

ANALYSIS

Item 2: Oregon Judicial Department Elder Justice Innovation

Analyst: John Borden

Request: Approve, retroactively, the submission of a federal grant application to the U.S. Department of Health and Human Services, Administration of Community Living, for an Elder Justice Innovation grant in the amount of \$275,752 to conduct a self-assessment of guardianship and conservatorship court monitoring practices, increase Federal Funds expenditure limitation by \$275,752, and establish two limited duration positions (1.00 FTE).

Analysis: The Oregon Judicial Department (OJD) requests retroactive approval to submit a federal grant application to the U.S. Department of Health and Human Services, Administration of Community Living, for an Elder Justice Innovation grant to conduct a self-assessment of guardianship and conservatorship court monitoring practices across circuit courts.

A conservatorship is a legal proceeding when an adult or juvenile can no longer make or communicate sound decisions about his or her persona and/or assets. A guardianship provides protection and care for adults or juveniles with dementia, mental illness or other mental impairments. Conservators are those individuals entrusted to manage and protect the assets of incapacitated adults and guardians are individuals who manage the well-being of a protected person. Statute states that conservators must “account to the court for the administration of the protected estate” annually and at the conclusion of the conservator’s appointment (125.475). Statute also outlines the requirements for guardians to report to the court on the well-being of the protected person (ORS 125.325). Even with court oversight, guardianship and conservatorship can be susceptible to waste or fraud by a conservator or guardian.

Circuit courts in civil proceedings may monitor guardianship and conservatorship for years or even decades. Circuit courts have averaged 2,172 Protective Proceedings Petition filing for guardianship and conservatorships over the prior four fiscal years beginning in 2017 and ending in 2020. OJD reports a total of 14,480 Protective Proceedings Petition have been filed, of which 9,997 are adult petitions and 4,483 are juvenile petitions. Only 292 (or 2%) of filed petitions await a judgement appointing a permanent guardian or conservator. There can be, apart from circuit courts, nonprofit entities that provide volunteers to monitor protected persons under guardianships in certain counties. OJD does have a standing Statewide Protective Proceedings Advisory Committee, however, that committee has only been able to perform limited, but important programmatic support. OJD acknowledges that “Oregon has a clear need to improve our data collection efforts and to standardize and improve [statewide] monitoring practices,” as related to court monitoring of guardianship and conservatorships.

Under this grant, OJD’s Office of the State Court Administrator, Internal Audit Section, in conjunction with Juvenile and Family Court Programs Division, will: (a) establish an Elder Justice Initiative Advisory Committee to oversee the grant; (b) undertake a comprehensive study of Oregon court guardianship and conservatorship monitoring practices to identify gaps in services, data, and training; (d) establish processes and procedures to enable circuit courts to detect financial mismanagement of protected person’s assets; and (d) institute changes identified in the comprehensive self-assessment study.

This competitive grant has a state matching funds requirement of 25% that will be met by existing General Fund serving as an in-kind contribution. The grant period is from September 1, 2021 to August 31, 2023. A second and final year of the grant, in the same amount, could be awarded in 2022. There is no other expectation of continued federal or state funding associated with this grant.

Due to staff turnover, OJD failed to make timely notice of the grant to the Legislature as required by ORS 291.375. The grant was announced on March 25, 2021. The grant application deadline was May 24, 2021. OJD applied for the grant on May 24, 2021. OJD was awarded the grant on September 27, 2021. Since the application and award of the grant, OJD has hired a new Grant Manager who has been trained in the requirements of timely legislative reporting under ORS 291.375.

OJD is also requesting an increase of \$275,752 in Federal Funds expenditure limitation and the establishment of one Limited Duration Internal Auditor II position (0.50 FTE) and one Limited Duration Analyst 3 position (Statewide Probate Analyst)(0.50 FTE) to perform the work required by the grant.

Recommendation: The Legislative Fiscal Office recommends that the Joint Interim Committee on Ways and Means approve, retroactively, the submission of a federal grant application to the U.S. Department of Health and Human Services, Administration for Community Living; and recommend including a one-time increase of \$275,752 in the Federal Funds expenditure limitation and authorizing the establishment of two Limited Duration positions (1.00 FTE), for the Judicial Department, Operations, in a budget reconciliation bill during the 2022 legislative session for an Elder Justice Innovation grant.

2
Oregon Judicial Department
McDonald

Request: Retroactive authorization to apply for a grant of \$275,752 from the U.S. Department of Health and Human Services Administration for Community Living to conduct a study of guardianship and conservatorship monitoring practices and policies in Oregon courts and enable better detection of financial mismanagement.

Increase in Federal Funds expenditure limitation by \$275,752 for the grant award and establish two limited duration, full-time positions (1.00 FTE) to execute deliverables.

Recommendation: The Oregon Judicial Department is not under Executive Branch budgetary authority.

Discussion: The Oregon Judicial Department (OJD) requests retroactive permission to apply for a grant aimed at examining and improving the financial oversight related to guardianship and conservatorship in Oregon's Juvenile and Family Court Programs Division within OJD. Over a 24-month period of performance, the grant would support a comprehensive self-assessment of the court's guardianship and conservatorship services and form recommendations for better oversight and detection of mismanagement of a protected person's assets. An Elder Justice Initiative Advisory Committee comprised of court staff, judges, and system partners, will be formed to provide direction and oversight. Additionally, the grant funds would support hiring two limited duration positions funded at 0.50 FTE each, including an Internal Auditor II and a Statewide Probate Analyst (Analyst 3) to accomplish the following:

- conduct the comprehensive assessment,
- recommend interventions aimed at court monitoring of conservators, and
- convene stakeholders to assist with the assessment and adoption of recommendations.

