

# Senate Bill 30

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## 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**.

Permits guardian to change abode or placement of adult protected person without 15-day notice under certain circumstances.

## A BILL FOR AN ACT

1  
2 Relating to guardianships; creating new provisions; and amending ORS 125.225 and 125.320.

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

4 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 125.**

5 **SECTION 2. (1) As used in this section, "move" means a change of abode or placement**  
6 **in a mental health treatment facility, a nursing home or another residential facility.**

7 (2)(a) **When a guardian moves an adult protected person, the guardian shall file with the**  
8 **court and serve a notice of the move in the manner provided for serving a motion under ORS**  
9 **125.065 to the persons specified in ORS 125.060 (3) and (8).**

10 (b) **Except as provided in subsection (3) of this section, the guardian must file and serve**  
11 **the notice required under this subsection at least 15 days prior to each move of the protected**  
12 **person.**

13 (c) **In addition to the requirements of ORS 125.070 (1), the notice given to the protected**  
14 **person under this section must clearly indicate the manner in which the protected person**  
15 **may object to the proposed move.**

16 (3)(a) **A guardian may move an adult protected person prior to filing and serving the**  
17 **notice required under subsection (2) of this section if the notice is filed and served with as**  
18 **much advance notice as possible, but in no event later than two judicial days following the**  
19 **move, in any of the following circumstances:**

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

23 (B) **The protected person desires the move and the guardian determines that delaying the**  
24 **protected person's move may jeopardize securing the new abode or placement; or**

25 (C) **The guardian determines that the protected person's move must occur in less than**  
26 **15 days to protect the immediate health, welfare or safety of the protected person or others.**

27 (b) **If the guardian files and serves the notice less than 15 days prior to moving the pro-**  
28 **ected person under this subsection, the guardian must describe in the notice the circum-**  
29 **stances necessitating the protected person's move.**

30 (4)(a) **The court shall schedule a hearing on any objection to a notice made in the manner**

**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 provided by ORS 125.075 for presenting objections to a petition or motion in a protective  
 2 proceeding.

3 (b) The guardian may move the adult protected person prior to a hearing on any ob-  
 4 jection if the move is made due to circumstances described in subsection (3) of this section.

5 (c) If no objection is made, the guardian may move the protected person without further  
 6 court order.

7 (5) The requirement under this section that notice be served on an attorney for a pro-  
 8 tected person under ORS 125.060 (8) does not impose any responsibility on the attorney re-  
 9 ceiving the notice to represent the adult protected person in the protective proceeding.

10 **SECTION 3.** ORS 125.225 is amended to read:

11 125.225. (1) A court shall remove a fiduciary whenever that removal is in the best interests of  
 12 the protected person.

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

17 (3) The court may remove a guardian if the guardian changes the abode of the adult protected  
 18 person or places the protected person in a mental health treatment facility, a nursing home or other  
 19 residential facility and:

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

22 (b) Failed to comply with [ORS 125.320 (3)] **section 2 of this 2019 Act** before making the  
 23 placement.

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

28 (5) Upon termination of the authority of a fiduciary, the court may appoint a successor fiduciary.  
 29 A petition for appointment as successor fiduciary must be filed in the same manner as provided for  
 30 an original petition, and is subject to all provisions applicable to an original petition for the ap-  
 31 pointment of a fiduciary. No filing fee shall be charged or collected for the filing of a petition for  
 32 the appointment of a successor fiduciary.

33 **SECTION 4.** ORS 125.320 is amended to read:

34 125.320. (1) A guardian may not authorize the sterilization of the protected person.

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

38 (3) **Except as provided in section 2 of this 2019 Act, a guardian may not change an adult**  
 39 **protected person's abode or place an adult protected person in a mental health treatment**  
 40 **facility, a nursing home or another residential facility without prior court order approving**  
 41 **the change of abode or placement.**

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

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

4        *[(B) When the guardian determines that the change of abode or placement must occur in less than*  
 5 *15 days to protect the immediate health, welfare or safety of the protected person or others, the state-*  
 6 *ment shall declare that the change of abode or placement must occur in less than 15 days to protect the*  
 7 *immediate health, welfare or safety of the protected person or others. The statement must be filed and*  
 8 *served with as much advance notice as possible, in no event later than two judicial days after the*  
 9 *change of abode or placement occurs. The guardian may make the change of abode or placement prior*  
 10 *to a hearing on any objection.]*

11        *[(c) In addition to the requirements of ORS 125.070 (1), the notice given to the protected person*  
 12 *must clearly indicate the manner in which the protected person may object to the proposed placement.]*

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

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

21        **SECTION 5. Section 2 of this 2019 Act and the amendments to ORS 125.225 and 125.320**  
 22 **by sections 3 and 4 of this 2019 Act apply to moves of an adult protected person occurring**  
 23 **on or after the effective date of this 2019 Act.**