**  
30 **care representative appointed under paragraph (a) of this subsection**

1 **is unavailable to make timely health care decisions for the principal**  
2 **if the health care representative is not available to answer questions**  
3 **for the health care provider in person, by telephone or by another**  
4 **means of direct communication.**

5 **“(d) An appointment made under this section is effective when it**  
6 **is accepted by the principal and the health care representative and**  
7 **witnessed or notarized as required by ORS 127.505 to 127.660.**

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

11 **“(3) Unless the period of time that an advance directive or a form ap-**  
12 **pointing a health care representative is [to be] effective is limited by the**  
13 **terms of the advance directive or the form appointing a health care rep-**  
14 **resentative, the advance directive [shall continue] or the form appointing**  
15 **a health care representative continues in effect until:**

16 **“(a) The principal dies; or**

17 **“(b) The advance directive or the form appointing a health care rep-**  
18 **resentative is revoked, suspended or superseded pursuant to ORS 127.545.**

19 **“(4) Notwithstanding subsection (3) of this section, if the principal is in-**  
20 **capable at the expiration of the term of the advance directive or the form**  
21 **appointing a health care representative, the advance directive or the**  
22 **form appointing a health care representative continues in effect until:**

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

24 **“(b) The principal dies; or**

25 **“(c) The advance directive or the form appointing a health care rep-**  
26 **resentative is revoked, suspended or superseded pursuant to the provisions**  
27 **of ORS 127.545.**

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



1 principal's health care provider.

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

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

7 “127.515. (1) An advance directive **or a form appointing a health care**  
8 **representative** may be executed by a resident or nonresident adult of this  
9 state in the manner provided by ORS 127.505 to 127.660. [*and 127.995.*]

10 “[*(2) A power of attorney for health care must be in the form provided by*  
11 *Part B of the advance directive form set forth in ORS 127.531, or must be in*  
12 *the form provided by ORS 127.530 (1991 Edition).*]

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

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

19 “[*(a) Each witness shall witness either the signing of the instrument by the*  
20 *principal or the principal's acknowledgment of the signature of the principal.*]

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

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

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

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

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

30 “[*(d) The attorney-in-fact for health care or alternative attorney-in-fact may*

1 *not be a witness. The principal's attending physician at the time the advance*  
2 *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*  
4 *advance directive is executed, one of the witnesses must be an individual des-*  
5 *ignated by the facility and having any qualifications that may be specified by*  
6 *the Department of Human Services by rule.]*

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

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

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

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

17 **“(a) The principal signing the advance directive or the form ap-**  
18 **pointing a health care representative; or**

19 **“(b) The principal acknowledging the signature of the principal on**  
20 **the advance directive or the form appointing a health care represen-**  
21 **tative or the applicable method by which the principal accepted the**  
22 **advance directive or the form appointing a health care representative.**

23 **“(4) For an advance directive or a form appointing a health care**  
24 **representative to be validated under subsection (2)(a) of this section,**  
25 **the witnesses may not, on the date the advance directive or the form**  
26 **appointing a health care representative is signed or acknowledged, be**  
27 **the principal's attending physician or other health care provider who**  
28 **has primary responsibility for the care and treatment of the principal.**

29 **“(5) If an advance directive or a form appointing a health care**  
30 **representative is validated under subsection (2)(a) of this section, nei-**

1 **ther witness may be a health care representative or an alternative**  
2 **health care representative appointed under ORS 127.510 for the princi-**  
3 **pal.**

4 **“(6) If an advance directive or a form appointing a health care**  
5 **representative is validated under subsection (2)(a) of this section, and**  
6 **if the principal is a patient in a long term care facility at the time the**  
7 **advance directive or the form appointing a health care representative**  
8 **is executed, one of the witnesses must be an individual who is desig-**  
9 **ned by the facility and qualified as specified by the Department of**  
10 **Human Services by rule.**

