

DRAFT

SUMMARY

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.**

1 • **Be sure to discuss your Advance Directive and your wishes with**
2 **your health care representative. This will allow them to make deci-**
3 **sions that reflect your wishes. It is best to complete this entire form.**

4 • **The Oregon Advance Directive for Health Care form and Your**
5 **Guide to the Oregon Advance Directive are available on the Oregon**
6 **Health Authority’s website.**

7 • **In sections 1, 2, 5, 6 and 7 you appoint a health care represen-**
8 **tative.**

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

10
11 **The Advance Directive form allows you to express your preferences**
12 **for health care. It is not the same as Portable Orders for Life Sus-**
13 **taining Treatment (POLST) as defined in ORS 127.663. You can find**
14 **more information about the POLST in Your Guide to the Oregon Ad-**
15 **vance Directive.**

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

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

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

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

31 • **You can change directions in your Advance Directive about re-**

1 moving life support or tube feeding at any time. You can do this in
2 any way that shows your desire to change them. This is the case even
3 if you are no longer able to make medical decisions.

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

6

7 **1. ABOUT ME**

8

9 **Name:** _____

10 **Date of Birth:** _____

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

12 **(Work)** _____ **(Cell)** _____

13 **Address:** _____

14 **E-mail:** _____

15

16 **2. MY HEALTH CARE REPRESENTATIVE**

17

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

20

21 **Name:** _____

22 **Relationship:** _____

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

24 **(Work)** _____ **(Cell)** _____

25 **Address:** _____

26 **E-mail:** _____

27

28 I choose the following people to be my alternate health care repre-
29 sentatives if my first choice is not available to make health care de-
30 cisions for me or if I cancel the first health care representative's
31 appointment.

1 **First alternate health care representative:**

2 **Name:** _____

3 **Relationship:** _____

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

5 **(Work)** _____ **(Cell)** _____

6 **Address:** _____

7 **E-mail:** _____

8

9 **Second alternate health care representative:**

10 **Name:** _____

11 **Relationship:** _____

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

13 **(Work)** _____ **(Cell)** _____

14 **Address:** _____

15 **E-mail:** _____

16

17 **3. MY HEALTH CARE INSTRUCTIONS**

18

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

22 **You can direct your care with the choices you make below. This**
23 **is the case even if you do not choose a health care representative or**
24 **if they cannot be reached.**

25

26 **A. My Health Care Decisions:**

27

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

1 **1. Terminal Condition**

2 **This is what I would want if:**

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

4 **AND**

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

7
8 **Initial one option only.**

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

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

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

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

23
24 **2. Advanced Progressive Illness**

25 **This is what I would want if:**

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

27 **AND**

- 28 • **My health care providers believe it would not improve and would**
29 **very likely get worse over time and result in death.**

30 **AND**

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

- 1 - **Communicate**
- 2 - **Swallow food and water safely**
- 3 - **Care for myself**
- 4 - **Recognize my family and other people**

5

6 **Initial one option only.**

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

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

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

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

21

22 **3. Permanently Unconscious**

23 **This is what I would want if:**

24 **I were not conscious.**

25 **AND**

26 **If my health care providers believe it would be very unlikely that I**
27 **would ever become conscious again.**

28

29 **Initial one option only.**

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

1 **machines.**

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

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

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

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

15 _____
16 _____
17 _____

18

19 **B. My Quality of Life:**

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

24 **I would not want life sustaining measures if I could not do these**
25 **things again:**

26

27 **Initial all that apply.**

28 **___ Communicate with family, friends and others.**

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

30 **___ Know who I am and who I am with.**

31 **___ Live without being hooked up to machines.**

1 **___ Participate in activities that have meaning to me.**

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

6 _____
7 _____
8 _____

9

10 **C. My Spiritual Beliefs**

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

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

16 _____
17 _____
18 _____

19

20 **4. MORE INFORMATION**

21

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

24 **A. Life and Values:**

25 **Below you can share about your life and values. This could help**
26 **your health care representative and health care providers make deci-**
27 **sions about your health care. This might include family history, ex-**
28 **periences with health care, cultural background, career, social support**
29 **system and more.**

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

1 _____
2 _____
3 _____

4

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.

12 _____
13 _____
14 _____

15

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.

