

**ALTERNATIVE TO 2019 SENATE BILL 30
Proposed by Warren Deras**

SUMMARY

The following summary is prepared by the proponent of the measure as a brief statement of the essential features of the measure and is not a part of the body thereof subject to consideration.

Requires guardian to consult with and inform protected person regarding significant decisions, clarifies procedures for resolving objections to decisions of guardian, reduces court fee for requesting notice in protective proceedings, and repeals requirement for notice to court of change of protected person's abode.

A BILL FOR AN ACT

Relating to guardianships; creating new provisions; and amending ORS 125.225, 125.320 and 125.325.

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

SECTION 1. Sections 2 and 3 of this 2019 Act are added to and made a part of ORS chapter 125.

SECTION 2. (1) Except as ordered by the court, a guardian for an adult protected person shall to the extent practicable and reasonable:

(a) Consult with the protected person in making significant decisions respecting the protected person; and

(b) Upon making a significant decision respecting the protected person inform the protected person of the decision.

(2) In determining the manner and extent to which it is practicable to consult with or inform a protected person under this section a guardian may consider:

(a) The extent to which the protected person can receive and understand the information, but the guardian is not excused from consulting with or giving notice to the protected person solely for the reason that the guardian expects that the protected person will unreasonably disagree with the guardian's decision;

(b) The existence of urgent circumstances requiring that the decision be made and implemented promptly; and

(c) Such other factors as the guardian considers reasonable in the circumstances.

(3) A protected person may object orally to a decision of the guardian in the same manner as the protected person may object to a motion under ORS 125.075(2). The court shall notify the guardian and schedule a hearing on the objection in the same manner as if the objection were a motion by the protected person for disapproval of the guardian's decision. The guardian shall give notice of the hearing to the persons and in the manner specified by ORS 125.075(3) for a notice on an objection.

SECTION 3. (1) As used in this section, "placement" means a placement of an adult protected person in a mental health treatment facility, a nursing home or another residential facility.

(2)(a) Except as provided in subsection (3) or (4) of this section, not less than 15 days before making a placement the guardian shall file with the court a notice of the placement and shall serve a copy of the notice on each of the persons specified in ORS 125.060 (3) and (8) in the manner provided for serving a motion under ORS 125.065.

(b) In addition to the requirements of ORS 125.070 (1) the notice given to the protected person under this section must clearly indicate the manner in which the protected person may object to the proposed placement.

(3) A guardian may make a placement without notice, hearing or court order in either of the following circumstances:

(A) The protected person's placement is the first placement following the guardian's appointment and the

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 petition for appointment included statement of intent to make a placement in the same facility or placement
2 option as the actual placement arranged; or

3 (B) The protected person desires the placement and the guardian determines that delaying the protected
4 person's placement may jeopardize securing the new placement;

5 (4)(a) A guardian may make a placement earlier than 15 days after filing and serving the notice required
6 under subsection (2) of this section if the notice is filed and served with as much advance notice as practicable,
7 but in no event later than two judicial days following the placement, in either of the following circumstances:

8 (A) The protected person's placement is the first placement following the guardian's appointment and the
9 petition for appointment included statement of intent to place the protected person in the same type of facility
10 or placement option as the actual placement arranged; or

11 (B) The guardian determines that the protected person's placement must occur in less than 15 days to protect
12 the health, welfare or safety of the protected person or others.

13 (b) If the guardian files and serves the notice later than 15 days prior to placement of the protected person
14 under this subsection, the guardian must describe in the notice the circumstances necessitating the protected
15 person's placement.

16 (c) The guardian may make a placement prior to a hearing on any objection if the placement is made due
17 to circumstances described in this subsection.

18 (5)(a) The court shall schedule a hearing on any objection to a notice made in the manner provided by ORS
19 125.075 for presenting objections to a petition or motion in a protective proceeding.

20 (b) If no objection is made, the guardian may make a placement without further court order.

21 (6) The requirement under this section that notice be served on an attorney for a protected person under
22 ORS 125.060 (8) does not impose any responsibility on the attorney receiving the notice to represent the adult
23 protected person in the protective proceeding.

