

**A-Engrossed**  
**Senate Bill 57**

Ordered by the Senate May 1  
Including Senate Amendments dated May 1

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Oregon Long-Term Care Ombudsman)

**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.

Prohibits court from appointing deputy public guardian and conservator as fiduciary and requires court to appoint Oregon Public Guardian and Conservator as fiduciary.

*[Permits needs assessment to be based on information available at time of assessment.]* Facilitates disclosure of information for needs assessment to determine eligibility for public guardian and conservator services.

*[Allows Oregon Public Guardian and Conservator to establish bank accounts on behalf of protected persons for purpose of managing financial affairs of protected persons without consent of incapacitated protected persons.]*

*[Requires Oregon Public Guardian and Conservator to perform criminal background checks on employees, contractors and volunteers.]*

**Authorizes Oregon Public Guardian and Conservator to require fingerprints of employee, applicant for employment, volunteer or party under contract for purpose of requesting state or nationwide criminal records check.**

Establishes Oregon Public Guardian and Conservator Fund.

**Establishes Oregon Public Guardian and Conservator Protected Person Trust Account for benefit of persons on whose behalf moneys have been received and for whom Oregon Public Guardian and Conservator has been appointed as guardian or conservator. Directs Oregon Public Guardian and Conservator to administer trust account.**

**A BILL FOR AN ACT**

1  
2 Relating to the Oregon Public Guardian and Conservator; creating new provisions; and amending  
3 ORS 125.242, 125.675, 125.678, 125.683, 125.685, 125.687, 441.406 and 441.419.

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

5 **SECTION 1.** ORS 125.678 is amended to read:

6 125.678. (1) The Long Term Care Ombudsman appointed under ORS 441.403, in consultation with  
7 the Residential Facilities Advisory Committee, shall appoint the Oregon Public Guardian and  
8 Conservator in the office of the Long Term Care Ombudsman for a four-year term. The Oregon  
9 Public Guardian and Conservator serves at the pleasure of the Long Term Care Ombudsman and  
10 may be removed by the Long Term Care Ombudsman for good cause. If there is a vacancy for any  
11 cause, the Long Term Care Ombudsman shall make an appointment within 60 days. The Oregon  
12 Public Guardian and Conservator shall receive a salary as fixed by the Long Term Care Ombudsman  
13 and be reimbursed for all reasonable travel and other expenses incurred in the performance of offi-  
14 cial duties.

15 (2) The Oregon Public Guardian and Conservator shall be responsible for carrying out the  
16 powers, duties and functions of the Oregon Public Guardian and Conservator pursuant to ORS  
17 125.675 to 125.687, within the office of the Long Term Care Ombudsman, *and subject to the direction,*

**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 *supervision and control of the Long Term Care Ombudsman*].

2 (3) The Oregon Public Guardian and Conservator[, *in consultation with and subject to the ap-*  
3 *proval of the Long Term Care Ombudsman,*] may:

4 (a) Hire or contract with volunteers, staff, deputy public guardians and conservators and other  
5 qualified individuals, as necessary, to carry out the powers, duties and functions of the Oregon  
6 Public Guardian and Conservator;

7 (b) Prescribe the duties and assignments of persons hired or under contract with the Oregon  
8 Public Guardian and Conservator;

9 (c) Fix the compensation, including reasonable travel and other expenses incurred in the per-  
10 formance of official duties, of persons hired by or under contract with the Oregon Public Guardian  
11 and Conservator subject to the State Personnel Relations Law; and

12 (d) Adopt rules to carry out the provisions of ORS 125.675 to 125.687.

13 (4) The Long Term Care Ombudsman may hire or contract with staff to serve in the office of  
14 the Long Term Care Ombudsman as necessary to [*carry out the powers, duties and functions of the*  
15 *Long Term Care Ombudsman in supervising, monitoring, advising and supporting*] **advise and sup-**  
16 **port** the Oregon Public Guardian and Conservator as required under ORS 441.406.

17 [(5)] **(5)(a)** The Oregon Public Guardian and Conservator may delegate the exercise or discharge  
18 of any power, duty or function that is vested in or imposed by law upon the Oregon Public Guardian  
19 and Conservator to a deputy public guardian and conservator, staff person or volunteer hired by or  
20 under contract with the Oregon Public Guardian and Conservator as appropriate for the purpose  
21 of conducting an official act in the name of the Oregon Public Guardian and Conservator. The offi-  
22 cial act of any person acting in the name of the Oregon Public Guardian and Conservator by the  
23 authority of the Oregon Public Guardian and Conservator is an official act of the Oregon Public  
24 Guardian and Conservator.

