

The background of the cover is a photograph of a forest with tall, thin trees and sunlight filtering through the leaves. Overlaid on the bottom left is a large black triangle pointing towards the center. Overlaid on the bottom right is a large, semi-transparent gold triangle pointing towards the center. The title is centered in the upper half of the page.

Legal Issues for Older Adults

An Oregon Information & Reference Guide

Topics Include:

Income Sources

Medical Matters

Housing Options

Managing as You Age:
Your Money, Yourself

Estate Planning

When Someone Dies

Family & Relationship
Issues

Resources

2017

2017

Legal Issues for Older Adults

An Oregon Information & Reference Guide

The logo for the Oregon State Bar, consisting of a solid black square with the words "Oregon State Bar" written in white, stacked vertically.

Oregon
State
Bar

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Introduction

Welcome to Legal Issues for Older Adults. This handbook is designed to help identify some of the common legal questions people may have as they age.

This handbook is not legal advice. But it will alert you to issues you should think about, and it will give you basic ideas and definitions you can use to decide if you need legal advice. You can find contact information for any government, social service or community program referenced in this hand book in the resources section (Chapter 8).

This edition was updated in January 2017. The law can change at any time though, so some information may not be accurate later. Look for more current information from the websites and contact information in each chapter.



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Chapter 1

Income Sources for Seniors

Older Oregonians get income from a variety of sources. Many rely on Social Security, pensions, or other benefits. Some older adults continue working. Some do both. This chapter will look at benefits programs for people over certain ages, their spouses, and their dependents. It will discuss eligibility requirements, the application process, and the appeals process for several state and federal benefits programs. This chapter also will look at the way work affects eligibility. Finally, this chapter mentions programs for seniors who may need additional help with food, shelter, or caregiving support.

1-1	Social Security Retirement-related Benefits	1-9	Benefits Overpayments and Withholding
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1-1

Social Security

Social Security is a federal program that provides income to eligible workers and their families when the worker reaches retirement age, becomes severely disabled, or dies.

General Eligibility: Social Security Retirement

To qualify for Social Security retirement benefits, you must have worked in a job where your employer paid Social Security taxes, or you must have paid those taxes yourself if you were self-employed. You must have worked a certain amount of time to earn quarters of coverage, or credits. When you earn enough credits, you become eligible for benefits. The amount of benefits you will receive each month depends on the amount of your average yearly earnings. (You do not have to retire to become eligible.)

To find out how many credits you have or need to qualify for benefits, contact the Social Security Administration or your local Social Security office. The Social Security Administration also provides a benefit estimate. If you work and file an income tax return, you should already be receiving an annual “Personal Earnings and Benefit Estimate Statement” that you can use to calculate your benefits online at www.ssa.gov.

If your earnings record is incorrect, you can give your local Social Security office proof of additional income, such as your W-2 forms or statements from co-workers or employees. You may need help from a lawyer to establish your eligibility for higher benefits.

Benefit eligibility

To be eligible for retirement benefits, you must

- Have a minimum of 40 credits; and
- Be 62 or older (see section below on early retirement).

Benefits for Spouse or Registered Domestic Partner

If you are the spouse or registered domestic partner of a worker who is eligible for retirement benefits, you yourself may be eligible for up to one-half of your spouse or partner's benefit. You cannot collect benefits until the eligible spouse or partner files for Social Security. You can take spousal benefits as early as age 62; the benefit will be smaller if you do unless you start or continue to work. If you are caring for the worker's child who is younger than 16 or disabled, you may be eligible for the benefit earlier than age 62.

You may qualify for Social Security on your own work credit history. If so, you will be paid your benefit amount first. If your benefit is less than half of your spouse or partner's benefit, you will get a combination of benefits to equal half of the other's benefit.

Benefits for Divorced Spouse or Registered Domestic Partner

If you are the divorced spouse or partner of a qualified worker, you can receive benefits on your former spouse's Social Security if you:

- Were married to your former spouse for at least 10 years;
- Are age 62 or older; or
- If younger than 62, caring for the worker's child who is younger than 16;
- Are not remarried; and
- Are not eligible for a higher benefit based on your own earned credits.

Survivors' Benefits: Widowed Spouse or Domestic Partner ("Surviving Spouse")

You can receive benefits as a surviving spouse or partner if your spouse was eligible for Social Security retirement benefits at death and you are at least age 60, or age 50 and severely disabled.

Benefits for Surviving Divorced Spouse or Registered Partner

You can receive benefits as a surviving divorced spouse if your former spouse or partner was eligible for Social Security retirement benefits at death and you:

- Are at least age 60, or age 50 and severely disabled;
- Were married to your former spouse for at least 10 years; and
- Are not eligible for a higher benefit based on your own earned credits.

If you are already entitled to benefits as an aged or disabled surviving divorced spouse and you remarry, the benefits will continue regardless of your age when you remarry.

Benefits for Dependents

To be eligible, a dependent must be single, under age 18, or under age 19 and attending high school, or disabled before age 22. Each eligible child will receive up to one-half of your full benefit, up to a certain limit. An unmarried qualifying dependent child may also be eligible for survivor benefits.

Death Benefit

A widow or widower or partner or dependent children can receive a lump sum death benefit of \$255 in addition to monthly survivors' benefits.

Early Retirement and Full Retirement Age

Full retirement age depends on the year you are born. For those born before 1937, full retirement benefits are available at age 65. The full retirement age gradually increases, to as high as age 67 for people born after 1959.

TABLE 1.1 FULL RETIREMENT AGE BY BIRTH YEAR

Birth Year	Full Retirement Age
1943-1954	66
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 month
1960 and later	67

You can begin collecting early retirement benefits at age 62 or later before your full retirement age, but your monthly benefit amount will be lower if you stop work before full retirement age. If you collect benefits before full retirement age but continue to work, your monthly benefit does go up over time. For the amount of the reduction in your case, contact your local Social Security office.

You will not receive a payment until age 62 even if you stop work when you are younger.

Earnings after Age 62

If you retire before your full retirement age but then return to work, or if you do not stop working but collect Social Security retirement, Social Security may reduce the benefits you receive by a certain amount until you reach full retirement age. That “certain amount” changes over time, but you can estimate that earnings of up to about \$15,000 per year will not result in a lower Social Security monthly check.

Between age 62 and the year you reach full retirement age, Social Security will reduce your benefit by \$1 for each \$2 you earn over that exempt amount. In the year you reach full retirement age, you can earn up to about \$39,000 before Social Security will reduce your benefit. In that year only, it will hold back \$1 for each \$3 you earn over the exempt amount. Once you reach full retirement age, there’s no reduction.

Be sure to report extra earnings to your local Social Security office. The money you earn may increase your monthly benefit amount now. At the same time, earnings higher than the exempt amount might mean you must pay back some of the benefits Social Security overpaid you. See section 1-9 below about benefits overpayments. Some of your Social Security income may be taxable, too. Regardless, your net income should be higher with earnings and Social Security payments than with Social Security alone.

How to Apply

To get any kind of Social Security benefit, you must apply for it: by phone 800-772-1213, online (www.ssa.gov), or in person at a Social Security field office. At some point you will need to prove who you are and that you are entitled to benefits, so expect to have to show either an original or certified copy of some or all of these documents:

- Your Social Security card
- Your birth certificate or other proof of birth
- Your most recent W-2 forms or self-employment tax return
- Proof of citizenship or other legal status (a “green card”)
- Name, routing number, and account number at the bank or other financial institution where your payments will go (the checks will not come to you in the mail)

For some types of benefits, applicants also will need:

- Proof of marriage or registered domestic partnership
- Spouse or partner’s birth certificate and Social Security number
- Proof of age of all applicants on the account
- Military discharge papers
- Children’s birth certificates and Social Security numbers
- Divorce judgment for benefits going to a former spouse
- Proof of covered worker’s death, for survivors’ benefits

Your Right to Appeal Social Security's Decision on Your Claim

You may appeal the decision if Social Security denies, reduces, or ends your benefits. You may also appeal if Social Security says it overpaid you. The appeal must be written and turned in within 60 days from the date you receive the initial decision letter from the Social Security Administration. You can start the appeals process on the Internet at www.ssa.gov. It is best to talk to a lawyer or other representative knowledgeable about Social Security before you start your appeal. See Chapter 8, section 8-2.

Direct Deposit

Social Security, like all federal benefits, must be paid directly into your bank account through a direct deposit. There are a few limited exceptions to this rule. If you don't already have a bank or credit union account, shop around. Avoid financial institutions that charge high fees.

1-2 Railroad Retirement Annuities

The federal Railroad Retirement Board handles this benefit program for eligible workers and their families.

General Eligibility

Similar to Social Security retirement benefits, Railroad Retirement benefits (called annuities) are based on months of service and earnings credits. Employees of railroads engaged in interstate commerce, some related industries, railway associations, and national railway labor organizations qualify for Railroad Retirement after 10 years of credited work (five years for credited work performed after 1995).

Retirement Annuities

Railroad employees with at least 30 years of service on or after Jan. 1, 2002 can get full benefits at age 60. The rate paid depends on your earnings.

Employees with fewer than 30 years of service (but at least 10 years) can get reduced benefits at age 62 and full benefits at full retirement age (65–67 depending on the year you were born).

Benefits for Spouses and Domestic Partners

A spouse or registered partner may be eligible for benefits depending on the employee's age at retirement and years of railroad service. A spouse or partner of any age can receive a spousal annuity when the employee qualifies for a retirement annuity, so long as the spouse is caring for the employee's unmarried minor child or child who became disabled before age 22.

Benefits for Divorced Spouses and Domestic Partners

A divorced spouse or partner may be eligible for an annuity if: 1) he or she was married to a retired eligible employee for at least 10 years; 2) he or she has not remarried; and 3) both the retired employee and the former spouse/partner are at least one month older than 62 when the ex-spouse applies.

Earnings After Retirement

No benefits are available in any month in which a retired railroad employee works for a railroad industry covered by the retirement benefit law.

Other kinds of earnings may result in reductions in benefits, similar to the reductions for Social Security retirement. (See "Earnings After Age 62," above.) If you have earnings from a non-railroad job or self-employment, be sure to let the Railroad Retirement Board know so it can figure out the right amount of benefits to pay you.

Survivors' Benefits

The benefits available to surviving spouses, partners, and children are similar to those that Social Security offers. There is also a small death benefit for families of an eligible worker who has died.

How to Apply

For any kind of Railroad Retirement Board benefit, you must apply. In Oregon, you can apply by telephone (877-772-5772) or by mail using forms from the Railroad Retirement Board website, www.rrb.gov. You also can apply in person by appointment at one of six offices around the state.

The list of documents you will be expected to provide include those similar to what you would need to apply for Social Security benefits.

Your Right to Appeal

If the Railroad Retirement Board denies your claim, reduces or stops your benefits, or claims it overpaid you, you may appeal the decision. You can be represented by a friend, family member, paralegal or lawyer. The appeal process is very similar to that for Social Security benefits. It is best to get legal advice before starting your appeal.

1-3 Supplemental Security Income (SSI) Based on Age

If you haven't worked outside the home or didn't work enough to qualify for Social Security retirement benefits, you may be eligible for SSI, which provides small monthly cash payments based on financial need. If you get Social Security retirement benefits that are extremely low or you work in a job where you make very little money after age 65, you still may qualify for SSI.

The program provides a basic level of income to those 65 and older with very low income and few assets. If you have a spouse or registered partner, that person's income and assets are factored in. It is possible that only one of you will be eligible, or both of you may be eligible.

Getting SSI gives you access to medical coverage and Medicare prescription coverage. Even if your income from other sources brings you close to the limit for SSI eligibility, it's worth having even a few dollars of SSI benefits in order to qualify for the medical benefits that you become eligible for by having it. (If you are found to be eligible for SSI, you still will need to apply for the medical benefits. You don't get them automatically. See Chapter 2.)

Eligibility

For SSI based on age, you must be 65 or over, be a U.S. citizen or legal resident, and live in the United States or the Northern Mariana Islands. You may not leave the country for more than 30 days in a row. You must apply for any other cash benefits for which you are eligible, too. You must allow the Social Security Administration, which administers the SSI program, to look at your financial records.

The maximum amount of SSI you can receive in a month is around \$700, although the maximum goes up slightly from time to time. If your income from other sources is higher than that, you likely will not be eligible. Not all other income counts against you, however. The first \$20 of income you get in a month doesn't count against the eligibility limit. If you have earnings, \$65 earned income plus half of your other earnings over \$65 don't count against it, either.

Your assets must be limited, too. Not every asset counts. \$500,000 in value of your home, a car, life insurance policies with a face value of less than \$1,500, immediate family burial plots, and burial funds usually don't count. Resources that do count include cash on hand, bank accounts, and stocks and bonds. Countable resources must

be less than \$2,000 for one person or \$3,000 for a couple. Always check with Social Security to determine if a particular asset is countable. There are many exceptions to these general rules.

It is unlawful to give away or sell countable resources for less than face value to reduce your resources in order to become eligible for SSI. In fact, you can become ineligible for SSI for up to 36 months if you try to get rid of assets in this way.

If you are eligible for SSI, the amount of the monthly benefit will depend on your other income. Income includes money earned from work, free housing and food, and money received from other sources, including friends and family, Social Security, and VA benefits.

How to Apply

You can start an application online at www.ssa.gov, you can apply by phone, or you can meet with a representative at an SSA field office. You will need your Social Security card or number, proof of age and citizenship or legal residency. You also will need to give information about your income and that of your spouse or partner — pay stubs, tax records, bank statements, and other financial records. You will have to show the value of your assets, too — property tax bill, rent receipts, insurance policies, stock certificates, motor vehicle documents, etc. (Be sure to get a receipt for anything you turn over to SSA.)

Your Right to Appeal

Income and asset rules are complicated; sometimes the program may not calculate your eligibility correctly. You have the right to appeal a denial of SSI benefits. It is helpful to get legal advice before you start an appeal.

1-4

Employee Pensions

A private pension plan is an agreement for retirement compensation between an employee, a private employer and, for some jobs, the employee's union. Sometimes only the employer contributes to the pension fund, and sometimes the employee does as well. Employers are not required to have pension plans.

The Employee Retirement Income Security Act of 1974 (ERISA) sets the standards for private pensions. It also provides guaranteed pensions in some cases.

Your Right to Enroll in a Pension Plan

If a pension is offered at your work, you have the right to enroll in it if you are 21 or older or if you have worked there for at least one year. Your time at the job must be counted toward qualifying you for retirement benefits.

Your Right to Information

Federal law requires all plan rules to be in writing. The plan manager must explain all facts and rules about your employee benefit plan. You can get the plan rules, your employment records, and a statement of the credit you have earned to date. You can then determine when you will be eligible for benefits and calculate the approximate amount of your benefits. You also can get a copy of the plan description and an outline of your rights from the plan manager.

Eligibility for Pension Benefits

You earn credits by working in a job covered by an employee benefit plan. The plan rules say how much work an employee must do to earn a year of credit. The rules also explain how long you must work to qualify for benefits.

Absences from Employment

Employees who work for a short time or who have long absences from work may not be eligible for benefits. Find out how your employee benefit plan handles absences from work.

Payment of Pension Benefits

If you are close to retiring, it is wise to contact your plan manager about your pension benefits. The plan manager has 30 days from your inquiry to tell you in writing the amount of your benefit and when you can receive it.

Some plans may offer early retirement benefits and disability benefits. Some plans may give you a lump sum payment if the amount of your benefit is less than \$3,500. When you select what type of retirement benefit you want, your spouse or domestic partner will usually be notified and asked to sign a release or consent form.

Most private employee benefits are treated as taxable income once you start collecting them.

Social Security and Pension Benefits

Under some pension plans, the amount of the pension can be reduced by all or part of your Social Security payment.

Survivors' Pension Benefits

Under most pension plans, employees can choose to have pension payments go to their surviving spouse or domestic partner. Check to see whether survivors' benefits and early death forfeiture clauses are in your pension. Early death forfeiture means that your spouse does not receive benefits if you die before the early retirement age in the plan. If you die while you are eligible for benefits under an employee benefit plan, your spouse may receive a death benefit. If you wish to have someone else receive this death benefit, arrange for this change with your plan manager.

Your Right to Appeal

The plan manager must let you know, in writing, if your application for benefits is denied. He or she must give you specific reasons. You have the right to a full review of the denial by all the trustees of the plan. If you are still unhappy with the decision, you may file a lawsuit in federal district court. Deadlines apply; find out from your plan or a lawyer what they are.

1-5 **Disability-based Benefits: Social Security Disability**

Social Security disability (SSD) benefits are available for those under age 65 who have significant work experience and a severe disability. To be eligible, a person must have medical proof of an impairment or impairments that keeps him or her from being able to work at any job and that will last for at least 12 months or result in death. The health problem can be mental or physical or both. Just being unable to perform a former job is not enough to qualify.

To qualify, the person also must have at least 20 quarters of Social Security-covered work in the 10 years before becoming disabled. Someone who gets this benefit will get monthly checks based on lifetime earnings, not on the severity of his or her disability. (Someone with too few quarters for SSD may qualify for SSI based on disability; see 1-6, below.)

SSD benefits mean the person will qualify for Medicare — two years later, in most cases. People with ALS (Lou Gehrig's disease) will get Medicare immediately; people with end-stage renal disease will get Medicare in the third month after they start dialysis treatment or have a kidney transplant.

