

# House Bill 4135

Sponsored by Representative KOTEK, Senators PROZANSKI, STEINER HAYWARD; Representatives GREENLICK, KENY-GUYER, POWER, SALINAS, Senators BEYER, DEMBROW, GELSER, MANNING JR, MONNES ANDERSON (Presession filed.)

## 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**.

Establishes Advance Directive Adoption Committee for purpose of adopting form of advance directive to be used in this state. Specifies that form may not take effect unless form is ratified according to constitutional requirements for passage of legislative measures.

Requires Advance Directive Adoption Committee to submit form of advance directive to interim committee of Legislative Assembly related to judiciary. Directs interim committee, upon receiving form, to file proposed legislative measure with Legislative Counsel.

Repeals statute setting forth current form of advance directive used in this state. Sets forth alternative form of advance directive that may be used in this state until January 1, 2022.

Modifies means by which advance directive is executed.

Modifies law by which individual is selected to make health care decisions for another individual who becomes incapable of making health care decisions.

Makes certain other changes to provisions governing individuals who become incapable of making health care decisions.

Becomes operative January 1, 2019.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to health care decisions; creating new provisions; amending ORS 97.953, 97.955, 97.959, 127.005, 127.505, 127.510, 127.515, 127.520, 127.525, 127.535, 127.545, 127.550, 127.555, 127.565, 127.625, 127.635, 127.640, 127.649, 127.658, 127.737, 127.760, 163.193 and 163.206; repealing ORS 127.531; and prescribing an effective date.

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

## FORM OF AN ADVANCE DIRECTIVE

(Series Placement)

**SECTION 1. Sections 2 to 6 of this 2018 Act are added to and made a part of ORS 127.505 to 127.660.**

(Advance Directive Adoption Committee)

**SECTION 2. (1) The Advance Directive Adoption Committee is established within the division of the Oregon Health Authority that is charged with performing the public health functions of the state.**

**(2)(a) The committee consists of 13 members.**

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

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

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

2 (B) One member who represents hospitals.

3 (C) One member who is a clinical ethicist affiliated with a health care facility located in  
4 this state, or affiliated with a health care organization offering health care services in this  
5 state.

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

9 (E) One member who represents individuals with disabilities.

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

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

12 (H) One member with expertise advising or assisting consumers with end-of-life deci-  
13 sions.

14 (I) One member from among members proposed by the Oregon State Bar who has ex-  
15 tensive experience in elder law and advising individuals on how to execute an advance di-  
16 rective.

17 (J) One member from among members proposed by the Oregon State Bar who has ex-  
18 tensive experience in estate planning and advising individuals on how to make end-of-life  
19 decisions.

20 (K) One member from among members proposed by the Oregon State Bar who has ex-  
21 tensive experience in health law.

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

28 (4) A majority of the members of the committee constitutes a quorum for the transaction  
29 of business.

30 (5) Official action by the committee requires the approval of a majority of the members  
31 of the committee.

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

33 (7) The committee shall meet at times and places specified by the call of the chairperson  
34 or of a majority of the members of the committee, provided that the committee meets at  
35 least twice a year.

36 (8) The committee may adopt rules necessary for the operation of the committee.

37 (9) Members of the committee are not entitled to compensation, but may be reimbursed  
38 for actual and necessary travel and other expenses incurred by them in the performance of  
39 their official duties in the manner and amounts provided for in ORS 292.495. Claims for ex-  
40 penses shall be paid out of funds appropriated to the Oregon Health Authority for purposes  
41 of the committee.

42 **SECTION 3.** (1) In accordance with public notice and stakeholder participation require-  
43 ments prescribed by the Oregon Health Authority and section 4 of this 2018 Act, the Advance  
44 Directive Adoption Committee established under section 2 of this 2018 Act shall:

45 (a) Adopt the form of an advance directive to be used in this state; and

1 (b) Review the form not less than once every four years for the purpose of adopting  
2 changes to the form that the committee determines are necessary.

3 (2) Except as otherwise provided by ORS 127.505 to 127.660, the form of an advance di-  
4 rective adopted pursuant to this section is the only valid form of an advance directive in this  
5 state.

6 (3) At a minimum, the form of an advance directive adopted under this section must  
7 contain the following elements:

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

9 (A) A statement about the purpose of the principal's appointment of a health care rep-  
10 resentative to make health care decisions for the principal if the principal becomes incapable;

11 (B) A statement about the priority of health care representative appointment in ORS  
12 127.635 (2) in the event the principal becomes incapable and does not have a valid health care  
13 representative appointment;

14 (C) A statement about the purpose of the principal's expression of the principal's values  
15 and beliefs with respect to health care decisions and the principal's preferences for health  
16 care;

17 (D) A statement about the purpose of the principal's expression of the principal's pref-  
18 erences with respect to placement in a care home or a mental health facility; and

19 (E) A statement that advises the principal that the advance directive allows the principal  
20 to document the principal's preferences, but is not a POLST, as defined in ORS 127.663.

21 (b) A statement explaining that to be effective the advance directive must be:

22 (A) Accepted by signature or other applicable means; and

23 (B) Either witnessed and signed by at least two adults or notarized.

24 (c) A statement explaining that to be effective the appointment of a health care repre-  
25 sentative or an alternate health care representative must be accepted by the health care  
26 representative or the alternate health care representative.

27 (d) A statement explaining that the advance directive, once executed, supersedes any  
28 previously executed advance directive.

29 (e) The name, date of birth, address and other contact information of the principal.

30 (f) The name, address and other contact information of any health care representative  
31 or any alternate health care representative appointed by the principal.

32 (g) A section providing the principal with an opportunity to state the principal's values  
33 and beliefs with respect to health care decisions, including the opportunity to describe the  
34 principal's preferences, by completing a checklist, by providing instruction through narrative  
35 or other means, or by any combination of methods used to describe the principal's prefer-  
36 ences, regarding:

37 (A) When the principal wants all reasonably available health care necessary to preserve  
38 life and recover;

39 (B) When the principal wants all reasonably available health care necessary to treat  
40 chronic conditions;

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

44 (D) When the principal desires comfort care instead of health care necessary to preserve  
45 life.

1 (h) A section where the principal and the witnesses or notary may accept by signature  
2 or other means, including electronic or verbal means, the advance directive.

3 (i) A section where any health care representative or any alternate health care repre-  
4 sentative appointed by the principal may accept the advance directive by signature or other  
5 means, including electronic or verbal means.

6 (4)(a) In adopting the form of an advance directive under this section, the committee  
7 shall use plain language, such as “tube feeding” and “life support.”

8 (b) As used in this subsection:

9 (A) “Life support” means life-sustaining procedures.

10 (B) “Tube feeding” means artificially administered nutrition and hydration.

11 (5) In adopting the form of an advance directive under this section, the committee shall  
12 use the components of the form for appointing a health care representative or an alternate  
13 health care representative set forth in section 5 of this 2018 Act.

14 (6) The principal may attach supplementary material to an advance directive. In addition  
15 to the form of an advance directive adopted under this section, supplementary material at-  
16 tached to an advance directive under this subsection is a part of the advance directive.

17 (7) The Oregon Health Authority shall post the form of an advance directive adopted  
18 under this section on the authority’s website.

19 **SECTION 4.** (1) In addition to the requirements prescribed by the Oregon Health Au-  
20 thority under section 3 (1) of this 2018 Act, the form of an advance directive adopted pursu-  
21 ant to section 3 of this 2018 Act may not take effect until the form has been ratified by the  
22 Legislative Assembly during an odd-numbered year regular session of the Legislative As-  
23 sembly in the manner required for the passage of bills by Article IV, section 25 (1), of the  
24 Oregon Constitution, and by the Governor in the manner required for the passage of bills  
25 by Article V, section 15b, of the Oregon Constitution.

26 (2) For purposes of this section, the Advance Directive Adoption Committee established  
27 under section 2 of this 2018 Act shall submit the form of an advance directive adopted under  
28 section 3 of this 2018 Act to an interim committee of the Legislative Assembly related to the  
29 judiciary on or before September 1 of an even-numbered year following the date on which the  
30 committee adopts the form. Upon receiving the form, the interim committee shall file a  
31 proposed legislative measure with the Legislative Counsel requesting a measure by which the  
32 Legislative Assembly and the Governor may ratify the form.

33  
34 (Form for Appointing Health Care Representative  
35 and Alternate Health Care Representative)  
36

37 **SECTION 5.** A form for appointing a health care representative and an alternate health  
38 care representative must be written in substantially the following form:  
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40  
41 **FORM FOR APPOINTING HEALTH CARE REPRESENTATIVE**  
42 **AND ALTERNATE HEALTH CARE REPRESENTATIVE**  
43

44 This form may be used in Oregon to choose a person to make health care decisions for  
45 you if you become too sick to speak for yourself. The person is called a health care repre-

1 tentative.

2 • If you have completed a form appointing a health care representative in the past, this  
3 new form will replace any older form.

4 • You must sign this form for it to be effective. You must also have it witnessed by two  
5 witnesses or a notary. Your appointment of a health care representative is not effective until  
6 the health care representative accepts the appointment.

7 • If you become too sick to speak for yourself and do not have an effective health care  
8 representative appointment, a health care representative will be appointed for you in the  
9 order of priority set forth in ORS 127.635 (2).

10 **1. ABOUT ME.**

11 Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

12 Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

13 Address: \_\_\_\_\_

14 E-mail: \_\_\_\_\_

15 **2. MY HEALTH CARE REPRESENTATIVE.**

16 I choose the following person as my health care representative to make health care de-  
17 cisions for me if I can't speak for myself.

