

House Bill 2217

Sponsored by Representative GREENLICK, Senator STEINER HAYWARD; Representatives FAHEY, NOSSE, SALINAS, WILDE, Senators PROZANSKI, ROBLAN (Pre-session filed.)

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 **as introduced**.

Prohibits anyone other than patient from administering medication to end patient's life in humane and dignified manner.

Defines "self-administer" to include ingestion or other delivery method.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to death with dignity; creating new provisions; amending ORS 127.800, 127.815, 127.875,
3 127.885 and 127.897; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 127.800 to**
6 **127.897.**

7 **SECTION 2. Medication prescribed under ORS 127.800 to 127.897 must be self-**
8 **administered by the patient and may not be administered on behalf of the patient by any**
9 **other person.**

10 **SECTION 3.** ORS 127.800 is amended to read:

11 127.800. **§1.01. Definitions.** The following words and phrases, whenever used in ORS 127.800 to
12 127.897, have the following meanings:

13 (1) "Adult" means an individual who is 18 years of age or older.

14 (2) "Attending physician" means the physician who has primary responsibility for the care of the
15 patient and treatment of the patient's terminal disease.

16 (3) "Capable" means that in the opinion of a court or in the opinion of the patient's attending
17 physician or consulting physician, psychiatrist or psychologist, a patient has the ability to make and
18 communicate health care decisions to health care providers, including communication through per-
19 sons familiar with the patient's manner of communicating if those persons are available.

20 (4) "Consulting physician" means a physician who is qualified by specialty or experience to
21 make a professional diagnosis and prognosis regarding the patient's disease.

22 (5) "Counseling" means one or more consultations as necessary between a [*state licensed*] psy-
23 chiatrist or **licensed** psychologist and a patient for the purpose of determining that the patient is
24 capable and not suffering from a psychiatric or psychological disorder or depression causing im-
25 paired judgment.

26 (6) "Health care provider" means a person licensed, certified or otherwise authorized or per-
27 mitted by the law of this state to administer health care or dispense medication in the ordinary
28 course of business or practice of a profession, and includes a health care facility.

29 (7) "Informed decision" means a decision by a qualified patient, to request and obtain a pre-
30 scription **for medication** to end his or her life in a humane and dignified manner, that is based on

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 an appreciation of the relevant facts and after being fully informed by the attending physician of:

2 (a) His or her medical diagnosis;

3 (b) His or her prognosis;

4 (c) The potential risks associated with *[taking]* **self-administering** the medication to be pre-
5 scribed;

6 (d) The probable result of *[taking]* **self-administering** the medication to be prescribed; and

7 (e) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain
8 control.

9 (8) "Medically confirmed" means the medical opinion of the attending physician has been con-
10 firmed by a consulting physician who has examined the patient and the patient's relevant medical
11 records.

12 (9) "Patient" means a person who is under the care of a physician.

13 (10) "Physician" means a doctor licensed to practice medicine under ORS 677.100 to 677.228.

14 (11) "Qualified patient" means a capable adult who is a resident of Oregon and has satisfied the
15 requirements of ORS 127.800 to 127.897 in order to obtain a prescription for medication to end his
16 or her life in a humane and dignified manner.

17 **(12) "Self-administer" means a qualified patient's physical act of ingesting or delivering**
18 **by another method medication to end his or her life in a humane and dignified manner.**

19 ~~[(12)]~~ **(13)** "Terminal disease" means an incurable and irreversible disease that has been med-
20 ically confirmed and will, within reasonable medical judgment, produce death within six months.

21 **SECTION 4.** ORS 127.815 is amended to read:

22 127.815. §3.01. Attending physician responsibilities. (1) The attending physician shall:

23 (a) Make the initial determination of whether a patient has a terminal disease, is capable, and
24 has made the request voluntarily;

25 (b) Request that the patient demonstrate Oregon residency pursuant to ORS 127.860;

26 (c) To ensure that the patient is making an informed decision, inform the patient of:

27 (A) His or her medical diagnosis;

28 (B) His or her prognosis;

29 (C) The potential risks associated with *[taking]* **self-administering** the medication to be pre-
30 scribed;

31 (D) The probable result of *[taking]* **self-administering** the medication to be prescribed; and

32 (E) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain
33 control;

34 (d) Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for
35 a determination that the patient is capable and acting voluntarily;

36 (e) Refer the patient for counseling if appropriate pursuant to ORS 127.825;

37 (f) Recommend that the patient notify next of kin;

38 (g) Counsel the patient about the importance of having another person present when the patient
39 *[takes]* **self-administers** the medication prescribed pursuant to ORS 127.800 to 127.897 and of not
40 *[taking]* **self-administering** the medication in a public place;

41 (h) Inform the patient that he or she has an opportunity to rescind the request at any time and
42 in any manner, and offer the patient an opportunity to rescind at the end of the 15-day waiting pe-
43 riod pursuant to ORS 127.840;

