

Senate Bill 528

Sponsored by Senator DEMBROW (Pre-session filed.)

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**.

Modifies provisions relating to protective proceedings.

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A BILL FOR AN ACT

Relating to protective proceedings; creating new provisions; and amending ORS 125.005, 125.025, 125.055, 125.060, 125.065, 125.070, 125.080, 125.082, 125.150, 125.165, 125.225, 125.300, 125.305, 125.315, 125.320, 125.325, 125.330, 125.430, 125.475, 125.678 and 125.687 and section 4, chapter 400, Oregon Laws 2021.

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

SECTION 1. Sections 2 and 3 of this 2023 Act are added to and made a part of ORS chapter 125.

SECTION 2. (1) It is the policy of the State of Oregon that the least restrictive alternatives appropriate for meeting a person's needs be explored prior to the appointment of a fiduciary in a protective proceeding. Less restrictive alternatives to the appointment of a fiduciary in a protective proceeding include supported decision-making, the use of assistive technology, the appointment of a representative payee, the appointment by the person of an agent with decision-making authority, including by executing a power of attorney, as described in ORS 127.005 to 127.045, appointing a health care representative, as described in ORS 127.505 to 127.660, or executing a declaration for mental health treatment, as described in ORS 127.700 to 127.737, and any other decision-making supports that maximize opportunities for the person's independence, for the person's self-determination and for the person to make the person's own decisions to the greatest extent possible.

(2) A person who provides supported decision-making assistance or accommodation to another person may not act as a surrogate decision maker for the supported person or sign legal documents on behalf of the supported person.

SECTION 3. (1) No later than 30 days following the fifth anniversary of the date of filing of the initial petition for appointment of a fiduciary, and every five years thereafter, a fiduciary in a protective proceeding shall file a motion to continue the protective proceeding or a motion to terminate the protective proceeding. A motion to continue the protective proceeding must contain the same information as an initial petition for appointment of a fiduciary under ORS 125.055 and must be filed concurrently with any otherwise required guardian's report under ORS 125.325 or conservator's annual accounting to the court under ORS 125.475. The protected person is entitled to the same rights and procedures provided in the original proceedings when the motion to continue the protective proceeding is filed. The fiduciary has the burden of proving by clear and convincing evidence that a protected 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 continues to be incapacitated or financially incapable.

2 (2) The court may continue the protective proceeding only if the court determines that
 3 conditions for the continued appointment of the fiduciary have been established by clear and
 4 convincing evidence. If the court determines that conditions for the continued appointment
 5 of the fiduciary have not been established by clear and convincing evidence, the court shall
 6 direct the fiduciary to file a motion to terminate the protective proceeding.

7 (3) This section does not apply to a vulnerable youth guardianship.

8 **SECTION 4.** Section 5 of this 2023 Act is added to and made a part of ORS 125.675 to
 9 125.691.

10 **SECTION 5.** (1) The Oregon Public Guardian and Conservator must be certified by the
 11 Center for Guardianship Certification, or its successor organization, as a National Certified
 12 Guardian or a National Master Guardian.

13 (2) If the Oregon Public Guardian and Conservator is appointed as the fiduciary in a
 14 proceeding under this chapter, the Oregon Public Guardian and Conservator shall file with
 15 the court within three days after receipt of written notice of the appointment a statement
 16 containing the name, address and telephone number of the person who will act as primary
 17 decision maker for the protected person and the name of the person with whom the pro-
 18 tected person will have personal contact if the person named as primary decision maker will
 19 not have personal contact with the protected person.

20 (3) Each person identified in the notice under subsection (2) of this section must be cer-
 21 tified by the Center for Guardianship Certification, or its successor organization, as a Na-
 22 tional Certified Guardian or a National Master Guardian.

23 **SECTION 6.** ORS 125.005 is amended to read:

24 125.005. As used in this chapter:

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

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

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

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

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

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

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

45 (8) “Protective order” means an order of a court appointing a fiduciary or any other order of

1 the court entered for the purpose of protecting the person or estate of a respondent or protected
2 person.

3 (9) "Protective proceeding" means a proceeding under this chapter.

4 (10) "Respondent" means a person for whom entry of a protective order is sought in a petition
5 filed under ORS 125.055.

6 (11) **"Supported decision-making" means decision-making by a person with the assistance
7 or accommodation of another person, including assistance gathering relevant information,
8 evaluating information to allow the supported person to make a decision or communicating
9 the supported person's decision to others.**

10 [(11)] (12) "Visitor" means a person appointed by the court under ORS 125.150 for the purpose
11 of interviewing and evaluating a respondent or protected person.

12 [(12)] (13) "Vulnerable youth" means a person who:

13 (a) Is at least 18 years of age but has not attained 21 years of age;

14 (b) Is eligible for classification under 8 U.S.C. 1101(a)(27)(J); and

15 (c) Cannot be reunified with one or more of the person's parents due to abuse, neglect or
16 abandonment, that occurred when the person was a minor.

17 **SECTION 7.** ORS 125.025 is amended to read:

18 125.025. (1) Subject to ORS 125.800 to 125.852 for adults as defined in ORS 125.802, a court
19 having jurisdiction over a protective proceeding shall exercise continuing authority over the pro-
20 ceeding. Subject to the provisions of ORS 125.800 to 125.852 and this chapter, the court may act
21 upon the petition or motion of any person or upon its own authority at any time and in any manner
22 it deems appropriate to determine the condition and welfare of the respondent or protected person
23 and to inquire into the proper performance of the duties of a fiduciary appointed under the pro-
24 visions of this chapter.

25 (2) A court having jurisdiction over a protective proceeding in which the respondent or pro-
26 tected person is a minor shall consider and apply all relevant provisions of the Indian Child Welfare
27 Act codified at 25 U.S.C. sections 1901 et seq.

28 (3) A court having jurisdiction over a protective proceeding may:

29 (a) Compel the attendance of any person, including respondents, protected persons, fiduciaries
30 and any other person who may have knowledge about the person or estate of a respondent or pro-
31 tected person. The court may require those persons to respond to inquiries and produce documents
32 that are subject to discovery under ORCP 36.

33 (b) Appoint counsel for a respondent or protected person.

34 (c) Appoint investigators, visitors and experts to aid the court in the court's investigation.

35 (d) Exercise jurisdiction over any transaction entered into by a fiduciary to determine if a con-
36 flict of interest existed and enter an appropriate judgment with respect to the transaction.

37 (e) Surcharge a surety for any loss caused by failure of a fiduciary to perform a fiduciary duty
38 or any other duty imposed by this chapter, including a surcharge for attorney fees incurred by a
39 respondent or protected person by reason of the failure.

40 (f) Require immediate delivery of a protected person or property of the protected person, in-
41 cluding records, accounts and documents relating to that property, to the court or to a place it
42 designates.

43 (g) Require the fiduciary to produce any and all records that might provide information about
44 the treatment or condition of the protected person or property of the protected person.

45 (h) Remove a fiduciary whenever that removal is in the best interests of the protected person.

1 (i) Appoint a successor fiduciary when a fiduciary has died, resigned or been removed.

2 (j) Require a respondent or protected person to submit to a physical or mental examination
3 pursuant to ORCP 44.

4 (k) Make provisions for parenting time or visitation or order support for any minor who is a
5 respondent or protected person in a protective proceeding.

6 (L) Impose any conditions and limitations upon the fiduciary that the court considers appropri-
7 ate, including limitations on the duration of the appointment. Any conditions or limitations imposed
8 on the fiduciary must be reflected in the letters of appointment.

9 (m) Appoint protected person special advocates pursuant to ORS 125.120.

10 (n) In a guardianship proceeding involving a vulnerable youth, allow a person whose attendance
11 the court compels under paragraph (a) of this subsection to attend by telephone, video or other re-
12 mote technology.

