

D R A F T

SUMMARY

Prescribes form for supported decision-making agreement between person with disability and supporter.

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

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

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

A BILL FOR AN ACT

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

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

SECTION 1. Definitions. As used in sections 1 to 11 of this 2019 Act:

(1) **“Health care provider”** has the meaning given that term in ORS 127.505.

(2) **“Life decisions”** includes, but is not limited to, decisions regarding any of the following:

(a) **Where the person with a disability wants to live.**

(b) **With whom the person with a disability wants to live.**

(c) **The services, supports and medical care the person with a disability wants to receive.**

(d) **Where the person with a disability wants to work.**

(e) **With whom the person with a disability wants to associate.**

(f) **The educational and learning goals of the person with a disability.**

1 (3) “Person with a disability” means any person who has a physical
2 or mental impairment that substantially limits one or more major life
3 activities including, but not limited to, independent living, self-
4 direction, self-care, mobility, communication, learning, education,
5 medical care, financial decision-making and safety.

6 (4) “Supported decision-making” means a process of supporting and
7 accommodating a person with a disability to enable the person to
8 make life decisions without impeding the self-determination of the
9 person with a disability.

10 (5) “Supported decision-making agreement” means an agreement
11 between a person with a disability and a supporter entered into under
12 sections 1 to 11 of this 2019 Act.

13 (6) “Supported person” means a person with a disability who enters
14 into a supported decision-making agreement with a supporter.

15 (7) “Supporter” means an adult who enters into a supported
16 decision-making agreement with a person with a disability.

17 SECTION 2. Policy and purpose. It is the policy of this state that
18 the least restrictive alternative to the appointment of a fiduciary for
19 a person with a disability be considered prior to the initiation of a
20 protective proceeding under ORS chapter 125. The purpose of sections
21 1 to 11 of this 2019 Act is to recognize supported decision-making
22 agreements as a less restrictive alternative to protective proceedings
23 under ORS chapter 125 for a person with a disability who needs as-
24 sistance with life decisions.

25 SECTION 3. Agreement not evidence of incapacity. Execution of a
26 supported decision-making agreement may not be used as evidence
27 that the supported person is incapacitated, as defined in ORS 125.005,
28 and does not preclude the supported person from acting independently
29 of the agreement.

30 SECTION 4. Scope of agreement. (1) A person with a disability who
31 is at least 18 years of age may execute a written supported decision-

1 making agreement in which the person authorizes a supporter to do
2 any of the following:

3 (a) Provide supported decision-making to the supported person, in-
4 cluding assistance with understanding the options, responsibilities and
5 consequences of the supported person's life decisions, without making
6 those decisions on behalf of the supported person.

7 (b) Assist the supported person with accessing, collecting and ob-
8 taining information that is relevant to a given life decision, including
9 medical, psychological, financial, education or treatment records, from
10 any person.

11 (c) Assist the supported person with understanding the information
12 described in paragraph (b) of this subsection.

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

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

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

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

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

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

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

23 (4) Notwithstanding the existence of a supported decision-making
24 agreement, a supported person may request and receive assistance
25 from the supporter on any decision that is not covered under the
26 supported decision-making agreement at any time.

27 SECTION 5. Access to personal information. (1) A supporter is au-
28 thorized to assist the supported person with accessing, collecting or
29 obtaining only information that is relevant to a decision authorized
30 under the supported decision-making agreement.

31 (2)(a) A supporter may access or obtain patient health care records

1 only if the supported person authorizes the supporter to access or ob-
2 tain the person's protected health information by executing a separate
3 authorization in substantially the same form as ORS 192.566.

4 (b) A supporter may access or obtain the education records of the
5 supported person only if the supported person executes a separate re-
6 lease allowing the supporter to access or obtain the supported person's
7 education records under the federal Family Educational Rights and
8 Privacy Act (20 U.S.C. 1232g).

9 (c) A supporter may access the financial information of a supported
10 person only if the supported person executes a separate release of fi-
11 nancial information authorization form.

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

15 (4) Notwithstanding the existence of a supported decision-making
16 agreement, a supported person continues to have unrestricted access
17 to the person's personal information without the assistance of a sup-
18 porter.

19 (5) A supporter does not have a fiduciary duty or fiduciary obli-
20 gation to the supported person.

21 SECTION 6. Witnesses. A supported person and the person's sup-
22 porter entering into a supported decision-making agreement must sign
23 and date the agreement before a notary public or in the presence of
24 two witnesses who are at least 18 years of age.

