

Senate Bill 891

Sponsored by COMMITTEE ON JUDICIARY

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**.

Modifies provisions relating to Oregon Death with Dignity Act. Expands health care providers authorized to prescribe medication to include physician assistants and nurse practitioners. Repeals residency requirement. Modifies permissible methods of delivering prescription to pharmacist. Reduces certain waiting periods. Authorizes electronic filing of certain reports.

A BILL FOR AN ACT

1
2 Relating to death with dignity; creating new provisions; amending ORS 127.800, 127.805, 127.810,
3 127.815, 127.820, 127.825, 127.830, 127.835, 127.840, 127.845, 127.850, 127.855, 127.865, 127.880,
4 127.885 and 127.897; and repealing ORS 127.860.

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

6 **SECTION 1.** ORS 127.800 is amended to read:

7 127.800. §1.01. Definitions. The following words and phrases, whenever used in ORS 127.800 to
8 127.897, have the following meanings:

9 (1) "Adult" means an individual who is 18 years of age or older.

10 (2) "Attending [*physician*] **provider**" means the [*physician*] **provider** who has primary responsi-
11 bility for the care of the patient and treatment of the patient's terminal disease.

12 (3) "Capable" means that in the opinion of a court or in the opinion of the patient's attending
13 [*physician*] **provider** or consulting [*physician*] **provider**, psychiatrist or psychologist, a patient has
14 the ability to make and communicate health care decisions to health care providers, including
15 communication through persons familiar with the patient's manner of communicating if those per-
16 sons are available.

17 (4) "Consulting [*physician*] **provider**" means a [*physician*] **provider** who is qualified by specialty
18 or experience to make a professional diagnosis and prognosis regarding the patient's disease.

19 (5) "Counseling" means one or more consultations as necessary between a [*state licensed*] psy-
20 chiatrist or **licensed** psychologist and a patient for the purpose of determining that the patient is
21 capable and not suffering from a psychiatric or psychological disorder or depression causing im-
22 paired judgment.

23 (6) "Health care provider" means a person licensed, certified or otherwise authorized or per-
24 mitted by the law of this state to administer health care or dispense medication in the ordinary
25 course of business or practice of a profession, and includes a health care facility.

26 (7) "Informed decision" means a decision by a qualified patient, to request and obtain a pre-
27 scription to end his or her life in a humane and dignified manner, that is based on an appreciation
28 of the relevant facts and after being fully informed by the attending [*physician*] **provider** of:

29 (a) His or her medical diagnosis;

30 (b) His or her prognosis;

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) The potential risks associated with taking the medication to be prescribed;
- 2 (d) The probable result of taking the medication to be prescribed; and
- 3 (e) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain
- 4 control.

5 (8) “Medically confirmed” means the medical opinion of the attending [*physician*] **provider** has
 6 been confirmed by a consulting [*physician*] **provider** who has [*examined*] **evaluated** the patient and
 7 the patient’s relevant medical records.

8 (9) “Patient” means a person who is under the care of a [*physician*] **provider**.

9 [(10) “Physician” means a doctor licensed to practice medicine under ORS 677.100 to 677.228.]

10 (10) “**Provider**” means:

- 11 (a) **A physician licensed under ORS 677.100 to 677.228;**
- 12 (b) **A physician assistant licensed under ORS 677.505 to 677.525; and**
- 13 (c) **A nurse practitioner licensed under ORS 678.375 to 678.390.**

14 (11) “Qualified patient” means a capable adult who [*is a resident of Oregon and*] has satisfied the
 15 requirements of ORS 127.800 to 127.897 in order to obtain a prescription for medication to end his
 16 or her life in a humane and dignified manner.

17 (12) “Terminal disease” means an incurable and irreversible disease that has been medically
 18 confirmed and will, within reasonable medical judgment, produce death within six months.

19 **SECTION 2.** ORS 127.805 is amended to read:

20 127.805. §2.01. Who may initiate a written request for medication. (1) An adult who is capable,
 21 *is a resident of Oregon,*] and has been determined by the attending [*physician*] **provider** and con-
 22 sulting [*physician*] **provider** to be suffering from a terminal disease, and who has voluntarily ex-
 23 pressed his or her wish to die, may make a written request for medication for the purpose of ending
 24 his or her life in a humane and dignified manner in accordance with ORS 127.800 to 127.897.

