

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

**PROPOSED AMENDMENTS TO
SENATE BILL 199**

1 On page 1 of the printed bill, line 4, after the semicolon delete the rest
2 of the line and insert “and prescribing an effective date.”.

3 Delete lines 6 through 30 and delete pages 2 through 16 and insert:

4 **“SECTION 1. Section 2 of this 2021 Act is added to and made a part
5 of ORS 127.505 to 127.660.**

6 **“SECTION 2. An advance directive executed by an Oregon resident
7 or by a resident of any other state while physically present in this
8 state must be in substantially the following form:**

9 “

10 **OREGON ADVANCE DIRECTIVE FOR HEALTH CARE**

11

12 **• This Advance Directive form allows you to:**

13 **• Share your values, beliefs, goals and wishes for health care if
14 you are not able to express them yourself.**

15 **• Name a person to make your health care decisions if you could
16 not make them for yourself. This person is called your health care
17 representative and they must agree to act in this role.**

18

19 **• Be sure to discuss your Advance Directive and your wishes with
20 your health care representative. This will allow them to make deci-
21 sions that reflect your wishes. It is recommended that you complete**

1 **this entire form.**

2 • **The Oregon Advance Directive for Health Care form and Your**
3 **Guide to the Oregon Advance Directive are available on the Oregon**
4 **Health Authority’s website.**

5 • **In sections 1, 2, 5, 6 and 7 you appoint a health care represen-**
6 **tative.**

7 • **In sections 3 and 4 you provide instructions about your care.**

8

9 **The Advance Directive form allows you to express your preferences**
10 **for health care. It is not the same as Portable Orders for Life Sus-**
11 **taining Treatment (POLST) as defined in ORS 127.663. You can find**
12 **more information about the POLST in Your Guide to the Oregon Ad-**
13 **vance Directive.**

14 **This form may be used in Oregon to choose a person to make health**
15 **care decisions for you if you become too sick to speak for yourself or**
16 **are unable to make your own medical decisions. The person is called**
17 **a health care representative. If you do not have an effective health**
18 **care representative appointment and you become too sick to speak for**
19 **yourself, a health care representative will be appointed for you in the**
20 **order of priority set forth in ORS 127.635 (2) and this person can only**
21 **decide to withhold or withdraw life sustaining treatments if you meet**
22 **one of the conditions set forth in ORS 127.635 (1).**

23 **This form also allows you to express your values and beliefs with**
24 **respect to health care decisions and your preferences for health care.**

25 • **If you have completed an advance directive in the past, this new**
26 **advance directive will replace any older directive.**

27 • **You must sign this form for it to be effective. You must also have**
28 **it witnessed by two witnesses or a notary. Your appointment of a**
29 **health care representative is not effective until the health care repre-**
30 **sentative accepts the appointment.**

1 • If your advance directive includes directions regarding the with-
2 drawal of life support or tube feeding, you may revoke your advance
3 directive at any time and in any manner that expresses your desire to
4 revoke it.

5 • In all other cases, you may revoke your advance directive at any
6 time and in any manner as long as you are capable of making medical
7 decisions.

8

9 **1. ABOUT ME**

10

11 **Name:** _____

12 **Date of Birth:** _____

13 **Telephone numbers: (Home)** _____

14 **(Work)** _____ **(Cell)** _____

15 **Address:** _____

16 **E-mail:** _____

17

18 **2. MY HEALTH CARE REPRESENTATIVE**

19

20 I choose the following person as my health care representative to
21 make health care decisions for me if I can't speak for myself.

22

23 **Name:** _____

24 **Relationship:** _____

25 **Telephone numbers: (Home)** _____

26 **(Work)** _____ **(Cell)** _____

27 **Address:** _____

28 **E-mail:** _____

29

30 I choose the following people to be my alternate health care repre-

1 **sentatives if my first choice is not available to make health care de-**
2 **isions for me or if I cancel the first health care representative's**
3 **appointment.**

4

5 **First alternate health care representative:**

6 **Name:** _____

7 **Relationship:** _____

8 **Telephone numbers: (Home)** _____

9 **(Work)** _____ **(Cell)** _____

10 **Address:** _____

11 **E-mail:** _____

12

13 **Second alternate health care representative:**

14 **Name:** _____

15 **Relationship:** _____

16 **Telephone numbers: (Home)** _____

17 **(Work)** _____ **(Cell)** _____

18 **Address:** _____

19 **E-mail:** _____

20

21 **3. MY HEALTH CARE INSTRUCTIONS**

22

23 **This section is the place for you to express your wishes, values and**
24 **goals for care. Your instructions provide guidance for your health care**
25 **representative and health care providers.**

