

D R A F T

SUMMARY

Amends advance directive law. Clarifies rights and privileges of alternative attorney-in-fact. Changes requirements for witnesses. Deletes language setting forth form of advance directive and replaces with language describing form of advance directive. Clarifies provisions providing for exemption from liability.

A BILL FOR AN ACT

Relating to advance directives; creating new provisions; and amending ORS 127.505, 127.510, 127.515, 127.531, 127.535, 127.555 and 127.649.

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

EXECUTING ADVANCE DIRECTIVES

SECTION 1. ORS 127.510 is amended to read:

127.510. (1)(a) A capable adult may designate in writing a competent adult to serve as attorney-in-fact for health care. [*A capable adult may also designate a competent adult to serve as alternative attorney-in-fact if the original designee is unavailable, unable or unwilling to serve as attorney-in-fact at any time after the power of attorney for health care is executed. The power of attorney for health care is effective when it is signed, witnessed and accepted as required by ORS 127.505 to 127.660 and 127.995. The*] **An** attorney-in-fact [so] appointed **under this section** shall make health care decisions [*on behalf of*] **for** the principal if the principal becomes incapable.

(b) A capable adult may designate in writing a competent adult to serve as alternative attorney-in-fact for health care. For purposes of

1 **ORS 127.505 to 127.660, an alternative attorney-in-fact has the rights**
2 **and privileges of an attorney-in-fact, including the rights described in**
3 **ORS 127.535. An alternative attorney-in-fact appointed under this**
4 **section shall make health care decisions for the principal if the prin-**
5 **icipal becomes incapable and the attorney-in-fact is unable, unwilling**
6 **or unavailable to make timely health care decisions. For purposes of**
7 **this paragraph, an attorney-in-fact is unavailable to make timely**
8 **health care decisions if the attorney-in-fact is not available to answer**
9 **questions for the health care provider in person, by telephone or by**
10 **another means of direct communication.**

11 **(c) The power of attorney for health care is effective when it is**
12 **signed, witnessed and accepted as required by ORS 127.505 to 127.660.**

13 (2) A capable adult may execute a health care instruction. The instruc-
14 tion [*shall be*] is effective when it is signed and witnessed as required by
15 ORS 127.505 to 127.660 [*and 127.995*].

16 (3) Unless the period of time that an advance directive is [*to be*] effective
17 is limited by the terms of the advance directive, the advance directive [*shall*
18 *continue*] **continues** in effect until:

19 (a) The principal dies; or

20 (b) The advance directive is revoked, suspended or superseded pursuant
21 to ORS 127.545.

22 (4) Notwithstanding subsection (3) of this section, if the principal is in-
23 capable at the expiration of the term of the advance directive, the advance
24 directive continues in effect until:

25 (a) The principal is no longer incapable;

26 (b) The principal dies; or

27 (c) The advance directive is revoked, suspended or superseded pursuant
28 to the provisions of ORS 127.545.

29 (5) A health care provider shall make a copy of an advance directive and
30 **a copy of** any other instrument a part of the principal's medical record when
31 a copy of [*that*] **the** instrument is provided to the principal's health care

1 provider.

2 (6) Notwithstanding subsections (3)(a) and (4)(b) of this section, **an ad-**
3 **vance directive remains in effect with respect to** an anatomical gift, as
4 defined in ORS 97.953, [*made on an advance directive is effective*] **after the**
5 **principal dies.**

6 **SECTION 2.** ORS 127.515 is amended to read:

7 127.515. (1) An advance directive may be executed by a resident or non-
8 resident adult of this state in the manner provided by ORS 127.505 to 127.660
9 [*and 127.995*].