25 (2) No person shall qualify under the provisions of ORS 127.800 to 127.897 solely because of age
 26 or disability.

27 **SECTION 3.** ORS 127.810 is amended to read:

28 127.810. §2.02. Form of the written request. (1) A valid request for medication under ORS 127.800
 29 to 127.897 shall be in substantially the form described in ORS 127.897, signed and dated by the pa-
 30 tient and witnessed by at least two individuals who, in the presence of the patient, attest that to the
 31 best of their knowledge and belief the patient is capable, acting voluntarily, and is not being coerced
 32 to sign the request.

33 (2) One of the witnesses shall be a person who is not:

- 34 (a) A relative of the patient by blood, marriage or adoption; **or**
- 35 (b) A person who at the time the request is signed would be entitled to any portion of the estate
 36 of the qualified patient upon death under any will or by operation of law. [*or*]

37 [(*c*) *An owner, operator or employee of a health care facility where the qualified patient is receiving*
 38 *medical treatment or is a resident.*]

39 (3) The patient’s attending [*physician*] **provider** at the time the request is signed shall not be a
 40 witness.

41 (4) If the patient is a patient in a long term care facility at the time the written request is made,
 42 one of the witnesses shall be an individual designated by the facility and having the qualifications
 43 specified by the Department of Human Services by rule.

44 **SECTION 4.** ORS 127.815 is amended to read:

45 127.815. §3.01. Attending [*physician*] **provider** responsibilities. (1) The attending [*physician*]

1 **provider** shall:

2 (a) Make the initial determination of whether a patient has a terminal disease, is capable, and
3 has made the request voluntarily;

4 [(b) *Request that the patient demonstrate Oregon residency pursuant to ORS 127.860;*]

5 [(c) (b) To ensure that the patient is making an informed decision, inform the patient of:

6 (A) His or her medical diagnosis;

7 (B) His or her prognosis;

8 (C) The potential risks associated with taking the medication to be prescribed;

9 (D) The probable result of taking the medication to be prescribed; and

10 (E) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain
11 control;

12 [(d) (c) Refer the patient to a consulting [*physician*] **provider** for medical confirmation of the
13 diagnosis, and for a determination that the patient is capable and acting voluntarily;

14 [(e) (d) Refer the patient for counseling if appropriate pursuant to ORS 127.825;

15 [(f) (e) Recommend that the patient notify next of kin;

16 [(g) (f) Counsel the patient about the importance of having another person present when the
17 patient takes the medication prescribed pursuant to ORS 127.800 to 127.897 and of not taking the
18 medication in a public place;

19 [(h) (g) Inform the patient that he or she has an opportunity to rescind the request at any time
20 and in any manner, and offer the patient an opportunity to rescind at the time the patient makes
21 the patient's second oral request pursuant to ORS 127.840;

22 [(i) (h) Verify, immediately prior to writing the prescription for medication under ORS 127.800
23 to 127.897, that the patient is making an informed decision;

24 [(j) (i) Fulfill the medical record documentation requirements of ORS 127.855;

25 [(k) (j) Ensure that all appropriate steps are carried out in accordance with ORS 127.800 to
26 127.897 prior to writing a prescription for medication to enable a qualified patient to end his or her
27 life in a humane and dignified manner; and

28 [(L)(A)] (k)(A) Dispense medications directly, including ancillary medications intended to facili-
29 tate the desired effect to minimize the patient's discomfort, provided the attending [*physician*] **pro-**
30 **vider** is registered as a dispensing physician, **as defined in ORS 677.010**, with the Oregon Medical
31 Board, has a current Drug Enforcement Administration certificate and complies with any applicable
32 administrative rule; or

33 (B) With the patient's written consent, [.]