13 (4) When a person files a petition or motion for a support order under subsection (3)(k) of this
14 section:

15 (a) The person shall state in the petition or motion, to the extent known:

16 (A) Whether there is pending in this state or any other jurisdiction any type of support pro-
17 ceeding involving the minor, including a proceeding brought under ORS 25.287, 25.501 to 25.556,
18 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165 or 419B.400 or ORS chapter 110; and

19 (B) Whether there exists in this state or any other jurisdiction a support order, as defined in
20 ORS 110.503, involving the minor.

21 (b) The person shall include with the petition or motion a certificate regarding any pending
22 support proceeding and any existing support order. The person shall use a certificate that is in a
23 form established by court rule and include information required by court rule and paragraph (a) of
24 this subsection.

25 (5) When the court acts upon its own authority to order support under subsection (3)(k) of this
26 section, at least 21 days before the hearing the court shall notify the Administrator of the Division
27 of Child Support of the Department of Justice, or the branch office providing support services to the
28 county where the hearing will be held, of the hearing. Before the hearing the administrator shall
29 inform the court, to the extent known:

30 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
31 ceeding involving the minor, including a proceeding brought under ORS 25.287, 25.501 to 25.556,
32 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165 or 419B.400 or ORS chapter 110; and

33 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in
34 ORS 110.503, involving the minor.

35 (6) The Judicial Department and the Department of Justice may enter into an agreement re-
36 garding how the courts give the notice required under subsection (5) of this section to the Depart-
37 ment of Justice and how the Department of Justice gives the information described in subsection
38 (5)(a) and (b) of this section to the courts.

39 (7) If the court finds that a conservator should be appointed, the court may exercise all the
40 powers over the estate and affairs of the protected person that the protected person could exercise
41 if present and not under disability, except the power to make a will. The court shall exercise those
42 powers for the benefit of the protected person and members of the household of the protected per-
43 son.

44 **(8) If the court finds that a guardian should be appointed, the court shall limit the au-**
45 **thority of the guardian to the specific decision-making categories that the court has found,**

1 **by clear and convincing evidence, to be those in which the respondent or protected person**
 2 **is incapacitated.**

3 [(8)] (9) The powers of the court in protective proceedings may be exercised by the court di-
 4 rectly or through a fiduciary.

5 **SECTION 8.** ORS 125.055, as amended by section 4, chapter 68, Oregon Laws 2022, is amended
 6 to read:

7 125.055. (1)(a) A petition in a protective proceeding that seeks the appointment of a fiduciary
 8 must designate the type of fiduciary that the petitioner seeks to have appointed. If the petition does
 9 not request the appointment of a fiduciary, or if the petition requests both the appointment of a
 10 fiduciary and some other protective order, the petition must contain a statement of the nature of the
 11 protective order requested. The caption of the petition must reflect the type of fiduciary whose ap-
 12 pointment is requested or, if the appointment of a fiduciary is not requested, the nature of the pro-
 13 tective order requested. An original and duplicate copy of the petition must be filed with the court.

14 (b) A single filing fee shall be collected for a petition described in this section regardless of
 15 whether the petition requests multiple fiduciaries or protective orders. Notwithstanding ORS 21.135,
 16 21.145, 21.175, 21.180 and 125.650, the fee shall consist of the highest applicable fee set forth in ORS
 17 21.135, 21.145 (3), 21.175 or 21.180.

18 (2) A petition in a protective proceeding must contain the following information to the extent
 19 that the petitioner is aware of the information or to the extent that the petitioner is able to acquire
 20 the information with reasonable effort:

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

22 (b) The interest of the petitioner.

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

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

26 (A) Has been convicted of a crime;

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

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

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

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

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

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

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

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

43 [(i) *The factual information that:*]

44 [(A)] (i) [*Except as provided in subparagraph (B) of this paragraph,*] **The factual information**
 45 **that** supports the request for the appointment of a fiduciary or entry of other protective order, a

1 **description of the** less restrictive alternatives to the appointment of a fiduciary, **as described in**
 2 **section 2 of this 2023 Act**, that have been [*considered*] **explored** and why the alternatives are in-
 3 adequate and the names and addresses of all persons who have information that would support a
 4 finding that an adult respondent is **a vulnerable youth**, incapacitated or financially incapable.

5 [(B) *If the petition seeks appointment of a guardian for a vulnerable youth, supports a finding that*
 6 *the proposed protected person is a vulnerable youth.*]

7 **(j) Information regarding how the less restrictive alternatives described in paragraph (i)**
 8 **of this subsection, and specifically including supported decision-making, were explored and**
 9 **why the appointment of a fiduciary is still necessary.**

10 [(j)] **(k)** A statement that indicates whether the person nominated as fiduciary intends to place
 11 the respondent in a mental health treatment facility, a nursing home or other residential facility.

12 [(k)] **(L)** A general description of the estate of the respondent and the respondent's sources of
 13 income and the amount of that income.

14 [(L)] **(m)** A statement indicating whether the person nominated as fiduciary is a public or pri-
 15 vate agency or organization that provides services to the respondent or an employee of a public or
 16 private agency or organization that provides services to the respondent.

17 [(m)] **(n)** A statement that indicates whether the petitioner is petitioning for plenary authority
 18 or specified limited authority for the person nominated as fiduciary.

19 **(3) In addition to the requirements of subsection (2) of this section, if the petition seeks ap-**
 20 **pointment of a guardian, the petition must include:**

21 (a) [*If a petition seeks appointment of a guardian, the petition must contain a statement on whether*
 22 *the guardian will exercise any control over the estate of the respondent. If the guardian will exercise*
 23 *any control over the estate of the respondent, the petition must contain*] **A statement on whether the**
 24 **guardian will exercise any control over the estate of the respondent and, if so:**

25 **(A) The factual information demonstrating, by clear and convincing evidence, that the**
 26 **respondent requires the appointment of a guardian who may exercise control over the**
 27 **respondent's estate; and**

28 **(B)** A statement of the monthly income of the respondent, the sources of the respondent's in-
 29 come, and the amount of any moneys that the guardian will be holding for the respondent at the
 30 time of the appointment.

31 (b) [*Except as provided in paragraph (c) of this subsection,*] **A statement on whether the**
 32 **guardian will exercise medical decision-making authority on behalf of the respondent and, if**
 33 **so, the factual information demonstrating, by clear and convincing evidence, that the re-**
 34 **spondent is incapacitated as to making decisions regarding the respondent's medical care.**

35 **(c)** A statement on whether the guardian will exercise any decision-making authority
 36 regarding the respondent's place of abode and, if so, the factual information demonstrating,
 37 by clear and convincing evidence, that the respondent is incapacitated as to making decisions
 38 regarding the respondent's place of abode.

39 **(d)** A statement on whether the guardian will exercise any other general duties of a
 40 guardian, including duties to provide for the care, comfort and maintenance of the respond-
 41 ent, and, if so, the factual information demonstrating, by clear and convincing evidence, that
 42 the respondent is incapacitated as to making those decisions.

43 **(e)** If the petition seeks appointment of a guardian with plenary authority, the factual
 44 information demonstrating, by clear and convincing evidence, that the presumption in favor
 45 of a limited guardianship has been overcome.

1 **(f) A statement notifying the court that a visitor must be appointed** if the petition seeks
2 the appointment:

3 **(A)** Of a guardian for an adult respondent[.].

4 **(B)** Of a guardian for a minor respondent who is more than 16 years of age, [*in cases where*] if
5 the court determines there is the likelihood that a petition seeking appointment of a guardian for
6 the respondent as an adult will be filed before the date that the respondent attains [*majority*] **18**
7 **years of age**, in accordance with subsection (6)[*(a)*] of this section, or as an adult[, *or*].

8 **(C)** Of a temporary fiduciary who will exercise the powers of a guardian for an adult
9 respondent[, *the petition must contain a statement notifying the court that a visitor must be*
10 *appointed*].