11 **“[(5)] (7) Notwithstanding [subsections (2) to (4)] subsection (2) of this**  
12 **section, an advance directive or a form appointing a health care repre-**  
13 **sentative that is** executed by an adult who [*at the time of execution resided*  
14 *in another state,*] **resides in another state at the time of execution and**  
15 **that is executed** in compliance with [*the formalities of execution required*  
16 *by*] the laws of that state, the laws of the state where the principal [*was*] **is**  
17 **located at the time of execution or the laws of this state[,] is validly exe-**  
18 **cuted for the purposes of ORS 127.505 to 127.660 [and 127.995 and may be**  
19 **given effect in accordance with its provisions, subject to the laws of this**  
20 **state].**

21

22

## **“DEFINITIONS**

23

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

25 **“127.505. As used in ORS 127.505 to 127.660 and 127.995:**

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

28 **“[(2) ‘Advance directive’ means a document that contains a health care in-**  
29 **struction or a power of attorney for health care.]**

30 **“(2) ‘Advance directive’ means a document executed by a principal**

1 **to indicate the principal’s instructions regarding health care decisions.**

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

7 “(4)(a) ‘Artificially administered nutrition and hydration’ means a med-  
8 ical intervention to provide food and water by tube, mechanical device or  
9 other medically assisted method.

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

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

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

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

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

26 “(7) ‘Form appointing a health care representative’ means the por-  
27 tion of the form adopted under section 4 of this 2016 Act used to ap-  
28 point a health care representative or an alternative health care  
29 representative or the form set forth in section 5 of this 2016 Act.

30 “(8) ‘Health care’ means diagnosis, treatment or care of disease, injury

1 and congenital or degenerative conditions, including the use, maintenance,  
2 withdrawal or withholding of life-sustaining procedures and the use, main-  
3 tenance, withdrawal or withholding of artificially administered nutrition and  
4 hydration.

5 “(9) ‘Health care decision’ means consent, refusal of consent or with-  
6 holding or withdrawal of consent to health care, and includes decisions re-  
7 lating to admission to or discharge from a health care facility.

8 “(10) ‘Health care facility’ means a health care facility as defined in ORS  
9 442.015, a domiciliary care facility as defined in ORS 443.205, a residential  
10 facility as defined in ORS 443.400, an adult foster home as defined in ORS  
11 443.705 or a hospice program as defined in ORS 443.850.

12 “[11] *‘Health care instruction’ or ‘instruction’ means a document executed*  
13 *by a principal to indicate the principal’s instructions regarding health care*  
14 *decisions.*]

15 “[12] (11) ‘Health care provider’ means a person licensed, certified or  
16 otherwise authorized or permitted by the law of this state to administer  
17 health care in the ordinary course of business or practice of a profession,  
18 and includes a health care facility.

19 “[13] (12) ‘Health care representative’ means:

20 “[a] *An attorney-in-fact;*]

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

23 “(b) A person who has authority to make health care decisions for a  
24 principal under the provisions of ORS 127.635 (2) or (3); or

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

27 “[14] (13) ‘Incapable’ means that in the opinion of the court in a pro-  
28 ceeding to appoint or confirm authority of a health care representative, or  
29 in the opinion of the principal’s attending physician, a principal lacks the  
30 ability to make and communicate health care decisions to health care pro-

1 viders, including communication through persons familiar with the  
2 principal's manner of communicating if those persons are available.  
3 [*Capable' means not incapable.*]

4 “[(15)] (14) ‘Instrument’ means an advance directive, [*acceptance,*] **form**  
5 **appointing a health care representative**, disqualification, withdrawal,  
6 court order, court appointment or other document governing health care de-  
7 cisions.

8 “[*(16) ‘Life support’ means life-sustaining procedures.*]

9 “[*(17)*] (15)(a) ‘Life-sustaining procedure’ means any medical procedure,  
10 pharmaceutical, medical device or medical intervention that maintains life  
11 by sustaining, restoring or supplanting a vital function.

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

14 “[*(18)*] (16) ‘Medically confirmed’ means the medical opinion of the at-  
15 tending physician has been confirmed by a second physician who has exam-  
16 ined the patient and who has clinical privileges or expertise with respect to  
17 the condition to be confirmed.