44 (i) Verify, immediately prior to writing the prescription for medication under ORS 127.800 to
45 127.897, that the patient is making an informed decision;

1 (j) Fulfill the medical record documentation requirements of ORS 127.855;

2 (k) Ensure that all appropriate steps are carried out in accordance with ORS 127.800 to 127.897
3 prior to writing a prescription for medication to enable a qualified patient to end his or her life in
4 a humane and dignified manner; and

5 (L)(A) Dispense medications directly, including ancillary medications intended to facilitate the
6 desired effect to minimize the patient's discomfort, provided the attending physician is registered as
7 a dispensing physician with the Oregon Medical Board, has a current Drug Enforcement Adminis-
8 tration certificate and complies with any applicable administrative rule; or

9 (B) With the patient's written consent:

10 (i) Contact a pharmacist and inform the pharmacist of the prescription; and

11 (ii) Deliver the written prescription personally or by mail to the pharmacist, who will dispense
12 the medications to either the patient, the attending physician or an expressly identified agent of the
13 patient.

14 (2) Notwithstanding any other provision of law, the attending physician may sign the patient's
15 report of death.

16 **SECTION 5.** ORS 127.875 is amended to read:

17 127.875. §3.13. Insurance or annuity policies. The sale, procurement, or issuance of any life,
18 health, or accident insurance or annuity policy or the rate charged for any policy shall not be
19 conditioned upon or affected by the making or rescinding of a request, by a person, for medication
20 to end his or her life in a humane and dignified manner. Neither shall a qualified patient's act of
21 [*ingesting*] **self-administering** medication to end his or her life in a humane and dignified manner
22 have an effect upon a life, health, or accident insurance or annuity policy.

23 **SECTION 6.** ORS 127.885 is amended to read:

24 127.885. §4.01. Immunities. Except as provided in ORS 127.890:

25 (1) No person shall be subject to civil or criminal liability or professional disciplinary action for
26 participating in good faith compliance with ORS 127.800 to 127.897. This includes being present
27 when a qualified patient [*takes*] **self-administers** the prescribed medication to end his or her life in
28 a humane and dignified manner.

29 (2) No professional organization or association, or health care provider, may subject a person
30 to censure, discipline, suspension, loss of license, loss of privileges, loss of membership or other
31 penalty for participating or refusing to participate in good faith compliance with ORS 127.800 to
32 127.897.

33 (3) No request by a patient for or provision by an attending physician of medication in good
34 faith compliance with the provisions of ORS 127.800 to 127.897 shall constitute neglect for any pur-
35 pose of law or provide the sole basis for the appointment of a guardian or conservator.

36 (4) No health care provider shall be under any duty, whether by contract, by statute or by any
37 other legal requirement to participate in the provision to a qualified patient of medication to end
38 his or her life in a humane and dignified manner. If a health care provider is unable or unwilling
39 to carry out a patient's request under ORS 127.800 to 127.897, and the patient transfers his or her
40 care to a new health care provider, the prior health care provider shall transfer, upon request, a
41 copy of the patient's relevant medical records to the new health care provider.

42 (5)(a) Notwithstanding any other provision of law, a health care provider may prohibit another
43 health care provider from participating in ORS 127.800 to 127.897 on the premises of the prohibiting
44 provider if the prohibiting provider has notified the health care provider of the prohibiting
45 provider's policy regarding participating in ORS 127.800 to 127.897. Nothing in this paragraph pre-

1 vents a health care provider from providing health care services to a patient that do not constitute
2 participation in ORS 127.800 to 127.897.

3 (b) Notwithstanding the provisions of subsections (1) to (4) of this section, a health care provider
4 may subject another health care provider to the sanctions stated in this paragraph if the sanctioning
5 health care provider has notified the sanctioned provider prior to participation in ORS 127.800 to
6 127.897 that it prohibits participation in ORS 127.800 to 127.897:

7 (A) Loss of privileges, loss of membership or other sanction provided pursuant to the medical
8 staff bylaws, policies and procedures of the sanctioning health care provider if the sanctioned pro-
9 vider is a member of the sanctioning provider's medical staff and participates in ORS 127.800 to
10 127.897 while on the health care facility premises, as defined in ORS 442.015, of the sanctioning
11 health care provider, but not including the private medical office of a physician or other provider;

12 (B) Termination of lease or other property contract or other nonmonetary remedies provided by
13 lease contract, not including loss or restriction of medical staff privileges or exclusion from a pro-
14 vider panel, if the sanctioned provider participates in ORS 127.800 to 127.897 while on the premises
15 of the sanctioning health care provider or on property that is owned by or under the direct control
16 of the sanctioning health care provider; or

17 (C) Termination of contract or other nonmonetary remedies provided by contract if the sanc-
18 tioned provider participates in ORS 127.800 to 127.897 while acting in the course and scope of the
19 sanctioned provider's capacity as an employee or independent contractor of the sanctioning health
20 care provider. Nothing in this subparagraph shall be construed to prevent:

21 (i) A health care provider from participating in ORS 127.800 to 127.897 while acting outside the
22 course and scope of the provider's capacity as an employee or independent contractor; or

23 (ii) A patient from contracting with his or her attending physician and consulting physician to
24 act outside the course and scope of the provider's capacity as an employee or independent contrac-
25 tor of the sanctioning health care provider.