11 [*(c)*] **(g)** If the petition seeks appointment of a guardian for a vulnerable youth[, *the petition must*
12 *include*]:

13 **(A)** A statement that the court in its discretion may appoint a visitor; and

14 **(B)** [*Except as provided in subsection (6)(b) of this section,*] **If the respondent is an adult**, a
15 declaration signed by the vulnerable youth consenting to the appointment of the proposed
16 guardian[.] **or, if the respondent is a minor, a statement that the declaration of consent to**
17 **appointment will be filed no later than 10 days after the respondent attains 18 years of age.**

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

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

24 (6)[*(a)*] A parent or guardian of a minor may file a petition that seeks the appointment of a
25 guardian for the minor as an adult, to become effective on the date that the minor attains
26 [*majority*] **18 years of age**, at any time within 90 days before the date that the minor attains [*ma-*
27 *majority*] **18 years of age** or at any other time determined by the court to be necessary and appropriate
28 to ensure the ongoing protection, safety and welfare of the minor upon attaining [*majority*] **18 years**
29 **of age.**

30 [*(b)* *If a petition for the appointment of a guardian for a vulnerable youth is filed when the re-*
31 *spondent is a minor, the declaration of consent to appointment required under subsection (3)(c) of this*
32 *section must be filed no later than 10 days after the respondent attains the age of majority.*]

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

36 **SECTION 9.** ORS 125.060 is amended to read:

37 125.060. (1) The notices required by this section must be given to all persons whose identities
38 and addresses can be ascertained in the exercise of reasonable diligence by the person required to
39 give the notice.

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

42 (a) The respondent, if the respondent has attained 14 years of age unless the petition is for the
43 appointment of a guardian for a vulnerable youth who has attained 18 years of age and the
44 respondent's declaration consenting to the appointment has been filed with the court.

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

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

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

5 (e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the
6 respondent by a court of any state, any trustee for a trust established by or for the respondent, any
7 person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and
8 any person acting as attorney-in-fact for the respondent under a power of attorney.

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

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

13 (h) If the respondent is receiving moneys paid or payable by the United States through the De-
14 partment of Veterans Affairs, a representative of the United States Department of Veterans Affairs
15 regional office that has responsibility for the payments to the protected person.

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

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

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

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

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

27 (3) Notice of a motion **to continue the protective proceedings**, for the termination of the
28 protective proceedings, for removal of a fiduciary, for modification of the powers or authority of a
29 fiduciary, for approval of a fiduciary's actions or for protective orders in addition to those sought
30 in the petition must be given by the person making the motion to the following persons:

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

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

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

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

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

41 (f) If the protected person is a vulnerable youth, the consulate of the vulnerable youth's country
42 of nationality or, if unknown, the consulate of the vulnerable youth's last country of residence prior
43 to the United States of America.

44 (g) Any other person that the court requires.

45 (4) A request for notice under subsection (3)(b) of this section must be in writing and include

1 the name, address and phone number of the person requesting notice. A copy of the request must
 2 be mailed by the person making the request to the petitioner or to the fiduciary if a fiduciary has
 3 been appointed. The original request must be filed with the court. The person filing the request must
 4 pay the fee specified by ORS 21.135.

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

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

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

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

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

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

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

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

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

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

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

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

38 **SECTION 10.** ORS 125.065 is amended to read:

39 125.065. (1) Except as provided in ORS 125.060, notice of the filing of a petition must be per-
 40 sonally served on any respondent who has attained 14 years of age. Notice of a petition must be
 41 personally served on the parents of a respondent if the petition is based on the fact that the re-
 42 spondent is a minor. The notice may not be served on the respondent by the visitor appointed by
 43 the court. The notice shall be written in language reasonably understandable by the respondent. The
 44 notice must be printed in type size equal to at least 12-point type.

45 **(2) Whenever notice is required under ORS 125.060, 125.075 or 125.082 to be given to the**

1 **system described in ORS 192.517 (1):**

2 (a) **If the person giving notice is represented by counsel, the person shall provide the**
 3 **notice electronically in a manner described by the system; or**

4 (b) **If the person giving notice is not represented by counsel, the person shall provide the**
 5 **notice by mail or electronically in a manner described by the system.**

6 [(2)] (3) Except as provided in subsection (1) of this section, the notices required under ORS
 7 125.060 may be mailed to the last-known address of the person. If the address or identity of any
 8 person is not known and cannot be ascertained with reasonable diligence, notice of the filing of a
 9 petition may be given by publishing at least once a week for three consecutive weeks a copy of the
 10 notice in a newspaper having general circulation in the county where the hearing is to be held. The
 11 last publication of the notice must be at least 15 days before the final date for the filing of ob-
 12 jections.

13 [(3)] (4) The date of personal service or mailing under this section must be at least 15 days be-
 14 fore the final date for the filing of objections to the petition or motion. If the proceedings are subject
 15 to the Uniform Child Custody Jurisdiction and Enforcement Act provided for in ORS 109.701 to
 16 109.834, the date of service or mailing must be at least 21 days before the final date for the filing
 17 of objections to the petition or motion.

18 [(4)] (5) The court for good cause shown may provide for a different method or time of giving
 19 notice under this section.

20 [(5)] (6) Proof of the giving of notice must be filed in the proceeding before the court enters any
 21 order on a petition or motion.

22 **SECTION 11.** ORS 125.070 is amended to read:

23 125.070. (1) The notice required by ORS 125.060 must contain the following:

24 (a) The name, address and telephone number of the petitioner or the person making the motion,
 25 and the relationship of the petitioner or person making the motion to the respondent.

26 (b) A copy of the petition or motion.

27 (c) A statement on where objections may be made or filed and the deadline for making or filing
 28 those objections.

29 (d) If a hearing has been set, the date, time and place of the hearing.

30 (2) In addition to the requirements of subsection (1) of this section, a notice of a petition for the
 31 appointment of a conservator for a respondent who is alleged to be financially incapable or a notice
 32 of a petition for the appointment of a guardian or conservator for a respondent who is a minor that
 33 is served on the respondent must contain the following:

34 (a) An explanation of the purpose and possible consequences of the petition.

35 (b) A statement that financial resources of the respondent may be used to pay court-approved
 36 expenditures of the proceeding.

37 (c) Information regarding any free or low-cost legal services and other relevant services avail-
 38 able in the area.

39 (d) Information on any appointment of a visitor and the role of the visitor.

40 (e) A statement of the rights of the respondent as follows:

41 (A) The right to be represented by an attorney.

42 **(B) The right to have an attorney appointed by the court.**

43 [(B)] (C) The right to file a written or oral objection.

44 [(C)] (D) The right to request a hearing.

45 [(D)] (E) The right to present evidence and cross-examine witnesses at any hearing.

1 [(E)] (F) The right to request at any time that the power of the fiduciary be limited by the court.

2 [(F)] (G) The right to request at any time the removal of the fiduciary or a modification of the
3 protective order.

4 (3) In addition to the requirements of subsection (1) of this section, a notice of a petition for the
5 appointment of a guardian for a respondent who is alleged to be incapacitated must contain a notice,
6 printed in 14-point type, in substantially the following form:

7 _____
8
9 NOTICE TO RESPONDENT

10
11 To: Respondent _____:

12
13 _____, Petitioner, who is your _____ (relationship to respond-
14 ent), or that is an agency or business that provides guardianship services, has asked a judge for the
15 power to make decisions for you. The judge has been asked to give this person, agency or business
16 the authority to make the following decisions for you (mark the appropriate spaces):

- 17 Medical and health care decisions, including decisions on which doctors you will see and
18 what medications and treatments you will receive.
- 19 Residential decisions, including decisions on whether you can stay where you are currently
20 living or be moved to another place.
- 21 Financial decisions, including decisions on paying your bills and decisions about how your
22 money is spent.
- 23 Other decisions: _____
24 _____.