18 “[*(19)*] (17) ‘Permanently unconscious’ means completely lacking an  
19 awareness of self and external environment, with no reasonable possibility  
20 of a return to a conscious state, and that condition has been medically con-  
21 firmed by a neurological specialist who is an expert in the examination of  
22 unresponsive individuals.

23 “[*(20)*] (18) ‘Physician’ means an individual licensed to practice medicine  
24 by the Oregon Medical Board.

25 “[*(21) ‘Power of attorney for health care’ means a power of attorney docu-*  
26 *ment that authorizes an attorney-in-fact to make health care decisions for the*  
27 *principal when the principal is incapable.*]

28 “[*(22)*] (19) ‘Principal’ means:

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

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

1 “(c) A person for whom a health care representative is sought; or  
2 “(d) A person being evaluated for capability who will have a health care  
3 representative if the person is determined to be incapable.

4 “[~~(23)~~] **(20)** ‘Terminal condition’ means a health condition in which death  
5 is imminent irrespective of treatment, and where the application of life-  
6 sustaining procedures or the artificial administration of nutrition and hy-  
7 dration serves only to postpone the moment of death of the principal.

8 “[~~(24)~~] ‘Tube feeding’ means artificially administered nutrition and hy-  
9 dration.]

10  
11 **“CONFORMING AMENDMENTS**

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

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

1 **Until the principal becomes incapable, the health care representative**  
2 **or an alternative health care representative may withdraw by giving**  
3 **notice to the principal. After the principal becomes incapable, the**  
4 **health care representative or an alternative health care representative**  
5 **may withdraw by giving notice to the health care provider.**

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

7 “127.535. (1) The health care representative has all the authority over the  
8 principal’s health care that the principal would have if not incapable, subject  
9 to the limitations of the appointment and ORS 127.540 and 127.580. A health  
10 care representative who is known to the health care provider to be available  
11 to make health care decisions has priority over any person other than the  
12 principal to act for the principal [*in all*] **with respect to** health care deci-  
13 sions. A health care representative has authority to make a health care de-  
14 cision for a principal only when the principal is incapable.

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

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

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



1 the best interests of the principal.

2 “(5) ORS 127.505 to 127.660 do not authorize a health care representative  
3 or health care provider to withhold or withdraw life-sustaining procedures  
4 or artificially administered nutrition and hydration in any situation if the  
5 principal manifests an objection to the health care decision. If the principal  
6 objects to such a health care decision, the health care provider shall proceed  
7 as though the principal [*were*] **is** capable [*for the purposes of*] **with respect**  
8 **to** the health care decision [*objected to*].

9 “(6) An instrument that would be a valid advance directive **or form ap-**  
10 **pointing a health care representative** except that the instrument [*is not*  
11 *a form described in ORS 127.515, has*] **is** expired, is not properly witnessed  
12 or otherwise fails to meet the formal requirements of ORS 127.505 to 127.660  
13 shall constitute evidence of the patient’s desires and interests.

14 “(7) A health care representative is a personal representative for the  
15 purposes of ORS 192.553 to 192.581 and the federal Health Insurance Porta-  
16 bility and Accountability Act privacy regulations, 45 C.F.R. parts 160 and  
17 164.

18 “**SECTION 12.** ORS 127.545 is amended to read:

19 “127.545. (1) An advance directive or a health care decision by a health  
20 care representative may be revoked:

21 “(a) If the advance directive or health care decision involves the decision  
22 to withhold or withdraw life-sustaining procedures or artificially adminis-  
23 tered nutrition and hydration, at any time and in any manner by which the  
24 principal is able to communicate the intent to revoke; or

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

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

1 inform the attending physician or health care provider of the revocation.

2 “(3) Upon learning [of] **about** the revocation, the [*health care provider*  
3 *or*] attending physician **or health care provider** shall cause the revocation  
4 to be made a part of the principal’s medical records.

