

Senate Bill 1606

Sponsored by Senator COURTNEY (at the request of Joint Committee on the First Special Session of 2020)

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**.

Prohibits hospital from conditioning admission or treatment, or suggesting that treatment is conditioned, on patient having POLST or executing advance directive or other instruction regarding administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration.

Requires hospital to permit presence of support person for person with disability in emergency department and during hospital stay under specified conditions. Allows hospital to impose conditions to ensure safety of patient, support person and staff.

Authorizes civil penalty or revocation or suspension of license for violations of specified provisions.

Requires health care provider to immediately notify state protection and advocacy organization if, during state of emergency or public health emergency, person acting on behalf of patient with intellectual or developmental disability authorizes withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration or transfer of patient to hospice care or if patient is denied services, care, equipment or treatment based on crisis care guidance.

Requires notification to Department of Human Services case manager, if any, and state protection and advocacy organization before withholding or withdrawing from person with intellectual or developmental disability life-sustaining procedures or artificially administered nutrition and hydration during state of emergency or state of public health emergency.

Creates unlawful practice of denying medical treatment or restricting or limiting allocation of medical resources to protected class or based on patient's race, color, national origin, sex, sexual orientation, gender identity, age or disability.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to health care; creating new provisions; amending ORS 127.635 and 659A.142; and declaring
3 an emergency.

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

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

6 (a) "Advance directive" has the meaning given that term in ORS 127.505.

7 (b) "Facility" means a hospital, an emergency department or a hospital-affiliated clinic
8 as defined in ORS 442.612.

9 (c) "Hospital" has the meaning given that term in ORS 442.015.

10 (d) "POLST" has the meaning given that term in ORS 127.663.

11 (2) A facility may not:

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

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

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

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

10 (3) This section does not prohibit a facility from providing the written materials and in-
 11 formation about advance directives as required by ORS 127.649 and 127.652.

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

13 (a) "Hospital" has the meaning given that term in ORS 442.015.

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

17 (A) A physical, intellectual, behavioral or cognitive impairment;

18 (B) Deafness, being hard of hearing or other communication barrier;

19 (C) Blindness;

20 (D) Autism; or

21 (E) Dementia.

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

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

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

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

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

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

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

39 (a) Requiring a support person to:

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

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

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

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

1 time; and

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

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

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

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

14 (a) Provide patients with effective communication supports or other reasonable accom-
15 modations in accordance with federal and state laws; or

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

19 **SECTION 3.** (1) In addition to any other penalty or remedy provided by law, the Oregon
20 Health Authority may revoke or suspend the license of a hospital, as defined in ORS 442.015,
21 or impose a civil penalty of up to \$10,000 for each violation of section 1 or 2 of this 2020
22 special session Act.

23 (2) Moneys received under this section shall be paid into the General Fund and credited
24 to the Oregon Health Authority Fund established under ORS 413.101.

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

26 **SECTION 4.** Section 5 of this 2020 special session Act is added to and made a part of ORS
27 127.505 to 127.660.

28 **SECTION 5.** If the Governor has declared a state of emergency under ORS 401.165 or has
29 proclaimed a state of public health emergency under ORS 433.441, a health care provider li-
30 censed or certified in this state must immediately notify the system described in ORS 192.517
31 if:

32 (1) A person acting on behalf of a patient with an intellectual or developmental disability
33 authorizes the:

34 (a) Withholding or withdrawing of life-sustaining procedures or artificially administered
35 nutrition and hydration; or

36 (b) Transfer of the patient to hospice care; or

37 (2) A patient with an intellectual or developmental disability is denied services, care,
38 equipment or treatment based on crisis care guidance.

39 **SECTION 6.** ORS 127.635 is amended to read:

40 127.635. (1) Life-sustaining procedures that would otherwise be applied to a principal who is in-
41 capable and who does not have an appointed health care representative or applicable valid advance
42 directive may be withheld or withdrawn in accordance with subsections (2) and (3) of this section
43 if the principal has been medically confirmed to be in one of the following conditions:

44 (a) A terminal condition;

45 (b) Permanently unconscious;

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

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

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

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

13 (b) The principal's spouse;

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

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

17 (e) Either parent of the principal;

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

20 (g) Any adult relative or adult friend.