10 [(2) *A power of attorney for health care must be in the form provided by*
11 *Part B of the advance directive form set forth in ORS 127.531, or must be in*
12 *the form provided by ORS 127.530 (1991 Edition).*]

13 [(3) *A health care instruction must be in the form provided by Part C of*
14 *the advance directive form set forth in ORS 127.531, or must be in the form*
15 *provided by ORS 127.610 (1991 Edition).*]

16 [(4)] (2) An advance directive must reflect the date of the principal's sig-
17 nature. To be valid, an advance directive must be witnessed **and signed** by
18 at least two adults as follows:

19 (a) Each witness shall witness either the signing of the instrument by the
20 principal or the principal's acknowledgment of the signature of the principal.

21 [(b) *Each witness shall make the written declaration as set forth in the form*
22 *provided in ORS 127.531.*]

23 [(c)] (b) One of the witnesses shall be a person who is not:

24 (A) A relative of the principal by blood, marriage or adoption;

25 (B) A person who, [*at the time the advance directive is signed would be*]
26 **on the date the advance directive is signed, is** entitled to any portion of
27 the estate of the principal upon death under [*any*] **a** will or by operation of
28 law; [*or*]

29 [(C) *An owner, operator or employee of a health care facility where the*
30 *principal is a patient or resident.*]

31 (C) **The principal's attending physician on the date the advance di-**

1 **rective is signed;**

2 **(D) A person who provides health care services to the principal on**
3 **the date the advance directive is signed; or**

4 **(E) A person who has the administrative responsibility of billing the**
5 **principal for health care services on the date the advance directive is**
6 **signed.**

7 *[(d) The attorney-in-fact for health care or alternative attorney-in-fact may*
8 *not be a witness. The principal's attending physician at the time the advance*
9 *directive is signed may not be a witness.]*

10 *[(e)]* **(c)** If the principal is a patient in a long term care facility at the
11 time the advance directive is executed, one of the witnesses must be an in-
12 dividual **who is** designated by the facility *[and having any qualifications that*
13 *may be]* **and qualified as** specified by the Department of Human Services
14 by rule.

15 *[(5)]* **(3)** Notwithstanding *[subsections (2) to (4)]* **subsection (2)** of this
16 section, an advance directive **that is** executed by an adult who *[at the time*
17 *of execution resided in another state,]* **resides in another state at the time**
18 **of execution and is executed** in compliance with the formalities of exe-
19 cution required by the laws of that state, the laws of the state where the
20 principal *[was]* **is** located at the time of execution or the laws of this state,
21 is validly executed for the purposes of ORS 127.505 to 127.660 *[and 127.995*
22 *and may be given effect in accordance with its provisions, subject to the laws*
23 *of this state].*

24 **SECTION 3. Section 4 of this 2015 Act is added to and made a part**
25 **of ORS 127.505 to 127.660.**

26 **SECTION 4. (1) If the principal is incapable, the designated**
27 **attorney-in-fact and alternative attorney-in-fact, if any, withdraw un-**
28 **der ORS 127.525 and the health care representative, if any, is disqual-**
29 **ified under ORS 127.520, a health care provider may make health care**
30 **decisions for the principal in accordance with any health care in-**
31 **struction in an advance directive.**

(2) A person may not bring a cause of action against a health care provider who acts in accordance with the provisions of this section.

FORM OF ADVANCE DIRECTIVE

SECTION 5. ORS 127.531 is amended to read:

127.531. [(1) The form of an advance directive executed by an Oregon resident must be the same as the form set forth in this section to be valid. In any place in the form that requires the initials of the principal, any mark by the principal is effective to indicate the principal's intent.]

[(2) An advance directive shall be in the following form:]

[_____]

ADVANCE DIRECTIVE

YOU DO NOT HAVE TO FILL OUT AND SIGN THIS FORM

PART A: IMPORTANT INFORMATION ABOUT THIS ADVANCE DIRECTIVE

This is an important legal document. It can control critical decisions about your health care. Before signing, consider these important facts:

Facts About Part B

(Appointing a Health Care Representative)

You have the right to name a person to direct your health care when you cannot do so. This person is called your "health care representative." You can do this by using Part B of this form. Your representative must accept on Part E of this form.

