

Requested by SENATE COMMITTEE ON HUMAN SERVICES

**PROPOSED AMENDMENTS TO  
SENATE BILL 1039**

1 On page 1 of the printed bill, delete lines 4 through 30 and delete pages  
2 2 and 3 and insert:

3 **“SECTION 1. (1) As used in this section:**

4 **“(a) ‘Attending physician’ has the meaning given that term in ORS**  
5 **127.505.**

6 **“(b) ‘Developmental disability’ has the meaning given that term in**  
7 **ORS 427.005.**

8 **“(c) ‘Emergency treatment’ means a procedure or treatment that,**  
9 **if delayed, is likely to:**

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

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

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

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

16 **“(e) ‘Health care decision’ has the meaning given that term in ORS**  
17 **127.505.**

18 **“(f) ‘Health care representative’ has the meaning given that term**  
19 **in ORS 127.505.**

20 **“(g) ‘Individual’ means an individual with an intellectual or devel-**  
21 **opmental disability who receives services pursuant to an individualized**

1 **written service plan.**

2 **“(h) ‘Individualized written service plan’ has the meaning given**  
3 **that term in ORS 427.101.**

4 **“(i) ‘Individualized written service plan team’ means a group con-**  
5 **sisting of:**

6 **“(A) The individual;**

7 **“(B) The individual’s legal or designated representative;**

8 **“(C) The individual’s case manager; and**

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

11 **“(j) ‘Significant medical procedure’ means any medical procedure**  
12 **that requires a hospital admission or the administration of general**  
13 **anesthesia in an outpatient setting.**

14 **“(k) ‘Treating physician’ means a physician who has primary re-**  
15 **sponsibility for the care and treatment of an individual.**

16 **“(2) An individualized written service plan team may appoint a**  
17 **health care advocate for an individual whom a court or a treating**  
18 **physician has determined to be incapable of making health care deci-**  
19 **sions.**

20 **“(3) A health care advocate must be a capable adult who is willing**  
21 **to serve as a health care advocate and who is approved by at least**  
22 **two-thirds of the individualized written service plan team, including**  
23 **the individual, except that the following persons may not serve as a**  
24 **health care advocate:**

25 **“(a) The individual’s attending physician or an employee of the at-**  
26 **tending physician or any other person providing care to the individual.**

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

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

29 **“(4) A health care advocate is authorized to access the health re-**  
30 **ords of the individual and consult with the individual’s medical pro-**

1 **viders for the purpose of making health care decisions on behalf of the**  
2 **individual.**

3 **“(5) A health care advocate may not make health care decisions on**  
4 **behalf of an individual with respect to any of the following:**

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

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

7 **“(c) Withholding or withdrawing artificially administered nutrition**  
8 **and hydration other than hyperalimentation.**

9 **“(d) Testing for HIV, unless testing is necessary for obtaining**  
10 **treatment or care for the individual.**

11 **“(e) A request for medication for the purpose of ending the**  
12 **individual’s life pursuant to ORS 127.805 or other form of assisted su-**  
13 **icide.**

14 **“(f) Euthanasia.**

15 **“(g) An experimental procedure, unless the procedure has been ap-**  
16 **proved by an institutional review board and is determined by the**  
17 **treating physician to be in the best interest of the individual.**

18 **“(h) An experimental drug that has not been approved for use by**  
19 **the United States Food and Drug Administration, unless the drug is**  
20 **part of an approved clinical trial and the individual’s treating physi-**  
21 **cian has determined that it is in the best interest of the individual.**

22 **“(i) The use of seclusion or physical or chemical restraints unless**  
23 **an imminent risk of harm to the individual or others exists but only**  
24 **for as long as the imminent risk continues except in the case of an**  
25 **emergency.**

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

30 **“(7) A health care advocate may not disclose the contents of, and**

1 **must maintain the confidentiality of, the individual’s health informa-**  
2 **tion, as required by state and federal laws.**

3 **“(8) A health care decision by a health care advocate regarding a**  
4 **significant medical procedure or treatment must be approved by a**  
5 **majority of the individualized written service plan team at an in-**  
6 **person meeting of the team at which the team considers and docu-**  
7 **ments its consideration of:**

8 **“(a) Alternatives to the procedure or treatment;**

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

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

12 **“(d) Any preferences in favor of or against the procedure or treat-**  
13 **ment communicated by the individual verbally or nonverbally; and**

14 **“(e) Any additional information that is needed before making the**  
15 **decision.**

16 **“(9) The individual must participate in the meeting described in**  
17 **subsection (8) of this section unless the individual declines to partic-**  
18 **ipate or is unable to participate due to the individual’s medical condi-**  
19 **tion.**

20 **“(10) An individualized written service plan team must inform an**  
21 **individual of the team’s decision to seek a health care advocate for the**  
22 **individual prior to the appointment of the advocate.**

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

25 **“(12)(a) An individual has the right to protest any health care de-**  
26 **cision made by a health care advocate. The individualized written**  
27 **service plan team must immediately:**

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

30 **“(B) Consider the protest; and**

1       **“(C) Reassess the individual’s capacity to make health care deci-**  
2 **sions.**

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

9       **“(13) The Department of Human Services shall ensure that appro-**  
10 **priate training is made available to at least two members of the**  
11 **individual’s individualized written service plan team before a health**  
12 **care advocate may be appointed for the individual.**

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

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