18 Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

19 Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

20 Address: \_\_\_\_\_

21 E-mail: \_\_\_\_\_

22 I choose the following people to be my alternate health care representatives if my first  
23 choice is not available to make health care decisions for me or if I cancel the first health  
24 care representative's appointment.

25 **First alternate health care representative:**

26 Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

27 Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

28 Address: \_\_\_\_\_

29 E-mail: \_\_\_\_\_

30 **Second alternate health care representative:**

31 Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

32 Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

33 Address: \_\_\_\_\_

34 E-mail: \_\_\_\_\_

35 **3. MY SIGNATURE.**

36 My signature: \_\_\_\_\_ Date: \_\_\_\_\_

37 **4. WITNESS.**

38 **COMPLETE EITHER A OR B WHEN YOU SIGN.**

39 **A. NOTARY:**

40 State of \_\_\_\_\_

41 County of \_\_\_\_\_

42 Signed or attested before me on \_\_\_\_\_, 2\_\_\_\_, by

43 \_\_\_\_\_

44 \_\_\_\_\_

45 Notary Public - State of Oregon

**B. WITNESS DECLARATION:**

The person completing this form is personally known to me or has provided proof of identity, has signed or acknowledged the person's signature on the document in my presence and appears to be not under duress and to understand the purpose and effect of this form. In addition, I am not the person's health care representative or alternate health care representative, and I am not the person's attending health care provider.

Witness Name (print): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness Name (print): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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

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

Health care representative:

Printed name: \_\_\_\_\_

Signature or other verification of acceptance: \_\_\_\_\_

Date: \_\_\_\_\_

First alternate health care representative:

Printed name: \_\_\_\_\_

Signature or other verification of acceptance: \_\_\_\_\_

Date: \_\_\_\_\_

Second alternate health care representative:

Printed name: \_\_\_\_\_

Signature or other verification of acceptance: \_\_\_\_\_

Date: \_\_\_\_\_

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(Temporary Form for Advance Directive)

**SECTION 6.** (1) In lieu of the form of an advance directive adopted by the Advance Directive Adoption Committee under section 3 of this 2018 Act, on or before January 1, 2022, a principal may execute an advance directive that is in a form that is substantially the same as the form of an advance directive set forth in this section.

(2) Notwithstanding section 3 (2) of this 2018 Act, the form of an advance directive set forth in this section is a valid form of an advance directive in this state.

(3) The form of an advance directive executed as described in subsection (1) of this section is as follows:

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**ADVANCE DIRECTIVE  
(STATE OF OREGON)**

This form may be used in Oregon to choose a person to make health care decisions for

1 you if you become too sick to speak for yourself. The person is called a health care repre-  
2 sentative. If you do not have an effective health care representative appointment and become  
3 too sick to speak for yourself, a health care representative will be appointed for you in the  
4 order of priority set forth in ORS 127.635 (2).

5 This form also allows you to express your values and beliefs with respect to health care  
6 decisions and your preferences for health care.

7 • If you have completed an advance directive in the past, this new advance directive will  
8 replace any older directive.

9 • You must sign this form for it to be effective. You must also have it witnessed by two  
10 witnesses or a notary. Your appointment of a health care representative is not effective until  
11 the health care representative accepts the appointment.

12 • If your advance directive includes directions regarding the withdrawal of life support  
13 or tube feeding, you may revoke your advance directive at any time and in any manner that  
14 expresses your desire to revoke it.

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

17 **1. ABOUT ME.**

18 Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

19 Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

20 Address: \_\_\_\_\_

21 E-mail: \_\_\_\_\_

22 **2. MY HEALTH CARE REPRESENTATIVE.**

23 I choose the following person as my health care representative to make health care de-  
24 cisions for me if I can't speak for myself.

25 Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

26 Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

27 Address: \_\_\_\_\_

28 E-mail: \_\_\_\_\_

29 I choose the following people to be my alternate health care representatives if my first  
30 choice is not available to make health care decisions for me or if I cancel the first health  
31 care representative's appointment.

32 **First alternate health care representative:**

33 Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

34 Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

35 Address: \_\_\_\_\_

36 E-mail: \_\_\_\_\_

37 **Second alternate health care representative:**

38 Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

39 Telephone numbers: (Home)\_\_\_\_\_ (Work)\_\_\_\_\_ (Cell)\_\_\_\_\_

40 Address: \_\_\_\_\_

41 E-mail: \_\_\_\_\_

42 **3. INSTRUCTIONS TO MY HEALTH CARE REPRESENTATIVE.**

43 If you wish to give instructions to your health care representative about your health care  
44 decisions, initial one of the following three statements:

45 \_\_\_ To the extent appropriate, my health care representative must follow my in-

1 instructions.

2 \_\_\_ My instructions are guidelines for my health care representative to consider when  
3 making decisions about my care.

4 \_\_\_ Other instructions: \_\_\_\_\_

5 **4. DIRECTIONS REGARDING MY END OF LIFE CARE.**

6 In filling out these directions, keep the following in mind:

7 • The term “as my health care provider recommends” means that you want your health  
8 care provider to use life support if your health care provider believes it could be helpful, and  
9 that you want your health care provider to discontinue life support if your health care pro-  
10 vider believes it is not helping your health condition or symptoms.

11 • The term “life support” means any medical treatment that maintains life by sustaining,  
12 restoring or replacing a vital function.

13 • The term “tube feeding” means artificially administered food and water.

14 • If you refuse tube feeding, you should understand that malnutrition, dehydration and  
15 death will probably result.

16 • You will receive care for your comfort and cleanliness no matter what choices you  
17 make.

18 **A. Statement Regarding End of Life Care.** You may initial the statement below if you  
19 agree with it. If you initial the statement you may, but you do not have to, list one or more  
20 conditions for which you do not want to receive life support.

21 \_\_\_ I do not want my life to be prolonged by life support. I also do not want tube feeding  
22 as life support. I want my health care provider to allow me to die naturally if my health care  
23 provider and another knowledgeable health care provider confirm that I am in any of the  
24 medical conditions listed below.

25 **B. Additional Directions Regarding End of Life Care.** Here are my desires about my  
26 health care if my health care provider and another knowledgeable health care provider con-  
27 firm that I am in a medical condition described below:

28 **a. Close to Death.** If I am close to death and life support would only postpone the moment  
29 of my death:

30 INITIAL ONE:

31 \_\_\_ I want to receive tube feeding.

32 \_\_\_ I want tube feeding only as my health care provider recommends.

33 \_\_\_ I DO NOT WANT tube feeding.

34 INITIAL ONE:

35 \_\_\_ I want any other life support that may apply.

36 \_\_\_ I want life support only as my health care provider recommends.

37 \_\_\_ I DO NOT WANT life support.

38 **b. Permanently Unconscious.** If I am unconscious and it is very unlikely that I will ever  
39 become conscious again:

40 INITIAL ONE:

41 \_\_\_ I want to receive tube feeding.

42 \_\_\_ I want tube feeding only as my health care provider recommends.

43 \_\_\_ I DO NOT WANT tube feeding.

44 INITIAL ONE:

45 \_\_\_ I want any other life support that may apply.



1       \_\_\_ I want life support only as my health care provider recommends.

2       \_\_\_ I DO NOT WANT life support.

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

7       **INITIAL ONE:**

8       \_\_\_ I want to receive tube feeding.

9       \_\_\_ I want tube feeding only as my health care provider recommends.

10      \_\_\_ I DO NOT WANT tube feeding.

11      **INITIAL ONE:**

12      \_\_\_ I want any other life support that may apply.

13      \_\_\_ I want life support only as my health care provider recommends.

14      \_\_\_ I DO NOT WANT life support.

15      **d. Extraordinary Suffering. If life support would not help my medical condition and would**  
16 **make me suffer permanent and severe pain:**

17      **INITIAL ONE:**

18      \_\_\_ I want to receive tube feeding.

19      \_\_\_ I want tube feeding only as my health care provider recommends.

20      \_\_\_ I DO NOT WANT tube feeding.

21      **INITIAL ONE:**

22      \_\_\_ I want any other life support that may apply.

23      \_\_\_ I want life support only as my health care provider recommends.

24      \_\_\_ I DO NOT WANT life support.

25      **C. Additional Instruction. You may attach to this document any writing or recording of**  
26 **your values and beliefs related to health care decisions. These attachments will serve as**  
27 **guidelines for health care providers. Attachments may include a description of what you**  
28 **would like to happen if you are close to death, if you are permanently unconscious, if you**  
29 **have an advanced progressive illness or if you are suffering permanent and severe pain.**

30      **5. MY SIGNATURE.**

31      **My signature: \_\_\_\_\_ Date: \_\_\_\_\_**

32      **6. WITNESS.**

33      **COMPLETE EITHER A OR B WHEN YOU SIGN.**

34      **A. NOTARY:**

35      **State of \_\_\_\_\_**

36      **County of \_\_\_\_\_**

37      **Signed        or        attested       before       me       on       \_\_\_\_\_,       2\_\_\_\_,       by**

38      \_\_\_\_\_.

39      \_\_\_\_\_

40      **Notary Public - State of Oregon**

41      **B. WITNESS DECLARATION:**

42      **The person completing this form is personally known to me or has provided proof of**  
43 **identity, has signed or acknowledged the person's signature on the document in my presence**  
44 **and appears to be not under duress and to understand the purpose and effect of this form.**  
45 **In addition, I am not the person's health care representative or alternate health care rep-**

1 representative, and I am not the person’s attending health care provider.

