

HB 4135 STAFF MEASURE SUMMARY**Carrier:** Sen. Prozanski**Senate Committee On Judiciary**

Action Date: 02/21/18
Action: Do pass.
Vote: 4-2-1-0
Yeas: 4 - Dembrow, Gelser, Prozanski, Wagner
Nays: 2 - Bentz, Linthicum
Exc: 1 - Thatcher
Fiscal: Fiscal impact issued
Revenue: No revenue impact
Prepared By: Channa Newell, Counsel

WHAT THE MEASURE DOES:

Modifies the Oregon Advance Directive form. Establishes the thirteen-member Advance Directive Adoption Committee (ADAC) to propose modifications to the instructions portion of form on a four year cycle. Requires the ADAC proposal to be submitted to an interim committee on judiciary. Directs committee to introduce a proposed legislative measure by which the form may be ratified. Enumerates the provisions that must be included in the instruction portion of the form. Updates witnessing requirements and allows notarization in lieu of witnessing. Provides an updated form for use through January 1, 2022. Retains portion of form appointing health care representative in statute. Specifies that the ADAC may not modify the portion of the form used for appointing a health care representative. Updates terms. Provides that current advance directives remain in effect, as do advance directives completed on old forms. Takes effect 91 days after sine die; becomes operative January 1, 2019.

ISSUES DISCUSSED:

- Confusion over current advance directive
- Some individuals unable to complete form due to confusion
- Measure does not expand power of health care representative
- Whether law in effect at time of execution of advance directive or law in effect at time of occurrence giving rise to action controls
- Legislative intent is for legislature to act upon form submitted by the Committee

EFFECT OF AMENDMENT:

No amendment.

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 individual when that person becomes incapacitated. Additionally, it allows a person to provide directions and preferences on receiving life-sustaining treatments when one or more conditions exist, including when a person is close to death; is permanently unconscious; has a progressive fatal illness with an inability to communicate, swallow food or water safely, care for self, and recognize family or others; or has a medical condition in which life support would not help the condition and would make the person suffer permanent and severe pain. The advance directive does not apply when individuals can make their own health care decisions. The current advance directive has not been modified since 1993.

House Bill 4135 updates the current portion of the form dealing with the appointment of the health care representative. It also establishes the Advance Directive Adoption Committee, which is tasked with reviewing the instructions portion of the advance directive form every four years; the Committee may not modify the appointment portion of the form. Once the Committee proposes a new form, the form is given to an interim committee on

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judiciary, which is charged with submitting the form for legislation. In order for the form to take effect, the Legislature must pass the measure and it must be signed by the Governor. The measure also provides an update to the witnessing requirements, allows notarization in lieu of witnessing, and provides an updated temporary form for use while the committee undertakes its work.