If a person qualifies for SSD, his or her spouse or partner, children, and former spouses may qualify for benefits, too, just as they would for Social Security retirement benefits.

How to Apply

You can apply by making an appointment at your local Social Security office, calling SSA at 800-772-1213, or starting out online at www.ssa.gov. You will need all of the same information needed for retirement benefits (See the list under “How to Apply for Social Security retirement benefits, above), and much more. You will have to submit proof of medical problems and their effects on you and your ability to work.

The application process is long and can be discouraging. It is not unusual to wait longer than six months to learn whether SSA agrees you are eligible based on your disability. In fact, SSA initially denies more than three out of four claims. Most applicants must appeal their claims at least twice.

The appeals process includes these steps:

1. **Reconsideration:** A different Social Security worker will look at your claim. You have 60 days to ask for this review.
2. **Hearing:** If the claim is denied on reconsideration, you can ask for a hearing. You have 60 days after the reconsideration denial to ask for the hearing. Most people who get benefits do so at this stage. It can be very important to have a Social Security lawyer or paralegal represent you at the hearing. (They do not charge for their services if you lose your case.) A professional can help you gather more and better evidence of your disability, and can find experts to testify about your condition and your inability to work.
3. **Appeals Council:** If you lose at the hearing stage, the Appeals Council can look at the case if you ask it to within 60 days after the hearing decision. If you win at the hearing stage, it is possible that the Appeals Council will look at your case anyway, and find a reason to reject your claim.
4. **Judicial Review:** A federal court can review the Appeals Council or hearing denial, looking at whether the agency properly applied the law to the facts in your case.

If you succeed in your claim, you will get a check for benefits due you from the time you first applied for them. If you have waited a long time, the amount of benefits can be very large. If, after you start getting benefits, SSA decides you are not eligible after all, it must tell you in writing. You can ask for the benefits to continue while you appeal the denial. You must do that in writing within 10 days of when you receive this decision, and get legal advice immediately. If you lose your appeal, you might have to pay back all or part of the money you received.

1-6 Supplemental Security Income (SSI) based on Disability

For people with severe disabilities who have no work history outside the home or who do not have enough quarters of work history, SSI based on disability is a possible source of income. It is available to persons under age 65. Like SSI based on age (discussed above in section 1-3), the program is based on financial need. The rules for disability are the same as those for Social Security disability, and the application and appeals processes are the same. (See Section 1-5, above.)

1-7 Railroad Disability Benefits

A railroad employee with at least 10 years of credited service (or five years after 1995) who becomes severely disabled and unable to work at any job may qualify for a monthly benefit called an annuity based on total disability. The disability must be expected to last at least 12 months or result in death.

It is possible for some railroad employees with five to nine years of service to qualify for total disability benefits if they also have enough Social Security quarters to qualify for Social Security benefits. The amount of their benefits may be limited.

There is a second type of disability benefit called an annuity based on occupational disability. This type of benefit requires only that the person be unable to perform his or her past railroad-related job. It is available for people aged 60 or older with 10 years of service, or any age with at least 20 years of service. However, to get this annuity, the worker must have a “regular current connection” with railroad work. Generally, the connection means the person worked for the railroad for at least 12 of the last 30 months before the start of the annuity. There are other ways to show a connection, too. A representative of the Railroad Retirement Board can explain these alternatives. Some of the workers who qualify for this benefit may qualify for supplemental benefits at age 60 or age 65, based on numerous factors.

Benefits for Spouses, Partners, and Children

The benefits available to surviving spouses, domestic partners, and children of disabled railroad workers are very similar to those offered by Social Security. For families who qualify, there is also a death benefit.

How to Apply

Schedule an appointment with the nearest Railroad Retirement Board office. Find out what documents you will need to bring to show you are eligible for benefits. The application process can be frustrating and time-consuming, like the process for getting Social Security disability benefits (see section 1-5, above). It is good to talk with someone knowledgeable about proving your disability. As with Social Security, you have the right to appeal a decision denying you benefits, reducing your benefits, or asking for money back. Various programs may be able to offer help and referrals. See Chapter 8, section 8-2.

1-8

Veterans' Disability Benefits

Veterans of the United States armed services may be eligible for some or all of the benefits outlined in this chapter. For additional information or a list of benefits not covered in this chapter visit www.va.gov or one of the veterans' service organizations listed in Chapter 8 of this guide.

Service-Connected Disability Compensation

You are eligible for service-connected disability compensation benefits if you are disabled because of an injury or disease that began or worsened during your military service. Disabilities are rated according to severity from 10 percent to 100 percent disabling. The higher your disability percentage is, the more compensation you will be eligible for. If you are rated at 30 percent or more disabled, you can also receive money for eligible dependents.

Non-Service Connected Disability Pension

This disability pension is based on financial need of the veteran and his or her dependents. To get it, you must be permanently and totally disabled and over age 65. You must have received a general or better discharge from the armed services. If you enlisted before Sept. 8, 1980, you must have served 90 days or more, one day of which was during a time of war, or been discharged sooner because of a service-connected disability. If you enlisted after Sept. 7, 1980, in most cases, you must have served at least 24 months or the full period called or ordered to active duty.

Your family income must be within certain limits. For this program, income includes earnings, disability and retirement payments, interest and dividends, and net income from farming or business. You can deduct from this income things like: SSI, welfare benefits, and food stamps; some unreimbursed medical expenses; and educational expenses.

Even if you are eligible for both service-connected and non-service connected pensions, the VA will pay only for the one that gives you the higher amount.

Enhanced Pension Benefits

If you are homebound or live in a care facility, you may be entitled to a higher benefit through the Aid and Attendance or Housebound enhanced benefit programs.

To qualify for Housebound Enhanced Benefit, you must qualify for one of the veterans' pensions described above. You also must have a single permanent 100-percent disability. This disability keeps you permanently and substantially confined to where you live. In the alternative, you may qualify if you have a single permanent 100-percent disability and any other disabilities evaluated as 60 percent or more disabling, regardless of whether you are confined to where you live.

To qualify for the Aid and Attendance Enhanced Benefit, you must be pension-eligible and have one of these conditions:

- a. You need help with activities of daily living or protection from the hazards of your daily environment;
- b. You are bedridden (not just as part of convalescing or treatment);
- c. You are in a long-term care setting due to mental or physical incapacity; or
- d. Your visual acuity is 5/200 or less in both eyes, or your visual field is 5 degrees or less.

Dependents

If you receive monthly VA disability benefits, your spouse and dependent children may receive an additional monthly benefit. Surviving dependents also may be eligible for VA benefits, and a small one-time death benefit.

Additional Benefits

Qualifying veterans may get VA medical benefits, described in Chapter 2. The following VA benefits are also available for qualifying veterans: reimbursement for burial expenses, burial flags, burial in national cemeteries, and headstones or grave markers; loan

guaranty (the VA will essentially “co-sign” a qualifying veteran’s loan); some kinds of education and training; free counseling at any of Oregon’s veterans’ centers; and health insurance.

How to Apply

To apply for VA benefits, contact the Veterans Affairs regional office nearest you. For additional help, call the State of Oregon Department of Veterans’ Affairs (503-373-2085), a local Veterans’ Service Organization (VSO) (800-692-9666), or the federal Veterans Affairs office (800-827-1000). You also can apply online (www.va.gov).

Your Right to Appeal

If you are denied veterans’ benefits, you have one year from the date you were notified to request a hearing. The initial hearing is at the local VA office. If your claim is denied after the hearing, you can appeal to the Board of Veterans Appeals. You can have someone represent you at the hearing and on appeal. VSO offices often advocate at no charge for veterans in appeals.

1-9 Benefits Overpayments

In any program for government benefits, it is possible that, because of an agency error or a change in your situation, you may get too much money. For example, if you are retired but go back to work, your earnings may affect the amount of Social Security benefits you should get. If you get age-based SSI, your wages will affect how much your SSI check should be every month. For the veterans’ non-service-connected pension, your spouse or partner may at some point earn too much money for your family to qualify for benefits, or your children will become adults and no longer count as part of your household for a need-based pension. If the agency decides it overpaid you, it will want

the overpaid amount back. To avoid overpayments — or at least keep them low — it's important to notify the agency right away when there's a change in your income or family size. It's best to do so in writing.

If an agency says it overpaid you, it must tell you in writing, and it must give you a reason. It will ask you to repay the full amount right away. You may not be able to pay the full amount; you may believe you were not overpaid. You can negotiate a payment plan. You can appeal if you think the agency is wrong.

Repayment Plans and Appeals

When an agency wants to collect money from you, it will give you information about your right to appeal. The notice will tell you what to do if you want to keep getting benefits while you appeal; you likely will have only a very short time to ask to keep getting them.

Social Security and SSI make the most claims of overpayments. If you agree you owe the money but can't pay it back all at once, you can arrange for SSA to withhold a percentage or dollar amount from future benefits payments until the overpayment is collected. If paying the money back would be a serious hardship for you, you may be able to get the agency to waive its claim for the money. You must be able to show that the overpayment wasn't your fault.

It is always a good idea to get legal advice about your rights and duties when an agency says you have been overpaid. See Chapter 8, section 8-2.

Benefits Withholding

Federal law gives federal agencies such as the Social Security Administration the right to collect certain debts by withholding all or part of retirement or disability benefits. The most common reasons are unpaid child support, outstanding student loans, and overdue federal taxes. Get legal advice about your rights in these situations; they can be complicated. See Chapter 8, section 8-2.

1-10 Earnings from Work

Many older Oregonians continue to work instead of retiring; some even start new careers or businesses.

Earning more than a certain amount may affect the monthly amount of pension or Social Security or Railroad Retirement benefits you get. For SSI, the income you earn may make you ineligible for the need-based program. For SSI and SSD, your earnings might even affect your right to collect benefits, because these programs are based on your being unable to work. See “Earnings After Age 62,” above, for more information about the effect of wages on benefits.

1-11 Age and Disability Discrimination in the Workplace

Older workers have protections under both state and federal law from some kinds of job discrimination.

Oregon Law

In Oregon, it is unlawful to fire, refuse to hire, or refuse to promote someone because of race, religion, color, sex, national origin, disability, marital status, or age. However, discrimination may not be illegal if a job requirement that causes the discrimination is necessary to the normal operation of the business. Oregon law applies to every employer in the state regardless of the number of employees. State law protects people age 18 and older from unlawful hiring and firing, as well as discriminatory wages, benefits, and overtime. Oregon law also forbids age discrimination by labor unions and employment agencies.

A physical disability may be related to age. If you have a disability, Oregon and federal laws forbid discrimination because of it, so long as the disability does not interfere with your ability to perform the essential functions in your job description. Furthermore, if you ask, your

employer must make a reasonable accommodation for your disability to help you do your job. For example, an employer may have to provide a telephone amplifier for a receptionist who has hearing loss.

Federal Law

The federal Age Discrimination in Employment Act (ADEA) protects people age 40 or older who are doing their jobs in a satisfactory manner against age discrimination by: employers of 20 or more employees; state, local, and federal employers; and labor organizations with 25 or more employees. The ADEA covers all terms, conditions, and privileges of employment, including hiring, firing, layoffs, promotions, wages, benefits, and training opportunities.

Two other federal laws protect people of any age with disabilities: the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973. The ADA applies to private employers with 15 or more workers. The Rehabilitation Act is essentially the same, but applies to government workers.

Filing a Claim of Discrimination

State and federal laws are similar, but not identical. One difference is the time limits in which to file a complaint charging discrimination. If you have questions about how to protect your rights, contact an attorney who has experience handling cases involving age and disability discrimination.

Under state law, you have one year from the date of the discriminatory act to file a complaint with the Civil Rights Division of the Oregon Bureau of Labor and Industries (BOLI). Under federal law, you must file a complaint of discrimination in the workplace with the Equal Employment Opportunity Commission (EEOC) within 300 days of the discriminatory act or 30 days after receiving notice that the state or local agency has terminated its processing of the charge, whichever is earlier. (The rules are different if the employer is an agency of the federal government.)

Under state law, you may file a lawsuit within one year without first having filed a complaint with BOLI. Under federal law, you must wait 60 days after filing your complaint with the EEOC to file a lawsuit alleging age discrimination. For disability discrimination cases, you must first receive a “right to sue” notice from the EEOC, and then file your lawsuit not later than 90 days after receiving that notice. If you do not file a complaint with either the state or federal agency within these time limits, you may lose the right to sue for age or disability discrimination.

For other types of discrimination claims, you should seek legal advice regarding any other limits that may apply. For all types, find more information in Chapter 8, sections 8-2 and 8-6.

Not every kind of discrimination because of age is illegal. For example, both federal and state law allow discrimination on the basis of age when an age limit is necessary to the normal operation of a business, such as safety in the transportation industries.

The federal government has a free special service, the Job Accommodation Network, to help workers with disabilities and their employers develop ways to accommodate workers who have disabilities. See Chapter 8, section 8-6.

Retaliation for Complaining

Under federal and state laws, it is unlawful for an employer to retaliate against you if you have complained to your employer or to an agency about age or disability discrimination.

1-12

Other Income Sources for Seniors

Senior Community Service Employment Program

Senior Community Service Employment Program is a federally funded program that provides on-the-job training for people age 55 and older. Older adults work at a community service assignment four hours a day, five days a week, for minimum wage.

Spousal Pay for Caregiving

The Spousal Pay Program is an in-home support services program that pays for services that a spouse or domestic partner provides for an eligible person. Individuals must be eligible for Medicaid, require help with activities of daily living, and qualify for in-home services. The spouse must provide more services than would usually be expected of unpaid partners. He or she must be capable of providing the needed care. Area Agencies on Aging have more information about this program.

Taking in Boarders

Some seniors decide to use their homes as a source of income. If they own their homes, they may rent out a room or share the entire home with a renter housemate. Even a renter with a large enough apartment or house can sublet part of the unit if his or her rental agreement allows subletting. The homeowner and the renter who sublets part of his or her home both become landlords under Oregon law, and must follow landlord-tenant laws. The net rental income is taxable. Some friends enter into rental housing together to save on living expenses. People who become tenants together will have to decide who is responsible for paying security deposits and utilities, what happens if one person moves out, etc.

Some seniors have joined the online community of vacation-rental hosts. Before starting such a business, be sure to read all the terms of the contract, and make sure you have the right types of home insurance. Income you get from this kind of business is taxable.

Reverse Mortgages

Another way homeowners can obtain income is to get a “reverse mortgage.” In this arrangement, the homeowner obtains a loan based on some or all of the equity the person has in the home. The person agrees that, when he or she dies or moves out, the lender can be paid back through the sale of the home. Meanwhile, the person stays in the home and lives off the income from the loan. These loans are available for persons age 62 and over only. The best type of reverse mortgage is one that is insured by FHA, a Home Equity Conversion Mortgage (HECM). The insurance pays off the balance of the debt.

Reverse mortgages are expensive to obtain, averaging \$4,000-\$6,000. Financial experts say that reverse mortgages make sense only for those who realistically expect to stay in their home for at least another five years. In some cases, a reverse mortgage may make sense if the homeowner is desperate for cash now. Getting legal advice about your own situation is a good idea before you enter into a reverse mortgage agreement, because they are very complex.

Earned Income Tax Credit

If you are not yet 65 and work outside the home for low wages, you may be eligible for a small annual tax credit. If you are the main caregiver for minor children, you may be eligible for a larger credit. To get this money, you must file a federal tax return, even if you do not earn enough to have to file a return.

1-13 State Financial Programs

Oregon’s Department of Human Services Seniors and People with Disabilities office (SPD) controls several financial aid programs for older residents. In most counties, the local Area Agency on Aging (AAA) handles the programs. AAA offices are sometimes known as Aging and Disability Resource Connections (ADRC). Whatever they are

called, they provide information and referral services. They can tell you where to apply for food stamps, get emergency food help, help for winter utility costs, medical help, transportation, and other services.

Other programs include meals, transportation, counseling, case management, respite for family caregivers, protective services, and in-home support services. Check with your local AAA office or senior center to see if other programs are available. AAA offices can direct you to your local senior center. You should call to find out for certain if you are eligible for these programs and always apply in writing. You have the right to appeal a denial. (For contact information, see Chapter 8, section 8-1.)

Temporary Assistance for Needy Families (TANF)

If your children, grandchildren, or other relatives younger than 18 live with you and rely on you for their care, you may be eligible for Temporary Assistance for Needy Families (TANF). TANF provides a small amount of money to very low-income families and can sometimes subsidize child care and collect child support from absent parents. Contact your local Children and Family Services office for more information. For contract information see Chapter 8, section 8-1.

Supplemental Nutrition Assistance Program (SNAP)

In this food assistance program, the state issues a debit card that pays for food. You cannot use it to buy things like pet food, soap, toothpaste, cleaning supplies, paper products, tobacco, or alcohol. Low-income people of any age may qualify. If you qualify, the amount you receive depends on your income, needs, and family size. If you are disabled or over age 60, the amount may be larger.

If you are now receiving SSI or benefits from a similar program, you may automatically qualify for SNAP but you must apply. Contact your local AAA office to check your eligibility. See Chapter 8, section 8-1.

Your Right to Appeal

If you disagree with a SNAP decision, you can ask for a hearing. You have 90 days to appeal from the date of a decision that denies benefits. If you are already receiving benefits, appeal within 10 days from the date of the decision so you can keep getting your benefits during your appeal. Your benefits will continue after the appeal if you win the case. Various programs may be able to help you decide whether to appeal. See Chapter 8, section 8-2.