25 SECTION 7. Supported decision-making agreement form. (1) A
26 supported decision-making agreement is valid if it is in writing, en-
27 tered into voluntarily and without coercion, signed and dated as de-
28 scribed under section 6 of this 2019 Act and in substantially the
29 following form:
30 _____
31

WARNING:

PROTECTION FOR THE PERSON WITH A DISABILITY.

IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE PERSON WITH A DISABILITY IS BEING ABUSED, NEGLECTED OR EXPLOITED BY THE SUPPORTER, THE PERSON MAY REPORT THE ALLEGED ABUSE, NEGLECT OR EXPLOITATION TO THE DEPARTMENT OF HUMAN SERVICES BY CALLING THE ABUSE HOTLINE AT (855) 503-SAFE (7233).

SUPPORTED DECISION-MAKING AGREEMENT

APPOINTMENT OF SUPPORTER

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

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

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

Name of supporter: _____

Telephone number of supporter: _____

Yes___ No___

Name of supporter: _____

1 Telephone number of supporter: _____

2 Yes___ No___

3

4 For the following everyday life decisions, if I have checked “Yes,”
5 my supporter may help me with that type of decision, but if I have
6 checked “No,” my supporter may not help me with that type of deci-
7 sion:

8

9 Yes___ No___ Obtaining food, clothing and shelter.

10 Yes___ No___ Taking care of my physical health.

11 Yes___ No___ Taking care of my mental health.

12 Yes___ No___ Managing my financial affairs.

13 Yes___ No___ Applying for public benefits.

14 Yes___ No___ Assistance with seeking vocational rehabilitation
15 services and other vocational supports.

16

17 The following are other decisions I have specifically identified that
18 I would like assistance with: _____.

19 If I have not checked either “Yes” or “No” or specifically identified
20 and listed a decision immediately above, my supporter may not help
21 me with that type of decision.

22 My supporter is not allowed to make decisions for me. To help me
23 with my decisions, my supporter may do any of the following, if I have
24 checked “Yes”:

25 1. Help me access, collect or obtain information, including records,
26 relevant to a decision. If I have checked “Yes,” my supporter may help
27 me access, collect or obtain the type of information specified, includ-
28 ing relevant records, but if I have checked “No,” or I have not checked
29 either “Yes” or “No,” my supporter may not help me access, collect
30 or obtain that type of information:

31 Yes___ No___ Medical

1 **Yes___ No___ Psychological**
 2 **Yes___ No___ Financial**
 3 **Yes___ No___ Education**
 4 **Yes___ No___ Treatment**
 5 **Yes___ No___ Other (If "Yes," specify the other type(s) of infor-**
 6 **mation with which your supporter may assist: _____.)**

7 **2. Yes___ No___ Help me understand my options so I can make an**
 8 **informed decision.**

9 **3. Yes___ No___ Help me communicate my decision(s) to appro-**
 10 **priate persons.**

11 **4. Yes___ No___ Help me access appropriate personal records that**
 12 **may or may not require a separate release, including protected health**
 13 **information under the Health Insurance Portability and Accountabil-**
 14 **ity Act and protected information under the Family Educational**
 15 **Rights and Privacy Act, for specific decisions I want to make.**

16

17

EFFECTIVE DATE OF

18

SUPPORTED DECISION-MAKING AGREEMENT

19

20 **This supported decision-making agreement is effective immediately**
 21 **and will continue until _____ (date), or until the agreement is**
 22 **terminated by me or by my supporter or by operation of law.**

23 **Signature: _____**

24 **Date: _____**

25 **Printed name of person designating a supporter: _____**

26

27

CONSENT OF SUPPORTER

28

29 **I know _____ (name of person) personally or I have received**
 30 **proof of his or her identity, and I believe him or her to be at least 18**
 31 **years of age and entering into this agreement knowingly and volun-**