24 **SECTION 4.** ORS 125.060 is amended to read:

25 125.060(1) The notices required by this section must be given to all persons whose identities and addresses can be
26 ascertained in the exercise of reasonable diligence by the person required to give the notice.

27 (2) Notice of the filing of a petition for the appointment of a fiduciary or entry of other protective order must be
28 given by the petitioner to the following persons:

29 (a) The respondent, if the respondent has attained 14 years of age.

30 (b) The spouse, parents and adult children of the respondent.

31 (c) If the respondent does not have a spouse, parent or adult child, the person or persons most closely related to the
32 respondent.

33 (d) Any person who is cohabiting with the respondent and who is interested in the affairs or welfare of the
34 respondent.

35 (e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the respondent by a court
36 of any state, any trustee for a trust established by or for the respondent, any person appointed as a health care
37 representative under the provisions of ORS 127.505 to 127.660 and any person acting as attorney-in-fact for the
38 respondent under a power of attorney.

39 (f) If the respondent is a minor, the person who has exercised principal responsibility for the care and custody of
40 the respondent during the 60-day period before the filing of the petition.

41 (g) If the respondent is a minor and has no living parents, any person nominated to act as fiduciary for the minor in
42 a will or other written instrument prepared by a parent of the minor.

43 (h) If the respondent is receiving moneys paid or payable by the United States through the Department of Veterans
44 Affairs, a representative of the United States Department of Veterans Affairs regional office that has responsibility for

1 the payments to the protected person.

2 (i) If the respondent is receiving moneys paid or payable for public assistance provided under ORS chapter 411 by
3 the State of Oregon through the Department of Human Services, a representative of the department.

4 (j) If the respondent is receiving moneys paid or payable for medical assistance provided under ORS chapter 414
5 by the State of Oregon through the Oregon Health Authority, a representative of the authority.

6 (k) If the respondent is committed to the legal and physical custody of the Department of Corrections, the Attorney
7 General and the superintendent or other officer in charge of the facility in which the respondent is confined.

8 (L) If the respondent is a foreign national, the consulate for the respondent's country.

9 (m) Any other person that the court requires.

10 (3) Notice of a motion for the termination of the protective proceedings, for removal of a fiduciary, for modification
11 of the powers or authority of a fiduciary, for approval of a fiduciary's actions or for protective orders in addition to those
12 sought in the petition must be given by the person making the motion to the following persons:

13 (a) The protected person, if the protected person has attained 14 years of age.

14 (b) Any person who has filed a request for notice in the proceedings.

15 (c) Except for a fiduciary who is making a motion, any fiduciary who has been appointed for the protected person.

16 (d) If the protected person is receiving moneys paid or payable by the United States through the Department of
17 Veterans Affairs, a representative of the United States Department of Veterans Affairs regional office that has
18 responsibility for the payments to the protected person.

19 (e) If the protected person is committed to the legal and physical custody of the Department of Corrections, the
20 Attorney General and the superintendent or other officer in charge of the facility in which the protected person is
21 confined.

22 (f) Any other person that the court requires.

23 (4) A request for notice under subsection (3)(b) of this section must be in writing and include the name, address and
24 phone number of the person requesting notice. A copy of the request must be mailed by the person making the request
25 to the petitioner or to the fiduciary if a fiduciary has been appointed. The original request must be filed with the court.
26 The person filing the request must pay the fee specified by ORS [21.135] **21.145**.

27 (5) A person who files a request for notice in the proceedings in the manner provided by subsection (4) of this
28 section is entitled to receive notice from the fiduciary of any motion specified in subsection (3) of this section and of any
29 other matter to which a person listed in subsection (2) of this section is entitled to receive notice under a specific
30 provision of this chapter.

31 (6) If the Department of Human Services is nominated as guardian for the purpose of consenting to the adoption of
32 a minor, the notice provided for in this section must also be given to the minor's brothers, sisters, aunts, uncles and
33 grandparents.

