

# Senate Bill 1553

Sponsored by Senator DEMBROW, Representative DOHERTY (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs Governor to appoint Oregon Public Guardian and Conservator in office of Long Term Care Ombudsman to provide public guardian and conservator services for persons without relatives or friends willing or able to serve as guardians or conservators. Authorizes Oregon Public Guardian and Conservator to hire one full-time deputy public guardian and conservator and one staff person. Prescribes duties and responsibilities of Oregon Public Guardian and Conservator. Imposes certain limitations on court orders in proceedings involving Oregon Public Guardian and Conservator.

Directs office of Long Term Care Ombudsman to identify and coordinate programs, services and assistance for persons with inadequate legal, financial and medical resources, to contract with qualified individuals and entities to provide programs, services and assistance to persons with inadequate resources in remote and rural areas of state where such programs, services and assistance are inadequate or nonexistent and to contract with state protection and advocacy system.

Establishes Partnership Fund. Continuously appropriates moneys in fund to office of Long Term Care Ombudsman to pay for assistance to persons with inadequate resources.

Directs office of Long Term Care Ombudsman to supervise, monitor, advise and support Oregon Public Guardian and Conservator. Authorizes use of funds in Long Term Care Ombudsman Account to carry out responsibilities of Oregon Public Guardian and Conservator.

Directs Governor to appoint two members with expertise in guardianship, conservatorship and fiduciary services to Residential Facilities Advisory Committee.

Renames existing offices of public guardian and conservator as offices of county public guardian and conservator.

Appropriates moneys from General Fund to office of Long Term Care Ombudsman for Partnership Fund.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to services for persons with inadequate resources; creating new provisions; amending ORS 125.240, 125.410, 125.700, 125.705, 125.710, 125.715, 125.720, 125.725, 125.730, 441.109, 441.137 and 441.153; appropriating money; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

## THE OREGON PUBLIC GUARDIAN AND CONSERVATOR

**SECTION 1.** Sections 2 to 7 of this 2014 Act are added to and made a part of ORS chapter 125.

**SECTION 2.** For purposes of sections 2 to 7 of this 2014 Act:

(1) "Client" means a person who receives public guardian and conservator services from the Oregon Public Guardian and Conservator.

(2) "Deputy public guardian and conservator" means the person who is employed by or under contract with the Oregon Public Guardian and Conservator, who is certified by the Oregon Public Guardian and Conservator and who provides services as a fiduciary appointed by the court to clients under sections 2 to 7 of this 2014 Act.

(3) "Public guardian and conservator services" means services, including but not limited to information, assistance and services as a court-appointed fiduciary in guardianship or

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 conservatorship proceedings that are provided by deputy public guardians and conservators,  
2 volunteers and staff under the supervision and control of the Oregon Public Guardian and  
3 Conservator.

4 **SECTION 3.** (1) The Governor shall appoint the Oregon Public Guardian and Conservator  
5 in the office of the Long Term Care Ombudsman established in ORS 441.103, subject to Sen-  
6 ate confirmation under ORS 171.562 and 171.565, for a four-year term from a list of two or  
7 three individuals nominated by the Long Term Care Ombudsman. The Oregon Public Guard-  
8 ian and Conservator serves at the pleasure of the Governor and may be removed by the  
9 Governor for good cause or upon the recommendation of the Long Term Care Ombudsman.  
10 If there is a vacancy for any cause, the Governor shall make an appointment within 60 days.  
11 The Oregon Public Guardian and Conservator shall receive a salary as fixed by the Governor  
12 and be reimbursed for all reasonable travel and other expenses incurred in the performance  
13 of official duties.

14 (2) The Oregon Public Guardian and Conservator shall be responsible for carrying out the  
15 powers, duties and functions of the Oregon Public Guardian and Conservator pursuant to  
16 sections 2 to 7 of this 2014 Act, within the office of the Long Term Care Ombudsman, and  
17 subject to the direction, supervision and control of the Long Term Care Ombudsman.

