

# DRAFT

## SUMMARY

Prohibits hospital from conditioning admission or treatment, or suggesting that treatment is conditioned, on patient having POLST or executing advance directive or other instruction regarding administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration.

Requires hospital to permit presence of support person for person with disability in emergency department and during hospital stay under specified conditions. Allows hospital to impose conditions to ensure safety of patient, support person and staff.

Authorizes civil penalty or revocation or suspension of license for violations of specified provisions.

Requires health care provider to immediately notify state protection and advocacy organization if, during state of emergency or public health emergency, person acting on behalf of patient with intellectual or developmental disability authorizes withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration or transfer of patient to hospice care or if patient is denied services, care, equipment or treatment based on crisis care guidance.

Requires notification to Department of Human Services case manager, if any, and state protection and advocacy organization before withholding or withdrawing from person with intellectual or developmental disability life-sustaining procedures or artificially administered nutrition and hydration during state of emergency or state of public health emergency.

Creates unlawful practice of denying medical treatment or restricting or limiting allocation of medical resources to protected class or based on patient's race, color, national origin, sex, sexual orientation, gender identity, age or disability.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to health care; creating new provisions; amending ORS 127.635 and 659A.142; and declaring an emergency.

**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.

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

**SECTION 1. (1) As used in this section:**

**(a) “Advance directive” has the meaning given that term in ORS 127.505.**

**(b) “Facility” means a hospital, an emergency department or a hospital-affiliated clinic as defined in ORS 442.612.**

**(c) “Hospital” has the meaning given that term in ORS 442.015.**

**(d) “POLST” has the meaning given that term in ORS 127.663.**

**(2) A facility may not:**

**(a) Condition the provision of treatment on a patient having a POLST, advance directive or any instruction relating to the administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration;**

**(b) Communicate to any individual or person acting on behalf of the individual, before or after admission to the hospital, that treatment is conditioned on the individual’s having a POLST, an advance directive or any instruction relating to the administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration;**

**(c) Suggest to any individual, or person acting on behalf of the individual, who contacts the facility regarding treatment for the individual that admission or treatment is conditioned on the individual’s having a POLST, an advance directive or any instruction relating to the administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration; or**

**(d) Discriminate in any other way against an individual based on whether the individual has a POLST, an advance directive or any instruction relating to the administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration.**

**(3) This section does not prohibit a facility from providing the**

1 written materials and information about advance directives as re-  
2 quired by ORS 127.649 and 127.652.

3 **SECTION 2.** (1) As used in this section:

4 (a) “Hospital” has the meaning given that term in ORS 442.015.

5 (b) “Patient” means a patient admitted to a hospital or in an  
6 emergency department who needs assistance to effectively communi-  
7 cate with hospital staff, make health care decisions or engage in ac-  
8 tivities of daily living due to a disability, including but not limited to:

9 (A) A physical, intellectual, behavioral or cognitive impairment;

10 (B) Deafness, being hard of hearing or other communication bar-  
11 rier;

12 (C) Blindness;

13 (D) Autism; or

14 (E) Dementia.

15 (c) “Support person” means a family member, guardian, personal  
16 care assistant or other paid or unpaid attendant selected by the patient  
17 to physically or emotionally assist the patient or ensure effective  
18 communication with the patient.

19 (2) A hospital licensed in this state must allow a patient to desig-  
20 nate at least three support persons, and to allow at least one support  
21 person to be present with the patient at all times in the emergency  
22 department and during the patient’s stay at the hospital, if necessary  
23 to facilitate the patient’s care, including but not limited to when the  
24 patient:

25 (a) Has a cognitive or mental health disability that affects the  
26 patient’s ability to make medical decisions or understand medical ad-  
27 vice;

28 (b) Needs assistance with activities of daily living and the hospital  
29 staff are unable to provide or less effective at providing the assistance;

30 (c) Is deaf, is hard of hearing or has other communication barriers  
31 and requires the assistance of a support person to ensure effective

