



**DEPARTMENT OF HUMAN RESOURCES**  
**SENIOR & DISABLED SERVICES DIVISION**  
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**AUTHORIZED BY:** \_\_\_\_\_

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**INFORMATION MEMORANDUM**

SDSD-IM-99-72

Date: November 8, 1999

**TO:** SDSD District and Unit Managers  
Area Agency on Aging Directors

**SUBJECT:** Adult Protective Services Information

**INFORMATION:** A summary of the major laws related to adult protective service issues passed by the 1999 legislature is attached.

An APS Manual release will be issued after the first of the year.

Attached also is the most recent issue of "*nexus*," the newsletter of the National Committee for the Prevention of Elder Abuse. The Oregon Attorney General's Task Force on Elder Abuse is one of 17 affiliates of the National Committee for the Prevention of Elder Abuse. The newsletter serves the affiliates. Oregon is mentioned on pages 2,3,6, and 7.

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## Adult Protective Services and 1999 Legislation

*Note: Laws passed during the 1999 legislative session took effect on October 23, 1999 unless stated otherwise in the text of the law.*

### **Elder and Disabled Persons Abuse Prevention Act**

**HB 2464** (Or Laws Chapter 738), **Amends** ORS 124.005 - 124.040

This new law expands the list of those able to petition the court for a restraining order against their abuser. The new law allows younger disabled persons - defined as someone who is eligible for Supplemental Security Income or general assistance and who is mentally retarded, developmentally disabled, mentally or emotionally disturbed, an alcohol or drug abuser, or has another physical or mental disability - to petition for a restraining order. Before this law change, those petitioning under the Elder Abuse Prevention Act were required to be 65 years of age or older, not a resident of a long-term care facility, the victim of abuse that occurred within 180 days of the petition filing, and in immediate and present danger of further abuse from the respondent.

The types of abuse for which a person, elderly or disabled, may obtain a restraining order under the act remain the same.

**NOTE: This is not a mandatory reporting law.**

**HB 3388** (Or Law Chapter 875), **Amends** ORS 124.005 - 124.040, ORS 646.608

This new law brings certain conduct regarding mail-solicited contests and sweepstakes within the scope of the Unlawful Trade Practices Act and the Elder Abuse Prevention Act.

The new law makes several acts relating to the mailing of contest and sweepstakes materials an unlawful practice under the Unlawful Trade Practices Act, including mailings to solicit participation in a contest that do not clearly and conspicuously disclose in the solicitation, the number of rounds in the contest, the date that the final winner will be determined, the method of judging entries, and the procedures for entering the contest without making a purchase.

Violations of the Unfair Trade Practices Act may be brought by the Attorney General, District Attorney, or a private party.

The new law allows an elderly, disabled or incapacitated person to obtain a restraining order under the Elder Abuse Prevention Act against a sweepstakes company sending a person further mailings if the person has spent more than \$500 on the sweepstakes promotions received in the United States mail. Sweepstakes companies are allowed up to 150 days to stop sending sweepstakes entry materials. For a time after the court issues a restraining order, a person may receive additional solicitations from respondent. However, beginning on the date the restraining order is issued, the sweepstakes company must immediately reject any further orders from the petitioner and must return any money the petitioner sends to the company after the date the restraining order is issued.

Under the new provisions of the Elder Abuse Prevention Act, “Abuse” means “Causing any sweepstakes promotion to be mailed to an elderly, disabled or incapacitated person who had received sweepstakes promotional material in the United States mail, spent more than \$500 in the preceding year on any sweepstakes promotions, or any combination of sweepstakes promotions from the same service, regardless of the identities of the originators of the sweepstakes promotion and who represented to the court that the person felt the need for the court's assistance to prevent the person from incurring further expense.”

The State Court Administrator’s Office has revised the necessary forms to reflect the statute changes. Updated forms are available at your county courthouse.

**SB 318** (Or Laws Chapter 1052), **Amends** ORS 124.005 - 124.040

This new law clarifies that a petitioner in an Elder Abuse Prevention Act proceeding has the burden of proving a claim by a preponderance of the evidence. In a recent case, the court found that the burden of proof in a Family Abuse Prevention Act proceedings was clear and convincing evidence, not preponderance of the evidence. The legislature clarified its intent that the burden of proof in these cases is a preponderance of the evidence, or more likely than not.

## **Civil Action for Abuse of Elderly or Disabled Persons**

**SB 6** (Or Laws Chapter 305), **Amends** 124.100 to 124.140

This new law amends the Civil Action for Abuse of Elderly or Disabled Person statutes. It replaces the term “fiduciary abuse” with the term “financial abuse.” The new law clarifies that an action may be brought against a person who wrongfully takes or appropriates money or property of an elderly or incapacitated person without regard to whether the person taking or appropriating the money or property has a fiduciary relationship with the elderly or incapacitated person. Many cases of elder financial abuse involve a classic fiduciary relationship between the elderly person and the abuser, occurring for example through the misuse of a power of attorney, or joint account. However, there are cases of financial elder abuse where no traditional fiduciary relationship exists. SB 6 attempts to clarify that the intent of the original act was to cover situations involving both fiduciaries and non-fiduciaries.

## **Protective Proceedings**

**HB 2759** (Or Laws Chapter 774), **Amends** ORS 125, Protective Proceedings

This new law modifies the law relating to the appointment of professional fiduciaries, defined as any person nominated as a fiduciary or serving as a fiduciary who is acting at the same time as a fiduciary for three or more protected persons who are not related to the fiduciary.

