

Senate Bill 57

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 **as introduced**.

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.

Establishes Oregon Public Guardian and Conservator Fund.

A BILL FOR AN ACT

1
2 Relating to the Oregon Public Guardian and Conservator; creating new provisions; and amending
3 125.242, 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,*
18 *supervision and control of the Long Term Care Ombudsman*].

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

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

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

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

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

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

9 [(5)] **(5)(a)** The Oregon Public Guardian and Conservator may delegate the exercise or discharge
 10 of any power, duty or function that is vested in or imposed by law upon the Oregon Public Guardian
 11 and Conservator to a deputy public guardian and conservator, staff person or volunteer hired by or
 12 under contract with the Oregon Public Guardian and Conservator as appropriate for the purpose
 13 of conducting an official act in the name of the Oregon Public Guardian and Conservator. The offi-
 14 cial act of any person acting in the name of the Oregon Public Guardian and Conservator by the
 15 authority of the Oregon Public Guardian and Conservator is an official act of the Oregon Public
 16 Guardian and Conservator.

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

21 (6) The Oregon Public Guardian and Conservator may solicit and accept gifts, grants and do-
 22 nations from public and private sources for the purpose of carrying out the provisions of ORS
 23 125.675 to 125.687, which moneys shall be deposited in the [*Long Term Care Ombudsman Account*
 24 *established under ORS 441.419*] **Oregon Public Guardian and Conservator Fund established un-**
 25 **der section 8 of this 2017 Act.**

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

27 125.683. (1) In providing public guardian and conservator services, the Oregon Public Guardian
 28 and Conservator shall conduct a needs assessment for a person who claims or is claimed not to have
 29 relatives or friends willing or able to assume the duties of guardianship or conservatorship and who
 30 claims or is claimed to lack the financial resources to obtain a private guardian or conservator. The
 31 purpose of the needs assessment is to determine the person's eligibility to receive public guardian
 32 and conservator services and to determine the appropriateness of filing a petition for the appoint-
 33 ment of a fiduciary or other pleading on behalf of the person in a court having probate jurisdiction.
 34 The **needs** assessment shall, at a minimum:

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

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

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

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

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

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

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

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

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

7 **(2) The needs assessment conducted under subsection (1) of this section shall be based**
 8 **on information that is available or supplied to the Oregon Public Guardian and Conservator**
 9 **at the time of the assessment. A determination that a person is eligible to receive public**
 10 **guardian and conservator services may be based on a determination of probable or future**
 11 **need as compared to present and existing need in cases where sufficient information is de-**
 12 **layed, unavailable or cannot be obtained without a court order or for reasons of**
 13 **confidentiality.**

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

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

27 [(2)] **(4) For each person determined to be eligible for public guardian and conservator services**
 28 **under this section, the Oregon Public Guardian and Conservator shall develop a written plan setting**
 29 **forth the type and duration of services to be provided by the Oregon Public Guardian and**
 30 **Conservator. The plan shall be included in any nonemergency petition or pleading filed with the**
 31 **court.**

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

33 125.685. (1) A deputy public guardian and conservator providing public guardian and conservator
 34 services under ORS 125.675 to 125.687[:]

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

37 [(b) *If appointed by the court as public guardian and conservator for a client, shall serve as pro-*
 38 *vided in this chapter and ORS 127.005 and 127.015, except as expressly stated otherwise in ORS*
 39 *125.675 to 125.687.*]

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

43 (3) Volunteers:

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

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

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

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

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

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

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

12 125.687. (1) A court may not appoint the Oregon Public Guardian and Conservator [*or a deputy*
 13 *public guardian and conservator*] as a fiduciary for a person unless the Oregon Public Guardian and
 14 Conservator [*or deputy public guardian and conservator*] has petitioned for or consented to the ap-
 15 pointment. **If appointed as a fiduciary by the court, the Oregon Public Guardian and**
 16 **Conservator, and any deputy public guardian and conservator designated to act on behalf of**
 17 **the Oregon Public Guardian and Conservator, shall serve as provided in this chapter and ORS**
 18 **127.005 and 127.015, except as expressly stated otherwise in ORS 125.675 to 125.687 or by order**
 19 **of the court.**

20 (2) The Oregon Public Guardian and Conservator shall file an official bond in [*such amount as*
 21 *may be fixed from time to time by the Long Term Care Ombudsman*] **an amount established by the**
 22 **court.** The bond shall inure to the joint benefit of the several public guardianship and conserva-
 23 torship estates in which the Oregon Public Guardian and Conservator is providing services, but a
 24 bond is not required to be filed in individual estates.

