

Senate Bill 681

Sponsored by COMMITTEE ON JUDICIARY

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**.

Prescribes optional form for supported decision-making agreement. Limits liability of supporter acting under authority granted in statutory form for supported decision-making agreement and of individuals relying on supporter's authority under statutory form.

Requires court to consider supported decision-making as less restrictive alternative to protective proceeding.

Modifies notice requirements in protective proceedings to require that notice be provided to supporters under supported decision-making agreement.

Requires certain disclosures before professional supporter may enter into supported decision-making agreement.

A BILL FOR AN ACT

1
2 Relating to supported decision-making agreements; creating new provisions; and amending ORS
3 125.005, 125.055, 125.060, 125.150, 125.305, 125.680 and 343.181.

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

5 **SECTION 1. Definitions. As used in sections 1 to 10 of this 2019 Act:**

6 (1) "Health care provider" has the meaning given that term in ORS 127.505.

7 (2) "Life decisions" includes, but is not limited to, decisions regarding any of the follow-
8 ing:

9 (a) Where the person wants to live.

10 (b) With whom the person wants to live.

11 (c) The services, supports and medical care the person wants to receive.

12 (d) Where the person wants to work.

13 (e) With whom the person wants to associate.

14 (f) The educational and learning goals of the person.

15 (3) "Person with a disability" means any person who has a physical or mental impairment
16 that substantially limits one or more major life activities including, but not limited to, inde-
17 pendent living, self-direction, self-care, mobility, communication, learning, education, med-
18 ical care, financial decision-making and safety.

19 (4) "Supported decision-making" means a process of supporting and accommodating a
20 person to enable the person to make life decisions without impeding the self-determination
21 of the person.

22 (5) "Supported decision-making agreement" means an agreement between a person and
23 a supporter entered into under sections 1 to 10 of this 2019 Act.

24 (6) "Supported person" means a person who enters into a supported decision-making
25 agreement with a supporter.

26 (7) "Supporter" means an adult who enters into a supported decision-making agreement
27 with a person.

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 **SECTION 2. Policy and purpose.** It is the policy of this state that the least restrictive
 2 alternative to the appointment of a fiduciary for a person with a disability be considered
 3 prior to the initiation of a protective proceeding under ORS chapter 125. The purpose of
 4 sections 1 to 10 of this 2019 Act is to recognize supported decision-making agreements and
 5 to ensure that supported decision-making agreements are considered as a less restrictive
 6 alternative to protective proceedings under ORS chapter 125 for a person with a disability
 7 who needs assistance with life decisions.

8 **SECTION 3. Agreement not evidence of incapacity.** Execution of a supported decision-
 9 making agreement may not be used as evidence that the supported person is incapacitated,
 10 as defined in ORS 125.005, and does not preclude the supported person from acting inde-
 11 pendently of the agreement.

12 **SECTION 4. Scope of agreement.** (1) A person who is at least 18 years of age may execute
 13 a written supported decision-making agreement in which the person authorizes a supporter
 14 to do any of the following:

15 (a) Provide supported decision-making to the supported person, including assistance with
 16 understanding the options, responsibilities and consequences of the supported person's life
 17 decisions, without making those decisions on behalf of the supported person.

18 (b) Assist the supported person with accessing, collecting and obtaining information that
 19 is relevant to a given life decision, including medical, psychological, financial, education or
 20 treatment records, from any person.

21 (c) Assist the supported person with understanding the information described in para-
 22 graph (b) of this subsection.

23 (d) Assist the supported person with communicating the supported person's decisions to
 24 appropriate persons.

25 (2) A supporter does not have authority to do any of the following:

26 (a) Act as a surrogate decision maker for the supported person.

27 (b) Sign legal documents on behalf of the supported person.

28 (c) Take possession of the supported person's property.

29 (d) Bind the supported person to a legal agreement.

30 (3) Subject to section 5 of this 2019 Act, a supporter may exercise the authority granted
 31 to the supporter in the supported decision-making agreement.

32 (4) Notwithstanding the existence of a supported decision-making agreement, a supported
 33 person may:

34 (a) Request and receive assistance from the supporter on any decision that is not covered
 35 under the supported decision-making agreement at any time.

36 (b) Request and receive assistance from another person who is not a supporter.