25 YOUR MONEY MAY BE USED IF THE JUDGE APPOINTS A GUARDIAN FOR YOU. YOU
26 MAY BE ASKED TO PAY FOR THE TIME AND EXPENSES OF THE GUARDIAN, THE TIME
27 AND EXPENSES OF THE PETITIONER'S ATTORNEY, THE TIME AND EXPENSES OF YOUR
28 ATTORNEY, FILING FEES AND OTHER COSTS.

29 YOU MUST TELL SOMEONE AT THE COURTHOUSE BEFORE _____ (DATE)
30 IF YOU OPPOSE HAVING SOMEONE ELSE MAKE THESE DECISIONS FOR YOU.

31
32 **OBJECTIONS:**

33 You can write to the judge if you do not want someone else making decisions for you. The
34 judge's address is: _____.

35 You have the right to object to the appointment of a guardian by saying you want to continue
36 to make your own decisions. If you do not want another person, agency or business making decisions
37 for you, you can object. If you do not want _____ (Proposed Guardian) to make these deci-
38 sions for you, you can object. If you do not want your money to be used to pay for these expenses,
39 you can object.

40 You can object any time after the judge has appointed a guardian. You can ask the judge at any
41 time to limit the kinds of decisions that the guardian makes for you so that you can make more
42 decisions for yourself. You can also ask the judge at any time to end the guardianship.

43
44 **THE HEARING:**

45 The judge will hold a hearing if you do not want a guardian, do not want this particular person

1 to act as your guardian or do not want your money used this way. At the hearing, the judge will
 2 listen to what you and others have to say about whether you need someone else to make decisions
 3 for you, who that person should be and whether your money should be spent on these things. You
 4 can have your witnesses tell the judge why you do not need a guardian and you can bring in records
 5 and other information about why you think that you do not need a guardian. You can ask your
 6 witnesses questions and other witnesses questions.

7
 8 **THE COURT VISITOR:**

9 The judge will appoint someone to investigate whether you need a guardian to make decisions
 10 for you. This person is called a “visitor.” The visitor works for the judge and does not work for the
 11 person who filed the petition asking the judge to appoint a guardian for you, for you or for any other
 12 party. The visitor will come and talk to you about the guardianship process, about whether you
 13 think that you need a guardian and about who you would want to be your guardian if the judge
 14 decides that you need a guardian. The visitor will talk to other people who have information about
 15 whether you need a guardian. The visitor will make a report to the judge about whether what the
 16 petition says is true, whether the visitor thinks that you need a guardian, whether the person pro-
 17 posed as your guardian is able and willing to be your guardian, who would be the best guardian for
 18 you and what decisions the guardian should make for you. If there is a hearing about whether to
 19 appoint a guardian for you, the visitor will be in court to testify.

20 You can tell the visitor if you don’t want someone else making decisions for you when the vis-
 21 itor comes to talk with you about this matter.

22
 23 **LEGAL SERVICES:**

24 You can call a lawyer if you don’t want someone else making decisions for you. If you don’t
 25 have a lawyer, you can ask the judge [*whether a lawyer can be*] **to have a lawyer** appointed for you.

26 There may be free or low-cost legal services or other relevant services in your local area that
 27 may be helpful to you in the guardianship proceeding. For information about these services, you can
 28 call the following telephone numbers _____ and ask to talk to people who can help you
 29 find legal services or other types of services.

30
 31 **OBJECTION FORM:**

32 You can mark the blue sheet (Respondent’s Objection) that is attached to this form if you do
 33 not want someone else to make your decisions for you. You can give the blue sheet to the visitor
 34 when the visitor comes to talk with you about this, you can show it to your attorney or you can
 35 mail it to the judge.

36
 37
 38 (4) In addition to the requirements of subsection (1) of this section, a notice of a petition that
 39 is served on a respondent who is alleged to be incapacitated must contain an objection form, printed
 40 on blue paper in 14-point type, in substantially the following form:

41 _____
 42
 43 IN THE _____ COURT
 44 OF THE STATE OF OREGON
 45 FOR THE COUNTY OF _____

1) Case No. _____
 2 (Case Title))
 3) RESPONDENT'S
 4) OBJECTION
 5)
 6)
 7)

8
9 I object to the petition for the following reasons:

- 10 ___ I do not want anyone else making any of my decisions for me.
- 11 ___ I do not want _____ making any decisions for me.
- 12 ___ I do not want _____ to make the following decisions for me:

13 _____
 14 _____

15
 16 _____
 17 (Signature of Respondent)

18 _____
 19 (Date)

20 GIVE TO THE VISITOR OR MAIL TO:

21 _____
 22 _____

23
 24 (5) In addition to the requirements of subsection (1) of this section, a notice of a petition pro-
 25 vided to a person other than the respondent must contain a statement as follows:

26 _____

27
 28 NOTICE: If you wish to receive copies of future filings in this case, you must inform the judge
 29 and the person named as petitioner in this notice. You must inform the judge by filing a request for
 30 notice and paying any applicable fee. The request for notice must be in writing, must clearly indi-
 31 cate that you wish to receive future filings in the proceedings and must contain your name, address
 32 and phone number. You must notify the person named as petitioner by mailing a copy of the request
 33 to the petitioner. Unless you take these steps, you will receive no further copies of the filings in
 34 the case.

35 _____

36
 37 **(6) In addition to the requirements of subsection (1) of this section, each notice required**
 38 **by ORS 125.060 to be provided to a respondent or protected person must:**

39 **(a) Include a statement that the respondent or protected person may ask the court to**
 40 **appoint an attorney for the respondent or protected person; and**

41 **(b) Describe the court's procedures for making the request.**

42 **SECTION 12.** ORS 125.080 is amended to read:

43 125.080. (1) The court may require that a hearing be held on any petition or motion in a pro-
 44 tective proceeding.

45 (2) A hearing must be held on a petition or motion if the respondent or protected person makes

1 or files an objection to the petition or motion and the objection is not withdrawn before the time
2 scheduled for the hearing.

3 (3) A hearing must be held on a motion to modify a guardian’s powers under ORS 125.323.

4 (4) The respondent or protected person [*may*] **must** appear at [*a*] **the** hearing in person [*or by*
5 *counsel*].

6 (5) If the hearing is regarding a petition for appointment of a guardian for a vulnerable youth
7 or a petition involving a vulnerable youth guardianship, the court:

8 (a) May allow the respondent or protected person, proposed guardian, guardian or any other
9 witness to appear by telephone, video or other remote technology;

10 (b)(A) May take testimony from or confer with the respondent or protected person and may ex-
11 clude from the conference others if the court finds that doing so would be in the best interests of
12 the respondent or protected person; and

13 (B) Notwithstanding subparagraph (A) of this paragraph, shall permit any attorney for the re-
14 spondent or protected person to attend the conference and the conference must be reported;

15 (c) May not inquire into the nationality or current immigration status of the proposed guardian,
16 guardian or any other witness; and

17 (d) May not inquire about any prior immigration status of the respondent or protected person
18 or about the manner or place in which the respondent or protected person entered the United States
19 of America.

20 (6)(a) [*If the court requires that a hearing be held or a hearing is otherwise required under this*
21 *section,*] The court shall appoint counsel for the respondent or protected person when:

22 (A) The respondent or protected person requests that counsel be appointed;

23 (B) An objection is made or filed to the petition or motion by any person;

24 (C) The court has appointed a visitor under ORS 125.150, 125.160 or 125.605, and the visitor re-
25 commends appointment of counsel for the respondent or protected person; or

26 (D) The court determines that the respondent or protected person is in need of legal counsel.

27 (b) The court is not required to appoint counsel under this subsection if the respondent or pro-
28 tected person is already represented by counsel or otherwise objects to appointment of counsel.

29 (7) If the court appoints counsel under subsection (6) of this section:

30 (a) The court shall order payment of attorney fees and costs from the guardianship or conser-
31 vatorship estate of the respondent or protected person if sufficient funds exist to pay all or a portion
32 of the attorney fees and costs due; or

33 (b) The court may determine that a respondent or protected person is financially eligible for
34 appointed counsel at state expense and, if so, the compensation for legal counsel and costs and ex-
35 penses necessary for representation of the respondent or protected person shall be determined and
36 paid by the public defense services executive director as provided under ORS 135.055.