21 _____
22 _____
23 _____

24

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: _____

30

31

1 Telephone numbers: (Home) _____

2 (Work) _____ (Cell) _____

3 Address: _____

4 E-mail: _____

5

6 **5. MY SIGNATURE**

7

8 My signature: _____

9 Date: _____

10

11 **6. WITNESS**

12

13 **COMPLETE EITHER A OR B WHEN YOU SIGN**

14

15 **A. NOTARY:**

16

17 State of _____

18 County of _____

19 Signed or attested before me on _____,

20 2____, by _____.

21 _____

22 Notary Public - State of Oregon

23

24 **B. WITNESS DECLARATION:**

25

26 The person completing this form is personally known to me or has
27 provided proof of identity, has signed or acknowledged the person's
28 signature on the document in my presence and appears to be not under
29 duress and to understand the purpose and effect of this form. In ad-
30 dition, I am not the person's health care representative or alternative
31 health care representative, and I am not the person's attending health

1 **care provider.**

2

3 **Witness Name (print): _____**

4 **Signature: _____**

5 **Date: _____**

6

7 **Witness Name (print): _____**

8 **Signature: _____**

9 **Date: _____**

10

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

12

13 **I accept this appointment and agree to serve as health care repre-**
14 **sentative.**

15

16 **Health care representative:**

17 **Printed name: _____**

18 **Signature:**
19 _____

20 **Date: _____**

21

22 **First alternate health care representative:**

23 **Printed name: _____**

24 **Signature:**
25 _____

26 **Date: _____**

27

28 **Second alternate health care representative:**

29 **Printed name: _____**

30 **Signature:**
31 _____

1 **Date:** _____

2
3

SECTION 3. ORS 127.533 is amended to read:

4 127.533. (1) In accordance with public notice and stakeholder participation
5 requirements prescribed by the Oregon Health Authority [*and ORS 127.534*],
6 the Advance Directive [*Adoption*] **Advisory** Committee established under
7 ORS 127.532 shall:

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

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

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

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

19 [(3)] (2) At a minimum, the form of an advance directive [*adopted*] **re-**
20 **commended** under this section must contain the following elements:

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

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

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

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

31 (D) A statement about the purpose of the principal's expression of the

1 principal's preferences with respect to placement in a care home or a mental
2 health facility; *[and]*

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

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

9 **(G) A statement explaining that the principal may attach supple-**
10 **mentary material describing the principal's treatment preferences to**
11 **the advance directive and that any attached supplementary material**
12 **will be considered a part of the advance directive, consistent with ORS**
13 **127.505 (2)(b).**

14 (b) A statement explaining **the execution formalities under ORS**
15 **127.515, including** that, to be effective, the advance directive must be:

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

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

19 (c) A statement explaining **the acceptance formalities under ORS**
20 **127.525, including** that, to be effective, the appointment of a health care
21 representative or an alternate health care representative must be accepted
22 by the health care representative or the alternate health care representative.

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

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

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

30 (g) A section providing the principal with an opportunity to state the
31 principal's values and beliefs with respect to health care decisions, including

1 the opportunity to describe the principal's preferences, by completing a
2 checklist, by providing instruction through narrative or other means, or by
3 any combination of methods used to describe the principal's preferences, re-
4 garding:

5 (A) When the principal wants all reasonably available health care neces-
6 sary to preserve life and recover;

7 (B) When the principal wants all reasonably available health care neces-
8 sary to treat chronic conditions;

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

12 (D) When the principal desires comfort care instead of health care nec-
13 essary to preserve life.

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

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

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

25 (b) As used in this subsection:

26 (A) "Life support" means life-sustaining procedures.

27 (B) "Tube feeding" means artificially administered nutrition and hy-
28 dration.

29 [(5)] **(4)** In [*adopting*] **recommending changes to** the form of an advance
30 directive under this section, the **advisory** committee shall use the compo-
31 nents of the form for appointing a health care representative [*or*] **and** an

1 alternate health care representative set forth in ORS 127.527.

