

House Bill 2217

Sponsored by Representative WHISNANT, Senators GELSER, KNOPP; Representative SMITH WARNER (Presession 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**.

Creates Falk-Alfano Act.

Prohibits guardian or conservator from restricting protected person's right of communication, visitation or interaction with other persons unless authorized by court order.

Authorizes guardian or conservator to move court to restrict person's ability to communicate, visit or interact with protected person with showing of good cause.

Allows person or protected person who reasonably believes guardian or conservator has violated court order or abused discretion by restricting access to protected person to move court to allow access or modify or terminate powers of guardian or conservator.

Requires guardian or conservator of adult protected person to provide notice to specified persons of certain events or circumstances regarding protected person.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to access to protected persons; and declaring an emergency.

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

4 **SECTION 1. Sections 3 and 4 of this 2017 Act shall be known and may be cited as the**
5 **Falk-Alfano Act.**

6 **SECTION 2. Sections 3 and 4 of this 2017 Act are added to and made a part of ORS**
7 **chapter 125.**

8 **SECTION 3. (1)(a) Unless specifically authorized by court order or as described in para-**
9 **graph (b) of this subsection, a guardian or conservator may not restrict a protected person's**
10 **right of communication, visitation or interaction with other persons, including but not lim-**
11 **ited to the right to receive visits, telephone calls and personal and electronic mail.**

12 **(b) If a protected person is unable to express consent to communication, visitation or**
13 **interaction with a person due to incapacity, then the guardian or conservator may presume**
14 **the protected person's consent to, or refusal of, the communication, visitation or interaction**
15 **based on proof concerning the nature of the protected person's relationship with the person.**
16 **In determining the nature of the protected person's relationship with the person who seeks**
17 **to communicate, visit or interact with the protected person, the guardian or conservator**
18 **shall consider proof such as family history, photographs, documents, letters, communi-**
19 **cations, prior incidences of contact and other appropriate proof.**

20 **(2)(a) A guardian or conservator may, with a showing of good cause, move the court to**
21 **restrict a person's ability to communicate, visit or interact with a protected person. For**
22 **purposes of this paragraph, "good cause" includes the following:**

23 **(A) Protective or restraining orders have been issued to protect the protected person**
24 **from the other person;**

25 **(B) The person has been charged with abuse, neglect or financial exploitation of the**

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 **protected person;**

2 **(C) The protected person has expressed a desire to not communicate, visit or interact**
3 **with the person;**

4 **(D) If the protected person is incapacitated and unable to communicate, whether the**
5 **protected person's properly executed will, power of attorney, advance directive or other**
6 **documentation contains a preference to not allow or to reject communication, visitation or**
7 **interaction with the person; or**

8 **(E) Any other factors deemed to be relevant and to constitute good cause by the court.**

9 **(b) Prior to issuing an order under this subsection, the court shall consider the following**
10 **alternatives to a complete restriction of the person's communication, visitation or inter-**
11 **action with the protected person:**

12 **(A) Placing reasonable time, manner or place restrictions on communication, visitation**
13 **or interaction between the protected person and the person based on the prior relationship**
14 **between the protected person and the person or on the protected person's wishes, or both;**
15 **or**

16 **(B) Requiring that communication, visitation or interaction between the protected person**
17 **and the person be supervised.**

18 **(3) Any person or protected person who reasonably believes that a guardian or**
19 **conservator has violated a court order or abused the guardian's or conservator's discretion**
20 **under subsection (1) of this section may move the court to:**

21 **(a) Require the guardian or conservator to allow a person to communicate, visit or**
22 **interact with the protected person;**

23 **(b) Restrict, or further restrict, a person's communication, visitation or interaction with**
24 **the protected person;**

25 **(c) Modify the powers, duties and responsibilities of the guardian or conservator; or**

26 **(d) Remove the guardian or conservator pursuant to ORS 125.225.**

27 **(4) A guardian or conservator that knowingly isolates a protected person in violation of**
28 **subsection (1) of this section or that violates an order of the court made under subsection**
29 **(2) or (3) of this section is subject to removal under ORS 125.225.**