34 (7) In addition to the requirements of subsection (2) of this section, notice of the filing of a petition for the
35 appointment of a guardian for a person who is alleged to be incapacitated must be given by the petitioner to the following
36 persons:

37 (a) Any attorney who is representing the respondent in any capacity.

38 (b) If the respondent is a resident of a nursing home or residential facility, or if the person nominated to act as
39 fiduciary intends to place the respondent in a nursing home or residential facility, the office of the Long Term Care
40 Ombudsman.

41 (c) If the respondent is a resident of a mental health treatment facility or a residential facility for individuals with
42 developmental disabilities, or if the person nominated to act as fiduciary intends to place the respondent in such a facility,
43 the system described in ORS 192.517 (1).

44 (8) In addition to the requirements of subsection (3) of this section, in a protective proceeding in which a guardian

1 has been appointed, notice of the motions specified in subsection (3) of this section, and the address, telephone number
2 and other contact information of the protected person, must be given by the person making the motion to the following
3 persons:

4 (a) Any attorney who represented the protected person at any time during the protective proceeding.

5 (b) If the protected person is a resident of a nursing home or residential facility, or if the motion seeks authority to
6 place the protected person in a nursing home or residential facility, the office of the Long Term Care Ombudsman.

7 (c) If the protected person is a resident of a mental health treatment facility or a residential facility for individuals
8 with developmental disabilities, or if the motion seeks authority to place the protected person in such a facility, the
9 system described in ORS 192.517 (1).

10 (9) A respondent or protected person may not waive the notice required under this section.

11 (10) The requirement that notice be served on an attorney for a respondent or protected person under subsection
12 (7)(a) or (8)(a) of this section does not impose any responsibility on the attorney receiving the notice to represent the
13 respondent or protected person in the protective proceeding.

14 **SECTION 5.** ORS 125.075 is amended to read:

15 125.075. (1) Any person who is interested in the affairs or welfare of a respondent or protected person may present
16 objections to a petition or to a motion in a protective proceeding, including but not limited to:

17 (a) Any person entitled to receive notice under ORS 125.060.

18 (b) Any stepparent or stepchild of the respondent or protected person.

19 (c) Any other person the court may allow.

20 (2) Objections to a petition may be either written or oral. Objections to a motion must be in writing, except that a
21 protected person may object orally in person or by other means that are intended to convey the protected person's
22 objections to the court. Objections to a petition or to a motion must be made or filed with the court within 15 days after
23 notice of the petition or motion is served or mailed in the manner prescribed by ORS 125.065. The court shall designate
24 the manner in which oral objections may be made that ensures that a protected person will have the protected person's
25 objection presented to the court. The clerk of the court shall provide a means of reducing the oral objections to a signed
26 writing for the purpose of filing the objection.

27 (3) If objections are presented by any of the persons listed in subsection (1) of this section, the court shall schedule
28 a hearing on the objections. The petitioner or person making the motion shall give notice to all persons entitled to notice
29 under ORS 125.060 (3) of the date, time and place of the scheduled hearing at least 15 days before the date set for
30 hearing. Notice shall be given in the manner prescribed by ORS 125.065.

31 (4) Notwithstanding ORS [21.170] **21.175**, the court may not charge or collect any fee for the filing of objections
32 under the provisions of this section or for the filing of any motion from any of the following:

33 (a) The respondent or the protected person;

34 (b) The office of the Long Term Care Ombudsman; or

35 (c) The system described in ORS 192.517 (1).

36 (5) The court for good cause shown may provide for a different method or time of giving notice under subsection
37 (3) of this section.

38 **SECTION 6.** ORS 125.225 is amended to read:

39 125.225. (1) A court shall remove a fiduciary whenever that removal is in the best interests of the protected person.

40 (2) In addition to any other grounds, the court may remove a conservator if the conservator fails to use good
41 business judgment and diligence in the management of the estate under the control of the conservator. The court may
42 apply a higher standard of care to a conservator who claims to have greater than ordinary skill or expertise.