37 **SECTION 5. Access to personal information.** (1) A supporter is authorized to assist the
 38 supported person with accessing, collecting or obtaining only information that is relevant to
 39 a decision authorized under the supported decision-making agreement.

40 (2)(a) A supporter may access or obtain patient health care records only if the supported
 41 person authorizes the supporter to access or obtain the person's protected health informa-
 42 tion by executing a separate authorization in substantially the same form as ORS 192.566.

43 (b) A supporter may access or obtain the education records of the supported person only
 44 if the supported person executes a separate release allowing the supporter to access or ob-
 45 tain the supported person's education records under the federal Family Educational Rights

1 and Privacy Act (20 U.S.C. 1232g).

2 (c) A supporter may access the financial information of a supported person only if the
3 supported person executes a separate release of financial information authorization form.

4 (3) The supporter shall ensure the information under this section is kept privileged and
5 confidential, as applicable, and is not subject to unauthorized access, use or disclosure.

6 (4) Notwithstanding the existence of a supported decision-making agreement, a supported
7 person continues to have unrestricted access to the person’s personal information without
8 the assistance of a supporter.

9 (5) A supporter does not have a fiduciary duty or fiduciary obligation to the supported
10 person.

11 **SECTION 6. Witnesses.** A supported person and the person’s supporter entering into a
12 supported decision-making agreement must sign and date the agreement before a notary
13 public or in the presence of two witnesses who are at least 18 years of age.

14 **SECTION 7. Supported decision-making agreement form.** (1) A supported decision-making
15 agreement is valid if it is in writing, entered into voluntarily and without coercion, signed
16 and dated as described under section 6 of this 2019 Act.

17 (2) A supported decision-making agreement may be in substantially the following form:
18

19
20
21 **SUPPORTED DECISION-MAKING AGREEMENT**

22
23 **APPOINTMENT OF SUPPORTER**

24 I, _____ (name), make this agreement voluntarily and of my own free will.
25

26 I appoint _____ as my supporter. My supporter’s address
27 is _____, e-mail address is _____ and telephone number
28 is _____.

29 I have chosen to have multiple supporters, listed below. My supporter named above may
30 collaborate with my other supporters if I have checked “Yes,” but if I have checked “No,”
31 my supporter may not collaborate with my other supporters.
32

33 Name of supporter: _____
34 Telephone number of supporter: _____
35 Yes____ No____
36

37 Name of supporter: _____
38 Telephone number of supporter: _____
39 Yes____ No____
40

41 For the following everyday life decisions, if I have checked “Yes,” my supporter may help
42 me with that type of decision, but if I have checked “No,” my supporter may not help me
43 with that type of decision:
44

45 Yes____ No____ Obtaining food, clothing and shelter.

her identity, and I believe him or her to be at least 18 years of age and entering into this agreement knowingly and voluntarily. I am at least 18 years of age.

I, _____ (name of supporter), consent to act as a supporter under this agreement.

Supporter:

Signature: _____

Date: _____

Printed name: _____

Address: _____

E-mail address: _____

Telephone number(s): _____

**SIGNATURE OF NOTARY PUBLIC OR
STATEMENT AND SIGNATURE OF WITNESSES**

(This agreement must be signed either by a notary public or by two witnesses who are at least 18 years of age.)

OPTION I: NOTARY PUBLIC

State of _____

County of _____

This document was acknowledged before me on _____ (date), by _____ (name of person with a disability) and _____ (name of supporter).

Signature of notary: _____

(Seal, if any, of notary)

Printed name: _____

My commission expires: _____

OPTION II: WITNESSES

We declare that we are at least 18 years of age and that the persons signing this supported decision-making agreement:

1. Are personally known to us or have provided proof of identity;
2. Signed this supported decision-making agreement in our presence; and
3. Appeared to be of sound mind and not under duress, fraud or undue influence.

Witness No. 1:

Signature: _____

Date: _____

Printed name: _____

Address: _____

Telephone number(s): _____

1 (b) Executing a statement, in writing, that is signed and dated by the supported person,
2 expressing the supported person's intent to revoke the supported decision-making agree-
3 ment.

4 (c) Verbally expressing the supported person's intent to revoke the supported decision-
5 making agreement in the presence of two witnesses.

