House Bill 2217

Sponsored by Representative GREENLICK, Senator STEINER HAYWARD; Representatives FAHEY, NOSSE, SALINAS, WILDE, Senators PROZANSKI, ROBLAN (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.

Prohibits anyone other than patient from administering medication to end patient’s life in humane and dignified manner.

Defines “self-administer” to include ingestion or other delivery method.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to death with dignity; creating new provisions; amending ORS 127.800, 127.815, 127.875, 127.885 and 127.897; and prescribing an effective date.

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

SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 127.800 to 127.897.

SECTION 2. Medication prescribed under ORS 127.800 to 127.897 must be self-administered by the patient and may not be administered on behalf of the patient by any other person.

SECTION 3. ORS 127.800 is amended to read:

127.800. §1.01. Definitions.

The following words and phrases, whenever used in ORS 127.800 to 127.897, have the following meanings:

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

(2) “Attending physician” means the physician who has primary responsibility for the care of the patient and treatment of the patient’s terminal disease.

(3) “Capable” means that in the opinion of a court or in the opinion of the patient’s attending physician or consulting physician, psychiatrist or psychologist, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient’s manner of communicating if those persons are available.

(4) “Consulting physician” means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient’s disease.

(5) “Counseling” means one or more consultations as necessary between a [state licensed] psychiatrist or licensed psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

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

(7) “Informed decision” means a decision by a qualified patient, to request and obtain a prescription for medication to end his or her life in a humane and dignified manner, that is based on

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.

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an appreciation of the relevant facts and after being fully informed by the attending physician of:
(a) His or her medical diagnosis;
(b) His or her prognosis;
(c) The potential risks associated with \textit{taking} \textit{self-administering} the medication to be pre-
scribed;
(d) The probable result of \textit{taking} \textit{self-administering} the medication to be prescribed; and
(e) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain
control.

(8) “Medically confirmed” means the medical opinion of the attending physician has been con-
firmed by a consulting physician who has examined the patient and the patient’s relevant medical
records.

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

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

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

(12) “Self-administer” means a qualified patient’s physical act of ingesting or delivering
by another method medication to end his or her life in a humane and dignified manner.

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

\textbf{SECTION 4.} ORS 127.815 is amended to read:

ORS 127.815. §3.01. Attending physician responsibilities. (1) The attending physician shall:
(a) Make the initial determination of whether a patient has a terminal disease, is capable, and
has made the request voluntarily;
(b) Request that the patient demonstrate Oregon residency pursuant to ORS 127.860;
(c) To ensure that the patient is making an informed decision, inform the patient of:
(A) His or her medical diagnosis;
(B) His or her prognosis;
(C) The potential risks associated with \textit{taking} \textit{self-administering} the medication to be pre-
scribed;
(D) The probable result of \textit{taking} \textit{self-administering} the medication to be prescribed; and
(E) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain
control;
(d) Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for
a determination that the patient is capable and acting voluntarily;
(e) Refer the patient for counseling if appropriate pursuant to ORS 127.825;
(f) Recommend that the patient notify next of kin;
(g) Counsel the patient about the importance of having another person present when the patient
\textit{takes} \textit{self-administers} the medication prescribed pursuant to ORS 127.800 to 127.897 and of not
\textit{taking} \textit{self-administering} the medication in a public place;
(h) Inform the patient that he or she has an opportunity to rescind the request at any time and
in any manner, and offer the patient an opportunity to rescind at the end of the 15-day waiting pe-
riod pursuant to ORS 127.840;
(i) Verify, immediately prior to writing the prescription for medication under ORS 127.800 to
127.897, that the patient is making an informed decision;
(j) Fulfill the medical record documentation requirements of ORS 127.855;
(k) Ensure that all appropriate steps are carried out in accordance with ORS 127.800 to 127.897 prior to writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner; and

(L)(A) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient’s discomfort, provided the attending physician is registered as a dispensing physician with the Oregon Medical Board, has a current Drug Enforcement Administration certificate and complies with any applicable administrative rule; or
(B) With the patient’s written consent:
(i) Contact a pharmacist and inform the pharmacist of the prescription; and
(ii) Deliver the written prescription personally or by mail to the pharmacist, who will dispense the medications to either the patient, the attending physician or an expressly identified agent of the patient.

(2) Notwithstanding any other provision of law, the attending physician may sign the patient’s report of death.

SECTION 5. ORS 127.875 is amended to read:
ORS 127.875. §3.13. Insurance or annuity policies. The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner. Neither shall a qualified patient’s act of ingesting self-administering medication to end his or her life in a humane and dignified manner have an effect upon a life, health, or accident insurance or annuity policy.

SECTION 6. ORS 127.885 is amended to read:
ORS 127.885. §4.01. Immunities. Except as provided in ORS 127.890:

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

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

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

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

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

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

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

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

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

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

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

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

(d) For purposes of this subsection:

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

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

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

(ii) Providing information about [the Oregon Death with Dignity Act] ORS 127.800 to 127.897 to
a patient upon the request of the patient;

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

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

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

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

SECTION 7. ORS 127.897 is amended to read:

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

REQUEST FOR MEDICATION
TO END MY LIFE IN A HUMANE
AND DIGNIFIED MANNER

I, ____________________________, am an adult of sound mind.

I am suffering from ____________, which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

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

I request that my attending physician prescribe medication that will end my life in a humane and dignified manner.

INITIAL ONE:

__________ I have informed my family of my decision and taken their opinions into consideration.

__________ I have decided not to inform my family of my decision.

__________ I have no family to inform of my decision.

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

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

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

Signed: ______________________

Dated: ______________________

DECLARATION OF WITNESSES

We declare that the person signing this request:

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

_________________________ Witness 1/Date

_________________________ Witness 2/Date

NOTE: One witness shall not be a relative (by blood, marriage or adoption) of the person signing this request, shall not be entitled to any portion of the person’s estate upon death and shall not own, operate or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility.

SECTION 8. This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.