18 (3) The Oregon Public Guardian and Conservator may hire or contract with one full-time  
19 deputy public guardian and conservator and one staff person to carry out the powers, duties  
20 and functions of the Oregon Public Guardian and Conservator. The Oregon Public Guardian  
21 and Conservator may prescribe the duties and assignments and fix the compensation of  
22 persons hired by or under contract with the Oregon Public Guardian and Conservator, sub-  
23 ject to the State Personnel Relations Law. Subject to any other applicable laws regulating  
24 expenses, the persons hired by or under contract with the Oregon Public Guardian and  
25 Conservator shall be allowed reasonable travel and other expenses incurred in the perform-  
26 ance of official duties.

27 (4) The Oregon Public Guardian and Conservator may delegate the exercise or discharge  
28 of any power, duty or function that is vested in or imposed by law upon the Oregon Public  
29 Guardian and Conservator to the deputy public guardian and conservator or staff person  
30 hired by or under contract with the Oregon Public Guardian and Conservator for the purpose  
31 of conducting an official act in the name of the Oregon Public Guardian and Conservator.  
32 The official act of any person acting in the name of the Oregon Public Guardian and  
33 Conservator by the authority of the Oregon Public Guardian and Conservator is an official  
34 act of the Oregon Public Guardian and Conservator.

35 (5) The Oregon Public Guardian and Conservator may solicit and accept gifts, grants and  
36 donations from public and private sources for the purpose of carrying out the provisions of  
37 sections 2 to 7 of this 2014 Act, which moneys shall be deposited in the Long Term Care  
38 Ombudsman Account established under ORS 441.153.

39 (6) In accordance with applicable provisions of ORS chapter 183, the Oregon Public  
40 Guardian and Conservator, in consultation with the Long Term Care Ombudsman, may adopt  
41 rules to carry out the provisions of sections 2 to 7 of this 2014 Act.

42 **SECTION 4.** The Oregon Public Guardian and Conservator shall:

43 (1) Educate the public about the role and function of the Oregon Public Guardian and  
44 Conservator and about public guardian and conservator services.

45 (2) Provide public guardian and conservator services for persons who do not have rela-

1 tives or friends willing or able to assume the duties of guardianship or conservatorship and  
 2 who lack the financial resources to obtain a private guardian or conservator.

3 (3) Certify the deputy public guardian and conservator.

4 (4) Develop model standards of eligibility and professional conduct for the deputy public  
 5 guardian and conservator and of practice and procedure in public guardianship and conser-  
 6 vatorship proceedings.

7 (5) Develop and implement training and educational materials for the deputy public  
 8 guardian and conservator.

9 (6) Establish and operate a program to recruit, train and supervise volunteers to provide  
 10 assistance to the Oregon Public Guardian and Conservator, the deputy public guardian and  
 11 conservator and clients.

12 (7) Establish a process, including criteria and standards, to determine the eligibility of  
 13 persons to receive public guardian and conservator services and for the needs assessment  
 14 required under section 5 of this 2014 Act.

15 (8) Cooperate with offices of county public guardian and conservator operating under  
 16 ORS 125.700.

17 (9) Work with existing local and county programs and with other organizations and en-  
 18 tities to develop and expand public guardian and conservator services in this state.

19 (10) Make recommendations to the Legislative Assembly for policy and legislation re-  
 20 garding implementation, improvement and expansion of public guardian and conservator  
 21 services in this state.

22 **SECTION 5.** (1) In providing public guardian and conservator services, the Oregon Public  
 23 Guardian and Conservator shall conduct a needs assessment for a person who is claimed not  
 24 to have relatives or friends willing or able to assume the duties of guardianship or conser-  
 25 vatorship and who lacks the financial resources to obtain a private guardian or conservator.  
 26 The purpose of the needs assessment is to determine the person's eligibility to receive public  
 27 guardian and conservator services and to determine the appropriateness of filing a petition  
 28 for the appointment of a fiduciary or other pleading on behalf of the person in a court having  
 29 probate jurisdiction. The assessment shall, at a minimum:

30 (a) Assess the person's capacity to:

31 (A) Care for the person's own safety;

32 (B) Manage the person's own financial affairs; and

33 (C) Attend to and provide for necessities such as food, shelter, clothing and medical care;

34 (b) Assess the person's financial resources, based on information available or supplied to  
 35 the Oregon Public Guardian and Conservator at the time of the assessment;

36 (c) Determine whether the available information about the person is sufficient to support  
 37 a finding that the person is incapacitated or financially incapable, and the entry of a court  
 38 order for the appointment of a fiduciary under ORS 125.010;

39 (d) Inquire whether any other person may be willing and able to serve as the person's  
 40 guardian or conservator and, if appropriate, locate and contact that other person;

41 (e) Determine the type of fiduciary, if any, to request in a petition filed under ORS  
 42 125.055, giving preference to the least intrusive form of fiduciary relationship consistent with  
 43 the best interests of the person; and

44 (f) Determine how best to provide public guardian and conservator services to the person  
 45 that are least restrictive to the person's liberty, that are least intrusive to the person and

1 that provide for the greatest degree of independence that the person is capable of exercising.