6 (4) A supporter may resign:

7 (a) As provided in the supported decision-making agreement; or

8 (b) If the supported decision-making agreement does not provide a method for the
9 supporter's resignation, at any time by giving notice, in writing, to the supported person.

10 **SECTION 9. Reliance on agreement; limitation of liability.** (1) Any person who reasonably
11 relies in good faith on the authority of a supporter under a supported decision-making
12 agreement is not liable to any other person based on that reliance.

13 (2) Subsection (1) of this section does not apply if the person relying on the authority of
14 a supporter has actual knowledge or notice that:

15 (a) The agreement has been terminated or revoked as described in section 8 of this 2019
16 Act;

17 (b) The agreement is invalid; or

18 (c) The supporter has committed abuse, neglect or financial exploitation under ORS
19 124.005 to 124.040, 124.050 to 124.095, 124.100 to 124.140, 419B.005 to 419B.050, 430.735 to 430.765
20 or 441.630 to 441.680.

21 (3) This section may not be construed to provide immunity from actions alleging that a
22 health care provider has done any of the following:

23 (a) Caused personal injury as a result of a negligent, reckless or intentional act.

24 (b) Acted inconsistently with the expressed wishes of a supported person.

25 (c) Failed to provide information to a supported person or the supported person's sup-
26 porter that would be necessary for informed consent.

27 (d) Otherwise acted inconsistently with applicable law.

28 (4) The existence or availability of a supported decision-making agreement does not re-
29 lieve a health care provider of any legal obligation to provide services to a person with a
30 disability, including the obligation to provide reasonable accommodations or auxiliary aids
31 and services, including interpretation services and communication supports to a person with
32 a disability under the federal Americans with Disabilities Act.

33 (5) A supporter acting under a valid supported decision-making agreement is immune
34 from civil liability for the supporter's acts or omissions in performing duties as the supporter
35 if the supporter performs the duties in good faith, in conformance with the supported
36 decision-making agreement and with the care an ordinarily prudent person in a like position
37 would exercise in the person's own affairs.

38 (6) Subsections (1) and (5) of this section do not apply if the supported decision-making
39 agreement is not in substantially the form described in section 7 (2) of this 2019 Act.

40 **SECTION 10. Reporting of suspected abuse, neglect or financial exploitation.** (1) If a
41 person who receives a copy of a supported decision-making agreement or who is aware of the
42 existence of a supported decision-making agreement has cause to believe that a supported
43 person is being abused, neglected or financially exploited under ORS 124.005 to 124.040, 124.050
44 to 124.095, 124.100 to 124.140, 419B.005 to 419B.050, 430.735 to 430.765 or 441.630 to 441.680 by
45 the supporter, the person may report the alleged abuse, neglect or financial exploitation to

1 **the Department of Human Services.**

2 **(2) Nothing in this section may be construed as eliminating or limiting a person’s re-**
 3 **quirement to report under any other statute or regulation.**

4 **SECTION 11.** ORS 125.005 is amended to read:

5 125.005. As used in this chapter:

6 (1) “Conservator” means a person appointed as a conservator under the provisions of this
 7 chapter.

8 (2)(a) “Fiduciary” means a guardian or conservator appointed under the provisions of this
 9 chapter or any other person appointed by a court to assume duties with respect to a protected
 10 person under the provisions of this chapter.

11 **(b) “Fiduciary” does not include a supporter under a supported decision-making agree-**
 12 **ment described in sections 1 to 10 of this 2019 Act.**

13 (3) “Financially incapable” means a condition in which a person is unable to manage financial
 14 resources of the person effectively for reasons including, but not limited to, mental illness, mental
 15 retardation, physical illness or disability, chronic use of drugs or controlled substances, chronic
 16 intoxication, confinement, detention by a foreign power or disappearance. “Manage financial re-
 17 sources” means those actions necessary to obtain, administer and dispose of real and personal
 18 property, intangible property, business property, benefits and income.

19 (4) “Guardian” means a person appointed as a guardian under the provisions of this chapter.