2 Witness Name (print): \_\_\_\_\_

3 Signature: \_\_\_\_\_

4 Date: \_\_\_\_\_

5 Witness Name (print): \_\_\_\_\_

6 Signature: \_\_\_\_\_

7 Date: \_\_\_\_\_

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

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

10 Health care representative:

11 Printed name: \_\_\_\_\_

12 Signature or other verification of acceptance: \_\_\_\_\_

13 Date: \_\_\_\_\_

14 First alternate health care representative:

15 Printed name: \_\_\_\_\_

16 Signature or other verification of acceptance: \_\_\_\_\_

17 Date: \_\_\_\_\_

18 Second alternate health care representative:

19 Printed name: \_\_\_\_\_

20 Signature or other verification of acceptance: \_\_\_\_\_

21 Date: \_\_\_\_\_

22  
23  
24  
25 **APPOINTING HEALTH CARE REPRESENTATIVES**  
26 **AND EXECUTING ADVANCE DIRECTIVES**  
27

28 **SECTION 7.** ORS 127.510 is amended to read:

29 127.510. [(1) A capable adult may designate in writing a competent adult to serve as attorney-in-fact  
30 for health care. A capable adult may also designate a competent adult to serve as alternative  
31 attorney-in-fact if the original designee is unavailable, unable or unwilling to serve as attorney-in-fact  
32 at any time after the power of attorney for health care is executed. The power of attorney for health  
33 care is effective when it is signed, witnessed and accepted as required by ORS 127.505 to 127.660 and  
34 127.995. The attorney-in-fact so appointed shall make health care decisions on behalf of the principal  
35 if the principal becomes incapable.]

36 [(2) A capable adult may execute a health care instruction. The instruction shall be effective when  
37 it is signed and witnessed as required by ORS 127.505 to 127.660 and 127.995.]

38 (1) A capable adult may execute an advance directive. The advance directive is effective  
39 when it is signed by the principal and witnessed or notarized as required by ORS 127.505 to  
40 127.660.

41 (2)(a) A capable adult may use an advance directive or the form set forth in section 5 of  
42 this 2018 Act to appoint a competent adult to serve as the health care representative for the  
43 capable adult. A health care representative appointed under this paragraph shall make health  
44 care decisions for the principal if the principal becomes incapable.

45 (b) A capable adult may use an advance directive or the form set forth in section 5 of this

1 **2018 Act to appoint one or more competent adults to serve as alternate health care repre-**  
 2 **sentatives for the capable adult. For purposes of ORS 127.505 to 127.660, an alternate health**  
 3 **care representative has the rights and privileges of a health care representative appointed**  
 4 **under paragraph (a) of this subsection, including the rights described in ORS 127.535. An al-**  
 5 **ternate health care representative appointed under this paragraph shall make health care**  
 6 **decisions for the principal if:**

7 (A) **The principal becomes incapable; and**

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

10 (c) **For purposes of paragraph (b) of this subsection, the health care representative ap-**  
 11 **pointed under paragraph (a) of this subsection is unavailable to make timely health care de-**  
 12 **isions for the principal if the health care representative is not available to answer questions**  
 13 **for the health care provider in person, by telephone or by another means of direct commu-**  
 14 **nication.**

15 (d) **An appointment made under this section is effective when it is accepted by the health**  
 16 **care representative.**

17 (3) Unless the period of time that an advance directive **or a form appointing a health care**  
 18 **representative** is *[to be]* effective is limited by the terms of the advance directive **or the form**  
 19 **appointing a health care representative**, the advance directive *[shall continue]* **or the form ap-**  
 20 **pointing a health care representative continues** in effect until:

21 (a) The principal dies; or

22 (b) The advance directive **or the form appointing a health care representative** is revoked,  
 23 suspended or superseded pursuant to ORS 127.545.

24 (4) Notwithstanding subsection (3) of this section, if the principal is incapable at the expiration  
 25 of the term of the advance directive **or the form appointing a health care representative**, the  
 26 advance directive **or the form appointing a health care representative** continues in effect until:

27 (a) The principal is no longer incapable;

28 (b) The principal dies; or

29 (c) The advance directive **or the form appointing a health care representative** is revoked,  
 30 suspended or superseded pursuant to the provisions of ORS 127.545.

31 (5) A health care provider shall make a copy of an advance directive *[and]*, **a copy of a form**  
 32 **appointing a health care representative and a copy of** any other instrument a part of the  
 33 principal's medical record when a copy of *[that]* **the advance directive, form appointing a health**  
 34 **care representative or** instrument is provided to the principal's health care provider.

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

38 **SECTION 8.** ORS 127.515 is amended to read:

39 127.515. (1) An advance directive **or a form appointing a health care representative** may be  
 40 executed by a resident or nonresident adult of this state in the manner provided by ORS 127.505 to  
 41 127.660 *[and 127.995]*.

42 *[(2) A power of attorney for health care must be in the form provided by Part B of the advance*  
 43 *directive form set forth in ORS 127.531, or must be in the form provided by ORS 127.530 (1991 Edi-*  
 44 *tion).]*

45 *[(3) A health care instruction must be in the form provided by Part C of the advance directive form*

1 *set forth in ORS 127.531, or must be in the form provided by ORS 127.610 (1991 Edition).]*

2 [(4) *An advance directive must reflect the date of the principal's signature. To be valid, an advance*  
 3 *directive must be witnessed by at least two adults as follows:]*

4 [(a) *Each witness shall witness either the signing of the instrument by the principal or the*  
 5 *principal's acknowledgment of the signature of the principal.]*

6 [(b) *Each witness shall make the written declaration as set forth in the form provided in ORS*  
 7 *127.531.]*

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

9 [(A) *A relative of the principal by blood, marriage or adoption;]*

10 [(B) *A person who at the time the advance directive is signed would be entitled to any portion of*  
 11 *the estate of the principal upon death under any will or by operation of law; or]*

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

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

16 [(e) *If the principal is a patient in a long term care facility at the time the advance directive is*  
 17 *executed, one of the witnesses must be an individual designated by the facility and having any quali-*  
 18 *fications that may be specified by the Department of Human Services by rule.]*

19 **(2) An advance directive or a form appointing a health care representative must reflect**  
 20 **the date of the principal's signature or other method of accepting the advance directive or**  
 21 **the form appointing a health care representative. To be valid, an advance directive or a form**  
 22 **appointing a health care representative must be:**

23 **(a) Witnessed and signed by at least two adults; or**

24 **(b) Notarized by a notary public.**

25 **(3) If an advance directive or a form appointing a health care representative is validated**  
 26 **under subsection (2)(a) of this section, each witness must witness:**

27 **(a) The principal signing the advance directive or the form appointing a health care rep-**  
 28 **resentative; or**

29 **(b) The principal acknowledging the signature of the principal on the advance directive**  
 30 **or the form appointing a health care representative, or the principal acknowledging any**  
 31 **other method by which the principal accepted the advance directive or the form appointing**  
 32 **a health care representative.**

33 **(4) For an advance directive or a form appointing a health care representative to be valid**  
 34 **under subsection (2)(a) of this section, the witnesses may not, on the date the advance di-**  
 35 **rective or the form appointing a health care representative is signed or acknowledged:**

36 **(a) Be the principal's attending physician or attending health care provider.**

37 **(b) Be the principal's health care representative or alternate health care representative**  
 38 **appointed under ORS 127.510.**

39 **(5) If an advance directive or a form appointing a health care representative is validated**  
 40 **under subsection (2)(a) of this section, and if the principal is a patient in a long term care**  
 41 **facility at the time the advance directive or the form appointing a health care representative**  
 42 **is executed, one of the witnesses must be an individual who is designated by the facility and**  
 43 **qualified as specified by the Department of Human Services by rule.**

44 [(5)] **(6) Notwithstanding [subsections (2) to (4)] subsection (2) of this section, an advance di-**  
 45 **rective or a form appointing a health care representative that is executed by an adult who [at**

1 *the time of execution resided in another state,]* **resides in another state at the time of execution,**  
 2 **and that is executed** in compliance with [*the formalities of execution required by*] the laws of that  
 3 state, the laws of the state where the principal [*was*] **is** located at the time of **the** execution or the  
 4 laws of this state, is validly executed for the purposes of ORS 127.505 to 127.660 [*and 127.995 and*  
 5 *may be given effect in accordance with its provisions, subject to the laws of this state*].

6  
 7 **DEFINITIONS**

8  
 9 **SECTION 9.** ORS 127.505 is amended to read:

10 127.505. As used in ORS 127.505 to 127.660 and 127.995:

11 (1) “Adult” means an individual who:

12 (a) Is 18 years of age or older[, *who*]; **or**

13 (b) Has been adjudicated an emancipated minor, or [*who*] **is a minor who is married.**

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

16 (2)(a) “Advance directive” means a document executed by a principal that contains:

17 (A) **A form appointing a health care representative; and**

18 (B) **Instructions to the health care representative.**

19 (b) “Advance directive” includes any supplementary document or writing attached by the  
 20 principal to the document described in paragraph (a) of this subsection.

21 (3) “Appointment” means [*a power of attorney for health care*] **a form appointing a health care**  
 22 **representative**, letters of guardianship or a court order appointing a health care representative.

23 (4)(a) “Artificially administered nutrition and hydration” means a medical intervention to pro-  
 24 vide food and water by tube, mechanical device or other medically assisted method.

25 (b) “Artificially administered nutrition and hydration” does not include the usual and typical  
 26 provision of nutrition and hydration, such as the provision of nutrition and hydration by cup, hand,  
 27 bottle, drinking straw or eating utensil.

28 (5) “Attending health care provider” means the health care provider who has primary  
 29 responsibility for the care and treatment of the principal, provided that the powers and du-  
 30 ties conferred on the health care provider by ORS 127.505 to 127.660 are within the health  
 31 care provider’s scope of practice.

