

Senate Bill 766

Sponsored by Senator FERRIOLI

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 health care providers from denying patient health care necessary to prevent death based on certain factors. Requires providers to provide certain information to patients about provision of health care necessary to prevent death.

Directs Oregon Health Authority to maintain registry of organizations that may provide patients with information and assistance regarding health care necessary to prevent death and adopt rules requiring health care providers to report on denial of health care necessary to prevent death.

A BILL FOR AN ACT

1
2 Relating to the provision of health care.

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

4 **SECTION 1. As used in sections 1 to 5 of this 2015 Act:**

5 (1) **"Health care" has the meaning given that term in ORS 127.505.**

6 (2) **"Health care necessary to prevent death" means health care the denial of which, in**
7 **reasonable medical judgment, will result in or hasten the death of the particular patient.**

8 (3) **"Health care provider" has the meaning given that term in ORS 127.505.**

9 (4) **"Health care representative" has the meaning given that term in ORS 127.505, except**
10 **that, for an unemancipated minor, "health care representative" means the minor's custodial**
11 **parent or legal guardian.**

12 **SECTION 2. (1) A health care provider may not deny to a patient health care necessary**
13 **to prevent death that the provider provides to other patients, and the provision of which is**
14 **directed by the patient, the terms of the patient's advance directive or the patient's health**
15 **care representative:**

16 (a) **On the basis of the health care provider's view that treats extending the life of an**
17 **elderly, disabled or terminally ill individual as of lower value than extending the life of an**
18 **individual who is younger, not disabled or not terminally ill; or**

19 (b) **On the basis of the health care provider's disagreement with the way in which the**
20 **patient, the terms of the patient's advance directive or the patient's health care represen-**
21 **tative assesses the value of extending the patient's life as opposed to the risk of disability.**

22 (2) **This section does not require the provision of health care:**

23 (a) **That the health care provider is physically or legally unable to provide or unable to**
24 **provide without denying the same health care to another patient;**

25 (b) **In contradiction to the wishes of the patient or the patient's health care represen-**
26 **tative or the terms of the patient's advance directive; or**

27 (c) **That, in reasonable medical judgment, is medically inappropriate because providing it**
28 **would create a greater risk of causing or hastening death than would withholding or with-**
29 **drawing it.**

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 **SECTION 3.** (1) Upon the request of a patient or prospective patient, or of the patient's
2 health care representative, a health care provider shall disclose in writing any policies re-
3 lated to health care necessary to prevent death that a patient may receive or be denied, in-
4 cluding any policies related to health care deemed futile, inappropriate or non-beneficial.

5 (2) At the time a health care provider communicates unwillingness to comply with a di-
6 rection by the patient, the terms of the patient's advance directive or the patient's health
7 care representative to provide health care necessary to prevent death, the health care pro-
8 vider shall provide a written explanation of the reasons for unwillingness to comply and a
9 copy of the current registry posted on the Oregon Health Authority website under subsection
10 (3) of this section.

11 (3)(a) The authority shall maintain a registry that lists the identity of and contact in-
12 formation for organizations, inside and outside of this state, that have voluntarily notified
13 the authority that the organization may provide information and assistance to patients and
14 their health care representatives in cases in which the patient's health care provider may
15 be unwilling to comply with the patient's wishes regarding the provision, withholding or
16 withdrawal of health care necessary to prevent death. The information and assistance may
17 include, but is not limited to:

18 (A) Referrals for independent medical examinations and medical record reviews.

19 (B) Referrals for patient transfer.

20 (C) Assistance with ethics committee reviews or judicial review.

21 (D) Counseling.

22 (E) Mediation.

23 (b) Each listing of an organization must provide a brief description of the types of infor-
24 mation and assistance the organization offers.

25 (c) The listing of an organization in the registry does not obligate the organization to
26 provide information or assistance with regard to any particular patient.

27 (d) The authority shall post the registry on the authority's website and shall provide a
28 clearly identifiable link from the authority's home page to the registry page. The registry
29 must include the following disclaimer: This registry lists organizations that have indicated
30 to the Oregon Health Authority an interest in assisting patients and their health care agents
31 and surrogates in the circumstances described, and is provided for information purposes
32 only. Neither the Oregon Health Authority nor the State of Oregon endorses or assumes any
33 responsibility for any representation, claim or act of the listed organizations.

34 **SECTION 4.** (1) An affected patient or the patient's health care representative may
35 maintain a cause of action for injunctive relief against a health care provider who is rea-
36 sonably believed to be about to violate, who is in the course of violating or who has violated
37 section 2 or 3 of this 2015 Act.

38 (2) Notwithstanding subsection (1) of this section, a violation of section 2 or 3 of this 2015
39 Act may not be asserted as a basis for a per se negligence action.

40 (3) In an action pursuant to this section, (3) if the plaintiff pleads a prima facie case, the
41 burden shifts to the health care provider to establish a legitimate, nondiscriminatory reason
42 for the denial of health care necessary to prevent death. If the health care provider estab-
43 lishes a legitimate, nondiscriminatory reason for the denial of health care necessary to pre-
44 vent death, the plaintiff may establish that the reason for the denial is discriminatory in its
45 application.

1 **SECTION 5. (1) The Oregon Health Authority shall adopt rules requiring reporting by**
2 **health care providers of cases in which the provider does not comply with a direction by a**
3 **patient, the terms of the patient's advance directive or the patient's health care represen-**
4 **tative to provide health care necessary to prevent death. The rules must require annual**
5 **reporting of:**

6 **(a) The total number of cases during the reporting period.**

7 **(b) For each case:**

8 **(A) The diagnosis, race, gender, age, national origin, any disability and financial status,**
9 **including insurance status, of the patient;**

10 **(B) The specific health care denied and the reasons for the denial;**

11 **(C) The types of health care providers treating the patient;**

12 **(D) The types of health care providers, if any, to which a transfer of the patient was**
13 **sought;**

14 **(E) The number of health care providers that were requested to accept transfer of the**
15 **patient;**

16 **(F) To the extent known, the reasons given by other health care providers for refusing**
17 **to accept or for accepting transfer of the patient; and**

18 **(G) Whether a transfer of the patient occurred.**

19 **(c) For each case in which a transfer of the patient did not occur:**

20 **(A) Whether the patient died;**

21 **(B) The number of days between the date on which the patient or the patient's health**
22 **care representative was informed of the health care provider's unwillingness to comply and**
23 **the date of the patient's death, if applicable; and**

24 **(C) Whether directed health care necessary to prevent death had been withdrawn or**
25 **withheld before the patient's death, if applicable.**

26 **(2) The authority shall annually issue a report, which must be available on the**
27 **authority's website, summarizing the data reported to the authority under subsection (1) of**
28 **this section for the previous year, in a manner that preserves confidentiality concerning any**
29 **individual patient, unless the patient or the patient's health care representative has waived**
30 **that confidentiality.**

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