30 **(5)(a) Except as provided in paragraph (b) of this subsection, the court shall hold a**
31 **hearing on a motion filed under subsection (2) or (3) of this section not later than 60 days**
32 **after the date that the motion was filed. In the court's discretion, the court may order the**
33 **parties and the protected person to participate in mediation. If mediation results in agree-**
34 **ment among the parties and the protected person with regard to communication, visitation**
35 **or interaction with the protected person, the agreement shall be approved and made an order**
36 **of the court. In scheduling the hearing under this paragraph, the court shall also make a**
37 **preliminary order that supervised communication, visitation or interaction with the pro-**
38 **ected person be allowed during the period prior to the hearing unless the court, for good**
39 **cause as described in subsection (2) of this section, determines that such communication,**
40 **visitation or interaction would not be in the best interests of the protected person.**

41 **(b) If a motion under subsection (2) or (3) of this section states that the protected**
42 **person's health is in significant decline or that the protected person's death may be immi-**
43 **nent, the court shall conduct an emergency hearing as soon as practicable but no later than**
44 **10 days after the date that the motion is filed.**

45 **(c) Notice of the hearing, a copy of the motion and a copy of any order issued pursuant**

1 to paragraph (b) of this subsection, if applicable, shall be personally served upon the pro-
 2 tected person and any person, guardian or conservator against whom the motion is filed. The
 3 protected person has a right to appear and be heard at the hearing.

4 (d) The court may award the prevailing party in any proceeding brought under this sec-
 5 tion costs and reasonable attorney fees, except that an award of costs or attorney fees may
 6 not be paid out of the protected person's estate.

7 (e) Upon motion of a party or protected person, or on the court's own motion, the court
 8 may order that:

9 (A) The guardian or conservator pay an appropriate monetary sanction, including but not
 10 limited to an order to pay costs and reasonable attorney fees of another party or of the
 11 protected person, if the guardian or conservator is found to have knowingly isolated a pro-
 12 tected person in violation of subsection (1) of this section or to have knowingly violated an
 13 order of the court under subsection (2) or (3) of this section, except that the monetary
 14 sanction may not be paid out of the protected person's estate.

15 (B) An attorney be retained to represent the interests of the protected person in a pro-
 16 ceeding under this section, provided there are sufficient funds available in the protected
 17 person's estate or otherwise to pay for the cost of retaining the attorney. This subparagraph
 18 is not intended to prohibit obtaining legal advice, counsel or representation for the protected
 19 person that may be otherwise available to the protected person, whether through the Oregon
 20 Public Guardian and Conservator or local or state agency services and resources.

21 **SECTION 4.** (1) Except as provided in subsections (5) and (6) of this section, a guardian
 22 or conservator shall promptly notify the following persons of any event or circumstance de-
 23 scribed in subsection (2) of this section regarding an adult protected person:

- 24 (a) The spouse of the protected person;
- 25 (b) The parents of the protected person;
- 26 (c) The adult children of the protected person;
- 27 (d) Other persons who are closely related to the protected person;
- 28 (e) Any person designated in writing or otherwise by the protected person to be notified;
- 29 (f) All parties of record to the guardianship or conservatorship proceeding; and
- 30 (g) Any person who has filed a request for notice in the guardianship or conservatorship
 31 proceeding.

32 (2) The notice required by subsection (1) of this section must be provided when:

33 (a) The protected person changes the protected person's residence, including but not
 34 limited to a change of residence to or from a long term care facility as defined in ORS 442.015
 35 or a residential facility as defined in ORS 441.402;

36 (b) The protected person resides at a location other than the protected person's usual
 37 place of residence for more than seven days;

38 (c) The protected person is admitted to a medical facility for acute care or for emergency
 39 care;

40 (d) The protected person dies; or

41 (e) Funeral or memorial services are scheduled for the protected person, in which case
 42 the notice must be provided in advance of and immediately upon scheduling of the services.

43 (3) Notice to persons described in subsection (1)(a) to (e) of this section shall be provided
 44 by telephone or in person. Notice to persons described in subsection (1)(f) and (g) of this
 45 section shall be provided by written correspondence.

1 (4) The notice provided pursuant to this section must include the location of the pro-
2 tected person at the time the notice was given.

3 (5) A guardian or conservator is not required to provide notice to a person in accordance
4 with this section if:

5 (a) The person informs the guardian or conservator in writing that the person does not
6 wish to receive such notice; or

7 (b) The protected person or a court order expressly prohibits the guardian or conservator
8 from providing notice to the person.

9 (6) A guardian or conservator may not provide notice to a person under this section if
10 an order of restraint or protection has been issued against the person on behalf of the pro-
11 tected person.

12 SECTION 5. This 2017 Act being necessary for the immediate preservation of the public
13 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
14 on its passage.
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