You can write in this document any restrictions you want on how your representative will make decisions for you. Your representative must follow your desires as stated in this document or otherwise made known. If your desires are unknown, your representative must try to act in your best interest. Your representative can resign at any time.

Facts About Part C

(Giving Health Care Instructions)

1 You also have the right to give instructions for health care providers to
2 follow if you become unable to direct your care. You can do this by using Part
3 C of this form.

4 Facts About Completing This Form

5 This form is valid only if you sign it voluntarily and when you are of sound
6 mind. If you do not want an advance directive, you do not have to sign this
7 form.

8 Unless you have limited the duration of this advance directive, it will not
9 expire. If you have set an expiration date, and you become unable to direct
10 your health care before that date, this advance directive will not expire until
11 you are able to make those decisions again.

12 You may revoke this document at any time. To do so, notify your represen-
13 tative and your health care provider of the revocation.

14 Despite this document, you have the right to decide your own health care
15 as long as you are able to do so.

16 If there is anything in this document that you do not understand, ask a
17 lawyer to explain it to you.

18 You may sign PART B, PART C, or both parts. You may cross out words
19 that don't express your wishes or add words that better express your wishes.

20 Witnesses must sign PART D.

21 Print your NAME, BIRTHDATE AND ADDRESS here:

22

23 _____

24 (Name)

25

26 _____

27 (Birthdate)

28

29 _____

30

31 _____

1 (Address)

2 Unless revoked or suspended, this advance directive will continue for:

3

4 INITIAL ONE:

5 — My entire life

6 — Other period (— Years)

7 PART B: APPOINTMENT OF HEALTH CARE REPRESENTATIVE

8 I appoint _____ as my health care representative. My
9 representative’s address is _____ and telephone number is _____.

10 I appoint _____ as my alternate health care representative.
11 My alternate’s address is _____ and telephone number is _____.

12 I authorize my representative (or alternate) to direct my health care when
13 I can’t do so.

14

15 NOTE: You may not appoint your doctor, an employee of your doctor, or an
16 owner, operator or employee of your health care facility, unless that person is
17 related to you by blood, marriage or adoption or that person was appointed
18 before your admission into the health care facility.

19

20 1. Limits. Special Conditions or Instructions:

21 _____
22 _____
23 _____

24 INITIAL IF THIS APPLIES:

25 — I have executed a Health Care Instruction or Directive to Physicians.
26 My representative is to honor it.

27

28 2. Life Support. “Life support” refers to any medical means for maintaining
29 life, including procedures, devices and medications. If you refuse life support,
30 you will still get routine measures to keep you clean and comfortable.

31

1 *INITIAL IF THIS APPLIES:*

2 — *My representative MAY decide about life support for me. (If you don't*
3 *initial this space, then your representative MAY NOT decide about life*
4 *support.)*

5
6 3. *Tube Feeding. One sort of life support is food and water supplied arti-*
7 *ficially by medical device, known as tube feeding.*

8
9 *INITIAL IF THIS APPLIES:*

10
11 — *My representative MAY decide about tube feeding for me. (If you don't*
12 *initial this space, then your representative MAY NOT decide about tube*
13 *feeding.)*

14
15 _____

16 *(Date)*

17 *SIGN HERE TO APPOINT A HEALTH CARE REPRESENTATIVE*

18
19 _____

20 *(Signature of person making appointment)*

21
22 *PART C: HEALTH CARE INSTRUCTIONS*

23
24 *NOTE: In filling out these instructions, keep the following in mind:*

- 25 • *The term “as my physician recommends” means that you want your*
26 *physician to try life support if your physician believes it could be helpful*
27 *and then discontinue it if it is not helping your health condition or*
28 *symptoms.*

- 29
30 • *“Life support” and “tube feeding” are defined in Part B above.*

1 • *If you refuse tube feeding, you should understand that malnutrition,*
2 *dehydration and death will probably result.*

3
4 • *You will get care for your comfort and cleanliness, no matter what*
5 *choices you make.*