OJD originally applied for a grant of \$627,206, or \$313,603 per year of the two-year grant. On September 27, 2021, OJD was awarded \$275,752 for the first year of the grant, with a similar award anticipated in 2022, for the second year of the grant. Once OJD is awarded second year funding, additional expenditure limitation and limited duration position authority will likely be requested. There is a match requirement of 25% or \$68,938, which OJD will fund from their existing 2021-23 Legislatively Approved Budget. The deadline to submit the grant application was May 24, 2021, however, OJD did not provide the Legislature with the required 10-day notice. The Department reports this was due to internal turnover and has since provided grant request training to new staff and hired a grants manager to ensure future requests follow protocols in a timely manner.

Legal Reference: Increase the Federal Funds expenditure limitation established by chapter 557, section 3, Oregon Laws 2021, for the Oregon Judicial Department, by \$275,752 for the 2021-23 biennium.



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

October 22, 2021
(SENT BY EMAIL)

The Honorable Senator Betsy Johnson, Co-Chair
The Honorable Senator Elizabeth Steiner Hayward, Co-Chair
The Honorable Representative, Dan Rayfield, Co-Chair
Interim Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Re: Federal Grant Application AOA Elder Justice & Adult Protective Services Elder Justice
Innovation – Retroactive Approval

Dear Co-Chairpersons:

Nature of Request

The Oregon Judicial Department (OJD) requests retroactive permission to apply for a \$275,752 grant from the Department of Health and Human Service's Administration of Community Living (ACL). This would be the primary funding source for a two-year grant project to allow the Juvenile and Family Court Programs Division (JFCPD) within OJD to conduct a comprehensive study of the Oregon courts' guardianship and conservatorship monitoring policies and practices and subsequently establish processes that will enable courts to better detect financial mismanagement of protected person's assets. The deadline to submit the grant application was May 24, 2021. Due to internal turnover in critical positions, OJD was unable to provide the Legislature with the required 10-day notice. OJD's internal systems are now structured to avoid such delay in the future.

Background

With support from an Elder Justice Innovation Grant from the Department of Health and Human Services, Oregon's Office of the State Court Administrator (OSCA) will conduct a self-assessment of its guardianship and conservatorship court monitoring practices and implement recommended interventions identified in the self-assessment. The implemented interventions will prioritize those strategies that improve the court's monitoring of conservator financial reports to improve court oversight of fiduciaries and ensure the protected person's assets are managed efficiently and effectively.

This project will allow the Office of the State Court Administrator to hire a statewide probate analyst and an internal auditor who will achieve the following objectives: 1) conduct and manage a comprehensive self-assessment to develop intervention recommendations; 2) convene stakeholders throughout the project period to assist with the self-assessment and ultimately identify strategies to implement the recommendations; 3) once interventions are identified, implement those strategies with a focus on interventions aimed at court monitoring of conservators; 4) advocate for additional support to maintain the project past the grant project period.

The outcomes achieved at the end of the project period will include:

- Established processes and procedures that will enable Oregon courts to detect financial mismanagement of protected persons assets;
- A comprehensive study of Oregon court's guardianship and conservatorship monitoring practices.

Products and deliverables throughout the project will be:

- An Elder Justice Initiative Advisory Committee comprised of court staff, judges as well as system partners, to provide oversight of the self-assessment process and implementation strategies for the self-assessment recommendations.
- A complete understanding of the current Oregon system of court monitoring of guardianship and conservatorship including gaps in services and data and training needs.

The grant, which has been awarded, is for a period of 24 months, beginning September of 2021. The funding level request for the first year (FY 2021-2022) is for up to \$275,752. A similar funding level will be announced in 2022 for the final year of the grant. There is a state funding match requirement of 25% associated with the grant.

The application deadline for this grant was May 24, 2021. Due to turnover in critical positions OJD did not submit a timely application request to the Legislature. Since that time OJD has provided grants request training to new staff and has hired a grants manager to ensure future grant requests follow established protocols and to ensure timely requests are submitted to the legislature.

Action Requested

The Oregon Judicial Department requests the Interim Joint Committee on Ways and Means retroactively approve OJD's request to apply for a federal grant, and for the committee to recommend to the February 2022 legislative session an increase in Federal Funds limitation of \$275,752 and positional authority for one Limited Duration Internal Auditor II and one Limited Duration Analyst 3 position.

Interim Joint Committee on Ways and Means
Page 3
October 22, 2021

Legislation Affected

Federal Funds Limitation established under HB 5012 (Oregon Laws 2021, chapter 557, section 3) during the 2021 Regular Legislative Session.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy J. Cozine". The signature is fluid and cursive, with the first name "Nancy" being the most prominent.

Nancy Cozine
State Court Administrator

NC:jm/21eNC016jm.2

ec: Chief Justice Martha L. Walters
Ken Rocco, Principal Legislative Analyst, LFO
George Naughton, Policy and Budget Analyst, CFO-BAM
David Moon, Director, BFS, OJD
Nanci Thaemert, Director, JFCPD, OJD
Thujee Lhendup, Grants Manager, OJD