1 **arily. I am at least 18 years of age.**

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

4

5 **Supporter:**

6 **Signature: _____**

7 **Date: _____**

8 **Printed name: _____**

9 **Address: _____**

10 **E-mail address: _____**

11 **Telephone number(s): _____**

12

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

15

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

18

19 **OPTION I: NOTARY PUBLIC**

20

21 **State of _____**

22 **County of _____**

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

26 **Signature of notary: _____**

27 **(Seal, if any, of notary)**

28 **Printed name: _____**

29 **My commission expires: _____**

30

31 **OPTION II: WITNESSES**

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

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

8
9 **Witness No. 1:**

10 **Signature:** _____

11 **Date:** _____

12 **Printed name:** _____

13 **Address:** _____

14 **Telephone number(s):** _____

15
16 **Witness No. 2:**

17 **Signature:** _____

18 **Date:** _____

19 **Printed name:** _____

20 **Address:** _____

21 **Telephone number(s):** _____

22 _____
23 (2) The Department of Human Services shall prepare and provide
24 access to a supported decision-making agreement instrument and ac-
25 companying information for a person with a disability, family mem-
26 bers of a person with a disability, education professionals and school
27 districts, health care and social service professionals, county clerks
28 and local bar associations. The department may charge a reasonable
29 fee for the cost of preparation and distribution of the supported
30 decision-making agreement forms and information.

31 **SECTION 8. Terms of agreement.** (1) Except as otherwise provided

1 in this section, a supported decision-making agreement extends until
2 terminated by the supported person or the supporter or by the terms
3 of the agreement.

4 (2) A supported decision-making agreement is terminated upon the
5 occurrence of any of the following:

6 (a) The Department of Human Services or a law enforcement
7 agency substantiates an allegation of neglect or abuse by the supporter
8 under ORS 124.005 to 124.040, 124.050 to 124.095, 124.100 to 124.140,
9 419B.005 to 419B.050, 430.735 to 430.765 or 441.630 to 441.680.

10 (b) The supporter is found criminally liable for conduct described
11 under paragraph (a) of this subsection.

12 (c) A court authorizes a restraining order against the supporter as
13 described under ORS 124.005 to 124.040 or 124.100 to 124.140.

14 (3) A supported person may revoke a supported decision-making
15 agreement at any time by doing any of the following:

16 (a) Canceling, defacing, obliterating, burning, tearing or otherwise
17 destroying the supported decision-making agreement or directing an-
18 other person to destroy the supported decision-making agreement.

19 (b) Executing a statement, in writing, that is signed and dated by
20 the supported person, expressing the supported person's intent to re-
21 voke the supported decision-making agreement.

22 (c) Verbally expressing the supported person's intent to revoke the
23 supported decision-making agreement in the presence of two wit-
24 nesses.

25 (4) A supporter may resign:

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

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

30 SECTION 9. Reliance on agreement; limitation of liability. (1) Any
31 person who reasonably relies in good faith on the authority of a sup-

1 **porter under a supported decision-making agreement is not liable to**
2 **any other person based on that reliance.**

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

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

7 **(b) The agreement is invalid; or**

8 **(c) The supporter has committed abuse, neglect or financial ex-**
9 **ploitation under ORS 124.005 to 124.040, 124.050 to 124.095, 124.100 to**
10 **124.140, 419B.005 to 419B.050, 430.735 to 430.765 or 441.630 to 441.680.**

11 **(3) This section may not be construed to provide immunity from**
12 **actions alleging that a health care provider has done any of the fol-**
13 **lowing:**

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

16 **(b) Acted inconsistently with the expressed wishes of a supported**
17 **person.**

18 **(c) Failed to provide information to a supported person or the sup-**
19 **ported person's supporter that would be necessary for informed con-**
20 **sent.**

21 **(d) Otherwise acted inconsistently with applicable law.**

22 **(4) The existence or availability of a supported decision-making**
23 **agreement does not relieve a health care provider of any legal obli-**
24 **gation to provide services to a person with a disability, including the**
25 **obligation to provide reasonable accommodations or auxiliary aids and**
26 **services, including interpretation services and communication sup-**
27 **ports to a person with a disability under the federal Americans with**
28 **Disabilities Act.**

29 **(5) A supporter acting under a valid supported decision-making**
30 **agreement is immune from civil liability for the supporter's acts or**
31 **omissions in performing duties as the supporter if the supporter per-**

1 forms the duties in good faith, in conformance with the supported
2 decision-making agreement and with the care an ordinarily prudent
3 person in a like position would exercise in the person's own affairs.

4 **SECTION 10. Reporting of suspected abuse, neglect or financial ex-**
5 **ploitation.** (1) If a person who receives a copy of a supported
6 decision-making agreement or who is aware of the existence of a sup-
7 ported decision-making agreement has cause to believe that a sup-
8 ported person is being abused, neglected or financially exploited under
9 ORS 124.005 to 124.040, 124.050 to 124.095, 124.100 to 124.140, 419B.005 to
10 419B.050, 430.735 to 430.765 or 441.630 to 441.680 by the supporter, the
11 person may report the alleged abuse, neglect or financial exploitation
12 to the Department of Human Services.