26 **You can provide guidance on your care with the choices you make**
27 **below. This is the case even if you do not choose a health care repre-**
28 **sentative or if they cannot be reached.**

29

30 **A. MY HEALTH CARE DECISIONS:**

1 **There are three situations below for you to express your wishes.**
2 **They will help you think about the kinds of life support decisions your**
3 **health care representative could face. For each, choose the one option**
4 **that most closely fits your wishes.**

5 **a. Terminal Condition**

6 **This is what I want if:**

- 7 • **I have an illness that cannot be cured or reversed.**

8 **AND**

- 9 • **My health care providers believe it will result in my death within**
10 **six months, regardless of any treatments.**

11

12 **Initial one option only.**

13 ___ **I want to try all available treatments to sustain my life, such**
14 **as artificial feeding and hydration with feeding tubes, IV fluids, kidney**
15 **dialysis and breathing machines.**

16 ___ **I want to try to sustain my life with artificial feeding and hy-**
17 **dration with feeding tubes and IV fluids. I do not want other treat-**
18 **ments to sustain my life, such as kidney dialysis and breathing**
19 **machines.**

20 ___ **I do not want treatments to sustain my life, such as artificial**
21 **feeding and hydration with feeding tubes, IV fluids, kidney dialysis or**
22 **breathing machines. I want to be kept comfortable and be allowed to**
23 **die naturally.**

24 ___ **I want my health care representative to decide for me, after**
25 **talking with my health care providers and taking into account the**
26 **things that matter to me. I have expressed what matters to me in**
27 **section B below.**

28

29 **b. Advanced Progressive Illness**

30 **This is what I want if:**

1 • I have an illness that is in an advanced stage.

2 AND

3 • My health care providers believe it will not improve and will very
4 likely get worse over time and result in death.

5 AND

6 • My health care providers believe I will never be able to:

7 - Communicate

8 - Swallow food and water safely

9 - Care for myself

10 - Recognize my family and other people

11

12 Initial one option only.

13 ___ I want to try all available treatments to sustain my life, such
14 as artificial feeding and hydration with feeding tubes, IV fluids, kidney
15 dialysis and breathing machines.

16 ___ I want to try to sustain my life with artificial feeding and hy-
17 dration with feeding tubes and IV fluids. I do not want other treat-
18 ments to sustain my life, such as kidney dialysis and breathing
19 machines.

20 ___ I do not want treatments to sustain my life, such as artificial
21 feeding and hydration with feeding tubes, IV fluids, kidney dialysis or
22 breathing machines. I want to be kept comfortable and be allowed to
23 die naturally.

24 ___ I want my health care representative to decide for me, after
25 talking with my health care providers and taking into account the
26 things that matter to me. I have expressed what matters to me in
27 section B below.

28

29 **c. Permanently Unconscious**

30 **This is what I want if:**

1 **I am not conscious.**

2 **AND**

3 **If my health care providers believe it is very unlikely that I will**
4 **ever become conscious again.**

5

6 **Initial one option only.**

7 **___ I want to try all available treatments to sustain my life, such**
8 **as artificial feeding and hydration with feeding tubes, IV fluids, kidney**
9 **dialysis and breathing machines.**

10 **___ I want to try to sustain my life with artificial feeding and hy-**
11 **dration with feeding tubes and IV fluids. I do not want other treat-**
12 **ments to sustain my life, such as kidney dialysis and breathing**
13 **machines.**

14 **___ I do not want treatments to sustain my life, such as artificial**
15 **feeding and hydration with feeding tubes, IV fluids, kidney dialysis or**
16 **breathing machines. I want to be kept comfortable and be allowed to**
17 **die naturally.**

18 **___ I want my health care representative to decide for me, after**
19 **talking with my health care providers and taking into account the**
20 **things that matter to me. I have expressed what matters to me in**
21 **section B below.**

22

23 **You may write in the space below or attach pages to say more about**
24 **what kind of care you want or do not want.**

25

26

27

28

29 **B. WHAT MATTERS MOST TO ME AND FOR ME:**

30 **This section only applies when you are in a terminal condition,**

1 **have an advanced progressive illness or are permanently unconscious.**
2 **If you wish to use this section, you can communicate the things that**
3 **are really important to you and for you. This will help your health**
4 **care representative.**

5 **This is what you should know about what is important to me about**
6 **my life:**

7 _____

8 **This is what I value the most about my life:**

9 _____

10 **This is what is important for me about my life:**

11 _____

12
13 **I do not want life-sustaining procedures if I can not be supported**
14 **and be able to engage in the following ways:**

15

16 **Initial all that apply.**

17 **Express my needs.**

18 **Be free from long-term severe pain and suffering.**

19 **Know who I am and who I am with.**

20 **Live without being hooked up to mechanical life support.**

21 **Participate in activities that have meaning to me, such as:**

22 _____

23 **If you want to say more to help your health care representative**
24 **understand what matters most to you, write it here. (For example: I**
25 **do not want care if it will result in)**

26 _____

27 _____

28 _____

29

30 **C. MY SPIRITUAL BELIEFS**

1 Do you have spiritual or religious beliefs you want your health care
2 representative and those taking care of you to know? They can be
3 rituals, sacraments, denying blood product transfusions and more.