43 (3) The court may remove a guardian if the guardian [*changes the abode of the adult protected person*] :

44 (a) **Fails to consult with or inform the protected person as required by section 2 of this 2019 Act;** or

1 (b) Places [the] **an adult** protected person in a mental health treatment facility, a nursing home or other residential
2 facility and [:

3 (a) Failed to disclose in the petition for appointment that the guardian intended to make the placement; or

4 [(b)] failed to comply with [ORS 125.320 (3)] **section 3 of this 2019 Act** before making the placement.

5 (4) On termination of the authority of a fiduciary, an interim fiduciary may be appointed by the court to serve for
6 a period not to exceed 60 days. An interim fiduciary under this subsection may be appointed by the court without the
7 appointment of a visitor, additional notices or any other additional procedure, except as may be determined necessary
8 by the court.

9 (5) Upon termination of the authority of a fiduciary, the court may appoint a successor fiduciary. A petition for
10 appointment as successor fiduciary must be filed in the same manner as provided for an original petition, and is subject
11 to all provisions applicable to an original petition for the appointment of a fiduciary. No filing fee shall be charged or
12 collected for the filing of a petition for the appointment of a successor fiduciary.

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

14 125.300. (1) A guardian may be appointed for an adult person only as is necessary to promote and protect the well-
15 being of the protected person. A guardianship for an adult person must be designed to encourage the development of
16 maximum self-reliance and independence of the protected person and may be ordered only to the extent necessitated by
17 the person's actual mental and physical limitations.

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

19 (3) A protected person retains all legal and civil rights provided by law except those that have been expressly limited
20 by court order, [or] **those** specifically granted to the guardian by the court, **or those granted to the guardian by ORS**
21 **125.315 and not expressly limited by court order.** Rights retained by the person include but are not limited to the right
22 to contact and retain counsel and to have access to personal records.

23 **SECTION 8.** ORS 125.320 is amended to read:

24 125.320. (1) A guardian may not authorize the sterilization of the protected person.

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

28 **(3) Except as provided in section 3 of this 2019 Act, a guardian may not place an adult protected person in**
29 **a mental health treatment facility, a nursing home or another residential facility without prior court order**
30 **approving the placement.**

31 [(3)(a) Before a guardian may change the abode of an adult protected person or place an adult protected person
32 in a mental health treatment facility, a nursing home or other residential facility, the guardian must file with the court
33 and serve a statement declaring that the guardian intends to make the change of abode or placement in the manner set
34 forth in paragraph (b) of this subsection.

35 (b)(A) The statement must be filed and served in the manner provided for serving a motion under ORS 125.065 to
36 the persons specified in ORS 125.060 (3) and (8) at least 15 days prior to each change of abode or placement of the
37 protected person.

38 (B) When the guardian determines that the change of abode or placement must occur in less than 15 days to protect
39 the immediate health, welfare or safety of the protected person or others, the statement shall declare that the change
40 of abode or placement must occur in less than 15 days to protect the immediate health, welfare or safety of the protected
41 person or others. The statement must be filed and served with as much advance notice as possible, in no event later than
42 two judicial days after the change of abode or placement occurs. The guardian may make the change of abode or
43 placement prior to a hearing on any objection.

44 (c) In addition to the requirements of ORS 125.070 (1), the notice given to the protected person must clearly

1 indicate the manner in which the protected person may object to the proposed placement.

2 (d) The court shall schedule a hearing on any objection to a statement filed under this subsection made in the
3 manner provided by ORS 125.075 for presenting objections to a petition or motion in a protective proceeding. If no
4 objection is made, the guardian may change the abode of the adult protected person or place the adult protected person
5 in a mental health treatment facility, a nursing home or other residential facility without further court order.

6 (e) The requirement that notice be served on an attorney for a protected person under ORS 125.060 (8) does not
7 impose any responsibility on the attorney receiving the notice to represent the protected person in the protective
8 proceeding.]

