

HILARY CARTER LAW

9250 SW Tigard Street
Tigard, Oregon 97223

Fax: (503) 639-3447
Phone: (503) 639-4108

Attorneys:

Stephanie Carter
stephanie@hilarycarterlaw.com

Ira R. Weatherhead, Of Counsel
randy@hilarycarterlaw.com

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TESTIMONY IN HOUSE OF REPRESENTATIVES ON SENATE BILL 199

Thank you for giving me this opportunity to provide testimony in support of Senate Bill 199. I have been involved with legislative changes to the Oregon Advance Directive since Senator Prozanski convened a work group back in 2015. The work of that group ultimately resulted in the Advance Directive form that became operative on January 1, 2019.

Now, as chair of the Advance Directive Adoptions Committee, I'm excited to present our work to you. The proposed form represents a significant change from the existing form that has remained substantially the same since 1993, despite dramatic changes in health care during the last 30 years. Other states have already tackled these changes and it was time for Oregon to do so.

The proposed form allows Oregonians greater flexibility in expressing their values and preferences regarding health care. The form takes into account uncertain events and the variability of future options for treatment and care rather than focusing on specific treatments. This form emphasizes outcomes and incorporates the principles of "Goals of Care" conversations. Understanding a patient's care goals in the context of a serious illness allows medical providers to align care provided with what is most important to the patient.

The committee retained three scenarios from the existing form: (1) terminal condition, (2) advanced progressive illness, and (3) permanently unconscious. However, the choice of options has changed: (1) all available treatments, (2) artificial feeding and fluids only, (3) no life-sustaining treatments, and (4) health care representative to decide.

This section is followed by guided prompts to encourage narrative. These sections meet the legislative mandate to provide Oregonians with a means to indicate their values and beliefs, and to express preferences with regard to, for example, location of care. The prompts include:

- What Matters Most to Me and For Me. Sharing information about what matters most to you and under what circumstances you would not want life sustaining procedures near end of life.
- My Spiritual Beliefs.

- Life and Values. Sharing information about your life and values that would help in making decisions about care.
- Preference for Place of Care. If there is a choice, where you would want/not want to receive care.

The Advance Directive form has always allowed Oregonians to supplement the form with additional information. This form provides space and greater encouragement for the principal to list any additional documents that are being attached. Our experiences with Covid-19 have underlined the importance of giving Oregonians a space to provide more information about their goals of care.

Finally, the form allows the principal to list persons with whom the health care representative can share information about health status and care.

As the committee worked through the process of creating this form, members realized that it was essential to make a strong user's guide widely available. This guide will not become a part of the form, but our hope is that it (and the form) will be translated into multiple languages and heavily promoted. The user's guide discusses the purpose of the Advance Directive, the role of the health care representative, the difference between the Advance Directive and the POLST, and other helpful information.

In closing, I express my, and the Committee's, hope that this bill will be passed without delay.

Very truly yours,

Stephanie E. Carter

SB 199 A STAFF MEASURE SUMMARY

Carrier: Rep. Prusak

House Committee On Health Care**Action Date:** 05/20/21**Action:** Do Pass the A-Eng bill.**Vote:** 6-3-1-0**Yeas:** 6 - Alonso Leon, Campos, Dexter, Prusak, Salinas, Schouten**Nays:** 3 - Hayden, Moore-Green, Weber**Exc:** 1 - Noble**Fiscal:** No fiscal impact**Revenue:** No revenue impact**Prepared By:** Oliver Droppers, LPRO Analyst**Meeting Dates:** 5/13, 5/20**WHAT THE MEASURE DOES:**

Revises Advance Directive form. Provides increased content, options, and opportunity for direction in section of form on health care instructions. Includes section on values and directions regarding quality of life, spiritual beliefs, life and values, place of care, and other information for health care representative or health care provider. Provides direction to health care representative on discussion of health status with others. Allows acceptance as appointment as health care representative to be by signature or by representing to a third party that the person is the named representative and has accepted the authority and duties of a health care representative. Modifies structure and duty of Advance Directive Adoption Committee. Renames Committee to Advance Directive Advisory Committee (ADAC). Specifies that ADAC will recommend changes to the form to legislature. Removes requirement that ADAC submit form to Legislative Assembly and that it become a measure for ratification. Charges ADAC with providing written explanatory materials to the public. Requires ADAC to report to Legislative Assembly by September 1 of even-numbered years following finalization of its initial recommendation for changes to the form. Takes effect on 91st day following adjournment sine die.

