

House Bill 2748

Sponsored by Representative NEARMAN

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**.

Modifies advance directive law to clarify that health care representative's authority to withhold or withdraw certain treatments must be specified in writing by principal in separate section of advance directive.

A BILL FOR AN ACT

1
2 Relating to advance directives; amending ORS 127.510, 127.540 and 127.580 and section 6, chapter
3 36, Oregon Laws 2018.

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

5 **SECTION 1.** ORS 127.510, as amended by section 7, chapter 36, Oregon Laws 2018, is amended
6 to read:

7 127.510. (1) A capable adult may execute an advance directive. The advance directive is effective
8 when it is:

9 (a) **In writing; and**

10 (b) Signed by the principal and witnessed or notarized as required by ORS 127.505 to 127.660.

11 (2)(a) A capable adult may use an advance directive or the form set forth in section 5, chapter
12 36, Oregon Laws 2018, to appoint a competent adult to serve as the health care representative for
13 the capable adult. A health care representative appointed under this paragraph shall make health
14 care decisions for the principal **as provided in ORS 127.535** if the principal becomes incapable.

15 (b) A capable adult may use an advance directive or the form set forth in section 5, chapter 36,
16 Oregon Laws 2018, to appoint one or more competent adults to serve as alternate health care rep-
17 resentatives for the capable adult. For purposes of ORS 127.505 to 127.660, an alternate health care
18 representative has the rights and privileges of a health care representative appointed under para-
19 graph (a) of this subsection, including the rights described in ORS 127.535. An alternate health care
20 representative appointed under this paragraph shall make health care decisions for the principal if:

21 (A) The principal becomes incapable; and

22 (B) The health care representative appointed under paragraph (a) of this subsection is unable,
23 unwilling or unavailable to make timely health care decisions for the principal.

24 (c) For purposes of paragraph (b) of this subsection, the health care representative appointed
25 under paragraph (a) of this subsection is unavailable to make timely health care decisions for the
26 principal if the health care representative is not available to answer questions for the health care
27 provider in person, by telephone or by another means of direct communication.

28 (d) An appointment made under this section is effective when it is accepted by the health care
29 representative.

30 (3) Unless the period of time that an advance directive or a form appointing a health care rep-
31 resentative is effective is limited by the terms of the advance directive or the form appointing a

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 health care representative, the advance directive or the form appointing a health care represen-
 2 tative continues in effect until:

3 (a) The principal dies; or

4 (b) The advance directive or the form appointing a health care representative is revoked, sus-
 5 pended or superseded pursuant to ORS 127.545.

6 (4) Notwithstanding subsection (3) of this section, if the principal is incapable at the expiration
 7 of the term of the advance directive or the form appointing a health care representative, the ad-
 8 vance directive or the form appointing a health care representative continues in effect until:

9 (a) The principal is no longer incapable;

10 (b) The principal dies; or

11 (c) The advance directive or the form appointing a health care representative is revoked, sus-
 12 pended or superseded pursuant to the provisions of ORS 127.545.

13 (5) A health care provider shall make a copy of an advance directive, a copy of a form ap-
 14 pointing a health care representative and a copy of any other instrument a part of the principal's
 15 medical record when a copy of the advance directive, form appointing a health care representative
 16 or instrument is provided to the principal's health care provider.

17 (6) Notwithstanding subsections (3)(a) and (4)(b) of this section, an advance directive remains in
 18 effect with respect to an anatomical gift, as defined in ORS 97.953, after the principal dies.

19 **SECTION 2.** ORS 127.540 is amended to read:

20 127.540. ORS 127.505 to 127.660 do not authorize an appointed health care representative to
 21 make a health care decision with respect to any of the following on behalf of the principal:

22 (1) Convulsive treatment.

23 (2) Psychosurgery.

24 (3) Sterilization.

25 (4) Abortion.

