

Requested by Senator GELSER

**PROPOSED AMENDMENTS TO
SENATE BILL 1606**

1 On page 1 of the printed bill, delete lines 5 through 19 and delete pages
2 2 through 6 and insert:

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

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

6 **“(b) ‘Hospital’ has the meaning given that term in ORS 442.015.**

7 **“(c) ‘POLST’ has the meaning given that term in ORS 127.663.**

8 **“(2) A hospital may not:**

9 **“(a) Condition the provision of treatment on a patient having a**
10 **POLST, advance directive or any instruction relating to the adminis-**
11 **tration, withholding or withdrawing of life-sustaining procedures or**
12 **artificially administered nutrition and hydration;**

13 **“(b) Communicate to any individual or person acting on behalf of**
14 **the individual, before or after admission to the hospital, that treat-**
15 **ment is conditioned on the individual’s having a POLST, an advance**
16 **directive or any instruction relating to the administration, withhold-**
17 **ing or withdrawing of life-sustaining procedures or artificially admin-**
18 **istered nutrition and hydration;**

19 **“(c) Suggest to any individual, or person acting on behalf of the**
20 **individual, who contacts the hospital regarding treatment for the in-**
21 **dividual that admission or treatment is conditioned on the individual’s**

1 having a POLST, an advance directive or any instruction relating to
2 the administration, withholding or withdrawing of life-sustaining pro-
3 cedures or artificially administered nutrition and hydration; or

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

9 “(3) This section does not prohibit a hospital from providing the
10 written materials and information about advance directives as re-
11 quired 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
15 emergency department who needs assistance to effectively communi-
16 cate with hospital staff, make health care decisions or engage in ac-
17 tivities of daily living due to a disability, including but not limited to:**

18 **“(A) A physical, intellectual, behavioral or cognitive impairment;**

19 **“(B) Deafness, being hard of hearing or other communication bar-
20 rier;**

21 **“(C) Blindness;**

22 **“(D) Autism; or**

23 **“(E) Dementia.**

24 **“(c) ‘Support person’ means a family member, guardian, personal
25 care assistant or other paid or unpaid attendant selected by the patient
26 to physically or emotionally assist the patient or ensure effective
27 communication with the patient.**

28 **“(2) A hospital licensed in this state must allow a patient to desig-
29 nate at least three support persons, and to allow at least one support
30 person to be present with the patient at all times in the emergency**

1 department and during the patient’s stay at the hospital, if necessary
2 to facilitate the patient’s care, including but not limited to when the
3 patient:

4 “(a) Has a cognitive or mental health disability that affects the
5 patient’s ability to make medical decisions or understand medical ad-
6 vice;

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

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

12 “(d) Has behavioral health needs that the support person can ad-
13 dress more effectively than the hospital staff.

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

16 “(a) Requiring a support person to:

17 “(A) Wear personal protective equipment provided by the hospital
18 and follow hand washing and other protocols for preventing the po-
19 tential spread of infection;

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

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

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

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

27 “(4) A hospital must ensure that a support person designated by a
28 patient is present for any discussion in which the patient is asked to
29 elect hospice care or to sign an advance directive or other instrument
30 allowing the withholding or withdrawing of life-sustaining procedures

1 or artificially administered nutrition or hydration, unless the patient
2 requests to have the discussion outside of the presence of a support
3 person.

4 “(5) A hospital must inform a patient, at the time the hospital ser-
5 vices are scheduled and upon admission, of the patient’s right to sup-
6 port persons under this section and must post the hospital’s policy and
7 requirements for support persons at entry points to the hospital and
8 on the hospital’s website.

9 “(6) This section does not affect a hospital’s obligation to:

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

13 “(b) Make exceptions to the hospital visitor policy, including ex-
14 ceptions to the number of support persons allowed access to the pa-
15 tient, as a reasonable accommodation under the Americans with
16 Disabilities Act of 1990, 42 U.S.C. 12101 et seq.

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

21 “(2) Moneys received under this section shall be paid into the Gen-
22 eral Fund and credited to the Oregon Health Authority Fund estab-
23 lished under ORS 413.101.

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

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

27 “SECTION 5. If the Governor has declared a statewide state of
28 emergency under ORS 401.165 or has proclaimed a state of public
29 health emergency under ORS 433.441, a health care provider licensed
30 or certified in this state who is treating or caring for a person with a

1 **disability must immediately notify the system described in ORS 192.517**
2 **if:**

3 **“(1) An individual acting on behalf of the person with a disability**
4 **authorizes the transfer of the person with a disability to hospice care;**
5 **or**

6 **“(2) The person with a disability is denied services, care, equipment**
7 **or treatment based on crisis care guidance.**

8 **“SECTION 6.** ORS 127.635 is amended to read:

9 “127.635. (1) Life-sustaining procedures that would otherwise be applied
10 to a principal who is incapable and who does not have an appointed health
11 care representative or applicable valid advance directive may be withheld
12 or withdrawn in accordance with subsections (2) and (3) of this section if the
13 principal has been medically confirmed to be in one of the following condi-
14 tions:

15 “(a) A terminal condition;

16 “(b) Permanently unconscious;

17 “(c) A condition in which administration of life-sustaining procedures
18 would not benefit the principal’s medical condition and would cause perma-
19 nent and severe pain; or

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

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

1 representative:

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

4 “(b) The principal’s spouse;

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

7 “(d) A majority of the adult children of the principal who can be so lo-
8 cated;

9 “(e) Either parent of the principal;

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

12 “(g) Any adult relative or adult friend.