6
7 • *You may either give specific instructions by filling out Items 1 to 4 be-*
8 *low, or you may use the general instruction provided by Item 5.*

9
10 *Here are my desires about my health care if my doctor and another know-*
11 *ledgeable doctor confirm that I am in a medical condition described below:*

12 1. *Close to Death.* *If I am close to death and life support would only post-*
13 *pone the moment of my death:*

14
15 A. *INITIAL ONE:*

16 *— I want to receive tube feeding.*

17 *— I want tube feeding only as my physician recommends.*

18 *— I DO NOT WANT tube feeding.*

19
20 B. *INITIAL ONE:*

21 *— I want any other life support that may apply.*

22 *— I want life support only as my physician recommends.*

23 *— I want NO life support.*

24
25 2. *Permanently Unconscious.* *If I am unconscious and it is very unlikely*
26 *that I will ever become conscious again:*

27
28 A. *INITIAL ONE:*

29 *— I want to receive tube feeding.*

30 *— I want tube feeding only as my physician recommends.*

31 *— I DO NOT WANT tube feeding.*

1 B. INITIAL ONE:

2 — I want any other life support that may apply.

3 — I want life support only as my physician recommends.

4 — I want NO life support.

5

6 3. Advanced Progressive Illness. If I have a progressive illness that will
7 be fatal and is in an advanced stage, and I am consistently and permanently
8 unable to communicate by any means, swallow food and water safely, care for
9 myself and recognize my family and other people, and it is very unlikely that
10 my condition will substantially improve:

11

12 A. INITIAL ONE:

13 — I want to receive tube feeding.

14 — I want tube feeding only as my physician recommends.

15 — I DO NOT WANT tube feeding.

16

17 B. INITIAL ONE:

18 — I want any other life support that may apply.

19 — I want life support only as my physician recommends.

20 — I want NO life support.

21

22 4. Extraordinary Suffering. If life support would not help my medical con-
23 dition and would make me suffer permanent and severe pain:

24

25 A. INITIAL ONE:

26 — I want to receive tube feeding.

27 — I want tube feeding only as my physician recommends.

28 — I DO NOT WANT tube feeding.

29

30 B. INITIAL ONE:

31 — I want any other life support that may apply.

1 — *I want life support only as my physician recommends.*

2 — *I want NO life support.*

3

4 5. General Instruction.

5 **INITIAL IF THIS APPLIES:**

6 — *I do not want my life to be prolonged by life support. I also do not want*
7 *tube feeding as life support. I want my doctors to allow me to die na-*
8 *turally if my doctor and another knowledgeable doctor confirm I am in*
9 *any of the medical conditions listed in Items 1 to 4 above.*

10

11 6. Additional Conditions or Instructions.

12 _____
13 _____
14 _____

15 *(Insert description of what you want done.)*

16

17 7. Other Documents. *A “health care power of attorney” is any document you*
18 *may have signed to appoint a representative to make health care decisions for*
19 *you.*

20

21 **INITIAL ONE:**

22 — *I have previously signed a health care power of attorney. I want it to*
23 *remain in effect unless I appointed a health care representative after*
24 *signing the health care power of attorney.*

25 — *I have a health care power of attorney, and I REVOKE IT.*

26 — *I DO NOT have a health care power of attorney.*

27

28 _____

29 *(Date)*

30 **SIGN HERE TO GIVE INSTRUCTIONS**

31

1 _____
2 (Signature)

3 _____

4 PART D: DECLARATION OF WITNESSES

5 We declare that the person signing this advance directive:

6 (a) Is personally known to us or has provided proof of identity;

7 (b) Signed or acknowledged that person's signature on this advance direc-
8 tive in our presence;

9 (c) Appears to be of sound mind and not under duress, fraud or undue in-
10 fluence;

11 (d) Has not appointed either of us as health care representative or alterna-
12 tive representative; and

13 (e) Is not a patient for whom either of us is attending physician.