13 (2) Nothing in this section may be construed as eliminating or
14 limiting a person's requirement to report under any other statute or
15 regulation.

16 **SECTION 11. Professional supporters.** (1) As used in this section,
17 "professional supporter" means a person who is acting at the same
18 time as a supporter for three or more persons who are not related to
19 the supporter. A professional supporter may not delegate the assign-
20 ment of the duties of the professional supporter to another.

21 (2) Prior to entering into a supported decision-making agreement,
22 a professional supporter must provide the person with a disability with
23 the following information:

24 (a) The educational background and professional experience of the
25 professional supporter.

26 (b)(A) The fees charged by the professional supporter and whether
27 the fees are on an hourly basis or are based on charges for individual
28 services rendered, including whether there is any revenue sharing ar-
29 rangement between the professional supporter and any other person.

30 (B) The method by which the fees described in subparagraph (A)
31 of this paragraph will be assessed or charged, whether by commissions,

1 **monthly charges or any other method.**

2 **(c) The number of persons with a disability for whom the profes-**
3 **sional supporter performs services under supported decision-making**
4 **agreements.**

5 **(d) Whether the professional supporter has ever filed for bank-**
6 **ruptcy and the date of filing.**

7 **(e) Whether the professional supporter has ever had a claim against**
8 **any bond of the professional supporter and a description of the cir-**
9 **cumstances causing the claim.**

10 **(f) Whether the professional supporter has been denied a profes-**
11 **sional license or has had a professional license revoked or canceled**
12 **and, if so, a description of the circumstances of the denial or revoca-**
13 **tion. As used in this paragraph, “professional license” includes any**
14 **license or certification related to the responsibilities of the profes-**
15 **sional supporter.**

16 **(g) Whether the professional supporter is or has been certified by**
17 **a national or state association of professional fiduciaries, the name**
18 **of the association and whether the professional supporter has ever**
19 **been disciplined by any such association and the circumstances sur-**
20 **rounding such discipline.**

21 **(h) Any criminal convictions of the professional supporter in the**
22 **last five years.**

23 **(i) A statement that any criminal convictions disclosed under par-**
24 **agraph (h) of this subsection do not disqualify the professional sup-**
25 **porter from entering into a supported decision-making agreement.**

26 **(3) A professional supporter’s failure to provide the information**
27 **required in subsection (2) of this section is grounds for termination**
28 **of the supported decision-making agreement.**

29 **SECTION 12. ORS 125.005 is amended to read:**

30 **125.005. As used in this chapter:**

31 **(1) “Conservator” means a person appointed as a conservator under the**

1 provisions of this chapter.

2 (2)(a) “Fiduciary” means a guardian or conservator appointed under the
3 provisions of this chapter or any other person appointed by a court to as-
4 sume duties with respect to a protected person under the provisions of this
5 chapter.

6 (b) **“Fiduciary” does not include a supporter under a supported**
7 **decision-making agreement described in sections 1 to 11 of this 2019**
8 **Act.**

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

17 (4) “Guardian” means a person appointed as a guardian under the pro-
18 visions of this chapter.

19 (5) “Incapacitated” means a condition in which a person’s ability to re-
20 ceive and evaluate information effectively or to communicate decisions is
21 impaired to such an extent that the person presently lacks the capacity to
22 meet the essential requirements for the person’s physical health or safety.
23 “Meeting the essential requirements for physical health and safety” means
24 those actions necessary to provide the health care, food, shelter, clothing,
25 personal hygiene and other care without which serious physical injury or
26 illness is likely to occur.

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

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

30 (8) “Protective order” means an order of a court appointing a fiduciary
31 or any other order of the court entered for the purpose of protecting the

1 person or estate of a respondent or protected person.

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

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

5 (11) "Visitor" means a person appointed by the court under ORS 125.150
6 for the purpose of interviewing and evaluating a respondent or protected
7 person.

8 **SECTION 13.** ORS 125.055, as amended by section 2, chapter 59, Oregon
9 Laws 2018, is amended to read:

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

20 (2) A petition in a protective proceeding must contain the following in-
21 formation to the extent that the petitioner is aware of the information or to
22 the extent that the petitioner is able to acquire the information with rea-
23 sonable effort:

24 (a) The name, age, residence address and current location of the re-
25 spondent.