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

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

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

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

38 **SECTION 5.** Sections 6, 7 and 8 of this 2017 Act are added to and made a part of ORS
 39 **125.675 to 125.687.**

40 **SECTION 6.** (1) **As part of the public guardian and conservator services provided by the**
 41 **Oregon Public Guardian and Conservator after appointment as a fiduciary for a protected**
 42 **person by the court, the Oregon Public Guardian and Conservator may establish a bank ac-**
 43 **count on behalf of the protected person at a financial institution as defined in ORS 706.008**
 44 **for the purpose of managing the financial affairs of the protected person. The Oregon Public**
 45 **Guardian and Conservator may be an account holder on an account established under this**

1 subsection but the account shall be held in the name and on behalf of the protected person.
2 If the protected person is incapacitated, the consent of the protected person is not required
3 to establish an account under this subsection.

4 (2) The Oregon Public Guardian and Conservator has all rights and privileges of an ac-
5 count holder for an account established under this section including, but not limited to, ac-
6 cess to information about the account or to moneys in the account and authorization to
7 make deposits to or withdrawals from the account. If the protected person is incapacitated,
8 the consent of the protected person is not required for actions taken by the Oregon Public
9 Guardian and Conservator under this subsection.

10 (3) A financial institution may rely upon a court order appointing the Oregon Public
11 Guardian and Conservator as a fiduciary for a protected person that includes a finding that
12 the protected person is incapacitated in establishing, maintaining and monitoring an account
13 under this section. A financial institution that establishes an account under this section is
14 not required to ensure that moneys paid out of the account are properly applied.

15 **SECTION 7.** (1) The Oregon Public Guardian and Conservator shall perform a criminal
16 background check on any person employed by or under contract with the Oregon Public
17 Guardian and Conservator and on volunteers as provided in this section.

18 (2) Upon the request of the Oregon Public Guardian and Conservator, and in compliance
19 with procedures adopted by the Department of State Police under ORS 181A.230, the De-
20 partment of State Police shall furnish to the Oregon Public Guardian and Conservator such
21 information on a subject individual as the Department of State Police may have in its pos-
22 session, including but not limited to manual or computerized criminal offender information.
23 With the approval of the Department of State Police, a local law enforcement agency may
24 furnish the information described in this subsection to the Oregon Public Guardian and
25 Conservator.

26 (3)(a) Subsequent to furnishing the information required under subsection (2) of this
27 section, the Department of State Police shall conduct nationwide criminal records checks of
28 the subject individual through the Federal Bureau of Investigation by use of the subject
29 individual's fingerprints and shall report the results to the Oregon Public Guardian and
30 Conservator. In accordance with the procedures of the Department of State Police, a local
31 law enforcement agency may conduct the criminal records check described in this paragraph
32 if the local law enforcement agency has received approval under subsection (2) of this sec-
33 tion.

34 (b) The Department of State Police or a local law enforcement agency may not transfer
35 the fingerprint card used to conduct a criminal records check unless the public agency or
36 person receiving the fingerprint card agrees to destroy the fingerprint card or to return the
37 fingerprint card to the Department of State Police or local law enforcement agency.

38 (c) If a public agency or person returns a fingerprint card to the Department of State
39 Police or local law enforcement agency, the Department of State Police or local law
40 enforcement agency shall destroy the fingerprint card or return the fingerprint card to the
41 subject individual. The Department of State Police or local law enforcement agency may not
42 keep a record of the fingerprints.

43 **SECTION 8.** (1) The Oregon Public Guardian and Conservator Fund is established in the
44 State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon
45 Public Guardian and Conservator Fund shall be credited to the fund. The fund consists of:

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

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

4 (c) Amounts donated to the fund;

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

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

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

9 (3) Moneys in the fund may be invested and reinvested as provided in ORS 293.701 to
 10 293.857.

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

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

15 125.242. ORS 125.221 and 125.240 do not apply to a financial institution, as defined in ORS
 16 706.008, [or] a trust company, as defined in ORS 706.008 **or the Oregon Public Guardian and**
 17 **Conservator in proceedings under ORS 125.675 to 125.687.**

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

19 441.406. (1) The office of the Long Term Care Ombudsman shall carry out the following duties:

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

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

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

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

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

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

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

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

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

43 (C) Contract with the state protection and advocacy system described in ORS 192.517 (1) to
 44 provide services and assistance to persons who are prospective or current residents of a mental
 45 health treatment facility or of a residential facility for individuals with developmental disabilities

1 when the system has received a notice regarding the person pursuant to ORS 125.060 (7)(c) or (8)(c).

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

4 (j) Specify qualifications and duties of designees.

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

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

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

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

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

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

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

19 441.419. The Long Term Care Ombudsman Account is established in the State Treasury, separate
20 and distinct from the General Fund. All miscellaneous receipts, gifts and federal and other grants
21 received by the Long Term Care Ombudsman shall be deposited into the Long Term Care Ombuds-
22 man Account and are continuously appropriated to the Long Term Care Ombudsman for carrying
23 out the responsibilities of the Long Term Care Ombudsman [*and the Oregon Public Guardian and*
24 *Conservator*].

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

26 125.675. For purposes of ORS 125.675 to 125.687:

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

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

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