2 (2) For each person determined to be eligible for public guardian and conservator services  
3 under this section, the Oregon Public Guardian and Conservator shall develop a written plan  
4 setting forth the type and duration of services to be provided by the Oregon Public Guardian  
5 and Conservator. The plan shall be included in any nonemergency petition or pleading filed  
6 with the court.

7 **SECTION 6.** (1) The deputy public guardian and conservator providing public guardian  
8 and conservator services under sections 2 to 7 of this 2014 Act:

9 (a) Must be certified as the deputy public guardian and conservator by the Oregon Public  
10 Guardian and Conservator; and

11 (b) If appointed by the court as public guardian and conservator for a client, shall serve  
12 as provided in this chapter and ORS 127.005 and 127.015, except as expressly stated otherwise  
13 in sections 2 to 7 of this 2014 Act.

14 (2) A volunteer of the Oregon Public Guardian and Conservator must provide, in writing,  
15 the volunteer's criminal history and must submit or consent to a criminal records check,  
16 including fingerprint identification.

17 (3) Volunteers:

18 (a) May not conduct the needs assessments required under section 5 of this 2014 Act;

19 (b) May not engage in conduct that constitutes the unlicensed practice of law;

20 (c) Shall be under the supervision and control of the Oregon Public Guardian and  
21 Conservator or of the deputy public guardian and conservator;

22 (d) Shall be instructed in confidentiality and shall maintain the confidentiality of clients  
23 and of written information and materials relating to clients;

24 (e) May not receive compensation or any other benefit but may be reimbursed for rea-  
25 sonable travel and other expenses incurred in the performance of their duties on behalf of  
26 the Oregon Public Guardian and Conservator; and

27 (f) Except for intentional misconduct or conduct that is grossly negligent, are immune  
28 from civil liability for any acts or omissions occurring, or errors in judgment made in good  
29 faith, in the course of providing authorized public guardian and conservator services.

30 **SECTION 7.** (1) A court may not appoint the Oregon Public Guardian and Conservator  
31 or deputy public guardian and conservator as a fiduciary for a person unless the Oregon  
32 Public Guardian and Conservator or deputy public guardian and conservator has petitioned  
33 for or consented to the appointment.

34 (2) The Oregon Public Guardian and Conservator shall file an official bond in such  
35 amount as may be fixed from time to time by the Long Term Care Ombudsman. The bond  
36 shall inure to the joint benefit of the several public guardianship and conservatorship estates  
37 in which the Oregon Public Guardian and Conservator is providing services, but a bond is  
38 not required to be filed in individual estates.

39 (3) The court may not charge a fee for the filing of a petition or any other pleading under  
40 this chapter by the Oregon Public Guardian and Conservator or deputy public guardian and  
41 conservator when the filing is made in connection with the provision of public guardian and  
42 conservator services under sections 2 to 7 of this 2014 Act.

43 (4)(a) The court shall order the client or the client's estate to pay for reasonable ex-  
44 penses incurred, including compensation for services rendered, in the provision of public  
45 guardian and conservator services to the client, including but not limited to court costs and

1 attorney fees.

2 (b) If a client is indigent, the Oregon Public Guardian and Conservator and the office of  
 3 the Long Term Care Ombudsman shall have a claim against the client or the client's estate  
 4 for the portion of any payment ordered under paragraph (a) of this subsection that remains  
 5 unpaid.

6 (5) The court may not order the Oregon Public Guardian and Conservator, the deputy  
 7 public guardian and conservator or the office of the Long Term Care Ombudsman to pay  
 8 court costs or attorney fees in a proceeding brought on behalf of a client under sections 2  
 9 to 7 of this 2014 Act.

