

Senate Bill 793

Sponsored by COMMITTEE ON HUMAN SERVICES

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**.

Creates rebuttable presumption that protected person consents to ordinary and preventive health care. Provides that presumption may be overcome by clear and convincing evidence that protected person would withhold consent to specific treatment, if able. Directs guardian to petition court for instructions in specified circumstances.

A BILL FOR AN ACT

1
2 Relating to medical decision-making by guardian for protected person; creating new provisions; and
3 amending ORS 125.225, 125.315, 125.320 and 125.330.

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

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 125.**

6 **SECTION 2. (1) Except as otherwise specifically provided in the order of appointment and**
7 **subject to the provisions of ORS 125.315 (1)(f) to (h), a guardian may make medical decisions**
8 **on behalf of a protected person as provided in this section.**

9 (2) **It shall be presumed that every protected person has consented to ordinary and nec-**
10 **essary medical, dental and optical examination and treatment and preventive care, including**
11 **ordinary immunizations and examination for and treatment of any injury, symptom, disease**
12 **or pathology that is, in the judgment of the treating health care provider, reasonably nec-**
13 **essary. The presumption may be rebutted by clear and convincing evidence that the pro-**
14 **ected person would withhold consent to the specific treatment at issue, if able. If the**
15 **guardian reasonably believes that consenting to or withholding consent to the specific**
16 **treatment at issue would unreasonably harm or endanger the health or welfare of the pro-**
17 **ected person, the guardian shall petition the court for instructions.**

18 (3) **Subject to the provisions of this section and ORS 127.505 to 127.660, the guardian may**
19 **consent, refuse consent or withhold or withdraw consent to health care, as defined in ORS**
20 **127.505, for the protected person. A guardian is not liable solely by reason of consent under**
21 **this subsection for any injury to the protected person resulting from the negligence or acts**
22 **of third persons.**

23 (4) **A guardian may consent to the withholding or withdrawing of artificially administered**
24 **nutrition and hydration for a protected person only under the circumstances described in**
25 **ORS 127.580 (1)(a), (b), (d), (e) or (f) and, if the protected person has a medical condition**
26 **specified in ORS 127.580 (1)(b), (d), (e) or (f), the condition has been medically confirmed.**

27 (5) **A guardian may not authorize the sterilization of the protected person.**

28 **SECTION 3. ORS 125.315 is amended to read:**

29 125.315. (1) A guardian has the following powers and duties:

30 (a) Except to the extent of any limitation under the order of appointment, the guardian has

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 custody of the protected person and may establish the protected person's place of abode within or
2 without this state.

3 (b) The guardian shall provide for the care, comfort and maintenance of the protected person
4 and, whenever appropriate, shall arrange for training and education of the protected person.
5 Without regard to custodial rights of the protected person, the guardian shall take reasonable care
6 of the person's clothing, furniture and other personal effects unless a conservator has been ap-
7 pointed for the protected person.

8 [(c) Subject to the provisions of ORS 127.505 to 127.660 and subsection (3) of this section, the
9 guardian may consent, refuse consent or withhold or withdraw consent to health care, as defined in
10 ORS 127.505, for the protected person. A guardian is not liable solely by reason of consent under this
11 paragraph for any injury to the protected person resulting from the negligence or acts of third
12 persons.]

13 [(d)] (c) The guardian may:

14 (A) Make advance funeral and burial arrangements;

15 (B) Subject to the provisions of ORS 97.130, control the disposition of the remains of the pro-
16 tected person; and

17 (C) Subject to the provisions of ORS 97.965, make an anatomical gift of all or any part of the
18 body of the protected person.

19 [(e)] (d) The guardian of a minor has the powers and responsibilities of a parent who has legal
20 custody of a child, except that the guardian has no obligation to support the minor beyond the
21 support that can be provided from the estate of the minor, and the guardian is not liable for the
22 torts of the minor. The guardian may consent to the marriage or adoption of a protected person
23 who is a minor.

24 [(f)] (e) Subject to the provisions of ORS 125.320 [(2)] (1), the guardian may receive money and
25 personal property deliverable to the protected person and apply the money and property for support,
26 care and education of the protected person. The guardian shall exercise care to conserve any excess
27 for the protected person's needs.

28 [(g)] (f) The guardian shall promote the self-determination of the protected person and, to the
29 extent practicable, encourage the protected person to participate in decisions, act on the protected
30 person's own behalf and develop or regain the capacity to manage the protected person's personal
31 affairs. To accomplish the duties under this paragraph, the guardian shall:

32 (A) Become or remain personally acquainted with the protected person and maintain sufficient
33 contact with the protected person, including through regular visitation, to know the protected
34 person's abilities, limitations, needs, opportunities and physical and mental health;

35 (B) To the extent practicable, identify the values and preferences of the protected person and
36 involve the protected person in decisions affecting the protected person, including decisions about
37 the protected person's care, dwelling, activities or social interactions; and

38 (C) Make reasonable efforts to identify and facilitate supportive relationships and services for
39 the protected person.

40 [(h)] (g) In making decisions for the protected person, the guardian shall make the decisions the
41 guardian reasonably believes the protected person would make if the protected person were able,
42 unless doing so would unreasonably harm or endanger the welfare or personal or financial interests
43 of the protected person. To determine the decision the protected person would make if able, the
44 guardian shall consider the protected person's previous or current instructions, preferences, opin-
45 ions, values and actions, to the extent actually known or reasonably ascertainable by the guardian.