34 [(i) contact a pharmacist [*and*], inform the pharmacist of the prescription[.]; and **deliver the**
35 **prescription to the pharmacist in person, by mail, by facsimile or electronically.**

36 [(ii) *Deliver the written prescription personally or by mail to the pharmacist, who will dispense the*
37 *medications to either the patient, the attending physician or an expressly identified agent of the*
38 *patient.*]

39 **(2) A pharmacist may dispense the medications prescribed by the attending provider to**
40 **either the patient, the attending provider or an expressly identified agent of the patient:**

41 **(a) If the attending provider delivers the written prescription personally or by mail to the**
42 **pharmacist; or**

43 **(b) If the attending provider causes the written prescription to be delivered by facsimile**
44 **or electronically, after the pharmacist confirms the prescription with the attending provider**
45 **verbally in person or by telephone or other two-way electronic communication device.**

1 [(2)] (3) Notwithstanding any other provision of law, the attending [*physician*] **provider** may sign
2 the patient's report of death.

3 **SECTION 5.** ORS 127.820 is amended to read:

4 127.820. §3.02. Consulting [*physician*] **provider** confirmation. Before a patient is qualified under
5 ORS 127.800 to 127.897, a consulting [*physician*] **provider** shall [*examine*] **evaluate** the patient and
6 his or her relevant medical records and confirm, in writing, the attending [*physician's*] **provider's**
7 diagnosis that the patient is suffering from a terminal disease, and verify that the patient is capable,
8 is acting voluntarily and has made an informed decision.

9 **SECTION 6.** ORS 127.825 is amended to read:

10 127.825. §3.03. Counseling referral. If in the opinion of the attending [*physician*] **provider** or the
11 consulting [*physician*] **provider** a patient may be suffering from a psychiatric or psychological dis-
12 order or depression causing impaired judgment, either [*physician*] **provider** shall refer the patient
13 for counseling. No medication to end a patient's life in a humane and dignified manner shall be
14 prescribed until the person performing the counseling determines that the patient is not suffering
15 from a psychiatric or psychological disorder or depression causing impaired judgment.

16 **SECTION 7.** ORS 127.830 is amended to read:

17 127.830. §3.04. Informed decision. No person shall receive a prescription for medication to end
18 his or her life in a humane and dignified manner unless he or she has made an informed decision
19 as defined in ORS 127.800 (7). Immediately prior to writing a prescription for medication under ORS
20 127.800 to 127.897, the attending [*physician*] **provider** shall verify that the patient is making an in-
21 formed decision.

22 **SECTION 8.** ORS 127.835 is amended to read:

23 127.835. §3.05. Family notification. The attending [*physician*] **provider** shall recommend that the
24 patient notify the next of kin of his or her request for medication pursuant to ORS 127.800 to
25 127.897. A patient who declines or is unable to notify next of kin shall not have his or her request
26 denied for that reason.

27 **SECTION 9.** ORS 127.840 is amended to read:

28 127.840. §3.06. Written and oral requests. (1) In order to receive a prescription for medication
29 to end his or her life in a humane and dignified manner, a qualified patient shall have made an oral
30 request and a written request, and reiterate the oral request to his or her attending [*physician*]
31 **provider** no less than [*15 days*] **48 hours** after making the initial oral request.

32 (2) Notwithstanding subsection (1) of this section, if the qualified patient's attending [*physician*]
33 **provider** has medically confirmed that the qualified patient will, within reasonable medical judg-
34 ment, die within [*15 days*] **48 hours** after making the initial oral request under this section, the
35 qualified patient may reiterate the oral request to his or her attending [*physician*] **provider** at any
36 time after making the initial oral request.

37 (3) At the time the qualified patient makes his or her second oral request, the attending [*physi-*
38 *cian*] **provider** shall offer the patient an opportunity to rescind the request.

39 **SECTION 10.** ORS 127.845 is amended to read:

40 127.845. §3.07. Right to rescind request. A patient may rescind his or her request at any time
41 and in any manner without regard to his or her mental state. No prescription for medication under
42 ORS 127.800 to 127.897 may be written without the attending [*physician*] **provider** offering the
43 qualified patient an opportunity to rescind the request.