26 (5) Withholding or withdrawing of a life-sustaining procedure unless:

27 (a) The appointed health care representative has been given **specific authority in writing in a**
 28 **separate section of an advance directive** to make decisions on withholding or withdrawing life-
 29 sustaining procedures; or

30 (b) The principal has been medically confirmed to be in one of the following conditions:

31 (A) A terminal condition.

32 (B) Permanently unconscious.

33 (C) A condition in which administration of life-sustaining procedures would not benefit the
 34 principal's medical condition and would cause permanent and severe pain.

35 (D) A progressive, debilitating illness that will be fatal and is in its advanced stages, and the
 36 principal is consistently and permanently unable to communicate, swallow food and water safely,
 37 care for the principal, and recognize the principal's family and other people, and there is no rea-
 38 sonable chance that the principal's underlying condition will improve.

39 (6) Withholding or withdrawing artificially administered nutrition and hydration, other than
 40 hyperalimentation, necessary to sustain life except as provided in ORS 127.580.

41 **SECTION 3.** ORS 127.580 is amended to read:

42 127.580. (1) It shall be presumed that every person who is temporarily or permanently incapable
 43 has consented to artificially administered nutrition and hydration, other than hyperalimentation,
 44 that are necessary to sustain life except in one or more of the following circumstances:

45 (a) The person while a capable adult clearly and specifically stated **in writing in a separate**

1 **section of an advance directive** that the person would have refused artificially administered nu-
 2 trition and hydration.

3 (b) Administration of such nutrition and hydration is not medically feasible or would itself cause
 4 severe, intractable or long-lasting pain.

5 (c) The person has an appointed health care representative who has been given **specific** au-
 6 thority **written by the principal in a separate section of an advance directive** to make decisions
 7 on the use, maintenance, withholding or withdrawing of artificially administered nutrition and hy-
 8 dration.

9 (d) The person does not have an appointed health care representative or an advance directive
 10 that clearly states that the person did not want artificially administered nutrition and hydration,
 11 and the person is permanently unconscious.

12 (e) The person does not have an appointed health care representative or an advance directive
 13 that clearly states that the person did not want artificially administered nutrition and hydration, the
 14 person is incapable, and the person has a terminal condition.

15 (f) The person has a progressive illness that will be fatal and is in an advanced stage, the person
 16 is consistently and permanently unable to communicate by any means, swallow food and water
 17 safely, care for the person’s self and recognize the person’s family and other people, and it is very
 18 unlikely that the person’s condition will substantially improve.

19 (2) If a person does not have an appointed health care representative or an advance directive
 20 that clearly states that the person did not want artificially administered nutrition and hydration,
 21 but the presumption established by this section has been overcome under the provisions of sub-
 22 section (1)(a), (b), (d), (e) or (f) of this section, artificially administered nutrition and hydration may
 23 be withheld or withdrawn under the provisions of ORS 127.635 (2), (3) and (4).

24 (3) The medical conditions specified in subsection (1)(b), (d), (e) and (f) of this section must be
 25 medically confirmed to overcome the presumption established by subsection (1) of this section.

26 **SECTION 4.** Section 6, chapter 36, Oregon Laws 2018, is amended to read:

27 **Sec. 6.** (1) In lieu of the form of an advance directive adopted by the Advance Directive
 28 Adoption Committee under section 3, **chapter 36, Oregon Laws 2018** [*of this 2018 Act*], on or before
 29 January 1, 2022, a principal may execute an advance directive that is in a form that is substantially
 30 the same as the form of an advance directive set forth in this section.

31 (2) Notwithstanding section 3 (2), **chapter 36, Oregon Laws 2018** [*of this 2018 Act*], the form
 32 of an advance directive set forth in this section is a valid form of an advance directive in this state.

33 (3) The form of an advance directive executed as described in subsection (1) of this section is
 34 as follows:

35
 36
 37 **ADVANCE DIRECTIVE**
 38 **(STATE OF OREGON)**
 39

40 This form may be used in Oregon to choose a person to make health care decisions for you if
 41 you become too sick to speak for yourself. The person is called a health care representative. If you
 42 do not have an effective health care representative appointment and become too sick to speak for
 43 yourself, a health care representative will be appointed for you in the order of priority set forth in
 44 ORS 127.635 (2).

