

SB 494 A STAFF MEASURE SUMMARY

Carrier: Sen. Prozanski

Senate Committee On Judiciary

Action Date: 04/18/17

Action: Do pass with amendments and requesting subsequent referral to Ways and Means be rescinded. (Printed A-Eng.)

Fiscal: Fiscal impact issued

Revenue: No revenue impact

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WHAT THE MEASURE DOES:

Modifies statutory advance directive form. Creates Advance Directive Adoption Committee (ADAC) consisting of Long Term Care Ombudsman and 12 members appointed by Governor. Requires ADAC to adopt advance directive form and to review form at least once every four years. Establishes components of form that cannot be changed by ADAC. Requires first form adopted by ADAC to be ratified in manner of legislative measure. Requires subsequent changes to form to be submitted to interim committees related to health care and judiciary. Prohibits changes to form from taking effect until after adjournment sine die in odd-numbered year. Requires advance directive form to be notarized or witnessed by two adults other than health care provider or health care representative. Applies to advance directives executed on or after January 1, 2018.

ISSUES DISCUSSED:

- Process for modifying advance directive form; role of legislature
- Preserving individual's decisions in event he or she becomes incapable of decision-making
- Scope of authority of health care representative; default authority under form
- Attorney-in-fact vs. health care representative
- Physician Orders for Life Sustaining Treatment (POLST) vs. advanced directive
- Alzheimer's disease and dementia
- Provision of food and water

EFFECT OF AMENDMENT:

Modifies advanced directive form. Requires first form adopted by Advance Directive Adoption Committee (ADAC) to be submitted for ratification as legislative measure. Eliminates reference to adoption of rules and authorizes Oregon Health Authority to prescribe procedural requirements applicable to ADAC. Defines "life support" and "tube feeding" and modifies definition of "advance directive" to include both form appointing health care representative and instructions to health care representative. Modifies contents of instructions related to form.

BACKGROUND:

In 1993, Oregon adopted the first advance directive legislation in the nation. An advance directive is a legal document that appoints a representative to make health care decisions for another when that person becomes incapacitated. It also allows a person to provide directions and preferences on receiving life-sustaining treatments when one or more conditions exist. Those conditions are: close to death; permanently unconscious; progressive fatal illness with inability to communicate, swallow food or water safely, care for self, and recognize family or others; and medical conditions in which life support would not help the condition and would make the person suffer permanent and

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severe pain. The advance directive does not apply when a person can make health care decisions. Since 1993, the advance directive has not been modified in any way.

Senate Bill 494-A revises the current advance directive form. It creates a 13-member Advance Directive Adoption Committee (Committee) to revise the sections of the advance directive relating to the purpose of the form and proper execution and acceptance. The Committee is also tasked with developing the section of the form for the values, beliefs, and health care treatment options of the person, including both opportunity for narrative and a checklist. The sections of the form relating to appointment of the health care representative, alternates, acceptance, and witnessing remain in statute and may not be modified by the Committee. The Legislative Assembly must adopt the Commission's first form as legislation. At least every four years, the measure requires the Committee to review the form and allows it to offer a report and proposed revised form to the Legislative Assembly committees on judiciary and health care in each chamber. If the Legislative Assembly does not act in the following legislative session, the new form takes effect. Additionally, the measure changes the current statutory form. Other changes include changing "physician" to "health care provider" throughout the form, allowing witnessing of the form by employees of a health care facility, and allowing witnessing by notarization. The measure allows a person to execute an older version of an advance directive and retains effectiveness of current advance directives.