44 **SECTION 11.** ORS 127.850 is amended to read:

45 127.850. §3.08. Waiting [*periods*] **period.** (1) No less than [*15 days*] **48 hours** shall elapse between

1 the patient's initial oral request and the writing of a prescription under ORS 127.800 to 127.897.
 2 [No less than 48 hours shall elapse between the patient's written request and the writing of a pre-
 3 scription under ORS 127.800 to 127.897.]

4 (2) Notwithstanding subsection (1) of this section, if the qualified patient's attending [*physician*]
 5 **provider** has medically confirmed that the qualified patient will, within reasonable medical judg-
 6 ment, die before the expiration [*of at least one*] of the waiting [*periods*] **period** described in sub-
 7 section (1) of this section, the prescription for medication under ORS 127.800 to 127.897 may be
 8 written at any time following the later of the qualified patient's written request or second oral re-
 9 quest under ORS 127.840.

10 **SECTION 12.** ORS 127.855 is amended to read:

11 127.855. §3.09. Medical record documentation requirements. The following shall be documented
 12 or filed in the patient's medical record:

13 (1) All oral requests by a patient for medication to end his or her life in a humane and dignified
 14 manner;

15 (2) All written requests by a patient for medication to end his or her life in a humane and dig-
 16 nified manner;

17 (3) The attending [*physician's*] **provider's** diagnosis and prognosis, determination that the pa-
 18 tient is capable, acting voluntarily and has made an informed decision;

19 (4) The consulting [*physician's*] **provider's** diagnosis and prognosis, and verification that the
 20 patient is capable, acting voluntarily and has made an informed decision;

21 (5) A report of the outcome and determinations made during counseling, if performed;

22 (6) Any medically confirmed certification of the imminence of the patient's death;

23 (7) The attending [*physician's*] **provider's** offer to the patient to rescind his or her request at
 24 the time of the patient's second oral request pursuant to ORS 127.840; and

25 (8) A note by the attending [*physician*] **provider** indicating that all requirements under ORS
 26 127.800 to 127.897 have been met and indicating the steps taken to carry out the request, including
 27 a notation of the medication prescribed.

28 **SECTION 13.** ORS 127.865 is amended to read:

29 127.865. §3.11. Reporting requirements. (1)(a) The Oregon Health Authority shall annually review
 30 a sample of records maintained pursuant to ORS 127.800 to 127.897.

31 (b) The authority shall require any health care provider upon dispensing medication pursuant
 32 to ORS 127.800 to 127.897 to file a copy of the dispensing record with the authority.

33 (2) The authority shall make rules to facilitate the collection of information regarding compli-
 34 ance with ORS 127.800 to 127.897. **The authority's rules adopted under this subsection must**
 35 **permit health care providers to file any required records electronically.** Except as otherwise
 36 required by law, the information collected shall not be a public record and may not be made avail-
 37 able for inspection by the public.

38 (3) The authority shall generate and make available to the public an annual statistical report
 39 of information collected under subsection (2) of this section.

40 **SECTION 14.** ORS 127.880 is amended to read:

41 127.880. §3.14. Construction of Act. Nothing in ORS 127.800 to 127.897 shall be construed to
 42 authorize a [*physician*] **provider** or any other person to end a patient's life by lethal injection, mercy
 43 killing or active euthanasia. Actions taken in accordance with ORS 127.800 to 127.897 shall not, for
 44 any purpose, constitute suicide, assisted suicide, mercy killing or homicide, under the law.

45 **SECTION 15.** ORS 127.885 is amended to read:

1 127.885. §4.01. Immunities. Except as provided in ORS 127.890:

2 (1) No person shall be subject to civil or criminal liability or professional disciplinary action for
3 participating in good faith compliance with ORS 127.800 to 127.897. This includes being present
4 when a qualified patient takes the prescribed medication to end his or her life in a humane and
5 dignified manner.

6 (2) No professional organization or association, or health care provider, may subject a person
7 to censure, discipline, suspension, loss of license, loss of privileges, loss of membership or other
8 penalty for participating or refusing to participate in good faith compliance with ORS 127.800 to
9 127.897.