25 **(b) Notwithstanding paragraph (a) of this subsection, a court may not appoint a deputy**  
26 **public guardian and conservator as a fiduciary in a proceeding under ORS 125.675 to 125.687**  
27 **but shall appoint the Oregon Public Guardian and Conservator as the fiduciary in the pro-**  
28 **ceeding.**

29 (6) The Oregon Public Guardian and Conservator may solicit and accept gifts, grants and do-  
30 nations from public and private sources for the purpose of carrying out the provisions of ORS  
31 125.675 to 125.687, which moneys shall be deposited in the [*Long Term Care Ombudsman Account*  
32 *established under ORS 441.419*] **Oregon Public Guardian and Conservator Fund established un-**  
33 **der section 7 of this 2017 Act.**

34 **SECTION 2.** ORS 125.683 is amended to read:

35 125.683. (1) In providing public guardian and conservator services, the Oregon Public Guardian  
36 and Conservator shall conduct a needs assessment for a person who claims or is claimed not to have  
37 relatives or friends willing or able to assume the duties of guardianship or conservatorship and who  
38 claims or is claimed to lack the financial resources to obtain a private guardian or conservator. The  
39 purpose of the needs assessment is to determine **the person's eligibility to receive public guardian**  
40 **and conservator services and to determine the appropriateness of filing a petition for the**  
41 **appointment of a fiduciary or other pleading on behalf of the person in a court having pro-**  
42 **bate jurisdiction. The needs assessment shall, at a minimum:**

43 **(a) Assess the person's capacity to:**

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

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

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

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

4 (c) Determine whether [the available] information that is available about the person is suffi-  
5 cient to support a finding that the person is incapacitated or financially incapable[,] and the entry  
6 of a court order for the appointment of a fiduciary under ORS 125.010;

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

9 (e) Determine the type of fiduciary, if any, to request in a petition filed under ORS  
10 125.055, giving preference to the least intrusive form of fiduciary relationship consistent with  
11 the best interests of the person; and

12 (f) Determine how best to provide public guardian and conservator services to the person  
13 that are least restrictive to the person's liberty, that are least intrusive to the person and  
14 that provide for the greatest degree of independence that the person is capable of exercising.

15 (2)(a) If the person is a resident of a nursing home as defined in ORS 678.710 or a resi-  
16 dential facility as defined in ORS 441.402, the nursing home or residential facility shall pro-  
17 vide the Oregon Public Guardian and Conservator access to the person's records as is  
18 necessary to conduct the needs assessment required under this section.

19 (b) Any other public agency that has provided or is providing care or services to the  
20 person shall disclose to the Oregon Public Guardian and Conservator, upon request, a mini-  
21 mum amount of information about the person for whom the needs assessment is being con-  
22 ducted, including protected health information as defined in ORS 192.556 and financial  
23 information, as is reasonably necessary to prevent or lessen a serious and imminent threat  
24 to the health or safety of the person who is the subject of the needs assessment. For pur-  
25 poses of this paragraph, a request from the Oregon Public Guardian and Conservator for the  
26 purpose of conducting a needs assessment is presumed to be a situation that will prevent or  
27 lessen a serious and imminent threat to the health or safety of the person.

28 (c) Any health care provider not identified in either paragraph (a) or (b) of this sub-  
29 section may disclose protected health information to the Oregon Public Guardian and  
30 Conservator in accordance with 45 C.F.R. 164.512 (j) to prevent or lessen a serious or immi-  
31 nent threat to the health or safety of a person if the health care provider, in good faith,  
32 believes the disclosure is necessary to prevent or lessen the threat. For purposes of this  
33 paragraph, a request from the Oregon Public Guardian and Conservator for disclosure under  
34 this paragraph for the purposes of conducting a needs assessment, or the good faith belief  
35 and disclosure of the health care provider under this paragraph, are presumed to be situ-  
36 ations that will prevent or lessen a serious and imminent threat to the health or safety of  
37 the person.

38 [(2)] (3) For each person determined to be eligible for public guardian and conservator services  
39 under this section, the Oregon Public Guardian and Conservator shall develop a written plan setting  
40 forth the type and duration of services to be provided by the Oregon Public Guardian and  
41 Conservator. The plan shall be included in any nonemergency petition or pleading filed with the  
42 court.

43 **SECTION 3.** ORS 125.685 is amended to read:

44 125.685. (1) A deputy public guardian and conservator providing public guardian and conservator  
45 services under ORS 125.675 to 125.687[:.]