20 (5) “Incapacitated” means a condition in which a person’s ability to receive and evaluate infor-
 21 mation effectively or to communicate decisions is impaired to such an extent that the person pres-
 22 ently lacks the capacity to meet the essential requirements for the person’s physical health or
 23 safety. “Meeting the essential requirements for physical health and safety” means those actions
 24 necessary to provide the health care, food, shelter, clothing, personal hygiene and other care with-
 25 out which serious physical injury or illness is likely to occur.

26 (6) “Minor” means any person who has not attained 18 years of age.

27 (7) “Protected person” means a person for whom a protective order has been entered.

28 (8) “Protective order” means an order of a court appointing a fiduciary or any other order of
 29 the court entered for the purpose of protecting the person or estate of a respondent or protected
 30 person.

31 (9) “Protective proceeding” means a proceeding under this chapter.

32 (10) “Respondent” means a person for whom entry of a protective order is sought in a petition
 33 filed under ORS 125.055.

34 (11) “Visitor” means a person appointed by the court under ORS 125.150 for the purpose of
 35 interviewing and evaluating a respondent or protected person.

36 **SECTION 12.** ORS 125.055, as amended by section 2, chapter 59, Oregon Laws 2018, is amended
 37 to read:

38 125.055. (1) A petition in a protective proceeding that seeks the appointment of a fiduciary must
 39 designate the type of fiduciary that the petitioner seeks to have appointed. If the petition does not
 40 request the appointment of a fiduciary, or if the petition requests both the appointment of a
 41 fiduciary and some other protective order, the petition must contain a statement of the nature of the
 42 protective order requested. The caption of the petition must reflect the type of fiduciary whose ap-
 43 pointment is requested or, if the appointment of a fiduciary is not requested, the nature of the pro-
 44 tective order requested. An original and duplicate copy of the petition must be filed with the court.

45 (2) A petition in a protective proceeding must contain the following information to the extent

1 that the petitioner is aware of the information or to the extent that the petitioner is able to acquire
2 the information with reasonable effort:

3 (a) The name, age, residence address and current location of the respondent.

4 (b) The interest of the petitioner.

5 (c) The name, age and address of the petitioner and any person nominated as fiduciary in the
6 petition and the relationship of the person nominated to the respondent.

7 (d) A statement as to whether the person nominated as fiduciary:

8 (A) Has been convicted of a crime;

9 (B) Has filed for or received protection under the bankruptcy laws;

10 (C) Has caused any loss resulting in a surcharge under ORS 125.025 (3)(e) or a similar statute
11 of another jurisdiction;

12 (D) Has been removed as a fiduciary under ORS 125.225; or

13 (E) Has had a license revoked or canceled that was required by the laws of any state for the
14 practice of a profession or occupation.

15 (e) If an event listed in paragraph (d) of this subsection has occurred, a statement of the cir-
16 cumstances surrounding the event.

17 (f) If the person nominated as fiduciary is not the petitioner, a statement indicating that the
18 person nominated is willing and able to serve.

19 (g) The name and address of any fiduciary that has been appointed for the respondent by a court
20 of any state, any trustee for a trust established by or for the respondent, any person appointed as
21 a health care representative under the provisions of ORS 127.505 to 127.660 and any person acting
22 as attorney-in-fact for the respondent under a power of attorney.

23 (h) The name and address of the respondent's treating physician and any other person who is
24 providing care to the respondent.

25 (i) The factual information that supports the request for the appointment of a fiduciary or entry
26 of other protective order, less restrictive alternatives to the appointment of a fiduciary that have
27 been considered, **including supported decision-making under sections 1 to 10 of this 2019 Act**,
28 and why the alternatives are inadequate and the names and addresses of all persons who have in-
29 formation that would support a finding that an adult respondent is incapacitated or financially in-
30 capable.

31 (j) A statement that indicates whether the person nominated as fiduciary intends to place the
32 respondent in a mental health treatment facility, a nursing home or other residential facility.

33 (k) A general description of the estate of the respondent and the respondent's sources of income
34 and the amount of that income.

35 (L) A statement indicating whether the person nominated as fiduciary is a public or private
36 agency or organization that provides services to the respondent or an employee of a public or pri-
37 vate agency or organization that provides services to the respondent.

38 (m) A statement that indicates whether the petitioner is petitioning for plenary authority or
39 specified limited authority for the person nominated as fiduciary.