26 (b) The interest of the petitioner.

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

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

31 (A) Has been convicted of a crime;

- 1 (B) Has filed for or received protection under the bankruptcy laws;
- 2 (C) Has caused any loss resulting in a surcharge under ORS 125.025 (3)(e)
- 3 or a similar statute of another jurisdiction;
- 4 (D) Has been removed as a fiduciary under ORS 125.225; or
- 5 (E) Has had a license revoked or canceled that was required by the laws
- 6 of any state for the practice of a profession or occupation.
- 7 (e) If an event listed in paragraph (d) of this subsection has occurred, a
- 8 statement of the circumstances surrounding the event.
- 9 (f) If the person nominated as fiduciary is not the petitioner, a statement
- 10 indicating that the person nominated is willing and able to serve.
- 11 (g) The name and address of any fiduciary that has been appointed for the
- 12 respondent by a court of any state, any trustee for a trust established by or
- 13 for the respondent, any person appointed as a health care representative
- 14 under the provisions of ORS 127.505 to 127.660 and any person acting as
- 15 attorney-in-fact for the respondent under a power of attorney.
- 16 (h) The name and address of the respondent's treating physician and any
- 17 other person who is providing care to the respondent.
- 18 (i) The factual information that supports the request for the appointment
- 19 of a fiduciary or entry of other protective order, less restrictive alternatives
- 20 to the appointment of a fiduciary that have been considered, **including**
- 21 **supported decision-making under sections 1 to 11 of this 2019 Act**, and
- 22 why the alternatives are inadequate and the names and addresses of all
- 23 persons who have information that would support a finding that an adult
- 24 respondent is incapacitated or financially incapable.
- 25 (j) A statement that indicates whether the person nominated as fiduciary
- 26 intends to place the respondent in a mental health treatment facility, a
- 27 nursing home or other residential facility.
- 28 (k) A general description of the estate of the respondent and the
- 29 respondent's sources of income and the amount of that income.
- 30 (L) A statement indicating whether the person nominated as fiduciary is
- 31 a public or private agency or organization that provides services to the re-

1 spondent or an employee of a public or private agency or organization that
2 provides services to the respondent.

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

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

7 (a) If a petition seeks appointment of a guardian, the petition must con-
8 tain a statement on whether the guardian will exercise any control over the
9 estate of the respondent. If the guardian will exercise any control over the
10 estate of the respondent, the petition must contain a statement of the
11 monthly income of the respondent, the sources of the respondent's income,
12 and the amount of any moneys that the guardian will be holding for the re-
13 spondent at the time of the appointment.

14 (b) If the petition seeks the appointment of a guardian for an adult re-
15 spondent, of a guardian for a minor respondent who is more than 16 years
16 of age, in cases where the court determines there is the likelihood that a
17 petition seeking appointment of a guardian for the respondent as an adult
18 will be filed before the date that the respondent attains majority, in accord-
19 ance with subsection (6) of this section, or as an adult, or of a temporary
20 fiduciary who will exercise the powers of a guardian for an adult respondent,
21 the petition must contain a statement notifying the court that a visitor must
22 be appointed.

23 (4) In addition to the requirements of subsection (2) of this section, if a
24 petition seeks appointment of a conservator or a temporary fiduciary who
25 will exercise the powers of a conservator or if a petition seeks a protective
26 order relating to the estate of the respondent, the petition must contain the
27 petitioner's estimate of the value of the estate.

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

30 (6) A parent or guardian of a minor may file a petition that seeks the
31 appointment of a guardian for the minor as an adult, to become effective on

1 the date that the minor attains majority, at any time within 90 days before
2 the date that the minor attains majority or at any other time determined by
3 the court to be necessary and appropriate to ensure the ongoing protection,
4 safety and welfare of the minor upon attaining majority.

5 (7) The court shall review a petition seeking appointment of a guardian
6 and shall dismiss the proceeding without prejudice, or require that the peti-
7 tion be amended, if the court determines that the petition does not meet the
8 requirements of this section.

9 **SECTION 14.** ORS 125.060 is amended to read:

10 125.060. (1) The notices required by this section must be given to all per-
11 sons whose identities and addresses can be ascertained in the exercise of
12 reasonable diligence by the person required to give the notice.