1 [(i)] **(h)** If the guardian cannot make a decision under paragraph [(h)] **(g)** of this subsection be-
 2 cause the guardian does not know and cannot reasonably determine the decision the protected per-
 3 son would make if able, or the guardian reasonably believes the decision the protected person would
 4 make would unreasonably harm or endanger the welfare or personal or financial interests of the
 5 protected person, the guardian shall act in accordance with the best interest of the protected per-
 6 son. In determining the best interest of the protected person, the guardian shall consider:

7 (A) Information received from professionals and persons that demonstrate sufficient interest in
 8 the welfare of the protected person;

9 (B) Other information the guardian believes the protected person would consider if the protected
 10 person were able; and

11 (C) Other factors a reasonable person in the circumstances of the protected person would con-
 12 sider, including consequences for others.

13 (2) If a conservator has been appointed for the protected person, the guardian may file a motion
 14 with the court seeking an order of the court on the duties of the conservator relating to payment
 15 of support for the protected person.

16 [(3) *A guardian may consent to the withholding or withdrawing of artificially administered nutri-
 17 tion and hydration for a protected person only under the circumstances described in ORS 127.580 (1)(a),
 18 (b), (d), (e) or (f) and, if the protected person has a medical condition specified in ORS 127.580 (1)(b),
 19 (d), (e) or (f), the condition has been medically confirmed.*]

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

21 125.320. [(1) *A guardian may not authorize the sterilization of the protected person.*]

22 [(2)] **(1)** A guardian may not use funds from the protected person's estate for room and board
 23 that the guardian or guardian's spouse, parent or child have furnished the protected person unless
 24 the charge for the service is approved by order of the court before the payment is made.

25 [(3)(a)] **(2)(a)** Before a guardian may change the abode of an adult protected person or place an
 26 adult protected person in a mental health treatment facility, a nursing home or other residential
 27 facility, the guardian must file with the court and serve a statement declaring that the guardian
 28 intends to make the change of abode or placement in the manner set forth in paragraph (b) of this
 29 subsection.

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

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

40 (c) In addition to the requirements of ORS 125.070 (1), the notice given to the protected person
 41 must clearly indicate the manner in which the protected person may object to the proposed place-
 42 ment.

43 (d) The court shall schedule a hearing on any objection to a statement filed under this sub-
 44 section made in the manner provided by ORS 125.075 for presenting objections to a petition or mo-
 45 tion in a protective proceeding. If no objection is made, the guardian may change the abode of the

1 adult protected person or place the adult protected person in a mental health treatment facility, a
 2 nursing home or other residential facility without further court order.

3 (e) The requirement that notice be served on an attorney for a protected person under ORS
 4 125.060 (8) does not impose any responsibility on the attorney receiving the notice to represent the
 5 protected person in the protective proceeding.

6 [(4)] (3) A guardian for a protected person who is a vulnerable youth may not possess or control
 7 the vulnerable youth's identity documents.

8 **SECTION 5.** ORS 125.225 is amended to read:

9 125.225. (1) A court shall remove a fiduciary whenever that removal is in the best interests of
 10 the protected person.

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

15 (3) In addition to any other grounds, the court may remove a guardian if the court determines
 16 the guardian:

17 (a) Unreasonably limits the protected person's associations under ORS 125.323;

18 (b) Fails to perform the guardian's duties required under ORS 125.315 [(1)(g) to (i)] (1)(f) to
 19 (h); or

20 (c) Changes the abode of the adult protected person or places the protected person in a mental
 21 health treatment facility, a nursing home or other residential facility and:

22 (A) Failed to disclose in the petition for appointment that the guardian intended to make the
 23 placement; or

24 (B) Failed to comply with ORS 125.320 [(3)] (2) before making the placement.

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

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

34 **SECTION 6.** ORS 125.330 is amended to read:

35 125.330. (1) Except as provided in subsection (2) of this section, a guardian appointed for a per-
 36 son committed to the legal and physical custody of the Department of Corrections may not exercise
 37 those powers specified in ORS 125.315 (1)(a) or (b) while the person remains confined.

38 (2) A guardian appointed for a person committed to the legal and physical custody of the De-
 39 partment of Corrections may take reasonable care of the person's clothing, furniture and other
 40 personal effects that are not located at the person's place of confinement.

41 (3) A guardian appointed for an incarcerated person may exercise those powers specified in
 42 [ORS 125.315 (1)(c)] **section 2 of this 2023 Act** only to the extent that the exercise of those powers
 43 is consistent with the protected person's status as a confined person and with the powers and duties
 44 of the superintendent or other officials of the facility. In no event may a guardian appointed for a
 45 person committed to the legal and physical custody of the Department of Corrections exercise more

1 authority over health care decisions than the protected person could exercise given the person's
2 status as a confined person.

3 **SECTION 7. Section 2 of this 2023 Act and the amendments to ORS 125.225, 125.315,**
4 **125.320 and 125.330 by sections 3 to 6 of this 2023 Act apply to health care decisions made by**
5 **a guardian for a protected person on or after the effective date of this 2023 Act.**

6