26 (c) A health care provider that imposes sanctions pursuant to paragraph (b) of this subsection
27 must follow all due process and other procedures the sanctioning health care provider may have
28 that are related to the imposition of sanctions on another health care provider.

29 (d) For purposes of this subsection:

30 (A) "Notify" means a separate statement in writing to the health care provider specifically in-
31 forming the health care provider prior to the provider's participation in ORS 127.800 to 127.897 of
32 the sanctioning health care provider's policy about participation in activities covered by ORS
33 127.800 to 127.897.

34 (B) "Participate in ORS 127.800 to 127.897" means to perform the duties of an attending physi-
35 cian pursuant to ORS 127.815, the consulting physician function pursuant to ORS 127.820 or the
36 counseling function pursuant to ORS 127.825. "Participate in ORS 127.800 to 127.897" does not in-
37 clude:

38 (i) Making an initial determination that a patient has a terminal disease and informing the pa-
39 tient of the medical prognosis;

40 (ii) Providing information about [*the Oregon Death with Dignity Act*] **ORS 127.800 to 127.897** to
41 a patient upon the request of the patient;

42 (iii) Providing a patient, upon the request of the patient, with a referral to another physician;
43 or

44 (iv) A patient contracting with his or her attending physician and consulting physician to act
45 outside of the course and scope of the provider's capacity as an employee or independent contractor

1 of the sanctioning health care provider.

2 (6) Suspension or termination of staff membership or privileges under subsection (5) of this sec-
3 tion is not reportable under ORS 441.820. Action taken pursuant to ORS 127.810, 127.815, 127.820
4 or 127.825 shall not be the sole basis for a report of unprofessional or dishonorable conduct under
5 ORS 677.415 (3), (4), (5) or (6).

6 (7) No provision of ORS 127.800 to 127.897 shall be construed to allow a lower standard of care
7 for patients in the community where the patient is treated or a similar community.

8 **SECTION 7.** ORS 127.897 is amended to read:

9 127.897. §6.01. Form of the request. A request for a medication as authorized by ORS 127.800 to
10 127.897 shall be in substantially the following form:

11 _____
12
13 **REQUEST FOR MEDICATION**
14 **TO END MY LIFE IN A HUMANE**
15 **AND DIGNIFIED MANNER**
16

17 I, _____, am an adult of sound mind.

18 I am suffering from _____, which my attending physician has determined is a terminal
19 disease and which has been medically confirmed by a consulting physician.

20 I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed
21 and potential associated risks, the expected result, and the feasible alternatives, including comfort
22 care, hospice care and pain control.

23 I request that my attending physician prescribe medication that will end my life in a humane
24 and dignified manner.

25
26 **INITIAL ONE:**

27 _____ I have informed my family of my decision and taken their opinions into consider-
28 ation.

29 _____ I have decided not to inform my family of my decision.

30 _____ I have no family to inform of my decision.

31 I understand that I have the right to rescind this request at any time.

32 I understand the full import of this request and I expect to die when I [*take*] **self-administer**
33 the medication to be prescribed. I further understand that although most deaths occur within three
34 hours, my death may take longer and my physician has counseled me about this possibility.

35 I make this request voluntarily and without reservation, and I accept full moral responsibility
36 for my actions.

37
38 Signed: _____

39
40 Dated: _____

41
42 **DECLARATION OF WITNESSES**
43

44 We declare that the person signing this request:

45 (a) Is personally known to us or has provided proof of identity;

- 1 (b) Signed this request in our presence;
- 2 (c) Appears to be of sound mind and not under duress, fraud or undue influence; **and**
- 3 (d) Is not a patient for whom either of us is attending physician.

4
5 _____ Witness 1/Date

6
7 _____ Witness 2/Date

8
9 NOTE: One witness shall not be a relative (by blood, marriage or adoption) of the person signing
10 this request, shall not be entitled to any portion of the person's estate upon death and shall not own,
11 operate or be employed at a health care facility where the person is a patient or resident. If the
12 patient is an inpatient at a health care facility, one of the witnesses shall be an individual desig-
13 nated by the facility.

14 _____

15
16 **SECTION 8. This 2019 Act takes effect on the 91st day after the date on which the 2019**
17 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

18 _____