

SENATE AMENDMENTS TO SENATE BILL 1039

By COMMITTEE ON HUMAN SERVICES

April 16

- 1 On page 1 of the printed bill, delete lines 4 through 30 and delete pages 2 and 3 and insert:
- 2 **“SECTION 1. (1) As used in this section:**
- 3 **“(a) ‘Attending physician’ has the meaning given that term in ORS 127.505.**
- 4 **“(b) ‘Developmental disability’ has the meaning given that term in ORS 427.005.**
- 5 **“(c) ‘Emergency treatment’ means a procedure or treatment that, if delayed, is likely to:**
- 6 **“(A) Place the health of the individual in serious jeopardy;**
- 7 **“(B) Result in serious impairment to bodily functions; or**
- 8 **“(C) Result in serious dysfunction of any bodily organ.**
- 9 **“(d) ‘Health care advocate’ means a person who is authorized to make health care deci-**
- 10 **sions on behalf of an individual if the individual does not have a guardian or a health care**
- 11 **representative.**
- 12 **“(e) ‘Health care decision’ has the meaning given that term in ORS 127.505.**
- 13 **“(f) ‘Health care representative’ has the meaning given that term in ORS 127.505.**
- 14 **“(g) ‘Individual’ means an individual with an intellectual or developmental disability who**
- 15 **receives services pursuant to an individualized written service plan.**
- 16 **“(h) ‘Individualized written service plan’ has the meaning given that term in ORS 427.101.**
- 17 **“(i) ‘Individualized written service plan team’ means a group consisting of:**
- 18 **“(A) The individual;**
- 19 **“(B) The individual’s legal or designated representative;**
- 20 **“(C) The individual’s case manager; and**
- 21 **“(D) Other individuals who may be chosen by the individual, such as care providers or**
- 22 **family members.**
- 23 **“(j) ‘Significant medical procedure’ means any medical procedure that requires a hospital**
- 24 **admission or the administration of general anesthesia in an outpatient setting.**
- 25 **“(k) ‘Treating physician’ means a physician who has primary responsibility for the care**
- 26 **and treatment of an individual.**
- 27 **“(2) An individualized written service plan team may appoint a health care advocate for**
- 28 **an individual whom a court or a treating physician has determined to be incapable of making**
- 29 **health care decisions.**
- 30 **“(3) A health care advocate must be a capable adult who is willing to serve as a health**
- 31 **care advocate and who is approved by at least two-thirds of the individualized written service**
- 32 **plan team, including the individual, except that the following persons may not serve as a**
- 33 **health care advocate:**
- 34 **“(a) The individual’s attending physician or an employee of the attending physician or any**
- 35 **other person providing care to the individual.**

1 “(b) A parent whose parental rights are terminated.

2 “(c) A guardian if the guardianship is terminated.

3 “(4) A health care advocate is authorized to access the health records of the individual

4 and consult with the individual’s medical providers for the purpose of making health care

5 decisions on behalf of the individual.

6 “(5) A health care advocate may not make health care decisions on behalf of an individual

7 with respect to any of the following:

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

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

10 “(c) Withholding or withdrawing artificially administered nutrition and hydration other

11 than hyperalimentation.

12 “(d) Testing for HIV, unless testing is necessary for obtaining treatment or care for the

13 individual.

14 “(e) A request for medication for the purpose of ending the individual’s life pursuant to

15 ORS 127.805 or other form of assisted suicide.

16 “(f) Euthanasia.

17 “(g) An experimental procedure, unless the procedure has been approved by an institu-

18 tional review board and is determined by the treating physician to be in the best interest of

19 the individual.

20 “(h) An experimental drug that has not been approved for use by the United States Food

21 and Drug Administration, unless the drug is part of an approved clinical trial and the

22 individual’s treating physician has determined that it is in the best interest of the individual.

23 “(i) The use of seclusion or physical or chemical restraints unless an imminent risk of

24 harm to the individual or others exists but only for as long as the imminent risk continues

25 except in the case of an emergency.

26 “(6) A health care advocate is appointed for a one-year term and may be reappointed as

27 provided in subsection (3) of this section. The individualized written service plan team may

28 revoke the appointment of a health care advocate by a majority vote.

29 “(7) A health care advocate may not disclose the contents of, and must maintain the

30 confidentiality of, the individual’s health information, as required by state and federal laws.

31 “(8) A health care decision by a health care advocate regarding a significant medical

32 procedure or treatment must be approved by a majority of the individualized written service

33 plan team at an in-person meeting of the team at which the team considers and documents

34 its consideration of:

35 “(a) Alternatives to the procedure or treatment;

36 “(b) Risks and benefits of the procedure or treatment;

37 “(c) The anticipated impact of the procedure or treatment on the individual’s well-being;

38 “(d) Any preferences in favor of or against the procedure or treatment communicated

39 by the individual verbally or nonverbally; and

40 “(e) Any additional information that is needed before making the decision.

41 “(9) The individual must participate in the meeting described in subsection (8) of this

42 section unless the individual declines to participate or is unable to participate due to the

43 individual’s medical condition.

44 “(10) An individualized written service plan team must inform an individual of the team’s

45 decision to seek a health care advocate for the individual prior to the appointment of the

1 **advocate.**

2 **“(11) A health care advocate must inform an individual of all health care decisions made**
3 **or considered by the advocate.**

4 **“(12)(a) An individual has the right to protest any health care decision made by a health**
5 **care advocate. The individualized written service plan team must immediately:**

6 **“(A) Notify a provider who prescribed a procedure or treatment approved under a health**
7 **care decision that is under protest;**

8 **“(B) Consider the protest; and**

9 **“(C) Reassess the individual’s capacity to make health care decisions.**

10 **“(b) The health care decision must be suspended while the protest is being considered and**
11 **the individual’s capacity to make health care decisions is being assessed by the individualized**
12 **written service plan team, unless the individual’s treating physician determines that the**
13 **procedure or treatment approved under the health care decision is emergency treatment.**

14 **“(13) The Department of Human Services shall ensure that appropriate training is made**
15 **available to at least two members of the individual’s individualized written service plan team**
16 **before a health care advocate may be appointed for the individual.**

17 **“(14) The department shall adopt rules necessary to carry out the provisions of this**
18 **section.”.**

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