45 This form also allows you to express your values and beliefs with respect to health care deci-

sions and your preferences for health care.

• If you have completed an advance directive in the past, this new advance directive will replace any older directive.

• You must sign this form for it to be effective. You must also have it witnessed by two witnesses or a notary. Your appointment of a health care representative is not effective until the health care representative accepts the appointment.

• If you want to authorize your health care representative to make decisions regarding the withholding or withdrawal of life support or tube feeding, you must provide specific instructions by either initialing the appropriate selections in part 4 of this form or attaching to this form separate written instructions for your health care representative.

• If your advance directive includes directions regarding the withdrawal of life support or tube feeding, you may revoke your advance directive at any time and in any manner that expresses your desire to revoke it.

• In all other cases, you may revoke your advance directive at any time and in any manner as long as you are capable of making medical decisions.

1. ABOUT ME.

Name: _____

Date of Birth: _____

Telephone numbers: (Home)_____

(Work)_____ (Cell)_____

Address: _____

E-mail: _____

2. MY HEALTH CARE REPRESENTATIVE.

I choose the following person as my health care representative to make health care decisions for me if I can't speak for myself.

Name: _____

Relationship: _____

Telephone numbers: (Home)_____

(Work)_____ (Cell)_____

Address: _____

E-mail: _____

I choose the following people to be my alternate health care representatives if my first choice is not available to make health care decisions for me or if I cancel the first health care representative's appointment.

First alternate health care representative:

Name: _____

Relationship: _____

Telephone numbers: (Home)_____

1 (Work)_____ (Cell)_____

2 Address: _____

3 E-mail: _____

4

5 Second alternate health care representative:

6 Name: _____

7 Relationship: _____

8 Telephone numbers: (Home)_____

9 (Work)_____ (Cell)_____

10 Address: _____

11 E-mail: _____

12

13 3. INSTRUCTIONS TO MY HEALTH CARE REPRESENTATIVE.

14

15 If you wish to give instructions to your health care representative about your health care de-

16 cisions, initial one of the following three statements:

- 17
- 18 ___ To the extent appropriate, my health care representative must follow my instructions.
- 19 ___ My instructions are guidelines for my health care representative to consider when making
- 20 decisions about my care.
- 21 ___ Other instructions: _____
- 22

23 4. DIRECTIONS REGARDING MY END OF LIFE CARE.

- 24
- 25 In filling out these directions, keep the following in mind:
- 26 • The term “as my health care provider recommends” means that you want your health care
 - 27 provider to use life support if your health care provider believes it could be helpful, and that you
 - 28 want your health care provider to discontinue life support if your health care provider believes it
 - 29 is not helping your health condition or symptoms.
 - 30 • The term “life support” means any medical treatment that maintains life by sustaining, re-
 - 31 storing or replacing a vital function.
 - 32 • The term “tube feeding” means artificially administered food and water.
 - 33 • If you refuse tube feeding, you should understand that malnutrition, dehydration and death
 - 34 will probably result.
 - 35 • You will receive care for your comfort and cleanliness no matter what choices you make.
- 36

37 A. Statement Regarding End of Life Care. You may initial the statement below if you agree with

38 it. If you initial the statement you may, but you do not have to, list one or more conditions for which

39 you do not want to receive life support.

40

41 ___ I do not want my life to be prolonged by life support. I also do not want tube feeding as life

42 support. I want my health care provider to allow me to die naturally if my health care provider and

43 another knowledgeable health care provider confirm that I am in any of the medical conditions

44 listed below.

