

House Bill 3000

Sponsored by Representative NOBLE; Representatives SPRENGER, WITT, Senator GELSER (at the request of Jacki Harris)

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**.

Directs Department of Human Services to deduct expenses for medically necessary guardianship services from recipient's income when calculating eligibility for assistance provided by Oregon Supplemental Income Program.

Describes expenses for medically necessary guardianship services to include court-approved fees, costs and expenses incurred by recipient, including expenses for guardian services necessary for guardian to provide informed consent to medical treatment on recipient's behalf and, in certain situations, fees and costs incurred by recipient initiating protective proceeding.

Requires notice of motion to approve expenses for medically necessary guardianship services to be provided to department.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to medically necessary guardianship expenses; creating new provisions; amending ORS
3 125.060 and 411.704; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 411.**

6 **SECTION 2. (1) If a recipient is a protected person, as defined by ORS 125.005, for the**
7 **purposes of calculating the recipient's eligibility for assistance provided by the Oregon Sup-**
8 **plemental Income Program, the Department of Human Services shall deduct from the**
9 **recipient's income the amounts of guardianship expenses incurred for medically necessary**
10 **guardianship services.**

11 **(2) Services are medically necessary guardianship services under this section if the ser-**
12 **vices are necessary for the recipient to receive nonemergent medical care and services from**
13 **licensed medical service providers.**

14 **(3) Expenses incurred for medically necessary guardianship services include the following**
15 **expenses in the amounts approved by the court under ORS 125.480:**

16 **(a) If the protective proceeding was initiated under ORS chapter 125 to appoint a**
17 **fiduciary to provide medically necessary guardianship services on the recipient's behalf,**
18 **court filing fees, attorney fees and court visitor fees incurred by the recipient and related**
19 **to initiating the protective proceeding; and**

20 **(b) Other reasonable fees, costs and expenses incurred by the recipient for medically**
21 **necessary guardianship services including, but not limited to, the following guardian services:**

22 **(A) Conferring with members of the recipient's care team and licensed medical service**
23 **providers regarding the recipient's medical condition and medical service and care options,**
24 **potential benefits and risks of the care options, and care options following emergent care and**
25 **services.**

26 **(B) Accompanying the recipient to medical appointments to provide supports to the re-**

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 **recipient and act on the recipient's behalf regarding medical services.**

2 **(C) Providing informed consent to receive or decline medical services, including medically**
3 **necessary relocation, and other reasonable actions related to making informed consent de-**
4 **isions.**

5 **(D) Completing necessary documentation to enable the recipient to receive medically**
6 **necessary services.**

7 **(E) Completing documentation required for the recipient to receive Oregon Supplemental**
8 **Income Program assistance.**

9 **SECTION 3.** ORS 411.704 is amended to read:

10 411.704. As used in this section and ORS 411.141, 411.706 and 411.708 **and section 2 of this 2019**

11 **Act:**

12 (1) "Assistance" means:

13 (a) Cash payments or noncash benefits provided under ORS 411.706 to or on behalf of a needy
14 person who is a resident of this state and who is blind, has a disability or is 65 years of age or older;
15 or

16 (b) Special need allowances for one-time or ongoing needs.

17 (2) "Blind" means having:

18 (a) Visual acuity with corrective lenses that does not exceed 20/200 in the better eye, or vision
19 in the better eye that is restricted to a field that subtends an angle of not greater than 20 degrees;
20 or

21 (b) An equivalent visual impairment, as determined by the Department of Human Services after
22 examination by:

23 (A) An ophthalmologist licensed to practice medicine and surgery in Oregon or in another state
24 or territory of the United States having qualifications substantially similar to those of the State of
25 Oregon; or

26 (B) An optometrist licensed and practicing in Oregon or in another state or territory of the
27 United States having qualifications substantially similar to those of the State of Oregon.

28 (3) "Disability" means a physical or mental impairment that:

29 (a) Is likely to continue without substantial improvement for no less than 12 months or to result
30 in death; and

31 (b) Prevents performance of substantially all the ordinary duties of occupations in which a per-
32 son not having the physical or mental impairment is capable of engaging, having due regard to the
33 training, experience and circumstances of the individual with the physical or mental impairment.