37 **SECTION 13.** ORS 125.080, as applicable to hearings taking place in counties until the respec-
38 tive dates provided in section 4, chapter 400, Oregon Laws 2021, is amended to read:

39 125.080. (1) The court may require that a hearing be held on any petition or motion in a pro-
40 tective proceeding.

41 (2) A hearing must be held on a petition or motion if an objection is filed to the petition or
42 motion and the objection is not withdrawn before the time scheduled for the hearing.

43 (3) A hearing must be held on a motion to modify a guardian’s powers under ORS 125.323.

44 (4) The respondent or protected person [*may*] **must** appear at [*a*] **the** hearing in person [*or by*
45 *counsel*].

1 (5) If the hearing is regarding a petition for appointment of a guardian for a vulnerable youth
2 or a petition involving a vulnerable youth guardianship, the court:

3 (a) May allow the respondent or protected person, proposed guardian, guardian or any other
4 witness to appear by telephone, video or other remote technology;

5 (b)(A) May take testimony from or confer with the respondent or protected person and may ex-
6 clude from the conference others if the court finds that doing so would be in the best interests of
7 the respondent or protected person; and

8 (B) Notwithstanding subparagraph (A) of this paragraph, shall permit any attorney for the re-
9 spondent or protected person to attend the conference and the conference must be reported;

10 (c) May not inquire into the nationality or current immigration status of the proposed guardian,
11 guardian or any other witness; and

12 (d) May not inquire about any prior immigration status of the respondent or protected person
13 or about the manner or place in which the respondent or protected person entered the United States
14 of America.

15 (6) If the court requires that a hearing be held on a petition, or a hearing is otherwise required
16 under this section, the court may appoint counsel for the respondent unless the respondent is al-
17 ready represented by counsel.

18 **SECTION 14.** ORS 125.082 is amended to read:

19 125.082. (1)(a) Upon appointment, a guardian shall deliver written notice of the order of ap-
20 pointment to the persons described in ORS 125.060 (3).

21 (b)(A) The notice provided to the protected person under this subsection must be delivered in
22 person in a manner reasonably calculated to be understood by the protected person.

23 (B) When delivering the notice to the protected person under this subsection, the guardian shall
24 offer to also provide the notice to the protected person orally. If the protected person requests oral
25 notice in response to the offer or otherwise, the guardian shall provide oral notice.

26 (C) In providing notice to the protected person under this paragraph, the guardian shall provide
27 reasonable accommodations for effective communication as necessary.

28 (c) Notwithstanding paragraph (b) of this subsection, if the guardian determines that personal
29 delivery of the notice to the protected person is unduly burdensome, the guardian may deliver the
30 notice by first class mail and certified, registered or express mail, return receipt requested.

31 (2) A notice under this section must include:

32 (a) The title of the court in which the protective proceeding is pending and the clerk's file
33 number;

34 (b) The name and address of the protected person and the attorney for the protected person, if
35 any;

36 (c) The name and address of the guardian and the attorney for the guardian, if any;

37 (d) The date of the appointment of the guardian;

38 (e) A statement describing the authority awarded to the guardian and any limitations placed on
39 the guardian's authority;

40 (f) A statement advising the protected person or other interested person of the right of the
41 protected person to seek removal of the guardian or termination of the guardianship;

42 **(g) A statement that the protected person may ask the court to appoint an attorney for**
43 **the protected person and a description of the court's procedures for making the request; and**

44 [(g)] **(h)** If the notice is delivered to the protected person as provided in subsection (1)(c) of this
45 section, a statement describing why personal delivery of the notice was unduly burdensome.

1 (3) No later than 30 days following the date of the guardian’s appointment, the guardian shall
 2 file in the proceeding before the court proof of the giving of notice under this section, including:

3 (a) The date, time and place where written notice was provided;

4 (b) A description of the manner the notice was provided, whether notice was provided orally and
 5 whether any reasonable accommodation was provided;

6 (c) If the guardian delivered notice as provided in subsection (1)(c) of this section, a brief de-
 7 scription of why personal delivery of the notice was unduly burdensome together with return of re-
 8 ceipt of the mailing; and

9 (d) If the protected person is a resident of a mental health treatment facility or a residential
 10 facility for individuals with developmental disabilities, or if the guardian intends to place the pro-
 11 tected person in such a facility, the guardian shall provide notice under this section to the system
 12 described in ORS 192.517 (1).[:]

13 [(A) *If the guardian is represented by counsel, electronically in a manner described by the system;*
 14 *or]*

15 [(B) *If the guardian is not represented by counsel, by mail or electronically in a manner described*
 16 *by the system.*]

17 **SECTION 15.** ORS 125.150 is amended to read:

18 125.150. (1)(a) The court shall **select and** appoint a visitor upon the filing of a petition in a
 19 protective proceeding that seeks the appointment of:

20 (A) A guardian for an adult respondent;

21 (B) A guardian for a minor respondent who is more than 16 years of age, [*in cases where*] **if** the
 22 court determines there is the likelihood that a petition seeking appointment of a guardian for the
 23 respondent as an adult will be filed before the date that the respondent attains [*majority*] **18 years**
 24 **of age**, in accordance with ORS 125.055 (6)[*(a)*], or as an adult; or

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

26 (b) [*Notwithstanding paragraph (a) of this subsection,*] If a petition in a protective proceeding
 27 seeks the appointment of a guardian for a respondent because the respondent is, or, if the respond-
 28 ent is a minor, will be a vulnerable youth, the court in its discretion may **select and** appoint a
 29 visitor **upon the filing of the petition.**

30 (c) The court may **select and** appoint a visitor in any other protective proceeding or in a pro-
 31 ceeding under ORS 109.329.

32 **(d) The court shall select and appoint a visitor upon the filing under section 3 of this 2023**
 33 **Act of a motion to continue a protective proceeding.**

34 **(e) The court may not take into consideration the preferences or recommendations of**
 35 **any of the parties to the proceeding when the court selects a visitor to appoint under this**
 36 **section.**

37 (2) [*A visitor may be an officer, employee or special appointee of the court. The person appointed*
 38 *may not have any personal interest in the proceedings. The person appointed must have training or*
 39 *expertise adequate to allow the person to appropriately evaluate the functional capacity and needs of*
 40 *a respondent or protected person, or each petitioner and the person to be adopted under ORS*
 41 *109.329.*] The court shall provide a copy of the petition and other filings in the proceedings that may
 42 be of assistance to the visitor **appointed by the court under this section.**

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

1 or each petitioner or the person to be adopted under ORS 109.329, is located.

2 (4) Subject to any law relating to confidentiality, the visitor may interview any physician,
3 naturopathic physician or psychologist who has examined the respondent or protected person, or
4 each petitioner under ORS 109.329, the person or officer of the institution having the care, custody
5 or control of the respondent or protected person, or each petitioner under ORS 109.329, and any
6 other person who may have relevant information.

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

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

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

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

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

24 (c) **The less restrictive alternatives to guardianship [considered], as described in section 2**
25 **of this 2023 Act and specifically including supported decision-making, explored** by the
26 petitioner and **the reasons why those alternatives [are not available] do not eliminate the need to**
27 **appoint a guardian for the respondent;**

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

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

31 (f) Whether the respondent's inability to provide for the needs of the respondent is an isolated
32 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 16.** ORS 125.165 is amended to read:

11 125.165. (1) A presiding judge shall by court order establish:

12 (a) Qualifications for persons serving as visitors for the court, in addition to those qualifications
 13 established by this section; and

14 (b) Standards and procedures to be used by visitors in the performance of their duties.