13 (2) Notice of the filing of a petition for the appointment of a fiduciary
14 or entry of other protective order must be given by the petitioner to the
15 following persons:

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

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

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

20 (d) Any person who is cohabiting with the respondent and who is inter-
21 ested in the affairs or welfare of the respondent.

22 (e) Any person who has been nominated as fiduciary or appointed to act
23 as fiduciary for the respondent by a court of any state, any trustee for a
24 trust established by or for the respondent, any person appointed as a health
25 care representative under the provisions of ORS 127.505 to 127.660, **any**
26 **person acting as a supporter for the respondent under the provisions**
27 **of sections 1 to 11 of this 2019 Act** and any person acting as attorney-in-
28 fact for the respondent under a power of attorney.

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

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

4 (h) If the respondent is receiving moneys paid or payable by the United
5 States through the Department of Veterans Affairs, a representative of the
6 United States Department of Veterans Affairs regional office that has re-
7 sponsibility for the payments to the protected person.

8 (i) If the respondent is receiving moneys paid or payable for public as-
9 sistance provided under ORS chapter 411 by the State of Oregon through the
10 Department of Human Services, a representative of the department.

11 (j) If the respondent is receiving moneys paid or payable for medical as-
12 sistance provided under ORS chapter 414 by the State of Oregon through the
13 Oregon Health Authority, a representative of the authority.

14 (k) If the respondent is committed to the legal and physical custody of the
15 Department of Corrections, the Attorney General and the superintendent or
16 other officer in charge of the facility in which the respondent is confined.

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

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

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

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

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

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

30 (d) If the protected person is receiving moneys paid or payable by the
31 United States through the Department of Veterans Affairs, a representative

1 of the United States Department of Veterans Affairs regional office that has
2 responsibility for the payments to the protected person.

3 (e) If the protected person is committed to the legal and physical custody
4 of the Department of Corrections, the Attorney General and the superinten-
5 dent or other officer in charge of the facility in which the protected person
6 is confined.

7 **(f) Any person acting as a supporter for the protected person under**
8 **the provisions of sections 1 to 11 of this 2019 Act.**

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

10 (4) A request for notice under subsection (3)(b) of this section must be in
11 writing and include the name, address and phone number of the person re-
12 questing notice. A copy of the request must be mailed by the person making
13 the request to the petitioner or to the fiduciary if a fiduciary has been ap-
14 pointed. The original request must be filed with the court. The person filing
15 the request must pay the fee specified by ORS 21.135.

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

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

25 (7) In addition to the requirements of subsection (2) of this section, notice
26 of the filing of a petition for the appointment of a guardian for a person who
27 is alleged to be incapacitated must be given by the petitioner to the follow-
28 ing persons:

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

30 (b) If the respondent is a resident of a nursing home or residential facil-
31 ity, or if the person nominated to act as fiduciary intends to place the re-

1 spondent in a nursing home or residential facility, the office of the Long
2 Term Care Ombudsman.

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

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

12 (a) Any attorney who represented the protected person at any time during
13 the protective proceeding.

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

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

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

24 (10) The requirement that notice be served on an attorney for a respond-
25 ent or protected person under subsection (7)(a) or (8)(a) of this section does
26 not impose any responsibility on the attorney receiving the notice to repre-
27 sent the respondent or protected person in the protective proceeding.

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

29 125.150. (1)(a) The court shall appoint a visitor upon the filing of a peti-
30 tion in a protective proceeding that seeks the appointment of:

31 (A) A guardian for an adult respondent;

1 (B) A guardian for a minor respondent who is more than 16 years of age,
2 in cases where the court determines there is the likelihood that a petition
3 seeking appointment of a guardian for the respondent as an adult will be
4 filed before the date that the respondent attains majority, in accordance with
5 ORS 125.055 (6), or as an adult; or

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

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

10 (2) A visitor may be an officer, employee or special appointee of the court.
11 The person appointed may not have any personal interest in the proceedings.
12 The person appointed must have training or expertise adequate to allow the
13 person to appropriately evaluate the functional capacity and needs of a re-
14 spondent or protected person, or each petitioner and the person to be adopted
15 under ORS 109.329. The court shall provide a copy of the petition and other
16 filings in the proceedings that may be of assistance to the visitor.

