

Enrolled

Senate Bill 1606

Sponsored by Senators COURTNEY, GELSER; Senators HASS, MANNING JR, MONNES ANDERSON, Representatives DEXTER, HAYDEN, HELT, KENY-GUYER, NOSSE, POST, PRUSAK, SALINAS, SCHOUTEN, SMITH DB, WILDE, ZIKA (at the request of Joint Committee on the First Special Session of 2020)

CHAPTER

AN ACT

Relating to health care; creating new provisions; amending ORS 127.635; and declaring an emergency.

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

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

(a) “Advance directive” has the meaning given that term in ORS 127.505.

(b) “Hospital” has the meaning given that term in ORS 442.015.

(c) “POLST” has the meaning given that term in ORS 127.663.

(2) A hospital may not:

(a) Condition the provision of treatment on a patient having a POLST, advance directive or any instruction relating to the administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration;

(b) Communicate to any individual or person acting on behalf of the individual, before or after admission to the hospital, that treatment is conditioned on the individual’s having a POLST, an advance directive or any instruction relating to the administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration;

(c) Suggest to any individual, or person acting on behalf of the individual, who contacts the hospital regarding treatment for the individual that admission or treatment is conditioned on the individual’s having a POLST, an advance directive or any instruction relating to the administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration; or

(d) Discriminate in any other way against an individual based on whether the individual has a POLST, an advance directive or any instruction relating to the administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration.

(3) This section does not prohibit a hospital from providing the written materials and information about advance directives as required by ORS 127.649 and 127.652 or prohibit a licensed health care professional from engaging in a discussion with a patient about the written materials and information.

SECTION 2. (1) As used in this section:

(a) "Hospital" has the meaning given that term in ORS 442.015, excluding the Oregon State Hospital.

(b) "Patient" means a patient admitted to a hospital or in an emergency department who needs assistance to effectively communicate with hospital staff, make health care decisions or engage in activities of daily living due to a disability, including but not limited to:

- (A) A physical, intellectual, behavioral or cognitive impairment;
- (B) Deafness, being hard of hearing or other communication barrier;
- (C) Blindness;
- (D) Autism; or
- (E) Dementia.

(c) "Support person" means a family member, guardian, personal care assistant or other paid or unpaid attendant selected by the patient to physically or emotionally assist the patient or ensure effective communication with the patient.

(2) A hospital licensed in this state must allow a patient to designate at least three support persons, and to allow at least one support person to be present with the patient at all times in the emergency department and during the patient's stay at the hospital, if necessary to facilitate the patient's care, including but not limited to when the patient:

(a) Has a cognitive or mental health disability that affects the patient's ability to make medical decisions or understand medical advice;

(b) Needs assistance with activities of daily living and the hospital staff are unable to provide or less effective at providing the assistance;

(c) Is deaf, is hard of hearing or has other communication barriers and requires the assistance of a support person to ensure effective communication with hospital staff; or

(d) Has behavioral health needs that the support person can address more effectively than the hospital staff.

(3) A hospital may impose conditions regarding support persons to ensure the safety of the patient, support person and staff such as:

(a) Requiring a support person to:

(A) Wear personal protective equipment provided by the hospital and follow hand washing and other protocols for preventing the potential spread of infection;

(B) Be free of any symptoms of viruses or contagious diseases; and

(C) Submit to screenings for viruses or contagious diseases upon entering and exiting the hospital;

(b) Limiting the number of support persons allowed to be present with the patient at a time; and

(c) Limiting the total number of support persons allowed to be present during the course of a day.

(4) A hospital must ensure that a support person designated by a patient is present for any discussion in which the patient is asked to elect hospice care or to sign an advance directive or other instrument allowing the withholding or withdrawing of life-sustaining procedures or artificially administered nutrition or hydration, unless the patient requests to have the discussion outside of the presence of a support person.

(5) A hospital must inform a patient, at the time the hospital services are scheduled and upon admission, of the patient's right to support persons under this section and must post the hospital's policy and requirements for support persons at entry points to the hospital and on the hospital's website.

(6) This section does not affect a hospital's obligation to:

(a) Provide patients with effective communication supports or other reasonable accommodations in accordance with federal and state laws; or

(b) Make exceptions to the hospital visitor policy, including exceptions to the number of support persons allowed access to the patient, as a reasonable accommodation under the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.

