

House Bill 2776

Sponsored by Representative BARKER

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**.

Authorizes appointment of guardian for person with disability who is in need of guardianship.

Requires guardian to enforce right of protected person who is person with disability to receive visitors, telephone calls, personal mail and electronic communications.

Requires guardian of protected person who is person with disability to notify certain persons and entities of protected person's hospitalization, death, funeral arrangements and final resting place.

A BILL FOR AN ACT

1
2 Relating to guardian for person with a disability; creating new provisions; and amending ORS
3 125.005, 125.300, 125.305, 125.315 and 125.320.

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

5 **SECTION 1.** ORS 125.005 is amended to read:

6 125.005. As used in this chapter:

7 (1) "Conservator" means a person appointed as a conservator under the provisions of this
8 chapter.

9 (2) "Fiduciary" means a guardian or conservator appointed under the provisions of this chapter
10 or any other person appointed by a court to assume duties with respect to a protected person under
11 the provisions of this chapter.

12 (3) "Financially incapable" means a condition in which a person is unable to manage financial
13 resources of the person effectively for reasons including, but not limited to, mental illness, mental
14 retardation, physical illness or disability, chronic use of drugs or controlled substances, chronic
15 intoxication, confinement, detention by a foreign power or disappearance. "Manage financial re-
16 sources" means those actions necessary to obtain, administer and dispose of real and personal
17 property, intangible property, business property, benefits and income.

18 (4) "Guardian" means a person appointed as a guardian under the provisions of this chapter.

19 (5) "Incapacitated" means a condition in which a person's ability to receive and evaluate infor-
20 mation effectively or to communicate decisions is impaired to such an extent that the person pres-
21 ently lacks the capacity to meet the essential requirements for the person's physical health or
22 safety. "Meeting the essential requirements for physical health and safety" means those actions
23 necessary to provide the health care, food, shelter, clothing, personal hygiene and other care with-
24 out which serious physical injury or illness is likely to occur.

25 (6) "Minor" means any person who has not attained 18 years of age.

26 **(7) "Person with a disability" has the meaning given that term in ORS 174.107.**

27 [(7)] **(8)** "Protected person" means a person for whom a protective order has been entered.

28 [(8)] **(9)** "Protective order" means an order of a court appointing a fiduciary or any other order
29 of the court entered for the purpose of protecting the person or estate of a respondent or protected

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 person.

2 [(9)] (10) "Protective proceeding" means a proceeding under this chapter.

3 [(10)] (11) "Respondent" means a person for whom entry of a protective order is sought in a
4 petition filed under ORS 125.055.

5 [(11)] (12) "Visitor" means a person appointed by the court under ORS 125.150 for the purpose
6 of interviewing and evaluating a respondent or protected person.

7 **SECTION 2.** ORS 125.300 is amended to read:

8 125.300. (1) A guardian may be appointed for an adult person **or a person with a disability** only
9 as is necessary to promote and protect the well-being of the protected person. A guardianship for
10 an adult person **or a person with a disability** must be designed to encourage the development of
11 maximum self-reliance and independence of the protected person and may be ordered only to the
12 extent necessitated by the person's actual mental and physical limitations.

13 (2) An adult protected person for whom a guardian has been appointed is not presumed to be
14 incompetent.

15 (3) A protected person retains all legal and civil rights provided by law except those that have
16 been expressly limited by court order or specifically granted to the guardian by the court. Rights
17 retained by the person include but are not limited to the right to contact and retain counsel and to
18 have access to personal records.

19 **SECTION 3.** ORS 125.305 is amended to read:

20 125.305. (1) After determining that conditions for the appointment of a guardian have been es-
21 tablished, the court may appoint a guardian as requested if the court determines by clear and con-
22 vincing evidence that:

23 (a) The respondent is a minor in need of a guardian, [or] the respondent is incapacitated **or the**
24 **respondent is a person with a disability in need of a guardian;**

25 (b) The appointment is necessary as a means of providing continuing care and supervision of the
26 respondent; and

27 (c) The nominated person is both qualified and suitable, and is willing to serve.

28 (2) The court shall make a guardianship order that is no more restrictive upon the liberty of the
29 protected person than is reasonably necessary to protect the person. In making the order the court
30 shall consider the information in the petition, the report of the visitor, the report of any physician
31 or psychologist who has examined the respondent, if there was an examination and the evidence
32 presented at any hearing.

33 (3) The court may require that a guardian post bond.

34 (4) The Department of Human Services may be appointed guardian of a minor if the minor has
35 no living parents and if no willing, qualified and suitable relative or other person has petitioned the
36 court for appointment as a guardian.

37 **SECTION 4.** ORS 125.315 is amended to read:

38 125.315. (1) A guardian has the following powers and duties:

39 (a) Except to the extent of any limitation under the order of appointment, the guardian has
40 custody of the protected person and may establish the protected person's place of abode within or
41 without this state.

42 (b) The guardian shall provide for the care, comfort and maintenance of the protected person
43 and, whenever appropriate, shall arrange for training and education of the protected person.
44 Without regard to custodial rights of the protected person, the guardian shall take reasonable care
45 of the person's clothing, furniture and other personal effects unless a conservator has been ap-

1 pointed for the protected person.

2 (c) Subject to the provisions of ORS 127.505 to 127.660 and subsection (3) of this section, the
 3 guardian may consent, refuse consent or withhold or withdraw consent to health care, as defined in
 4 ORS 127.505, for the protected person. A guardian is not liable solely by reason of consent under
 5 this paragraph for any injury to the protected person resulting from the negligence or acts of third
 6 persons.