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

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

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

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

37 **(5) Before life-sustaining procedures may be withheld or withdrawn for a principal who**
38 **has an intellectual or developmental disability, the person designated under subsection (2)**
39 **or (3) of this section must:**

40 **(a) Contact the department to determine if the principal has a case manager and provide**
41 **notice to the case manager in accordance with subsection (4) of this section; and**

42 **(b) Notify the system described in ORS 192.517 of the proposed withholding or withdraw-**
43 **ing of life-sustaining procedures.**

44 ~~[(5)]~~ **(6)** Notwithstanding subsection (2) of this section, a person who is the principal's parent
45 or former guardian may not withhold or withdraw life-sustaining procedures under this section if:

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

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

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

6 (b) The court entered a subsequent order that:

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

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

12 [(6)] (7) A principal, while not incapable, may petition the court to remove a prohibition con-
13 tained in subsection [(5)] (6) of this section.

14 **SECTION 7.** ORS 659A.142 is amended to read:

15 659A.142. (1) As used in this section[,]:

16 (a) **"Health care facility" has the meaning given that term in ORS 442.015.**

17 (b) **"Health professional regulatory board" has the meaning given that term in ORS**
18 **676.160.**

19 (c) **"Medical resources" includes but is not limited to:**

20 (A) **Medical devices or equipment.**

21 (B) **Prescription drugs.**

22 (C) **Provider staff time.**

23 (D) **Level or intensity of patient care.**

24 (E) **Laboratory testing.**

25 (d) **"Protected class" means a group of persons distinguished by, or perceived to be dis-**
26 **tinguished by race, color, national origin, sex, sexual orientation, gender identity, age or**
27 **disability.**

28 (e) **"Provider" means:**

29 (A) **An individual licensed or certified by a health professional regulatory board.**

30 (B) **A health care facility.**

31 (f) **"State government" has the meaning given that term in ORS 174.111.**

32 (2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for
33 employment, or otherwise discriminate against, any individual because that individual has a disa-
34 bility, or to classify or refer for employment any individual because that individual has a disability.

35 (3) It is an unlawful employment practice for a labor organization, because an individual has a
36 disability, to exclude or to expel from its membership such individual or to discriminate in any way
37 against such individual.

38 (4) It is an unlawful practice for any place of public accommodation, resort or amusement as
39 defined in ORS 659A.400, or any person acting on behalf of such place, to make any distinction,
40 discrimination or restriction because a customer or patron is an individual with a disability.

41 (5)(a) It is an unlawful practice for state government to exclude an individual from participation
42 in or deny an individual the benefits of the services, programs or activities of state government or
43 to make any distinction, discrimination or restriction because the individual has a disability.

44 (b) Paragraph (a) of this subsection is intended to ensure equal access to available services,
45 programs and activities of state government.

1 (c) Paragraph (a) of this subsection is not intended to:

2 (A) Create an independent entitlement to any service, program or activity of state government;

3 or

4 (B) Require state government to take any action that state government can demonstrate would
5 result in a fundamental alteration in the nature of a service, program or activity of state govern-
6 ment or would result in undue financial or administrative burdens on state government.

7 **(6) It is an unlawful practice for a provider or any person acting on behalf of a provider**
8 **to deny medical treatment or to limit or restrict in any manner the allocation of medical**
9 **resources to a protected class or to a patient based on the patient's race, color, national**
10 **origin, sex, sexual orientation, gender identity, age or disability.**

11 [(6)] (7) Receipt or alleged receipt of treatment for a mental disorder does not constitute evi-
12 dence of an individual's inability to acquire, rent or maintain property.

13 **SECTION 8. This 2020 special session Act being necessary for the immediate preservation**
14 **of the public peace, health and safety, an emergency is declared to exist, and this 2020 special**
15 **session Act takes effect on its passage.**

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