10  
 11 **PARTNERSHIP FUND**

12  
 13 **SECTION 8.** Section 9 of this 2014 Act is added to and made a part of ORS 441.100 to  
 14 441.153.

15 **SECTION 9.** The Partnership Fund is established in the State Treasury, separate and  
 16 distinct from the General Fund, consisting of moneys appropriated, donated or otherwise  
 17 paid to the office of the Long Term Care Ombudsman established in ORS 441.103. Interest  
 18 earned by the Partnership Fund shall be credited to the fund. Moneys in the fund are con-  
 19 tinuously appropriated to the office of the Long Term Care Ombudsman solely for the pur-  
 20 pose of implementing and administering the provisions of ORS 441.109 (1)(h).

21  
 22 **CONFORMING AMENDMENTS**  
 23 **FOR OREGON PUBLIC GUARDIAN AND CONSERVATOR**  
 24 **AND PARTNERSHIP FUND**

25  
 26 **SECTION 10.** ORS 441.109 is amended to read:

27 441.109. (1) The office of the Long Term Care Ombudsman shall carry out the following duties:

28 (a) Investigate and resolve complaints made by or for residents of residential facilities about  
 29 administrative actions that may adversely affect their health, safety, welfare or rights, including  
 30 subpoenaing any person to appear, give sworn testimony or to produce documentary or other evi-  
 31 dence that is reasonably material to any matter under investigation.

32 (b) Undertake, participate in or cooperate with persons and agencies in such conferences, in-  
 33 quiries, meetings or studies as may lead to improvements in the functioning of residential facilities.

34 (c) Monitor the development and implementation of federal, state and local laws, regulations and  
 35 policies that relate to residential facilities in this state.

36 (d) Provide information to public agencies about the problems of residents of residential facili-  
 37 ties.

38 (e) Work closely with cooperative associations and citizen groups in this state and the state  
 39 protection and advocacy system under ORS 192.517.

40 (f) Widely publicize the Long Term Care Ombudsman's service, purpose and mode of operation.

41 (g) Collaborate with the Oregon Health Authority, the Department of Human Services, the  
 42 Nursing Home Administrators Board and any other appropriate agencies and organizations to es-  
 43 tablish a statewide system to collect and analyze information on complaints and conditions in resi-  
 44 dential facilities for the purpose of publicizing improvements and resolving significant problems.

45 **(h)(A) Identify and coordinate programs, services and other assistance for persons with**

1 **inadequate legal, financial and medical resources, that are available statewide;**

2 **(B) Contract with qualified individuals and entities to provide programs, services and**  
 3 **assistance to persons with inadequate resources who are located in remote and rural areas**  
 4 **of this state where such programs, services and other assistance are inadequate or nonex-**  
 5 **istent; and**

6 **(C) Contract with the state protection and advocacy system described in ORS 192.517 (1)**  
 7 **to provide services and assistance to persons who are prospective or current residents of a**  
 8 **mental health treatment facility or of a residential facility for individuals with developmental**  
 9 **disabilities when the system has received a notice regarding the person pursuant to ORS**  
 10 **125.060 (7)(c) or (8)(c).**

11 [(h)] **(i)** Appoint designees to serve as local representatives of the office in various districts of  
 12 the state and regularly monitor their functions.

13 [(i)] **(j)** Specify qualifications and duties of designees.

14 [(j)] **(k)** Adopt rules necessary for carrying out ORS 441.100 to 441.133, after consultation with  
 15 the Residential Facilities Advisory Committee.

16 [(k)] **(L)** Provide periodically, or at least annually, a report to the Governor, authority, depart-  
 17 ment and Legislative Assembly.

18 [(L)] **(m)** Prepare necessary reports with the assistance of the authority and the department.

19 **(n) Supervise, monitor, advise and support the Oregon Public Guardian and Conservator**  
 20 **appointed under section 3 of this 2014 Act.**

21 (2) At least quarterly, the Oregon Health Authority and the Department of Human Services shall  
 22 provide the Long Term Care Ombudsman with a list of the number of licensed or certified beds in  
 23 each residential facility for which the ombudsman has responsibilities under this section.

24 (3) As used in this section, "administrative action" means any action or decision made by an  
 25 owner, employee or agent of a residential facility or by a public agency that affects the services to  
 26 residents of the facility.