ISSUES DISCUSSED:

- Advance Directive Advisory Committee
- History and purpose of Oregon's Advance Directive form
- Proposed changes to form
- Distinction between progressive and advanced illness
- Ability for individuals with limited English proficiency to use the form
- Terminology used in the form
- Clarification whether future changes to the form require legislative approval

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

In 1993, Oregon adopted the first advance directive legislation in the nation. An advance directive is a legal document that appoints a representative to make health care decisions for another individual when that person becomes incapacitated. Additionally, it allows a person to provide directions and preferences on receiving life-sustaining treatments when one or more conditions exist, including the following: close to death; permanently unconscious; progressive fatal illness with inability to communicate, swallow food or water safely, care for self, and recognize family or others; and medical conditions in which life support would not help the condition and would make the person suffer permanent and severe pain. The advance directive does not apply when individuals can make their own health care decisions. The current advance directive has not been modified since 1993.

SB 199 A STAFF MEASURE SUMMARY

House Bill 4135 (2018) established the Advance Directive Adoption Committee (ADAC), which is required to review the current Advance Directive form every four years. It specifies that future changes to the Advance Directive form require legislative action through a legislative measure before becoming effective in Oregon. In September 2020, the ADAC submitted a revised form to the legislature for ratification.

Senate Bill 199 A revises the Oregon Advance Directive form.

CHAPTER 328

AN ACT

SB 199

Relating to advance directives; creating new provisions; amending ORS 127.505, 127.510, 127.515, 127.525, 127.532, 127.533 and 127.658 and section 29, chapter 36, Oregon Laws 2018; repealing ORS 127.534 and section 6, chapter 36, Oregon Laws 2018; and prescribing an effective date.

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

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 127.505 to 127.660.

SECTION 2. An advance directive executed by an Oregon resident or by a resident of any other state while physically present in this state must be in substantially the following form:

OREGON ADVANCE DIRECTIVE FOR HEALTH CARE

- This Advance Directive form allows you to:
• Share your values, beliefs, goals and wishes for health care if you are not able to express them yourself.
• Name a person to make your health care decisions if you could not make them for yourself. This person is called your health care representative and they must agree to act in this role.

• Be sure to discuss your Advance Directive and your wishes with your health care representative. This will allow them to make decisions that reflect your wishes. It is recommended that you complete this entire form.

• The Oregon Advance Directive for Health Care form and Your Guide to the Oregon Advance Directive are available on the Oregon Health Authority's website.

• In sections 1, 2, 5, 6 and 7 you appoint a health care representative.

• In sections 3 and 4 you provide instructions about your care.

The Advance Directive form allows you to express your preferences for health care. It is not the same as Portable Orders for Life Sustaining Treatment (POLST) as defined in ORS 127.663. You can find more information about the POLST in Your Guide to the Oregon Advance Directive.

This form may be used in Oregon to choose a person to make health care decisions for you if you become too sick to speak for yourself or are unable to make your own medical decisions. The person is called a health care represen-

tative. If you do not have an effective health care representative appointment and you become too sick to speak for yourself, a health care representative will be appointed for you in the order of priority set forth in ORS 127.635 (2) and this person can only decide to withhold or withdraw life sustaining treatments if you meet one of the conditions set forth in ORS 127.635 (1).

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

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

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

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

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

1. ABOUT ME

Name: _____
Date of Birth: _____
Telephone numbers: (Home) _____
(Work) _____ (Cell) _____
Address: _____
E-mail: _____

2. MY HEALTH CARE REPRESENTATIVE

I choose the following person as my health care representative to make health care decisions for me if I can't speak for myself.

Name: _____
Relationship: _____
Telephone numbers: (Home) _____
(Work) _____ (Cell) _____
Address: _____
E-mail: _____

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

First alternate health care representative:
Name: _____
Relationship: _____
Telephone numbers: (Home) _____

(Work) _____ (Cell) _____
 Address: _____
 E-mail: _____

Second alternate health care representative:
 Name: _____
 Relationship: _____
 Telephone numbers: (Home) _____
 (Work) _____ (Cell) _____
 Address: _____
 E-mail: _____

3. MY HEALTH CARE INSTRUCTIONS

This section is the place for you to express your wishes, values and goals for care. Your instructions provide guidance for your health care representative and health care providers.