45

1 B. Additional Directions Regarding End of Life Care. Here are my desires about my health care
2 if my health care provider and another knowledgeable health care provider confirm that I am in a
3 medical condition described below:

4
5 a. Close to Death. If I am close to death and life support would only postpone the moment of
6 my death:

7
8 INITIAL ONE:

9 ___ I want to receive tube feeding.

10 ___ I want tube feeding only as my health care provider recommends.

11 ___ I DO NOT WANT tube feeding.

12
13 INITIAL ONE:

14 ___ I want any other life support that may apply.

15 ___ I want life support only as my health care provider recommends.

16 ___ I DO NOT WANT life support.

17
18 b. Permanently Unconscious. If I am unconscious and it is very unlikely that I will ever become
19 conscious again:

20
21 INITIAL ONE:

22 ___ I want to receive tube feeding.

23 ___ I want tube feeding only as my health care provider recommends.

24 ___ I DO NOT WANT tube feeding.

25
26 INITIAL ONE:

27 ___ I want any other life support that may apply.

28 ___ I want life support only as my health care provider recommends.

29 ___ I DO NOT WANT life support.

30
31 c. Advanced Progressive Illness. If I have a progressive illness that will be fatal and is in an
32 advanced stage, and I am consistently and permanently unable to communicate by any means,
33 swallow food and water safely, care for myself and recognize my family and other people, and it is
34 very unlikely that my condition will substantially improve:

35
36 INITIAL ONE:

37 ___ I want to receive tube feeding.

38 ___ I want tube feeding only as my health care provider recommends.

39 ___ I DO NOT WANT tube feeding.

40
41 INITIAL ONE:

42 ___ I want any other life support that may apply.

43 ___ I want life support only as my health care provider recommends.

44 ___ I DO NOT WANT life support.

1 d. Extraordinary Suffering. If life support would not help my medical condition and would make
2 me suffer permanent and severe pain:

3
4 INITIAL ONE:

- 5 ___ I want to receive tube feeding.
- 6 ___ I want tube feeding only as my health care provider recommends.
- 7 ___ I DO NOT WANT tube feeding.

8
9 INITIAL ONE:

- 10 ___ I want any other life support that may apply.
- 11 ___ I want life support only as my health care provider recommends.
- 12 ___ I DO NOT WANT life support.

13
14 C. Additional Instruction. You may attach to this document any writing or recording of your
15 values and beliefs related to health care decisions. These attachments will serve as guidelines for
16 health care providers. Attachments may include a description of what you would like to happen if
17 you are close to death, if you are permanently unconscious, if you have an advanced progressive
18 illness or if you are suffering permanent and severe pain.

19
20 5. MY SIGNATURE.

21
22 My signature: _____

23 Date: _____

24
25 6. WITNESS.

26
27 COMPLETE EITHER A OR B WHEN YOU SIGN.

28
29 A. NOTARY:

30
31 State of _____

32 County of _____

33 Signed or attested before me on _____, 2_____, by

34 _____

35 _____

36 Notary Public - State of Oregon

37
38 B. WITNESS DECLARATION:

39
40 The person completing this form is personally known to me or has provided proof of identity,
41 has signed or acknowledged the person's signature on the document in my presence and appears to
42 be not under duress and to understand the purpose and effect of this form. In addition, I am not the
43 person's health care representative or alternate health care representative, and I am not the
44 person's attending health care provider.

1 Witness Name (print): _____

2 Signature: _____

3 Date: _____

4

5 Witness Name (print): _____

6 Signature: _____

7 Date: _____

8

9 7. ACCEPTANCE BY MY HEALTH CARE REPRESENTATIVE.

10

11 I accept this appointment and agree to serve as health care representative.

12

13 Health care representative:

14 Printed name: _____

15 Signature or other verification of acceptance: _____

16 Date: _____

17

18 First alternate health care representative:

19 Printed name: _____

20 Signature or other verification of acceptance: _____

21 Date: _____

22

23 Second alternate health care representative:

24 Printed name: _____

25 Signature or other verification of acceptance: _____

26 Date: _____

27

28

29