32 [(5)] (6) “Attending physician” means the physician who has primary responsibility for the care  
 33 and treatment of the principal.

34 [(6)] “Attorney-in-fact” means an adult appointed to make health care decisions for a principal under  
 35 a power of attorney for health care, and includes an alternative attorney-in-fact.]

36 [(7)] “Dementia” means a degenerative condition that causes progressive deterioration of intellectual  
 37 functioning and other cognitive skills, including but not limited to aphasia, apraxia, memory, agnosia  
 38 and executive functioning, that leads to a significant impairment in social or occupational function and  
 39 that represents a significant decline from a previous level of functioning. Diagnosis is by history and  
 40 physical examination.]

41 (7) “Capable” means not incapable.

42 (8) “Form appointing a health care representative” means:

43 (a) **The portion of the form adopted under section 3 of this 2018 Act used to appoint a**  
 44 **health care representative or an alternate health care representative;**

45 (b) **The portion of the form set forth in section 6 of this 2018 Act used to appoint a health**

1 **care representative or an alternate health care representative; or**

2 (c) **The form set forth in section 5 of this 2018 Act.**

3 [(8)] (9) “Health care” means diagnosis, treatment or care of disease, injury and congenital or  
4 degenerative conditions, including the use, maintenance, withdrawal or withholding of life-sustaining  
5 procedures and the use, maintenance, withdrawal or withholding of artificially administered nutri-  
6 tion and hydration.

7 [(9)] (10) “Health care decision” means consent, refusal of consent or withholding or withdrawal  
8 of consent to health care, and includes decisions relating to admission to or discharge from a health  
9 care facility.

10 [(10)] (11) “Health care facility” means a health care facility as defined in ORS 442.015, a  
11 domiciliary care facility as defined in ORS 443.205, a residential facility as defined in ORS 443.400,  
12 an adult foster home as defined in ORS 443.705 or a hospice program as defined in ORS 443.850.

13 [(11) “Health care instruction” or “instruction” means a document executed by a principal to indi-  
14 cate the principal’s instructions regarding health care decisions.]

15 (12)(a) “Health care provider” means a person licensed, certified or otherwise authorized or  
16 permitted by the [law] laws of this state to administer health care in the ordinary course of business  
17 or practice of a profession[, and includes a health care facility].

18 (b) **“Health care provider” includes a health care facility.**

19 (13) “Health care representative” means:

20 [(a) An attorney-in-fact;]

21 (a) **A competent adult appointed to be a health care representative or an alternate health  
22 care representative under ORS 127.510.**

23 (b) A person who has authority to make health care decisions for a principal under the pro-  
24 visions of ORS 127.635 (2) or (3)[; or].

25 (c) A guardian or other person, appointed by a court to make health care decisions for a prin-  
26 cipal.

27 (14) “Incapable” means that in the opinion of the court in a proceeding to appoint or confirm  
28 authority of a health care representative, or in the opinion of the principal’s attending physician  
29 **or attending health care provider**, a principal lacks the ability to make and communicate health  
30 care decisions to health care providers, including communication through persons familiar with the  
31 principal’s manner of communicating if those persons are available. [“Capable” means not  
32 incapable.]

33 (15) “Instrument” means an advance directive, [acceptance,] **form appointing a health care  
34 representative**, disqualification, withdrawal, court order, court appointment or other document  
35 governing health care decisions.

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

37 [(17)] (16)(a) “Life-sustaining procedure” means any medical procedure, pharmaceutical, medical  
38 device or medical intervention that maintains life by sustaining, restoring or supplanting a vital  
39 function.

40 (b) “Life-sustaining procedure” does not include routine care necessary to sustain patient  
41 cleanliness and comfort.

42 [(18)] (17) “Medically confirmed” means the medical opinion of the attending physician **or at-  
43 tending health care provider** has been confirmed by a second physician **or second health care  
44 provider** who has examined the patient and who has clinical privileges or expertise with respect to  
45 the condition to be confirmed.

1 [(19)] (18) “Permanently unconscious” means completely lacking an awareness of self and ex-  
 2 ternal environment, with no reasonable possibility of a return to a conscious state, and that condi-  
 3 tion has been medically confirmed by a neurological specialist who is an expert in the examination  
 4 of unresponsive individuals.

5 [(20)] (19) “Physician” means an individual licensed to practice medicine by the Oregon Medical  
 6 Board or a naturopathic physician licensed to practice naturopathic medicine by the Oregon Board  
 7 of Naturopathic Medicine.

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

10 [(22)] (20) “Principal” means:

- 11 (a) An adult who has executed an advance directive;
- 12 (b) A person of any age who has a health care representative;
- 13 (c) A person for whom a health care representative is sought; or
- 14 (d) A person being evaluated for capability [*who will have*] **to whom** a health care represen-  
 15 tative **will be assigned** if the person is determined to be incapable.

16 [(23)] (21) “Terminal condition” means a health condition in which death is imminent irrespec-  
 17 tive of treatment, and where the application of life-sustaining procedures or the artificial adminis-  
 18 tration of nutrition and hydration serves only to postpone the moment of death of the principal.

19 [(24) “Tube feeding” means artificially administered nutrition and hydration.]

20  
 21 **TECHNICAL AMENDMENTS**

22  
 23 **SECTION 10.** ORS 127.005 is amended to read:

24 127.005. (1) When a principal designates another person as an agent by a power of attorney in  
 25 writing, and the power of attorney does not contain words that otherwise delay or limit the period  
 26 of time of its effectiveness:

- 27 (a) The power of attorney becomes effective when executed and remains in effect until the power  
 28 is revoked by the principal;
- 29 (b) The powers of the agent are unaffected by the passage of time; and
- 30 (c) The powers of the agent are exercisable by the agent on behalf of the principal even though  
 31 the principal becomes financially incapable.

32 (2) The terms of a power of attorney may provide that the power of attorney will become ef-  
 33 fective at a specified future time, or will become effective upon the occurrence of a specified future  
 34 event or contingency such as the principal becoming financially incapable. If a power of attorney  
 35 becomes effective upon the occurrence of a specified future event or contingency, the power of at-  
 36 torney may designate a person or persons to determine whether the specified event or contingency  
 37 has occurred, and the manner in which the determination must be made. A person designated by a  
 38 power of attorney to determine whether the principal is financially incapable is the principal’s per-  
 39 sonal representative for the purposes of ORS 192.553 to 192.581 and the federal Health Insurance  
 40 Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164.

41 (3) If a power of attorney becomes effective upon the principal becoming financially incapable  
 42 and either the power of attorney does not designate a person or persons to make the determination  
 43 as to whether the principal is financially incapable or none of the designated persons is willing or  
 44 able to make the determination, a determination that the principal is financially incapable may be  
 45 made by any physician. The physician’s determination must be made in writing.

1 (4) All acts done by an agent under a power of attorney during a period in which the principal  
 2 is financially incapable have the same effect, and inure to the benefit of and bind the principal, as  
 3 though the principal were not financially incapable.

4 (5) If a conservator is appointed for a principal, the agent shall account to the conservator,  
 5 rather than to the principal, for so long as the conservatorship lasts. The conservator has the same  
 6 power that the principal would have to revoke, suspend or terminate all or any part of the power  
 7 of attorney.

8 (6) This section does not apply to [*powers of attorney for health care executed under*] ORS 127.505  
 9 to 127.660 [*and 127.995*].

10 **SECTION 11.** ORS 127.520 is amended to read:

11 127.520. (1) Except as provided in ORS 127.635 or as may be allowed by court order, the fol-  
 12 lowing persons may not serve as health care representatives:

13 (a) If unrelated to the principal by blood, marriage or adoption:

14 (A) The attending physician **or attending health care provider of the principal**, or an em-  
 15 ployee of the attending physician **or attending health care provider of the principal**; or

16 (B) An owner, operator or employee of a health care facility in which the principal is a patient  
 17 or resident, unless the health care representative was appointed before the principal's admission to  
 18 the facility; or

19 (b) A person who is the principal's parent or former guardian [*and*] **if**:

20 (A) At any time while the principal was under the care, custody or control of the person, a court  
 21 entered an order:

22 (i) Taking the principal into protective custody under ORS 419B.150; or

23 (ii) Committing the principal to the legal custody of the Department of Human Services for care,  
 24 placement and supervision under ORS 419B.337; and

25 (B) The court entered a subsequent order that:

26 (i) The principal should be permanently removed from the person's home, or continued in sub-  
 27 stitute care, because it was not safe for the principal to be returned to the person's home, and no  
 28 subsequent order of the court was entered that permitted the principal to return to the person's  
 29 home before the principal's wardship was terminated under ORS 419B.328; or

30 (ii) Terminated the person's parental rights under ORS 419B.500 and 419B.502 to 419B.524.

31 (2) A principal, while not incapable, may petition the court to remove a prohibition [*contained*]  
 32 **described** in subsection (1)(b) of this section.

33 (3) A capable adult may disqualify any other person from making health care decisions for the  
 34 capable adult. The disqualification must be in writing and signed by the capable adult. The dis-  
 35 qualification must specifically designate those persons who are disqualified.

36 (4) A health care representative whose authority has been revoked by a court is disqualified.

37 (5) A health care provider who has actual knowledge of a disqualification may not accept a  
 38 health care decision from [*a*] **the** disqualified [*individual*] **person**.

39 (6) A person who has been disqualified from making health care decisions for a principal, and  
 40 who is aware of that disqualification, may not make health care decisions for the principal.