1 **communication with hospital staff; or**

2 **(d) Has behavioral health needs that the support person can address**  
3 **more effectively than the hospital staff.**

4 **(3) A hospital may impose conditions regarding support persons to**  
5 **ensure the safety of the patient, support person and staff such as:**

6 **(a) Requiring a support person to:**

7 **(A) Wear personal protective equipment provided by the hospital**  
8 **and follow hand washing and other protocols for preventing the po-**  
9 **tential spread of infection; and**

10 **(B) Be free of any symptoms of viruses or contagious diseases; and**

11 **(C) Submit to screenings for viruses or contagious diseases upon**  
12 **entering and exiting the facility;**

13 **(b) Limiting the number of support persons allowed to be present**  
14 **with the patient at a time; and**

15 **(c) Limiting the total number of support persons allowed to be**  
16 **present during the course of a day.**

17 **(4) A hospital must ensure that a support person designated by a**  
18 **patient is present for any discussion in which the patient is asked to**  
19 **elect hospice care or to sign an advance directive or other instrument**  
20 **allowing the withholding or withdrawing of life-sustaining procedures**  
21 **or artificially administered nutrition or hydration, unless the patient**  
22 **requests to have the discussion outside of the presence of a support**  
23 **person.**

24 **(5) A hospital must inform a patient, at the time the hospital ser-**  
25 **vices are scheduled and upon admission, of the patient's right to sup-**  
26 **port persons under this section and must post the hospital's policy and**  
27 **requirements for support persons at entry points to the hospital and**  
28 **on the hospital's website.**

29 **(6) This section does not affect a hospital's obligation to:**

30 **(a) Provide patients with effective communication supports or other**  
31 **reasonable accommodations in accordance with federal and state laws;**

1 or

2 (b) Make exceptions to the hospital visitor policy, including ex-  
3 ceptions to the number of support persons allowed access to the pa-  
4 tient, as a reasonable accommodation under the Americans with  
5 Disabilities Act of 1990, 42 U.S.C. 12101 et seq.

6 SECTION 3. (1) In addition to any other penalty or remedy provided  
7 by law, the Oregon Health Authority may revoke or suspend the li-  
8 cense of a hospital, as defined in ORS 442.015, or impose a civil penalty  
9 of up to \$10,000 for each violation of section 1 or 2 of this 2020 special  
10 session Act.

11 (2) Moneys received under this section shall be paid into the Gen-  
12 eral Fund and credited to the Oregon Health Authority Fund estab-  
13 lished under ORS 413.101.

14 (3) Civil penalties shall be imposed as provided in ORS 183.745.

15 SECTION 4. Section 5 of this 2020 special session Act is added to  
16 and made a part of ORS 127.505 to 127.660.

17 SECTION 5. If the Governor has declared a state of emergency un-  
18 der ORS 401.165 or has proclaimed a state of public health emergency  
19 under ORS 433.441, a health care provider licensed or certified in this  
20 state must immediately notify the system described in ORS 192.517 if:

21 (1) A person acting on behalf of a patient with an intellectual or  
22 developmental disability authorizes the:

23 (a) Withholding or withdrawing of life-sustaining procedures or ar-  
24 tificially administered nutrition and hydration; or

25 (b) Transfer of the patient to hospice care; or

26 (2) A patient with an intellectual or developmental disability is de-  
27 nied services, care, equipment or treatment based on crisis care guid-  
28 ance.

29 SECTION 6. ORS 127.635 is amended to read:

30 127.635. (1) Life-sustaining procedures that would otherwise be applied to  
31 a principal who is incapable and who does not have an appointed health care

1 representative or applicable valid advance directive may be withheld or  
2 withdrawn in accordance with subsections (2) and (3) of this section if the  
3 principal has been medically confirmed to be in one of the following condi-  
4 tions:

5 (a) A terminal condition;

6 (b) Permanently unconscious;

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

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

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

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

24 (b) The principal's spouse;

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

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

29 (e) Either parent of the principal;

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

(g) Any adult relative or adult friend.