4 You may write in the space below or attach pages to say more about
5 your spiritual or religious beliefs.

6 _____
7 _____
8 _____

9

10 **4. MORE INFORMATION**

11

12 Use this section if you want your health care representative and
13 health care providers to have more information about you.

14 **A. LIFE AND VALUES**

15 Below you can share about your life and values. This can help your
16 health care representative and health care providers make decisions
17 about your health care. This might include family history, experiences
18 with health care, cultural background, career, social support system
19 and more.

20 You may write in the space below or attach pages to say more about
21 your life, beliefs and values.

22 _____
23 _____
24 _____

25

26 **B. PLACE OF CARE:**

27 If there is a choice about where you receive care, what do you
28 prefer? Are there places you want or do not want to receive care? (For
29 example, a hospital, a nursing home, a mental health facility, an adult
30 foster home, assisted living, your home.)

1 **You may write in the space below or attach pages to say more about**
2 **where you prefer to receive care or not receive care.**

3 _____
4 _____
5 _____

6

7 **C. OTHER:**

8 **You may attach to this form other documents you think will be**
9 **helpful to your health care representative and health care providers.**
10 **What you attach will be part of your Advance Directive.**

11 **You may list documents you have attached in the space below.**

12 _____
13 _____
14 _____

15

16 **D. INFORM OTHERS:**

17 **You can allow your health care representative to authorize your**
18 **health care providers to the extent permitted by state and federal**
19 **privacy laws to discuss your health status and care with the people**
20 **you write in below. Only your health care representative can make**
21 **decisions about your care.**

22 **Name:** _____

23 **Relationship:** _____

24 **Telephone numbers: (Home)** _____

25 **(Work)** _____ **(Cell)** _____

26 **Address:** _____

27 **E-mail:** _____

28

29 **5. MY SIGNATURE**

30

1 **My signature:** _____

2 **Date:** _____

3

4 **6. WITNESS**

5

6 **COMPLETE EITHER A OR B WHEN YOU SIGN**

7

8 **A. NOTARY:**

9

10 **State of** _____

11 **County of** _____

12 **Signed or attested before me on** _____,

13 **2____, by** _____.

14 _____

15 **Notary Public - State of Oregon**

16

17 **B. WITNESS DECLARATION:**

18

19 **The person completing this form is personally known to me or has**
20 **provided proof of identity, has signed or acknowledged the person’s**
21 **signature on the document in my presence and appears to be not under**
22 **duress and to understand the purpose and effect of this form. In ad-**
23 **dition, I am not the person’s health care representative or alternative**
24 **health care representative, and I am not the person’s attending health**
25 **care provider.**

26

27 **Witness Name (print):** _____

28 **Signature:** _____

29 **Date:** _____

30

1 **Witness Name (print):** _____

2 **Signature:** _____

3 **Date:** _____

4

5 **7. ACCEPTANCE BY MY HEALTH CARE REPRESENTATIVE**

6

7 **I accept this appointment and agree to serve as health care repre-**
8 **sentative.**

9

10 **Health care representative:**

11 **Printed name:** _____

12 **Signature or other verification of acceptance:**

13 _____

14 **Date:** _____

15

16 **First alternate health care representative:**

17 **Printed name:** _____

18 **Signature or other verification of acceptance:**

19 _____

20 **Date:** _____

21

22 **Second alternate health care representative:**

23 **Printed name:** _____

24 **Signature or other verification of acceptance:**

25 _____

26 **Date:** _____

27 “ _____

28 **“SECTION 3.** ORS 127.533 is amended to read:

29 “127.533. (1) In accordance with public notice and stakeholder partic-
30 ipation requirements prescribed by the Oregon Health Authority [*and ORS*

1 127.534], the Advance Directive [*Adoption*] **Advisory** Committee established
2 under ORS 127.532 shall:

3 “(a) [*Adopt*] **Advise the Legislative Assembly regarding** the form of
4 an advance directive to be used in this state; [*and*]