SECTION 3. (1) In addition to any other penalty or remedy provided by law, the Oregon Health Authority may impose a civil penalty of up to \$10,000 for each violation of section 1 or 2 of this 2020 special session Act.

(2) Moneys received under this section shall be paid into the General Fund.

(3) Civil penalties shall be imposed as provided in ORS 183.745.

SECTION 4. ORS 127.635 is amended to read:

127.635. (1) Life-sustaining procedures that would otherwise be applied to a principal who is incapable and who does not have an appointed health care representative or applicable valid advance directive may be withheld or withdrawn in accordance with subsections (2) and (3) of this section if the principal has been medically confirmed to be in one of the following conditions:

(a) A terminal condition;

(b) Permanently unconscious;

(c) A condition in which administration of life-sustaining procedures would not benefit the principal's medical condition and would cause permanent and severe pain; or

(d) An advanced stage of a progressive illness that will be fatal, and the principal is consistently and permanently unable to communicate by any means, to swallow food and water safely, to care for the principal's self and to recognize the principal's family and other people, and it is very unlikely that the principal's condition will substantially improve.

(2) If a principal's condition has been determined to meet one of the conditions set forth in subsection (1) of this section, and the principal does not have an appointed health care representative or applicable valid advance directive, the principal's health care representative shall be the first of the following, in the following order, who can be located upon reasonable effort by the health care facility and who is willing to serve as the health care representative:

(a) A guardian of the principal who is authorized to make health care decisions, if any;

(b) The principal's spouse;

(c) An adult designated by the others listed in this subsection who can be so located, if no person listed in this subsection objects to the designation;

(d) A majority of the adult children of the principal who can be so located;

(e) Either parent of the principal;

(f) A majority of the adult siblings of the principal who can be located with reasonable effort;

or

(g) Any adult relative or adult friend.

(3) If none of the persons described in subsection (2) of this section is available, then life-sustaining procedures may be withheld or withdrawn upon the direction and under the supervision of the attending physician or attending health care provider.

(4)(a) Life-sustaining procedures may be withheld or withdrawn, including an election for hospice treatment, upon the direction and under the supervision of the attending physician or attending health care provider at the request of a person designated the health care representative under subsections (2) and (3) of this section only after the person has consulted with concerned family and close friends and, if the principal has a case manager, as defined by rules adopted by the Department of Human Services, after giving notice to the principal's case manager.

(b) A case manager who receives notice under paragraph (a) of this subsection shall provide the person giving the case manager notice with any information in the case manager's possession that is related to the principal's values, beliefs and preferences with respect to the withholding or withdrawing of life-sustaining procedures.

(c) As used in this subsection, "hospice treatment" means treatment that focuses on palliative care, including care for acute pain and symptom management, rather than curative treatment, provided to a principal with a terminal condition.

(5) Before life-sustaining procedures may be withheld or withdrawn for a principal who has an intellectual or developmental disability, the person designated under subsection (2) or (3) of this section shall contact the department to determine if the principal has a case

manager and provide notice to the case manager in accordance with subsection (4) of this section.

[(5)] (6) Notwithstanding subsection (2) of this section, a person who is the principal's parent or former guardian may not withhold or withdraw life-sustaining procedures under this section if:

(a) At any time while the principal was under the care, custody or control of the person, a court entered an order:

(A) Taking the principal into protective custody under ORS 419B.150; or

(B) Committing the principal to the legal custody of the Department of Human Services for care, placement and supervision under ORS 419B.337; and

(b) The court entered a subsequent order that:

(A) The principal should be permanently removed from the person's home, or continued in substitute care, because it was not safe for the principal to be returned to the person's home, and no subsequent order of the court was entered that permitted the principal to return to the person's home before the principal's wardship was terminated under ORS 419B.328; or

(B) Terminated the person's parental rights under ORS 419B.500 and 419B.502 to 419B.524.

[(6)] (7) A principal, while not incapable, may petition the court to remove a prohibition contained in subsection [(5)] (6) of this section.

SECTION 5. A hospital must implement protocols to inform patients of their rights under section 2 of this 2020 special session Act and post the hospital's policy as required by section 2 (5) of this 2020 special session Act no later than August 1, 2020.

SECTION 6. This 2020 special session Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2020 special session Act takes effect on its passage.

Passed by Senate June 26, 2020

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 26, 2020

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2020

Approved:

.....M.,....., 2020

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2020

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Bev Clarno, Secretary of State