41 **SECTION 12.** ORS 127.525 is amended to read:

42 127.525. [*For an appointment under a power of attorney for health care to be effective, the*  
 43 *attorney-in-fact must accept the appointment in writing. Subject to the right of the attorney-in-fact to*  
 44 *withdraw, the acceptance imposes a duty on the attorney-in-fact to make health care decisions on behalf*  
 45 *of the principal at such time as the principal becomes incapable. Until the principal becomes incapable,*



1 *the attorney-in-fact may withdraw by giving notice to the principal. After the principal becomes inca-*  
 2 *capable, the attorney-in-fact may withdraw by giving notice to the health care provider.] For an ap-*  
 3 **pointment of a health care representative or an alternate health care representative in a**  
 4 **form appointing a health care representative to be effective, the health care representative**  
 5 **or the alternate health care representative must accept the appointment as described in ORS**  
 6 **127.510. Subject to the right of the health care representative or the alternate health care**  
 7 **representative to withdraw, the acceptance imposes a duty on the health care representative**  
 8 **or the alternate health care representative to make health care decisions on behalf of the**  
 9 **principal as described in ORS 127.510. Until the principal becomes incapable, the health care**  
 10 **representative or the alternate health care representative may withdraw by giving notice to**  
 11 **the principal. After the principal becomes incapable, the health care representative or the**  
 12 **alternate health care representative may withdraw by giving notice to the health care pro-**  
 13 **vider.**

14 **SECTION 13.** ORS 127.535 is amended to read:

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

22 (2) A health care representative is not personally responsible for the cost of health care pro-  
 23 vided to the principal solely because the health care representative makes health care decisions for  
 24 the principal.

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

31 (4) In making health care decisions, *[the]* a health care representative has a duty to act con-  
 32 sistent with the desires of the principal as expressed in the principal's advance directive, or as  
 33 otherwise made known by the principal to the health care representative *[at any time]*. If the  
 34 principal's *[desires]* **preferences** are unknown, *[the]* a health care representative has a duty to act  
 35 in *[what]* **a manner that** the health care representative in good faith believes to be **in** the best in-  
 36 terests of the principal.

37 (5) ORS 127.505 to 127.660 do not authorize a health care representative or health care provider  
 38 to withhold or withdraw life-sustaining procedures or artificially administered nutrition and hy-  
 39 dration *[in any situation]* if the principal manifests an objection to the health care decision. If the  
 40 principal objects to *[such a]* **the** health care decision, the health care provider shall proceed as  
 41 though the principal *[were]* **is** capable *[for the purposes of]* **with respect to** the health care decision  
 42 *[objected to]*.

43 (6) An *[instrument that would be a valid]* advance directive **or form appointing a health care**  
 44 **representative that would be valid** except that the *[instrument is not a form described in ORS*  
 45 *127.515, has]* **advance directive or form appointing a health care representative is** expired, is

1 not properly witnessed or otherwise fails to meet the formal requirements of ORS 127.505 to 127.660  
 2 shall constitute evidence of the patient's desires and interests.

3 (7) A health care representative is a personal representative for the purposes of ORS 192.553 to  
 4 192.581 and the federal Health Insurance Portability and Accountability Act privacy regulations, 45  
 5 C.F.R. parts 160 and 164.

6 **SECTION 14.** ORS 127.545 is amended to read:

7 127.545. (1) An advance directive or a health care decision by a health care representative may  
 8 be revoked:

9 (a) If the advance directive or health care decision involves the decision to withhold or with-  
 10 draw life-sustaining procedures or artificially administered nutrition and hydration, at any time and  
 11 in any manner by which the principal is able to communicate the intent to revoke; or

12 (b) At any time and in any manner by a capable principal.

13 (2) Revocation is effective upon communication by the principal to the **principal's** attending  
 14 physician, *[or] attending* health care provider~~, or to the~~ **or** health care representative. If the re-  
 15 vocation is communicated **by the principal** to the **principal's** health care representative, and the  
 16 principal is incapable and is under the care of a health care provider known to the **health care**  
 17 representative, the health care representative must promptly inform the **principal's** attending phy-  
 18 sician or **attending** health care provider of the revocation.

19 (3) Upon learning *[of the revocation, the health care provider or attending physician shall]* **about**  
 20 **a revocation of a health care decision, an attending physician or attending health care pro-**  
 21 **vider must** cause the revocation to be made a part of the principal's medical records.

22 *[(4) Execution of a valid power of attorney for health care revokes any prior power of attorney for*  
 23 *health care. Unless the health care instruction provides otherwise, execution of a valid health care in-*  
 24 *struction revokes any prior health care instruction.]*

25 **(4) Unless the advance directive provides otherwise:**

26 **(a) Execution of an advance directive revokes any prior advance directive; and**

27 *[(5) (b) [Unless the advance directive provides otherwise,] The directions [as] with respect to*  
 28 *health care decisions in [a valid] an advance directive supersede:*

29 *[(a) (A) Any directions contained in a previous court appointment or advance directive; and*

30 *[(b) (B) Any prior inconsistent expression of [desires] preferences with respect to health care*  
 31 *decisions.*

32 *[(6) Unless the power of attorney for health care provides otherwise, valid appointment of an*  
 33 *attorney-in-fact for health care supersedes:]*

34 **(5) Unless the form appointing a health care representative provides otherwise:**

35 **(a) Execution of a form appointing a health care representative revokes any prior form**  
 36 **appointing a health care representative;**

37 **(b) Valid appointment of a health care representative or an alternate health care repre-**  
 38 **sentative under ORS 127.510 supersedes:**

39 *[(a) (A) Any power of a guardian or other person appointed by a court to make health care*  
 40 *decisions for the protected person; and*

41 *[(b) (B) Any other prior appointment or designation of a health care representative[.]; and*

42 *[(7) Unless the power of attorney for health care expressly provides otherwise, a power of attorney*  
 43 *for health care is suspended:]*

44 **(c) A form appointing a health care representative is suspended:**

45 *[(a) (A) If [both the attorney-in-fact and the alternative attorney-in-fact] the appointed health*

1 **care representative and all appointed alternate health care representatives** have withdrawn;  
2 or

3 [(b)] **(B)** If the [*power of attorney*] **form appointing a health care representative** names the  
4 principal's spouse as [*attorney-in-fact*] **the health care representative or an alternate health care**  
5 **representative**, a petition for dissolution or annulment of marriage is filed and the principal does  
6 not reaffirm the appointment [*in writing*] after the filing of the petition.

7 [(8)(a)] **(6)(a)** If the principal has both a valid [*health care instruction*] **advance directive** and a  
8 valid [*power of attorney for health care*] **form appointing a health care representative**, and if the  
9 directions reflected in those documents are inconsistent, the document last executed governs to the  
10 extent of the inconsistency.

11 (b) If the principal has both a valid [*health care instruction*] **advance directive**, or a valid [*power*  
12 *of attorney for health care*] **form appointing a health care representative**, and a declaration for  
13 mental health treatment made in accordance with ORS 127.700 to 127.737, and if the directions re-  
14 flected in those documents are inconsistent, [*the directions contained in*] the declaration for mental  
15 health treatment governs to the extent of the inconsistency.

16 [(9)] **(7)** Any reinstatement of an advance directive **or a form appointing a health care rep-**  
17 **resentative** must be in writing.

18 **SECTION 15.** ORS 127.550 is amended to read:

19 127.550. (1) A health care decision made by [*an individual*] **a person** who is authorized to make  
20 the decision under ORS 127.505 to 127.660 [*and 127.995*] is effective immediately and does not require  
21 judicial approval.

22 (2) A petition may be filed under ORS 127.505 to 127.660 [*and 127.995 for any*] **for** one or more  
23 of the following purposes:

24 (a) Determining whether a principal is incapable.

25 (b) Determining whether an appointment of [*the*] **a health care representative** or [*a health care*  
26 *instruction*] **the execution of an advance directive** is valid or has been suspended, reinstated, re-  
27 voked or terminated.

28 (c) Determining whether the acts or proposed acts of [*the*] **a health care representative** breach  
29 any duty of the **health care** representative and whether those acts should be enjoined.

30 (d) Declaring that [*an individual*] **a person** is authorized to act as a health care representative.

31 (e) Disqualifying [*the*] **a health care representative** upon a determination of the court that the  
32 health care representative has violated, **has** failed to perform or is unable to perform the duties  
33 under ORS 127.535 (4).

34 (f) Approving any health care decision that by law requires court approval.

35 (g) Determining whether the acts or proposed acts of [*the*] **a health care representative** are  
36 clearly inconsistent with the [*desires*] **preferences** of the principal as made known to the health  
37 care representative, or where the [*desires*] **preferences** of the principal are unknown or unclear,  
38 whether the acts or proposed acts of the health care representative are clearly contrary to the best  
39 interests of the principal.

40 (h) Declaring that a [*power of attorney for health care is*] **form appointing a health care rep-**  
41 **resentative is suspended or** revoked upon a determination by the court that the [*attorney-in-fact*]  
42 **appointed health care representative** has made a health care decision for the principal that au-  
43 thorized anything illegal. A suspension or revocation of a [*power of attorney*] **form appointing a**  
44 **health care representative** under this paragraph shall be in the discretion of the court.

45 (i) Considering any other matter that the court determines needs to be decided for the pro-

1 tection of the principal.

2 (3) A petition may be filed by any of the following:

3 (a) The principal.

4 (b) *[The]* A health care representative.

5 (c) The spouse, parent, sibling or adult child of the principal.

6 (d) An adult relative or adult friend of the principal who is familiar with the desires of the  
7 principal.

8 (e) The guardian of the principal.

9 (f) The conservator of the principal.