5 “(b) Review the form **set forth in section 2 of this 2021 Act** not less
6 than once every four years for the purpose of [*adopting*] **recommending**
7 changes to the form that the **advisory** committee determines are
8 necessary[.]; **and**

9 “(c) **Prepare written materials that provide information regarding**
10 **advance directives to assist the public with completing the advance**
11 **directive form.**

12 “[*2*] *Except as otherwise provided by ORS 127.505 to 127.660, the form of*
13 *an advance directive adopted pursuant to this section is the only valid form*
14 *of an advance directive in this state.*]

15 “[*3*] **(2)** At a minimum, the form of an advance directive [*adopted*] **re-**
16 **commended** under this section must contain the following elements:

17 “(a) A statement about the purposes of the advance directive, including:

18 “(A) A statement about the purpose of the principal’s appointment of a
19 health care representative to make health care decisions for the principal if
20 the principal becomes incapable;

21 “(B) A statement about the priority of health care representative ap-
22 pointment in ORS 127.635 (2) in the event the principal becomes incapable
23 and does not have a valid health care representative appointment;

24 “(C) A statement about the purpose of the principal’s expression of the
25 principal’s values and beliefs with respect to health care decisions and the
26 principal’s preferences for health care;

27 “(D) A statement about the purpose of the principal’s expression of the
28 principal’s preferences with respect to placement in a care home or a mental
29 health facility; [*and*]

30 “(E) A statement that advises the principal that the advance directive

1 allows the principal to document the principal's preferences, but is not a
2 POLST, as defined in ORS 127.663[.];

3 **“(F) A statement that the information described in subsection (1)(c)**
4 **of this section is available on the Oregon Health Authority's website;**
5 **and**

6 **“(G) A statement explaining that the principal may attach supple-**
7 **mentary material describing the principal's treatment preferences to**
8 **the advance directive and that any attached supplementary material**
9 **will be considered a part of the advance directive, consistent with ORS**
10 **127.505 (2)(b).**

11 **“(b) A statement explaining the execution formalities under ORS**
12 **127.515, including** that, to be effective, the advance directive must be:

13 **“(A) [*Accepted by signature or other applicable means*] Signed by the**
14 **principal; and**

15 **“(B) Either witnessed and signed by at least two adults or notarized.**

16 **“(c) A statement explaining the acceptance formalities under ORS**
17 **127.525, including** that, to be effective, the appointment of a health care
18 representative or an alternate health care representative must be accepted
19 by the health care representative or the alternate health care representative.

20 **“(d) A statement explaining ORS 127.545, including** that the advance
21 directive, once executed, supersedes any previously executed advance direc-
22 tive.

23 **“(e) The name, date of birth, address and other contact information of the**
24 **principal.**

25 **“(f) The name, address and other contact information of any health care**
26 **representative or any alternate health care representative appointed by the**
27 **principal.**

28 **“(g) A section providing the principal with an opportunity to state the**
29 **principal's values and beliefs with respect to health care decisions, including**
30 **the opportunity to describe the principal's preferences, by completing a**

1 checklist, by providing instruction through narrative or other means, or by
2 any combination of methods used to describe the principal’s preferences, re-
3 garding:

4 “(A) When the principal wants all reasonably available health care nec-
5 essary to preserve life and recover;

6 “(B) When the principal wants all reasonably available health care nec-
7 essary to treat chronic conditions;

8 “(C) When the principal wants to specifically limit health care necessary
9 to preserve life and recover, including artificially administered nutrition and
10 hydration, cardiopulmonary resuscitation and transport to a hospital; and

11 “(D) When the principal desires comfort care instead of health care nec-
12 essary to preserve life.

13 “(h) A section where the principal and the witnesses or notary may [*ac-*
14 *cept by signature or other means, including electronic or verbal means,*] **sign**
15 the advance directive, **consistent with the execution formalities required**
16 **under ORS 127.515.**

17 “(i) A section where any health care representative or any alternate
18 health care representative appointed by the principal may accept [*the ad-*
19 *vance directive by signature or other means, including electronic or verbal*
20 *means*] **the appointment, consistent with the requirements under ORS**
21 **127.525.**

22 “[*(4)(a)*] **(3)(a)** In [*adopting*] **recommending changes to** the form of an
23 advance directive under this section, the **advisory** committee shall use plain
24 language, such as ‘tube feeding’ and ‘life support.’

25 “(b) As used in this subsection:

26 “(A) ‘Life support’ means life-sustaining procedures.

27 “(B) ‘Tube feeding’ means artificially administered nutrition and hy-
28 dration.

29 “[*(5)*] **(4)** In [*adopting*] **recommending changes to** the form of an ad-
30 vance directive under this section, the **advisory** committee shall use the

1 components of the form for appointing a health care representative [or] **and**
2 an alternate health care representative set forth in ORS 127.527.