40 (3) In addition to the requirements of subsection (2) of this section:

41 (a) If a petition seeks appointment of a guardian, the petition must contain a statement on
42 whether the guardian will exercise any control over the estate of the respondent. If the guardian
43 will exercise any control over the estate of the respondent, the petition must contain a statement
44 of the monthly income of the respondent, the sources of the respondent's income, and the amount
45 of any moneys that the guardian will be holding for the respondent at the time of the appointment.

1 (b) If the petition seeks the appointment of a guardian for an adult respondent, of a guardian for
2 a minor respondent who is more than 16 years of age, in cases where the court determines there is
3 the likelihood that a petition seeking appointment of a guardian for the respondent as an adult will
4 be filed before the date that the respondent attains majority, in accordance with subsection (6) of
5 this section, or as an adult, or of a temporary fiduciary who will exercise the powers of a guardian
6 for an adult respondent, the petition must contain a statement notifying the court that a visitor must
7 be appointed.

8 (4) In addition to the requirements of subsection (2) of this section, if a petition seeks appoint-
9 ment of a conservator or a temporary fiduciary who will exercise the powers of a conservator or if
10 a petition seeks a protective order relating to the estate of the respondent, the petition must contain
11 the petitioner's estimate of the value of the estate.

12 (5) A petitioner may join parties in a petition in the manner provided by ORCP 28 for the joining
13 of defendants.

14 (6) A parent or guardian of a minor may file a petition that seeks the appointment of a guardian
15 for the minor as an adult, to become effective on the date that the minor attains majority, at any
16 time within 90 days before the date that the minor attains majority or at any other time determined
17 by the court to be necessary and appropriate to ensure the ongoing protection, safety and welfare
18 of the minor upon attaining majority.

19 (7) The court shall review a petition seeking appointment of a guardian and shall dismiss the
20 proceeding without prejudice, or require that the petition be amended, if the court determines that
21 the petition does not meet the requirements of this section.

22 **SECTION 13.** ORS 125.060 is amended to read:

23 125.060. (1) The notices required by this section must be given to all persons whose identities
24 and addresses can be ascertained in the exercise of reasonable diligence by the person required to
25 give the notice.

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

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

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

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

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

34 (e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the
35 respondent by a court of any state, any trustee for a trust established by or for the respondent, any
36 person appointed as a health care representative under the provisions of ORS 127.505 to 127.660,
37 **any person acting as a supporter for the respondent under the provisions of sections 1 to 10**
38 **of this 2019 Act** and any person acting as attorney-in-fact for the respondent under a power of at-
39 torney.

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

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

44 (h) If the respondent is receiving moneys paid or payable by the United States through the De-
45 partment of Veterans Affairs, a representative of the United States Department of Veterans Affairs

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

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

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

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

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

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

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

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

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

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

21 (d) If the protected person is receiving moneys paid or payable by the United States through the
22 Department of Veterans Affairs, a representative of the United States Department of Veterans Af-
23 fairs regional office that has responsibility for the payments to the protected person.

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

27 **(f) Any person acting as a supporter for the protected person under the provisions of**
28 **sections 1 to 10 of this 2019 Act.**

29 *[(f)]* (g) Any other person that the court requires.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **SECTION 14.** ORS 125.150 is amended to read:

24 125.150. (1)(a) The court shall appoint a visitor upon the filing of a petition in a protective
 25 proceeding that seeks the appointment of:

26 (A) A guardian for an adult respondent;

27 (B) A guardian for a minor respondent who is more than 16 years of age, in cases where the
 28 court determines there is the likelihood that a petition seeking appointment of a guardian for the
 29 respondent as an adult will be filed before the date that the respondent attains majority, in ac-
 30 cordance with ORS 125.055 (6), or as an adult; or

31 (C) A temporary fiduciary who will exercise the powers of a guardian for an adult respondent.

32 (b) The court may appoint a visitor in any other protective proceeding or in a proceeding under
 33 ORS 109.329.

34 (2) A visitor may be an officer, employee or special appointee of the court. The person appointed
 35 may not have any personal interest in the proceedings. The person appointed must have training or
 36 expertise adequate to allow the person to appropriately evaluate the functional capacity and needs
 37 of a respondent or protected person, or each petitioner and the person to be adopted under ORS
 38 109.329. The court shall provide a copy of the petition and other filings in the proceedings that may
 39 be of assistance to the visitor.