Consumer Grievances

You have the right to make a written complaint about poor treatment by a state worker. To make a complaint, ask for a grievance form (available from the agency). Complete the “Consumer” section, and return it to the office. See Chapter 8, section 8-1.

Doing this may make the agency review your case to make sure you get the service you deserve. A supervisor must discuss your complaint with the worker. The agency cannot discriminate against you for making a complaint.

You can contact your local AAA or the Governor’s Advocacy Office in Salem. See Chapter 8, section 8-1 for contact information.

1-14 Additional Programs for Seniors

To find out more about the following programs, contact your local senior center or AAA office. See Chapter 8, section 8-1, for contact information.

Emergency Help

Emergency assistance may be available for low-income persons who need help to pay for heat, weatherization, food, shelter, and transportation.

Family Caregiver Support Program

The Family Caregiver Support Program is a statewide program providing respite care, supplemental services, and products to make caregiving easier for caregivers of family members who are over age 60, and for people over age 60 who are caring for minor children.

Meals

Some community programs serve hot meals at noon or deliver meals to your home. Most do not charge a fee but do accept donations.

Oregon Food Bank

The Oregon Food Bank and many community organizations and churches also offer food to Oregonians.

Oregon Project Independence

Oregon Project Independence is a program that provides help for people who have been diagnosed with Alzheimer's disease or related dementia disorders, are age 60 years or older, meet the state's long-term care priority rule, and are not receiving Medicaid long-term care services. Services include home care, assisted transportation, respite/adult day care, home meal deliveries, and case management. There is an hourly fee for services.

Senior Farm Direct Nutrition Program

Provides low-income seniors with checks to purchase Oregon raised fruits, vegetables, and herbs at approved fruit stands and farmer's markets.

Other Services

Other services may include: counseling; home repair and modification; in-home support (help with housekeeping or personal care); protective services (investigating reports of abuse or neglect of elderly and disabled persons); public guardianship; conservator programs; and help with choosing long-term care.

Final Note

If you think you might be eligible for one or more of the programs listed in this chapter, contact the proper agency and fill out an application. Do not be discouraged from applying! Insist on completing an application even if an agency tries to turn you away. If you complete your application, the agency must tell you in writing if it thinks you are not eligible for benefits and why. If you think this decision is wrong, you can appeal. For advice about your rights, see Chapter 8, section 8-2.

Chapter 2

Medical Matters for Seniors

As people age, they visit doctors more often, go to the hospital more often, and need prescription medicine they didn't need when they were younger. Expenses for health care get higher even as many seniors must live on a fixed income. Luckily, there is a variety of health-care insurance that works well for many older Oregonians, and other health-care resources.

These insurance programs include Medicare, Medicaid (the Oregon Health Plan), veterans' health care benefits, and Affordable Care Act private insurance. This chapter also looks at ways to control the scope and extent of care. It outlines Oregon's Death with Dignity law, too.

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2-1

Medicare Overview

Medicare is a federal health insurance program for people age 65 and over, for some severely disabled people under age 65, and for people with end-stage renal failure. Medicare helps pay for hospital and medical care, prescription costs, and some of the necessary medical care in rehabilitation facilities and at home. Generally, Medicare cannot refuse to insure you, regardless of your medical needs.

There are two kinds of Medicare. One type is known as “original” or “traditional” Medicare. The other is called “managed care” or “Medicare Advantage.” Original Medicare is made up of Parts A and B. Medicare Part A covers necessary stays in a hospital after you pay a deductible, and a period of skilled care in a rehabilitation facility after a minimum three-day stay in a hospital. It pays for a few kinds of health care in your home after you leave a hospital. It covers hospice service, too. Part A does not cover doctors’ services. For people with enough Social Security work credits (see Chapter 1), this coverage is free. For people with fewer work credits, there is a monthly cost based on the number of credits earned.

Medicare Part B covers part of doctors’ services, outpatient services, laboratory tests, some medical equipment, some home health care and rehabilitation services. Under original Medicare, you can choose any doctor who accepts Medicare. Not all doctors do. There is a monthly premium for Part B.

Medicare managed care (Medicare Advantage) is the second kind of Medicare. Under this kind, you don’t choose coverage under Part A or Part B. Instead, you choose a private company approved by Medicare. This company can be any of the following: a managed care or a health maintenance organization (HMO); a preferred provider organization (PPO); a Special Needs Plan (SNP); a private fee-for-service plan (PFFS); an HMO Point-of-Service (HMOPOS); or a Medical Savings Account plan (MSA). These plans may include coverage for items that are not covered under original Medicare. For example, some of them offer coverage for prescription medicines. The plans might not accept

people who have end-stage renal disease, even though original Medicare does. Some programs put a limit, or a cap, on how much you have to pay out-of-pocket annually regardless of how much your care actually costs (there's no cap on original Medicare). Plans may also have different eligibility requirements, co-pays (the part of the cost you yourself pay), and premiums. Some of the managed-care plans are available in large areas of the country; some are small regional programs. They may limit coverage only to doctors in their program, or reduce payments to doctors outside their program. If you often travel out of state or have summer and winter homes and you choose this type of Medicare, you will want to be sure you choose coverage that works everywhere you plan to be.

Deciding whether to choose original Medicare or one of the managed-care plans is not easy. Oregon has trained staff and volunteers around the state to help you figure out what will work for you. The program is called "SHIBA," or Senior Health Insurance Benefits Assistance, and it's free. You can get information and help from SHIBA at 800-722-4134.

It can be tempting to put off getting Medicare coverage. If you decide to wait, however, there will be an extra cost for coverage. For refusing Part A for a while, the extra cost is not permanent. For Part B coverage, the longer you wait, the larger the penalty becomes.

Medicare now has prescription coverage, too. There is a variety of plans, operated by private companies. They are all called Medicare Part D. You must have Medicare Part A and B or a Medicare Advantage plan (one that doesn't include prescription coverage) to qualify for a Medicare prescription drug plan. Like Part B, drug coverage becomes more expensive if you wait to sign up.

Neither original Medicare nor Medicare managed care covers some common health care expenses including routine dental care, most eyeglasses, or hearing aids. There are sometimes exceptions when eye or dental problems endanger your overall health.

Medicare does not cover most long-term care, even though many seniors may need it at some point. This chapter talks later about how to pay for this expensive care.

2-2 Medicare Eligibility

You are eligible for either kind of Medicare if you:

- Are 65 or older and qualify for Social Security or Railroad Retirement benefits, even if you are not collecting them;
- Were a federal employee who retired after 1982;
- Have been disabled according to Social Security or Railroad Retirement for two years; or
- Have been diagnosed with ALS (Lou Gehrig's disease) regardless of your age.

If you are age 65 or older but not eligible for one of these reasons, you can still enroll in Medicare if you live in the United States and have been a citizen or legal resident for at least five years. In this group, you must pay higher monthly premiums than the people eligible above. If your income and assets are extremely low, you may be eligible for the Oregon Health Plan (Medicaid), described later in this chapter.

2-3 Medicare Enrollment

With just a few exceptions, there are only certain times when you can sign up for — or change — your Medicare. The first time you can enroll for either kind of Medicare is the seven-month period beginning three months before your 65th birthday month and extending three months after your 65th birthday. This time frame is called the initial enrollment period. If you wait to sign up until your birthday or the three months after, you may experience a delay in coverage for up to three months. If you don't sign up at all during the initial enrollment period, you may be penalized up to 10 percent of the cost for each 12-month period you were

eligible but not enrolled. If you miss the initial enrollment period, the next time you can sign up is during open enrollment, January 1 through March 31; if that's what you do, you will get coverage starting July 1.

If you aren't already getting Social Security benefits by age 65 and don't want to wait until your full retirement age to claim them, you can sign up for Social Security benefits and Medicare at the same time. If you are already receiving reduced Social Security benefits when you reach age 65, you will receive a Medicare card showing your enrollment in Part A (hospital insurance) and Part B (medical insurance).

The premium will be deducted from your monthly Social Security payments. Those who get Medicare without signing up for or qualifying for Social Security benefits get monthly bills for the premiums.

You don't have to enroll if you have certain health insurance at work (COBRA and retiree health plans do not count). If Medicare says the insurance is as good as Medicare, your job will give you a notice of "creditable coverage." Save that notice to show Social Security or Medicare! You don't have to sign up for Medicare at all until that insurance coverage ends. You can sign up for Medicare, too, while having the work-related coverage. In most cases, that means paying more for coverage. But if you want that extra coverage, you get a special enrollment period to sign up.

If the work itself or the work-related insurance coverage ends or is no longer "creditable," you then can enroll in Medicare during the 8-month period that begins the month after the job or the group insurance plan ends, whichever event happens first. There is generally no penalty if you sign up during the special enrollment period.

Once you are enrolled, in most circumstances you can change your insurance only during the annual open enrollment period. If you do not change the type of Medicare coverage at this time, your coverage will stay the same until the next open enrollment period.

The limits of the open-enrollment period don't apply in some cases, such as if you go on or off Medicaid, or move somewhere (including a nursing home) where your managed-care Medicare plan doesn't operate, and a few other reasons. You also can change to a "five star" Medicare Advantage plan (considered the best of the managed-care plans) at any time.

People who choose original Medicare must also choose a separate policy for prescription drugs. People who choose a managed-care plan may get a prescription drug benefit as part of their main plan, or they too may have to buy a separate policy for medications.

Just as with the two kinds of Medicare, you can sign up for prescription coverage during the initial enrollment period beginning three months before your 65th birthday through three months after it. After your initial enrollment, you can change your prescription coverage only once per year in most cases, during the annual open enrollment period, October 15 to December 7. You likely will want to change your plan at some point — the plans may change what they cover or cost, or even stop being available, and your medicine needs may change. If you do nothing, the insurance you have this year will continue if the company still offers a plan. Check with Oregon's SHIBA experts each year to see if you have the best plan for your situation.

2-4 What Medicare Covers

Under original Medicare, Part A covers "reasonable and medically necessary" hospital care. Coverage includes semi-private rooms, meals, general nursing, and drugs as part of your inpatient treatment, including acute care. A doctor must say that you need to be in the hospital for the care or treatment of your illness or injury, and that the care you need can be provided only in a hospital. The hospital where you get care must be a Medicare-approved one. Medicare managed-care plans generally follow this same rule.

You must be “admitted” to the hospital for a diagnosed condition. Staying overnight does not mean you are admitted. You can be physically in the hospital but still be getting outpatient services (or are being held, without a diagnosis, for observation). Your admission status affects whether and how much Medicare will pay and whether it will pay for skilled nursing care after your hospital stay.

It is not unusual for hospitals to send patients to a skilled nursing facility to complete their recovery and rehabilitation. For Medicare to cover your stay in a skilled nursing facility, you must have spent at least three overnights in a hospital as an admitted patient for a condition related to your follow-up stay in the facility. Your doctor must say you need daily skilled care — nursing, rehabilitation services, etc. Then Medicare will pay for these services, and for medically necessary supplies. The amount it pays will start at 100 per cent, but goes down with time and eventually stops. You would be responsible for an increasing share of the cost. Medicare will not pay for ordinary long-term care that doesn’t require daily professional treatment.

Part A also covers hospice care from a Medicare-approved provider. Coverage includes drugs for pain and symptom management, medical and nursing services, durable medical equipment, and spiritual and grief counseling. Coverage can also include respite care for family caregivers for up to five days. A doctor must say you are terminally ill, with six months or less to live. After six months, the doctor can update your status and you can remain in hospice care. If you decide at any time that you would rather get medical treatment, you can stop hospice service and go back to regular Medicare.

Part A even covers some services patients can get at home: medically necessary part-time or occasional skilled nursing care or therapy (speech, physical, occupational). A Medicare-enrolled doctor must prescribe this kind of treatment after face-to-face evaluation. A Medicare-certified home health agency must provide the care.

Visit www.medicare.gov or call 800-MEDICARE (800-633-4227) to find out your share of the costs for services described in this chapter.

In narrow circumstances, Medicare Part A may cover inpatient care administered by a religious nonmedical health care institution. Call Medicare or see the website for information. No Medicare plan pays for general day-to-day home care or companion care.

Medicare Part B focuses on treatment services, especially those outside the hospital. Services covered under Medicare Part B include a “Welcome to Medicare” physical examination (in the first 12 months) and yearly wellness visits. Part B does not necessarily cover laboratory tests related to the physical exam. It does cover periodic screening for diabetes, cardiovascular, colorectal, prostate, and breast cancer, gynecological problems, and glaucoma, as well as HIV testing on request. It sometimes covers oral cancer drugs.

Part B covers flu and pneumococcal vaccines; hepatitis B vaccine for people at high risk; diabetes supplies, self-management training and foot care for people with diabetes; supplies, education, and screening for people with diabetes risk factors. It also covers outpatient mental health care. Part B pays for ambulance transport if getting to the hospital or facility some other way would endanger your health. Ambulance service is one of the claims Medicare denies the most — sometimes because patients could have gotten to the hospital safely some other way, sometimes because the ambulance staff don’t always add the details to their billing that shows the ambulance service was necessary. (Read later on about appealing Medicare denials of coverage.)

Part B covers some types of hospital outpatient services and supplies, such as x-rays, chemotherapy, and radiation treatment; emergency room and urgent care visits; and rent or purchase of medical equipment — oxygen, beds, wheelchairs, walkers, prosthetic aids, etc. — from Medicare-approved suppliers.

Outpatient physical, occupational, and speech therapy usually fit under Part B, as do some home health services, and help for smokers with smoking-related illnesses to stop smoking.

Prescription plans are available to anyone who has original Medicare (A and B) or an Advantage plan. The cost and coverage vary, depending on the policy and on the income of the patient. You may have a copayment and an annual upfront deductible, too.

The plans cover all commercially available vaccines not covered under Part B. Also included is a Medication Therapy Management program for those with complex health needs to make sure the medicines work well and safely together.

Most plans have a gap in coverage once prescription drugs costs reach a certain point each year. Patients have to pay for prescriptions themselves at that point, until the cost reaches a higher amount. Then Medicare steps back in. The amount you would have to pay during the coverage gap goes down every year; the gap is expected to be gone completely by 2020.

Meanwhile, your deductibles, coinsurance, and copayments or the discounts paid by drug companies on name brand drugs, dispensing fees, and your own cost for covered generic and name brand drugs all count toward crossing this gap and getting you back on Part D for reimbursement. Additional “gap” insurance is available. Generally the gap insurance has a higher monthly premium than your regular Part D coverage.

2-5 How Medicare Pays

Like private insurance policies, original Medicare has deductibles you must pay before Medicare pays. It also expects co-payments for most services. You are responsible for paying the deductible and making the co-payments to the health care provider. In original Medicare, you pay a deductible for hospital care; then Medicare pays for up to 60 days. If you stay in the hospital after that, you make a co-payment that goes up over

time. After 150 days, Medicare stops paying. Almost no one stays in the hospital for more than two weeks, so most people don't have a co-pay. Many people have a supplemental private policy that covers the deductible and co-pays. This kind of policy is often called "Medigap" coverage. (See section 2-8, below, for more information about Medigap policies.) If you belong to a health maintenance organization (HMO), it may not charge co-payments. Many do charge; check with your HMO for specifics.

For medical coverage under traditional Medicare Part B, you pay monthly premiums that vary depending on your income level, along with an annual deductible. Medicare then pays 80 percent of the cost it allows for covered services from a medical provider that has agreed to accept Medicare-approved amounts as full payment ("accepts assignment"). You would pay the remaining 20 percent. If a medical provider accepts Medicare but does not accept assignment, you pay the remaining 20 percent of the Medicare-approved charge, too. But if the actual bill is higher than the amount Medicare approved, you also are responsible for up to another 15 percent of the Medicare-approved charge. It is illegal for the provider to demand more.

Medicare will not pay for services performed by a health care provider who does not accept Medicare. If you sign a separate contract with your health care provider you will be responsible for the full amount charged. You don't have to sign these contracts; you can opt for health care by a Medicare-certified provider. Visit www.medicare.gov to search for Medicare-approved health care providers.

Oregon pays or helps pay the monthly Part B premium for some lower-income people. Oregon's Area Agencies on Aging and local Seniors and People with Disabilities offices have information on this program. Your assets must be limited, too; some assets, such as your home and a car, and a burial plan (up to \$1,500) aren't counted.

2-6 Medicare Claims

Under Medicare Part A, you do not have to file claims or submit bills from hospitals, skilled nursing facilities, or home health agencies. They all bill Medicare directly. You will receive statements showing the benefits used, your deductible, co-payments, and the amount Medicare paid. Always ask — in writing — for an itemized bill of services from your provider to make sure all charges are correct. Billing errors are common, often because Parts A and B sometimes cover the same services in different situations.

Providers also bill Medicare directly for services under Part B. If the provider accepted assignment, Medicare will pay it directly. If the provider did not accept assignment, you will receive a check from Medicare and be responsible for paying the provider's bill. After Medicare processes your claim, you will receive an Explanation of Medicare Benefits form or Medicare Summary Notice form. These forms will show whether or not Medicare approved the claim, whether the provider accepted assignment, the Medicare approved charge, how much Medicare paid, and any deductible and co-payment amounts you must pay. Medicare sends out these summaries only four times a year, so it can be hard to keep track of what's been paid and when. Don't throw these forms away for at least a year. (You may want to keep them for as long as five years to help prove your medical expenses if you itemize your medical bills on your tax return.)

