

**SENATE MINORITY REPORT  
AMENDMENTS TO  
SENATE BILL 494**

By Nonconcurring Members of COMMITTEE ON JUDICIARY

May 8

1 On page 1 of the printed bill, line 2, after the first semicolon delete the rest of the line and  
2 delete lines 3 and 4.

3 In line 5, delete "127.531;".

4 Delete lines 7 through 24 and delete pages 2 through 29 and insert:

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

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

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

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

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

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

15 **"(B) One member who represents hospitals.**

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

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

22 **"(E) One member who represents individuals with disabilities.**

23 **"(F) One member who represents consumers of health care services.**

24 **"(G) One member who represents the long term care community.**

25 **"(H) One member with expertise advising or assisting consumers with end-of-life deci-**  
26 **sions.**

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

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

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

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

3       “(e) One member who is an advocate for end-of-life decision making appointed by the  
4 Minority Leader of the Senate.

5       “(f) One member who is an advocate for end-of-life decision making appointed by the  
6 Minority Leader of the House of Representatives.

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

13       “(4) A majority of the members of the committee constitutes a quorum for the trans-  
14 action of business.

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

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

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

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

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

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

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

31       “(b) Review the form not less than once every four years for the purpose of adopting  
32 changes to the form that the committee determines are necessary; and

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

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

38       “(3) At a minimum, the form of an advance directive adopted under this section must  
39 contain the following elements:

40       “(a) A statement about the purposes of the advance directive, including:

41       “(A) A statement about the purpose of the principal’s appointment of an attorney-in-fact  
42 to make health care decisions for the principal if the principal becomes incapable;

43       “(B) A statement about the priority of attorney-in-fact appointment in ORS 127.635 in the  
44 event the principal becomes incapable and does not have a valid attorney-in-fact appoint-  
45 ment;

1       “(C) A statement about the purpose of the principal’s expression of the principal’s values  
2 and beliefs with respect to health care decisions and the principal’s preferences for health  
3 care;

4       “(D) A statement about the purpose of the principal’s expression of the principal’s pref-  
5 erences with respect to placement in a care home or a mental health facility; and

6       “(E) A statement that advises the principal that the advance directive allows the princi-  
7 pal to document the principal’s preferences, but is not a POLST, as defined in ORS 127.663.

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

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

10       “(B) Either witnessed and signed by at least two adults or notarized.

11       “(c) A statement explaining that to be effective the appointment of an attorney-in-fact  
12 or an alternate attorney-in-fact must be accepted by the attorney-in-fact or the alternate  
13 attorney-in-fact.

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

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

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

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

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

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

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

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

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

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

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

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

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

45       “SECTION 4. (1) The form of an advance directive adopted under section 3 of this 2017

1 Act may not take effect until the form has been ratified by the Legislative Assembly in the  
2 manner required for the passage of bills by Article IV, section 25 (1), of the Oregon Consti-  
3 tution, and by the Governor in the manner required for the passage of bills by Article V,  
4 section 15b, of the Oregon Constitution.

5 “(2) For purposes of this section, the Advance Directive Adoption Committee established  
6 under section 2 of this 2017 Act shall submit the form of an advance directive adopted under  
7 section 3 of this 2017 Act to an interim committee of the Legislative Assembly related to the  
8 judiciary on or before September 1 following the date on which the committee adopts the  
9 form. Upon receiving the form, the interim committee shall file a proposed legislative  
10 measure with Legislative Counsel requesting a measure by which the Legislative Assembly  
11 and the Governor may ratify the form. In preparing the proposed legislative measure, the  
12 Legislative Counsel shall amend ORS 127.531 to replace any form for an advance directive  
13 currently required to be used under the laws of this state with the form adopted by the  
14 committee.

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

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

20 “SECTION 6. This 2017 Act takes effect on the 91st day after the date on which the 2017  
21 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.”.

22 /s/ Kim Thatcher  
23 Senator

24 /s/ Dennis Linthicum  
25 Senator

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