7 **(d) The guardian shall enforce the right of a protected person who is a person with a**
 8 **disability to receive visitors, telephone calls, personal mail and electronic communications.**

9 [(d)] (e) The guardian may:

10 (A) Make advance funeral and burial arrangements;

11 (B) Subject to the provisions of ORS 97.130, control the disposition of the remains of the pro-
 12 tected person; and

13 (C) Subject to the provisions of ORS 97.965, make an anatomical gift of all or any part of the
 14 body of the protected person.

15 [(e)] (f) The guardian of a minor has the powers and responsibilities of a parent who has legal
 16 custody of a child, except that the guardian has no obligation to support the minor beyond the
 17 support that can be provided from the estate of the minor, and the guardian is not liable for the
 18 torts of the minor. The guardian may consent to the marriage or adoption of a protected person
 19 who is a minor.

20 [(f)] (g) Subject to the provisions of ORS 125.320 (2), the guardian may receive money and per-
 21 sonal property deliverable to the protected person and apply the money and property for support,
 22 care and education of the protected person. The guardian shall exercise care to conserve any excess
 23 for the protected person's needs.

24 (2) If a conservator has been appointed for the protected person, the guardian may file a motion
 25 with the court seeking an order of the court on the duties of the conservator relating to payment
 26 of support for the protected person.

27 (3) A guardian may consent to the withholding or withdrawing of artificially administered nu-
 28 trition and hydration for a protected person only under the circumstances described in ORS 127.580
 29 (1)(a), (b), (d), (e) or (f) and, if the protected person has a medical condition specified in ORS 127.580
 30 (1)(b), (d), (e) or (f), the condition has been medically confirmed.

31 **SECTION 5.** ORS 125.320 is amended to read:

32 125.320. (1) A guardian may not authorize the sterilization of the protected person.

33 (2) A guardian may not use funds from the protected person's estate for room and board that
 34 the guardian or guardian's spouse, parent or child have furnished the protected person unless the
 35 charge for the service is approved by order of the court before the payment is made.

36 (3)(a) Before a guardian may place an adult protected person in a mental health treatment fa-
 37 cility, a nursing home or other residential facility, the guardian must file a statement with the court
 38 informing the court that the guardian intends to make the placement.

39 (b) Notice of the statement of intent must be given in the manner provided by ORS 125.065 to
 40 the persons specified in ORS 125.060 (3).

41 (c) In addition to the requirements of paragraph (b) of this subsection, notice of the statement
 42 of intent must be given in the manner provided by ORS 125.065 by the guardian to the following
 43 persons:

44 (A) Any attorney who represented the protected person at any time during the protective pro-
 45 ceeding.

1 (B) If the protected person is a resident of a nursing home or residential facility, or if the notice
 2 states the intention to place the protected person in a nursing home or residential facility, the office
 3 of the Long Term Care Ombudsman.

4 (C) If the protected person is a resident of a mental health treatment facility or a residential
 5 facility for individuals with developmental disabilities, or if the notice states the intention to place
 6 the protected person in such a facility, the system described in ORS 192.517 (1).

7 (d) In addition to the requirements of ORS 125.070 (1), the notice given to the protected person
 8 must clearly indicate the manner in which the protected person may object to the proposed place-
 9 ment.

10 (e) The guardian may thereafter place the adult protected person in a mental health treatment
 11 facility, a nursing home or other residential facility without further court order. If an objection is
 12 made in the manner provided by ORS 125.075, the court shall schedule a hearing on the objection
 13 as soon as practicable.

14 (f) The requirement that notice be served on an attorney for a protected person under paragraph
 15 (c)(A) of this subsection does not impose any responsibility on the attorney receiving the notice to
 16 represent the protected person in the protective proceeding.

17 **(4)(a) A guardian of a protected person who is a person with a disability shall, as soon
 18 as practicable, inform the court if the protected person has been hospitalized or dies.**

19 **(b) In the case of the death of a protected person who is a person with a disability, the
 20 guardian of the protected person shall, as soon as practicable, inform the protected person's
 21 spouse, adult children, adult grandchildren, parents and siblings of any funeral arrangements
 22 and the location of the protected person's final resting place.**

23 **(c) The guardian must provide notice of the protected person's hospitalization or death
 24 in the manner provided by ORS 125.065 to:**

25 **(A) The persons specified in ORS 125.060 (3);**

26 **(B) Any attorney who represented the protected person at any time during the protective
 27 proceeding;**

28 **(C) If the protected person is a resident of a nursing home or residential facility, or if
 29 the notice states the intention to place the protected person in a nursing home or residential
 30 facility, the office of the Long Term Care Ombudsman; and**

31 **(D) If the protected person is a resident of a mental health treatment facility or a resi-
 32 dential facility for individuals with developmental disabilities, or if the notice states the in-
 33 tention to place the protected person in such a facility, the system described in ORS 192.517
 34 (1).**

35 **(d) In addition to the requirements of ORS 125.070 (1), the notice given to the protected
 36 person must clearly indicate the manner in which the protected person may object to the
 37 proposed placement.**

38 **(e) The requirement that notice be served on an attorney for a protected person under
 39 paragraph (c)(B) of this subsection does not impose any responsibility on the attorney re-
 40 ceiving the notice to represent the protected person in the protective proceeding.**

41 **SECTION 6. The amendments to ORS 125.005, 125.300, 125.305, 125.315 and 125.320 by
 42 sections 1 to 5 of this 2017 Act apply to guardians appointed by the court on or after the
 43 effective date of this 2017 Act.**