Under the new law, a professional fiduciary would not be able to employ a person in which the fiduciary has a pecuniary or financial interest before the professional fiduciary has provided information to the court regarding that pecuniary or financial interest. If a petition seeks the appointment of a professional fiduciary, the petition now must contain specific information regarding the fiduciary and their business. The professional fiduciary and all staff with responsibility for making decisions for clients or for management of client assets must undergo a criminal records check before the court may appoint the professional fiduciary. The new law also provides that a judge may not approve any fees or expenses requested by the fiduciary to the extent that the combined fees of the fiduciary and the person employed by the fiduciary exceed the amount the court finds would have been appropriate for payment to the fiduciary if the fiduciary had provided the services alone.

The new law defines what a pecuniary or financial interest is for purposes of the new law.

**HB 2760** (Or Laws Chapter 775), **Amends** ORS 125, Protective Proceedings

This new law adds new notice requirements and due process protections for respondents in adult guardianship proceedings. Respondents are the defendants in adult guardianship cases.

When a new guardianship petition or a motion in a open case is filed, a notice must now be sent to the following: any attorney representing the respondent in any capacity; the Office of the Long Term Care Ombudsman if the petition seeks to place the respondent in a nursing home or residential facility or if the respondent is a resident of a nursing home or residential facility; the Protection and Advocacy Agency (Oregon Advocacy Center) if the petition seeks to place the respondent in a mental health treatment center or a residential facility for persons with developmental disabilities or if the respondent is a resident of a mental health treatment center or a residential facility for persons with developmental disabilities.

The new law also requires that a new form of notice be served on the respondent, which is intended to be more comprehensive and to provide specific information regarding the effects of a protective proceeding, the rights of the respondent, and what the respondent must do to object to the protective proceeding. The notice must be printed in 14-point font.

Also, respondents are to receive, along with the Notice of the Petition, a "Respondent's Objection Form," printed on blue paper in 14-point font. This is intended to provide the respondent with an meaningful opportunity to object to the petition for guardianship.

Finally, HB 2760 provides for a pilot project in Multnomah County beginning on July 1, 2000. The pilot project addresses visitor provisions and the appointment of counsel for respondents in some guardianship cases. The project allows for the hiring of a court visitor who will be a court employee who will perform the usual visitor function, who but will also do follow-up visits and other investigations dealing with irregularities that come to the court's attention. The visitor will also be required to inform the

respondent of the nature of the proceedings and if the visitor recommends that counsel be provided, the Court is obliged to do so. The Multnomah County Probate Department is currently seeking grant funds to allow them to hire a visitor and will be developing local court rules regarding the project's implementation.

### **Physician-Assisted Suicide**

SB 491 (Or Laws Chapter 423), **Amends** ORS 127.800 to 127.897

SB 491 amends the Death with Dignity Act. Some of the changes include: requiring the physician to request from the patient proof of Oregon residency; requiring the physician to counsel the patient about the importance of having another person present when the patient take the medication and of not taking the medication in a public place. It also gives the attending physician some new responsibilities.

The new law permits health care providers to prohibit another health care provider from participating in physician-assisted suicide on the prohibiting provider's premises and provides for sanctions for violation of the prohibition. The definition of "health care provider" includes hospitals, and long term care facilities, including skilled nursing facilities and intermediate care facilities. The definition of "participate in ORS 127.8000 to 127.897" means to perform the duties of an attending physician, consulting physician, and the counseling function under the act. It does not include making an initial determination that a patient has a terminal disease and informing the patient of the prognosis, providing information about the Death with Dignity Act to a patient upon the patient's request, providing a patient with a referral to another physician upon the patient's request, or a patient contracting with his or her attending physician and consulting physician to act outside of the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

SB 491 became effective on June 30, 1999.

## **In-Home Care Agencies**

**HB 3635** (Or Laws Chapter 1034), **Creates** new laws

The new law requires a person who operates or maintains an in-home care agency to obtain a license from the Department of Human Services. The term *in-home care agency* means an agency primarily engaged in providing in-home care services for compensation to a person in that person's place of residence. It does not include a home health agency that provides curative or rehabilitative services such as nursing services. The term *in-home care services* means personal care services furnished by an in-home care agency or an individual under an arrangement with an in-home care agency that are necessary to assist a person in meeting his or her daily needs but does not include curative or rehabilitative services.

The Health Division is responsible for implementing the new law. SDSO is represented on the administrative rule group responsible for writing the new rules.

## **Abuse Prevention and Domestic Violence Cases**

**HB 3395** (Or Laws Chapter 945), **Amends** ORS 40.460

This new law creates new provisions and amends the Oregon Evidence Code. It allows certain statements concerning domestic violence to be admissible even if the statements would be hearsay. A statement is admissible if the statement purports to narrate, describe, report or explain an instance of domestic violence as defined in ORS 135.230, the statement is made by a victim of domestic violence within 24 hours after the incident occurred, the statement was recorded either electronically or in writing, or was made to a peace officer, emergency medical technician, firefighter or adult or juvenile corrections personnel officer, and the statement has sufficient indicators of reliability as defined by statute. The declarant's recanting a statement describing domestic violence is not sufficient reason for denying admission of a statement in the absence of other factors indicating reliability.

## **Assistive Devices**

### **SB 30** (Or Laws Chapter 81), **Amends** ORS 646 and ORS 694

The new law gives users of hearing aids additional rights and remedies if the hearing aid does not work properly. Oregon laws relating to warranties on assistive devices did not include hearing aids. The new law provides that a manufacturer who sells or leases a hearing aid must furnish an express warranty that the hearing aid is free from any nonconformity. The definition of “nonconformity” has been amended to exclude a hearing aid condition or defect that is the result of normal use or when the condition or defect could be resolved through fitting adjustments, cleaning and proper care.

SB 30 became effective on April 30, 1999.