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

17 “(4)(a) Life-sustaining procedures may be withheld or withdrawn, includ-
18 ing an election for hospice treatment, upon the direction and under the
19 supervision of the attending physician or attending health care provider at
20 the request of a person designated the health care representative under sub-
21 sections (2) and (3) of this section only after the person has consulted with
22 concerned family and close friends and, if the principal has a case manager,
23 as defined by rules adopted by the Department of Human Services, after
24 giving notice to the principal’s case manager.

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

30 “(c) As used in this subsection, ‘hospice treatment’ means treatment that

1 focuses on palliative care, including care for acute pain and symptom man-
2 agement, rather than curative treatment, provided to a principal with a ter-
3 minal condition.

4 **“(5) Before life-sustaining procedures may be withheld or withdrawn**
5 **for a principal who has an intellectual or developmental disability, the**
6 **person designated under subsection (2) or (3) of this section shall**
7 **contact the department to determine if the principal has a case man-**
8 **ager and provide notice to the case manager in accordance with sub-**
9 **section (4) of this section.**

10 “[5] (6) Notwithstanding subsection (2) of this section, a person who is
11 the principal’s parent or former guardian may not withhold or withdraw
12 life-sustaining procedures under this section if:

13 “(a) At any time while the principal was under the care, custody or con-
14 trol of the person, a court entered an order:

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

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

19 “(b) The court entered a subsequent order that:

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

25 “(B) Terminated the person’s parental rights under ORS 419B.500 and
26 419B.502 to 419B.524.

27 “[6] (7) A principal, while not incapable, may petition the court to re-
28 move a prohibition contained in subsection [(5)] (6) of this section.

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

30 **“659A.142. (1) As used in this section[,]:**

1 **“(a) ‘Health care facility’ has the meaning given that term in ORS**
2 **442.015.**

3 **“(b) ‘Health professional regulatory board’ has the meaning given**
4 **that term in ORS 676.160.**

5 **“(c) ‘Medical resources’ includes but is not limited to:**

6 **“(A) Medical devices or equipment.**

7 **“(B) Prescription drugs.**

8 **“(C) Laboratory testing.**

9 **“(d) ‘Provider’ means:**

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

12 **“(B) A health care facility.**

13 **“(e) ‘State government’ has the meaning given that term in ORS 174.111.**

14 **“(2) It is an unlawful employment practice for an employment agency to**
15 **fail or refuse to refer for employment, or otherwise discriminate against, any**
16 **individual because that individual has a disability, or to classify or refer for**
17 **employment any individual because that individual has a disability.**

18 **“(3) It is an unlawful employment practice for a labor organization, be-**
19 **cause an individual has a disability, to exclude or to expel from its mem-**
20 **bership such individual or to discriminate in any way against such**
21 **individual.**

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

26 **“(5)(a) It is an unlawful practice for state government to exclude an in-**
27 **dividual from participation in or deny an individual the benefits of the ser-**
28 **vices, programs or activities of state government or to make any distinction,**
29 **discrimination or restriction because the individual has a disability.**

30 **“(b) Paragraph (a) of this subsection is intended to ensure equal access**

1 to available services, programs and activities of state government.

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

3 “(A) Create an independent entitlement to any service, program or activ-
4 ity of state government; or

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

9 **“(6)(a) It is an unlawful practice for a provider or any person acting**
10 **on behalf of a provider to deny medical treatment to a patient that is**
11 **likely, based on an individualized assessment of the patient using ob-**
12 **jective medical evidence, to benefit the patient or to limit or restrict**
13 **in any manner the allocation of medical resources to the patient based**
14 **on the patient’s race, color, national origin, sex, sexual orientation,**
15 **gender identity, age or disability.**

16 **“(b) In determining whether medical treatment is likely to benefit**
17 **a patient, a provider shall work with the patient, the patient’s family**
18 **and others authorized to act on behalf of a patient, if available.**

19 “[6] (7) Receipt or alleged receipt of treatment for a mental disorder
20 does not constitute evidence of an individual’s inability to acquire, rent or
21 maintain property.

22 **“SECTION 8. (1) The Legislative Policy and Research Director shall**
23 **study the implementation of this 2020 special session Act in collab-**
24 **oration with individuals from the Department of Human Services who**
25 **administer the developmental disabilities programs and individuals**
26 **from the protection and advocacy system described in ORS 192.517,**
27 **health care providers and persons with disabilities.**

28 **“(2) The director shall provide a report of the director’s findings**
29 **under subsection (1) of this section to the Senate committee of the**
30 **Legislative Assembly related to Human Services no later than Febru-**

1 ary 1, 2021.

2 **“SECTION 9. A hospital must implement protocols to inform pa-**
3 **tients of their rights under section 2 of this 2020 special session Act**
4 **and post the hospital’s policy as required by section 2 (5) of this 2020**
5 **special session Act no later than August 1, 2020.**

6 **“SECTION 10. This 2020 special session Act being necessary for the**
7 **immediate preservation of the public peace, health and safety, an**
8 **emergency is declared to exist, and this 2020 special session Act takes**
9 **effect on its passage.”.**

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