10 (g) The attending physician or **attending** health care provider of the principal.

11 (4) A petition under this section shall be filed in the circuit court in the county in which the  
12 principal resides or is located.

13 (5) *[Any of the determinations]* A **determination** described in this section may be made by the  
14 court as a part of a protective proceeding under ORS chapter 125 if a guardian or temporary  
15 guardian has been appointed for the principal, or if the petition seeks the appointment of a guardian  
16 or a temporary guardian for the principal.

17 **SECTION 16.** ORS 127.555 is amended to read:

18 127.555. (1) If there is more than one physician **or health care provider** caring for a principal,  
19 the principal shall designate one physician **or one health care provider** as the attending physician  
20 **or the attending health care provider**. If the principal is incapable, the health care representative  
21 for the principal shall designate the attending physician **or the attending health care provider**.

22 (2) Health care representatives, and persons who are acting under a reasonable belief that they  
23 are health care representatives, *[shall not be]* **are not** guilty of any criminal offense, or subject to  
24 civil liability, or in violation of any professional oath, affirmation or standard of care for any action  
25 taken in good faith as a health care representative.

26 (3) A health care provider acting or declining to act in reliance on the health care decision  
27 made in an advance directive **or in a document that the health care provider reasonably be-**  
28 **lieves to be an advance directive**, made by an attending physician **or attending health care**  
29 **provider** under ORS 127.635 (3), or made by a person who the **health care** provider believes is the  
30 health care representative for an incapable principal, is not subject to criminal prosecution, civil  
31 liability or professional disciplinary action on *[the]* grounds that the health care decision is unau-  
32 thorized unless the **health care** provider:

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

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

36 (c) Knows or has reason to know that the requirements of ORS 127.505 to 127.660 *[and*  
37 *127.995]* have not been satisfied; or

38 (d) Acts after receiving notice that:

39 (A) The authority or decision on which the **health care** provider relied is revoked, suspended,  
40 superseded or subject to other legal infirmity;

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

43 (C) The health care representative has withdrawn or has been disqualified.

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

45 (a) The manner of administering health care pursuant to a health care decision made by the

1 health care representative or by [*a health care instruction*] **an advance directive**; or

2 (b) The manner of determining the health condition or incapacity of the principal.

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

7 **SECTION 17.** ORS 127.565 is amended to read:

8 127.565. (1) In following [*a health care instruction*] **an advance directive** or the decision of a  
9 health care representative, a health care provider shall exercise the same independent medical  
10 judgment that the health care provider would exercise in following the decisions of the principal if  
11 the principal were capable.

12 (2) [*No*] **A person** [*shall*] **may not** be required [*either*] to execute or to refrain from executing  
13 an advance directive **or to appoint or to refrain from appointing a health care representative**  
14 as a [*criterion*] **condition** for insurance. [*No*] **A health care provider** [*shall*] **may not** condition the  
15 provision of health care or otherwise discriminate against an individual based on whether or not the  
16 individual has executed an advance directive **or has appointed a health care representative**.

17 (3) No existing or future policy of insurance [*shall be*] **is** legally impaired or invalidated in any  
18 manner by actions taken under ORS 127.505 to 127.660 [*and 127.995*]. [*No person shall*] **A person**  
19 **may not** be discriminated against in premium or contract rates because of the existence or absence  
20 of an advance directive or appointment of a health care representative.

21 (4) Nothing in ORS 127.505 to 127.660 [*and 127.995*] is intended to impair or supersede any  
22 conflicting federal statute.

23 **SECTION 18.** ORS 127.625 is amended to read:

24 127.625. (1) [*No health care provider shall be*] **A health care provider is not** under any duty,  
25 whether by contract, [*by*] statute or [*by any*] other legal requirement, to participate in the with-  
26 drawal or withholding of life-sustaining procedures or of artificially administered nutrition or hy-  
27 dration.

28 (2) If a health care provider is unable or unwilling to carry out [*a health care instruction*] **an**  
29 **advance directive** or the decisions of the health care representative, the following provisions apply:

30 (a) The health care provider shall promptly notify the health care representative, if [*there is*]  
31 **the principal has appointed** a health care representative;

32 (b) If the authority or decision of the health care representative is in dispute, the health care  
33 representative or **health care** provider may seek the guidance of the court in the manner provided  
34 in ORS 127.550;

35 (c) If the **health care** representative's authority or decision is not in dispute, the **health care**  
36 representative shall make a reasonable effort to transfer the principal to the care of another phy-  
37 sician or health care provider; and

38 (d) If there is no health care representative for an incapable patient, and the health care deci-  
39 sions are not in dispute, the health care provider shall, without abandoning the patient, either dis-  
40 charge the patient or make a reasonable effort to locate a different **physician or** health care  
41 provider and authorize the transfer of the patient to that **physician or health care** provider.

42 **SECTION 19.** ORS 127.635 is amended to read:

43 127.635. (1) Life-sustaining procedures that would otherwise be applied to a principal who is in-  
44 capable and who does not have an appointed health care representative or applicable valid advance  
45 directive may be withheld or withdrawn in accordance with subsections (2) and (3) of this section

1 if the principal has been medically confirmed to be in one of the following conditions:

2 (a) A terminal condition;

3 (b) Permanently unconscious;

4 (c) A condition in which administration of life-sustaining procedures would not benefit the  
5 principal's medical condition and would cause permanent and severe pain; or

6 (d) An advanced stage of a progressive illness that will be fatal, and the principal is consistently  
7 and permanently unable to communicate by any means, to swallow food and water safely, to care  
8 for the principal's self and to recognize the principal's family and other people, and it is very un-  
9 likely that the principal's condition will substantially improve.

10 (2) If a principal's condition has been determined to meet one of the conditions set forth in  
11 subsection (1) of this section, and the principal does not have an appointed health care represen-  
12 tative or applicable valid advance directive, the principal's health care representative shall be the  
13 first of the following, in the following order, who can be located upon reasonable effort by the health  
14 care facility and who is willing to serve as the health care representative:

15 (a) A guardian of the principal who is authorized to make health care decisions, if any;

16 (b) The principal's spouse;

17 (c) An adult designated by the others listed in this subsection who can be so located, if no  
18 person listed in this subsection objects to the designation;

19 (d) A majority of the adult children of the principal who can be so located;

20 (e) Either parent of the principal;

21 (f) A majority of the adult siblings of the principal who can be located with reasonable effort;

22 or

23 (g) Any adult relative or adult friend.

24 (3) If none of the persons described in subsection (2) of this section is available, then life-  
25 sustaining procedures may be withheld or withdrawn upon the direction and under the supervision  
26 of the attending physician **or attending health care provider**.

27 (4)(a) Life-sustaining procedures may be withheld or withdrawn upon the direction and under the  
28 supervision of the attending physician **or attending health care provider** at the request of a person  
29 designated the health care representative under subsections (2) and (3) of this section only after the  
30 person has consulted with concerned family and close friends and, if the principal has a case man-  
31 ager, as defined by rules adopted by the Department of Human Services, after giving notice to the  
32 principal's case manager.

33 (b) A case manager who receives notice under paragraph (a) of this subsection shall provide the  
34 person giving the case manager notice with any information in the case manager's possession that  
35 is related to the principal's values, beliefs and preferences with respect to the withholding or with-  
36 drawing of life-sustaining procedures.

37 (5) Notwithstanding subsection (2) of this section, a person who is the principal's parent or for-  
38 mer guardian may not withhold or withdraw life-sustaining procedures under this section if:

39 (a) At any time while the principal was under the care, custody or control of the person, a court  
40 entered an order:

41 (A) Taking the principal into protective custody under ORS 419B.150; or

42 (B) Committing the principal to the legal custody of the Department of Human Services for care,  
43 placement and supervision under ORS 419B.337; and

44 (b) The court entered a subsequent order that:

45 (A) The principal should be permanently removed from the person's home, or continued in sub-

1 stitute care, because it was not safe for the principal to be returned to the person’s home, and no  
 2 subsequent order of the court was entered that permitted the principal to return to the person’s  
 3 home before the principal’s wardship was terminated under ORS 419B.328; or

4 (B) Terminated the person’s parental rights under ORS 419B.500 and 419B.502 to 419B.524.

5 (6) A principal, while not incapable, may petition the court to remove a prohibition contained  
 6 in subsection (5) of this section.

7 **SECTION 20.** ORS 127.640 is amended to read:

8 127.640. Before withholding or withdrawing life-sustaining procedures or artificially administered  
 9 nutrition and hydration under the provisions of ORS 127.540, 127.580 or 127.635, the attending phy-  
 10 sician **or attending health care provider** shall determine that the conditions of ORS 127.540,  
 11 127.580 and 127.635 have been met.