5 “[*(4) Execution of a valid power of attorney for health care revokes any*  
6 *prior power of attorney for health care. Unless the health care instruction*  
7 *provides otherwise, execution of a valid health care instruction revokes any*  
8 *prior health care instruction.*]

9 “**(4) Unless the advance directive provides otherwise:**

10 “**(a) Execution of an advance directive revokes any prior advance**  
11 **directive; and**

12 “[*(5) (b) [Unless the advance directive provides otherwise,] The directions*  
13 *as to health care decisions in [a valid] an advance directive supersede:*

14 “[*(a) (A) Any directions contained in a previous court appointment or*  
15 *advance directive; and*

16 “[*(b) (B) Any prior inconsistent expression of desires with respect to*  
17 *health care decisions.*

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

20 “**(5) Unless the form appointing a health care representative pro-**  
21 **vides otherwise:**

22 “**(a) Execution of a form appointing a health care representative**  
23 **revokes any prior form appointing a health care representative;**

24 “**(b) Valid appointment of a health care representative or an alter-**  
25 **native health care representative under ORS 127.510 supersedes:**

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

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

30 “[*(7) Unless the power of attorney for health care expressly provides other-*

1 *wise, a power of attorney for health care is suspended:]*

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

3 *“[(a)] (A) If [both the attorney-in-fact and the alternative attorney-in-fact]*  
4 **the appointed health care representative and all appointed alternative**  
5 **health care representatives** have withdrawn; or

6 *“[(b)] (B) If the [power of attorney] form appointing a health care*  
7 **representative** names the principal’s spouse as *[attorney-in-fact]* **the health**  
8 **care representative or an alternative health care representative**, a pe-  
9 tition for dissolution or annulment of marriage is filed and the principal does  
10 not reaffirm the appointment *[in writing]* after the filing of the petition.

11 *“[(8)(a)] (6)(a) If the principal has both a valid [health care instruction]*  
12 **advance directive** and a valid *[power of attorney for health care]* **form ap-**  
13 **pointing a health care representative**, and if the directions reflected in  
14 those documents are inconsistent, the document last executed governs to the  
15 extent of the inconsistency.

16 *“(b) If the principal has both a valid [health care instruction] advance*  
17 **directive**, or a valid *[power of attorney for health care]* **form appointing a**  
18 **health care representative**, and a declaration for mental health treatment  
19 made in accordance with ORS 127.700 to 127.737, and if the directions re-  
20 flected in those documents are inconsistent, the directions contained in the  
21 declaration for mental health treatment governs to the extent of the incon-  
22 sistency.

23 *“[(9)] (7) Any reinstatement of an advance directive or a form appoint-*  
24 **ing a health care representative** must be in writing.

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

26 *“127.550. (1) A health care decision made by an individual who is au-*  
27 *thorized to make the decision under ORS 127.505 to 127.660 [and 127.995] is*  
28 *effective immediately and does not require judicial approval.*

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

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

2       “(b) Determining whether an appointment of the health care represen-  
3       tative or [*a health care instruction*] **an advance directive** is valid or has  
4       been suspended, reinstated, revoked or terminated.

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

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

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

13       “(f) Approving any health care decision that by law requires court ap-  
14       proval.

15       “(g) Determining whether the acts or proposed acts of the health care  
16       representative are clearly inconsistent with the desires of the principal as  
17       made known to the health care representative, or where the desires of the  
18       principal are unknown or unclear, whether the acts or proposed acts of the  
19       health care representative are clearly contrary to the best interests of the  
20       principal.

21       “(h) Declaring that a [*power of attorney for health care*] **form appointing**  
22       **a health care representative** is **suspended or** revoked upon a determi-  
23       nation by the court that the [*attorney-in-fact*] **appointed health care rep-**  
24       **resentative or any appointed alternative health care representative** has  
25       made a health care decision for the principal that authorized anything ille-  
26       gal. A suspension or revocation of a [*power of attorney*] **form appointing**  
27       **a health care representative** under this paragraph shall be in the dis-  
28       cretion of the court.

29       “(i) Considering any other matter that the court determines needs to be  
30       decided for the protection of the principal.

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

2 “(a) The principal.