15 (2) A visitor may be an **officer**, employee **or special appointee** of the court. The visitor **must**
 16 **be independent and** may not have any personal interest in the respondent or protected person, or
 17 any pecuniary or financial interest in the proceedings[, *if those interests could compromise or other-*
 18 *wise affect the decisions of the visitor*]. A visitor may not receive compensation for services rendered
 19 as a fiduciary for two or more protected persons at the same time who are not related to the
 20 fiduciary.

21 (3) A visitor must:

22 (a) Have the training and expertise adequate to allow the person to conduct the interviews and
 23 make the recommendations required under ORS 125.150 and 125.155, **to appropriately evaluate the**
 24 **functional capacity and needs of a respondent or protected person, or each petitioner or the**
 25 **person to be adopted under ORS 109.329**, to communicate with, assess and interact with re-
 26 spondents and protected persons, and to perform the other duties required of a visitor; and

27 (b) Demonstrate sufficient knowledge of the law so as to be able to inform a respondent or
 28 protected person of the nature and effect of a protective proceeding, to inform a respondent or
 29 protected person of the rights of the respondent or protected person in the protective proceeding,
 30 to answer the questions of a respondent or protected person and to inform fiduciaries concerning
 31 their powers and duties.

32 **SECTION 17.** ORS 125.300 is amended to read:

33 125.300. (1)(a) [*Except as provided in paragraph (b) of this subsection,*] A guardian may be ap-
 34 pointed for an adult person only as is necessary to promote and protect the well-being of the pro-
 35 tected person. A guardianship for an adult person must be designed to encourage the development
 36 of maximum self-reliance and independence of the protected person and may be ordered only to the
 37 extent necessitated by the person's actual mental and physical limitations.

38 (b) **Notwithstanding paragraph (a) of this subsection**, a guardian may be appointed for an
 39 adult person if there is clear and convincing evidence that the person is a vulnerable youth. A
 40 guardianship for a vulnerable youth must be designed to encourage the development of maximum
 41 self-reliance and independence of the vulnerable youth and may be ordered only to the extent that
 42 the vulnerable youth consents and that is necessitated by the circumstances justifying the appoint-
 43 ment of a guardian for the vulnerable youth.

44 (2) **If a court determines that a guardian should be appointed for an adult person, it is**
 45 **presumed that only a limited guardianship is necessary. This presumption may be overcome**

1 **if the petitioner proves by clear and convincing evidence that a plenary guardianship is the**
 2 **least restrictive alternative that will serve the best interests of the adult person.**

3 [(2)] (3) An adult protected person for whom a guardian has been appointed is not presumed to
 4 be incompetent.

5 [(3)] (4) A protected person retains all legal and civil rights provided by law except those that
 6 have been expressly limited by court order or specifically granted to the guardian by the court.
 7 Rights retained by the person include but are not limited to the right to contact and retain counsel
 8 and to have access to personal records.

9 **SECTION 18.** ORS 125.305 is amended to read:

10 125.305. (1) After determining that conditions for the appointment of a guardian have been es-
 11 tablished, the court may appoint a guardian as requested if the court determines by clear and con-
 12 vincing evidence that:

13 (a) The respondent is a minor in need of a guardian, the respondent is incapacitated or the re-
 14 spondent is a vulnerable youth;

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)(a) The court shall make a guardianship order that is no more restrictive upon the liberty
 19 of the protected person than is reasonably necessary to protect the person. **The order must specify**
 20 **the limited matters over which the guardian has decision-making authority.**

21 **(b) If the court finds, by clear and convincing evidence, that the presumption in favor**
 22 **of a limited guardianship has been overcome, the court shall include a statement of its**
 23 **findings in the order.**

24 (c) In making the order the court shall consider the information in the petition, the report of
 25 the visitor, the report of any physician, naturopathic physician or psychologist who has examined
 26 the respondent, if there was an examination, and the evidence presented at any hearing.

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

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

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

32 125.315. (1) A guardian has the following powers and duties:

33 [(a) *Except to the extent of any limitation under the order of appointment, the guardian has custody*
 34 *of the protected person and may establish the protected person's place of abode within or without this*
 35 *state.*]

36 [(b)] (a) The guardian shall provide for the care, comfort and maintenance of the protected
 37 person and, whenever appropriate, shall arrange for training and education of the protected person.
 38 Without regard to custodial rights of the protected person, the guardian shall take reasonable care
 39 of the person's clothing, furniture and other personal effects unless a conservator has been ap-
 40 pointed for the protected person.

41 [(c)] (b) Subject to the provisions of ORS 127.505 to 127.660 and [subsection (3) of this section]
 42 **except as provided in ORS 125.320**, the guardian may consent, refuse consent or withhold or
 43 withdraw consent to health care, as defined in ORS 127.505, for the protected person. A guardian
 44 is not liable solely by reason of consent under this paragraph for any injury to the protected person
 45 resulting from the negligence or acts of third persons.

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

2 (A) Make advance funeral and burial arrangements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 125.320. (1) A guardian may not:

10 (a) Authorize the sterilization of the protected person.

11 **(b) Authorize the use of convulsive treatment on the protected person.**

12 **(c) Authorize the withholding or withdrawal of life-sustaining procedures, as defined in**
 13 **ORS 127.505, unless the guardian is the protected person's health care representative under**
 14 **a valid advance directive, as defined in ORS 127.505, and the guardian has been given au-**
 15 **thority in the advance directive to make decisions on the withholding or withdrawal of life-**
 16 **sustaining procedures.**

17 **(d) Notwithstanding ORS 127.505 to 127.660 and paragraph (c) of this subsection, authorize**
 18 **the withholding or withdrawal of artificially administered nutrition and hydration, as defined**
 19 **in ORS 127.505.**

20 **(e) Attend the protected person's mental health counseling sessions, unless specifically**
 21 **invited to attend by the protected person in the presence of the mental health provider.**

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

25 **(3)(a) The guardian has custody and may establish the protected person's place of abode**
 26 **only to the extent specifically provided in the order of appointment and subject to the re-**
 27 **quirements of this subsection.**

28 **(b) Before a guardian may change the abode of an adult protected person or place an adult**
 29 **protected person in a mental health treatment facility, a nursing home or other residential facility,**
 30 **the guardian must file with the court and serve a statement declaring that the guardian intends to**
 31 **make the change of abode or placement in the manner set forth in paragraph [(b)] (c) of this sub-**
 32 **section. The statement must indicate that the guardian consulted with the protected person**
 33 **regarding the change of abode, provided the protected person with a range of alternative**
 34 **options and an opportunity to participate in the decision-making, and took the protected**
 35 **person's preferences into consideration when selecting the new abode.**

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

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

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

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

9 [(e)] (f) The requirement that notice be served on an attorney for a protected person under ORS
10 125.060 (8) does not impose any responsibility on the attorney receiving the notice to represent the
11 protected person in the protective proceeding.

12 (4) A guardian for a protected person who is a vulnerable youth may not possess or control the
13 vulnerable youth's identity documents.

14 **SECTION 21.** ORS 125.325 is amended to read:

15 125.325. (1) Not later than 30 days following each anniversary of appointment, a guardian for
16 an adult protected person shall file with the court a written report. **Prior to filing the report with
17 the court, the guardian must provide the protected person with an opportunity to contribute
18 to and comment on the report.** The report must include a declaration under penalty of perjury
19 in the form required by ORCP 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if the
20 declarant is physically outside the boundaries of the United States. Copies of the guardian's report
21 must be given to those persons specified in ORS 125.060 (3). Except as provided in subsection (6) of
22 this section, the report must be in substantially the following form:

23 _____

24
25 IN THE _____ COURT _____ COUNTY,
26 STATE OF OREGON
27 DEPARTMENT OF PROBATE

28 In the Matter of the) No. _____
29 Guardianship of)
30 _____,)
31 (Name of protected)
32 person))
33 A Protected)
34 Person.)

35 GUARDIAN'S REPORT

36 I am the guardian for the person named above, and I make the following report to the court as
37 required by law:

38 1. My name is _____.