27 **SECTION 11.** ORS 441.137 is amended to read:

28 441.137. (1) There is established a Residential Facilities Advisory Committee of [nine] **11** mem-  
 29 bers to be appointed in the following manner:

30 (a) One person appointed by the Speaker of the House of Representatives;

31 (b) One person appointed by the President of the Senate;

32 (c) One person appointed by the House Minority Leader;

33 (d) One person appointed by the Senate Minority Leader;

34 (e) One person appointed by the Governor from each list of four names submitted by organiza-  
 35 tions for seniors, organizations for persons with mental illness and the Oregon Council on Develop-  
 36 mental Disabilities; and

37 (f) [Two] **Four** persons appointed by the Governor, **two of whom must have expertise in the**  
 38 **provision of guardianship, conservatorship and other fiduciary services for persons with in-**  
 39 **adequate resources.**

40 (2) Members described in subsection (1)(e) and (f) of this section are subject to confirmation by  
 41 the Senate under ORS 171.562 and 171.565.

42 (3) The term of office of each member is four years. Before the expiration of the term of a  
 43 member, the appointing authority shall appoint a successor whose term begins on July 1 next fol-  
 44 lowing. A member is eligible for reappointment. If there is a vacancy for any cause, the appointing  
 45 authority shall make an appointment to become immediately effective for the unexpired term.

1 (4) The members of the committee must be residents of this state who are broadly represen-  
 2 tative, to the extent possible, of persons residing in residential facilities, including members of racial  
 3 and ethnic minorities, who have knowledge and interest in the problems of persons residing in res-  
 4 idential facilities, and who are representative of all areas of this state and the demographics of  
 5 groups served by the Long Term Care Ombudsman.

6 (5) A member of the committee may not have a financial or fiduciary interest in residential fa-  
 7 cilities or service providers, or involvement in the licensing or certification of residential facilities  
 8 or service providers.

9 (6) The committee shall select one of its members as chairperson and another as vice chair-  
 10 person, for such terms and with duties and powers necessary for the performance of the functions  
 11 of such offices as the committee determines.

12 (7) A majority of the members of the committee constitutes a quorum for the transaction of  
 13 business. Decisions may be made by a majority of the quorum.

14 (8) The committee shall meet at least once each month at a place, day and hour determined by  
 15 the committee. The committee also shall meet at other times and places specified by the call of the  
 16 chairperson or of a majority of the members of the committee. The committee shall confer each  
 17 month with the Long Term Care Ombudsman. All meetings are subject to ORS 192.610 to 192.690.

18 (9) A member of the committee is entitled to compensation and expenses as provided in ORS  
 19 292.495.

20 **SECTION 12.** ORS 441.153 is amended to read:

21 441.153. The Long Term Care Ombudsman Account is established in the State Treasury, separate  
 22 and distinct from the General Fund. All miscellaneous receipts, gifts and federal and other grants  
 23 received by the Long Term Care Ombudsman shall be deposited into the Long Term Care Ombuds-  
 24 man Account and are continuously appropriated to the Long Term Care Ombudsman for carrying  
 25 out the responsibilities of the Long Term Care Ombudsman **and the Oregon Public Guardian and**  
 26 **Conservator.**

27  
 28 **OFFICES OF COUNTY PUBLIC GUARDIAN AND CONSERVATOR**

29  
 30 **SECTION 13.** ORS 125.700 is amended to read:

31 125.700. The county court or board of county commissioners of any county:

32 (1) After making a determination that there exists a need within the county for a guardian or  
 33 conservator for persons who do not have relatives or friends willing to serve as a guardian or  
 34 conservator and capable of assuming the duties of guardianship or conservatorship, may create  
 35 [*within the county*] the office of **county** public guardian and conservator and such subordinate posi-  
 36 tions as may be necessary to operate effectively the office of **county** public guardian and  
 37 conservator [*within the county*].

38 (2) May expend county funds for the purpose of operating the office of **county** public guardian  
 39 and conservator.

40 (3) After establishment of the office of **county** public guardian and conservator [*within a*  
 41 *county*], upon the finding that the county does not need the service of a **county** public guardian and  
 42 conservator, may terminate the office.

