

AARP Oregon Testimony on HB 4135 – Advance Directives

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TO: Senate Committee on Judiciary, Sen. Prozanski, Chair

FROM: Jerry Cohen, State Director, AARP Oregon

AARP recognizes that when adults lack decision-making capacity or the ability to communicate their decisions, the duty to decide on treatment falls to others. Although this may raise ethical considerations, concern for the individual's wishes, values, and welfare remains at the heart of surrogate decision-making. The most crucial questions are: who should make treatment decisions for incapacitated adults, and what criteria they should use in making those decisions. Policymakers should support programs to help patients plan their advanced care and create clear, comprehensive advance health care directives to be shared with providers and loved ones.

Laws of this nature should be flexible regarding patient preferences in unpredictable circumstances and protective of appropriate end-of-life interventions. Oregon has been a leader in the creation of advance directives as well as Physician Orders for Life-Sustaining Treatment (POLST) - a specific protocol which translates the wishes of patients with advanced chronic progressive illness into medical orders that health care systems understand. But specific to advance directives, Oregon's legislation like many other states needs updating to better address the consumer's individual's values and reduce confusion as to which type of directive is most appropriate.

HB 4135 has been developed over the past three years through the work of a diverse set of stakeholders including various health care and social supports providers, ethicists, attorneys, and consumers and their families (especially those who have been or are caregivers). The work group incorporated lessons learned over many years, some best practices to improve the processes by which advance directives can be developed and utilized. We are pleased to have been engaged in this effort and AARP Oregon supports this legislation. Both personally and professionally, we have engaged on the issues of advance planning, ethical considerations, and practical applications when it comes to surrogate decision-making. And based upon our public policies adopted by our Board of Directors, a volunteer board of diverse backgrounds and experiences, AARP Oregon supports HB 4135.

Currently every state permits competent adults to execute advance directives, either in a living will or a durable power of attorney for health care. In addition, the Patient Self-Determination Act requires health care providers to inform individuals of these rights. These advanced directives allow people to make known their treatment wishes under specific medical circumstances and appoint a surrogate decision maker to act for them should they become incapacitated. There remain, however, gaps in state laws, confusion as to which type of directive is most appropriate, and questions about the implementation of advance directives by health care providers.

While Oregon has been a leader in adopting advance directives legislation back in 1993, until recently, we had not reviewed and updated our approach. House Bill 4135 is consensus legislation, resulting from nearly three years of comprehensive discussions with a broad group of stakeholders. As already noted, the bill includes five primary components:

- **Small but essential changes to the current statutory form:** Although the current form will remain in statute until 2019, simplifying the language to clarify existing requirements and allowing the use of a notary will enable more people to complete the form to express their wishes. Family members and health providers will have a tool to guide care and respect the wishes of the person who completed the advanced care directive.
- **Establish a strict framework for updating the advance directive:** A committee, made of a diverse stakeholder group, is established within the Office of Public Health. Based on a strict statutory framework outlined in the bill, the group will adopt a single advance directive form by rule through a public process. The committee must report on its work to the Legislature before any changes take effect.
- **Process improvements to execution of the advanced directive:** The bill eliminates barriers to executing an advanced directive, including allowing notarization of the document. The bill also requires appointed Health Care Representatives to accept the appointment in order to encourage dialogue about the patient's wishes.
- **Existing Advance Directives remain valid:** No change is made in the effect of an advance directive. And
- **Legislative approval process for future revisions:** The bill provides for future revisions to undergo review and approval by legislators before they would go into effect.

From a practical perspective of a care manager who has dealt with families and/or individuals struggling with making health care and treatment decisions, we know that having directives that are easy to fill out and promote the dialogue on values for care is vital. It reduces the potential family conflicts, engagement of the judicial system and costs involved (financial and emotional) as well as offers practical ways that one can express values beyond checking off boxes of "what if".

As our society ages and more of us need to plan ahead, this update of Oregon's Advance Directives law allows for a stronger engagement on these tough issues of when one lacks capacity to communicate. We urge you to vote yes on HB 4135.