2-7 Medicare Denials and Appeals

Medicare may sometimes deny your claim for coverage or reimbursement. You can appeal any of the following decisions from Medicare: a denial of service, supply, or prescription (including denials in a managed-care program); a denial of payment for services received; a notice of discharge from a hospital or skilled nursing facility if you believe discharge is premature; and the amount you are charged for a prescription. The appeals process itself differs in original Medicare and managed-care Medicare.

In original Medicare, the levels of appeal are similar to those in Social Security: redetermination; reconsideration; a hearing by an administrative law judge; Medicare Appeals Council; and judicial review in U.S. District Court. Your appeal must be in writing. Always keep copies of anything you send to Medicare in addition to all the statements, letters, and decisions you receive from Medicare. For copies of forms you can use for the various levels of appeal, and for tips on how to present your best case, look at the website of the Center for Medicare Advocacy at www.medicareadvocacy.org.

If Medicare denies a claim for payment under Part A or Part B, the Medicare Summary Notice will include your appeal rights. Follow the instructions on the back of the Medicare Summary Notice.

Redetermination is an informal review of the denial by another worker. You have 120 days from the date you receive the denial notice to ask for it.

If Medicare denies your claim again, you have 180 days from the date you receive the redetermination decision to ask for a “reconsideration.” If you disagree with the result at this level, and if your claim involves at least \$150 (this amount changes upward over time), you can seek a hearing within 60 days from the decision. You can get the request form for a hearing from your local Social Security office or the CMS Internet site. Get legal advice before you go further; you will have a better idea whether you have a strong claim. It is best to have a lawyer for the hearing. You have 60 days to appeal the hearing decision to federal court.

Expedited Appeals to Object to Hospital or Nursing Facility Discharges

Hospitals and skilled nursing facilities follow guidelines that list how long the average patient must be under care before he or she is well enough or stable enough to leave. Medicare coverage ends at the time listed in the guidelines.

Not everyone recovers as quickly as the guidelines recommend. A premature hospital discharge can end up making your condition worse. If you are in the hospital or a skilled facility and feel too weak or in too much pain to leave “on schedule,” ask for a notice of non-coverage, so you can read how to appeal. You also can call the outside review agency, Livanta LLC, at 877-588-1123, for help to get a fast review. After getting your request, the hospital or facility must look at your condition within 24 hours and decide quickly whether you should have more time. You can stay in the hospital or facility until it decides. (Most people do recover enough to leave after that extra day.) Medicare will cover the rest of the stay if doctors agree that you were being pushed out too soon. If you have a health care representative or someone else by your side when you are in a hospital or facility, make sure that person knows that you have this right.

Appeals in Medicare Managed Care (Advantage) Plans

In a Medicare Advantage plan, you have the right to appeal decisions that deny coverage or access to services. Each plan has specific rules for appeals. The rules for any of these plans must follow federal laws, and they allow you 60 days from the date you get a written notice from the plan to file an appeal. If you do not get a written notice, you still can ask for reconsideration. If the plan continues to deny coverage or access to services, the second denial will automatically go to an independent reviewer. If you are not satisfied with the independent review decision, you have the same right as original Medicare holders to a hearing and court review as described above.

Appeals for Medicare Prescription Drug Coverage

Medicare insurance plans do not cover all prescription drugs. The plans often insist that patients use a generic drug instead of a brand name medicine, even if the generic drug has side effects or doesn't work for you. You can petition, by phone or in writing, for a non-covered

prescription drug or for a review of a denial of prescriptions. If you want an exception to the standard drug coverage, your doctor or prescriber must put in writing the medical reason it should be approved. Your plan must notify you of its decision within 24 hours for expedited (emergency) appeals and 72 hours for standard appeals. If you disagree with your plan's decision, you have 60 days to ask for an independent review of your case. If you disagree with the decision at that level, you have 60 days to ask for an administrative law hearing. At this stage, the appeal process is the same as that for Medicare A and B appeals.

2-8 “Medigap,” the Supplemental Health Insurance for Medicare

Since Medicare does not pay all of your health care expenses, private insurance companies sell insurance to fill much of the gap. These policies are known as Medicare Supplemental Insurance or Medigap insurance. Medigap helps pay for copayments, coinsurance, and deductibles in original Medicare. Medicare will pay its share of the Medicare-approved amounts for covered health care costs before the Medigap policy pays its share. For example, Medicare does not pay the deductible for a hospitalization it covers. The Medigap policy would pay the deductible. Likewise, if Medicare pays 80 percent of what it approves for a doctor's bill, the Medigap policy would pay the remaining 20 percent. Medigap coverage does not step in to pay for things Medicare does not approve and cover.

Insurance companies cannot refuse an applicant for Medigap policies if the person applies for coverage within six months after turning 65 and enrolling in Medicare Part B. If you miss this window to apply, a company may be able to refuse to enroll you. Medigap insurers must honor special enrollment periods that Medicare honors, however.

Insurance companies cannot try to sell you more than one Medigap policy. (Note that you can still buy accident insurance or life insurance.) If an insurance agent tells you that Medicare or the VA or the government endorses a specific policy, you should find a different agent—no government agency endorses any insurance company.

Oregon has certain protections for those who buy Medigap insurance. For example, with minor exceptions, Medigap policies cannot exclude coverage by type of illness, accident, treatment, or medical condition. These policies cannot limit or reduce coverage for pre-existing diseases or physical conditions. If you have a claim for losses caused by a medical condition that existed before you bought your policy, Medigap cannot deny a covered claim that you make six or more months after you purchased the policy. The Medigap provider cannot end your coverage if your health gets worse. Your coverage will end if you stop paying for it, of course.

There are many supplemental policies. Policies and plans differ in coverage and cost, and companies differ in service.

When shopping:

- Learn what Medicare does and does not cover, and what the Medigap plan does and does not cover.
- Know your insurance needs before you talk to an agent. Compare policies and plans. Decide whether you want to buy an insurance policy or join an HMO. Medigap will not pay deductibles, premiums, or coinsurance for Medicare Advantage Plans. For more information visit: www.medicare.gov/Medigap
- Contact your local Social Security office for information.
- Ask others about their policies and plans before you buy. And take someone with you when you meet your agent.
- A 30-day “free look” period allows you to cancel the policy for a full refund.

If you already have a Medigap policy and are thinking about switching plans, be careful! The new plan may have a waiting period before you can use it for pre-existing health conditions.

2-9 Help in Making Medicare Health Plan Decisions

Oregon's Senior Health Insurance Benefits Assistance program (SHIBA) can provide you with information and counseling by trained volunteers to help you come to an informed decision about your choices for health insurance in general and Medicare in particular.

2-10 HIPAA Release Forms

Every medical provider must obtain a privacy and disclosure form from you, called a HIPAA form. It allows you to say who can get information about your health care from that particular provider. Listing the people you are willing to have your doctors talk to can be very helpful if you are unable to talk or communicate with your care providers, or if you have trouble remembering or understanding the complicated information doctors sometimes provide. Note that even if you routinely have someone by your side at medical appointments, the provider cannot disclose information to anyone at other times without your written consent on the HIPAA form. It's okay to change the names on the form, too, if you think of other names or want a current name to be removed.

2-11 The Oregon Health Plan (Medicaid)

The Oregon Health Plan (OHP) is this state's version of Medicaid. It covers many products and services for people with little income and few assets. Low-income people who already have Medicare coverage may also qualify for OHP. When they do, OHP may pay for the

Medicare premiums, deductibles, co-payments, prescriptions, limited dental care, and other health care not covered by Medicare. One very important service OHP covers is long-term care, described below.

Not all doctors and providers accept OHP. Always ask before you get treatment or service. Also, because most OHP services are part of a managed-care package, you may need to be referred by your primary physician or get prior authorization from your plan for specialists or other treatments or services.

People who are not eligible for SSI and who are not receiving long-term care may be eligible for coverage under OHP by paying monthly premiums and modest co-payments. The availability of this program changes with the state of Oregon's health care budget. Your local Area Agency on Aging will know when it is available.

2-12 How to Apply

You can apply for Oregon Health Plan coverage at a local Area Agency on Aging office. The eligibility worker there can help you complete the application. You also can get the form online at www.oregon.gov/oha/healthplan/pages/apply.aspx.

2-13 How OHP Medicaid Pays

OHP pays the health care provider or managed care plan directly. There are no claim forms to complete. Health care providers are not allowed to charge you anything for services covered by OHP.

2-14 Problems with Managed Care under the Oregon Health Plan

Each HMO or managed care organization that serves OHP recipients has an Exceptional Needs Care Coordinator (ENCC). The role of the ENCC is to help people who are having trouble getting the care they need through the managed care system. If you can't get needed care, ask your primary doctor to help. If your primary doctor is the problem, ask to change to another doctor or contact the ENCC. If the problem continues, you may want to change to a different HMO. You may also be able to get advice from a legal aid office.

2-15 Oregon Health Plan Denials and Appeals

You will get a written notice from the Area Agency on Aging office if your application for OHP assistance is denied or if your current benefits are being reduced or terminated. The notice will include a reason for the action and tell you how to get a hearing and the time limit in which to ask for one.

The hearings are held by administrative law judges who work for the state. The hearing may be in person at the local office, or by telephone. You may want to have an attorney represent you at the hearing and may be able to get representation through a legal aid office near you.

2-16 Getting Long-term Care

At some point, a majority of seniors spends at least some time in a long-term care facility or gets long-term aid at home. For many, the service is brief. For some, a care facility becomes the person's permanent home.

Whether you get ongoing services in your home, in an adult foster home, in assisted living, or in a skilled nursing facility, you'll find that the care is very expensive. Depending on where you get the care and how much care you need, you can be facing monthly bills of \$2,000 to \$8,000. Few people can afford to pay this ongoing expense.

2-17 Paying for Long-term Care

Planning ahead for long-term care will provide more options and may help protect your assets. The three main sources of funding for long-term care are your personal funds, the Oregon Health Plan (OHP), and long-term care insurance. For some veterans, VA long-term care benefits may be available. Medicare generally does not pay for long-term care. Medigap policies don't, either.

Life Insurance — Accelerated Death Benefit

Some life insurance policies offer an accelerated death payment — early payment when you are still living — for all or part of the policy's death benefit when you have a terminal illness or go into a long-term care facility permanently. Review your policy or speak with your agent to see if your policy contains this clause or if one can be added to your current life insurance policy.

Long-term Care Insurance

For people who have too much income or too many assets to qualify for OHP coverage, long-term care insurance may be a resource. This private insurance can cover the cost of nursing home care, home care, and other levels of service. There are several policy types and options in Oregon. Long-term care policies generally begin to pay for care when a certified healthcare provider confirms that the policy holder needs "substantial supervision" because of cognitive decline or the person needs help with two or more "activities of daily living" — like eating, dressing, taking medicines, and other day-to-day functions.

Most policies provide a benefit up to a certain dollar amount per day, for a certain period of time. Generally, the larger the benefit and the longer that benefit is payable, the higher the cost of the policy. The cost increases with your age. After you have reached a certain age or have been diagnosed with a particular medical condition, you may not be able to buy long-term care insurance. These limitations vary among policies. It is best to review several policies before deciding on one.

Long-term care insurance gives you certain rights. For example,

- A policy is renewable so long as you pay your premiums on time.
- It cannot limit benefits to skilled nursing care only, but must offer home care, assisted living, and adult care home coverage (on policies bought after 1992).
- It cannot offer significantly better benefits for any single level of care.
- It must pay for Alzheimer's disease and related illnesses.
- It cannot force you to go to the hospital before it pays for long-term care, or to get a higher level of care before it pays for a lower level of long-term care.
- A new policy must cover pre-existing conditions after six months from the effective date of coverage.
- There is a "free look" period of 30 days, during which you can cancel the policy for a full refund.
- The company must pay benefits for no fewer than 24 months.

In addition, companies selling long-term care policies in Oregon may be required to provide alternatives if rates increase, offer programs for policy holders who lose group coverage, offer inflation protection as an option, and include provisions to prevent unintentional lapses.

Before you buy long-term care insurance, read the “Oregon Consumer Guide to Long-term Care Insurance,” available from the Oregon Insurance Division. Figure out if you or your spouse will qualify for OHP; read more about it below. You probably don’t want long-term-care insurance if you qualify for OHP.

If you do buy long-term care insurance, compare policies first. Ask the agent what is covered if anything you read isn’t clear. The policy must be in writing; the agent must sign it.

Make sure the policy covers all the benefits you may need. Some policies cover changing needs — such as a move from the home to assisted living or a nursing home. Ask how the policy will cover the changes. Also find out if you can stop making payments when you are receiving long-term care, and whether premiums will go up over time. And ask if there are limitations or waiting periods for pre-existing conditions. The company should be able to tell you what percentage of claims it pays out, too. The higher the percentage, the less profit the company is trying to make on your money.

Oregon Health Plan (OHP) for Long-term Care

For low-income people with few assets, OHP will pay for care provided by a nursing home, adult foster home, assisted living facility, residential care facility, or in-home services for an unlimited time for persons who qualify. Not all senior living communities or in-home care providers accept OHP payments. OHP does not cover the cost of housing in independent senior complexes or retirement communities.

Even if you can afford long-term care for a while, you may eventually run out of money to pay for your care. An attorney who is familiar with OHP can advise you about lawful ways to qualify for it.

If you are likely to need care in the future and decide to live in a senior community, choose one that accepts OHP if you don't want to have to move out when your assets are nearly gone. No care-based housing that accepts OHP can charge you, your family, or your friends anything in addition to Medicaid for OHP-covered services.

You qualify for long-term care under OHP if:

1. You need help with a certain number of “activities of daily living;” and
2. Your countable assets don't exceed \$2,000 for one person and \$3,000 for a couple; and
3. Your income is equal to or less than 300 percent of SSI for an individual (slightly over \$2,000 per month at the time of this writing).

Activities of daily living (ADL) include bathing, eating, going to the bathroom, dressing, grooming, and taking medications. They also include being able to get out of your home on your own, traveling, and being able to walk and get into and out of a chair by yourself. Other ADLs are cooking, shopping, housework, and transportation. The more help you need day-to-day, the more likely you will qualify for OHP coverage of long-term care.

OHP counts as assets things like cash, bank accounts, IRAs, investments, real property (excluding up to \$500,000 equity in your home), more than one car, the cash surrender value of life insurance policies, and other assets that can go to pay for your care. OHP does not count up to \$500,000 in equity in your home if you or your spouse lives there. It allows for one vehicle, medical equipment, household items, and an irrevocable prepaid funeral or burial plan (up to \$1,500 in value). Income must be less than three times the SSI standard (around \$2,100 for one person) to qualify for OHP.

Thinking about the cost of long-term care, you may be tempted to give away some of your assets so you can qualify more quickly for OHP coverage. Don't do it! If you or your spouse gives assets away, you will

not be eligible for OHP for up to five years after you otherwise would be eligible. The amount of time you will be ineligible is based on the value of what you gave away or got rid of for less than fair market value.

Certain transfers of assets are permitted. Speak with an elder law attorney or an attorney who has experience in this area. You may be able to keep some of the assets, or use them in a way that will benefit you and your spouse.

Income Cap Trust

A person whose income is over the OHP limit may still be able to qualify for OHP by creating a Medicaid Income Cap Trust. This is a special trust allowable under Oregon law. You need a lawyer to prepare the trust for you and to explain to you how it works.

The sole purpose of an income cap trust is to qualify you for OHP long-term care when you would otherwise not be eligible because your income is more than approximately \$2,100 per month. A trust has three parties to it: the grantor who signs the trust, the beneficiary who benefits from the trust, and the trustee who administers the trust. Usually, the person who needs OHP coverage is the grantor and is also the beneficiary. The trustee is usually a family member or friend.

To set up an income cap trust for OHP, you put all of your monthly income into the trust bank account. No income from anybody else and none of your other property goes into that account. The trustee pays the money out of the trust account toward certain monthly expenses set out by Medicaid law. These include a monthly allowance for your personal needs; room and board (unless you are in a nursing home); an allowance for your spouse or domestic partner; health insurance premiums, if you have any; and payment toward the cost of your care. You will need to put all your monthly income into the income cap trust for as long as you have OHP coverage. When the trust ends at your death, any administrative expenses of the trust are

paid. Then the balance, if any, in the trust account goes to the state, up to the amount the state has spent for your care. Usually, there is very little money in the trust account at the time the trust ends.

Limit on Duty to Pay for Long-Term Care for Spouse or Domestic Partner

Oregon law says generally that spouses and domestic partners must support each other. When one spouse is living in a facility and the other is not, though, OHP does not require the outside (“community”) spouse to give up everything for the partner’s care. The community spouse can keep his or her own income. Sometimes the community spouse can use part of the income of the partner in a facility, so that the community spouse can live at up to 150% of the Federal Poverty Level (around \$1,900 per month — this amount changes from time to time). The community spouse can also keep the greater of around \$22,000 or one-half of the total countable assets, up to around \$110,000.

Example 1: Couple’s countable assets total \$200,000; the community partner can keep up to \$100,000.

Example 2: Couple’s countable assets total \$20,000; the community spouse can keep all \$20,000.

Example 3: Couple’s countable assets total \$300,000; the community spouse can keep about \$110,000 (because there is a maximum allowable amount of around \$219,000).

It may be possible for the community spouse to increase the amount of assets, income, or both, if needed for normal living expenses. An attorney versed in long-term care law can explain the options.