43 **SECTION 14.** ORS 125.705 is amended to read:

44 125.705. (1) The person appointed to the office of **county** public guardian and conservator shall  
 45 serve in the office at the pleasure of the appointing authority. If the person holding the office of

1 **county** public guardian and conservator [*in a county*] is removed from office, dies, becomes inca-  
 2 pacitated or resigns, the removal, death, incapacity or resignation shall operate to remove [*such*]  
 3 **the county** public guardian and conservator as guardian and conservator of all estates then under  
 4 the guardianship and conservatorship of the person.

5 (2) As used in ORS 125.700 to 125.730, “**county public guardian and conservator**” means  
 6 **the person appointed to the office of county public guardian and conservator created under**  
 7 **ORS 125.700.**

8 **SECTION 15.** ORS 125.710 is amended to read:

9 125.710. (1) The **county** public guardian and conservator may serve as the guardian or  
 10 conservator, or both, of any person of whom the court having probate jurisdiction in the county may  
 11 have jurisdiction. The **county** public guardian and conservator may serve as guardian or  
 12 conservator upon the petition of any person or upon the [*own*] petition of the **county** public guard-  
 13 ian and conservator.

14 (2) When appointed as guardian or conservator by the court having probate jurisdiction, the  
 15 **county** public guardian and conservator shall serve as provided in ORS chapter 125, ORS 127.005  
 16 and 127.015 except as specifically stated to the contrary in ORS 125.700 to 125.730.

17 (3) The **county** public guardian and conservator in the discretion of the **county** public guardian  
 18 and conservator may employ private attorneys if the fees for the attorneys can be defrayed out of  
 19 funds of the guardianship or conservatorship estate.

20 **SECTION 16.** ORS 125.715 is amended to read:

21 125.715. (1) Before entering into office as **county** public guardian and conservator, the person  
 22 appointed to the office shall file an official bond in such amount as may be fixed from time to time  
 23 by the board of county commissioners or the court having probate jurisdiction, which bond shall  
 24 inure to the joint benefit of the several guardianship [*or*] **and** conservatorship estates in which the  
 25 person is acting as guardian or conservator and the county. The **county** public guardian and  
 26 conservator shall not be required to file bonds in individual estates.

27 (2) Upon removal of the **county** public guardian and conservator in accordance with the pro-  
 28 visions of ORS 125.705, the surety on the **county** public guardian and conservator bond shall be  
 29 exonerated upon order to that effect of the court having probate jurisdiction in the county.

30 **SECTION 17.** ORS 125.720 is amended to read:

31 125.720. All funds coming into the custody of the **county** public guardian and conservator shall  
 32 be deposited in the county treasury and disbursed by proper warrant, or shall be deposited in one  
 33 or more banks or invested in one or more insured savings and loan associations authorized to do  
 34 business within the county, or as provided by ORS 125.445 (5).

35 **SECTION 18.** ORS 125.725 is amended to read:

36 125.725. The **county** public guardian and conservator shall have a claim against the ward’s or  
 37 protected person’s estate for reasonable expenses incurred in the execution of the guardianship or  
 38 conservatorship and such compensation for services and those of the attorney of the **county** public  
 39 guardian and conservator as the court having probate jurisdiction in the county deems just and  
 40 reasonable. If the **county** public guardian and conservator is compensated by the county for ser-  
 41 vices, any reimbursement of expenses or compensation shall be paid to the county.

42 **SECTION 19.** ORS 125.730 is amended to read:

43 125.730. No fee shall be charged or received by any court having probate jurisdiction for the  
 44 filing of any petition asking for the appointment of the **county** public guardian and conservator **as**  
 45 **the guardian or conservator** or for any official service performed by that court in the course of



1 the guardianship or conservatorship proceedings.

2  
3 **CONFORMING AMENDMENTS**  
4 **FOR OFFICES OF COUNTY PUBLIC GUARDIAN**  
5 **AND CONSERVATOR**  
6

7 **SECTION 20.** ORS 125.240 is amended to read:

8 125.240. (1) If a petition seeks the appointment of a professional fiduciary, the petition must  
9 contain the following information in addition to that information required under ORS 125.055:

10 (a) Proof that the professional fiduciary, or an individual responsible for making decisions for  
11 clients or for managing client assets for the professional fiduciary, is certified by the Center for  
12 Guardianship Certification or its successor organization as a National Certified Guardian or a Na-  
13 tional Master Guardian.