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

13 127.649. (1) Subject to the provisions of ORS 127.652 and 127.654, all health care organizations  
 14 shall maintain written policies and procedures, applicable to [*all capable adults who are receiving*]  
 15 **each capable adult individual who receives** health care by or through the health care organiza-  
 16 tion, that provide for:

17 (a) Delivering to [*those individuals*] **the individual** the following information and materials, in  
 18 written form, without recommendation:

19 (A) Information on the rights of the individual under [*Oregon law*] **the laws of this state** to  
 20 make health care decisions, including the right to accept or refuse medical or surgical treatment  
 21 and the right to execute [*advance directives*] **an advance directive or a form appointing a health**  
 22 **care representative;**

23 (B) Information on the policies of the health care organization with respect to the implementa-  
 24 tion of the rights of the individual under [*Oregon law*] **the laws of this state** to make health care  
 25 decisions;

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

29 **(C) Materials necessary to execute an advance directive or a form appointing a health**  
 30 **care representative; and**

31 (D) The name of a person who can provide additional information concerning [*the forms for*]  
 32 advance directives **and forms appointing a health care representative.**

33 (b) Documenting in a prominent place in the individual’s medical record whether the individual  
 34 has executed an advance directive **or a form appointing a health care representative.**

35 (c) Ensuring compliance by the health care organization with [*Oregon law relating to advance*  
 36 *directives*] **the laws of this state governing advance directives and forms appointing a health**  
 37 **care representative.**

38 (d) Educating the staff and the community on issues relating to advance directives **and forms**  
 39 **appointing a health care representative.**

40 (2) A health care organization [*need not furnish a copy of an advance directive to an individual*]  
 41 **does not need to deliver materials described in subsection (1)(a)(C) of this section** if the health  
 42 care organization has reason to believe that the individual [*has received a copy of an advance di-*  
 43 *rective in the form set forth in ORS 127.531 within*] **has received materials described in subsection**  
 44 **(1)(a)(C) of this section during** the preceding 12-month period or has previously executed an ad-  
 45 vance directive **or a form appointing a health care representative.**

**SECTION 22.** ORS 127.737 is amended to read:

127.737. [(1)] ORS 127.525, 127.550, 127.565, 127.570, 127.575 and 127.995 apply to a declaration for mental health treatment.

[(2) For purposes of this section only, a declaration shall be considered a power of attorney for health care, without regard to whether the declaration appoints an attorney-in-fact.]

**SECTION 23.** ORS 127.760 is amended to read:

127.760. (1) As used in this section:

(a) “Health care instruction” means a document executed by a patient to indicate the patient’s instructions regarding health care decisions[, including an advance directive or power of attorney for health care executed under ORS 127.505 to 127.660].

(b) “Health care provider” means a person licensed, certified or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

(c) “Hospital” has the meaning given that term in ORS 442.015.

(d) “Mental health treatment” means convulsive treatment, treatment of mental illness with psychoactive medication, psychosurgery, admission to and retention in a health care facility for care or treatment of mental illness, and related outpatient services.

(2)(a)(A) A hospital may appoint a health care provider who has received training in health care ethics, including identification and management of conflicts of interest and acting in the best interest of the patient, to give informed consent to medically necessary health care services on behalf of a patient admitted to the hospital in accordance with subsection (3) of this section.

(B) If a person appointed under subparagraph (A) of this paragraph is the patient’s attending physician or naturopathic physician licensed under ORS chapter 685, the hospital must also appoint another health care provider who meets the requirements of subparagraph (A) of this paragraph to participate in making decisions about giving informed consent to health care services on behalf of the patient.

(b) A hospital may appoint a multidisciplinary committee with ethics as a core component of the duties of the committee, or a hospital ethics committee, to participate in making decisions about giving informed consent to medically necessary health care services on behalf of a patient admitted to the hospital in accordance with subsection (3) of this section.

(3) A person appointed by a hospital under subsection (2) of this section may give informed consent to medically necessary health care services on behalf of and in the best interest of a patient admitted to the hospital if:

(a) In the medical opinion of the attending physician or naturopathic physician, the patient lacks the ability to make and communicate health care decisions to health care providers;

(b) The hospital has performed a reasonable search, in accordance with the hospital’s policy for locating relatives and friends of a patient, for a health care representative appointed under ORS 127.505 to 127.660 or an adult relative or adult friend of the patient who is capable of making health care decisions for the patient, including contacting social service agencies of the Oregon Health Authority or the Department of Human Services if the hospital has reason to believe that the patient has a case manager with the authority or the department, and has been unable to locate any person who is capable of making health care decisions for the patient; and

(c) The hospital has performed a reasonable search for and is unable to locate any health care instruction executed by the patient.

(4) Notwithstanding subsection (3) of this section, if a patient’s wishes regarding health care services were made known during a period when the patient was capable of making and communi-



1 cating health care decisions, the hospital and the person appointed under subsection (2) of this  
 2 section shall comply with those wishes.

3 (5) A person appointed under subsection (2) of this section may not consent on a patient's behalf  
 4 to:

5 (a) Mental health treatment;

6 (b) Sterilization;

7 (c) Abortion;

8 (d) Except as provided in ORS 127.635 (3), the withholding or withdrawal of life-sustaining pro-  
 9 cedures as defined in ORS 127.505; or

10 (e) Except as provided in ORS 127.580 (2), the withholding or withdrawal of artificially admin-  
 11 istered nutrition and hydration, as defined in ORS 127.505, other than hyperalimentation, necessary  
 12 to sustain life.

13 (6) If the person appointed under subsection (2) of this section knows the patient's religious  
 14 preference, the person shall make reasonable efforts to confer with a member of the clergy of the  
 15 patient's religious tradition before giving informed consent to health care services on behalf of the  
 16 patient.

17 (7) A person appointed under subsection (2) of this section is not a health care representative  
 18 as defined in ORS 127.505.

19 **SECTION 24.** ORS 97.953 is amended to read:

20 97.953. As used in ORS 97.951 to 97.982:

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

22 (2) "Agent" means [an]:

23 [(a) *Attorney-in-fact as that term is defined in ORS 127.505; or*]

24 **(a) A health care representative or an alternate health care representative appointed**  
 25 **under ORS 127.510; or**

26 **(b) An** individual expressly authorized to make an anatomical gift on the principal's behalf by  
 27 any record signed by the principal.

28 (3) "Anatomical gift" means a donation of all or part of a human body to take effect after the  
 29 donor's death for the purpose of transplantation, therapy, research or education.

30 (4) "Body part" means an organ, an eye or tissue of a human being. The term does not include  
 31 the whole body.

32 (5) "Decedent" means a deceased individual whose body or body part is or may be the source  
 33 of an anatomical gift, and includes a stillborn infant or a fetus.

34 (6)(a) "Disinterested witness" means a witness other than:

35 (A) A spouse, child, parent, sibling, grandchild, grandparent or guardian of the individual who  
 36 makes, amends, revokes or refuses to make an anatomical gift; or

37 (B) An adult who exhibited special care and concern for the individual.

38 (b) "Disinterested witness" does not include a person to whom an anatomical gift could pass  
 39 under ORS 97.969.

40 (7) "Document of gift" means a donor card or other record used to make an anatomical gift. The  
 41 term includes a statement, symbol or designation on a driver license, identification card or donor  
 42 registry.

43 (8) "Donor" means an individual whose body or body part is the subject of an anatomical gift.

44 (9) "Donor registry" means a centralized database that contains records of anatomical gifts and  
 45 amendments to or revocations of anatomical gifts.

- 1 (10) "Driver license" means a license or permit issued under ORS 807.021, 807.040, 807.200,  
 2 807.280 or 807.730, regardless of whether conditions are attached to the license or permit.
- 3 (11) "Eye bank" means an organization licensed, accredited or regulated under federal or state  
 4 law to engage in the recovery, screening, testing, processing, storage or distribution of human eyes  
 5 or portions of human eyes.
- 6 (12) "Guardian" means a person appointed by a court to make decisions regarding the support,  
 7 care, education, health or welfare of an individual. "Guardian" does not include a guardian ad litem.
- 8 (13) "Hospital" means a facility licensed as a hospital under the law of any state or a facility  
 9 operated as a hospital by the United States, a state or a subdivision of a state.
- 10 (14) "Identification card" means the card issued under ORS 807.021, 807.400 or 807.730, or a  
 11 comparable provision of the motor vehicle laws of another state.
- 12 (15) "Know" means to have actual knowledge.
- 13 (16) "Minor" means an individual who is under 18 years of age.
- 14 (17) "Organ procurement organization" means an organization designated by the Secretary of  
 15 the United States Department of Health and Human Services as an organ procurement organization.
- 16 (18) "Parent" means a parent whose parental rights have not been terminated.
- 17 (19) "Physician" means an individual authorized to practice medicine under the law of any state.
- 18 (20) "Procurement organization" means an eye bank, organ procurement organization or tissue  
 19 bank.
- 20 (21) "Prospective donor" means an individual who is dead or near death and has been deter-  
 21 mined by a procurement organization to have a body part that could be medically suitable for  
 22 transplantation, therapy, research or education. The term does not include an individual who has  
 23 made a refusal.
- 24 (22) "Reasonably available" means able to be contacted by a procurement organization without  
 25 undue effort and willing and able to act in a timely manner consistent with existing medical criteria  
 26 necessary for the making of an anatomical gift.
- 27 (23) "Recipient" means an individual into whose body a decedent's body part has been or is in-  
 28 tended to be transplanted.
- 29 (24) "Record" means information that is inscribed on a tangible medium or that is stored in an  
 30 electronic or other medium and is retrievable in perceivable form.
- 31 (25) "Refusal" means a record that expressly states an intent to prohibit other persons from  
 32 making an anatomical gift of an individual's body or body part.
- 33 (26) "Sign" means, with the present intent to authenticate or adopt a record:  
 34 (a) To execute or adopt a tangible symbol; or  
 35 (b) To attach to or logically associate with the record an electronic symbol, sound or process.
- 36 (27) "State" means a state of the United States, the District of Columbia, Puerto Rico, the  
 37 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the  
 38 United States.
- 39 (28) "Technician" means an individual determined to be qualified to remove or process body  
 40 parts by an appropriate organization that is licensed, accredited or regulated under federal or state  
 41 law. The term includes an enucleator.
- 42 (29) "Tissue" means a portion of the human body other than an organ or an eye. The term does  
 43 not include blood unless the blood is donated for the purpose of research or education.
- 44 (30) "Tissue bank" means a person that is licensed, accredited or regulated under federal or  
 45 state law to engage in the recovery, screening, testing, processing, storage or distribution of tissue.

