

A-Engrossed
Senate Bill 1039

Ordered by the Senate April 16
Including Senate Amendments dated April 16

Sponsored by Senator MONNES ANDERSON

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.

Authorizes appointment of health care advocate to make health care decisions for individual with developmental disability receiving services through individualized written service plan if individual does not have guardian or health care representative. Specifies requirements for appointment of health care advocate, restrictions on health care advocate and rights of individual for whom health care advocate has been appointed.

A BILL FOR AN ACT

Relating to individuals with developmental disabilities.

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

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

(a) **"Attending physician" has the meaning given that term in ORS 127.505.**

(b) **"Developmental disability" has the meaning given that term in ORS 427.005.**

(c) **"Emergency treatment" means a procedure or treatment that, if delayed, is likely to:**

(A) Place the health of the individual in serious jeopardy;

(B) Result in serious impairment to bodily functions; or

(C) Result in serious dysfunction of any bodily organ.

(d) **"Health care advocate" means a person who is authorized to make health care decisions on behalf of an individual if the individual does not have a guardian or a health care representative.**

(e) **"Health care decision" has the meaning given that term in ORS 127.505.**

(f) **"Health care representative" has the meaning given that term in ORS 127.505.**

(g) **"Individual" means an individual with an intellectual or developmental disability who receives services pursuant to an individualized written service plan.**

(h) **"Individualized written service plan" has the meaning given that term in ORS 427.101.**

(i) **"Individualized written service plan team" means a group consisting of:**

(A) The individual;

(B) The individual's legal or designated representative;

(C) The individual's case manager; and

(D) Other individuals who may be chosen by the individual, such as care providers or family members.

(j) **"Significant medical procedure" means any medical procedure that requires a hospital admission or the administration of general anesthesia in an outpatient setting.**

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 (k) “Treating physician” means a physician who has primary responsibility for the care
2 and treatment of an individual.

3 (2) An individualized written service plan team may appoint a health care advocate for
4 an individual whom a court or a treating physician has determined to be incapable of making
5 health care decisions.

6 (3) A health care advocate must be a capable adult who is willing to serve as a health
7 care advocate and who is approved by at least two-thirds of the individualized written service
8 plan team, including the individual, except that the following persons may not serve as a
9 health care advocate:

10 (a) The individual’s attending physician or an employee of the attending physician or any
11 other person providing care to the individual.

12 (b) A parent whose parental rights are terminated.

13 (c) A guardian if the guardianship is terminated.

14 (4) A health care advocate is authorized to access the health records of the individual
15 and consult with the individual’s medical providers for the purpose of making health care
16 decisions on behalf of the individual.

17 (5) A health care advocate may not make health care decisions on behalf of an individual
18 with respect to any of the following:

19 (a) An action or procedure described in ORS 127.540 (1) to (4).

20 (b) Withholding or withdrawing of a life-sustaining procedure.

21 (c) Withholding or withdrawing artificially administered nutrition and hydration other
22 than hyperalimentation.

23 (d) Testing for HIV, unless testing is necessary for obtaining treatment or care for the
24 individual.

25 (e) A request for medication for the purpose of ending the individual’s life pursuant to
26 ORS 127.805 or other form of assisted suicide.

27 (f) Euthanasia.

28 (g) An experimental procedure, unless the procedure has been approved by an institu-
29 tional review board and is determined by the treating physician to be in the best interest of
30 the individual.

31 (h) An experimental drug that has not been approved for use by the United States Food
32 and Drug Administration, unless the drug is part of an approved clinical trial and the
33 individual’s treating physician has determined that it is in the best interest of the individual.

34 (i) The use of seclusion or physical or chemical restraints unless an imminent risk of
35 harm to the individual or others exists but only for as long as the imminent risk continues
36 except in the case of an emergency.

37 (6) A health care advocate is appointed for a one-year term and may be reappointed as
38 provided in subsection (3) of this section. The individualized written service plan team may
39 revoke the appointment of a health care advocate by a majority vote.

40 (7) A health care advocate may not disclose the contents of, and must maintain the
41 confidentiality of, the individual’s health information, as required by state and federal laws.

42 (8) A health care decision by a health care advocate regarding a significant medical pro-
43 cedure or treatment must be approved by a majority of the individualized written service
44 plan team at an in-person meeting of the team at which the team considers and documents
45 its consideration of:

- 1 **(a) Alternatives to the procedure or treatment;**
 - 2 **(b) Risks and benefits of the procedure or treatment;**
 - 3 **(c) The anticipated impact of the procedure or treatment on the individual's well-being;**
 - 4 **(d) Any preferences in favor of or against the procedure or treatment communicated by**
5 **the individual verbally or nonverbally; and**
 - 6 **(e) Any additional information that is needed before making the decision.**
 - 7 **(9) The individual must participate in the meeting described in subsection (8) of this**
8 **section unless the individual declines to participate or is unable to participate due to the**
9 **individual's medical condition.**
 - 10 **(10) An individualized written service plan team must inform an individual of the team's**
11 **decision to seek a health care advocate for the individual prior to the appointment of the**
12 **advocate.**
 - 13 **(11) A health care advocate must inform an individual of all health care decisions made**
14 **or considered by the advocate.**
 - 15 **(12)(a) An individual has the right to protest any health care decision made by a health**
16 **care advocate. The individualized written service plan team must immediately:**
 - 17 **(A) Notify a provider who prescribed a procedure or treatment approved under a health**
18 **care decision that is under protest;**
 - 19 **(B) Consider the protest; and**
 - 20 **(C) Reassess the individual's capacity to make health care decisions.**
 - 21 **(b) The health care decision must be suspended while the protest is being considered and**
22 **the individual's capacity to make health care decisions is being assessed by the individualized**
23 **written service plan team, unless the individual's treating physician determines that the**
24 **procedure or treatment approved under the health care decision is emergency treatment.**
 - 25 **(13) The Department of Human Services shall ensure that appropriate training is made**
26 **available to at least two members of the individual's individualized written service plan team**
27 **before a health care advocate may be appointed for the individual.**
 - 28 **(14) The department shall adopt rules necessary to carry out the provisions of this sec-**
29 **tion.**
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