14 (b) A description of the events that led to the involvement of the professional fiduciary in the  
15 case.

16 (c) The professional fiduciary's educational background and professional experience.

17 (d) The fees charged by the professional fiduciary and whether the fees are on an hourly basis  
18 or are based on charges for individual services rendered.

19 (e) The names of providers of direct services to protected persons that are repeatedly used by  
20 the professional fiduciary under contract.

21 (f) The disclosures required under ORS 125.221 if the person nominated to act as a professional  
22 fiduciary will employ a person in which the nominated person has a pecuniary or financial interest.

23 (g) The number of protected persons for whom the person performs fiduciary services at the time  
24 of the petition.

25 (h) Whether the professional fiduciary has ever had a claim against the bond of the professional  
26 fiduciary and a description of the circumstances causing the claim.

27 (i) Whether the professional fiduciary or any staff with responsibility for making decisions for  
28 clients or for management of client assets has ever filed for bankruptcy and the date of filing.

29 (j)(A) Whether the professional fiduciary or any staff with responsibility for making decisions for  
30 clients or for management of client assets has ever been denied a professional license that is directly  
31 related to responsibilities of the professional fiduciary, or has ever held a professional license that  
32 is directly related to responsibilities of the professional fiduciary that was revoked or canceled. If  
33 such a license has been denied, revoked or canceled, the petition must reflect the date of the denial,  
34 revocation or cancellation and the name of the regulatory body that denied, revoked or canceled the  
35 license.

36 (B) A professional license under this paragraph includes a certificate described in paragraph (a)  
37 of this subsection.

38 (k) A statement that the criminal records check required under subsection (2) of this section  
39 does not disqualify the person from acting as a professional fiduciary.

40 (L) Whether the professional fiduciary and any staff responsible for making decisions for clients  
41 or for management of client assets is or has been certified by a national or state association of  
42 professional fiduciaries, the name of any such association and whether the professional fiduciary or  
43 other staff person has ever been disciplined by any such association and the result of the discipli-  
44 nary action.

45 (m) The name, address and telephone number of the individual who is to act as primary decision

1 maker for the protected person and the name of the person with whom the protected person will  
2 have personal contact if that person is not the person who will act as primary decision maker for  
3 the protected person.

4 (2)(a) If a petition seeks the appointment of a professional fiduciary as described in subsection  
5 (5) of this section, the professional fiduciary and all staff with responsibility for making decisions for  
6 clients or for management of client assets must undergo a criminal records check before the court  
7 may appoint the professional fiduciary. The results of the criminal records check shall be provided  
8 by the petitioner to the court. Results of criminal records checks submitted to the court are confi-  
9 dential, shall be subject to inspection only by the parties to the proceedings and their attorneys, and  
10 shall not be subject to inspection by members of the public except pursuant to a court order entered  
11 after a showing of good cause. A professional fiduciary must disclose to the court any criminal  
12 conviction of the professional fiduciary that occurs after the criminal records check was performed.  
13 The criminal records check under this subsection shall consist of a check for a criminal record in  
14 the State of Oregon and a national criminal records check if:

15 (A) The person has resided in another state within five years before the date that the criminal  
16 records check is performed;

17 (B) The person has disclosed the existence of a criminal conviction; or

18 (C) A criminal records check in Oregon discloses the existence of a criminal record in another  
19 jurisdiction.

20 (b) The requirements of this subsection do not apply to any person who serves as a public  
21 guardian or conservator, or any staff of a public guardian or conservator, who is operating under  
22 ORS 125.700 to 125.730 or 406.050 and who is otherwise required to acquire a criminal records check  
23 for other purposes.

24 (3)(a) If a petition seeks the appointment of a **county** public guardian and conservator operating  
25 under the provisions of ORS 125.700 to 125.730, or the appointment of a conservator under ORS  
26 406.050 (8), the petition need not contain the information described in subsection (1)(e) or (m) of this  
27 section.

28 (b) If a **county** public guardian and conservator operating under the provisions of ORS 125.700  
29 to 125.730 is appointed to act as a professional fiduciary, or a conservator operating under the au-  
30 thority of ORS 406.050 (8) is appointed, the public guardian or conservator must file with the court  
31 within three days after receipt of written notice of the appointment a statement containing the  
32 name, address and telephone number of the individual who will act as primary decision maker for  
33 the protected person and the name of the person with whom the protected person will have personal  
34 contact if the person named as primary decision maker will not have personal contact with the  
35 protected person.