14 Witnessed By:

15
16 _____
17 (Signature of (Printed Name
18 Witness/Date) of Witness)

19
20 _____
21 (Signature of (Printed Name
22 Witness/Date) of Witness)

23
24 NOTE: One witness must not be a relative (by blood, marriage or adoption)
25 of the person signing this advance directive. That witness must also not be
26 entitled to any portion of the person's estate upon death. That witness must
27 also not own, operate or be employed at a health care facility where the person
28 is a patient or resident.

29 _____
30 PART E: ACCEPTANCE BY HEALTH CARE REPRESENTATIVE

31 I accept this appointment and agree to serve as health care representative.

1 *I understand I must act consistently with the desires of the person I represent,*
2 *as expressed in this advance directive or otherwise made known to me. If I do*
3 *not know the desires of the person I represent, I have a duty to act in what I*
4 *believe in good faith to be that person’s best interest. I understand that this*
5 *document allows me to decide about that person’s health care only while that*
6 *person cannot do so. I understand that the person who appointed me may re-*
7 *voke this appointment. If I learn that this document has been suspended or*
8 *revoked, I will inform the person’s current health care provider if known to*
9 *me.*

10

11 _____

12 *(Signature of Health Care Representative /Date)*

13

14 _____

15 *(Printed name)*

16

17 _____

18 *(Signature of Alternate Health Care Representative /Date)*

19

20 _____

21 *(Printed name)*

22 [_____]

23 **(1) The form of an advance directive executed by the principal may**
24 **include one or more of the following:**

25 **(a) Designation of a competent adult to serve as attorney-in-fact for**
26 **health care.**

27 **(b) Designation of a competent adult to serve as alternative**
28 **attorney-in-fact for health care.**

29 **(c) Health care instruction in the form of a checklist of health care**
30 **choices, such as whether the principal would want life-sustaining hy-**
31 **dration, life-sustaining food, extraordinary life-saving measures or**

1 **other treatment.**

2 **(d) Health care instruction in the form of an explanation of the**
3 **principal's health care choices, including any information about the**
4 **basis for those choices, such as the principal's religious beliefs, other**
5 **beliefs or principles or any other guidance provided with respect to the**
6 **choices.**

7 **(2) A checklist of health care choices that is presented to a person**
8 **by the person's attending physician is a valid advance directive.**

9 **(3) An explanation of a person's health care choices may include,**
10 **by reference, an authoritative document of an organized religion for**
11 **the purpose of providing information about the principal's health care**
12 **choices.**

13 **(4) An advance directive may be executed electronically as part of**
14 **the principal's electronic medical record, provided that the signatures**
15 **required under ORS 127.515 are obtained either by electronic means or**
16 **on a document that references the electronic medical record.**

17 **(5) A state agency may not, by rule or otherwise, prescribe the form**
18 **or content of an advance directive.**

19

20

LIABILITY

21

22 **SECTION 6.** ORS 127.555 is amended to read:

23 127.555. (1) If there is more than one physician caring for a principal, the
24 principal shall designate one physician as the attending physician. If the
25 principal is incapable, the health care representative for the principal shall
26 designate the attending physician.

27 (2) Health care representatives, and persons who are acting under a rea-
28 sonable belief that they are health care representatives, shall not be guilty
29 of any criminal offense, or subject to civil liability, or in violation of any
30 professional oath, affirmation or standard of care for any action taken in
31 good faith as a health care representative[.], **including:**

1 **(a) Relying on any health care instruction in an advance directive;**
2 **and**

3 **(b) Consenting to or providing treatment on the basis of a health**
4 **care instruction in an advance directive that takes the form of an ex-**
5 **planation of health care decisions, even if the advance directive does**
6 **not specifically mention the treatment.**

7 (3) A health care provider acting or declining to act in reliance on the
8 health care decision made in an advance directive, made by an attending
9 physician under ORS 127.635 (3), or made by a person who the provider be-
10 lieves is the health care representative for an incapable principal, is not
11 subject to criminal prosecution, civil liability or professional disciplinary
12 action on the grounds that the health care decision is unauthorized unless
13 the provider:

14 (a) Fails to satisfy a duty [*that*] **of a health care provider** ORS 127.505
15 to 127.660 [*and 127.995 place on the provider*];

16 (b) Acts without medical confirmation as required under ORS 127.505 to
17 127.660 [*and 127.995*];

18 (c) Knows or has reason to know that the requirements of ORS 127.505
19 to 127.660 [*and 127.995*] have not been satisfied; or

20 (d) Acts after receiving notice that:

21 (A) The authority or decision on which the provider relied is revoked,
22 suspended, superseded or subject to other legal infirmity;

23 (B) A court challenge to the health care decision or the authority relied
24 on in making the health care decision is pending; or

25 (C) The health care representative has withdrawn or has been disquali-
26 fied.

27 (4) The immunities provided by this section do not apply to:

28 (a) The manner of administering health care pursuant to a health care
29 decision made by the health care representative or by a health care instruc-
30 tion; or

31 (b) The manner of determining the health condition or incapacity of the

1 principal.

2 (5) A health care provider who determines that a principal is incapable
3 is not subject to criminal prosecution, civil liability or professional discipli-
4 nary action for failing to follow that principal's direction except for a failure
5 to follow a principal's manifestation of an objection to a health care decision
6 under ORS 127.535 (5).

7

8

CONFORMING AMENDMENTS

9

10 **SECTION 7.** ORS 127.505 is amended to read:

11 127.505. As used in ORS 127.505 to 127.660 and 127.995:

12 (1) "Adult" means an individual who is 18 years of age or older, who has
13 been adjudicated an emancipated minor or who is married.

14 (2) "Advance directive" means a document that contains a health care
15 instruction or a power of attorney for health care.

16 (3) "Appointment" means a power of attorney for health care, letters of
17 guardianship or a court order appointing a health care representative.

18 (4)(a) "Artificially administered nutrition and hydration" means a medical
19 intervention to provide food and water by tube, mechanical device or other
20 medically assisted method.

21 (b) "Artificially administered nutrition and hydration" does not include
22 the usual and typical provision of nutrition and hydration, such as the pro-
23 vision of nutrition and hydration by cup, hand, bottle, drinking straw or
24 eating utensil.

25 (5) "Attending physician" means the physician who has primary respon-
26 sibility for the care and treatment of the principal.

27 (6) "Attorney-in-fact" means an adult appointed to make health care de-
28 cisions for a principal under a power of attorney for health care, and in-
29 cludes an alternative attorney-in-fact.

30 [(7) "*Dementia*" means a degenerative condition that causes progressive de-
31 *terioration of intellectual functioning and other cognitive skills, including but*

1 *not limited to aphasia, apraxia, memory, agnosia and executive functioning,*
2 *that leads to a significant impairment in social or occupational function and*
3 *that represents a significant decline from a previous level of functioning. Di-*
4 *agnosis is by history and physical examination.]*

5 **(7) “Capable” means not incapable.**

6 (8) “Health care” means diagnosis, treatment or care of disease, injury
7 and congenital or degenerative conditions, including the use, maintenance,
8 withdrawal or withholding of life-sustaining procedures and the use, main-
9 tenance, withdrawal or withholding of artificially administered nutrition and
10 hydration.

11 (9) “Health care decision” means consent, refusal of consent or with-
12 holding or withdrawal of consent to health care, and includes decisions re-
13 lating to admission to or discharge from a health care facility.

14 (10) “Health care facility” means a health care facility as defined in ORS
15 442.015, a domiciliary care facility as defined in ORS 443.205, a residential
16 facility as defined in ORS 443.400, an adult foster home as defined in ORS
17 443.705 or a hospice program as defined in ORS 443.850.

18 (11) “Health care instruction” or “instruction” means a document exe-
19 cuted by a principal to indicate the principal’s instructions regarding health
20 care decisions.