40 (3) A visitor appointed by the court under this section shall interview a person nominated or
 41 appointed as fiduciary and the respondent or protected person, or each petitioner and the person to
 42 be adopted under ORS 109.329, personally at the place where the respondent or protected person,
 43 or each petitioner or the person to be adopted under ORS 109.329, is located.

44 (4) Subject to any law relating to confidentiality, the visitor may interview any physician,
 45 naturopathic physician or psychologist who has examined the respondent or protected person, or

1 each petitioner under ORS 109.329, the person or officer of the institution having the care, custody
2 or control of the respondent or protected person, or each petitioner under ORS 109.329, **any person**
3 **acting as a supporter for the respondent or protected person under the provisions of sections**
4 **1 to 10 of this 2019 Act** and any other person who may have relevant information.

5 (5) If requested by a visitor under subsection (4) of this section, a physician, naturopathic phy-
6 sician or psychologist who has examined the respondent or protected person, or each petitioner
7 under ORS 109.329, may, with patient authorization or, in the case of a minor respondent, with the
8 authorization of the minor's parent or the person having custody of the minor, or in response to a
9 court order in accordance with ORCP 44 or a subpoena under ORCP 55, provide any relevant in-
10 formation the physician, naturopathic physician or psychologist has regarding the respondent or
11 protected person, or each petitioner under ORS 109.329.

12 (6) A visitor shall determine whether it appears that the respondent or protected person, or each
13 petitioner or the person to be adopted under ORS 109.329, is able to attend the hearing and, if able
14 to attend, whether the respondent or protected person, or each petitioner or the person to be
15 adopted under ORS 109.329, is willing to attend the hearing.

16 (7) If a petition is filed seeking the appointment of a guardian for an adult respondent, a visitor
17 shall investigate the following matters:

18 (a) The inability of the respondent to provide for the needs of the respondent with respect to
19 physical health, food, clothing and shelter;

20 (b) The location of the respondent's residence and the ability of the respondent to live in the
21 residence while under guardianship;

22 (c) **The likelihood that the respondent would be able to provide for the respondent's needs**
23 **with supported decision-making, as that term is defined in section 1 of this 2019 Act, and**
24 **whether supported decision-making under sections 1 to 10 of this 2019 Act is available to the**
25 **respondent;**

26 [(c)] (d) **Other** alternatives to guardianship considered by the petitioner and reasons why those
27 alternatives are not available;

28 [(d)] (e) Health or social services provided to the respondent during the year preceding the filing
29 of the petition, when the petitioner has information as to those services;

30 [(e)] (f) The inability of the respondent to resist fraud or undue influence; and

31 [(f)] (g) Whether the respondent's inability to provide for the needs of the respondent is an iso-
32 lated incident of negligence or improvidence, or whether a pattern exists.

33 (8) If a petition is filed seeking the appointment of a fiduciary, a visitor shall determine whether
34 the respondent objects to:

35 (a) The appointment of a fiduciary; and

36 (b) The nominated fiduciary or prefers another person to act as fiduciary.

37 (9) If a petition is filed seeking the appointment of a conservator in addition to the appointment
38 of a guardian, a visitor shall investigate whether the respondent is financially incapable. The visitor
39 shall interview the person nominated to act as conservator and shall interview the respondent per-
40 sonally at the place where the respondent is located.

41 (10) A visitor shall determine whether the respondent or protected person, or each petitioner
42 or the person to be adopted under ORS 109.329, wishes to be represented by counsel and, if so,
43 whether the respondent or protected person, or each petitioner or the person to be adopted under
44 ORS 109.329, has retained counsel and, if not, the name of an attorney the respondent or protected
45 person, or each petitioner or the person to be adopted under ORS 109.329, wishes to retain.

1 (11) If the respondent or protected person, or each petitioner or the person to be adopted under
 2 ORS 109.329, has not retained counsel, a visitor shall determine whether the respondent or protected
 3 person, or each petitioner or the person to be adopted under ORS 109.329, desires the court to ap-
 4 point counsel.