3 “(b) The health care representative.

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

5 “(d) An adult relative or adult friend of the principal who is familiar with  
6 the desires of the principal.

7 “(e) The guardian of the principal.

8 “(f) The conservator of the principal.

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

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

12 “(5) Any of the determinations described in this section may be made by  
13 the court as a part of a protective proceeding under ORS chapter 125 if a  
14 guardian or temporary guardian has been appointed for the principal, or if  
15 the petition seeks the appointment of a guardian or a temporary guardian  
16 for the principal.

17 **“SECTION 14.** ORS 127.555 is amended to read:

18 “127.555. (1) If there is more than one physician caring for a principal, the  
19 principal shall designate one physician as the attending physician. If the  
20 principal is incapable, the health care representative for the principal shall  
21 designate the attending physician.

22 “(2) Health care representatives, and persons who are acting under a  
23 reasonable belief that they are health care representatives, shall not be  
24 guilty of any criminal offense, or subject to civil liability, or in violation of  
25 any professional oath, affirmation or standard of care for any action taken  
26 in good faith as a health care representative.

27 “(3) A health care provider acting or declining to act in reliance on the  
28 health care decision made in an advance directive, made by an attending  
29 physician under ORS 127.635 (3), or made by a person who the provider be-  
30 lieves is the health care representative for an incapable principal, is not

1 subject to criminal prosecution, civil liability or professional disciplinary  
2 action on the grounds that the health care decision is unauthorized unless  
3 the provider:

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

6 “(b) Acts without medical confirmation as required under ORS 127.505 to  
7 127.660 [*and 127.995*];

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

10 “(d) Acts after receiving notice that:

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

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

15 “(C) The health care representative has withdrawn or has been disquali-  
16 fied.

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

18 “(a) The manner of administering health care pursuant to a health care  
19 decision made by the health care representative or by [*a health care in-*  
20 *struction*] **an advance directive**; or

21 “(b) The manner of determining the health condition or incapacity of the  
22 principal.

23 “(5) A health care provider who determines that a principal is incapable  
24 is not subject to criminal prosecution, civil liability or professional discipli-  
25 nary action for failing to follow that principal’s direction except for a failure  
26 to follow a principal’s manifestation of an objection to a health care decision  
27 under ORS 127.535 (5).

28 “**SECTION 15.** ORS 127.565 is amended to read:

29 “127.565. (1) In following [*a health care instruction*] **an advance directive**  
30 or the decision of a health care representative, a health care provider shall

1 exercise the same independent medical judgment that the health care pro-  
2 vider would exercise in following the decisions of the principal if the prin-  
3 cipal were capable.

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

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

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

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

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

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

25 “(a) The health care provider shall promptly notify the health care rep-  
26 resentative, if there is a health care representative;

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

30 “(c) If the **health care** representative’s authority or decision is not in

1 dispute, the **health care** representative shall make a reasonable effort to  
2 transfer the principal to the care of another physician or health care pro-  
3 vider; and

4 “(d) If there is no health care representative for an incapable patient, and  
5 the health care decisions are not in dispute, the health care provider shall,  
6 without abandoning the patient, either discharge the patient or make a rea-  
7 sonable effort to locate a different health care provider and authorize the  
8 transfer of the patient to that provider.

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

10 “127.649. (1) Subject to the provisions of ORS 127.652 and 127.654, all  
11 health care organizations shall maintain written policies and procedures,  
12 applicable to all capable adults who are receiving health care by or through  
13 the health care organization, that provide for:

14 “(a) Delivering to those individuals the following information and mate-  
15 rials, in written form, without recommendation:

16 “(A) Information on the rights of the individual under [*Oregon law*] **the**  
17 **laws of this state** to make health care decisions, including the right to ac-  
18 cept or refuse medical or surgical treatment and the right to execute [*ad-*  
19 *van*ce directives] **an advance directive or a form appointing a health care**  
20 **representative;**

21 “(B) Information on the policies of the health care organization with re-  
22 spect to the implementation of the rights of the individual under [*Oregon*  
23 *law*] **the laws of this state** to make health care decisions;