People who are receiving long-term care services will have to pay some or most of their income toward the cost of their care. The amount that each person pays depends on the setting in which the care is being provided, whether the person is single or married, and a number of other factors.

Paying Back OHP for Care

The state will seek reimbursement from an OHP recipient for what it spent for his or her care. There are limits on what the state can do and when it can do it. For example, the state cannot collect while the OHP recipient is alive, has a surviving spouse, or a minor or disabled child living in the family home. After the spouse passes away and eligible children no longer live in the family home, the state can make a claim against the estate to collect whatever it could have collected from the OHP recipient's estate. If you have questions about how estate recovery will affect your property, or if you have received a Medicaid claim from the state, contact an attorney for advice.

2-18 Veterans' Health Care Benefits

Veterans of the United States armed services may be eligible for some or all of the medical-related benefits outlined in this chapter, in addition to other benefits mentioned in Chapter 1.

To qualify for health care benefits through the Veterans Administration, you must have served in the active military, naval or air service (reservists and National Guard members also qualify if called to active duty other than for training and complete the order).

If you enlisted after Sept. 7, 1980 or entered active duty after Oct. 16, 1981, you must have served 24 continuous months or the full period called to active duty. In addition, your discharge or release status must be other than dishonorable.

To apply for health care benefits, complete VA Form 10-10EZ Application for Health Benefits. You can get this form from any VA health care facility or regional benefits office, or online at www.1010ez.med.va.gov, or by calling 877-222-8387. Once enrolled, you are assigned to a priority group that will help determine your eligibility.

Based on your priority group, you will qualify for free or reduced-cost inpatient and outpatient care at VA facilities; and you can get VA-covered prosthetic appliances, aids, and services for the blind. For additional information or a list of benefits not covered in this chapter visit www.va.gov or your local veterans' service organization.

Note: It is not a good idea to turn down Medicare hospital and medical coverage, even if you have VA health insurance coverage. Some medicines are cheaper under VA coverage, but you may also want to consider a Medicare prescription drug plan. Speak with an Oregon Senior Health Insurance Benefits Assistance (SHIBA) representative about your options. See Chapter 8, section 8-10.

The state operates two long-term care homes for veterans. One is in The Dalles and the other is in Lebanon. Any Armed Forces veteran with an honorable discharge after at least 90 days of active duty is eligible to live there, if there is a bed available. Also eligible is the veteran's spouse or widow. Parents of a child killed while on active duty are eligible, too. A veteran with at least a 70 per cent service-connected disability will not have to pay for care. A veteran who the Veterans Administration says is at least 60 per cent disabled and "unemployable" will not have to pay for care. The two veterans' homes also accept personal payment and Medicaid for long-term care for family members.

2-19 VA Health Care Denials and Appeals

If the Veterans Administration denies a claim for health benefits or you are dissatisfied with a VA decision for other reasons, you have the right to appeal it to the Board of Veterans' Appeals. You must appeal in writing within one year of the VA's decision. You can use VA form 4107VHA or label a letter "Notice of Disagreement." If the VA's review does not satisfy you, you can seek a reconsideration within one

year of the date of the review notice to you. Higher levels of appeal are available. It's wise to work with an advocate at one of the state's Veterans Services offices from the beginning of the appeal process.

2-20 Affordable Care Act Coverage

If you are not yet age 65 and don't get Medicare because of a disability or don't qualify for the Oregon Health Plan, you likely have a legal duty to get health insurance under the federal Affordable Care Act. Insurance through an employer usually satisfies this requirement. If you don't have access to insurance through work, you will need to sign up for an individual policy with a private company.

All Affordable Care Act insurers must accept all applicants at the same rate, and they must provide coverage for a list of certain conditions at a minimum. Lower-income households can get a refundable tax credit for part of what they pay in premiums and co-pays. Households for whom insurance would cost more than eight percent of annual income are exempt from getting coverage.

Like other states, Oregon participates in a "health insurance exchange," where you can choose from different insurance companies with different costs and coverage. Insurance agents and state agencies such as Seniors and People with Disabilities offices can guide you in choosing a policy. Once you turn 65, you will not qualify for ACA coverage any more because you will have access to Medicare.

2-21 Making Health Care Decisions

As medical care became more sophisticated, it became possible to keep people alive long after they were able to function. The expenses of artificially prolonging life became prohibitive. Patients demanded more control over their care both to save money and to avoid unnecessary

pain and suffering. Now, Oregon law makes it possible for you to use documents to say what medical treatment you want and don't want in the event you aren't able to communicate your wishes.

Advance Directive for Health Care

A health care advance directive allows you to express to your doctor your preferences about treatment, particularly about whether to use procedures that will artificially prolong your life. Medical providers must look at your directive for instructions when you are incapable of telling them personally. Oregon law says you must use a certain form for this purpose. The form is available free from most doctors' offices and hospitals. It has two parts. Part C tells medical providers your wishes. If you want to name someone to tell your wishes to your doctor if you can't, the advance directive also lets you name a health care representative. You use Part B of the form for this purpose. Part B is sometimes referred to as a power of attorney for health care. You do not have to complete both parts of the form, just the part you want medical providers to honor.

You can give specific instructions to your health care representative about surgery, diagnostic tests, or the need for nursing home care. Even if a guardian is appointed for you, the health care representative named in your advance directive is the one to make the health care decisions, unless the court later takes that power away.

You must sign the advance directive in front of two witnesses. One of them must be unrelated to you and have no right to inherit from you. There are some people, such as your doctor, who cannot be witnesses. The health care representative must sign the form to show she or he agrees to take on this serious duty. It is important for you and your representative to talk through your wishes thoroughly.

Once your advance directive is in place, you can still change your mind about the kind of care you want by saying what you want instead. You can revoke the advance directive and the power of attorney for health care by saying you revoke them. It's a good idea to look over your advance directive from time to time to make sure you still want

the things you wanted earlier, and to make sure your health care representative, if you named one, is still willing and able to make your wishes known if you can't do that yourself at some point.

Normally, medical providers will do everything possible to keep you alive. The advance directive lets you decide when, or if, you want life-sustaining treatment. Using the directive, you can reject further treatment if your attending physician and one other doctor agree that you are going to die and treatment won't help; and you are permanently unconscious or have an advanced illness that life support won't help or the life support would cause you to suffer severely.

You can make additions to the form to specify more clearly what kind of care you do or do not want. It is best to get advice and assistance from a lawyer about the use of the form.

2-22 Doctors' Orders for Life-Sustaining Treatment (POLST)

Oregon law created a Doctor or Physician's Order for Life-Sustaining Treatment, or POLST. The program is designed to help medical care providers to follow the wishes of patients about life sustaining treatment.

This form includes your doctor's signature. The form transfers the client's written requests into a doctor's order that medical staff and emergency responders must follow. Your doctor's office may have a copy of this form for you to look at. Your doctor can counsel you about the choices on the form. After your doctor signs the POLST, keep it in a place where it is easy for anyone to find, such as on your refrigerator door. You can make copies to keep in your car or other places where emergency medical staff can find them easily. You also can add your POLST number to a medical alert bracelet. Oregon keeps a central online registry of all signed POLST forms that medical responders are supposed to check, too.

2-23 Oregon's Death with Dignity Law

Some Oregonians with a terminal illness can get prescriptions for medicines to end their lives. To qualify for such a prescription, the person must be an Oregon “resident,” someone who has an Oregon driver license, rents or owns property in Oregon, is registered to vote in Oregon, or filed an Oregon tax return in the most recent year. A doctor must say that the person is likely to die within 6 months. In addition, the person must have the ability to understand and communicate his or her health care decisions, and be physically able to take the prescription medicine himself or herself.

Oregon law contains a suggested form for requesting the prescription. The patient must sign the form, and two witnesses must also sign, saying they believe the person is capable of making this decision, and is voluntarily choosing to end his or her life without coercion. There is a waiting period before the person can fill the prescription.

The law makes clear that mercy killing remains unlawful; the Death with Dignity Act simply allows the natural process of dying to occur at a time selected by a terminal patient.

Chapter 3

Housing Options for Seniors

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3-1

Overview

Older Oregonians have a large variety of housing options. They can live in their own homes or apartments as they have before, of course, or with family and friends.

Seniors who need help with things like cooking, eating, bathing, and taking medications can use state-certified in-home caregivers instead of moving to a nursing home or other care facility. Another option is to live independently in retirement communities that cater to those 55 and older. In this kind of housing, seniors can usually find wide doorways, accessible showers, railings on walls, and elevators. They may have a common dining room where staff prepare meals, and planned activities for residents to keep healthy and socialize. There also are communities for those 62 and older; these are not required by law to offer services, but many do. Some of those communities do not allow children.

Apartments made affordable by government support make it possible for lower-income elderly renters to have safe, decent housing in many places. Sources of information about low-cost housing include HUD, www.hud.gov, local housing authorities, and, in some rural areas, Rural Housing through the U.S. Department of Agriculture, www.rd.usda.gov and at 503-414-3357.

Assisted-living complexes provide house-cleaning, laundry services, medication alerts, 24-hour staffing, and alarm systems. They often feature ramps, low railings, and other adaptations for people with limited mobility.

Adult care homes serve the housing and health needs of small groups of frail elders and people with disabilities in almost every corner of the state. Residential care and skilled nursing facilities serve larger groups of elders who need extensive help with day-to-day activities. There are also “continuing care retirement communities” that offer independent-living units, assisted living, residential care, skilled nursing, and even dementia care centers.

3-2 Staying in Your Own Home

Most homeowners want to remain in their homes. As time goes by, these homeowners must make repairs for their homes to stay safe—repairing water heaters, replacing roofing, fixing electrical and plumbing problems, and dealing with termites and dry rot in wood structures. If these are repairs you can't make yourself or don't know someone you trust to do a good job, you will need to be careful about hiring a stranger.

Ask friends for referrals, and get references from past customers of anyone you are thinking about hiring. Get written bids for the work to compare costs. Use licensed contractors when you can; they must be bonded so you don't lose money on a job done badly. (You can find out if a worker is licensed by contacting the state Construction Contractors Board.) Never pay the full cost of the work in advance.

If you have trouble getting around, think about installing ramps and bathroom railings, widening your doorways, etc. You may be able to get help from your Area Agency on Aging or Community Action agency with the costs of these changes if your income is low. You also may be eligible for help from an agency or your utility company to get better home insulation or modern replacements for leaky old windows.

3-3 Deferring Your Property Taxes

If your income is not keeping up with increases in your property taxes for your home, you may be able to put off paying them (“property tax deferral”). To qualify, you must be totally and permanently disabled or age 62 by April 15 of the year you file your application. The deed to the property must be in your name and recorded. You must have lived there for at least five years before April 15 of the year you apply for the program. (This restriction does not apply if you are absent for health reasons. A doctor must verify for the state Department of Revenue why you could not be at home.) You must have homeowner's insurance.

To qualify for the deferral, you must have had a total household income from all sources the previous year of around \$40,000 or less. You must have assets worth no more than \$500,000 not including the value of the home, life insurance policies, and tangible personal property (like furniture and clothing). The value of the home itself cannot be more than most other homes in the area. You don't qualify if you have a reverse mortgage on the property, or if your property taxes are overdue already.

Applications and income worksheets are at the county assessor's office. After the Oregon Department of Revenue has approved your application, you must tell your mortgage holder, if you have a mortgage, that the state will be paying your taxes. Your application must be filed with your county assessor between January 1 and April 15 to defer the taxes that would be billed to you the next fall. You must re-certify every two years and meet all the qualifications.

The deferred taxes must be paid when something in this list occurs:

- You die and have no surviving spouse or registered domestic partner living in the home. Your heirs must pay by August 15 of the next calendar year.
- The property is sold or there is a change in ownership. For example, if you deed your property through a life estate or trust, you will be disqualified from the program.
- You stop living permanently on the property. However, temporary absences due to vacation, travel, or illness do not disqualify you. If you move for medical reasons, you must submit a doctor's statement to the Department of Revenue.

In addition to a deferral of property taxes, you may be able to defer payments on certain "special assessments" against your property. Such assessments include those made by city, county, and sanitary districts for streets, sidewalks, sewers, and water. The requirements for deferral of special assessments are very similar to those for deferral of real property taxes. You can get information about deferrals from the Oregon Department of Revenue. See Chapter 8, section 8-4.

3-4 Veterans' Property Tax Exemption

Some low-income veterans — including some members of the Oregon National Guard — who served during wartime are entitled to a partial tax exemption for about \$21,000 of property value of the home they own and live in. This amount increases three percent every year. Surviving spouses or registered domestic partners who have not remarried also qualify for the home they own and live in. For certain veterans with limited income and service-connected disabilities, or for their surviving spouses/registered domestic partners, the exemption is around \$25,000.

Contact the tax assessor in your county for more information. The application must be filed before April 1 of each year.

3-5 Living in Your Rented Home or Condominium

Different housing situations come with different rights. If you rent from a private landlord, the landlord always has the right to end your tenancy for proper reasons after giving proper notice. For seniors, the notice period is longer than the notice for younger renters, though. See Chapter 8, section 8-5.

This handbook only covers legal topics specific to seniors. You can, however, find extensive information on landlord/tenant law on the OSB website: www.oregonstatebar.org.

3-6 Fair Housing Rights

If you live in seniors-only housing subsidized or operated by the government, you may be able to have children in your rental despite the “62-and-older” limits. The federal rules that apply to your complex will define who is eligible to be part of your household.

If you become less able to move about in your apartment or rental home, you have the right to ask for “reasonable accommodation” from your landlord. If you own a condominium in a complex, the condominium association must respond in the same way a landlord would.

What is reasonable depends on each situation. If you need a wheelchair now, for example, wider doorways usually are reasonable; so are lower sinks and counters, and an easier way to get into the bathtub/shower. You must ask your landlord to allow the changes beforehand. The landlord can say no if the changes would do permanent structural damage to the unit (taking out a code-required wall when there is no other option, for example), or if the changes would change the nature of your building or be extremely onerous for the landlord to do. Otherwise, the landlord must agree to what’s reasonable to allow you to get full use of the unit. As the tenant of a private landlord, you would be responsible for paying for the changes, and for putting the place back in its original condition when you move out.

If you are a tenant in a public complex or a place owned privately but built with government subsidies, you have the same rights. In addition, the cost of making the changes will normally fall on the owner, not on you.

The law applies not only to physical disabilities. Someone who needs a service or companion animal (based on a doctor’s assessment) must be allowed to have an animal for that medical purpose. The animal cannot be dangerous to others or unduly disturbing of others. Someone who needs 24-hour supervision or care should be permitted to have a full-time caregiver live in the unit. (The landlord can screen the caregiver for drug use, past violence, etc.) There are many examples of situations in which a tenant should be permitted an accommodation.

In some cases, landlords and homeowners’ associations unreasonably refuse to accommodate a tenant’s disability. Refusing to make a reasonable accommodation violates both state and federal law. For help, contact the Fair Housing Council of Oregon at www.fhco.org or 503-223-8197, the Oregon Bureau of Labor and Industries civil rights

office at www.oregon.gov/BOLI/CRD or 971-673-0764, the Disability Resources Oregon (DRO) office at www.droregon.org or 503-243-2081, or you can talk to a lawyer who handles disability rights.

3-7 Assisted Living

Assisted living facilities are licensed and inspected periodically by the state. They offer private rooms or apartments, with kitchenettes and sometimes meals, housekeeping, medication and behavior management, organized activities, and help for those who need it when dressing or bathing. Like rental homes, these facilities must accommodate reasonable requests for treatment or changes to the unit to help a person with a disability make full use of the unit. In most situations, the resident would be responsible for the cost of additional services.

How people pay for assisted living can be complicated. Some places offer month-to-month fee agreements, similar to rent. Some require a large investment in advance, then charge monthly fees. They may pay for utilities and internet and cable service; they may not. If you are considering moving to an assisted-living facility, find out what your rights would be if you can no longer pay to live at the place (some accept the Oregon Health Plan/Medicaid), and what reasons the facility can use to move you out. Also find out what complaints about the place people have had in the past; because the state regulates assisted-living facilities, it has records of past problems. See Chapter 8, section 8-8.

3-8 Adult Care Homes

Adult care homes, also called adult foster homes, serve two to five people in a small, homelike setting. They offer several levels of care (depending on the skills of the staff). Generally, the services include room and board, medication management, help with bathing and dressing, some activities, and some nursing care. Adult foster homes bill by the month; they don't charge any entry fees. Many of these homes accept Medicaid payment.

Adult care homes are licensed and inspected by the state, so you can get information from the state about problems and complaints in the past about the place you are considering. See Chapter 8, section 8-8.

3-9 Continuum of Care Retirement Community (CCRC)

A CCRC provides a continuum of care from independent housing through skilled nursing services on one campus. There are about a dozen of these communities in Oregon. They normally offer meals, housekeeping, activities, and other amenities. There is an entrance fee, generally fairly high, and monthly fees. New residents usually must be able to show they have enough savings or other income to pay for their care well into the future. CCRCs almost never accept Medicaid from residents who need medical or nursing home services while living there.

If you are thinking about entering a CCRC, you are entitled to information in advance about how to cancel a contract. You have the right to invest your money in a facility that is well managed, so that it will be there as long as you need. Therefore, the CCRC must show you a copy of the community's last audited financial statement.

If you plan to move into an independent living unit, don't forget to visit the assisted living section and the nursing facility section. Arrange at least to have a meal at each, so you'll get a better sense of how people in the various sections are treated.