1        [(a)] must be certified as a deputy public guardian and conservator by the Oregon Public  
2 Guardian and Conservator.[:; and]

3        [(b) *If appointed by the court as public guardian and conservator for a client, shall serve as pro-*  
4 *vided in this chapter and ORS 127.005 and 127.015, except as expressly stated otherwise in ORS*  
5 *125.675 to 125.687.*]

6        (2) A volunteer of the Oregon Public Guardian and Conservator must provide, in writing, the  
7 volunteer's criminal history and must submit or consent to a criminal records check, including fin-  
8 gerprint identification.

9        (3) Volunteers:

10        (a) May not conduct the needs assessments required under ORS 125.683;

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

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

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

16        (e) May not receive compensation or any other benefit but may be reimbursed for reasonable  
17 travel and other expenses incurred in the performance of their duties on behalf of the Oregon Public  
18 Guardian and Conservator; and

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

22        **SECTION 4.** ORS 125.687 is amended to read:

23        125.687. (1) A court may not appoint the Oregon Public Guardian and Conservator [*or a deputy*  
24 *public guardian and conservator*] as a fiduciary for a person unless the Oregon Public Guardian and  
25 Conservator [*or deputy public guardian and conservator*] has petitioned for or consented to the ap-  
26 pointment. **If appointed as a fiduciary by the court, the Oregon Public Guardian and**  
27 **Conservator, and any deputy public guardian and conservator designated to act on behalf of**  
28 **the Oregon Public Guardian and Conservator, shall serve as provided in this chapter and ORS**  
29 **127.005 and 127.015, except as expressly stated otherwise in ORS 125.675 to 125.687 or by order**  
30 **of the court.**

31        (2) The Oregon Public Guardian and Conservator shall file an official bond in [*such amount as*  
32 *may be fixed from time to time by the Long Term Care Ombudsman*] **an amount determined in**  
33 **consultation with the Oregon Department of Administrative Services.** The bond shall inure to  
34 the joint benefit of the several public guardianship and conservatorship estates in which the Oregon  
35 Public Guardian and Conservator is providing services, but a bond is not required to be filed in in-  
36 dividual estates.

37        (3) The court may not charge **the Oregon Public Guardian and Conservator** a fee for the fil-  
38 ing of a petition or any other pleading under this chapter [*by the Oregon Public Guardian and*  
39 *Conservator or a deputy public guardian and conservator*] when the filing is made in connection with  
40 the provision of public guardian and conservator services under ORS 125.675 to 125.687.

41        (4)(a) The court shall order the client or the client's estate to pay for reasonable expenses in-  
42 curred, including compensation for services rendered, in the provision of public guardian and  
43 conservator services to the client, including but not limited to court costs and attorney fees.

44        (b) If a client is indigent, the Oregon Public Guardian and Conservator [*and the office of the*  
45 *Long Term Care Ombudsman*] shall have a claim against the client or the client's estate for the

1 portion of any payment ordered under paragraph (a) of this subsection that remains unpaid.

2 (5) The court may not order the Oregon Public Guardian and Conservator, a deputy public  
3 guardian and conservator or the office of the Long Term Care Ombudsman to pay court costs or  
4 attorney fees in a proceeding brought on behalf of a client under ORS 125.675 to 125.687.

5 **SECTION 5.** Sections 6, 7 and 8 of this 2017 Act are added to and made a part of ORS  
6 125.675 to 125.687.

7 **SECTION 6.** For the purpose of requesting a state or nationwide criminal records check  
8 under ORS 181A.195, the Oregon Public Guardian and Conservator may require the finger-  
9 prints of an employee of the Oregon Public Guardian and Conservator, an applicant for em-  
10 ployment with the Oregon Public Guardian and Conservator or a volunteer or party under  
11 contract with the Oregon Public Guardian and Conservator.

12 **SECTION 7.** (1) The Oregon Public Guardian and Conservator Fund is established in the  
13 State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon  
14 Public Guardian and Conservator Fund shall be credited to the fund. The fund consists of:

15 (a) Moneys appropriated or otherwise transferred to the fund by the Legislative Assem-  
16 bly;

17 (b) Moneys received from federal, state or local sources;

18 (c) Amounts donated to the fund;

19 (d) Investment earnings received on moneys in the fund; and

20 (e) Other amounts deposited in the fund from any source.

21 (2) Moneys in the fund are continuously appropriated to the Oregon Public Guardian and  
22 Conservator for the purposes of ORS 125.675 to 125.687.

23 (3) Moneys in the fund may be invested and reinvested as provided in ORS 293.701 to  
24 293.857.

25 (4) Moneys in the fund may be used by the Oregon Public Guardian and Conservator for  
26 administrative costs and expenses of the Oregon Public Guardian and Conservator in per-  
27 forming the duties and functions under ORS 125.675 to 125.687.