You can provide guidance on your care with the choices you make below. This is the case even if you do not choose a health care representative or if they cannot be reached.

A. MY HEALTH CARE DECISIONS:

There are three situations below for you to express your wishes. They will help you think about the kinds of life support decisions your health care representative could face. For each, choose the one option that most closely fits your wishes.

a. Terminal Condition

This is what I want if:

- I have an illness that cannot be cured or reversed.

AND

- My health care providers believe it will result in my death within six months, regardless of any treatments.

Initial one option only.

___ I want to try all available treatments to sustain my life, such as artificial feeding and hydration with feeding tubes, IV fluids, kidney dialysis and breathing machines.

___ I want to try to sustain my life with artificial feeding and hydration with feeding tubes and IV fluids. I do not want other treatments to sustain my life, such as kidney dialysis and breathing machines.

___ I do not want treatments to sustain my life, such as artificial feeding and hydration with feeding tubes, IV fluids, kidney dialysis or breathing machines. I want to be kept comfortable and be allowed to die naturally.

___ I want my health care representative to decide for me, after talking with my health care providers and taking into account the things that matter to me. I have expressed what matters to me in section B below.

b. Advanced Progressive Illness

This is what I want if:

- I have an illness that is in an advanced stage.

AND

- My health care providers believe it will not improve and will very likely get worse over time and result in death.

AND

- My health care providers believe I will never be able to:

- Communicate
- Swallow food and water safely
- Care for myself
- Recognize my family and other people

Initial one option only.

___ I want to try all available treatments to sustain my life, such as artificial feeding and hydration with feeding tubes, IV fluids, kidney dialysis and breathing machines.

___ I want to try to sustain my life with artificial feeding and hydration with feeding tubes and IV fluids. I do not want other treatments to sustain my life, such as kidney dialysis and breathing machines.

___ I do not want treatments to sustain my life, such as artificial feeding and hydration with feeding tubes, IV fluids, kidney dialysis or breathing machines. I want to be kept comfortable and be allowed to die naturally.

___ I want my health care representative to decide for me, after talking with my health care providers and taking into account the things that matter to me. I have expressed what matters to me in section B below.

c. Permanently Unconscious

This is what I want if:

I am not conscious.

AND

If my health care providers believe it is very unlikely that I will ever become conscious again.

Initial one option only.

___ I want to try all available treatments to sustain my life, such as artificial feeding and hydration with feeding tubes, IV fluids, kidney dialysis and breathing machines.

___ I want to try to sustain my life with artificial feeding and hydration with feeding tubes and IV fluids. I do not want other treatments to sustain my life, such as kidney dialysis and breathing machines.

___ I do not want treatments to sustain my life, such as artificial feeding and hydration with feeding tubes, IV fluids, kidney dialysis or breathing machines. I want to be kept comfortable and be allowed to die naturally.

___ I want my health care representative to decide for me, after talking with my health care providers and taking into account the things that matter to me. I have expressed what matters to me in section B below.

You may write in the space below or attach pages to say more about what kind of care you want or do not want.

B. WHAT MATTERS MOST TO ME AND FOR ME:

This section only applies when you are in a terminal condition, have an advanced progressive illness or are permanently unconscious. If you wish to use this section, you can communicate the things that are really important to you and for you. This will help your health care representative.

This is what you should know about what is important to me about my life:

This is what I value the most about my life:

This is what is important for me about my life:

I do not want life-sustaining procedures if I can not be supported and be able to engage in the following ways:

Initial all that apply.

- Express my needs.
- Be free from long-term severe pain and suffering.
- Know who I am and who I am with.
- Live without being hooked up to mechanical life support.
- Participate in activities that have meaning to me, such as:

If you want to say more to help your health care representative understand what matters most to you, write it here. (For example: I do not want care if it will result in . . .)

C. MY SPIRITUAL BELIEFS

Do you have spiritual or religious beliefs you want your health care representative and those taking care of you to know? They can be rituals, sacraments, denying blood product transfusions and more.

You may write in the space below or attach pages to say more about your spiritual or religious beliefs.

4. MORE INFORMATION

Use this section if you want your health care representative and health care providers to have more information about you.

A. LIFE AND VALUES

Below you can share about your life and values. This can help your health care representative and health care providers make decisions about your health care. This might include family history, experiences with health care, cultural background, career, social support system and more.