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

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

29 “(D) The name of a person who can provide additional information con-  
30 cerning [*the forms for*] advance directives **and forms appointing a health**



1 **care representative.**

2 “(b) Documenting in a prominent place in the individual’s medical record  
3 whether the individual has executed an advance directive **or a form ap-**  
4 **pointing a health care representative.**

5 “(c) Ensuring compliance by the health care organization with [*Oregon*  
6 *law relating to advance directives*] **the laws of this state governing ad-**  
7 **vance directives and forms appointing a health care representative.**

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

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

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

19 “127.737. (1) ORS 127.525, 127.550, 127.565, 127.570, 127.575 and 127.995 ap-  
20 ply to a declaration for mental health treatment.

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

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

25 “127.760. (1) As used in this section:

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

30 “(b) ‘Health care provider’ means a person licensed, certified or otherwise

1 authorized by the law of this state to administer health care in the ordinary  
2 course of business or practice of a profession.

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

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

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

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

19 “(b) A hospital may appoint a multidisciplinary committee with ethics as  
20 a core component of the duties of the committee, or a hospital ethics com-  
21 mittee, to participate in making decisions about giving informed consent to  
22 medically necessary health care services on behalf of a patient admitted to  
23 the hospital in accordance with subsection (3) of this section.

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

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

30 “(b) The hospital has performed a reasonable search, in accordance with

1 the hospital's policy for locating relatives and friends of a patient, for a  
2 health care representative appointed under ORS 127.505 to 127.660 or an  
3 adult relative or adult friend of the patient who is capable of making health  
4 care decisions for the patient, including contacting social service agencies  
5 of the Oregon Health Authority or the Department of Human Services if the  
6 hospital has reason to believe that the patient has a case manager with the  
7 authority or the department, and has been unable to locate any person who  
8 is capable of making health care decisions for the patient; and

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

11       “(4) Notwithstanding subsection (3) of this section, if a patient's wishes  
12 regarding health care services were made known during a period when the  
13 patient was capable of making and communicating health care decisions, the  
14 hospital and the person appointed under subsection (2) of this section shall  
15 comply with those wishes.

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

18       “(a) Mental health treatment;

19       “(b) Sterilization;

20       “(c) Abortion;

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

23       “(e) Except as provided in ORS 127.580 (2), the withholding or withdrawal  
24 of artificially administered nutrition and hydration, as defined in ORS  
25 127.505, other than hyperalimentation, necessary to sustain life.

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

30       “(7) A person appointed under subsection (2) of this section is not a

1 health care representative as defined in ORS 127.505.”.

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

3 “97.953. As used in ORS 97.951 to 97.982:

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

5 “(2) ‘Agent’ means [*an*]:

6 “(a) [*Attorney-in-fact as that term is defined in ORS 127.505*] **A health**  
7 **care representative or an alternative health care representative ap-**  
8 **pointed under ORS 127.510;** or

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

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

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

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

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

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

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

24 “(b) ‘Disinterested witness’ does not include a person to whom an ana-  
25 tomical gift could pass under ORS 97.969.

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

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

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

3 “(10) ‘Driver license’ means a license or permit issued under ORS 807.021,  
4 807.040, 807.200, 807.280 or 807.730, regardless of whether conditions are at-  
5 tached to the license or permit.

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

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

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

15 “(14) ‘Identification card’ means the card issued under ORS 807.021,  
16 807.400 or 807.730, or a comparable provision of the motor vehicle laws of  
17 another state.

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

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

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

23 “(18) ‘Parent’ means a parent whose parental rights have not been termi-  
24 nated.

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

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

29 “(21) ‘Prospective donor’ means an individual who is dead or near death  
30 and has been determined by a procurement organization to have a body part

1 that could be medically suitable for transplantation, therapy, research or  
2 education. The term does not include an individual who has made a refusal.

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

7 “(23) ‘Recipient’ means an individual into whose body a decedent’s body  
8 part has been or is intended to be transplanted.