What should you know before you agree to move in to a CCRC? One thing is whether you can move out without forfeiting your entrance fee. Other things to ask are:

- Who decides whether you get transferred from independent housing to assisted or nursing care?
- How many nursing home beds are available? What happens if no bed is open when you need it?

- What if you and your spouse or partner need different levels of care?
- Can the CCRC increase the monthly fees? If so, by how much and how often? (Use past practice to figure out what's likely to happen in the future.)
- Does the CCRC offer dementia care?
- Are you required to carry health insurance in addition to paying monthly fees?
- What if you move in and eventually run out of money?

Before you sign a contract to live there, the community must give you a written list of services it offers and the fees for those services.

3-10 Residential Care Facility

A residential care facility is a state-licensed community serving six or more residents. It is similar to an assisted living facility except the licensing does not require each apartment to have private bathrooms or kitchenettes. The level of care is generally a little higher, too, serving the needs of people who have more complex medical problems.

3-11 Memory Care (Dementia) Facilities

Communities that provide care to individuals with Alzheimer's or other dementias are governed by additional regulations to ensure they provide appropriate care to their residents. These communities offer apartment-style housing with a secure building and secure outdoor area. Some have alarms in addition to codes to get into and out of the building. Rooms can be shared or private. These units are more expensive because the residents need extra care and supervision.

These facilities must have programs to help residents with gross motor skills, self-care, crafts, and other appropriate activities. The facilities must create, update, and follow an individual care plan for each resident. See Chapter 9, section 8-8.

3-12 Nursing Facilities

A nursing facility may be called a nursing home, care center, convalescent center or rehabilitation facility. Nursing facilities offer the following: room and board; 24-hour nursing; personal care; medication help; management of chronic medical problems; social services; and organized activities for residents. A nursing facility also offers daily medical evaluation and rehabilitation services by physical, speech, and occupational therapists.

Generally, people stay in nursing facilities only for a limited time unless they require 24-hour nursing care or they are not appropriate for another setting. Some facilities accept Medicaid residents.

3-13 Choosing a Senior Community

The person who will be moving to a long-term care setting is the one who should make the final decision about living in a senior community. Often, particularly in the middle of a crisis, facilities turn to the family to make the decisions. Family members and friends can offer advice, but the prospective resident should make the decisions, unless he or she is incapacitated.

Social workers, referral agencies, and the Area Agency on Aging/ Seniors and People with Disabilities office (AAA/SPD) can talk about arrangements that may be right for you. If you are hospitalized, a pre-admission screening is available. This service can help you decide where you want to live based on your particular needs (including future needs) and desires. For instance, if you need daily skilled care from licensed nurses, then you might want to choose a nursing home. If you need reminders to turn off the stove burners and take your prescribed medications, an adult foster care home or assisted living facility may be good.

When considering a specific living option, be sure the community and its administrator have current licenses as required by law. Consider whether you would get along with the people who live there. Inspect the home carefully. Make sure that it will provide the maximum opportunity for independence and mobility. Speak with the current residents about their lives. For example, ask about the quality of food, recreation, exercise, clubs, organizations, entertainment, and planned trips, as well as the freedom to have visitors and personal possessions such as furniture, bedspreads and curtains of your choice. Meal times are a good time to speak with current residents.

Check on policies about visiting hours and phone calls (generally you will have your own phone line in assisted living, residential care, and retirement settings). Also, make sure that your personal doctor can care for you at the community. Ask the facility for a copy of its policies and procedures. Visits from friends and relatives are very important so choose a living option near them, your place of worship, or area you would like to live. To help you choose, you can ask family, friends, senior housing referral agencies, and doctors to participate in the decision process.

If you think you may need to rely on the Oregon Health Plan (Medicaid) at some point, find out if the facility accepts Medicaid. It may not accept Medicaid later on, but usually places that do accept it now continue to do so. Know that a facility that accepts Medicaid cannot force a Medicaid recipient to pay cash for a period of time before being accepted as a Medicaid resident.

It's hard to know from just looking at a place how good it is. An attractive physical environment could be hiding a place that provides inadequate care. On the other hand, a floor that does not shine may mean that the community is making a safer environment for those with vision problems. Fortunately, Oregon has a long-term care ombudsman who regularly visits and inspects assisted living, foster homes, residential care, and nursing homes (including the ones in CCRCs). The ombudsman also responds to complaints and publishes reports of what

it finds. You can read about any complaints on the ombudsman’s website at www.oregon.gov/litco/pages/index.aspx. Look for the section called “Department of Human Services Searchable Database of Substantiated Facility Abuse Complaints.” In addition, local Area Agencies on Aging usually have more recent information about complaints against local facilities that the Ombudsman is still investigating. Ask for that information.

Senior community advocate organizations have helpful information for residents and their families. The Office of the Long-term Care Ombudsman and the Department of Human Services Facilities Licensing Office maintain a list of all of the communities in Oregon except independent living retirement communities. See Chapter 8, section 8-8.

3-14 The Residents’ Bill of Rights

If you live anywhere that the state licenses (assisted living, adult foster care, etc.), you have the right to:

- Be treated as an adult with respect and dignity;
- Be informed of all resident rights and all house policies;
- Be encouraged and assisted to exercise constitutional and legal rights including the right to vote;
- Be informed of your medical condition and the right to consent to or refuse treatment;
- Receive appropriate care and services promptly;
- Be free from mental and physical abuse;
- Have complete privacy when receiving treatment or personal care;
- Associate and communicate privately with any person of your choice and send and receive personal mail unopened;
- Have access to and participate in activities of social, religious, and community groups;
- Have medical and personal information kept confidential;
- Keep and use reasonable amount of personal clothing and belongings,

- and to have a reasonable amount of private, secure storage space;
- Be free from chemical and physical restraints except as ordered by a physician or other qualified practitioner. Restraints are used only for medical reasons, to maximize a resident's physical functioning, after other alternatives have been tried. Restraints are not used for discipline or convenience;
 - Manage your own financial affairs unless someone else has the legal right to manage them for you;
 - Be free from financial exploitation — the facility cannot charge or ask for application fees or nonrefundable deposits or solicit, accept, or receive money or property from a resident other than the amount agreed to for services;
 - Be given a written agreement about rates and services;
 - Get at least 30 days' written notice before any change in the rates or ownership of the home;
 - Not be transferred or moved out of the community without 30 days' written notice and an opportunity for a hearing — a licensee may transfer a resident only for medical reasons, or for the welfare of the resident or other residents, or for nonpayment;
 - Have a safe and secure living environment;
 - Be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion; and
 - Be able to offer suggestions or complaints without fear of retaliation.

3-15 Skilled Nursing Home Residents' Rights

If you live in a skilled nursing facility, you have these same rights, along with other specific rights under federal law. These additional rights are:

- To be fully informed of all rules for resident conduct and responsibilities when you move in;

- To be fully informed of services available in the community, related charges, charges not covered by Medicaid or the community's basic daily rate when you move in;
- To be fully informed by a physician of your medical condition;
- To participate in medical treatment planning;
- To refuse any kind of medical treatment so long as you understand the consequences;
- To refuse to participate in experimental research;
- To be transferred or discharged only for medical reasons, your best interests, or nonpayment;
- To be given reasonable advance notice for orderly transfer or discharge;
- To be encouraged to exercise all rights as a resident, voice grievances, and recommend changes in policies and services;
- To be free from restraint, interference, coercion, discrimination, or retaliation;
- To manage your personal financial affairs, or, if the community is handling the finances, be given a written report of financial transactions made on your behalf at least once a quarter or at your request;
- To be free from mental and physical abuse and from unnecessary chemical and physical restraints that are not prescribed by a doctor to treat symptoms;
- To have confidential treatment of personal and medical records, and be able to approve or refuse their release to any person outside the community (except if transferring to another health care institution);
- To be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and care for personal needs;
- Not be required to perform services for the community that do not have therapeutic purposes in a plan of care;
- To communicate privately with persons of your choice and send or receive personal mail unopened;

- To keep personal clothing and possessions as space permits;
- If married or in a domestic partnership, to have privacy for visits by your spouse or partner; and be allowed to share a room if you both are residents in a community.

3-16 Complaining about Problems Where You Live

Where to complain about a problem depends to some extent on where you live. If you live in your own home on your own property, the kind of problem you are most likely to have is disputes with neighbors. Community police and mediation programs may be able to help you if direct communication doesn't work.

If you are the tenant complaining about the acts of a landlord on property that is not subsidized by the government, your rights will depend on Oregon landlord-tenant law and laws about housing discrimination. You probably will need legal advice to figure out what steps to take next. If your rented home is government-subsidized, you likely have greater rights, including access to an informal hearing with the government agency. Because the law in this area is complicated, talking to a lawyer or legal aid staff member can be very helpful.

If your home is in an independent-living retirement community, you can bring problems and questions to your resident council or to the owners and managers of the property. These same options are available to you if you live independently in a CCRC. Be sure to keep records of all of your conversations and copies of correspondence about the problem.

People in assisted living, residential care, skilled nursing and memory care facilities have several resources to help them solve problems where they are living. Depending on the type of complaint, you may want to talk with a resident manager or the facility administrator. If the facility isn't doing its job properly, you can report it to the long-term care

ombudsman, who will investigate. You also can report problems to a residents' case manager at a local Area Agency on Aging, or the Seniors and People with Disabilities Services' Client Care Management Unit.

It is against the law for any facility to retaliate against you in any way for complaining. Obviously, if the place you live does retaliate (the most common way is to try to move you out), you have the basis for another complaint. Keep records of everything that happens; talk to the ombudsman and a lawyer, as you may need to ask for a hearing to challenge the eviction or a change in the level of service you have been receiving.

Finally, if you have been the victim of a crime at a facility, you have the right to call the police. In addition, if you or another resident in long-term care is being abused, neglected, or exploited, call the protective services advocate at your local Area Agency on Aging or the ombudsman's office.

Chapter 4

Managing as You Age: Your Money, Yourself

Health problems at any age can make it difficult for you to manage your property or care for yourself. However, with careful planning you can arrange how your affairs will be managed if you become ill. You can get the help of others to manage your property and personal affairs. If you have a spouse or domestic partner, you both should consider how you would manage if the other person loses the ability to make financial decisions.

Some methods are simple. For example, your government benefits already get deposited automatically into your bank account. Other methods are more complex, such as giving someone your power of attorney or acting as someone else's agent legally. This chapter will explain these methods and others, and outline their benefits and limits.

- 4-1 Direct Deposit
- 4-2 Automatic Bill Payment
- 4-3 Joint Bank Accounts
- 4-4 Powers of Attorney
- 4-5 Representative Payee
- 4-6 Conservatorship
- 4-7 Managing Your Well-Being
- 4-8 Guardianship

4-1 **Direct Deposit**

Direct deposit is a free service that electronically deposits payments into your bank account. You can use direct deposit for any federal payments as well as most recurring private income, such as a pension or annuity.

Social Security, Supplemental Security Income (SSI), Railroad Retirement, federal employee retirement, or VA compensation or pension already go directly into your bank account.

To arrange for direct deposit of payments from other sources, contact the source of your payment to find out what information you need to set up direct deposit. Some financial institutions also offer deposit through smart phone technology. Call your financial institution to inquire about alternatives to traditional checks.

Direct deposit is more reliable than check delivery by mail, which can get lost or stolen. Funds generally get into your account sooner, too, so you begin earning interest earlier if you have an interest-bearing account. You should check your bank statement each month to make sure the deposits were received.

You can change your direct deposit to a new or different account by completing a new form with your financial institution. Do not close an old account until all direct deposit payments are switched to your new account.

4-2 **Automatic Bill Payment**

Many businesses offer automatic bill payment. Using it, you allow the creditor to take money directly out of your account. Utility companies, cable and internet services, mortgage lenders, car lenders, credit card companies, magazines and newspapers, and other businesses that bill on a regular basis typically offer this method of bill payment. If you decide to authorize automatic payment, be sure to check your bank statement every month to make sure the biller hasn't taken

more than it is entitled to. If you see a discrepancy, contact the company immediately about the problem. Also remember that the withdrawals will continue until you arrange to stop them. If you move, for example, your internet and utility providers may need notice that you do not want the services at the old address. Likewise, if you change your bank, you must make new arrangements with your creditors so they can pay themselves from your new account.

4-3 Joint Bank Accounts

Most financial institutions have several options allowing more than one person to control funds in a bank account. The most common is called a joint account. A joint account allows two or more people to deposit and withdraw money from it. The individuals named on the account do not need permission from each other to use the account. If one of the account holders dies, the funds in the account automatically belong to the other account holders.

The main advantage of shared accounts is convenience. The disadvantage is the risk of holding an account with other people, who have the same right as you do to write checks for anything they want. If they owe taxes or child support, get divorced, or have court judgments against them, their creditors could take payment for the debt directly from the joint account. Finally, you may not want the money in your joint account to go to the other account holders at your death.

4-4 Powers of Attorney

A power of attorney is a written, signed document that gives one person the legal authority to manage some or all of another's financial affairs. Any adult you choose can serve as your agent under a power of attorney. You must be mentally competent to grant a power of attorney. Making someone your agent does not take away your right to make your own decisions, so long as you stay competent.

There are two kinds of powers of attorney. A general power of attorney gives the agent the power to manage almost all business that would otherwise require your presence or signature. This kind of power of attorney is potentially very broad. The second kind is called a specific power of attorney. This kind grants permission to the other person to perform only certain acts. For example, if you are physically unable to go to the bank, you could give someone the power to deposit and withdraw money from your account.

A power of attorney can be permanent (“durable”) or temporary. In Oregon, the law presumes that a power of attorney is durable. It would remain valid if you become incapacitated. You can make a power of attorney temporary, though, just by adding an ending date to the authority in the document.

You can even create a power of attorney now that won’t go into effect until later. It’s called a springing power of attorney, and it takes effect on a specific date or upon a certain event spelled out in the document. For instance, if you currently want to control your own affairs but know there may be a time you no longer can, you can sign the document now for use later. The document should describe how to determine when the power of attorney would be needed.

Whichever type of power of attorney you have, you can end it at any time while you are competent by telling your agent in writing. Be sure to send a copy of your notice to anyone (such as your bank) with whom your agent has used or might use the power of attorney. If you recorded the original power of attorney at a county clerk’s office, you should record the notice ending it, too. (In that case, your signature on the notice must be notarized.)

Having a valid power of attorney in place if you become unable to manage or understand your affairs can help family or friends avoid the need to file a court case in order to take on the responsibility for managing your affairs. See the sections on conservatorship and guardianship, below.

Powers of attorney do not have to be notarized for most dealings, but businesses prefer to see that a notary has verified your identity on the document. A power of attorney that is used to transfer real estate does need to be notarized and recorded in the recorder's office in the county where the property is. No witnesses are needed.

As you can see, creating a legally binding power of attorney is easy. Many people say it is too easy, as one of the most common ways to defraud older people is through the agent's abuse of his or her authority. For this reason, it is important to have a lawyer draft the power of attorney for you, limiting the scope and purpose and duties of the agent so that he or she can do things only for your benefit.

A power of attorney of any type will automatically end at your death.

4-5 Representative Payee

Some government programs allow benefits payable to one person (the beneficiary) to be paid to another person, called a representative payee. The representative payee uses the benefits to pay expenses of the person entitled to the money. Social Security, Railroad Retirement, and the Veterans Administration benefits all require representative payees for beneficiaries who have trouble managing their benefits. They will not send benefits to someone who has only a power of attorney over the beneficiary.

The representative payee is generally a family member or a trusted friend. Some organizations can also act as a representative payee if a friend or family member can't do it.

To get a representative payee, someone — a concerned person or even the beneficiary — must apply to the agency paying the benefits. The agency will agree only if there is evidence that the beneficiary has trouble managing his or her funds. Evidence includes allowing others to take the money needed for bills, repeatedly losing the money, using

the money for alcohol and drugs instead of paying rent and utilities, etc. It's not necessary to show the person is legally incapacitated or incompetent in order for him or her to qualify for a representative payee.

Many beneficiaries do not want to lose control over their benefits. They have the right to appeal an agency decision to name a payee, or they can suggest a different payee.

The payee must account for the government funds used and saved. The payee has no authority over other income and assets of the beneficiary.

If a representative payee misuses the benefits, the agency should be told immediately to protect the beneficiary. It is a crime for a representative payee to misuse funds intentionally. The agency may have to repay the beneficiary if it keeps paying the representative payee after learning about the misuse.

To get information about representative payees, contact the paying agency. Social Security, Railroad Retirement, and the Veterans Administration have both written and online information about the duties of a representative payee.

4-6 Conservatorship

A conservatorship is a court case that gives an adult (“conservator”) power over the property and finances of a financially incapable person (“protected person”). A court can establish a conservatorship over a person who cannot manage his or her financial resources rationally.

A financially incapable person or a third party may ask the court to appoint a conservator for someone who cannot handle financial affairs to the point that property will be wasted or dissipated unless someone else manages them. The court documents must explain why the proposed protected person cannot handle his or her affairs (Alzheimer's, mental incapacity, etc.).

If the person does not want a conservator, he or she may object by writing to the court. The court will hold a hearing on the objection. The person who does not want a conservator has a right to be represented by a lawyer at the objection hearing.

A conservator must manage the protected person's money and property for the benefit of the protected person and keep records of how they were used. The conservator must tell the court every year how he or she managed the money and property. The court requires conservators to have a bond to give the protected person a way to get back anything the conservator misuses.

