House Bill 4135 Fact Sheet

"Several states, including Wisconsin and New York, forbid health care surrogates to stop food and fluids. (Oregon legislators, on the other hand, are considering drafting a bill to allow surrogates to withhold nutrition [from patients with dementia or mental illness])." – NY Times, October 21, 2016.

House Bill 4135 removes the current safeguards which prohibit health care representatives in Oregon from withholding food and fluids from conscious patients with dementia or mental illness.

1. In 2016 Bill Harris of Ashland filed a lawsuit as guardian of Nora Harris, his wife who was suffering from Alzheimer's disease, asking the court to issue an order to her nursing facility to stop providing Nora with spoon feeding assistance when eating. *(USA Today, August 20, 2017)* The nursing facility had begun to spoon feed Nora because she could no longer use utensils to eat, but could only eat with her hands. Bill argued that because Nora indicated in her advance directive that she did not want artificial nutrition and hydration, this meant she also did not want assistance with ordinary eating and drinking. The court denied the order in part because all advance directives given effect in the state are subject to Oregon law, and under Oregon law the denial of assistance with eating ordinary food and water is not a health care decision that a health care representative has the authority to make. *(ORS 127.515(5); ORS 127.505 (8), (9))* However, this is not the case in other states. Bill Harris specifically argued that under California law health care includes assistance with ordinary food and water, and thus if California law applied he would have the authority to withhold this assistance from his wife. HB 4135 would remove the requirement that an out of state advance directive only be given effect subject to the laws of Oregon. *(HB 4135 – Section 8[(5)] (6)).*

2. Under current Oregon law, a health care representative does not have the authority to make a life ending decision for an incapable person unless the representative has been given authority to do so, or the incapable person is in one of four end of life situations defined in statute. *(ORS 127.540)* Because the advance directive form is in statute, *(ORS 127.531 pg. 2)* the only way that someone gives authority to their health care representative is by affirmatively initialing the spaces on the form which grant this authority to their representative. *(ORS 127.531, Part B, 2 &3; ORS 127.580)*

   HB 4135 would remove the requirement that the principal affirmatively and specifically grant authority to his or her health care representative to make a life ending decision for the principal when the principal is not imminently close to dying. *(HB 4135, Section 30).* Instead, simply by his or her appointment, the health care representative would have the authority to make a life ending decision for a conscious, but incapable patient. *(HB 4135 Section 7 (2)(a)).* Thus, if HB 4135 is passed a person who appoints a health care representative, but makes no decisions regarding end of life care, would be granting his or her health care representative the power to make a life ending decision for the principal even when the principal is not in one of the four statutorily defined end of life situations, and even if this is not the will of the principal.