10 (3) No request by a patient for or provision by an attending [*physician*] **provider** of medication
11 in good faith compliance with the provisions of ORS 127.800 to 127.897 shall constitute neglect for
12 any purpose of law or provide the sole basis for the appointment of a guardian or conservator.

13 (4) No health care provider shall be under any duty, whether by contract, by statute or by any
14 other legal requirement to participate in the provision to a qualified patient of medication to end
15 his or her life in a humane and dignified manner. If a health care provider is unable or unwilling
16 to carry out a patient's request under ORS 127.800 to 127.897, and the patient transfers his or her
17 care to a new health care provider, the prior health care provider shall transfer, upon request, a
18 copy of the patient's relevant medical records to the new health care provider.

19 (5)(a) Notwithstanding any other provision of law, a health care provider may prohibit another
20 health care provider from participating in ORS 127.800 to 127.897 on the premises of the prohibiting
21 **health care** provider if the prohibiting **health care** provider has notified the health care provider
22 of the prohibiting **health care** provider's policy regarding participating in ORS 127.800 to 127.897.
23 Nothing in this paragraph prevents a health care provider from providing health care services to a
24 patient that do not constitute participation in ORS 127.800 to 127.897.

25 (b) Notwithstanding the provisions of subsections (1) to (4) of this section, a health care provider
26 may subject another health care provider to the sanctions stated in this paragraph if the sanctioning
27 health care provider has notified the sanctioned **health care** provider prior to participation in ORS
28 127.800 to 127.897 that it prohibits participation in ORS 127.800 to 127.897:

29 (A) Loss of privileges, loss of membership or other sanction provided pursuant to the medical
30 staff bylaws, policies and procedures of the sanctioning health care provider if the sanctioned
31 **health care** provider is a member of the sanctioning **health care** provider's medical staff and par-
32 ticipates in ORS 127.800 to 127.897 while on the health care facility premises, as defined in ORS
33 442.015, of the sanctioning health care provider, but not including the private medical office of a
34 [*physician or other*] provider **or other private medical office not owned or operated by the**
35 **sanctioning health care provider;**

36 (B) Termination of lease or other property contract or other nonmonetary remedies provided by
37 lease contract, not including loss or restriction of medical staff privileges or exclusion from a pro-
38 vider panel, if the sanctioned **health care** provider participates in ORS 127.800 to 127.897 while on
39 the premises of the sanctioning health care provider or on property that is owned by or under the
40 direct control of the sanctioning health care provider; or

41 (C) Termination of contract or other nonmonetary remedies provided by contract if the sanc-
42 tioned **health care** provider participates in ORS 127.800 to 127.897 while acting in the course and
43 scope of the sanctioned **health care** provider's capacity as an employee or independent contractor
44 of the sanctioning health care provider. Nothing in this subparagraph shall be construed to prevent:

45 (i) A health care provider from participating in ORS 127.800 to 127.897 while acting outside the

1 course and scope of the **health care** provider’s capacity as an employee or independent contractor;
2 or

3 (ii) A patient from contracting with his or her attending [*physician and*] **provider or** consulting
4 [*physician*] **provider** to act outside the course and scope of the **attending provider or consulting**
5 **provider’s** capacity as an employee or independent contractor of the sanctioning health care pro-
6 vider.

7 (c) A health care provider that imposes sanctions pursuant to paragraph (b) of this subsection
8 must follow all due process and other procedures the sanctioning health care provider may have
9 that are related to the imposition of sanctions on another health care provider.

10 (d) For purposes of this subsection:

11 (A) “Notify” means a separate statement in writing to the health care provider specifically in-
12 forming the health care provider prior to the **health care** provider’s participation in ORS 127.800
13 to 127.897 of the sanctioning health care provider’s policy about participation in activities covered
14 by ORS 127.800 to 127.897.