A conservator has no other powers. He or she cannot make personal decisions for the protected person.

The protected person can ask the court to end the conservatorship at any time. The court can end the conservatorship if it sees that the protected person no longer needs someone to manage his or her money and property. The protected person can ask for a different conservator, too, especially if there is evidence the first conservator misused the property. The court also can order the company providing the conservator's bond — which is required by the court — to pay the protected person for his or her losses because of the conservator's misconduct.

The advantage of a conservatorship is that the conservator is usually bonded and is accountable for all funds and property. The disadvantages of a conservatorship are that it can be expensive, the records are public (resulting in a loss of privacy), and ending it can be difficult.

4-7 Managing Your Well-Being

While most older people manage their own care successfully, a serious illness or disability can mean that a person needs help with more than financial matters. If someone becomes unable to communicate or understand information and can't care for his or her daily needs, it may be necessary for another to take control of decisions for that person.

Spouses and domestic partners who haven't prepared well for medical needs are sometimes surprised that just being partners doesn't give them the legal ability to force their partner to get needed medical help or other care. In extreme situations, a guardianship may be needed.

4-8 Guardianship

The most restrictive control over a person is a guardianship. Guardianship requires a court proceeding. A court will appoint a guardian for someone only if the person to be protected is in danger of serious physical injury or illness without a guardian's help. The law takes into account the protected person's actual mental and physical limitations, and limits the role of the guardian to those things beyond the ability of the protected person to do. For example, a person may speak and think clearly, but be so paralyzed that he or she cannot move, dress, bathe, eat, or take needed medicines without help. A guardian would find a suitable living situation for the person, where people would be able to help with these activities. Another person might be able-bodied but unable to think clearly after a stroke. A guardian would see to it that the person gets help and supervision with daily activities.

Any adult concerned about the welfare of another person may petition the court to set up a guardianship. The court then has a qualified person (the court visitor) interview the person who wants to be the guardian, the proposed protected person, and other people with knowledge about the situation. The visitor then makes a report to the court. The court may also require a medical or psychological examination of the proposed protected person.

The proposed protected person receives formal notice of the proposed guardianship. The person can object to the court if he or she does not want a guardian. The court will hold a hearing to learn if a guardianship is needed. The proposed protected person has the right to be represented by an attorney. The person who filed the petition

must prove that there is no better way to deal with the situation. If the court finds that the proposed protected person needs oversight, it will name a guardian to provide continuing care and supervision.

The court order must specifically outline the duties and responsibilities of the guardian. The order must be attached to the “Letters of Guardianship,” a court document showing the authority of the person named as guardian. If the court order allows it, the guardian can control where the protected person lives and can consent to any necessary medical or professional care and treatment for the protected person. The guardian can exercise this power even if the protected person disagrees.

If the protected person already has a conservator, the guardian and conservator must work together to protect the person’s financial safety and personal well-being. If there is no conservator, the guardian may use the money and property of the protected person for his or her support and care. The guardian must report annually how the money was spent and saved on behalf of the protected person.

The guardian’s responsibility ends when the protected person dies or the court concludes that the protected person is no longer incapacitated. If a guardian cannot or does not want to continue to serve, he or she must ask the court to appoint someone else for the job.

Chapter 5

Estate Planning

Your estate includes the assets and obligations you have when you die. It is important to plan what you want to give away and who will receive it. You will want to think, too, about the least expensive ways to make gifts and how to reduce or eliminate estate taxes.

Each person's situation is unique. The information in this chapter will give you an overview to help you seek legal advice about the choices that would benefit you and your family the most.

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|------------|--|------------|----------------|
| 5-1 | Overview | 5-6 | Estate Taxes |
| 5-2 | Dying Without a Will | 5-7 | General Advice |
| 5-3 | Wills | | |
| 5-4 | Probate | | |
| 5-5 | Alternatives to Wills | | |
| | <ul style="list-style-type: none">• Survivorship Interests• Payable-on-Death Accounts• Transfer-on-Death Deeds• Trusts• Life Insurance | | |

5-1 Overview

Your estate includes all of your property at death. The law recognizes two types of property: real property and personal property. Real property includes land, buildings, and structures placed on land, such as houses, barns, and commercial buildings. There will be deeds and, in some cases, mortgages connected with real property. Personal property is everything else — such as cars, boats, furniture, clothing, bank accounts, stocks, bonds, and personal items. Some of these things may have titles or other legal designations. After your death, the deeds and titles will need to show the names of the new owners.

5-2 Dying without a Will

If you have not done any estate planning at your death, your property will be transferred through a process called intestate succession. Oregon law outlines who will receive your property as follows:

Situation	Property goes to
Married with no children or all children born to you and current spouse	Entire estate will pass to your spouse
Married with children from former spouse	1/2 to surviving spouse and 1/2 to children in equal shares
Unmarried with children	Entire estate will pass to your children in equal shares
No spouse and no children	Entire estate will pass to your parents
No spouse, no children and no parents	Entire estate will pass to your brothers and sisters
No spouse, children, parents, or siblings	Entire estate will pass to the children of your siblings
No spouse, children, parents, siblings, or children of siblings	Entire estate will pass to your grandparents

Only if you die without any family and have not done any estate planning will your property go to the state of Oregon.

5-3

Wills

A will is a formal statement signed by you and witnessed by at least two other people describing how your estate should be divided after you die. You can use a will to give anything you own — including real estate, cars, business holdings, money, and other personal property — to anyone you want after your estate’s debts are paid. In your will, you can name a personal representative who will be responsible for following your directions in the will. A will may also state whom you want as a guardian for your minor or disabled adult children.

To make a will, you must meet these minimum legal requirements:

1. You must be at least 18 years old;
2. You must be “of sound mind,” meaning you understand what property you have and to whom you are giving this property after your death;
3. The will must be in writing with the date that it was signed. It should be typed if possible;
4. The will must be signed by you or someone acting under your supervision and in your presence if you are physically not able to sign for yourself;
5. Two witnesses must sign the will. They must sign in your presence and certify that you were of sound mind when the will was signed and certify that they saw you sign it or you acknowledged your signature. At least one of the witnesses cannot have the right to inherit from your estate; and
6. You must be acting on your own free will and making the will in the way you want.

Preparing your own will is not recommended because any errors can have serious consequences. A lawyer can tell you why you need a will and what to dispose of through a will. You may not be able to dispose of some of your property. The lawyer can make sure that the will reflects your wishes about your property.

Be sure to let the lawyer know if any of your intended heirs receives SSI benefits or relies on the Oregon Health Plan or Medicaid — even a small gift may make the person ineligible for needed medical assistance. The lawyer can explain how to leave an inheritance to these heirs.

Once you have a will, you should review it periodically to update the amount or kind of property you are giving, and to take account of changes to family such as births, deaths, and divorces among relatives; changes in tax laws; or moving to a new state or country. Later wills cancel out wills made earlier. It is possible to make changes to a will without writing a new will, but the rules for wills also apply to the changes. Crossing things out or adding things in the margins of the will, for example, can cancel the will. Again, errors can cause serious problems, so get a lawyer's help.

5-4 Probate

Probate is a court process to distribute your estate according to your will. If you had no will, probate follows the rules for intestate succession as shown on Table 5.2. A personal representative gathers together and manages your property, pays the expenses and debts, and then distributes the property. The personal representative must show the court that he or she followed the instructions in your will or, if there is no will, state law. Probate makes it possible to put deeds and the titles to stocks, bonds, other securities, and cars into the names of the heir. Probate stops other people, including creditors, from claiming any of the property after the probate ends.

Small Estate or Regular Probate

If you have an estate with a value of no more than \$275,000 (no more than \$200,000 in real property and \$75,000 in personal property), you have what Oregon defines as a small estate. In a small estate proceeding, probate is simple and relatively informal and inexpensive. This type of probate takes about four to six months. One of the heirs must file an affidavit that says the estate is worth no more than these amounts.

If you have real property valued at more than \$200,000, personal property valued at more than \$75,000, or both, then the estate must go through regular probate. Regular probate usually takes a minimum of nine months. It may take longer depending on the size and complexity of the estate.

Probating a large and complex estate can be expensive. If you have a large estate, you should contact an attorney to discuss other ways of estate planning that may help reduce the cost.

5-5 Alternatives to Wills

Survivorship Interests

Many people have joint bank accounts or own real estate jointly with others. Normally the language that sets up these joint owners also gives the owners “the right of survivorship.” This term means that when one owner dies, the other owners automatically take over that person’s right of ownership. Holding property with a survivorship interest can be an inexpensive alternative to a will. It can be used for both real and personal property.

A disadvantage of joint bank accounts is that everyone who owns the account can use the money in the account. The only exception is if the account requires everyone’s signature on every check. Obviously, this arrangement is inconvenient. In addition, others may refuse to sign when you want to write a check yourself.

Payable-on-Death (POD) Accounts

A POD account is treated like a normal bank account during the lifetime of the person putting the money into the account (the payer). On the payer’s death, any funds remaining in the account belong to the people named on the account by the payer (the payees). The payees have no control over the account during the payer’s lifetime. To set up a POD account, contact your local bank or financial institution. There normally is no cost to do so.

Transfer-on-Death Deeds (TODD)

The owner of real estate can sign and record a transferable-on-death deed at any time. Using a TODD allows the owner to keep full control of the property until death. In addition, the TODD can be revoked if the owner decides to get rid of the property. Like the original TODD, the revocation must be signed, notarized, and recorded in order to be effective. There is a very small cost to record the deed.

Trusts

A trust allows someone to hold property of any type for the benefit of another, now or in the future. The person who provides the property for the trust is known as the “settlor” or “trustor.” The person who holds the property is the “trustee.” The person who gets the property is the “beneficiary.” A trust must be in writing to be valid.

Trusts have many purposes. They can transfer specific types of property at death, set aside education funds for minor children, manage assets or some of the assets, or manage assets for a particular person (such as a child).

There are two general kinds of trusts: testamentary trusts and living trusts. A testamentary trust is established in your will. It takes effect only after your death and after your estate has been probated.

In a living trust, you can put property or money for yourself and others into the trust. Instead of giving the property and its income directly to the beneficiaries, the trust places it under the control of a person called the trustee. Typically, the trustee will invest the property (called the principal). The trust may allow the trustee to pay the beneficiaries interest earned on the principal. When the trust expires, the trustee will distribute the property to the beneficiaries.

A living trust can be revocable (the trustor can change or end it) or irrevocable (the trustor cannot change it). Irrevocable trusts have special tax treatment and can be used to help people plan for eligibility for Medicaid.

A living trust has several important advantages if it is set up properly and is fully funded, meaning all the trustor's assets are placed in the trust. First, a fully funded trust will avoid the need to probate the estate of the trustor. If it is a joint trust, it will also avoid probate if one of the joint trustors dies. Second, a living trust may avoid the need for a conservatorship for the trustor if he or she becomes legally disabled. Third, a living trust may offer tax advantages for people with large amounts of assets. Fourth, it can allow for a smooth transition of your estate after your death with no delays for your beneficiaries.

There are downsides to trusts; preparing, funding, and managing them can be expensive. They are generally more expensive to prepare than wills. They must be reviewed regularly to stay current with tax laws. They also require that you maintain information about the assets in the trust. Finally, they may be confusing, especially if you want to borrow against any of the assets in the trust.

Trusts have several common uses, such as these:

- A pet trust can provide for the continuing care of a designated domestic pet after your death. The person who is to care for the pet will be paid to do it from the assets of the trust. After the death of the pet, the rest of the money will go to whomever the will/trust designates or by intestate succession if there was no will.
- An income cap trust is created with the beneficiary's income for the purpose of qualifying for Medicaid.
- A special needs trust may be set up for children or others who have developmental or physical needs that may interfere with their ability to work. The trust helps them to receive public benefits by restricting what the trust funds can be used for.

Note: Living trusts are complex legal documents that require the use of competent and experienced estate planning attorneys. If trusts are not drafted correctly, the trustor's wishes may not be carried out and the estate taxes may be higher. You should not attempt to create your own trust!

Life Insurance

Life insurance benefits usually pass to whomever you have named on the policy to receive those benefits (called the beneficiary). You have to name the beneficiary in writing when you purchase your policy. The insurance company will have a record of the beneficiary you chose.

You can change the beneficiary at any time by informing your insurance company in writing. Most insurance companies provide a form to change the beneficiary. If your named beneficiary is alive when you die, the insurance company will pay the money due under the policy to the beneficiary, even if your will says something different. The insurance money will not be part of the probate estate. It is wise to name another person as an alternate beneficiary in case your first beneficiary dies before you do. If your beneficiary is no longer alive, the insurance proceeds will go into your estate and potentially increase the cost of your probate proceeding.

Irrevocable Life Insurance Trust

An irrevocable life insurance trust allows life insurance proceeds to pass free of estate transfer taxes.

5-6 Estate Transfer Taxes

At the time this guide was published, no Oregon state estate taxes were payable on estates valued at less than \$1 million in total assets. For estates valued over \$1 million there is a 16 percent tax. The exempt amount under federal tax law is even higher, at about \$5.5 million; this amount changes each year for inflation. If the combined value of your estate and that of your spouse or domestic partner is close to these amounts, consult a tax lawyer about potential estate taxes. There may be ways to decrease your taxable estate through gifts and trusts.

For tax purposes, your estate includes all property in which you have an interest. The estate includes the proceeds of life insurance, property held with a survivorship interest, and certain life estates. The value of your property for estate tax purposes is its fair market value on the date of your death.

5-7 General advice

Keep an up-to-date itemized list of all your debts and property. Your list should include insurance policies, securities, bank accounts, safe deposit boxes, real estate, jewelry, artwork, and pension plans. You also should record where you put your will or trust. Give a copy of this list to someone you trust and to your lawyer or financial adviser.

Chapter 6

When Someone Dies

The death of a loved one is not an easy time. In addition to dealing with the emotional impact, you must notify agencies about the death, deal with creditors, and start the legal process to give property to those entitled to receive it.

There are a number of things to do within the first few hours, days, and weeks after someone's death. Many of these responsibilities will be yours if you are named as personal representative under a will or you are the spouse, partner, or adult child of the person who has died.

6-1 In the First Few Days

6-2 In the First Few Weeks

6-3 Probating the Estate

6-1 In the First Few Days

If the person dies in a hospital or care facility, notify a staff member immediately. If the person is not at the hospital or in a care setting, call paramedics or police. A medical professional will then declare the person dead and determine the cause of death.

Some people arrange to donate organs at death. If so, their driver's license will show a "D" on it, or their name will be on a state registry for organ donors, www.donatelifenw.org. If you know the person has registered as an organ donor, be sure to tell facility staff, ambulance workers, or police right away.

Call immediate family members to let them know the person has passed away. Designate someone to help you make calls to additional family and friends.

Arrange for temporary care of minor children, other dependents, and pets. The person's will might call for the continued care of pets or dependents, but the will does not take effect until the probate court declares it is valid.

If the person had arranged for burial or cremation, normally you will follow his or her instructions. (If the person died far from home, those plans may not be practical now.) If there is no arrangement, you can confer with a funeral home and family members, if any, about whether burial or cremation is the better option. If the person had a religious affiliation, notify the clergy of the church, synagogue, mosque, or place of worship to help with funeral arrangements. It will also be a good resource for family grief counseling.

If the person who died was a veteran of the armed forces or a veteran's spouse, he or she may be eligible for free burial at a national cemetery. For help with a national cemetery burial, contact the National Cemetery Scheduling Office at 800-535-1117, or have the funeral home do it. You will need proof of the person's military discharge in the form of a Defense Department Form 214 (DD 214). If there's no original available, you can get a copy of the DD 214 at www.archives.gov/veterans/military.

Order certified copies of the death certificate from the Oregon Department of Human Services by calling 971-673-1190, going in person to 800 N.E. Oregon St., Room 205, Portland, or ordering online at *www.VitalCheck.com* (additional charges may apply). You will need to include the deceased person's full name, spouse or domestic partner's name, date of death, place of death, your name and relationship to the deceased or the reason you are seeking the record, your mailing address, phone number, and your signature. You will also need to provide a photocopy of your driver's license or ID. You will need the death certificates for insurance benefits, survivor benefits, VA benefits, stock certificates, car titles, and more. It is not unusual to need 12-20 certificates. There are two types of death certificates — a long one stating the cause of death, the other not mentioning cause. Only insurance companies need to see the long version.

Contact your local newspaper about an obituary or death announcement. The funeral home may be willing to do this for you. Newspaper announcement costs vary based on their length. They are not required.

Call the person's place of employment, fraternal organizations, and volunteer organizations to inform them that the person has passed away.

If the person was receiving public benefits, notify the agency that was providing the benefits. Inform the agency if there is a surviving spouse or dependents as they may be entitled to death benefits or survivor's benefits. Most families are eligible for the Social Security death benefit, about \$250. At the same time, an agency may be adding monthly benefits to the person's bank account. People are not entitled to receive a Social Security or SSI benefit in the month they die. Sometimes the agency will take the money back out of the account; sometimes it will expect you to return the check yourself. It is unlawful to keep the money.

Note: When an Oregon Health Plan recipient dies, the state will want to be reimbursed by the person's estate for the care OHP paid for. If there is a surviving spouse, a minor child, or a child that is permanently and totally disabled, the state will hold off its claim until that person's death or adoption.