21 (12) “Health care provider” means a person licensed, certified or other-
22 wise authorized or permitted by the law of this state to administer health
23 care in the ordinary course of business or practice of a profession, and in-
24 cludes a health care facility.

25 (13) “Health care representative” means:

26 (a) An attorney-in-fact;

27 (b) A person who has authority to make health care decisions for a prin-
28 cipal under the provisions of ORS 127.635 (2) or (3); or

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

31 (14) “Incapable” means that in the opinion of the court in a proceeding

1 to appoint or confirm authority of a health care representative, or in the
2 opinion of the principal's attending physician, a principal lacks the ability
3 to make and communicate health care decisions to health care providers,
4 including communication through persons familiar with the principal's man-
5 ner of communicating if those persons are available. [*“Capable” means not*
6 *incapable.*]

7 (15) “Instrument” means an advance directive, acceptance, disqualifica-
8 tion, withdrawal, court order, court appointment or other document govern-
9 ing health care decisions.

10 [(16) *“Life support” means life-sustaining procedures.*]

11 [(17)] (16) “Life-sustaining procedure” means any medical procedure,
12 pharmaceutical, medical device or medical intervention that maintains life
13 by sustaining, restoring or supplanting a vital function. “Life-sustaining
14 procedure” does not include routine care necessary to sustain patient clean-
15 liness and comfort.

16 [(18)] (17) “Medically confirmed” means the medical opinion of the at-
17 tending physician has been confirmed by a second physician who has exam-
18 ined the patient and who has clinical privileges or expertise with respect to
19 the condition to be confirmed.

20 [(19)] (18) “Permanently unconscious” means completely lacking an
21 awareness of self and external environment, with no reasonable possibility
22 of a return to a conscious state, and that condition has been medically con-
23 firmed by a neurological specialist who is an expert in the examination of
24 unresponsive individuals.

25 [(20)] (19) “Physician” means an individual licensed to practice medicine
26 by the Oregon Medical Board.

27 [(21)] (20) “Power of attorney for health care” means a power of attorney
28 document that authorizes an attorney-in-fact to make health care decisions
29 for the principal when the principal is incapable.

30 [(22)] (21) “Principal” means:

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

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

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

3 (d) A person being evaluated for capability who will have a health care
4 representative if the person is determined to be incapable.

5 [(23)] **(22)** “Terminal condition” means a health condition in which death
6 is imminent irrespective of treatment, and where the application of life-
7 sustaining procedures or the artificial administration of nutrition and hy-
8 dration serves only to postpone the moment of death of the principal.

9 [(24) “Tube feeding” means artificially administered nutrition and hy-
10 dration.]

11 **SECTION 8.** ORS 127.535 is amended to read:

12 127.535. (1) The health care representative has all the authority over the
13 principal’s health care that the principal would have if not incapable, subject
14 to the limitations of the appointment and ORS 127.540 and 127.580. A health
15 care representative who is known to the health care provider to be available
16 to make health care decisions has priority over any person other than the
17 principal to act for the principal [*in all*] **with respect to** health care deci-
18 sions. A health care representative has authority to make a health care de-
19 cision for a principal only when the principal is incapable.

20 (2) A health care representative is not personally responsible for the cost
21 of health care provided to the principal solely because the health care rep-
22 resentative makes health care decisions for the principal.

23 (3) Except to the extent **that** the right is limited by the appointment or
24 [*any*] federal law **or regulation**, a health care representative for an incapa-
25 ble principal has the same right as the principal to receive information re-
26 garding the proposed health care, to receive and review medical records and
27 to consent to the disclosure of medical records. The right of the health care
28 representative to receive this information is not a waiver of any evidentiary
29 privilege or any right to assert confidentiality with respect to others.

30 (4) In making health care decisions, the health care representative has a
31 duty to act consistently with the desires of the principal as expressed in the

1 principal's advance directive, or as otherwise made known by the principal
2 to the health care representative at any time. If the principal's desires are
3 unknown, the health care representative has a duty to act in *[what]* a
4 **manner that** the health care representative in good faith believes to be the
5 best interests of the principal.