15 (B) “Participate in ORS 127.800 to 127.897” means to perform the duties of an attending [*physi-*
16 *cian*] **provider** pursuant to ORS 127.815, the consulting [*physician*] **provider** function pursuant to
17 ORS 127.820 or the counseling function pursuant to ORS 127.825. “Participate in ORS 127.800 to
18 127.897” does not include:

19 (i) Making an initial determination that a patient has a terminal disease and informing the pa-
20 tient of the medical prognosis;

21 (ii) Providing information about the Oregon Death with Dignity Act to a patient upon the re-
22 quest of the patient;

23 (iii) Providing a patient, upon the request of the patient, with a referral to another [*physician*]
24 **provider**; or

25 (iv) A patient contracting with his or her attending [*physician and*] **provider or** consulting
26 [*physician*] **provider** to act outside of the course and scope of the **attending provider or consulting**
27 **provider’s** capacity as an employee or independent contractor of the sanctioning health care pro-
28 vider.

29 (6) Suspension or termination of staff membership or privileges under subsection (5) of this sec-
30 tion is not reportable under ORS 441.820. Action taken pursuant to ORS 127.810, 127.815, 127.820
31 or 127.825 shall not be the sole basis for a report of unprofessional or dishonorable conduct under
32 ORS 677.415 (3), (4), (5) or (6).

33 (7) No provision of ORS 127.800 to 127.897 shall be construed to allow a lower standard of care
34 for patients in the community where the patient is treated or a similar community.

35 **SECTION 16.** ORS 127.897 is amended to read:

36 127.897. §6.01. Form of the request. A request for a medication as authorized by ORS 127.800 to
37 127.897 shall be in substantially the following form:

38 _____
39
40 **REQUEST FOR MEDICATION**
41 **TO END MY LIFE IN A HUMANE**
42 **AND DIGNIFIED MANNER**
43

44 I, _____, am an adult of sound mind.
45 I am suffering from _____, which my attending [*physician*] **provider** has determined

1 is a terminal disease and which has been medically confirmed by a consulting [*physician*] **provider**.

2 I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed
3 and potential associated risks, the expected result, and the feasible alternatives, including comfort
4 care, hospice care and pain control.

5 I request that my attending [*physician*] **provider** prescribe medication that will end my life in
6 a humane and dignified manner.

7
8 INITIAL ONE:

9 _____ I have informed my family of my decision and taken their opinions into consider-
10 ation.

11 _____ I have decided not to inform my family of my decision.

12 _____ I have no family to inform of my decision.

13 I understand that I have the right to rescind this request at any time.

14 I understand the full import of this request and I expect to die when I take the medication to
15 be prescribed. I further understand that although most deaths occur within three hours, my death
16 may take longer and my [*physician*] **provider** has counseled me about this possibility.

17 I make this request voluntarily and without reservation, and I accept full moral responsibility
18 for my actions.

19
20 Signed: _____

21
22 Dated: _____

23
24 DECLARATION OF WITNESSES

25
26 We declare that the person signing this request:

- 27 (a) Is personally known to us or has provided proof of identity;
- 28 (b) Signed this request in our presence;
- 29 (c) Appears to be of sound mind and not under duress, fraud or undue influence;
- 30 (d) Is not a patient for whom either of us is attending [*physician*] **provider**.

31
32 _____ Witness 1/Date

33
34 _____ Witness 2/Date

35
36 NOTE: One witness shall not be a relative (by blood, marriage or adoption) of the person signing
37 this request[,] **and** shall not be entitled to any portion of the person's estate upon death [*and shall*
38 *not own, operate or be employed at a health care facility where the person is a patient or resident*]. If
39 the patient is an inpatient at a health care facility, one of the witnesses shall be an individual des-
40 ignated by the facility.

41
42
43 **SECTION 17. ORS 127.860 is repealed.**

44 **SECTION 18. ORS 127.800 to 127.897 shall be known and may be cited as the Oregon**
45 **Death with Dignity Act.**

1 **SECTION 19.** The amendments to ORS 127.800, 127.805, 127.810, 127.815, 127.820, 127.825,
2 127.830, 127.835, 127.840, 127.845, 127.850, 127.855, 127.865, 127.880, 127.885 and 127.897 by
3 sections 1 to 16 of this 2023 Act and the repeal of ORS 127.860 by section 17 of this 2023 Act
4 apply to medication dispensed on or after the effective date of this 2023 Act.
5
