



## PERMANENT ADMINISTRATIVE ORDER

**APD 19-2021**

CHAPTER 411

DEPARTMENT OF HUMAN SERVICES

AGING AND PEOPLE WITH DISABILITIES AND DEVELOPMENTAL DISABILITIES

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### RULES:

411-390-0160, 411-390-0180, 411-390-0220

AMEND: 411-390-0160

REPEAL: Temporary 411-390-0160 from APD 52-2020

RULE TITLE: Health Care Decisions

NOTICE FILED DATE: 03/30/2021

RULE SUMMARY: OAR 411-390-0160 about Health Care Decisions is being amended to comply with ORS 127.765 and the legislative intent of Senate Bill 1039 (2019).

### RULE TEXT:

(1) INDIVIDUAL. An individual is entitled to make their own health care decisions unless the individual is determined to be incapable as defined in OAR 411-390-0120.

(2) GUARDIAN. For an individual who has a guardian with health care decision-making authority, the guardian has health care decision-making authority.

(3) HEALTH CARE REPRESENTATIVE. For an individual who has self-appointed a health care representative with an advance directive, the health care representative has health care decision-making authority as described in ORS 127.505 through 127.660.

(4) HEALTH CARE ADVOCATE. If an individual is determined to be incapable and does not have a health care representative or guardian with health care decision-making authority, the individual's individualized written service plan team may appoint a health care advocate.

(a) The health care advocate must be a capable adult willing to serve as a health care advocate.

(b) Except as may be allowed by court order, the following may not serve as the health care advocate appointed under these rules:

(A) The individual's attending physician or an employee of the attending physician or any other person providing care to the individual.

(B) The individual's parent whose parental rights are terminated.

(C) The individual's parent or guardian who, if at any time the individual was under the care, custody, or control of the

parent or guardian, the court entered an order that placed the individual in the protective or legal custody of the Department and the individual was not returned to the care, custody, or control of the parent or guardian.

(D) An owner, operator, or employee of a health care facility in which the individual is a patient or resident, unless the health care advocate was appointed before the individual's admission to the facility.

(E) An owner, operator, or employee of a licensed, certified, or endorsed developmental disabilities services provider when the provider is paid to support the individual for whom a health care advocate is being appointed.

(F) An employee of a case management entity when the individual is receiving case management services from the entity.

(c) At least two-thirds of an individualized written service plan team, including the individual, must approve of the health care advocate.

(d) The appointment of a health care advocate is valid for up to one year but may be revoked as described in subsection (f) of this section.

(e) The appointment of a health care advocate is only valid when form 0496R is completed each year of the health care advocate's appointment.

(f) The appointment of a health care advocate may be revoked:

(A) By the individual, at any time, using any means of communication available.

(B) By the individualized written service plan team following a majority vote.

(g) A person who is willing and eligible to serve as an appointed health care advocate is required to complete Department-approved training prior to the appointment as a health care advocate and prior to making a health care decision for an individual.

STATUTORY/OTHER AUTHORITY: ORS 127.765, 409.050

STATUTES/OTHER IMPLEMENTED: ORS 127.765, 409.010

AMEND: 411-390-0180

REPEAL: Temporary 411-390-0180 from APD 52-2020

RULE TITLE: Authority and Responsibility of a Health Care Advocate

NOTICE FILED DATE: 03/30/2021

RULE SUMMARY: OAR 411-390-0180 about Authority and Responsibility of a Health Care Advocate is being amended to comply with ORS 127.765 and the legislative intent of Senate Bill 1039 (2019).

RULE TEXT:

- (1) When making a health care decision for an individual, a health care advocate must first consider any preference indicated by the individual by any means of communication (verbal or nonverbal) and attempt to make the decision that the individual may have made if capable. If this is not possible, the health care decision must be made in what the health care advocate believes to be in the individual's best interest.
- (2) A health care advocate must inform an individual and the individual's case manager of all health care decisions made, or considered by, the health care advocate.
- (3) A health care advocate must consult with any other available surrogate decision-maker and an individual's attending physician to provide information with regards to the health care decision being made.
- (4) A health care advocate shall have all the authority over an individual's health care that the individual may have if not incapable, subject to the limitations of the health care advocate's appointment, these rules, and ORS 127.765.
- (5) A health care advocate is authorized to access the medical records necessary to make a health care decision.
- (6) A health care advocate may not disclose the contents of, and must maintain the confidentiality of, an individual's health information, as required by state and federal laws.

STATUTORY/OTHER AUTHORITY: ORS 127.765, 409.050

STATUTES/OTHER IMPLEMENTED: ORS 127.765, 409.010

AMEND: 411-390-0220

REPEAL: Temporary 411-390-0220 from APD 52-2020

RULE TITLE: Safeguards

NOTICE FILED DATE: 03/30/2021

RULE SUMMARY: OAR 411-390-0220 about Safeguards is being amended to comply with ORS 127.765 and the legislative intent of Senate Bill 1039 (2019).

RULE TEXT:

(1) When an individualized written service plan team is discussing the appointment of a health care advocate for an individual, or discussing an individual's significant medical treatment or procedure, the individual and any advocate named to the individualized written service plan team by the individual must be included in the individualized written service plan team and may not be excluded.

(a) The individualized written service plan team must be composed of at least three members other than the individual.

(b) The individualized written service plan team may include, but is not limited to, family, advocates, and staff with a vested interest in the individual.

(c) An individual is not required to participate in the discussion if the individual declines to participate or is unable to participate due to the individual's medical condition.

(2) The composition of the individualized written service plan team may not be changed, except by the individual, to override the objection of any member of the individualized written service plan team. The case manager and any authorized representative of the individual must be allowed to continue to be members of the individualized written service plan team.

(3) A case manager and at least one other person from the individualized written service plan team must receive approved training from the Department before using these rules to designate a health care advocate.

(4) When these rules are used to appoint a health care advocate, information and data specified by the Department must be submitted to the case management entity and the Department.

STATUTORY/OTHER AUTHORITY: ORS 127.765, 409.050

STATUTES/OTHER IMPLEMENTED: ORS 127.765, 409.010