3 “[~~(6)~~ *The principal may attach supplementary material to an advance di-*
4 *rective. In addition to the form of an advance directive adopted under this*
5 *section, supplementary material attached to an advance directive under this*
6 *subsection is a part of the advance directive.*]

7 “**(5) The advisory committee shall submit a report detailing the ad-**
8 **visory committee’s recommendations developed under this section on**
9 **or before September 1 of an even-numbered year following the date**
10 **on which the advisory committee finalizes the recommendations in the**
11 **manner provided by ORS 192.245 to an interim committee of the Leg-**
12 **islative Assembly related to the judiciary. The interim committee shall**
13 **consider the advisory committee’s recommendations submitted to the**
14 **interim committee under this section.**

15 “[~~(7)~~ **(6)** The Oregon Health Authority shall post the form of an advance
16 directive [*adopted under this section*] **set forth in section 2 of this 2021**
17 **Act and the written materials described in subsection (1)(c) of this**
18 **section** on the authority’s website.

19 “**SECTION 4.** ORS 127.505 is amended to read:

20 “127.505. As used in ORS 127.505 to 127.660 and 127.995:

21 “(1) ‘Adult’ means an individual who:

22 “(a) Is 18 years of age or older; or

23 “(b) Has been adjudicated an emancipated minor, or is a minor who is
24 married.

25 “(2)(a) ‘Advance directive’ means a document executed by a principal that
26 contains:

27 “(A) A form appointing a health care representative; and

28 “(B) Instructions to the health care representative.

29 “(b) ‘Advance directive’ includes any supplementary document or writing
30 attached by the principal to the document described in paragraph (a) of this

1 subsection.

2 “(3) ‘Appointment’ means a form appointing a health care representative,
3 letters of guardianship or a court order appointing a health care represen-
4 tative.

5 “(4)(a) ‘Artificially administered nutrition and hydration’ means a medical
6 intervention to provide food and water by tube, mechanical device or other
7 medically assisted method.

8 “(b) ‘Artificially administered nutrition and hydration’ does not include
9 the usual and typical provision of nutrition and hydration, such as the pro-
10 vision of nutrition and hydration by cup, hand, bottle, drinking straw or
11 eating utensil.

12 “(5) ‘Attending health care provider’ means the health care provider who
13 has primary responsibility for the care and treatment of the principal, pro-
14 vided that the powers and duties conferred on the health care provider by
15 ORS 127.505 to 127.660 are within the health care provider’s scope of prac-
16 tice.

17 “(6) ‘Attending physician’ means the physician who has primary respon-
18 sibility for the care and treatment of the principal.

19 “(7) ‘Capable’ means not incapable.

20 “(8) ‘Form appointing a health care representative’ means:

21 “[*a*] *The portion of the form adopted under ORS 127.533 used to appoint*
22 *a health care representative or an alternate health care representative;*]

23 “[*b*] (a) The portion of the form set forth in [*section 6, chapter 36, Oregon*
24 *Laws 2018*] **section 2 of this 2021 Act**, used to appoint a health care repre-
25 sentative or an alternate health care representative; or

26 “[*c*] (b) The form set forth in ORS 127.527.

27 “(9) ‘Health care’ means diagnosis, treatment or care of disease, injury
28 and congenital or degenerative conditions, including the use, maintenance,
29 withdrawal or withholding of life-sustaining procedures and the use, main-
30 tenance, withdrawal or withholding of artificially administered nutrition and

1 hydration.

2 “(10) ‘Health care decision’ means consent, refusal of consent or with-
3 holding or withdrawal of consent to health care, and includes decisions re-
4 lating to admission to or discharge from a health care facility.

5 “(11) ‘Health care facility’ means a health care facility as defined in ORS
6 442.015, a domiciliary care facility as defined in ORS 443.205, a residential
7 facility as defined in ORS 443.400, an adult foster home as defined in ORS
8 443.705 or a hospice program as defined in ORS 443.850.

9 “(12)(a) ‘Health care provider’ means a person licensed, certified or oth-
10 erwise authorized or permitted by the laws of this state to administer health
11 care in the ordinary course of business or practice of a profession.

12 “(b) ‘Health care provider’ includes a health care facility.

13 “(13) ‘Health care representative’ means:

14 “(a) A competent adult appointed to be a health care representative or
15 an alternate health care representative under ORS 127.510.

16 “(b) A person who has authority to make health care decisions for a
17 principal under the provisions of ORS 127.635 (2) or (3).

18 “(c) A guardian or other person, appointed by a court to make health care
19 decisions for a principal.