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

6 **(5) The advisory committee shall submit a report detailing the ad-**
7 **visory committee’s recommendations developed under this section on**
8 **or before September 1 of an even-numbered year following the date**
9 **on which the advisory committee finalizes the recommendations in the**
10 **manner provided by ORS 192.245 to an interim committee of the Leg-**
11 **islative Assembly related to the judiciary. The interim committee shall**
12 **consider the advisory committee’s recommendations submitted to the**
13 **interim committee under this section.**

14 [(7)] **(6) The Oregon Health Authority shall post the form of an advance**
15 **directive [adopted under this section] set forth in section 2 of this 2021**
16 **Act and the written materials described in subsection (1)(c) of this**
17 **section on the authority’s website.**

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

19 127.505. As used in ORS 127.505 to 127.660 and 127.995:

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

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

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

24 (2)(a) “Advance directive” means a document executed by a principal that
25 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
29 attached by the principal to the document described in paragraph (a) of this
30 subsection.

31 (3) “Appointment” means a form appointing a health care representative,

1 letters of guardianship or a court order appointing a health care represen-
2 tative.

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

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

10 (5) “Attending health care provider” means the health care provider who
11 has primary responsibility for the care and treatment of the principal, pro-
12 vided that the powers and duties conferred on the health care provider by
13 ORS 127.505 to 127.660 are within the health care provider’s scope of prac-
14 tice.

15 (6) “Attending physician” means the physician who has primary respon-
16 sibility for the care and treatment of the principal.

17 (7) “Capable” means not incapable.

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

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

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

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

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

30 (10) “Health care decision” means consent, refusal of consent or with-
31 holding or withdrawal of consent to health care, and includes decisions re-

1 lating to admission to or discharge from a health care facility.

2 (11) “Health care facility” means a health care facility as defined in ORS
3 442.015, a domiciliary care facility as defined in ORS 443.205, a residential
4 facility as defined in ORS 443.400, an adult foster home as defined in ORS
5 443.705 or a hospice program as defined in ORS 443.850.

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

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

10 (13) “Health care representative” means:

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

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

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

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

24 (15) “Instrument” means an advance directive, form appointing a health
25 care representative, disqualification, withdrawal, court order, court appoint-
26 ment or other document governing health care decisions.

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

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

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

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

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

14 (20) “Principal” means:

- 15 (a) An adult who has executed an advance directive;
16 (b) A person of any age who has a health care representative;
17 (c) A person for whom a health care representative is sought; or
18 (d) A person being evaluated for capability to whom a health care repre-
19 sentative will be assigned if the person is determined to be incapable.

20 (21) “Terminal condition” means a health condition in which death is
21 imminent irrespective of treatment, and where the application of life-
22 sustaining procedures or the artificial administration of nutrition and hy-
23 dration serves only to postpone the moment of death of the principal.

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

25 127.510. (1) A capable adult may execute an advance directive. The ad-
26 vance directive is effective when it is signed by the principal and witnessed
27 or notarized as [*required by ORS 127.505 to 127.660*] **described in ORS**
28 **127.515.**

29 (2)(a) A capable adult may use [*an advance directive or the form set forth*
30 *in ORS 127.527*] **a form appointing a health care representative** to ap-
31 point a competent adult to serve as the health care representative for the

1 capable adult. A health care representative appointed under this paragraph
2 shall make health care decisions for the principal if the principal becomes
3 incapable.

4 (b) A capable adult may use [*an advance directive or the form set forth in*
5 *ORS 127.527*] **a form appointing health care representative** to appoint
6 one or more competent adults to serve as alternate health care represen-
7 tatives for the capable adult. For purposes of ORS 127.505 to 127.660, an al-
8 ternate health care representative has the rights and privileges of a health
9 care representative appointed under paragraph (a) of this subsection, in-
10 cluding the rights described in ORS 127.535. An alternate health care repre-
11 sentative appointed under this paragraph shall make health care decisions
12 for the principal if:

13 (A) The principal becomes incapable; and

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

17 (c) For purposes of paragraph (b) of this subsection, the health care rep-
18 resentative appointed under paragraph (a) of this subsection is unavailable
19 to make timely health care decisions for the principal if the health care
20 representative is not available to answer questions for the health care pro-
21 vider in person, by telephone or by another means of direct communication.

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

24 (3) Unless the period of time that an advance directive or a form ap-
25 pointing a health care representative is effective is limited by the terms of
26 the advance directive or the form appointing a health care representative,
27 the advance directive or the form appointing a health care representative
28 continues in effect until:

29 (a) The principal dies; or

30 (b) The advance directive or the form appointing a health care represen-
31 tative is revoked, suspended or superseded pursuant to ORS 127.545.