You may write in the space below or attach pages to say more about your life, beliefs and values.

B. PLACE OF CARE:

If there is a choice about where you receive care, what do you prefer? Are there places you want or do not want to receive care? (For example, a hospital, a nursing home, a mental health facility, an adult foster home, assisted living, your home.)

You may write in the space below or attach pages to say more about where you prefer to receive care or not receive care.

C. OTHER:

You may attach to this form other documents you think will be helpful to your health care representative and health care providers. What you attach will be part of your Advance Directive.

You may list documents you have attached in the space below.

D. INFORM OTHERS:

You can allow your health care representative to authorize your health care providers to the extent permitted by state and federal privacy laws to discuss your health status and care with the people you write in below. Only your health care representative can make decisions about your care.

Name: _____
Relationship: _____
Telephone numbers: (Home) _____
(Work) _____ (Cell) _____
Address: _____
E-mail: _____

5. MY SIGNATURE

My signature: _____
Date: _____

6. WITNESS

COMPLETE EITHER A OR B WHEN YOU SIGN

A. NOTARY:

State of _____
County of _____
Signed or attested before me on _____,
2____, by _____.

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 alternative health care representative, and I am not the person's attending health care provider.

Witness Name (print): _____
Signature: _____
Date: _____

Witness Name (print): _____
Signature: _____
Date: _____

7. 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: _____

SECTION 3. ORS 127.533 is amended to read:

127.533. (1) In accordance with public notice and stakeholder participation requirements prescribed by the Oregon Health Authority [and ORS 127.534], the Advance Directive [Adoption] Advisory Committee established under ORS 127.532 shall:

(a) [Adopt] Advise the Legislative Assembly regarding the form of an advance directive to be used in this state; [and]

(b) Review the form set forth in section 2 of this 2021 Act not less than once every four years for the purpose of [adopting] recommending changes to the form that the advisory committee determines are necessary[.]; and

(c) Prepare written materials that provide information regarding advance directives to assist the public with completing the advance directive form.

[(2) Except as otherwise provided by ORS 127.505 to 127.660, the form of an advance directive adopted pursuant to this section is the only valid form of an advance directive in this state.]

[(3)] (2) At a minimum, the form of an advance directive [adopted] recommended under this section must contain the following elements:

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

(A) A statement about the purpose of the principal's appointment of a health care representative to make health care decisions for the principal if the principal becomes incapable;

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

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

(D) A statement about the purpose of the principal’s expression of the principal’s preferences with respect to placement in a care home or a mental health facility; *[and]*

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

(F) A statement that the information described in subsection (1)(c) of this section is available on the Oregon Health Authority’s website; and

(G) A statement explaining that the principal may attach supplementary material describing the principal’s treatment preferences to the advance directive and that any attached supplementary material will be considered a part of the advance directive, consistent with ORS 127.505 (2)(b).

(b) A statement explaining **the execution formalities under ORS 127.515, including** that, to be effective, the advance directive must be:

(A) *[Accepted by signature or other applicable means]* **Signed by the principal;** and

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

(c) A statement explaining **the acceptance formalities under ORS 127.525, including** that, to be effective, the appointment of a health care representative or an alternate health care representative must be accepted by the health care representative or the alternate health care representative.

(d) A statement explaining **ORS 127.545, including** that the advance directive, once executed, supersedes any previously executed advance directive.

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

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

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

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

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

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

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

(h) A section where the principal and the witnesses or notary may *[accept by signature or other means, including electronic or verbal means,]* **sign the advance directive, consistent with the execution formalities required under ORS 127.515.**

(i) A section where any health care representative or any alternate health care representative appointed by the principal may accept *[the advance directive by signature or other means, including electronic or verbal means]* **the appointment, consistent with the requirements under ORS 127.525.**

[(4)(a)] **(3)(a)** In *[adopting]* **recommending changes** to the form of an advance directive under this section, the **advisory** committee shall use plain language, such as “tube feeding” and “life support.”

(b) As used in this subsection:

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

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

[(5)] **(4)** In *[adopting]* **recommending changes** to the form of an advance directive under this section, the **advisory** committee shall use the components of the form for appointing a health care representative *[or]* **and** an alternate health care representative set forth in ORS 127.527.

