

Enrolled
Senate Bill 57

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CHAPTER

AN ACT

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

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

SECTION 1. ORS 125.678 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. ORS 125.683 is amended to read:

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

(a) Assess the person's capacity to:

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

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

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

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

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

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

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

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

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

(b) Any other public agency that has provided or is providing care or services to the person shall disclose to the Oregon Public Guardian and Conservator, upon request, a minimum amount of information about the person for whom the needs assessment is being conducted, including protected health information as defined in ORS 192.556 and financial information, as is reasonably necessary to prevent or lessen a serious and imminent threat

to the health or safety of the person who is the subject of the needs assessment. For purposes of this paragraph, a request from the Oregon Public Guardian and Conservator for the purpose of conducting a needs assessment is presumed to be a situation that will prevent or lessen a serious and imminent threat to the health or safety of the person.

(c) Any health care provider not identified in either paragraph (a) or (b) of this subsection may disclose protected health information to the Oregon Public Guardian and Conservator in accordance with 45 C.F.R. 164.512 (j) to prevent or lessen a serious or imminent threat to the health or safety of a person if the health care provider, in good faith, believes the disclosure is necessary to prevent or lessen the threat. For purposes of this paragraph, a request from the Oregon Public Guardian and Conservator for disclosure under this paragraph for the purposes of conducting a needs assessment, or the good faith belief and disclosure of the health care provider under this paragraph, are presumed to be situations that will prevent or lessen a serious and imminent threat to the health or safety of the person.

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

SECTION 3. ORS 125.685 is amended to read:

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

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

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

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

(3) Volunteers:

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

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

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

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

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

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

SECTION 4. ORS 125.687 is amended to read:

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

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

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

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

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

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

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

SECTION 6. For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, the Oregon Public Guardian and Conservator may require the fingerprints of an employee of the Oregon Public Guardian and Conservator, an applicant for employment with the Oregon Public Guardian and Conservator or a volunteer or party under contract with the Oregon Public Guardian and Conservator.

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

(a) Moneys appropriated or otherwise transferred to the fund by the Legislative Assembly;

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

(c) Amounts donated to the fund;

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

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

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

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

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

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

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

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

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

(3) The Oregon Public Guardian and Conservator may establish subaccounts within the Oregon Public Guardian and Conservator Protected Person Trust Account when the Oregon Public Guardian and Conservator determines that subaccounts are necessary or desirable. Interest earned by the account or subaccounts, if any, shall accrue to the benefit of the account or subaccounts.

SECTION 9. ORS 125.242 is amended to read:

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

SECTION 10. ORS 441.406 is amended to read:

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

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

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

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

(d) Provide information to public agencies about the problems of residents of residential facilities.

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

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

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

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

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

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

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

(j) Specify qualifications and duties of designees.

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

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

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

(n) [*Supervise, monitor,*] Advise and support the Oregon Public Guardian and Conservator appointed under ORS 125.678.

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

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

SECTION 11. ORS 441.419 is amended to read:

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

SECTION 12. ORS 125.675 is amended to read:

125.675. For purposes of ORS 125.675 to 125.687:

(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 a 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 ORS 125.675 to 125.687.

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

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

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Tina Kotek, Speaker of House

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Kate Brown, Governor

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Dennis Richardson, Secretary of State