

House Bill 2903

Sponsored by Representative EVANS (at the request of Michelle Olafson and Sheri Marchand)

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**.

Defines "ingest." Expands definition of "terminal disease."

Creates Death with Dignity Advisory Committee within Oregon Health Authority. Directs advisory committee to analyze data relating to patients who make requests for prescription medication under Oregon Death with Dignity Act and to propose policy recommendations regarding Act.

Directs authority to develop recommendations on improvements to Oregon Death with Dignity Act and report to Legislative Assembly on or before September 15 of each even-numbered year.

A BILL FOR AN ACT

1
2 Relating to death with dignity; amending ORS 127.800, 127.815, 127.865, 127.885 and 127.897.

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

4 **SECTION 1.** ORS 127.800 is amended to read:

5 127.800. §1.01. Definitions. The following words and phrases, whenever used in ORS 127.800 to
6 127.897, have the following meanings:

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

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

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

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

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

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

23 (7) "Informed decision" means a decision by a qualified patient, to request and obtain a pre-
24 scription **for medication** to end his or her life in a humane and dignified manner, that is based on
25 an appreciation of the relevant facts and after being fully informed by the attending physician of:

26 (a) His or her medical diagnosis;

27 (b) His or her prognosis;

28 (c) The potential risks associated with [*taking*] **ingesting** the medication to be prescribed;

29 (d) The probable result of [*taking*] **ingesting** the medication to be prescribed; and

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

3 **(8) “Ingest” means any method by which a patient introduces medication into the**
4 **patient’s body.**

5 [(8)] **(9)** “Medically confirmed” means the medical opinion of the attending physician has been
6 confirmed by a consulting physician who has examined the patient and the patient’s relevant medical
7 records.

8 [(9)] **(10)** “Patient” means a person who is under the care of a physician.

9 [(10)] **(11)** “Physician” means a doctor licensed to practice medicine under ORS 677.100 to
10 677.228.

11 [(11)] **(12)** “Qualified patient” means a capable adult who is a resident of Oregon and has satis-
12 fied the requirements of ORS 127.800 to 127.897 in order to obtain a prescription for medication to
13 end his or her life in a humane and dignified manner.

14 [(12)] **(13)(a)** “Terminal disease” means an incurable and irreversible disease that has been
15 medically confirmed and will, within reasonable medical judgment, produce death [*within six*
16 *months*].

17 **(b) “Terminal disease” includes a degenerative condition that will, at some point in the**
18 **future, be the cause of the patient’s death.**

19 **SECTION 2.** ORS 127.815 is amended to read:

20 127.815. §3.01. Attending physician responsibilities. (1) The attending physician shall:

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

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

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

25 (A) His or her medical diagnosis;

26 (B) His or her prognosis;

27 (C) The potential risks associated with [*taking*] **ingesting** the medication to be prescribed;

28 (D) The probable result of [*taking*] **ingesting** the medication to be prescribed; and

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

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

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

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

35 (g) Counsel the patient about the importance of having another person present when the patient
36 [*takes*] **ingests** the medication prescribed pursuant to ORS 127.800 to 127.897 and of not [*taking*]
37 **ingesting** the medication in a public place;

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

41 (i) Verify, immediately prior to writing the prescription for medication under ORS 127.800 to
42 127.897, that the patient is making an informed decision;

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

44 (k) Ensure that all appropriate steps are carried out in accordance with ORS 127.800 to 127.897
45 prior to writing a prescription for medication to enable a qualified patient to end his or her life in

1 a humane and dignified manner; and

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

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

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

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

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

13 **SECTION 3.** ORS 127.865 is amended to read:

14 127.865. §3.11. Reporting requirements. (1)(a) The Oregon Health Authority shall annually review
 15 a sample of records maintained pursuant to ORS 127.800 to 127.897.

16 (b) The authority shall require any health care provider upon dispensing medication pursuant
 17 to ORS 127.800 to 127.897 to file a copy of the dispensing record with the authority.

18 (2) The authority shall make rules to facilitate the collection of information regarding compli-
 19 ance with ORS 127.800 to 127.897. Except as otherwise required by law, the information collected
 20 shall not be a public record and may not be made available for inspection by the public.