[(6)] *The principal may attach supplementary material to an advance directive. In addition to the form of an advance directive adopted under this section, supplementary material attached to an advance directive under this subsection is a part of the advance directive.*

(5) The advisory committee shall submit a report detailing the advisory committee’s recommendations developed under this section on or before September 1 of an even-numbered year following the date on which the advisory committee finalizes the recommendations in the manner provided by ORS 192.245 to an interim committee of the Legislative Assembly related to the judiciary. The interim committee shall consider the advisory committee’s recommendations submitted to the interim committee under this section.

[(7)] **(6)** The Oregon Health Authority shall post the form of an advance directive *[adopted under this section]* **set forth in section 2 of this 2021 Act and the written materials described in subsection (1)(c) of this section** on the authority’s website.

SECTION 4. ORS 127.505 is amended to read:
127.505. As used in ORS 127.505 to 127.660 and 127.995:

(1) “Adult” means an individual who:

(a) Is 18 years of age or older; or

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

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

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

(B) Instructions to the health care representative.

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

(3) “Appointment” means a form appointing a health care representative, letters of guardianship or a court order appointing a health care representative.

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

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

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

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

(7) “Capable” means not incapable.

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

[*(a) The portion of the form adopted under ORS 127.533 used to appoint a health care representative or an alternate health care representative;*]

[*(b) (a) The portion of the form set forth in [section 6, chapter 36, Oregon Laws 2018] section 2 of this 2021 Act, used to appoint a health care representative or an alternate health care representative; or*

[*(c) (b) The form set forth in ORS 127.527.*

(9) “Health care” means diagnosis, treatment or care of disease, injury and congenital or degenerative conditions, including the use, maintenance, withdrawal or withholding of life-sustaining procedures and the use, maintenance, withdrawal or withholding of artificially administered nutrition and hydration.

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

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

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

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

(13) “Health care representative” means:

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

(b) A person who has authority to make health care decisions for a principal under the provisions of ORS 127.635 (2) or (3).

(c) A guardian or other person, appointed by a court to make health care decisions for a principal.

(14) “Incapable” means that in the opinion of the court in a proceeding to appoint or confirm authority of a health care representative, or in the opinion of the principal’s attending physician or attending health care provider, a principal lacks the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the principal’s manner of communicating if those persons are available.

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

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

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

(17) “Medically confirmed” means the medical opinion of the attending physician or attending health care provider has been confirmed by a second physician or second health care provider who has examined the patient and who has clinical privileges or expertise with respect to the condition to be confirmed.

(18) “Permanently unconscious” means completely lacking an awareness of self and external environment, with no reasonable possibility of a return to a conscious state, and that condition has been medically confirmed by a neurological specialist who is an expert in the examination of unresponsive individuals.

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

(20) “Principal” means:

(a) An adult who has executed an advance directive;

(b) A person of any age who has a health care representative;

(c) A person for whom a health care representative is sought; or

(d) A person being evaluated for capability to whom a health care representative will be assigned if the person is determined to be incapable.

(21) “Terminal condition” means a health condition in which death is imminent irrespective of treatment, and where the application of life-sustaining procedures or the artificial administration

of nutrition and hydration serves only to postpone the moment of death of the principal.

SECTION 5. ORS 127.510 is amended to read:

127.510. (1) A capable adult may execute an advance directive. The advance directive is effective when it is signed by the principal and witnessed or notarized as *[required by ORS 127.505 to 127.660]* **described in ORS 127.515.**

(2)(a) A capable adult may use *[an advance directive or the form set forth in ORS 127.527]* **a form appointing a health care representative** to appoint a competent adult to serve as the health care representative for the capable adult. A health care representative appointed under this paragraph shall make health care decisions for the principal if the principal becomes incapable.

(b) A capable adult may use *[an advance directive or the form set forth in ORS 127.527]* **a form appointing health care representative** to appoint one or more competent adults to serve as alternate health care representatives for the capable adult. For purposes of ORS 127.505 to 127.660, an alternate health care representative has the rights and privileges of a health care representative appointed under paragraph (a) of this subsection, including the rights described in ORS 127.535. An alternate health care representative appointed under this paragraph shall make health care decisions for the principal if:

(A) The principal becomes incapable; and

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

(c) For purposes of paragraph (b) of this subsection, the health care representative appointed under paragraph (a) of this subsection is unavailable to make timely health care decisions for the principal if the health care representative is not available to answer questions for the health care provider in person, by telephone or by another means of direct communication.

