

Minority Report
A-Engrossed
Senate Bill 494

Ordered by the Senate May 8
Including Senate Minority Report Amendments dated May 8

Sponsored by nonconcurring members of the Senate Committee on Judiciary: Senators THATCHER, LINTHICUM

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Establishes Advance Directive [*Rules*] Adoption Committee for purpose of adopting form of advance directive to be used in this state. Specifies that form may not take effect unless form [*is submitted and presented to certain committees of Legislative Assembly*] **has been ratified by Legislative Assembly and Governor in manner required for passage of bills by Oregon Constitution.**

[Repeals statute setting forth current form of advance directive used in this state. Sets forth alternative form of advance directive that may be used in this state. Sunsets alternative form on January 1, 2020.]

[Modifies means by which advance directive is executed.]

[Modifies law by which individual is selected to make health care decisions for another individual who becomes incapable of making health care decisions.]

[Makes certain other changes to provisions governing individuals who become incapable of making health care decisions.]

Becomes operative January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to health care decisions; and prescribing an effective date.

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

4 **SECTION 1. Sections 2 to 4 of this 2017 Act are added to and made a part of ORS 127.505**
5 **to 127.660.**

6 **SECTION 2. (1) The Advance Directive Adoption Committee is established within the di-**
7 **vision of the Oregon Health Authority that is charged with performing the public health**
8 **functions of the state.**

9 **(2)(a) The committee consists of 16 members.**

10 **(b) One member shall be the Long Term Care Ombudsman or the designee of the Long**
11 **Term Care Ombudsman.**

12 **(c) Twelve members shall be appointed by the President of the Senate as follows:**

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

14 **(B) One member who represents hospitals.**

15 **(C) One member who is a clinical ethicist affiliated with a health care facility located in**
16 **this state, or affiliated with a health care organization offering health care services in this**
17 **state.**

18 **(D) Two members who are health care providers with expertise in palliative or hospice**
19 **care, one of whom is not employed by a hospital or other health care facility, a health care**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 organization or an insurer.

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

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

4 (G) One member who represents the long term care community.

5 (H) One member with expertise advising or assisting consumers with end-of-life deci-
6 sions.

7 (I) One member from among members proposed by the Oregon State Bar who has ex-
8 tensive experience in elder law and advising individuals on how to execute an advance di-
9 rective.

10 (J) One member from among members proposed by the Oregon State Bar who has ex-
11 tensive experience in estate planning and advising individuals on how to make end-of-life
12 decisions.

13 (K) One member from among members proposed by the Oregon State Bar who has ex-
14 tensive experience in health law.

15 (d) One member who is an advocate for end-of-life decision making appointed by the
16 Speaker of the House of Representatives.

17 (e) One member who is an advocate for end-of-life decision making appointed by the Mi-
18 nority Leader of the Senate.

19 (f) One member who is an advocate for end-of-life decision making appointed by the Mi-
20 nority Leader of the House of Representatives.

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

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

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

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

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

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

36 (9) Members of the committee are not entitled to compensation, but may be reimbursed
37 for actual and necessary travel and other expenses incurred by them in the performance of
38 their official duties in the manner and amounts provided for in ORS 292.495. Claims for ex-
39 penses shall be paid out of funds appropriated to the Oregon Health Authority for purposes
40 of the committee.

41 **SECTION 3.** (1) In accordance with public notice and stakeholder participation require-
42 ments prescribed by the Oregon Health Authority and section 4 of this 2017 Act, the Advance
43 Directive Adoption Committee established under section 2 of this 2017 Act shall:

44 (a) Adopt the form of an advance directive that may be used in this state;

45 (b) Review the form not less than once every four years for the purpose of adopting

1 **changes to the form that the committee determines are necessary; and**

2 **(c) Review the statutes of this state related to attorneys-in-fact and advance directives**
3 **for purposes of making recommendations for legislation with respect to those statutes.**

4 **(2) Except as otherwise provided by ORS 127.505 to 127.660, the form of an advance di-**
5 **rective adopted pursuant to this section is the only valid form of an advance directive in this**
6 **state.**

7 **(3) At a minimum, the form of an advance directive adopted under this section must**
8 **contain the following elements:**

