

Senate Bill 893

Sponsored by Senators DEMBROW, STEINER HAYWARD, Representative GREENLICK; Senator MONNES ANDERSON, Representatives KENY-GUYER, MALSTROM, NOSSE

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**.

Permits expressly identified agent, pursuant to lawfully executed advance directive and in accordance with Oregon Death with Dignity Act, to collect and administer prescribed medication for purpose of ending patient's life in humane and dignified manner if patient ceases to be capable after having received prescription for life-ending medication.

A BILL FOR AN ACT

1
2 Relating to treatments for patients with terminal diseases; creating new provisions; and amending
3 ORS 127.800, 127.830 and 127.885.

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

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

6 127.800. §1.01. Definitions. The following words and phrases, whenever used in ORS 127.800 to
7 127.897, have the following meanings:

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

9 (2) "Attending physician" means the physician who has primary responsibility for the care of the
10 patient and treatment of the patient's terminal disease.

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

15 (4) "Consulting physician" means a physician who is qualified by specialty or experience to
16 make a professional diagnosis and prognosis regarding the patient's disease.

17 (5) "Counseling" means one or more consultations as necessary between a state licensed psy-
18 chiatrist or psychologist and a patient for the purpose of determining that the patient is capable and
19 not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

20 (6) "**Expressly identified agent**" means an attorney-in-fact, as that term is defined in ORS
21 **127.505, who has been authorized to assist with the procedures for ending a patient's life in**
22 **a humane and dignified manner under ORS 127.800 to 127.897.**

23 [(6)] (7) "Health care provider" means a person licensed, certified or otherwise authorized or
24 permitted 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)] (8) "Informed decision" means a decision by a qualified patient, to request and obtain a
27 prescription to end his or her life in a humane and dignified manner, that is based on an appreci-
28 ation of the relevant facts and after being fully informed by the attending physician 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)] (9) “Medically confirmed” means the medical opinion of the attending physician has been
6 confirmed by a consulting physician who has examined the patient and the patient’s relevant medical
7 records.

8 [(9)] (10) “Patient” means a person who is under the care of a physician.

9 [(10)] (11) “Physician” means a doctor of medicine or osteopathy licensed to practice medicine
10 by the Oregon Medical Board.

11 [(11)] (12) “Qualified patient” means a capable adult who is a resident of Oregon and has satis-
12 fied the requirements of ORS 127.800 to 127.897 in order to obtain a prescription for medication to
13 end his or her life in a humane and dignified manner.

14 [(12)] (13) “Terminal disease” means an incurable and irreversible disease that has been med-
15 ically confirmed and will, within reasonable medical judgment, produce death within six months.

16 **SECTION 2. Section 3 of this 2017 Act is added to and made a part of ORS 127.800 to**
17 **127.897.**

18 **SECTION 3. An expressly identified agent may collect medications dispensed under ORS**
19 **127.815 (1)(L)(B)(ii) and administer the medications to the patient in the manner prescribed**
20 **by the attending physician if:**

21 (1) **The patient lawfully executed an advance directive in the manner provided by ORS**
22 **127.505 to 127.660;**

23 (2) **The patient’s advance directive designates the expressly identified agent as the person**
24 **who is authorized to perform the actions described in this section;**

25 (3) **The patient’s advance directive includes an instruction that, if the patient ceases to**
26 **be capable after medication has been prescribed pursuant to ORS 127.800 to 127.897, the ex-**
27 **pressly identified agent is authorized to collect and to administer to the patient the pre-**
28 **scribed medication;**

29 (4) **The medication was prescribed pursuant to ORS 127.800 to 127.897; and**

30 (5) **The patient ceases to be capable.**

31 **SECTION 4.** ORS 127.830 is amended to read:

32 127.830. §3.04. Informed decision. No person shall receive a prescription for medication to end
33 his or her life in a humane and dignified manner unless he or she has made an informed decision
34 as defined in ORS 127.800 [(7)]. Immediately prior to writing a prescription for medication under
35 ORS 127.800 to 127.897, the attending physician shall verify that the patient is making an informed
36 decision.

37 **SECTION 5.** ORS 127.885 is amended to read:

38 127.885. §4.01. Immunities. Except as provided in ORS 127.890:

39 (1) No person shall be subject to civil or criminal liability or professional disciplinary action for
40 participating in good faith compliance with ORS 127.800 to 127.897. This includes being present
41 when a qualified patient takes the prescribed medication to end his or her life in a humane and
42 dignified manner **and also includes carrying out the provisions of section 3 of this 2017 Act.**

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

1 127.897. **This includes carrying out the provisions of section 3 of this 2017 Act.**

2 (3) No request by a patient for or provision by an attending physician of medication in good
3 faith compliance with the provisions of ORS 127.800 to 127.897 shall constitute neglect for any pur-
4 pose of law or provide the sole basis for the appointment of a guardian or conservator.

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

11 (5)(a) Notwithstanding any other provision of law, a health care provider may prohibit another
12 health care provider from participating in ORS 127.800 to 127.897 on the premises of the prohibiting
13 provider if the prohibiting provider has notified the health care provider of the prohibiting
14 provider's policy regarding participating in ORS 127.800 to 127.897. Nothing in this paragraph pre-
15 vents a health care provider from providing health care services to a patient that do not constitute
16 participation in ORS 127.800 to 127.897.

17 (b) Notwithstanding the provisions of subsections (1) to (4) of this section, a health care provider
18 may subject another health care provider to the sanctions stated in this paragraph if the sanctioning
19 health care provider has notified the sanctioned provider prior to participation in ORS 127.800 to
20 127.897 that it prohibits participation in ORS 127.800 to 127.897:

21 (A) Loss of privileges, loss of membership or other sanction provided pursuant to the medical
22 staff bylaws, policies and procedures of the sanctioning health care provider if the sanctioned pro-
23 vider is a member of the sanctioning provider's medical staff and participates in ORS 127.800 to
24 127.897 while on the health care facility premises, as defined in ORS 442.015, of the sanctioning
25 health care provider, but not including the private medical office of a physician or other provider;

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

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

35 (i) A health care provider from participating in ORS 127.800 to 127.897 while acting outside the
36 course and scope of the provider's capacity as an employee or independent contractor; or

37 (ii) A patient from contracting with his or her attending physician and consulting physician to
38 act outside the course and scope of the provider's capacity as an employee or independent contrac-
39 tor of the sanctioning health care provider.

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

43 (d) For purposes of this subsection:

44 (A) "Notify" means a separate statement in writing to the health care provider specifically in-
45 forming the health care provider prior to the provider's participation in ORS 127.800 to 127.897 of

1 the sanctioning health care provider's policy about participation in activities covered by ORS
2 127.800 to 127.897.

3 (B) "Participate in ORS 127.800 to 127.897" means to perform the duties of an attending physi-
4 cian pursuant to ORS 127.815, the consulting physician function pursuant to ORS 127.820 or the
5 counseling function pursuant to ORS 127.825. "Participate in ORS 127.800 to 127.897" does not in-
6 clude:

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

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

11 (iii) Providing a patient, upon the request of the patient, with a referral to another physician;
12 or

13 (iv) A patient contracting with his or her attending physician and consulting physician to act
14 outside of the course and scope of the provider's capacity as an employee or independent contractor
15 of the sanctioning health care provider.

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

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

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