

Senate Bill 199

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Advance Directive Adoption Committee)

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**.

Modifies laws relating to form of advance directive.
Declares emergency, effective on passage.

A BILL FOR AN ACT

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 declaring an emergency.

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 were 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 best to 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

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.

1 127.663. You can find more information about the POLST in Your Guide to the Oregon Ad-
2 vance Directive.

3 This form may be used in Oregon to choose a person to make health care decisions for
4 you if you become too sick to speak for yourself or are unable to make your own medical
5 decisions. The person is called a health care representative. If you do not have an effective
6 health care representative appointment and become too sick to speak for yourself, a health
7 care representative will be appointed for you in the order of priority set forth in ORS 127.635
8 (2).

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

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

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

16 • You can change directions in your Advance Directive about removing life support or
17 tube feeding at any time. You can do this in any way that shows your desire to change them.
18 This is the case even if you are no longer able to make medical decisions.

19 • You can change or cancel your Advance Directive at any time. You can do this as long
20 as you are able to make medical decisions.

21
22 **1. ABOUT ME**

23
24 **Name:** _____

25 **Date of Birth:** _____

26 **Telephone numbers: (Home)** _____

27 **(Work)** _____ **(Cell)** _____

28 **Address:** _____

29 **E-mail:** _____

30
31 **2. MY HEALTH CARE REPRESENTATIVE**

32
33 I choose the following person as my health care representative to make health care de-
34 cisions for me if I can't speak for myself.

35
36 **Name:** _____

37 **Relationship:** _____

38 **Telephone numbers: (Home)** _____

39 **(Work)** _____ **(Cell)** _____

40 **Address:** _____

41 **E-mail:** _____

42
43 I choose the following people to be my alternate health care representatives if my first
44 choice is not available to make health care decisions for me or if I cancel the first health
45 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 direct 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.

1. Terminal Condition

This is what I would want if:

- I had an illness that could not be cured or reversed.**

AND

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

Initial one option only.

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

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

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

___ I would want my health care representative to decide for me. This would be after

1 they talk with my health care providers and take into account the things that matter to me.
2 I have expressed what matters to me in section B below.

3
4 **2. Advanced Progressive Illness**

5 This is what I would want if:

- 6 • I had an illness that was in an advanced stage.

7 AND

8 • My health care providers believe it would not improve and would very likely get worse
9 over time and result in death.

10 AND

- 11 • My health care providers believe I would likely never be able to:

- 12 - Communicate
13 - Swallow food and water safely
14 - Care for myself
15 - Recognize my family and other people

16
17 Initial one option only.

18 ___ I would want to try all available treatments to sustain my life, such as using feeding
19 tubes, IV fluids, kidney dialysis and breathing machines.

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

23 ___ I would not want treatments to sustain my life, such as using feeding tubes, IV fluids,
24 kidney dialysis or breathing machines. I would want to be kept comfortable and be allowed
25 to die naturally.

26 ___ I would want my health care representative to decide for me. This would be after
27 they talk with my health care providers and take into account the things that matter to me.
28 I have expressed what matters to me in section B below.

29
30 **3. Permanently Unconscious**

31 This is what I would want if:

- 32 I were not conscious.

33 AND

34 If my health care providers believe it would be very unlikely that I would ever become
35 conscious again.

36
37 Initial one option only.

38 ___ I would want to try all available treatments to sustain my life, such as using feeding
39 tubes, IV fluids, kidney dialysis and breathing machines.

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

43 ___ I would not want treatments to sustain my life, such as using feeding tubes, IV fluids,
44 kidney dialysis or breathing machines. I would want to be kept comfortable and be allowed
45 to die naturally.

1 ___ I would want my health care representative to decide for me. This would be after
2 they talk with my health care providers and take into account the things that matter to me.
3 I have expressed what matters to me in section B below.

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

6 _____
7 _____
8 _____
9 _____
10 _____

11
12
13 **B. My Quality of Life:**

14 A terminal condition or advanced illness may put severe limits on what a person can do
15 and how they feel. Think about what gives meaning to your life. Think about the things that
16 are really important for you to have quality of life. Then answer the statement below.

17 I would not want life sustaining measures if I could not do these things again:

18
19 Initial all that apply.

20 ___ Communicate with family, friends and others.

21 ___ Be free from long-term severe pain and suffering.

22 ___ Know who I am and who I am with.

23 ___ Live without being hooked up to machines.