39 2. My address and telephone number are:

40 _____
41 _____

42 Phone _____

43 3. The name, if applicable, and address of the place where the person now resides are:

44 _____
45 _____

1 4. The person is currently residing at the following type of facility or residence:

2 _____

3 5. The person is currently engaged in the following programs and activities and receiving the
4 following services (brief description):

5 _____

6 6. I was paid for providing the following items of lodging, food or other services to the person:

7 _____

8 _____

9 7. The name of the person primarily responsible for the care of the person at the person's place
10 of residence is:

11 _____

12 8. The name and address of any hospital or other institution where the person is now admitted
13 on a temporary or permanent basis are:

14 _____

15 _____

16 9. The person's physical condition is as follows (brief description):

17 _____

18 _____

19 10. The person's mental condition is as follows (brief description):

20 _____

21 _____

22 11. Facts that support the conclusion that the person is incapacitated include the following:

23 _____

24 12. I made the following contacts with the person during the past year (brief description):

25 _____

26 13. I limited the person's association with _____ (Please specifically name any limitations and
27 briefly describe the limitation):

28 _____

29 14. I made the following major decisions on behalf of the person during the past year (brief de-
30 scription):

31 _____

32 **15. Supported decision-making was explored in the following ways:**

33 _____

34 **16. To grant more autonomy to the protected person, the authority of the guardian may
35 be safely limited as follows:**

36 _____

37 [15.] **17.** I believe the guardianship should or should not continue because:

38 _____

39 [16.] **18.** At the time of my last report, I held the following amount of money on behalf of the
40 person: \$_____. Since my last report, I received the following amount of money on behalf of the
41 person: \$_____. I spent the following amount of money on behalf of the person: \$_____. I
42 now hold the following amount of money on behalf of the person: \$_____.

43 [17.] **19.** A true copy of this report will be given to the person, any conservator for the person
44 and any other person who has requested notice.

45 [18.] **20.** Since my last report:

1 (a) I have been convicted of the following crimes (not including traffic violations):

2 _____

3 (b) I have filed for or received protection from creditors under the Federal Bankruptcy Code
4 (yes or no): _____.

5 (c) I have had a professional or occupational license revoked or suspended (yes or no):
6 _____.

7 (d) I have had my driver license revoked or suspended (yes or no): _____.

8 [19.] 21. Since my last report, I have delegated the following powers over the protected person
9 for the following periods of time (provide name of person powers delegated to):

10 _____

11 **22. Prior to finalizing this report, I provided the protected person with the opportunity**
12 **to contribute to and comment on the report. I have taken the protected person's suggestions**
13 **and comments into consideration in the preparation of this report.**

14 I hereby declare that the above statement is true to the best of my knowledge and belief, and
15 that I understand it is made for use as evidence in court and is subject to penalty for perjury.

16 Dated this ____ day of _____, 2____.

17 _____
18 Guardian

19 NOTICE: ANY PERSON INTERESTED IN THE AFFAIRS OR WELFARE OF THE PRO-
20 TECTED PERSON WHO IS THE SUBJECT OF THIS REPORT WHO HAS CONCERNS ABOUT
21 THIS REPORT OR THE GUARDIAN'S PERFORMANCE MAY CONTACT THE COURT AS FOL-
22 LLOWS:

23 _____
24 _____
25 _____
26 _____
27 _____
28 _____
29 _____
30 _____
31 _____
32 _____
33 _____

35 (2) If the guardian indicates in the report under subsection (1) of this section that the
36 guardianship should not continue or fails to provide adequate information in the report supporting
37 the continuing need for the guardianship, the court shall order the guardian to supplement the re-
38 port or to file a motion to terminate the protective proceeding under ORS 125.090.

39 (3) Failure of the guardian to comply with an order under subsection (2) of this section before
40 the 30th day following the date of the order is grounds for removal under ORS 125.225 (1).

41 (4) If the guardian fails to comply with an order issued under subsection (2) of this section, the
42 court, on its own motion or on the petition of any other person, shall order the guardian to appear
43 and show cause why the guardian should not be removed.

44 (5) The court shall serve a copy of any order issued under subsection (2) or (4) of this section
45 and a copy of the report filed under subsection (1) of this section and supplemental materials, if any,

1 upon those persons entitled to notice under ORS 125.060 (3).

2 (6) If a guardian was appointed because the protected person is a vulnerable youth, the court
3 may in its discretion:

4 (a) Require a guardian for a vulnerable youth to file written reports with the court more fre-
5 quently than required under subsection (1) of this section; or

6 (b) Permit the report to be in an alternate form approved in advance by the court.

7 **SECTION 22.** ORS 125.430 is amended to read:

8 125.430. (1) A protected person’s principal residence may be sold by a conservator only with the
9 prior approval of the court. A motion seeking prior approval must be filed with the court and notice
10 given to the persons specified in ORS 125.060 (3). **The motion must indicate that the conservator**
11 **consulted with the protected person regarding the sale, provided the protected person with**
12 **a range of alternative options and an opportunity to participate in the decision-making, and**
13 **took the protected person’s preferences into consideration when making the decision to sell**
14 **the protected person’s principal residence.**

15 (2) For purposes of this section, “principal residence” means a residence that is owned by the
16 protected person and in which the protected person resides or last resided, whether or not the
17 protected person resides in the residence at the time approval to sell is sought from the court.

18 **SECTION 23.** ORS 125.475 is amended to read:

19 125.475. (1) Unless the court by order provides otherwise, a conservator shall account to the
20 court for the administration of the protected estate within 60 days after each anniversary of ap-
21 pointment. In addition, a conservator shall account to the court for the administration of the pro-
22 tected estate:

23 (a) Within 60 days after the death of the protected person, a minor protected person attains
24 majority or an adult protected person becomes able to manage the protected person’s financial re-
25 sources; and

26 (b) Within 30 days after the removal of the conservator, the resignation of the conservator or
27 the termination of the conservator’s authority under ORS 125.410 (7).

28 (2) Each accounting must include the following information:

29 (a) The period of time covered by the accounting.

30 (b) The total value of the property with which the conservator is chargeable according to the
31 inventory, or, if there was a prior accounting, the amount of the balance of the prior accounting.

32 (c) All money and property received during the period covered by the accounting.

33 (d) All disbursements made during the period covered by the accounting.

34 (e) The amount of bond posted by the conservator during the period covered by the accounting.

35 (f) With respect to conservators who are professional fiduciaries, the total amount of compen-
36 sation that investment advisers or brokers other than the professional fiduciary charged or received
37 in charges for investments managed or transacted by the investment advisers or brokers.

38 **(g) Specific examples of the ways in which the conservator explored supported decision-**
39 **making during the period covered by the accounting.**

40 [(g)] **(h)** Such other information as the conservator considers necessary, or that the court might
41 require, for the purpose of disclosing the condition of the estate.

42 (3) Vouchers for disbursements must accompany the accounting unless otherwise provided by
43 order or rule of the court or unless the conservator is a trust company that has complied with ORS
44 709.030 or is the Department of Veterans’ Affairs. If vouchers are not required, the conservator
45 shall:

1 (a) Maintain the vouchers for a period of not less than one year following the date on which the
2 order approving the final accounting is entered;

3 (b) Permit interested persons to inspect the vouchers and receive copies of the vouchers at their
4 own expense at the place of business of the conservator during the conservator's normal business
5 hours at any time before the end of one year following the date on which the order approving the
6 final accounting is entered; and

7 (c) Include in each annual accounting and the final accounting a statement that the vouchers
8 are not filed with the accounting but are maintained by the conservator and may be inspected and
9 copied as provided in this subsection.

10 (4) The court may waive a final accounting if:

11 (a) The conservator was appointed because the protected person was a minor, and the protected
12 person has attained the age of majority, or the conservator was appointed because the protected
13 person was financially incapable, and the protected person is no longer financially incapable;

14 (b) The protected person gives a receipt to the conservator for the property delivered to the
15 protected person; and

16 (c) The conservator files with the court a copy of the receipt issued by the protected person to
17 the conservator.