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

5 (a) The principal is no longer incapable;

6 (b) The principal dies; or

7 (c) The advance directive or the form appointing a health care represen-
8 tative is revoked, suspended or superseded pursuant to the provisions of ORS
9 127.545.

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

15 (6) Notwithstanding subsections (3)(a) and (4)(b) of this section, an ad-
16 vance directive remains in effect with respect to an anatomical gift, as de-
17 fined in ORS 97.953, after the principal dies.

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

19 127.515. (1) An advance directive **form set forth in section 2 of this 2021**
20 **Act** or a form appointing a health care representative **set forth in ORS**
21 **127.527** may be executed by *[a resident or nonresident adult of this state in*
22 *the manner provided by ORS 127.505 to 127.660]* **an Oregon resident or by**
23 **a resident of any other state while physically present in this state.**

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

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

31 (b) Notarized by a notary public.

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

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

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

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

14 (a) Be the principal's attending physician or attending health care pro-
15 vider.

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

18 (5) If an advance directive or a form appointing a health care represen-
19 tative is validated under subsection (2)(a) of this section, and if the principal
20 is a patient in a long term care facility at the time the advance directive or
21 the form appointing a health care representative is executed, one of the
22 witnesses must be an individual who is designated by the facility and quali-
23 fied as specified by the Department of Human Services by rule.

24 (6) Notwithstanding subsection (2) of this section, an advance directive,
25 [or] a form appointing a health care representative **or a similar instru-**
26 **ment**, that is executed by an adult who resides in another state at the time
27 of execution, and that is executed in compliance with the laws of that state,
28 the laws of the state where the principal is located at the time of the exe-
29 cution or the laws of this state, is validly executed for the purposes of ORS
30 127.505 to 127.660.

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

1 127.525. *[For an appointment of a health care representative or an alternate*
2 *health care representative in a form appointing a health care representative to*
3 *be effective, the health care representative or the alternate health care repre-*
4 *sentative must accept the appointment as described in ORS 127.510.]*

5 **(1) A person may accept appointment as a health care represen-**
6 **tative or an alternate health care representative in a form appointing**
7 **a health care representative by:**

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

9 **(b) If an emergency exists and the person is not presently able to**
10 **sign the acceptance of appointment, the person may temporarily ac-**
11 **cept appointment by orally conveying acceptance to a witness who**
12 **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**
15 **health care representative to withdraw, the acceptance imposes a duty on the**
16 **health care representative or the alternate health care representative to**
17 **make health care decisions on behalf of the principal as described in ORS**
18 **127.510.**

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

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

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

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

31 (b) The provisions of ORS 127.505 to 127.660 or any other statute govern-

1 ing an advance directive, a form appointing a health care representative or
2 a directive to physicians that was in effect on the date that the advance di-
3 rective, the form appointing a health care representative or the directive to
4 physicians was executed.

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

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

10 [(b)] the advance directive, the form appointing a health care represen-
11 tative or the directive to physicians was executed.

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

13 127.532. (1) The Advance Directive [*Adoption*] **Advisory** Committee is es-
14 tablished within the division of the Oregon Health Authority that is charged
15 with performing the public health functions of the state.

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

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

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

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

21 (B) One member who represents hospitals.

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

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

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

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

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

31 (H) One member with expertise advising or assisting consumers with

1 end-of-life decisions.

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

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

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

10 (3) The term of office of each member of the committee is four years, but
11 a member serves at the pleasure of the appointing authority. Before the ex-
12 piration of the term of a member, the appointing authority shall appoint a
13 successor whose term begins on January 1 next following. A member is eli-
14 gible for reappointment. If there is a vacancy for any cause, the appointing
15 authority shall make an appointment to become immediately effective for the
16 unexpired term.

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

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

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

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

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

27 (9) Members of the committee are not entitled to compensation, but may
28 be reimbursed for actual and necessary travel and other expenses incurred
29 by them in the performance of their official duties in the manner and
30 amounts provided for in ORS 292.495. Claims for expenses shall be paid out
31 of funds appropriated to the Oregon Health Authority for purposes of the

1 committee.

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

4 **Sec. 29.** Notwithstanding the term of office specified by [*section 2 of this*
5 *2018 Act*] **ORS 127.532**, of the members first appointed by the Governor to
6 the Advance Directive [*Adoption*] **Advisory** Committee:

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

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

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

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

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

15