24 ___ Participate in activities that have meaning to me.

25 If you want to say more about quality of life, you may write it here. (Examples of things
26 you might want to do are: feed and bathe yourself, be able to live on your own, think for
27 yourself and make your own decisions).

28 _____
29 _____
30 _____
31 _____
32 _____

33
34
35 **C. My Spiritual Beliefs**

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

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

41 _____
42 _____
43 _____
44 _____
45 _____

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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 could 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 would you prefer? Are there places you would want or 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 would prefer to receive care on not receive care.

C. Other:

You may attach to this form other documents you think would 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 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: _____

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

2
3 **I accept this appointment and agree to serve as health care representative.**

4
5 **Health care representative:**

6 **Printed name:** _____

7 **Signature:**
8 _____

9 **Date:** _____

10
11 **First alternate health care representative:**

12 **Printed name:** _____

13 **Signature:**
14 _____

15 **Date:** _____

16
17 **Second alternate health care representative:**

18 **Printed name:** _____

19 **Signature:**
20 _____

21 **Date:** _____

22
23
24 **SECTION 3.** ORS 127.533 is amended to read:

25 127.533. (1) In accordance with public notice and stakeholder participation requirements pre-
26 scribed by the Oregon Health Authority [*and ORS 127.534*], the Advance Directive [*Adoption*] **Ad-**
27 **visory** Committee established under ORS 127.532 shall:

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

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

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

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

37 [(3)] (2) At a minimum, the form of an advance directive [*adopted*] **recommended** under this
38 section must contain the following elements:

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

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

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

45 (C) A statement about the purpose of the principal's expression of the principal's values and

1 beliefs with respect to health care decisions and the principal's preferences for health care;

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

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

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

8 **(G) A statement explaining that the principal may attach supplementary material de-
9 scribing the principal's treatment preferences to the advance directive and that any attached
10 supplementary material will be considered a part of the advance directive, consistent with
11 ORS 127.505 (2)(b).**

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (i) A section where any health care representative or any alternate health care representative
41 appointed by the principal may accept *[the advance directive by signature or other means, including
42 electronic or verbal means]* **the appointment, consistent with the requirements under ORS
43 127.525.**

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

1 support.”

2 (b) As used in this subsection:

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

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

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

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

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

17 [(7)] **(6)** The Oregon Health Authority shall post the form of an advance directive *[adopted under*
18 *this section]* **set forth in section 2 of this 2021 Act and the written materials described in**
19 **subsection (1)(c) of this section** on the authority’s website.

20 **SECTION 4.** ORS 127.505 is amended to read:

21 127.505. As used in ORS 127.505 to 127.660 and 127.995:

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

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

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

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

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

27 (B) Instructions to the health care representative.

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

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

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

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

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

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

43 (7) “Capable” means not incapable.

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

45 [(a) *The portion of the form adopted under ORS 127.533 used to appoint a health care represen-*

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

2 [(b)] (a) The portion of the form set forth in [section 6, chapter 36, Oregon Laws 2018] **section**
3 **2 of this 2021 Act**, used to appoint a health care representative or an alternate health care repre-
4 sentative; or

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

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

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

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

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

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

20 (13) “Health care representative” means:

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

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 or
29 attending health care provider, a principal lacks the ability to make and communicate health care
30 decisions to health care providers, including communication through persons familiar with the
31 principal’s manner of communicating if those persons are available.

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

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

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

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

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

1 sponsive individuals.

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

5 (20) "Principal" means:

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

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

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

9 (d) A person being evaluated for capability to whom a health care representative will be as-
 10 signed if the person is determined to be incapable.

11 (21) "Terminal condition" means a health condition in which death is imminent irrespective of
 12 treatment, and where the application of life-sustaining procedures or the artificial administration of
 13 nutrition and hydration serves only to postpone the moment of death of the principal.

14 **SECTION 5.** ORS 127.510 is amended to read:

15 127.510. (1) A capable adult may execute an advance directive. The advance directive is effective
 16 when it is signed by the principal and witnessed or notarized as [*required by ORS 127.505 to*
 17 *127.660*] **described in ORS 127.515.**

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

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

29 (A) The principal becomes incapable; and

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

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

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

38 (3) Unless the period of time that an advance directive or a form appointing a health care rep-
 39 resentative is effective is limited by the terms of the advance directive or the form appointing a
 40 health care representative, the advance directive or the form appointing a health care represen-
 41 tative continues in effect until:

42 (a) The principal dies; or

43 (b) The advance directive or the form appointing a health care representative is revoked, sus-
 44 pended or superseded pursuant to ORS 127.545.

