

2009 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: HB 2139

STATUS: A Engrossed

SUBJECT: Modifies grounds for court order appointment of a trustee and set forth the conditions under which the Director of Human Services has the authority to appoint a temporary manager when the health or safety of patients in a care facility is at risk. Establishes Facility Fund.

GOVERNMENT UNIT AFFECTED: Department of Human Services, Judicial Department, Department of Justice

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REVIEWED BY: Sheila Baker, John Borden, Doug Wilson

DATE: April 21, 2009

	<u>2009-2011</u>	<u>2011-2013</u>
EXPENDITURES:		
DHS Facility Fund Trustee Expenses– Other Funds	\$450,000	
REVENUES:		
DHS Facility Fund Fees – Other Funds	\$450,000	

EFFECTIVE DATE: January 1, 2010

LOCAL GOVERNMENT MANDATE: This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

ANALYSIS: This measure creates new provisions and amends existing statutes defining grounds for the temporary appointment of a trustee when the health or safety of patients in a care facility is at risk. In addition to clarifying definitions of facility and licensee, the bill:

- set forth the conditions under which the Director of the Department of Human Services (DHS) may petition for expedited appointment of a trustee or appoint a temporary manager;
- clarifies the powers, duties, liability and compensation of the appointed trustee or temporary manager;
- establishes the Facility Fund to replace the existing trustee account used under the supervision of the trustee or temporary manager to meet expenses when the care facility income is inadequate;
- specifies that the fee paid by each long-term and residential care facility annually to the Facility Fund should not exceed the annual license fee for the facility under Oregon Revised Statutes 441.020 or 443.415;
- increases the maximum amount of funds collected in the Facility Fund (trustee account) from \$300,000 to \$750,000; and prescribes the fee collecting and management methodology to be used to maintain this fund balance; and
- stipulates that when the balance in the Facility Fund (trustee account) falls below \$600,000, DHS shall reinstitute fee collecting and management methodology to restore the fund to at least \$750,000.

Under current statutes, if patients of a care facility are at risk of harm, court appointment of a trustee for the care facility can take several days to weeks resulting in a delay that can be detrimental to patients. This bill provides the infrastructure for an expedited appointment in emergency situations by adding Marion County as an alternative venue for filling a petition for an order appointing a trustee, and allowing for a concurrent ex parte motion for a preliminary appointment of a trustee. The bill also

authorizes DHS, with the consent of the licensee, to appoint a temporary manager to assume control of the day-to-day operation of the facility if the facility's patients are in jeopardy due to the facility's failure to comply with DHS rules, imminent insolvency, revocation or suspension of license, or if the facility intends to cease operations and close the facility without adequate arrangements for the relocation of the patients.

In addition, the bill enables DHS to close the gap between available funds and the actual cost of operating care facilities in trusteeships. The bill establishes the Facility Fund in the State Treasury, separate and distinct from the General Fund, to replace the existing trustee account used under the supervision of the trustee or temporary manager to meet expenses when the care facility income is inadequate. Interest earned by the Facility Fund shall be credited to the fund. DHS reports that the current \$300,000 ceiling on the Facility Fund (trustee account) has not been updated for 20 years and is insufficient to cover expenses in a typical facility in trusteeship. This amount is even more inadequate when the possibility of several trusteeships occurs in one year, as experienced in 2007. This bill raises the ceiling from \$300,000 to \$750,000. Moreover, current statute limits the fee collection methodology for the Facility Fund (trustee account) to the equivalent of the annual licensing fee of a facility over six years, preventing adequate replenishment. This bill specifies annual payments not to exceed the annual license fee for the facility. Under current statutes, DHS has the authority to recoup expenses from the licensee when funds from the Facility Fund (trustee account) are insufficient to cover the reasonable expenses of the trusteeship; this bill clarifies this authority and prescribes the form of motion. The bill does not mandate, but allows for higher collections, and DHS intends to collect fees to meet the new \$750,000 ceiling. A portion (\$200,000) of this increase in Other Funds is included in the Department of Human Services 2009-2011 proposed budget as Policy Option Package #143.

The Oregon Judicial Department notes that although the number of trusteeships may increase due to the current downturn in the economy, the department does not expect the passage of this bill to have an impact on court operation costs. Similarly, the Department of Justice anticipates minimal fiscal impact if this measure passes.