(d) An appointment made under this section is effective when it is accepted by the health care representative, **as described in ORS 127.525.**

(3) Unless the period of time that an advance directive or a form appointing a health care representative is effective is limited by the terms of the advance directive or the form appointing a health care representative, the advance directive or the form appointing a health care representative continues in effect until:

(a) The principal dies; or

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

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

(a) The principal is no longer incapable;

(b) The principal dies; or

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

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

(6) Notwithstanding subsections (3)(a) and (4)(b) of this section, an advance directive remains in effect with respect to an anatomical gift, as defined in ORS 97.953, after the principal dies.

SECTION 6. ORS 127.515 is amended to read:

127.515. (1) An advance directive **form set forth in section 2 of this 2021 Act** or a form appointing a health care representative **set forth in ORS 127.527** may be executed by *[a resident or nonresident adult of this state in the manner provided by ORS 127.505 to 127.660]* **an Oregon resident or by a resident of any other state while physically present in this state.**

(2) *[An advance directive or a form appointing a health care representative must reflect the date of the principal's signature or other method of accepting the advance directive or the form appointing a health care representative. To be valid, an advance directive or a form appointing a health care representative]* **The form described in subsection (1) of this section must be signed and:**

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

(b) Notarized by a notary public.

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

(a) The principal signing the advance directive or the form appointing a health care representative; or

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

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

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

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

(5) If an advance directive or a form appointing a health care representative is validated under sub-

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

(6) Notwithstanding subsection (2) of this section, an advance directive, [or] a form appointing a health care representative **or a similar instrument**, that is executed by an adult who resides in another state at the time of execution, and that is executed in compliance with the laws of that state, the laws of the state where the principal is located at the time of the execution or the laws of this state, is validly executed for the purposes of ORS 127.505 to 127.660.

SECTION 7. ORS 127.525 is amended to read:

127.525. *[For an appointment of a health care representative or an alternate health care representative in a form appointing a health care representative to be effective, the health care representative or the alternate health care representative must accept the appointment as described in ORS 127.510.]*

(1) A person may accept appointment as a health care representative or an alternate health care representative in a form appointing a health care representative by:

(a) Signing the acceptance of appointment; or

(b) Representing to a third party that the person has accepted the authority and duties of a health care representative under an advance directive in which the person is named as the health care representative or alternate health care representative.

(2) Subject to the right of the health care representative or the alternate health care representative to withdraw, the acceptance imposes a duty on the health care representative or the alternate health care representative to make health care decisions on behalf of the principal as described in ORS 127.510.

(3) Until the principal becomes incapable, the health care representative or the alternate health care representative may withdraw by giving notice to the principal. After the principal becomes incapable, the health care representative or the alternate health care representative may withdraw by giving notice to the health care provider.

SECTION 8. ORS 127.658 is amended to read:

127.658. (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 January 1, 2019, 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 9. ORS 127.532 is amended to read:

127.532. (1) The Advance Directive [Adoption] Advisory 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:

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

(B) One member who represents hospitals.

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

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

(E) One member who represents individuals with disabilities.

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

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

(H) One member with expertise advising or assisting consumers with end-of-life decisions.

(I) One member from among members proposed by the Oregon State Bar who has extensive experience in elder law and advising individuals on how to execute an advance directive.

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

(K) One member from among members proposed by the Oregon State Bar who has extensive experience in health law.

(3) The term of office of each member of the committee is four years, but a member serves at the pleasure of the appointing authority. Before the expiration of the term of a member, the appointing

authority shall appoint a successor whose term begins on January 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

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

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

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

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

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

(9) Members of the committee are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses shall be paid out of

funds appropriated to the Oregon Health Authority for purposes of the committee.

SECTION 10. Section 29, chapter 36, Oregon Laws 2018, is amended to read:

Sec. 29. Notwithstanding the term of office specified by [section 2 of this 2018 Act] **ORS 127.532**, of the members first appointed by the Governor to the Advance Directive [Adoption] **Advisory 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.

SECTION 11. Section 6, chapter 36, Oregon Laws 2018, and ORS 127.534 are repealed.

SECTION 12. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Approved by the Governor June 15, 2021

Filed in the office of Secretary of State June 16, 2021

Effective date September 25, 2021