45 (4) Notwithstanding subsection (3) of this section, if the principal is incapable at the expiration

1 of the term of the advance directive or the form appointing a health care representative, the ad-
 2 vance directive or the form appointing a health care representative continues in effect until:

3 (a) The principal is no longer incapable;

4 (b) The principal dies; or

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

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

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

13 **SECTION 6.** ORS 127.515 is amended to read:

14 127.515. (1) An advance directive **form set forth in section 2 of this 2021 Act** or a form ap-
 15 pointing a health care representative **set forth in ORS 127.527** may be executed by [*a resident or*
 16 *nonresident adult of this state in the manner provided by ORS 127.505 to 127.660*] **an Oregon resident**
 17 **or by a resident of any other state while physically present in this state.**

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

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

23 (b) Notarized by a notary public.

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

26 (a) The principal signing the advance directive or the form appointing a health care represen-
 27 tative; or

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

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

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

36 (b) Be the principal's health care representative or alternate health care representative ap-
 37 pointed under ORS 127.510.

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

43 (6) Notwithstanding subsection (2) of this section, an advance directive, [*or*] a form appointing
 44 a health care representative **or a similar instrument**, that is executed by an adult who resides in
 45 another state at the time of execution, and that is executed in compliance with the laws of that

1 state, the laws of the state where the principal is located at the time of the execution or the laws
2 of this state, is validly executed for the purposes of ORS 127.505 to 127.660.

3 **SECTION 7.** ORS 127.525 is amended to read:

4 127.525. *[For an appointment of a health care representative or an alternate health care represen-*
5 *tative in a form appointing a health care representative to be effective, the health care representative*
6 *or the alternate health care representative must accept the appointment as described in ORS 127.510.]*

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

9 **(a) Signing the acceptance of appointment; or**

10 **(b) If an emergency exists and the person is not presently able to sign the acceptance**
11 **of appointment, the person may temporarily accept appointment by orally conveying accept-**
12 **ance to a witness who then records the date and time of the acceptance in writing on the**
13 **acceptance of appointment.**

14 **(2)** Subject to the right of the health care representative or the alternate health care represen-
15 tative to withdraw, the acceptance imposes a duty on the health care representative or the alternate
16 health care representative to make health care decisions on behalf of the principal as described in
17 ORS 127.510.

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

22 **SECTION 8.** ORS 127.658 is amended to read:

23 127.658. (1) ORS 127.505 to 127.660 as enacted, the repeal of any statute that was a part of ORS
24 127.505 to 127.660 and subsequent amendments to the provisions of ORS 127.505 to 127.660 do not
25 impair or supersede any advance directive, form appointing a health care representative or directive
26 to physicians executed in accordance with:

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

28 (b) The provisions of ORS 127.505 to 127.660 or any other statute governing an advance direc-
29 tive, a form appointing a health care representative or a directive to physicians that was in effect
30 on the date that the advance directive, the form appointing a health care representative or the di-
31 rective to physicians was executed.

32 (2) An advance directive, a form appointing a health care representative or a directive to phy-
33 sicians executed before, on or after January 1, 2019, shall be governed by the provisions of ORS
34 127.505 to 127.660 or any other statute that is in effect on the date on which[:]

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

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

38 **SECTION 9.** ORS 127.532 is amended to read:

39 127.532. (1) The Advance Directive *[Adoption]* **Advisory** Committee is established within the
40 division of the Oregon Health Authority that is charged with performing the public health functions
41 of the state.

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

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

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

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 this
4 state, or affiliated with a health care organization offering health care services in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (9) Members of the committee are not entitled to compensation, but may be reimbursed for ac-
33 tual and necessary travel and other expenses incurred by them in the performance of their official
34 duties in the manner and amounts provided for in ORS 292.495. Claims for expenses shall be paid
35 out of funds appropriated to the Oregon Health Authority for purposes of the committee.

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

37 **Sec. 29.** Notwithstanding the term of office specified by [section 2 of this 2018 Act] **ORS**
38 **127.532**, of the members first appointed by the Governor to the Advance Directive [Adoption] **Ad-**
39 **visory** Committee:

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

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

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

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

44 **SECTION 12.** This 2021 Act being necessary for the immediate preservation of the public
45 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect

1 **on its passage.**

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