6 (5) ORS 127.505 to 127.660 do not authorize a health care representative
7 or health care provider to withhold or withdraw life-sustaining procedures
8 or artificially administered nutrition and hydration in any situation if the
9 principal manifests an objection to the health care decision. If the principal
10 objects to such a health care decision, the health care provider shall proceed
11 as though the principal *[were]* **is** capable *[for the purposes of]* **with respect**
12 **to** the health care decision *[objected to]*.

13 (6) An instrument that would be a valid advance directive except that the
14 instrument *[is not a form described in ORS 127.515, has]* **is** expired, is not
15 properly witnessed or otherwise fails to meet the formal requirements of ORS
16 127.505 to 127.660 shall constitute evidence of the patient's desires and in-
17 terests.

18 (7) A health care representative is a personal representative for the pur-
19 poses of ORS 192.553 to 192.581 and the federal Health Insurance Portability
20 and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164.

21 **SECTION 9.** ORS 127.649 is amended to read:

22 127.649. (1) Subject to the provisions of ORS 127.652 and 127.654, all
23 health care organizations shall maintain written policies and procedures,
24 applicable to all capable adults who are receiving health care by or through
25 the health care organization, that provide for:

26 (a) Delivering to those individuals the following information and materi-
27 als, in written form, without recommendation:

28 (A) Information on the rights of the individual under Oregon law to make
29 health care decisions, including the right to accept or refuse medical or
30 surgical treatment and the right to execute advance directives;

31 (B) Information on the policies of the health care organization with re-

1 spect to the implementation of the rights of the individual under Oregon law
2 to make health care decisions;

3 [(C) A copy of the advance directive set forth in ORS 127.531, along with
4 a disclaimer on the first line of the first page of each form in at least 16-point
5 boldfaced type stating “You do not have to fill out and sign this form.”; and]

6 (C) **Materials necessary to execute an advance directive described**
7 **in ORS 127.531; and**

8 (D) The name of a person who can provide additional information con-
9 cerning [*the forms for*] advance directives.

10 (b) Documenting in a prominent place in the individual’s medical record
11 whether the individual has executed an advance directive.

12 (c) Ensuring compliance by the health care organization with Oregon law
13 relating to advance directives.

14 (d) Educating the staff and the community on issues relating to advance
15 directives.

16 (2) A health care organization [*need not furnish a copy of an advance di-*
17 *rective to an individual*] **does not need to deliver materials described in**
18 **subsection (1)(a)(C) of this section** if the health care organization has
19 reason to believe that the individual [*has received a copy of an advance di-*
20 *rective in the form set forth in ORS 127.531 within*] **has received materials**
21 **described in subsection (1)(a)(C) of this section during** the preceding
22 12-month period or has previously executed an advance directive.

23

24

APPLICABILITY

25

26 **SECTION 10. The amendments to ORS 127.510 by section 1 of this**
27 **2015 Act apply to designations made before, on or after the effective**
28 **date of this 2015 Act.**

29 **SECTION 11. The amendments to ORS 127.515 by section 2 of this**
30 **2015 Act apply to advance directives executed on or after the effective**
31 **date of this 2015 Act.**

1 **SECTION 12.** The amendments to ORS 127.531 by section 5 of this
2 2015 Act do not invalidate any advance directive executed before the
3 effective date of this 2015 Act.

4 **SECTION 13.** Section 4 of this 2015 Act and the amendments to ORS
5 127.555 by section 6 of this 2015 Act apply to causes of action brought
6 before, on or after the effective date of this 2015 Act.

7

8

UNIT CAPTIONS

9

10 **SECTION 14.** The unit captions used in this 2015 Act are provided
11 only for the convenience of the reader and do not become part of the
12 statutory law of this state or express any legislative intent in the
13 enactment of this 2015 Act.

14