9 **(a) A statement about the purposes of the advance directive, including:**

10 **(A) A statement about the purpose of the principal's appointment of an attorney-in-fact**
11 **to make health care decisions for the principal if the principal becomes incapable;**

12 **(B) A statement about the priority of attorney-in-fact appointment in ORS 127.635 in the**
13 **event the principal becomes incapable and does not have a valid attorney-in-fact appoint-**
14 **ment;**

15 **(C) A statement about the purpose of the principal's expression of the principal's values**
16 **and beliefs with respect to health care decisions and the principal's preferences for health**
17 **care;**

18 **(D) A statement about the purpose of the principal's expression of the principal's pref-**
19 **erences with respect to placement in a care home or a mental health facility; and**

20 **(E) A statement that advises the principal that the advance directive allows the principal**
21 **to document the principal's preferences, but is not a POLST, as defined in ORS 127.663.**

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

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

24 **(B) Either witnessed and signed by at least two adults or notarized.**

25 **(c) A statement explaining that to be effective the appointment of an attorney-in-fact or**
26 **an alternate attorney-in-fact must be accepted by the attorney-in-fact or the alternate**
27 **attorney-in-fact.**

28 **(d) A statement explaining that the advance directive, once executed, supersedes any**
29 **previously executed advance directive.**

30 **(e) The name, date of birth, address and other contact information of the principal.**

31 **(f) The name, address and other contact information of any attorney-in-fact or any al-**
32 **ternate attorney-in-fact appointed by the principal.**

33 **(g) A section providing the principal with an opportunity to state the principal's values**
34 **and beliefs with respect to health care decisions, including the opportunity to describe the**
35 **principal's preferences, by completing a checklist, by providing instruction through narrative**
36 **or other means, or by any combination of methods used to describe the principal's prefer-**
37 **ences, regarding:**

38 **(A) When the principal wants all reasonably available health care necessary to preserve**
39 **life and recover;**

40 **(B) When the principal wants all reasonably available health care necessary to treat**
41 **chronic conditions;**

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

45 **(D) When the principal desires comfort care instead of health care necessary to preserve**

1 life.

2 (h) A section where the principal and the witnesses or notary may accept by signature
3 or other means, including electronic or verbal means, the advance directive.

4 (i) A section where any attorney-in-fact or any alternate attorney-in-fact appointed by
5 the principal may accept the advance directive by signature or other means, including elec-
6 tronic or verbal means.

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

9 (5) The principal may attach supplementary material to an advance directive. In addition
10 to the form of an advance directive adopted under this section, supplementary material at-
11 tached to an advance directive under this subsection is a part of the advance directive.

12 (6) The Oregon Health Authority shall post the form of an advance directive adopted
13 under this section on the authority's website.

14 **SECTION 4.** (1) The form of an advance directive adopted under section 3 of this 2017
15 Act may not take effect until the form has been ratified by the Legislative Assembly in the
16 manner required for the passage of bills by Article IV, section 25 (1), of the Oregon Consti-
17 tution, and by the Governor in the manner required for the passage of bills by Article V,
18 section 15b, of the Oregon Constitution.

19 (2) For purposes of this section, the Advance Directive Adoption Committee established
20 under section 2 of this 2017 Act shall submit the form of an advance directive adopted under
21 section 3 of this 2017 Act to an interim committee of the Legislative Assembly related to the
22 judiciary on or before September 1 following the date on which the committee adopts the
23 form. Upon receiving the form, the interim committee shall file a proposed legislative
24 measure with Legislative Counsel requesting a measure by which the Legislative Assembly
25 and the Governor may ratify the form. In preparing the proposed legislative measure, the
26 Legislative Counsel shall amend ORS 127.531 to replace any form for an advance directive
27 currently required to be used under the laws of this state with the form adopted by the
28 committee.

29 **SECTION 5.** (1) Sections 1 to 4 of this 2017 Act become operative on January 1, 2018.

30 (2) The Oregon Health Authority may take any action before the operative date specified
31 in subsection (1) of this section that is necessary to enable the authority to exercise, on and
32 after the operative date specified in subsection (1) of this section, all the duties, powers and
33 functions conferred on the authority by sections 1 to 4 of this 2017 Act.

34 **SECTION 6.** This 2017 Act takes effect on the 91st day after the date on which the 2017
35 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

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