21 **(3)(a) There is created a Death with Dignity Advisory Committee within the Oregon**
 22 **Health Authority. The Director of the Oregon Health Authority shall appoint nine members**
 23 **to the advisory committee who are representatives of the medical community, including**
 24 **medical professionals, clinical ethicists, psychiatrists and the Oregon Medical Board. To the**
 25 **extent practicable, the director shall select advisory committee members from a diverse**
 26 **group of specialties and from geographically diverse areas of the state. Members of the ad-**
 27 **visory committee serve at the pleasure of the director.**

28 **(b) Members of the advisory committee are not entitled to compensation but, in the dis-**
 29 **cretion of the director, may be reimbursed from funds available to the authority for actual**
 30 **and necessary travel and other expenses incurred by the members in the performance of**
 31 **official duties in the manner and amount provided in ORS 292.495.**

32 **(c) The advisory committee shall:**

33 **(A) Review the reports submitted to the authority under subsection (1) of this section;**

34 **(B) Analyze the data collected under subsection (2) of this section and compile reports**
 35 **summarizing the diseases suffered by patients making requests under ORS 127.800 to 127.897**
 36 **and identifying additional diseases and illnesses that may qualify a patient to make a request**
 37 **under ORS 127.800 to 127.897;**

38 **(C) Advise the director on the development and administration of death with dignity**
 39 **policies and practices; and**

40 **(D) Meet at least once every six months.**

41 ~~[(3)]~~ **(4)(a)** The authority shall generate and make available to the public an annual statistical
 42 report of information collected under subsection (2) of this section.

43 **(b) The authority shall make recommendations on improvements to ORS 127.800 to**
 44 **127.897. The authority shall submit reports of its recommendations to the appropriate com-**
 45 **mittee of the Legislative Assembly no later than September 15 of each even-numbered year.**

1 **SECTION 4.** ORS 127.885 is amended to read:

2 127.885. §4.01. Immunities. Except as provided in ORS 127.890:

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

7 (2) No professional organization or association, or health care provider, may subject a person
8 to censure, discipline, suspension, loss of license, loss of privileges, loss of membership or other
9 penalty for participating or refusing to participate in good faith compliance with ORS 127.800 to
10 127.897.

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

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

20 (5)(a) Notwithstanding any other provision of law, a health care provider may prohibit another
21 health care provider from participating in ORS 127.800 to 127.897 on the premises of the prohibiting
22 provider if the prohibiting provider has notified the health care provider of the prohibiting
23 provider's policy regarding participating in ORS 127.800 to 127.897. Nothing in this paragraph pre-
24 vents a health care provider from providing health care services to a patient that do not constitute
25 participation in ORS 127.800 to 127.897.

26 (b) Notwithstanding the provisions of subsections (1) to (4) of this section, a health care provider
27 may subject another health care provider to the sanctions stated in this paragraph if the sanctioning
28 health care provider has notified the sanctioned provider prior to participation in ORS 127.800 to
29 127.897 that it prohibits participation in ORS 127.800 to 127.897:

30 (A) Loss of privileges, loss of membership or other sanction provided pursuant to the medical
31 staff bylaws, policies and procedures of the sanctioning health care provider if the sanctioned pro-
32 vider is a member of the sanctioning provider's medical staff and participates in ORS 127.800 to
33 127.897 while on the health care facility premises, as defined in ORS 442.015, of the sanctioning
34 health care provider, but not including the private medical office of a physician or other provider;

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

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

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

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

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

7 (d) For purposes of this subsection:

8 (A) “Notify” means a separate statement in writing to the health care provider specifically in-
9 forming the health care provider prior to the provider’s participation in ORS 127.800 to 127.897 of
10 the sanctioning health care provider’s policy about participation in activities covered by ORS
11 127.800 to 127.897.

12 (B) “Participate in ORS 127.800 to 127.897” means to perform the duties of an attending physi-
13 cian pursuant to ORS 127.815, the consulting physician function pursuant to ORS 127.820 or the
14 counseling function pursuant to ORS 127.825. “Participate in ORS 127.800 to 127.897” does not in-
15 clude:

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

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

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

22 (iv) A patient contracting with his or her attending physician and consulting physician to act
23 outside of the course and scope of the provider’s capacity as an employee or independent contractor
24 of the sanctioning health care provider.

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

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

31 **SECTION 5.** ORS 127.897 is amended to read:

32 127.897. §6.01. Form of the request. A request for a medication as authorized by ORS 127.800 to
33 127.897 shall be in substantially the following form:

34
35
36 **REQUEST FOR MEDICATION**
37 **TO END MY LIFE IN A HUMANE**
38 **AND DIGNIFIED MANNER**
39

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

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

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

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

3
4 INITIAL ONE:

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

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

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

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

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

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

15
16 Signed: _____

17
18 Dated: _____

19
20 DECLARATION OF WITNESSES

21
22 We declare that the person signing this request:

- 23 (a) Is personally known to us or has provided proof of identity;
- 24 (b) Signed this request in our presence;
- 25 (c) Appears to be of sound mind and not under duress, fraud or undue influence;
- 26 (d) Is not a patient for whom either of us is attending physician.

27
28 _____ Witness 1/Date

29
30 _____ Witness 2/Date

31
32 NOTE: One witness shall not be a relative (by blood, marriage or adoption) of the person signing
33 this request, shall not be entitled to any portion of the person's estate upon death and shall not own,
34 operate or be employed at a health care facility where the person is a patient or resident. If the
35 patient is an inpatient at a health care facility, one of the witnesses shall be an individual desig-
36 nated by the facility.

37 _____

38
39 _____