9 **SECTION 9.** ORS 125.325 is amended to read:

10 125.325. Within 30 days after each anniversary of appointment, a guardian for an adult protected person shall file
11 with the court a written report. The report must include a declaration under penalty of perjury in the form required by
12 ORCP 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside the
13 boundaries of the United States. Copies of the guardian’s report must be given to those persons specified in ORS 125.060
14 (3). The report shall be in substantially the following form:

15 _____

16 IN THE _____ COURT _____ COUNTY,
17 STATE OF OREGON
18 DEPARTMENT OF PROBATE

19 In the Matter of the) No. _____
20 Guardianship of)
21 _____,)
22 (Name of protected)
23 person))
24 A Protected)
25 Person.)

26 **GUARDIAN’S REPORT**

27 I am the guardian for the person named above, and I make the following report to the court as required by law:

28 1. My name is _____.

29 2. My address and telephone number are:

30 _____

31 _____

32 Phone _____

33 3. The name, if applicable, and address of the place where the person now resides are:

34 _____

35 _____

36 4. The person is currently residing at the following type of facility or residence:

37 _____

38 5. The person is currently engaged in the following programs and activities and receiving the following services
39 (brief description):

40 _____

41 6. I was paid for providing the following items of lodging, food or other services to the person:

42 _____

43 _____

44 7. The name of the person primarily responsible for the care of the person at the person’s place of residence is:

1 _____
2 8. The name and address of any hospital or other institution where the person is now admitted on a temporary or
3 permanent basis are:

4 _____
5 _____
6 9. The person's physical condition is as follows (brief description):
7 _____
8 _____

9 10. The person's mental condition is as follows (brief description):
10 _____
11 _____

12 11. Facts that support the conclusion that the person is incapacitated include the following:
13 _____

14 12. I made the following contacts with the person during the past year (brief description):
15 _____

16 13. I made the following major decisions on behalf of the person during the past year (brief description):
17 _____

18 **I acknowledge that in making significant decisions on behalf of the person I am required by law to consult with**
19 **and inform the person regarding those decisions to the extent practicable and reasonable under the**
20 **circumstances.**

21 14. I believe the guardianship should or should not continue because:
22 _____

23 15. At the time of my last report, I held the following amount of money on behalf of the person: \$ _____. Since
24 my last report, I received the following amount of money on behalf of the person: \$ _____. I spent the following amount
25 of money on behalf of the person: \$ _____. I now hold the following amount of money on behalf of the person: \$ _____.
26

27 16. A true copy of this report will be given to the person, any conservator for the person, and any other person who
has requested notice.

28 17. Since my last report:

29 (a) I have been convicted of the following crimes (not including traffic violations):
30 _____

31 (b) I have filed for or received protection from creditors under the Federal Bankruptcy Code (yes or no): _____.

32 (c) I have had a professional or occupational license revoked or suspended (yes or no): _____.

33 (d) I have had my driver license revoked or suspended (yes or no): _____.

34 18. Since my last report, I have delegated the following powers over the protected person for the following periods
35 of time (provide name of person powers delegated to):
36 _____

37 I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is
38 made for use as evidence in court and is subject to penalty for perjury.

39 Dated this ___ day of _____, 2__.

40 _____
41 Guardian

42 **NOTICE: ALL GUARDIANS ARE SUBJECT TO COURT SUPERVISION. THE PROTECTED PERSON**
43 **OR ANY OTHER PERSON INTERESTED IN THE AFFAIRS OR WELFARE OF THE PROTECTED PERSON**
44 **WHO IS THE SUBJECT OF THIS REPORT WHO HAS CONCERNS ABOUT THIS REPORT OR THE**

1 GUARDIAN'S PERFORMANCE MAY CONTACT THE COURT **IN WRITING** AS FOLLOWS:

2 _____
3 _____
4 _____
5 _____
6 _____

7 **IN ADDITION THE PROTECTED PERSON MAY CONTACT THE COURT ORALLY AS FOLLOWS:**

8 _____
9 _____
10 _____
11 _____
12 _____

13 **IF THE PROTECTED PERSON INFORMS THE COURT OF ANY OBJECTIONS TO DECISIONS OR**
14 **ACTIONS OF THE GUARDIAN, A HEARING WILL BE SCHEDULED. NO FEE WILL BE CHARGED TO**
15 **THE PROTECTED PERSON FOR THE FILING OF OBJECTIONS.**

16 _____