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

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

15 “(26) ‘Sign’ means, with the present intent to authenticate or adopt a re-  
16 cord:

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

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

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

23 “(28) ‘Technician’ means an individual determined to be qualified to re-  
24 move or process body parts by an appropriate organization that is licensed,  
25 accredited or regulated under federal or state law. The term includes an  
26 enucleator.

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

30 “(30) ‘Tissue bank’ means a person that is licensed, accredited or regu-

1 lated under federal or state law to engage in the recovery, screening, testing,  
2 processing, storage or distribution of tissue.

3 “(31) ‘Transplant hospital’ means a hospital that furnishes organ trans-  
4 plants and other medical and surgical specialty services required for the care  
5 of transplant patients.

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

7 “97.955. (1) Subject to ORS 97.963, a donor may make an anatomical gift  
8 of a donor’s body or body part during the life of the donor for the purpose  
9 of transplantation, therapy, research or education.

10 “(2) An anatomical gift may be made in the manner provided in ORS  
11 97.957 by:

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

13 “(A) Emancipated; or

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

16 “(b) An agent of the donor, unless the [*power of attorney for health care*]  
17 **form appointing a health care representative, as defined in ORS**  
18 **127.505**, or other record prohibits the agent from making an anatomical gift;

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

20 “(d) The donor’s guardian.

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

22 “97.959. (1) Except as provided in subsection (7) or (8) of this section, an  
23 anatomical gift made under ORS 97.957 may be amended or revoked only by  
24 the donor in accordance with the provisions of this section and may not be  
25 amended or revoked by any other person otherwise authorized to make,  
26 amend or revoke a gift under ORS 97.963 or 97.967.

27 “(2) A donor or other person authorized to amend or revoke an anatomical  
28 gift under subsection (7) or (8) of this section may amend or revoke an ana-  
29 tomical gift by:

30 “(a) A record signed by:

1 “(A) The donor;

2 “(B) The other person; or

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

6 “(b) A later-executed document of gift that amends or revokes a previous  
7 anatomical gift or portion of an anatomical gift, either expressly or by in-  
8 consistency.

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

10 “(a) Be witnessed by at least two adults, at least one of whom is a dis-  
11 interested witness, who have signed at the request of the donor or the other  
12 person; and

13 “(b) State that it has been signed and witnessed as required in this sub-  
14 section.

15 “(4) A donor or other person authorized to revoke an anatomical gift un-  
16 der subsection (7) or (8) of this section may revoke an anatomical gift by the  
17 destruction or cancellation of the document of gift, or the portion of the  
18 document of gift used to make the gift, with the intent to revoke the gift.

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

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

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

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



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

3 “(b) [*The power of attorney for health care*] **The form appointing a**  
4 **health care representative, as defined in ORS 127.505**, or other record  
5 appointing the agent expressly authorizes the agent to amend or revoke an-  
6 atomical gifts.

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

8 “163.193. (1) A person commits the crime of assisting another person to  
9 commit suicide if the person knowingly sells, or otherwise transfers for  
10 consideration, any substance or object, that is capable of causing death, to  
11 another person for the purpose of assisting the other person to commit sui-  
12 cide.

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

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

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

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

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

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

22 “163.206. ORS 163.200 and 163.205 do not apply:

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

27 “(2) To a person withholding or withdrawing life-sustaining procedures  
28 or artificially administered nutrition and hydration pursuant to ORS 127.505  
29 to 127.660;

30 “(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  
2 who is at least 18 years of age with spiritual treatment through prayer from  
3 a duly accredited practitioner of spiritual treatment as provided in ORS  
4 124.095, in lieu of medical treatment, in accordance with the tenets and  
5 practices of a recognized church or religious denomination of which the el-  
6 derly or dependent person is a member or an adherent; or

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

9  
10 **“REPEALS**

11  
12 **“SECTION 25. ORS 127.531 is repealed.**

13 **“SECTION 26. Section 6 of this 2016 Act is repealed on January 1,**  
14 **2020.**

