

# D R A F T

## SUMMARY

Permits health care representative to make election for hospice treatment on behalf of incapacitated principal with terminal condition who does not have valid advance directive.

### A BILL FOR AN ACT

Relating to election for hospice treatment; amending ORS 127.635.

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

**SECTION 1.** ORS 127.635, as amended by section 19, chapter 36, Oregon Laws 2018, is amended to read:

127.635. (1) Life-sustaining procedures that would otherwise be applied to a principal who is incapable and who does not have an appointed health care representative or applicable valid advance directive may be withheld or withdrawn in accordance with [*subsections (2) and (3) of*] this section if the principal has been medically confirmed to be in one of the following conditions:

(a) A terminal condition;

(b) Permanently unconscious;

(c) A condition in which administration of life-sustaining procedures would not benefit the principal's medical condition and would cause permanent and severe pain; or

(d) An advanced stage of a progressive illness that will be fatal, and the principal is consistently and permanently unable to communicate by any means, to swallow food and water safely, to care for the principal's self and to recognize the principal's family and other people, and it is very unlikely

1 that the principal's condition will substantially improve.

2 (2) If a principal's condition has been determined to meet one of the  
3 conditions set forth in subsection (1) of this section, and the principal does  
4 not have an appointed health care representative or applicable valid advance  
5 directive, the principal's health care representative shall be the first of the  
6 following, in the following order, who can be located upon reasonable effort  
7 by the health care facility and who is willing to serve as the health care  
8 representative:

9 (a) A guardian of the principal who is authorized to make health care  
10 decisions, if any;

11 (b) The principal's spouse;

12 (c) An adult designated by the others listed in this subsection who can  
13 be so located, if no person listed in this subsection objects to the designation;

14 (d) A majority of the adult children of the principal who can be so lo-  
15 cated;

16 (e) Either parent of the principal;

17 (f) A majority of the adult siblings of the principal who can be located  
18 with reasonable effort; or

19 (g) Any adult relative or adult friend.

20 (3) If none of the persons described in subsection (2) of this section is  
21 available, then life-sustaining procedures may be withheld or withdrawn  
22 upon the direction and under the supervision of the attending physician or  
23 attending health care provider.

24 (4)(a) Life-sustaining procedures may be withheld or withdrawn, **includ-**  
25 **ing an election for hospice treatment**, upon the direction and under the  
26 supervision of the attending physician or attending health care provider at  
27 the request of a person designated the health care representative under sub-  
28 sections (2) and (3) of this section only after the person has consulted with  
29 concerned family and close friends and, if the principal has a case manager,  
30 as defined by rules adopted by the Department of Human Services, after  
31 giving notice to the principal's case manager.

1 (b) A case manager who receives notice under paragraph (a) of this sub-  
2 section shall provide the person giving the case manager notice with any  
3 information in the case manager's possession that is related to the principal's  
4 values, beliefs and preferences with respect to the withholding or withdraw-  
5 ing of life-sustaining procedures.

6 (c) **As used in this subsection, "hospice treatment" means treat-**  
7 **ment that focuses on palliative care, including care for acute pain and**  
8 **symptom management, rather than curative treatment, provided to a**  
9 **principal with a terminal condition.**

10 (5) Notwithstanding subsection (2) of this section, a person who is the  
11 principal's parent or former guardian may not withhold or withdraw life-  
12 sustaining procedures under this section if:

13 (a) At any time while the principal was under the care, custody or control  
14 of the person, a court entered an order:

15 (A) Taking the principal into protective custody under ORS 419B.150; or

16 (B) Committing the principal to the legal custody of the Department of  
17 Human Services for care, placement and supervision under ORS 419B.337;  
18 and

19 (b) The court entered a subsequent order that:

20 (A) The principal should be permanently removed from the person's home,  
21 or continued in substitute care, because it was not safe for the principal to  
22 be returned to the person's home, and no subsequent order of the court was  
23 entered that permitted the principal to return to the person's home before  
24 the principal's wardship was terminated under ORS 419B.328; or

25 (B) Terminated the person's parental rights under ORS 419B.500 and  
26 419B.502 to 419B.524.

27 (6) A principal, while not incapable, may petition the court to remove a  
28 prohibition contained in subsection (5) of this section.

29