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

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

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

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

**(5) Before life-sustaining procedures may be withheld or withdrawn for a principal who has an intellectual or developmental disability, the person designated under subsection (2) or (3) of this section must:**

**(a) Contact the department to determine if the principal has a case manager and provide notice to the case manager in accordance with subsection (4) of this section; and**

**(b) Notify the system described in ORS 192.517 of the proposed withholding or withdrawing of life-sustaining procedures.**

[(5)] (6) Notwithstanding subsection (2) of this section, a person who is

1 the principal's parent or former guardian may not withhold or withdraw  
2 life-sustaining procedures under this section if:

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

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

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

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

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

15 (B) Terminated the person's parental rights under ORS 419B.500 and  
16 419B.502 to 419B.524.

17 [(6)] (7) A principal, while not incapable, may petition the court to re-  
18 move a prohibition contained in subsection [(5)] (6) of this section.

19 **SECTION 7.** ORS 659A.142 is amended to read:

20 659A.142. (1) As used in this section[,]:

21 (a) **"Health care facility" has the meaning given that term in ORS**  
22 **442.015.**

23 (b) **"Health professional regulatory board" has the meaning given**  
24 **that term in ORS 676.160.**

25 (c) **"Medical resources" includes but is not limited to:**

26 (A) **Medical devices or equipment.**

27 (B) **Prescription drugs.**

28 (C) **Provider staff time.**

29 (D) **Level or intensity of patient care.**

30 (E) **Laboratory testing.**

31 (d) **"Protected class" means a group of persons distinguished by, or**



1 **perceived to be distinguished by race, color, national origin, sex, sex-**  
2 **ual orientation, gender identity, age or disability.**

3 **(e) “Provider” means:**

4 **(A) An individual licensed or certified by a health professional reg-**  
5 **ulatory board.**

6 **(B) A health care facility.**

7 **(f) “State government”** has the meaning given that term in ORS 174.111.

8 (2) It is an unlawful employment practice for an employment agency to  
9 fail or refuse to refer for employment, or otherwise discriminate against, any  
10 individual because that individual has a disability, or to classify or refer for  
11 employment any individual because that individual has a disability.

12 (3) It is an unlawful employment practice for a labor organization, be-  
13 cause an individual has a disability, to exclude or to expel from its mem-  
14 bership such individual or to discriminate in any way against such  
15 individual.

16 (4) It is an unlawful practice for any place of public accommodation, re-  
17 sort or amusement as defined in ORS 659A.400, or any person acting on be-  
18 half of such place, to make any distinction, discrimination or restriction  
19 because a customer or patron is an individual with a disability.

20 (5)(a) It is an unlawful practice for state government to exclude an indi-  
21 vidual from participation in or deny an individual the benefits of the ser-  
22 vices, programs or activities of state government or to make any distinction,  
23 discrimination or restriction because the individual has a disability.

24 (b) Paragraph (a) of this subsection is intended to ensure equal access to  
25 available services, programs and activities of state government.

26 (c) Paragraph (a) of this subsection is not intended to:

27 (A) Create an independent entitlement to any service, program or activity  
28 of state government; or

29 (B) Require state government to take any action that state government  
30 can demonstrate would result in a fundamental alteration in the nature of  
31 a service, program or activity of state government or would result in undue

1 financial or administrative burdens on state government.

2 **(6) It is an unlawful practice for a provider or any person acting**  
3 **on behalf of a provider to deny medical treatment or to limit or re-**  
4 **strict in any manner the allocation of medical resources to a protected**  
5 **class or to a patient based on the patient's race, color, national origin,**  
6 **sex, sexual orientation, gender identity, age or disability.**

7 [(6)] (7) Receipt or alleged receipt of treatment for a mental disorder does  
8 not constitute evidence of an individual's inability to acquire, rent or main-  
9 tain property.

10 **SECTION 8. This 2020 special session Act being necessary for the**  
11 **immediate preservation of the public peace, health and safety, an**  
12 **emergency is declared to exist, and this 2020 special session Act takes**  
13 **effect on its passage.**