34 (4)(a) "Income" means net income in cash or in kind available to the applicant or recipient, the
35 receipt of which is regular and predictable enough to afford security in the sense that the applicant
36 or recipient may rely upon it to contribute toward meeting the needs of the applicant or recipient.

37 (b) "Income" does not include:

38 (A) Earnings or other income that may be exempted in compliance with federal laws and regu-
39 lations; or

40 (B) Premiums on life insurance policies, whether paid by the applicant, recipient or other person.

41 (5) "Recipient" means a person who is receiving assistance provided by the Oregon Supple-
42 mental Income Program.

43 (6) "Resources" means an asset that may be applied toward meeting the needs of the applicant
44 or recipient, including real and personal property holdings contributing to the maintenance of the
45 applicant or recipient or representing investments or savings that may be drawn upon for mainte-

1 nance purposes.

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

3 125.060. (1) The notices required by this section must be given to all persons whose identities
4 and addresses can be ascertained in the exercise of reasonable diligence by the person required to
5 give the notice.

6 (2) Notice of the filing of a petition for the appointment of a fiduciary or entry of other pro-
7 tective order must be given by the petitioner to the following persons:

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

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

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

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

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

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

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

22 (h) If the respondent is receiving moneys paid or payable by the United States through the De-
23 partment of Veterans Affairs, a representative of the United States Department of Veterans Affairs
24 regional office that has responsibility for the payments to the protected person.

25 (i) If the respondent is receiving moneys paid or payable for public assistance provided under
26 ORS chapter 411 by the State of Oregon through the Department of Human Services, a represen-
27 tative of the department.

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

31 (k) If the respondent is committed to the legal and physical custody of the Department of Cor-
32 rections, the Attorney General and the superintendent or other officer in charge of the facility in
33 which the respondent is confined.

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

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

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

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

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

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

44 (d) If the protected person is receiving moneys paid or payable by the United States through the
45 Department of Veterans Affairs, a representative of the United States Department of Veterans Af-

1 fairs regional office that has responsibility for the payments to the protected person.

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

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

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

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

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

18 (7) In addition to the requirements of subsection (2) of this section, notice of the filing of a pe-
19 tition for the appointment of a guardian for a person who is alleged to be incapacitated must be
20 given by the petitioner to the following persons:

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

22 (b) If the respondent is a resident of a nursing home or residential facility, or if the person
23 nominated to act as fiduciary intends to place the respondent in a nursing home or residential fa-
24 cility, the office of the Long Term Care Ombudsman.

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

28 (8) In addition to the requirements of subsection (3) of this section, in a protective proceeding
29 in which a guardian has been appointed, notice of the motions specified in subsection (3) of this
30 section, and the address, telephone number and other contact information of the protected person,
31 must be given by the person making the motion to the following persons:

32 (a) Any attorney who represented the protected person at any time during the protective pro-
33 ceeding.

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

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

40 **(d) If the protected person is receiving moneys paid or payable for public assistance**
41 **provided under ORS chapter 411 by the State of Oregon through the Department of Human**
42 **Services and the motion seeks approval of expenses for medically necessary guardianship**
43 **services for the purposes of section 2 of this 2019 Act, a representative of the department.**

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

45 (10) The requirement that notice be served on an attorney for a respondent or protected person

1 under subsection (7)(a) or (8)(a) of this section does not impose any responsibility on the attorney
2 receiving the notice to represent the respondent or protected person in the protective proceeding.

3 **SECTION 5. (1) Section 2 of this 2019 Act and the amendments to ORS 125.060 and 411.704**
4 **by sections 3 and 4 of this 2019 Act become operative January 2, 2020.**

5 **(2) The Department of Human Services may take any action before the date specified in**
6 **subsection (1) of this section that is necessary for the department to exercise, on and after**
7 **the operative date specified in subsection (1) of this section, all of the functions and powers**
8 **conferred on the department by section 2 of this 2019 Act and the amendments to ORS**
9 **125.060 and 411.704 by sections 3 and 4 of this 2019 Act.**

10 **SECTION 6. This 2019 Act takes effect on the 91st day after the date on which the 2019**
11 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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