5 (12) If the respondent or protected person, or each petitioner or the person to be adopted under
 6 ORS 109.329, does not plan to retain counsel and has not requested the appointment of counsel by
 7 the court, a visitor shall determine whether the appointment of counsel would help to resolve the
 8 matter and whether appointment of counsel is necessary to protect the interests of the respondent
 9 or protected person, or each petitioner or the person to be adopted under ORS 109.329.

10 **SECTION 15.** ORS 125.305 is amended to read:

11 125.305. (1) After determining that conditions for the appointment of a guardian have been es-
 12 tablished, the court may appoint a guardian as requested if the court determines by clear and con-
 13 vincing evidence that:

14 (a) The respondent is a minor in need of a guardian or the respondent is incapacitated;

15 (b) The appointment is necessary as a means of providing continuing care and supervision of the
 16 respondent; and

17 (c) The nominated person is both qualified and suitable, and is willing to serve.

18 (2) The court shall make a guardianship order that is no more restrictive upon the liberty of the
 19 protected person than is reasonably necessary to protect the person. In making the order the court
 20 shall consider the information in the petition, the report of the visitor, the report of any physician,
 21 naturopathic physician or psychologist who has examined the respondent, if there was an examina-
 22 tion, **the existence of a valid supported decision-making agreement under sections 1 to 10 of**
 23 **this 2019 Act** and the evidence presented at any hearing.

24 (3) The court may require that a guardian post bond.

25 (4) The Department of Human Services may be appointed guardian of a minor if the minor has
 26 no living parents and if no willing, qualified and suitable relative or other person has petitioned the
 27 court for appointment as a guardian.

28 **SECTION 16.** ORS 125.680 is amended to read:

29 125.680. The Oregon Public Guardian and Conservator shall:

30 (1) Educate the public about the role and function of the Oregon Public Guardian and
 31 Conservator and about public guardian and conservator services.

32 (2) Provide public guardian and conservator services for persons who do not have relatives or
 33 friends willing or able to assume the duties of guardianship or conservatorship and who lack the
 34 financial resources to obtain a private guardian or conservator.

35 (3) Certify deputy public guardians and conservators.

36 (4) Develop model standards of eligibility and professional conduct for deputy public guardians
 37 and conservators and of practice and procedure in public guardianship and conservatorship pro-
 38 ceedings.

39 (5) Develop and implement training and educational materials for deputy public guardians and
 40 conservators.

41 (6) Establish and operate a program to recruit, train and supervise volunteers to provide as-
 42 sistance to the Oregon Public Guardian and Conservator, deputy public guardians and conservators
 43 and clients.

44 (7) Establish a process, including criteria and standards, to determine the eligibility of persons
 45 to receive public guardian and conservator services and for the needs assessment required under

1 ORS 125.683.

2 (8) Cooperate with offices of county public guardian and conservator operating under ORS
3 125.700.

4 (9) Work with existing local and county programs and with other organizations and entities to
5 develop and expand public guardian and conservator services in this state.

6 (10) Make recommendations to the Legislative Assembly for policy and legislation regarding
7 implementation, improvement and expansion of public guardian and conservator services in this
8 state.

9 **(11)(a) Provide supported decision-making services for persons who do not have a friend
10 or relative willing to act as a supporter and who lack the financial resources obtain a private
11 supporter.**

12 **(b) As used in this subsection, “supporter” and “supported decision-making” have the
13 meaning given those terms in section 1 of this 2019 Act.**

14 **SECTION 17.** ORS 343.181 is amended to read:

15 343.181. When a child with a disability reaches the age of majority as described in ORS 109.510
16 or 109.520 or is emancipated pursuant to ORS 419B.550 to 419B.558:

17 (1) The rights accorded to the child’s parents under this chapter transfer to the child;

18 **(2) The school district shall provide the child and the child’s parents with information
19 regarding supported decision-making under sections 1 to 10 of this 2019 Act, other alterna-
20 tives to guardianship and strategies to remain engaged in the child’s secondary education;**

21 [(2)] **(3)** The school district shall provide any written notice required to both the child and the
22 parents; and

23 [(3)] **(4)** The school district shall notify the child and the parents of the transfer of rights.

24 **SECTION 18. The section captions used in this 2019 Act are provided only for the con-
25 venience of the reader and do not become part of the statutory law of this state or express
26 any legislative intent in the enactment of this 2019 Act.**

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