20 “(14) ‘Incapable’ means that in the opinion of the court in a proceeding
21 to appoint or confirm authority of a health care representative, or in the
22 opinion of the principal’s attending physician or attending health care pro-
23 vider, a principal lacks the ability to make and communicate health care
24 decisions to health care providers, including communication through persons
25 familiar with the principal’s manner of communicating if those persons are
26 available.

27 “(15) ‘Instrument’ means an advance directive, form appointing a health
28 care representative, disqualification, withdrawal, court order, court appoint-
29 ment or other document governing health care decisions.

30 “(16)(a) ‘Life-sustaining procedure’ means any medical procedure, phar-

1 maceutical, medical device or medical intervention that maintains life by
2 sustaining, restoring or supplanting a vital function.

3 “(b) ‘Life-sustaining procedure’ does not include routine care necessary
4 to sustain patient cleanliness and comfort.

5 “(17) ‘Medically confirmed’ means the medical opinion of the attending
6 physician or attending health care provider has been confirmed by a second
7 physician or second health care provider who has examined the patient and
8 who has clinical privileges or expertise with respect to the condition to be
9 confirmed.

10 “(18) ‘Permanently unconscious’ means completely lacking an awareness
11 of self and external environment, with no reasonable possibility of a return
12 to a conscious state, and that condition has been medically confirmed by a
13 neurological specialist who is an expert in the examination of unresponsive
14 individuals.

15 “(19) ‘Physician’ means an individual licensed to practice medicine by the
16 Oregon Medical Board or a naturopathic physician licensed to practice
17 naturopathic medicine by the Oregon Board of Naturopathic Medicine.

18 “(20) ‘Principal’ means:

19 “(a) An adult who has executed an advance directive;

20 “(b) A person of any age who has a health care representative;

21 “(c) A person for whom a health care representative is sought; or

22 “(d) A person being evaluated for capability to whom a health care rep-
23 resentative will be assigned if the person is determined to be incapable.

24 “(21) ‘Terminal condition’ means a health condition in which death is
25 imminent irrespective of treatment, and where the application of life-
26 sustaining procedures or the artificial administration of nutrition and hy-
27 dration serves only to postpone the moment of death of the principal.

28 **“SECTION 5.** ORS 127.510 is amended to read:

29 “127.510. (1) A capable adult may execute an advance directive. The ad-
30 vance directive is effective when it is signed by the principal and witnessed

1 or notarized as [required by ORS 127.505 to 127.660] **described in ORS**
2 **127.515.**

3 “(2)(a) A capable adult may use [*an advance directive or the form set forth*
4 *in ORS 127.527*] **a form appointing a health care representative** to ap-
5 point a competent adult to serve as the health care representative for the
6 capable adult. A health care representative appointed under this paragraph
7 shall make health care decisions for the principal if the principal becomes
8 incapable.

9 “(b) A capable adult may use [*an advance directive or the form set forth*
10 *in ORS 127.527*] **a form appointing health care representative** to appoint
11 one or more competent adults to serve as alternate health care represen-
12 tatives for the capable adult. For purposes of ORS 127.505 to 127.660, an al-
13 ternate health care representative has the rights and privileges of a health
14 care representative appointed under paragraph (a) of this subsection, in-
15 cluding the rights described in ORS 127.535. An alternate health care repre-
16 sentative appointed under this paragraph shall make health care decisions
17 for the principal if:

18 “(A) The principal becomes incapable; and

19 “(B) The health care representative appointed under paragraph (a) of this
20 subsection is unable, unwilling or unavailable to make timely health care
21 decisions for the principal.

22 “(c) For purposes of paragraph (b) of this subsection, the health care
23 representative appointed under paragraph (a) of this subsection is unavail-
24 able to make timely health care decisions for the principal if the health care
25 representative is not available to answer questions for the health care pro-
26 vider in person, by telephone or by another means of direct communication.

27 “(d) An appointment made under this section is effective when it is ac-
28 cepted by the health care representative, **as described in ORS 127.525.**

29 “(3) Unless the period of time that an advance directive or a form ap-
30 pointing a health care representative is effective is limited by the terms of

1 the advance directive or the form appointing a health care representative,
2 the advance directive or the form appointing a health care representative
3 continues in effect until:

4 “(a) The principal dies; or

5 “(b) The advance directive or the form appointing a health care repre-
6 sentative is revoked, suspended or superseded pursuant to ORS 127.545.