1 (31) "Transplant hospital" means a hospital that furnishes organ transplants and other medical  
 2 and surgical specialty services required for the care of transplant patients.

3 **SECTION 25.** ORS 97.955 is amended to read:

4 97.955. (1) Subject to ORS 97.963, a donor may make an anatomical gift of a donor's body or body  
 5 part during the life of the donor for the purpose of transplantation, therapy, research or education.

6 (2) An anatomical gift may be made in the manner provided in ORS 97.957 by:

7 (a) The donor, if the donor is an adult or if the donor is a minor and is:

8 (A) Emancipated; or

9 (B) Authorized under ORS 807.280 to apply for an instruction driver permit because the donor  
 10 is at least 15 years of age;

11 (b) An agent of the donor, unless the [*power of attorney for health care*] **form appointing a**  
 12 **health care representative, as defined in ORS 127.505**, or other record prohibits the agent from  
 13 making an anatomical gift;

14 (c) A parent of the donor, if the donor is an unemancipated minor; or

15 (d) The donor's guardian.

16 **SECTION 26.** ORS 97.959 is amended to read:

17 97.959. (1) Except as provided in subsection (7) or (8) of this section, an anatomical gift made  
 18 under ORS 97.957 may be amended or revoked only by the donor in accordance with the provisions  
 19 of this section and may not be amended or revoked by any other person otherwise authorized to  
 20 make, amend or revoke a gift under ORS 97.963 or 97.967.

21 (2) A donor or other person authorized to amend or revoke an anatomical gift under subsection  
 22 (7) or (8) of this section may amend or revoke an anatomical gift by:

23 (a) A record signed by:

24 (A) The donor;

25 (B) The other person; or

26 (C) Subject to subsection (3) of this section, another individual acting at the direction of the  
 27 donor or the other person if the donor or other person is physically unable to sign; or

28 (b) A later-executed document of gift that amends or revokes a previous anatomical gift or por-  
 29 tion of an anatomical gift, either expressly or by inconsistency.

30 (3) A record signed pursuant to subsection (2)(a)(C) of this section must:

31 (a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who  
 32 have signed at the request of the donor or the other person; and

33 (b) State that it has been signed and witnessed as required in this subsection.

34 (4) A donor or other person authorized to revoke an anatomical gift under subsection (7) or (8)  
 35 of this section may revoke an anatomical gift by the destruction or cancellation of the document  
 36 of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the  
 37 gift.

38 (5) A donor may amend or revoke an anatomical gift that was not made in a will by any form  
 39 of communication during a terminal illness or injury addressed to at least two adults, at least one  
 40 of whom is a disinterested witness.

41 (6) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner  
 42 provided for amendment or revocation of wills or as provided in subsection (4) of this section.

43 (7) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably  
 44 available may revoke or amend an anatomical gift of the donor's body or body part.

45 (8) An agent or guardian of a donor may amend or revoke an anatomical gift only if:

(a) The agent or guardian made the gift under ORS 97.955 (2)(b) or (d); or

(b) *[The power of attorney for health care]* **The form appointing a health care representative, as defined in ORS 127.505**, or other record appointing the agent expressly authorizes the agent to amend or revoke anatomical gifts.

**SECTION 27.** ORS 163.193 is amended to read:

163.193. (1) A person commits the crime of assisting another person to commit suicide if the person knowingly sells, or otherwise transfers for consideration, any substance or object, that is capable of causing death, to another person for the purpose of assisting the other person to commit suicide.

(2) This section does not apply to a person:

(a) Acting pursuant to a court order, an advance directive or *[power of attorney for health care]* **a form for appointing a health care representative** pursuant to ORS 127.505 to 127.660 or a POLST, as defined in ORS 127.663;

(b) Withholding or withdrawing life-sustaining procedures or artificially administered nutrition and hydration pursuant to ORS 127.505 to 127.660; or

(c) Acting in accordance with the provisions of ORS 127.800 to 127.897.

(3) Assisting another person to commit suicide is a Class B felony.

**SECTION 28.** ORS 163.206 is amended to read:

163.206. ORS 163.200 and 163.205 do not apply:

(1) To a person acting pursuant to a court order, an advance directive or a *[power of attorney for health care]* **form for appointing a health care representative** pursuant to ORS 127.505 to 127.660 or a POLST, as defined in ORS 127.663;

(2) To a person withholding or withdrawing life-sustaining procedures or artificially administered nutrition and hydration pursuant to ORS 127.505 to 127.660;

(3) When a competent person refuses food, physical care or medical care;

(4) To a person who provides an elderly person or a dependent person who is at least 18 years of age with spiritual treatment through prayer from a duly accredited practitioner of spiritual treatment as provided in ORS 124.095, in lieu of medical treatment, in accordance with the tenets and practices of a recognized church or religious denomination of which the elderly or dependent person is a member or an adherent; or

(5) To a duly accredited practitioner of spiritual treatment as provided in ORS 124.095.

**TEMPORARY PROVISION RELATED TO MEMBERSHIP  
OF ADVANCE DIRECTIVE ADOPTION COMMITTEE**

**SECTION 29.** Notwithstanding the term of office specified by section 2 of this 2018 Act, of the members first appointed by the Governor to the Advance Directive Adoption Committee:

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

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

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

**REPEAL**

**SECTION 30.** ORS 127.531 is repealed.

SAVINGS CLAUSES AND APPLICABILITY

**SECTION 31.** ORS 127.658 is amended to read:

127.658. *[(1) ORS 127.505 to 127.660 and 127.995 do not impair or supersede any power of attorney for health care, directive to physicians or health care instruction in effect before November 4, 1993.]*

*[(2) Any power of attorney for health care or directive to physicians executed before November 4, 1993, shall be governed by the provisions of ORS 127.505 to 127.660 and 127.995, except that:]*

*[(a) The directive to physicians or power of attorney for health care shall be valid if it complies with the provisions of either ORS 127.505 to 127.660 and 127.995 or the statutes in effect as of the date of execution;]*

*[(b) The terms in a directive to physicians in the form prescribed by ORS 127.610 (1991 Edition) or predecessor statute have those meanings given in ORS 127.605 (1991 Edition) or predecessor statute in effect at the time of execution; and]*

*[(c) The terms in a power of attorney for health care in the form prescribed by ORS 127.530 (1991 Edition) have those meanings given in ORS 127.505 in effect at the time of execution.]*

*[(3) A health care organization, as defined in ORS 127.646, that on November 4, 1993, has printed materials with the information and forms which were required by ORS 127.649, prior to November 4, 1993, may use such printed materials until December 1, 1993.]*

**(1) ORS 127.505 to 127.660 as enacted, the repeal of any statute that was a part of ORS 127.505 to 127.660 and subsequent amendments to the provisions of ORS 127.505 to 127.660 do not impair or supersede any advance directive, form appointing a health care representative or directive to physicians executed in accordance with:**

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

**(b) The provisions of ORS 127.505 to 127.660 or any other statute governing an advance directive, a form appointing a health care representative or a directive to physicians that was in effect on the date that the advance directive, the form appointing a health care representative or the directive to physicians was executed.**

**(2) An advance directive, a form appointing a health care representative or a directive to physicians executed before, on or after the operative date specified in section 34 of this 2018 Act shall be governed by the provisions of ORS 127.505 to 127.660 or any other statute that is in effect on the date on which:**

**(a) The issue giving rise to adjudication occurs; or**

**(b) The advance directive, the form appointing a health care representative or the directive to physicians was executed.**

**SECTION 32.** The amendments to ORS 127.510 by section 7 of this 2018 Act apply to appointments made before, on or after the operative date specified in section 34 of this 2018 Act.

**SECTION 33.** (1) The amendments to ORS 127.515 by section 8 of this 2018 Act apply to advance directives and forms appointing a health care representative that are executed on or after the operative date specified in section 34 of this 2018 Act.

(2) Sections 1 to 6 of this 2018 Act, the amendments to statutes by sections 7 to 28 and 31 of this 2018 Act and the repeal of ORS 127.531 by section 30 of this 2018 Act do not effect the validity of an advance directive executed on or after the operative date specified in section 34 of this 2018 Act if the principal relied in good faith on a provision of ORS 127.505 to 127.660 as in effect immediately before the operative date specified in section 34 of this 2018

1 Act.

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**OPERATIVE DATE**

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5 **SECTION 34.** (1) Sections 1 to 6 of this 2018 Act, the amendments to statutes by sections  
6 7 to 28 and 31 of this 2018 Act and the repeal of ORS 127.531 by section 30 of this 2018 Act  
7 become operative on January 1, 2019.

8 (2) The Advance Directive Adoption Committee and the Oregon Health Authority may  
9 take any action before the operative date specified in subsection (1) of this section that is  
10 necessary to enable the committee and the authority to exercise, on and after the operative  
11 date specified in subsection (1) of this section, all the duties, powers and functions conferred  
12 on the committee and authority by sections 1 to 6 of this 2018 Act, the amendments to  
13 statutes by sections 7 to 28 and 31 of this 2018 Act and the repeal of ORS 127.531 by section  
14 30 of this 2018 Act.

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**UNIT CAPTIONS**

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18 **SECTION 35.** The unit captions used in this 2018 Act are provided only for the conven-  
19 ience of the reader and do not become part of the statutory law of this state or express any  
20 legislative intent in the enactment of this 2018 Act.

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**EFFECTIVE DATE**

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24 **SECTION 36.** This 2018 Act takes effect on the 91st day after the date on which the 2018  
25 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

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