36 (4) If the court appoints a professional fiduciary as described in subsection (5) of this section,  
37 the professional fiduciary must update all information required to be disclosed by subsection (1) of  
38 this section and provide a copy of the updated statement upon the request of the protected person  
39 or upon the request of any person entitled to notice under ORS 125.060 (3). The professional  
40 fiduciary must provide an updated statement without demand to the court, the protected person and  
41 persons entitled to notice under ORS 125.060 (3) at any time that there is a change in the informa-  
42 tion provided under subsection (1)(m) or (3)(b) of this section.

43 (5) As used in this section, "professional fiduciary" means a person nominated as a fiduciary or  
44 serving as a fiduciary who is acting at the same time as a fiduciary for three or more protected  
45 persons who are not related to the fiduciary.

**SECTION 21.** ORS 125.410 is amended to read:

125.410. (1) Except as provided in subsection (2) of this section, the court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservator according to law, with sureties as specified by the court. Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the property of the estate in the control of the conservator plus one year's estimated income minus the value of securities and money deposited under arrangements requiring an order of the court for their removal and the value of any real property that the conservator, by express limitation of power, lacks power to sell or convey without court authorization.

(2)(a) The court may waive a bond for good cause shown.

(b) Subsection (1) of this section does not affect the provisions of ORS 709.240, relating to a trust company acting as fiduciary, ORS 125.715, relating to a **county** public guardian **and conservator** acting as fiduciary, **section 7 of this 2014 Act, relating to the Oregon Public Guardian and Conservator or the deputy public guardian and conservator acting as fiduciary under sections 2 to 7 of this 2014 Act**, or ORS 406.050 (8), relating to the Department of Veterans' Affairs acting as fiduciary.

(3) Sureties for a bond required under this section are jointly and severally liable with the conservator and with each other.

(4) Letters of conservatorship may not be issued until the bond required by this section is approved by the court.

(5) The bond of the conservator continues in effect until the sureties on the bond are released by order of the court.

(6) The court may at any time increase or reduce the amount of the bond required of a conservator for the protection of the protected person and the estate of the protected person.

(7) If a surety on a bond required by this section gives notice of intent to cancel the bond, the conservator shall execute and file in the protective proceeding a new bond before the cancellation date specified by the surety. The new bond shall be in the amount and subject to those conditions that may be required by the court. If the conservator fails to file a new bond, the authority of the conservator ends on the date specified by the surety for cancellation of the bond. The letters of conservatorship issued to the conservator are void from that date, and the conservator must make and file the final accounting of the conservator.

**APPROPRIATION**

**SECTION 22.** In addition to and not in lieu of any other appropriation, there is appropriated to the office of the Long Term Care Ombudsman for deposit into the Partnership Fund established under section 9 of this 2014 Act, for the biennium beginning July 1, 2013, out of the General Fund, the amount of \$\_\_\_\_\_, which may be expended for the purpose of implementing the provisions of ORS 441.109 (1)(h).

**UNIT CAPTIONS**

**SECTION 23.** The unit captions used in this 2014 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2014 Act.

**OPERATIVE DATES AND APPLICABILITY**

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**SECTION 24.** (1) Sections 2 to 7 and 9 of this 2014 Act and the amendments to ORS 125.240, 125.410, 125.700, 125.705, 125.710, 125.715, 125.720, 125.725, 125.730, 441.109, 441.137 and 441.153 by sections 10 to 21 of this 2014 Act:

(a) Become operative on July 1, 2014; and

(b) Apply to protective proceedings, if applicable, commenced on or after the operative date specified in this subsection.

(2) The Governor and the Long Term Care Ombudsman may take any action before the operative date specified in subsection (1) of this section, including but not limited to the appointment of the Oregon Public Guardian and Conservator and the appointment of new members of the Residential Facilities Advisory Committee, that is necessary to enable the Oregon Public Guardian and Conservator and the Long Term Care Ombudsman to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the Oregon Public Guardian and Conservator and the Long Term Care Ombudsman by this 2014 Act.

**SECTION 25.** This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect on its passage.

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