7 “(4) Notwithstanding subsection (3) of this section, if the principal is in-
8 capable at the expiration of the term of the advance directive or the form
9 appointing a health care representative, the advance directive or the form
10 appointing a health care representative continues in effect until:

11 “(a) The principal is no longer incapable;

12 “(b) The principal dies; or

13 “(c) The advance directive or the form appointing a health care repre-
14 sentative is revoked, suspended or superseded pursuant to the provisions of
15 ORS 127.545.

16 “(5) A health care provider shall make a copy of an advance directive, a
17 copy of a form appointing a health care representative and a copy of any
18 other instrument a part of the principal’s medical record when a copy of the
19 advance directive, form appointing a health care representative or instru-
20 ment is provided to the principal’s health care provider.

21 “(6) Notwithstanding subsections (3)(a) and (4)(b) of this section, an ad-
22 vance directive remains in effect with respect to an anatomical gift, as de-
23 fined in ORS 97.953, after the principal dies.

24 “**SECTION 6.** ORS 127.515 is amended to read:

25 “127.515. (1) An advance directive **form set forth in section 2 of this**
26 **2021 Act** or a form appointing a health care representative **set forth in ORS**
27 **127.527** may be executed by [*a resident or nonresident adult of this state in*
28 *the manner provided by ORS 127.505 to 127.660*] **an Oregon resident or by**
29 **a resident of any other state while physically present in this state.**

30 “(2) [*An advance directive or a form appointing a health care representative*

1 *must reflect the date of the principal's signature or other method of accepting*
2 *the advance directive or the form appointing a health care representative. To*
3 *be valid, an advance directive or a form appointing a health care*
4 *representative]* **The form described in subsection (1) of this section** must
5 be **signed and:**

6 “(a) Witnessed and signed by at least two adults; or

7 “(b) Notarized by a notary public.

8 “(3) If an advance directive or a form appointing a health care represen-
9 tative is validated under subsection (2)(a) of this section, each witness must
10 witness:

11 “(a) The principal signing the advance directive or the form appointing
12 a health care representative; or

13 “(b) The principal acknowledging the signature of the principal on the
14 advance directive or the form appointing a health care representative[, *or the*
15 *principal acknowledging any other method by which the principal accepted the*
16 *advance directive or the form appointing a health care representative*].

17 “(4) For an advance directive or a form appointing a health care repre-
18 sentative to be valid under subsection (2)(a) of this section, the witnesses
19 may not, on the date the advance directive or the form appointing a health
20 care representative is signed or acknowledged:

21 “(a) Be the principal's attending physician or attending health care pro-
22 vider.

23 “(b) Be the principal's health care representative or alternate health care
24 representative appointed under ORS 127.510.

25 “(5) If an advance directive or a form appointing a health care represen-
26 tative is validated under subsection (2)(a) of this section, and if the principal
27 is a patient in a long term care facility at the time the advance directive or
28 the form appointing a health care representative is executed, one of the
29 witnesses must be an individual who is designated by the facility and quali-
30 fied as specified by the Department of Human Services by rule.

1 “(6) Notwithstanding subsection (2) of this section, an advance directive,
2 [or] a form appointing a health care representative **or a similar instru-**
3 **ment**, that is executed by an adult who resides in another state at the time
4 of execution, and that is executed in compliance with the laws of that state,
5 the laws of the state where the principal is located at the time of the exe-
6 cution or the laws of this state, is validly executed for the purposes of ORS
7 127.505 to 127.660.

8 **“SECTION 7.** ORS 127.525 is amended to read:

9 “127.525. *[For an appointment of a health care representative or an alter-*
10 *enate health care representative in a form appointing a health care represen-*
11 *tative to be effective, the health care representative or the alternate health care*
12 *representative must accept the appointment as described in ORS 127.510.]*

13 **“(1) A person may accept appointment as a health care represen-**
14 **tative or an alternate health care representative in a form appointing**
15 **a health care representative by:**

16 **“(a) Signing the acceptance of appointment; or**

17 **“(b) Representing to a third party that the person has accepted the**
18 **authority and duties of a health care representative under an advance**
19 **directive in which the person is named as the health care represen-**
20 **tative or alternate health care representative.**

21 **“(2)** Subject to the right of the health care representative or the alternate
22 health care representative to withdraw, the acceptance imposes a duty on the
23 health care representative or the alternate health care representative to
24 make health care decisions on behalf of the principal as described in ORS
25 127.510.

26 **“(3)** Until the principal becomes incapable, the health care representative
27 or the alternate health care representative may withdraw by giving notice
28 to the principal. After the principal becomes incapable, the health care rep-
29 resentative or the alternate health care representative may withdraw by
30 giving notice to the health care provider.