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

22 (4) Subject to any law relating to confidentiality, the visitor may inter-
23 view any physician, naturopathic physician or psychologist who has exam-
24 ined the respondent or protected person, or each petitioner under ORS
25 109.329, the person or officer of the institution having the care, custody or
26 control of the respondent or protected person, or each petitioner under ORS
27 109.329, **any person acting as a supporter for the respondent or pro-**
28 **ected person under the provisions of sections 1 to 11 of this 2019 Act**
29 and any other person who may have relevant information.

30 (5) If requested by a visitor under subsection (4) of this section, a physi-
31 cian, naturopathic physician or psychologist who has examined the respond-

1 ent or protected person, or each petitioner under ORS 109.329, may, with
2 patient authorization or, in the case of a minor respondent, with the au-
3 thorization of the minor's parent or the person having custody of the minor,
4 or in response to a court order in accordance with ORCP 44 or a subpoena
5 under ORCP 55, provide any relevant information the physician,
6 naturopathic physician or psychologist has regarding the respondent or pro-
7 tected person, or each petitioner under ORS 109.329.

8 (6) A visitor shall determine whether it appears that the respondent or
9 protected person, or each petitioner or the person to be adopted under ORS
10 109.329, is able to attend the hearing and, if able to attend, whether the re-
11 spondent or protected person, or each petitioner or the person to be adopted
12 under ORS 109.329, is willing to attend the hearing.

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

15 (a) The inability of the respondent to provide for the needs of the re-
16 spondent with respect to physical health, food, clothing and shelter;

17 (b) The location of the respondent's residence and the ability of the re-
18 spondent to live in the residence while under guardianship;

19 **(c) The likelihood that the respondent would be able to provide for**
20 **the respondent's needs with supported decision-making, as that term**
21 **is defined in section 1 of this 2019 Act, and whether supported**
22 **decision-making under sections 1 to 11 of this 2019 Act is available to**
23 **the respondent;**

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

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

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

31 [(f)] **(g)** Whether the respondent's inability to provide for the needs of the

1 respondent is an isolated incident of negligence or improvidence, or whether
2 a pattern exists.

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

5 (a) The appointment of a fiduciary; and

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

7 (9) If a petition is filed seeking the appointment of a conservator in ad-
8 dition to the appointment of a guardian, a visitor shall investigate whether
9 the respondent is financially incapable. The visitor shall interview the per-
10 son nominated to act as conservator and shall interview the respondent
11 personally at the place where the respondent is located.

12 (10) A visitor shall determine whether the respondent or protected person,
13 or each petitioner or the person to be adopted under ORS 109.329, wishes to
14 be represented by counsel and, if so, whether the respondent or protected
15 person, or each petitioner or the person to be adopted under ORS 109.329,
16 has retained counsel and, if not, the name of an attorney the respondent or
17 protected person, or each petitioner or the person to be adopted under ORS
18 109.329, wishes to retain.

19 (11) If the respondent or protected person, or each petitioner or the person
20 to be adopted under ORS 109.329, has not retained counsel, a visitor shall
21 determine whether the respondent or protected person, or each petitioner or
22 the person to be adopted under ORS 109.329, desires the court to appoint
23 counsel.

24 (12) If the respondent or protected person, or each petitioner or the person
25 to be adopted under ORS 109.329, does not plan to retain counsel and has
26 not requested the appointment of counsel by the court, a visitor shall deter-
27 mine whether the appointment of counsel would help to resolve the matter
28 and whether appointment of counsel is necessary to protect the interests of
29 the respondent or protected person, or each petitioner or the person to be
30 adopted under ORS 109.329.

31 **SECTION 16.** ORS 125.305 is amended to read:

1 125.305. (1) After determining that conditions for the appointment of a
2 guardian have been established, the court may appoint a guardian as re-
3 quested if the court determines by clear and convincing evidence that:

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

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

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

10 (2) The court shall make a guardianship order that is no more restrictive
11 upon the liberty of the protected person than is reasonably necessary to
12 protect the person. In making the order the court shall consider the infor-
13 mation in the petition, the report of the visitor, the report of any physician,
14 naturopathic physician or psychologist who has examined the respondent, if
15 there was an examination, **the existence of a valid supported decision-**
16 **making agreement under sections 1 to 11 of this 2019 Act** and the evi-
17 dence presented at any hearing.

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

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

23 **SECTION 17. The section captions used in this 2019 Act are provided**
24 **only for the convenience of the reader and do not become part of the**
25 **statutory law of this state or express any legislative intent in the**
26 **enactment of this 2019 Act.**

27
