

**SB 16: ADVANCE DIRECTIVE COVERS HOSPITALIZATION FOR DEMENTIA**  
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**Penny L. Davis, The Elder Law Firm**

Senate Bill (SB) 16 (2009 Oregon Laws Chapter 381) gives a health care representative named in an advance directive for health care the power to consent to the involuntary psychiatric hospitalization of the principal for up to 18 days for the treatment of behavior caused by dementia. The change applies to existing advance directives as well as to those executed on or after June 18, 2009, the effective date of the legislation.

Prior to the passage of the bill, ORS 127.540 prohibited a health care representative from consenting to “\*\*\*admission to or retention in a health care facility for care or treatment of mental illness.” Section 1(7) of SB 16 adds a definition for “dementia” to ORS 127.505, and section 2(6) amends ORS 127.535 to provide that hospitalization for up to 18 days for treatment of dementia-related behavior is not prohibited by ORS 127.540.

Geriatric psychiatrist Maureen C. Nash, MD, MS, requested the amendment through the Senate Interim Committee on Health and Human Services. Dr. Nash, who is a staff psychiatrist at the Tuality Center for Geriatric Psychiatry, testified at a legislative hearing on May 13<sup>th</sup> that she was seeing increasing numbers of older adults being referred to Tuality for psychiatric hospitalization due to dementia and behavior disturbances. She expressed her concern that dementia patients who had signed advance directives were still being required to go through the mental health involuntary commitment process or the temporary guardianship process in order to be admitted to psychiatric facilities for treatment and stabilization. The OSB Elder Law Section did not oppose the bill in its final form, but did oppose the earlier A-Engrossed version of the bill because that version would have allowed a health care representative to consent to psychiatric hospitalization for an unlimited length of time with no review and no opportunity for the principal to object.

The initial version of the bill proposed modifying the statutory form of the advance directive by adding a section to show whether the health care representative had been authorized to consent to short-term hospitalization for treatment of dementia. SB 16, as adopted, does not add this option or otherwise alter the advance directive form. However, at least one publisher and a state agency are circulating alternative advance directive forms based on the initial version of SB 16. It is unclear whether the modified forms will be accepted as valid advance directives.

ORS 127.535(4) states that a health care representative has the duty to act consistently with the principal’s wishes as set out in the advance directive or “\*\*\*as otherwise made known\*\*\*” to the health care representative. A person who does not want his or her health care representative to have the authority to consent to short-term hospitalization for dementia can limit or restrict the health care representative’s authority by including appropriate language in the “special conditions or instructions” section in Part B of the advance directive form.

Advance directives are likely to be on the legislature’s agenda again in 2011. Section 3 of SB 16 provides that the amendment to ORS 127.535 authorizing a health care representative to consent to short-term hospitalization for dementia care will sunset on January 2, 2012.

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*Penny L. Davis is a partner in Davis Pagnano McNeil & Vigna, LLP, dba The Elder Law Firm, in Portland. She is the current chair of the OSB Elder Law Section.*