

# DRAFT

## SUMMARY

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

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

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

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

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

**(2) It shall be presumed that every protected person has consented to ordinary and necessary medical, dental and optical examination and treatment and preventive care, including ordinary immunizations and examination for and treatment of any injury, symptom, disease or pathology that is, in the judgment of the treating health care provider, reasonably necessary. The presumption may be rebutted by clear and convincing evidence that the protected person would withhold consent to the specific treatment at issue, if able. If the guardian reasonably**

1 believes that consenting to or withholding consent to the specific  
2 treatment at issue would unreasonably harm or endanger the health  
3 or welfare of the protected person, the guardian shall petition the  
4 court for instructions.

5 (3) Subject to the provisions of this section and ORS 127.505 to  
6 127.660, the guardian may consent, refuse consent or withhold or  
7 withdraw consent to health care, as defined in ORS 127.505, for the  
8 protected person. A guardian is not liable solely by reason of consent  
9 under this subsection for any injury to the protected person resulting  
10 from the negligence or acts of third persons.

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

17 (5) A guardian may not authorize the sterilization of the protected  
18 person.

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

20 125.315. (1) A guardian has the following powers and duties:

21 (a) Except to the extent of any limitation under the order of appointment,  
22 the guardian has custody of the protected person and may establish the  
23 protected person's place of abode within or without this state.

24 (b) The guardian shall provide for the care, comfort and maintenance of  
25 the protected person and, whenever appropriate, shall arrange for training  
26 and education of the protected person. Without regard to custodial rights  
27 of the protected person, the guardian shall take reasonable care of the  
28 person's clothing, furniture and other personal effects unless a conservator  
29 has been appointed for the protected person.

30 [(c) Subject to the provisions of ORS 127.505 to 127.660 and subsection (3)  
31 of this section, the guardian may consent, refuse consent or withhold or with-

*draw consent to health care, as defined in ORS 127.505, for the protected person. A guardian is not liable solely by reason of consent under this paragraph for any injury to the protected person resulting from the negligence or acts of third persons.]*

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

(A) Make advance funeral and burial arrangements;

(B) Subject to the provisions of ORS 97.130, control the disposition of the remains of the protected person; and

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

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

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

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

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

(B) To the extent practicable, identify the values and preferences of the

protected person and involve the protected person in decisions affecting the protected person, including decisions about the protected person's care, dwelling, activities or social interactions; and

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

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

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

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

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

(C) Other factors a reasonable person in the circumstances of the protected person would consider, including consequences for others.

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

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

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

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

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

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

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

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

1 (c) In addition to the requirements of ORS 125.070 (1), the notice given  
2 to the protected person must clearly indicate the manner in which the pro-  
3 tected person may object to the proposed placement.

4 (d) The court shall schedule a hearing on any objection to a statement  
5 filed under this subsection made in the manner provided by ORS 125.075 for  
6 presenting objections to a petition or motion in a protective proceeding. If  
7 no objection is made, the guardian may change the abode of the adult pro-  
8 tected person or place the adult protected person in a mental health treat-  
9 ment facility, a nursing home or other residential facility without further  
10 court order.

11 (e) The requirement that notice be served on an attorney for a protected  
12 person under ORS 125.060 (8) does not impose any responsibility on the at-  
13 torney receiving the notice to represent the protected person in the protec-  
14 tive proceeding.

15 [(4)] (3) A guardian for a protected person who is a vulnerable youth may  
16 not possess or control the vulnerable youth's identity documents.

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

18 125.225. (1) A court shall remove a fiduciary whenever that removal is in  
19 the best interests of the protected person.

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

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

27 (a) Unreasonably limits the protected person's associations under ORS  
28 125.323;

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

31 (c) Changes the abode of the adult protected person or places the pro-

1 tected person in a mental health treatment facility, a nursing home or other  
2 residential facility and:

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

5 (B) Failed to comply with ORS 125.320 [(3)] **(2)** before making the place-  
6 ment.

7 (4) On termination of the authority of a fiduciary, an interim fiduciary  
8 may be appointed by the court to serve for a period not to exceed 60 days.  
9 An interim fiduciary under this subsection may be appointed by the court  
10 without the appointment of a visitor, additional notices or any other addi-  
11 tional procedure, except as may be determined necessary by the court.

12 (5) Upon termination of the authority of a fiduciary, the court may ap-  
13 point a successor fiduciary. A petition for appointment as successor fiduciary  
14 must be filed in the same manner as provided for an original petition, and  
15 is subject to all provisions applicable to an original petition for the ap-  
16 pointment of a fiduciary. No filing fee shall be charged or collected for the  
17 filing of a petition for the appointment of a successor fiduciary.

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

19 125.330. (1) Except as provided in subsection (2) of this section, a guardian  
20 appointed for a person committed to the legal and physical custody of the  
21 Department of Corrections may not exercise those powers specified in ORS  
22 125.315 (1)(a) or (b) while the person remains confined.

23 (2) A guardian appointed for a person committed to the legal and physical  
24 custody of the Department of Corrections may take reasonable care of the  
25 person's clothing, furniture and other personal effects that are not located  
26 at the person's place of confinement.

27 (3) A guardian appointed for an incarcerated person may exercise those  
28 powers specified in [ORS 125.315 (1)(c)] **section 2 of this 2023 Act** only to  
29 the extent that the exercise of those powers is consistent with the protected  
30 person's status as a confined person and with the powers and duties of the  
31 superintendent or other officials of the facility. In no event may a guardian

1 appointed for a person committed to the legal and physical custody of the  
2 Department of Corrections exercise more authority over health care deci-  
3 sions than the protected person could exercise given the person's status as  
4 a confined person.

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