28 **SECTION 8.** (1) The Oregon Public Guardian and Conservator Protected Person Trust  
29 Account is established in the State Treasury separate and distinct from the General Fund  
30 and the Oregon Public Guardian and Conservator Fund. Moneys in the Oregon Public  
31 Guardian and Conservator Protected Person Trust Account consists of moneys received on  
32 behalf of persons for whom the Oregon Public Guardian and Conservator has been appointed  
33 as a guardian or conservator. All moneys in the account are continuously appropriated to  
34 the Oregon Public Guardian and Conservator to be used for the benefit of a person for whom  
35 the Oregon Public Guardian and Conservator has been appointed as a guardian or  
36 conservator and on whose behalf the Oregon Public Guardian and Conservator has received  
37 moneys.

38 (2) The Oregon Public Guardian and Conservator shall administer the trust account:

39 (a) For the benefit of persons for whom the Oregon Public Guardian and Conservator has  
40 been appointed a guardian or conservator and on whose behalf the Oregon Public Guardian  
41 and Conservator has received moneys; and

42 (b) In accordance with the provisions of this chapter or as ordered by the court.

43 (3) The Oregon Public Guardian and Conservator may establish subaccounts within the  
44 Oregon Public Guardian and Conservator Protected Person Trust Account when the Oregon  
45 Public Guardian and Conservator determines that subaccounts are necessary or desirable.

1 **Interest earned by the account or subaccounts, if any, shall accrue to the benefit of the ac-**  
2 **count or subaccounts.**

3 **SECTION 9.** ORS 125.242 is amended to read:

4 125.242. ORS 125.221 and 125.240 do not apply to a financial institution, as defined in ORS  
5 706.008, [or] a trust company, as defined in ORS 706.008 **or the Oregon Public Guardian and**  
6 **Conservator in proceedings under ORS 125.675 to 125.687.**

7 **SECTION 10.** ORS 441.406 is amended to read:

8 441.406. (1) The office of the Long Term Care Ombudsman shall carry out the following duties:

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

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

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

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

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

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

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

26 (h)(A) Identify and coordinate programs, services and other assistance for persons receiving  
27 public guardian and conservator services under ORS 125.675 to 125.687, that are available statewide;

28 (B) Contract with qualified individuals and entities to provide programs, services and assistance  
29 to persons receiving public guardian and conservator services under ORS 125.675 to 125.687 who are  
30 located in areas of this state where such programs, services and other assistance are inadequate or  
31 nonexistent; and

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

36 (i) Appoint designees to serve as local representatives of the office in various districts of the  
37 state and regularly monitor their functions.

38 (j) Specify qualifications and duties of designees.

39 (k) Adopt rules necessary for carrying out ORS 441.402 to 441.414, after consultation with the  
40 Residential Facilities Advisory Committee.

41 (L) Provide periodically, or at least annually, a report to the Governor, authority, department  
42 and Legislative Assembly.

43 (m) Prepare necessary reports with the assistance of the authority and the department.

44 (n) [*Supervise, monitor,*] Advise and support the Oregon Public Guardian and Conservator ap-  
45 pointed under ORS 125.678.

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

4 (3) As used in this section, “administrative action” means any action or decision made by an  
5 owner, employee or agent of a residential facility or by a public agency that affects the services to  
6 residents of the facility.

7 **SECTION 11.** ORS 441.419 is amended to read:

8 441.419. The Long Term Care Ombudsman Account is established in the State Treasury, separate  
9 and distinct from the General Fund. All miscellaneous receipts, gifts and federal and other grants  
10 received by the Long Term Care Ombudsman shall be deposited into the Long Term Care Ombuds-  
11 man Account and are continuously appropriated to the Long Term Care Ombudsman for carrying  
12 out the responsibilities of the Long Term Care Ombudsman [*and the Oregon Public Guardian and*  
13 *Conservator*].

14 **SECTION 12.** ORS 125.675 is amended to read:

15 125.675. For purposes of ORS 125.675 to 125.687:

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

18 (2) “Deputy public guardian and conservator” means a person who is employed by or under  
19 contract with the Oregon Public Guardian and Conservator, who is certified by the Oregon Public  
20 Guardian and Conservator and who provides services as a fiduciary [*appointed by the court to*  
21 *clients*] under ORS 125.675 to 125.687.

22 (3) “Public guardian and conservator services” means services, including but not limited to in-  
23 formation, assistance and services as a court-appointed fiduciary in guardianship or conservatorship  
24 proceedings that are provided by deputy public guardians and conservators, volunteers and staff  
25 under the supervision and control of the Oregon Public Guardian and Conservator.

26