18 (5) Copies of accountings must be served on all persons listed in ORS 125.060 (3). The court may
19 waive service on the protected person if service of the copy would not assist the protected person
20 in understanding the proceedings.

21 (6) The court may require a conservator to submit to a physical check of the estate in the
22 control of the conservator at any time and in any manner the court may specify.

23 (7) The Chief Justice of the Supreme Court may by rule specify the form and contents of ac-
24 counts that must be filed by a conservator.

25 **SECTION 24.** ORS 125.678 is amended to read:

26 125.678. (1) The Long Term Care Ombudsman appointed under ORS 441.403, in consultation with
27 the Residential Ombudsman and Public Guardianship Advisory Board, shall appoint the Oregon
28 Public Guardian and Conservator in the office of the Long Term Care Ombudsman for a four-year
29 term. The Oregon Public Guardian and Conservator serves at the pleasure of the Long Term Care
30 Ombudsman and may be removed by the Long Term Care Ombudsman for good cause. If there is
31 a vacancy for any cause, the Long Term Care Ombudsman shall make an appointment within 60
32 days. The Oregon Public Guardian and Conservator shall receive a salary as fixed by the Long Term
33 Care Ombudsman and be reimbursed for all reasonable travel and other expenses incurred in the
34 performance of official duties.

35 (2) The Oregon Public Guardian and Conservator shall be responsible for carrying out the
36 powers, duties and functions of the Oregon Public Guardian and Conservator pursuant to ORS
37 125.675 to 125.691, within the office of the Long Term Care Ombudsman.

38 (3) The Oregon Public Guardian and Conservator may:

39 (a) Hire or contract with volunteers, staff, deputy public guardians and conservators and other
40 qualified individuals, as necessary, to carry out the powers, duties and functions of the Oregon
41 Public Guardian and Conservator;

42 (b) Prescribe the duties and assignments of persons hired or under contract with the Oregon
43 Public Guardian and Conservator;

44 (c) Fix the compensation, including reasonable travel and other expenses incurred in the per-
45 formance of official duties, of persons hired by or under contract with the Oregon Public Guardian

1 and Conservator subject to the State Personnel Relations Law; and

2 (d) Adopt rules to carry out the provisions of ORS 125.675 to 125.691.

3 (4) The Long Term Care Ombudsman may hire or contract with staff to serve in the office of
4 the Long Term Care Ombudsman as necessary to advise and support the Oregon Public Guardian
5 and Conservator.

6 (5)[(a)] The Oregon Public Guardian and Conservator may delegate the exercise or discharge of
7 any power, duty or function that is vested in or imposed by law upon the Oregon Public Guardian
8 and Conservator to a deputy public guardian and conservator, staff person or volunteer hired by or
9 under contract with the Oregon Public Guardian and Conservator as appropriate for the purpose
10 of conducting an official act in the name of the Oregon Public Guardian and Conservator. The offi-
11 cial act of any person acting in the name of the Oregon Public Guardian and Conservator by the
12 authority of the Oregon Public Guardian and Conservator is an official act of the Oregon Public
13 Guardian and Conservator.

14 *[(b) Notwithstanding paragraph (a) of this subsection, a court may not appoint a deputy public*
15 *guardian and conservator as a fiduciary in a proceeding under ORS 125.675 to 125.691 but shall ap-*
16 *point the Oregon Public Guardian and Conservator as the fiduciary in the proceeding.]*

17 (6) The Oregon Public Guardian and Conservator may solicit and accept gifts, grants and do-
18 nations from public and private sources for the purpose of carrying out the provisions of ORS
19 125.675 to 125.691, which moneys shall be deposited in the Oregon Public Guardian and Conservator
20 Fund established under ORS 125.689.

21 **SECTION 25.** ORS 125.687 is amended to read:

22 125.687. (1)(a) A court may not appoint the Oregon Public Guardian and Conservator as a
23 fiduciary for a person unless the Oregon Public Guardian and Conservator has petitioned for or
24 consented to the appointment.

25 **(b) Notwithstanding ORS 125.678 (5), a court may not appoint a deputy public guardian**
26 **and conservator as a fiduciary for a protected person in a proceeding under ORS 125.675 to**
27 **125.691 but shall appoint the Oregon Public Guardian and Conservator as the fiduciary in the**
28 **proceeding.**

29 (c) If appointed as a fiduciary by the court, the Oregon Public Guardian and Conservator, and
30 any deputy public guardian and conservator designated to act on behalf of the Oregon Public
31 Guardian and Conservator, shall serve as provided in this chapter and ORS 127.005 and 127.015,
32 except as expressly stated otherwise in ORS 125.675 to 125.691 or by order of the court.

33 (2) The Oregon Public Guardian and Conservator shall file an official bond in an amount deter-
34 mined in consultation with the Oregon Department of Administrative Services. The bond shall inure
35 to the joint benefit of the several public guardianship and conservatorship estates in which the
36 Oregon Public Guardian and Conservator is providing services, but a bond is not required to be filed
37 in individual estates.

38 (3) The court may not charge the Oregon Public Guardian and Conservator a fee for the filing
39 of a petition or any other pleading under this chapter when the filing is made in connection with
40 the provision of public guardian and conservator services under ORS 125.675 to 125.691.

41 (4)(a) The court shall order the client or the client's estate to pay for reasonable expenses in-
42 curred, including compensation for services rendered, in the provision of public guardian and
43 conservator services to the client, including but not limited to court costs and attorney fees.

44 (b) If a client is indigent, the Oregon Public Guardian and Conservator shall have a claim
45 against the client or the client's estate for the portion of any payment ordered under paragraph (a)

1 of this subsection that remains unpaid.

2 (5) The court may not order the Oregon Public Guardian and Conservator, a deputy public
 3 guardian and conservator or the office of the Long Term Care Ombudsman to pay court costs or
 4 attorney fees in a proceeding brought on behalf of a client under ORS 125.675 to 125.691.

5 **SECTION 26.** Section 4, chapter 400, Oregon Laws 2021, is amended to read:

6 **Sec. 4.** The amendments to ORS 125.080 by section 1, **chapter 400, Oregon Laws 2021**, [of this
 7 2021 Act] apply only to:

- 8 (1) Hearings taking place in Multnomah County and Lane County on or after January 2, 2022;
- 9 (2) Hearings taking place in Columbia County on or after January 2, 2023; and
- 10 (3) Hearings taking place in any other county on or after [January 2, 2024] **January 1, 2024**.

11 **SECTION 27.** ORS 125.225 is amended to read:

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

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

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

- 20 (a) Unreasonably limits the protected person’s associations under ORS 125.323;
- 21 (b) Fails to perform the guardian’s duties required under ORS 125.315 [(1)(g) to (i)] **(1)(f) to**
 22 **(h)**; or
- 23 (c) Changes the abode of the adult protected person or places the protected person in a mental
 24 health treatment facility, a nursing home or other residential facility and:

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

27 (B) Failed to comply with ORS 125.320 (3) before making the placement.

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

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

37 **SECTION 28.** ORS 125.330 is amended to read:

38 125.330. (1) Except as provided in subsection (2) of this section, a guardian appointed for a per-
 39 son committed to the legal and physical custody of the Department of Corrections may not exercise
 40 those powers specified in ORS 125.315 (1)(a) or [(b)] **125.320 (3)** while the person remains confined.

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

44 (3) A guardian appointed for an incarcerated person may exercise those powers specified in ORS
 45 125.315 [(1)(c)] **(1)(b)** only to the extent that the exercise of those powers is consistent with the

1 protected person's status as a confined person and with the powers and duties of the superintendent
2 or other officials of the facility. In no event may a guardian appointed for a person committed to
3 the legal and physical custody of the Department of Corrections exercise more authority over health
4 care decisions than the protected person could exercise given the person's status as a confined
5 person.

6