1 **SECTION 8.** ORS 127.658 is amended to read:

2 “127.658. (1) ORS 127.505 to 127.660 as enacted, the repeal of any statute
3 that was a part of ORS 127.505 to 127.660 and subsequent amendments to the
4 provisions of ORS 127.505 to 127.660 do not impair or supersede any advance
5 directive, form appointing a health care representative or directive to phy-
6 sicians executed in accordance with:

7 “(a) The provisions of ORS 127.505 to 127.660; or

8 “(b) The provisions of ORS 127.505 to 127.660 or any other statute gov-
9 erning an advance directive, a form appointing a health care representative
10 or a directive to physicians that was in effect on the date that the advance
11 directive, the form appointing a health care representative or the directive
12 to physicians was executed.

13 “(2) An advance directive, a form appointing a health care representative
14 or a directive to physicians executed before, on or after January 1, 2019,
15 shall be governed by the provisions of ORS 127.505 to 127.660 or any other
16 statute that is in effect on the date on which[:]

17 “[(a) *The issue giving rise to adjudication occurs; or]*

18 “[(b)] the advance directive, the form appointing a health care represen-
19 tative or the directive to physicians was executed.

20 **SECTION 9.** ORS 127.532 is amended to read:

21 “127.532. (1) The Advance Directive [*Adoption*] **Advisory** Committee is
22 established within the division of the Oregon Health Authority that is
23 charged with performing the public health functions of the state.

24 “(2)(a) The committee consists of 13 members.

25 “(b) One member shall be the Long Term Care Ombudsman or the
26 designee of the Long Term Care Ombudsman.

27 “(c) The other 12 members shall be appointed by the Governor as follows:

28 “(A) One member who represents primary health care providers.

29 “(B) One member who represents hospitals.

30 “(C) One member who is a clinical ethicist affiliated with a health care

1 facility located in this state, or affiliated with a health care organization
2 offering health care services in this state.

3 “(D) Two members who are health care providers with expertise in
4 palliative or hospice care, one of whom is not employed by a hospital or
5 other health care facility, a health care organization or an insurer.

6 “(E) One member who represents individuals with disabilities.

7 “(F) One member who represents consumers of health care services.

8 “(G) One member who represents the long term care community.

9 “(H) One member with expertise advising or assisting consumers with
10 end-of-life decisions.

11 “(I) One member from among members proposed by the Oregon State Bar
12 who has extensive experience in elder law and advising individuals on how
13 to execute an advance directive.

14 “(J) One member from among members proposed by the Oregon State Bar
15 who has extensive experience in estate planning and advising individuals on
16 how to make end-of-life decisions.

17 “(K) One member from among members proposed by the Oregon State Bar
18 who has extensive experience in health law.

19 “(3) The term of office of each member of the committee is four years, but
20 a member serves at the pleasure of the appointing authority. Before the ex-
21 piration of the term of a member, the appointing authority shall appoint a
22 successor whose term begins on January 1 next following. A member is eli-
23 gible for reappointment. If there is a vacancy for any cause, the appointing
24 authority shall make an appointment to become immediately effective for the
25 unexpired term.

26 “(4) A majority of the members of the committee constitutes a quorum for
27 the transaction of business.

28 “(5) Official action by the committee requires the approval of a majority
29 of the members of the committee.

30 “(6) The committee shall elect one of its members to serve as chairperson.

1 “(7) The committee shall meet at times and places specified by the call
2 of the chairperson or of a majority of the members of the committee, pro-
3 vided that the committee meets at least twice a year.

4 “(8) The committee may adopt rules necessary for the operation of the
5 committee.

6 “(9) Members of the committee are not entitled to compensation, but may
7 be reimbursed for actual and necessary travel and other expenses incurred
8 by them in the performance of their official duties in the manner and
9 amounts provided for in ORS 292.495. Claims for expenses shall be paid out
10 of funds appropriated to the Oregon Health Authority for purposes of the
11 committee.

12 **“SECTION 10.** Section 29, chapter 36, Oregon Laws 2018, is amended to
13 read:

14 **“Sec. 29.** Notwithstanding the term of office specified by [*section 2 of this*
15 *2018 Act*] **ORS 127.532**, of the members first appointed by the Governor to
16 the Advance Directive [*Adoption*] **Advisory** Committee:

17 “(1) Four shall serve for a term ending January 1, 2021.

18 “(2) Four shall serve for a term ending January 1, 2022.

19 “(3) Four shall serve for a term ending January 1, 2023.

20 **“SECTION 11.** Section 6, chapter 36, Oregon Laws 2018, and ORS
21 **127.534 are repealed.**

22 **“SECTION 12.** This 2021 Act takes effect on the 91st day after the
23 date on which the 2021 regular session of the Eighty-first Legislative
24 Assembly adjourns sine die.”.

25