15  
16 **“SAVINGS CLAUSES AND APPLICABILITY**

17  
18 **“SECTION 27. ORS 127.658 is amended to read:**

19 *“127.658. [(1) ORS 127.505 to 127.660 and 127.995 do not impair or supersede*  
20 *any power of attorney for health care, directive to physicians or health care*  
21 *instruction in effect before November 4, 1993.]*

22 *“[(2) Any power of attorney for health care or directive to physicians exe-*  
23 *cuted before November 4, 1993, shall be governed by the provisions of ORS*  
24 *127.505 to 127.660 and 127.995, except that:]*

25 *“[(a) The directive to physicians or power of attorney for health care shall*  
26 *be valid if it complies with the provisions of either ORS 127.505 to 127.660 and*  
27 *127.995 or the statutes in effect as of the date of execution;]*

28 *“[(b) The terms in a directive to physicians in the form prescribed by ORS*  
29 *127.610 (1991 Edition) or predecessor statute have those meanings given in*  
30 *ORS 127.605 (1991 Edition) or predecessor statute in effect at the time of exe-*

1 *cution; and]*

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

5 “[*(3) A health care organization, as defined in ORS 127.646, that on No-*  
6 *vember 4, 1993, has printed materials with the information and forms which*  
7 *were required by ORS 127.649, prior to November 4, 1993, may use such printed*  
8 *materials until December 1, 1993.*]

9 “(1) **ORS 127.505 to 127.660 as enacted, the repeal of any statute that**  
10 **was a part of ORS 127.505 to 127.660 and subsequent amendments to the**  
11 **provisions of ORS 127.505 to 127.660 do not impair or supersede any**  
12 **advance directive, form appointing a health care representative or di-**  
13 **rective to physicians executed in accordance with:**

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

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

20 “(2) **An advance directive, a form appointing a health care repre-**  
21 **sentative or a directive to physicians executed on, before or after the**  
22 **operative date specified in section 30 of this 2016 Act shall be governed**  
23 **by the provisions of ORS 127.505 to 127.660, except that the advance**  
24 **directive, the form appointing a health care representative or the di-**  
25 **rective to physicians is valid if it complies with either:**

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

27 “(b) **The provisions of ORS 127.505 to 127.660 or any other statute**  
28 **governing an advance directive, a form appointing a health care rep-**  
29 **resentative or a directive to physicians that was in effect on the date**  
30 **that the advance directive, the form appointing a health care repre-**

1   sentative or the directive to physicians was executed.

2    “SECTION 28. The amendments to ORS 127.510 by section 7 of this  
3 2016 Act apply to appointments made before, on or after the operative  
4 date specified in section 30 of this 2016 Act.

5    “SECTION 29. The amendments to ORS 127.515 by section 8 of this  
6 2016 Act apply to advance directives and forms appointing a health  
7 care representative that are executed on or after the operative date  
8 specified in section 30 of this 2016 Act.

9  
10                                   “OPERATIVE DATE

11  
12    “SECTION 30. (1) Sections 1 to 6 of this 2016 Act, the amendments  
13 to statutes by sections 7 to 24 and 27 of this 2016 Act and the repeal  
14 of ORS 127.531 by section 25 of this 2016 Act become operative on  
15 January 1, 2017.

16    “(2) The Advance Directive Rules Adoption Committee and the  
17 Oregon Health Authority may take any action before the operative  
18 date specified in subsection (1) of this section that is necessary to en-  
19 able the committee and the authority to exercise, on and after the  
20 operative date specified in subsection (1) of this section, all the duties,  
21 powers and functions conferred on the committee and authority by  
22 sections 1 to 6 of this 2016 Act, the amendments to statutes by sections  
23 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  
29 only for the convenience of the reader and do not become part of the  
30 statutory law of this state or express any legislative intent in the

1 enactment of this 2016 Act.

2

3

**“EFFECTIVE DATE**

4

5 **“SECTION 32. This 2016 Act takes effect on the 91st day after the**  
6 **date on which the 2016 regular session of the Seventy-eighth Legisla-**  
7 **tive Assembly adjourns sine die.”.**

8

\_\_\_\_\_