

Senate Bill 1039

Sponsored by Senator MONNES ANDERSON

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**.

Authorizes appointment of health care advocate to make health care decisions for individual with developmental disability receiving services through individualized written service plan if individual does not have guardian or health care representative. Specifies requirements for appointment of health care advocate, restrictions on health care advocate and rights of individual for whom health care advocate has been appointed.

A BILL FOR AN ACT

1
2 Relating to individuals with developmental disabilities.

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

4 **SECTION 1. (1) As used in this section:**

5 (a) **"Attending physician" has the meaning given that term in ORS 127.505.**

6 (b) **"Developmental disability" has the meaning given that term in ORS 427.005.**

7 (c) **"Emergency treatment" means a procedure or treatment that, if delayed, is likely to:**

8 (A) **Place the health of the patient in serious jeopardy;**

9 (B) **Result in serious impairment to bodily functions; or**

10 (C) **Result in serious dysfunction of any bodily organ.**

11 (d) **"Health care advocate" means an individual who is authorized to make health care**
12 **decisions on behalf of a patient who does not have a guardian or a health care representative.**

13 (e) **"Health care decision" has the meaning given that term in ORS 127.505.**

14 (f) **"Health care facility" has the meaning given that term in ORS 442.015.**

15 (g) **"Health care representative" has the meaning given that term in ORS 127.505.**

16 (h) **"Individualized written service plan" has the meaning given that term in ORS 427.101.**

17 (i) **"Individualized written service plan team" means a group consisting of:**

18 (A) **The patient;**

19 (B) **The patient's legal or designated representative;**

20 (C) **The patient's case manager; and**

21 (D) **Other individuals who may be chosen by the patient, such as care providers or family**
22 **members.**

23 (j) **"Patient" means an individual with a developmental disability who receives services**
24 **through an individualized written service plan.**

25 (k) **"Significant medical procedure" means any medical procedure that requires a hospital**
26 **admission or the administration of general anesthesia in an outpatient setting.**

27 (L) **"Treating physician" means a physician who has primary responsibility for the care**
28 **and treatment of a patient.**

29 (2) **An individualized written service plan team may appoint a health care advocate for**
30 **a patient whom a court or a treating physician has determined to be incapable of making**

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 health care decisions.

2 (3) A health care advocate must be a capable adult who is willing to serve as a health
3 care advocate and who is approved by at least two-thirds of the individualized written service
4 plan team, including the patient, except that the following individuals may not serve as a
5 health care advocate:

6 (a) The patient's attending physician or an employee of the attending physician.

7 (b) An owner, operator or employee of a health care facility where the patient has been
8 admitted or resides.

9 (c) The owner, operator or employee of a provider of residential care to the patient.

10 (d) The owner, operator or employee of a provider of employment services to the patient.

11 (e) A parent or guardian if, at a time when the patient was under the care, custody, or
12 control of the parent or guardian, a court entered an order that:

13 (A) Terminated the parent's parental rights; or

14 (B) Placed the individual in the protective custody or legal custody of the Department
15 of Human Services based on the department's determination that it was not safe for the
16 patient to be returned to the care, custody, or control of the parent or guardian.

17 (4) A health care advocate is authorized to access the health records of the patient,
18 consult with the patient's medical providers and make health care decisions on behalf of the
19 patient except with respect to any of the following:

20 (a) An action or procedure described in ORS 127.540.

21 (b) Testing for HIV, unless testing is necessary for obtaining treatment or care for the
22 patient.

23 (c) A request for medication for the purpose of ending the patient's life pursuant to ORS
24 127.805.

25 (d) An experimental procedure, unless the procedure has been approved by an institu-
26 tional review board and is determined by the treating physician to be in the best interest of
27 the patient.

28 (e) An experimental drug that has not been approved for use by the United States Food
29 and Drug Administration, unless the drug is part of an approved clinical trial and the
30 patient's treating physician has determined that it is in the best interest of the patient.

31 (f) The use of physical or chemical restraints except during a period of time when an
32 imminent risk of physical harm to the patient or others exists.

33 (5) A health care advocate is appointed for a one-year term and may be reappointed as
34 provided in subsection (3) of this section. The individualized written service plan team may
35 revoke the appointment of a health care advocate by a majority vote.

36 (6) A health care advocate may not disclose the contents of, and must maintain the
37 confidentiality of, the patient's health information, as required by state and federal laws.

38 (7) A health care decision by a health care advocate regarding a significant medical pro-
39 cedure or treatment must be approved by a majority of the individualized written service
40 plan team at an in-person meeting of the team at which the team considers and documents
41 its consideration of:

42 (a) Alternatives to the procedure or treatment;

43 (b) Risks and benefits of the procedure or treatment;

44 (c) The anticipated impact of the procedure or treatment on the patient's well-being;

45 (d) Any preferences in favor of or against the procedure or treatment communicated by

1 **the patient verbally or nonverbally; and**

2 **(e) Any additional information that is needed before making the decision.**

3 **(8) An individualized written service plan team must inform a patient of the team's de-**
4 **cision to seek a health care advocate for the patient.**

5 **(9)(a) A patient has the right to protest any health care decision made by a health care**
6 **advocate. The individualized written service plan team must immediately:**

7 **(A) Notify a provider who prescribed a procedure or treatment approved under a health**
8 **care decision that is under protest;**

9 **(B) Consider the protest; and**

10 **(C) Reassess the patient's capacity to make health care decisions.**

11 **(b) The health care decision must be suspended while the protest is being considered and**
12 **the patient's capacity to make health care decisions is being reassessed, unless the provider**
13 **determines that the procedure or treatment approved under the health care decision is**
14 **emergency treatment.**

15 **(10) The Department of Human Services shall ensure that appropriate training is made**
16 **available to all health care advocates.**

17 **(11) The department shall adopt rules necessary to carry out the provisions of this sec-**
18 **tion.**

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