6-2 In the First Few Weeks

If the person was receiving a state pension, notify the state or states of the person's death. In Oregon, the state pension plan is at 888-320-7377, or www.oregon.gov/PERS. For private pensions, contact the company's human resources department or pension plan administrator. Ask if survivor benefits are available.

Contact the banks, credit card companies, and other financial institutions where the person had credit or money. Get claim forms from all life insurance companies where the person had policies.

Contact the guardian, conservator, or anyone with power of attorney on behalf of the person, as these people's duties and authority end at the person's death.

Contact providers of utility, phone, newspaper, membership companies, etc., to end or change service. Have the post office forward mail to you or the person who is helping you collect the mail. Note that the post office may not forward mail from a facility where the person did not have his or her own address. You may need to arrange with staff there to forward mail, including important tax information, which will keep coming to the facility for months.

Find the person's will and trusts, if any, including codicils and amendments. These may be in the person's home, with the attorney who prepared the documents, or in a safe deposit box.

Contact the personal representative named in the will, if there is one. If there is no will and no fully-funded trust, the court will name a personal representative. It could be a family member or friend, or a lawyer or bank official. Meanwhile, do not transfer any property to family or friends until the probate process is completed. Do not pay for any of the person's debts until you speak with an attorney.

Gather documents you may need, such as life insurance policies, income tax returns for the last five years; legal records such as birth and death certificates and marriage and divorce decrees; military records including discharge papers, the person's VA number or service number, and dates of active service; bank and brokerage accounts; IRAs, stocks, and bond certificates; titles to cars and other motor vehicles, deeds, mortgages, and titles to real property; and business information such as corporate agreements and notes receivable and payable. Ask brokerages and financial institutions for a "date of death" valuation for tax calculations. With all this information in hand, meet with a tax preparer who can help you with the final income tax return and, if necessary, an estate tax return. If the person had a trust, the trust also will need to file a tax return.

You also will look for credit card statements and other bills, notifying the companies that the accounts are closed and destroying credit and debit cards. In addition, you will close social media sites the person may have used. Doing these things will reduce the chance of identity theft.

Many banks and other financial institutions, tax preparers, brokers, and others have helpful outlines of things you need to think about when you are gathering the information needed for probate. Ask for them when you can; they may contain different tips you will find useful.

6-3 Probating the Estate

The information above describes some of the duties of the personal representative in a probate. More information about probate is in Chapter 5, and on the Oregon State Bar public information web page, "What is Probate?" at www.osbar.org/public/legalinfo/1117_Probate.html.

Chapter 7

Family and Relationship Issues

More than ever before, families are changing. Change is true for older Oregonians, too—more seniors divorce or end registered partnerships, or live with partners without marrying. Their adult children become parents and step-parents. Some older people find they are “parents” again, to their grandchildren or other young relatives. And violence within families touches too many people.

This chapter looks at some of the issues that can impact seniors in relationships.

- 7-1** Marrying in Later Life
- 7-2** Ending a Marriage or
Domestic Partnership
- 7-3** Grandparents’ Rights
- 7-4** Violence at Home
- 7-5** Elder Abuse

7-1

Marrying in Later Life

Those who marry for the first time in later life must consider things that younger people do not. For those who receive SSI and Medicaid, marriage means that their SSI income may go down or even end, because the Social Security Administration will count parts of the income and assets of both people in deciding whether the SSI recipient remains eligible for the benefit. Veterans eligible for benefits based on a low income may face the same situation.

For those who were widowed or divorced, a new marriage may affect their right to divorced spouse's pensions, widow's pensions, other survivor's benefits, or spousal support (alimony).

People marrying later in life often have their own property or children from earlier relationships. Thus, their families may have claims on that property. The new spouse or partner also will have claims. Couples can avoid questions about their various rights by creating a prenuptial agreement.

A prenuptial agreement allows the couple to decide, in advance, what rights each of them will keep over certain property if one dies or if they divorce or end a domestic partnership. The prenuptial agreement must be in writing and signed by both parties. The couple can revoke or change the agreement later only by a new signed written agreement. People who want such an agreement should speak to separate lawyers well before the wedding. If there is a divorce, will contest, or other legal action over property rights, a prenuptial agreement will help the court follow the wishes of the parties.

7-2

Ending a Marriage or Domestic Partnership

Seniors who decide to divorce or end a domestic partnership must do so through the court. The process can be very short and simple for those who file a “co-petition” and have few assets and little debt. The process can be short and only a little less simple if one spouse or partner files and the other has no objection to what the spouse or partner has asked the court to do. Older people are less likely to have dependent children at home, so they are less likely to dispute custody of minor children or financial support for them. Still, seniors often have more financial interests at stake than do younger people.

Seniors are more likely to be homeowners than younger people; how they “divide” their home can have serious tax consequences. If their marriage is long, one spouse or partner may be entitled to continuing financial support. Divorcing may affect one person’s right to rely on the other’s pension or medical or life insurance. Divorce after a marriage of under 10 years will keep one spouse from being able to claim Social Security benefits based on the earnings of the other spouse. A pre-nuptial agreement may contain errors that make it invalid, and so the court will have to divide property and debts without using it. In short, seniors should make sure they fully understand their legal rights before they file. In a divorce or dissolution of a domestic partnership, the couple become “adverse parties” — their interests are different. Thus, they should consult separate lawyers. An ethical lawyer will not advise both parties.

You can find more information on divorce and family law on the OSB website at oregonstatebar.org.

7-3

Grandparents' Rights

It can be difficult to keep in contact with grandchildren if the parents, or one parent, refuses to let you see or talk to the grandchildren. In some cases, a court can order the parent to allow visits. You must prove to the court that you already have a strong relationship with the grandchildren and that your spending time with them is in their best interest.

Courts will usually want you to meet with a trained mediator and the grandchildren's parents or custodian to attempt to reach an agreement before the court hears your case. If you have concerns about being kept from your grandchildren, talk to a lawyer about visitation rights.

If the court grants visitation rights, your rights continue if the parents divorce or legally separate, or if one or both of the parents die. Your rights can continue in most cases even if your grandchildren are adopted or the parents lose their rights over the children.

Sometimes grandparents care for grandchildren permanently or temporarily. If you are caring for grandchildren for a short time, you should obtain written permission from at least one parent to authorize school attendance and emergency medical care for the children. For longer periods, a parent can give you a special power of attorney for up to six months. Even without the parents' cooperation, you can use a state form for caretakers to get limited legal rights over the children.

If you expect to care for your grandchildren for an extended time, you may want to become their legal guardian. A legal guardianship gives you stronger authority over the children's care and well-being. Legal guardianship generally allows you to cover the grandchildren under your health insurance. The court may also order the parents to pay child support.

To become a guardian, you must get a court order. If the parents do not agree to the guardianship, you must show the court why the children need a guardian. With or without a guardianship, you may qualify for Temporary Assistance for Needy Families (TANF) and Oregon Health Plan coverage for minor grandchildren in your care.

In unusual circumstances, grandparents may seek full legal custody of grandchildren. If the parents do not agree to it, you must show the court that the parents are unfit and that it is in the child's best interest for you to have custody.

There are other court proceedings that would allow adoption or another kind of guardianship that is permanent. For more information, read the most recent edition of the Oregon Department of Human Services' "Oregon's Legal Guide for Grandparents and Other Relatives Raising Grandchildren," which describes grandparents' rights in greater detail.

7-4 Violence in the Home

In Oregon, it is against the law for adults to physically harm members of their family or household. If a family member or person in your home has threatened you with violence or abused you, the Oregon Family Abuse Prevention Act (FAPA) can help protect you. Under FAPA, you obtain a court order to keep the abuser from contacting you or coming to your home, school, or work place. In some cases, the court can order the abuser to leave the shared family home. To qualify for a FAPA restraining order, you must show:

- The violence or threats occurred within 180 days of your petition for the order;
- The abuser intentionally or recklessly caused or tried to hurt you or made you fear serious harm; and
- The abuser is a spouse, former spouse, adult relative (by blood, adoption or marriage), person living in the same house, person who has lived in the same house with you within the last two years, or the other parent of your minor child.

FAPA restraining orders are free. You can obtain the necessary forms and instructions from the circuit court clerk at your county courthouse. The Victims' Assistance Program in your county district attorney's office can help you prepare the needed forms and refer you to safe shelters and other protective services. Call the police if your abuser disobeys the court order and comes to your home or workplace or threatens you. The court order is valid for one year and can be renewed by order within the year for good reason.

People age 65 and older or people of any age with disabilities can also get a restraining order against family members, household members, and certain caregivers under the Abuse Prevention Act for Elders and Persons with Disabilities. To qualify you must show there has been violence, threat of violence, neglect, abandonment, or verbal abuse that is likely to cause significant physical or emotional harm. You can also qualify if someone has improperly taken or kept from you your possessions or assets.

The State Office for Seniors and People with Disabilities is another resource. It investigates complaints of abuse involving seniors and people with disabilities.

7-5 Elder Abuse

Abuse of older people is a serious problem, and a crime. It includes not just violence, but also neglect, and the deliberate withholding of food, water, needed walkers or wheelchairs, or medicines. Many seniors don't report abuse by family or "friends," feeling ashamed or embarrassed, or disloyal to the abuser. Some seniors don't report because they fear no one else will take care of them if the abuser leaves.

Specific types of abuse include injury to the senior not resulting from an accident; neglect that leads to physical harm; abandonment and isolation; neglecting caregiving duties and obligations; intentionally causing pain or injury; ridiculing, harassing, coercing, threatening, or intimidating; inappropriate sexual comments, etc.

Also included are wrongfully taking or using the elder's money or property; and sexual assault. Even some kinds of sweepstakes contests offered by strangers and designed to take a senior's money violate the law.

If you become aware of signs that a person over 65 (or a person with disabilities of any age) is being abused, do report. Let the authorities investigate. You can report abuse by calling the toll-free abuse hotline at 855-503-7233 or calling the local law enforcement agency in the county where the abuse occurred. If you report suspected elder abuse in good faith, the law will protect you from being sued by the alleged abuser if you are mistaken.

Adult Protective Services (APS) investigators will look into your concerns immediately. APS will arrange for immediate protection of the senior, determine whether the senior can help in the investigation, and arrange for services to prevent future abuse.

The law requires certain people, including lawyers and medical workers, to report signs of elder abuse to the state.

Chapter 8

Resources

8-1 Social Services

Information about Food Stamps (Supplemental Nutrition Program), Meals on Wheels, Senior Centers and Meal Sites, Local Area Agencies, Senior Employment Programs, and Miscellaneous Support Services:

Oregon Department of Human Services—
Seniors & People with Disabilities
500 Summer Street NE, Salem, OR 97301
503-945-5811; TTY: 503-282-8096
www.oregon.gov/DHS

Information about the Oregon Health Plan (Medicaid), and In-Home Care Services:

Oregon Health Plan
Division of Medical Assistance Programs Administrative Office
500 Summer St NE
Salem, OR 97301-1079
503-945-5772
www.oregon.gov/OHA/healthplan

Problems with and grievances against State Social Service Agencies:

DHS — Governor's Advocacy Office
800-442-5238 or 503-945-6904
www.oregon.gov/DHS/aboutdhs/gao.shtml

8-2 Help with Legal Issues

Oregon State Bar
16037 SW Upper Boones Ferry Rd
Tigard, OR 97224
503-620-0222 / 800-452-8260
www.osbar.org

Oregon State Bar Lawyer Referral Service
(low-cost initial consultations)
503-684-3763 or 800-452-7636
www.osbar.org/public/ris/lrsform.html

Oregon State Bar Legal Links (written information on many legal topics)
www.oregonstatebar.org

Legal Aid Programs, Including Legal Aid Services of Oregon,
Oregon Law Center, and Center for Non-profit Legal Services
www.oregonlawhelp.org

Oregon Department of Justice
Consumer Protection
1162 Court St NE
Salem, OR 97301-4096
503-378-4400
<http://www.doj.state.or.us/consumer/Pages/hotline.aspx>

National Veterans Legal Services Program
202-265-8305
www.nvlsp.org

8-3 Federal Benefits

Information about enrolling in Medicare, Social Security Retirement and Disability Benefits, SSI-based Medicaid, and addresses of local Social Security offices:

Social Security Administration
800-772-1213
www.ssa.gov

Information about Medicare and Medicaid policies and procedures, reporting Medicare fraud, and Medicare appeals:

U. S. Centers for Medicare and Medicaid Services (CMS)
7500 Security Blvd
Baltimore MD 21244
877-267-2323; TTY: 866-226-1819
www.cms.gov

Information about Railroad Retirement and Disability programs:

U.S. Railroad Retirement Board (Field Office)
1001 SW 5th Ave, Ste 420
Portland, OR 97204
877-772-5772
www.rrb.gov/default.asp

8-4 Tax Issues

Forms and information about state income and estate tax questions and local offices:

Oregon Department of Revenue
955 Center St NE
Salem, OR 97301-2555
503-378-4988 or 800-356-4222; TTY: 800-886-7204
Fax: 503-945-8738
www.oregon.gov/DOR

Forms and information about federal income and estate tax questions, local offices, and taxpayer advocates:

U.S. Internal Revenue Service (IRS)
www.irs.gov

Taxpayers age 65 or older should look at IRS publication 554, “Tax Benefits for Seniors.” This publication is available for free by writing or calling your local Internal Revenue Service office. It is also on the IRS website.

8-5 Housing Issues

Information on low-income and subsidized housing, including local housing authority offices:

Oregon Housing & Community Services
725 Summer St. NE, Ste B
Salem, OR 97301-2000
503-986-2000
www.ohcs.oregon.gov

Information on housing discrimination, including local offices:

Fair Housing Council of Oregon
503-223-8197
www.fhco.org

Oregon Bureau of Labor & Industries (BOLI)
800 NE Oregon St, Ste 1045
Portland, OR 97232
971-673-0764
www.oregon.gov/BOLI/CRD/index.shtm

8-6 Employment Discrimination

Information and help with questions about age and disability discrimination at the workplace:

Equal Employment Opportunity Commission
San Francisco Field Office
350 The Embarcadero, Ste 500
San Francisco, CA 94105-1260
800-669-4000
www.eeoc.gov

Job Accommodation Network
800-526-7234
askjan.org

Disability Rights Oregon
“Working for the rights of individuals with disabilities”
620 SW 5th Ave, 5th Floor
Portland, OR 97204
503-243-2081 or 800-452-1694
TTY: 503-323-9161 or 800-556-5351
www.oradvocacy.org

Oregon's Bureau of Labor & Industries (BOLI)
800 NE Oregon St, Ste 1045
Portland, OR 97232
971-673-0764
www.oregon.gov/BOLI/CRD/index.shtm

8-7 Resources for Veterans

Information about and help with Veterans' VA Appeals; referrals to advocates, Veteran Service Offices, VA Nursing Homes, and Local Vets' Center Counseling:

Oregon Department of Veterans' affairs
700 Summer St NE
Salem, OR 97301-1285
503-373-2000 or 800-828-8801
www.odva.state.or.us

Help with appeals and information about VA processes and standards:

National Veterans Legal Services Program
202-265-8305
www.nvlsp.org

Military records, information about national cemeteries, and referral to advocates and local agencies:

U.S. Department of Veterans Affairs (regional office)
100 SW Main St, Floor 2,
Portland, OR 97204
800-827-1000
www.va.gov

The following are non-government Veterans' Service Organizations:

American Legion, 503-685-5006
www.legion.org

AmVets, 503-735-1069
www.amvets.org

Disabled American Veterans, 503-326-2620
www.dav.org

Jewish War Veterans of the USA, 202-265-6280
www.jwv.org

Military Order of the Purple Heart, 503-373-2388
www.purpleheart.org

National Association for Black Veterans, 877-622-8387
www.nabvets.com

Paralyzed Veterans of America, 503-362-7998 or 800-333-0782
www.oregonpva.org

Veterans Consortium Pro Bono Program
202-628-8164 or 888-838-7727
www.vetsprobono.net

Veterans of Foreign Wars, 503-326-2614
www.vfworegon.org

Vietnam Veterans of America, 800-882-1316
www.vva.org

8-8 Protection from Abuse

Information about domestic violence and elder abuse; referrals to local domestic violence shelters and victims' Services:

Oregon Coalition against Domestic and Sexual Violence
1737 NE Alberta St, Ste 205
Portland, OR 97211
503-230-1951
www.ocadsv.com

National Domestic Violence Hotline
800-799-7233; TTY: 800-787-3224
www.thehotline.org

Information about rights of residents in assisted living, skilled nursing facilities, and care homes:

Office of the State Long-term Care Ombudsman (LTCO)
3855 Wolverine NE, Ste 6
Salem, OR 97305
503-378-6533; 800-522-2602
www.oregon.gov/LTCO

Oregon Department of Human Services (DHS)
Services for Seniors & People with Disabilities
500 Summer St. NE
Salem, OR 97301
503-945-5600
www.oregon.gov/dhs/seniors-disabilities/pages/index.aspx

8-9 Health Care Planning

Information about tools to help manage your treatment options:

Oregon Health Decisions
7451 SW Coho Court, #101
Tualatin, OR 97062
503-692-0894
www.oregonhealthdecisions.org

Oregon Advance Directive
www.oregon.gov/DCBS/SHIBA/docs/advance_directive_form.pdf

Physician's Order for Life Sustaining Treatment (POLST)
www.ohsu.edu/polst

Oregon Pain Management Program
503-373-1605

Oregon Hospice & Palliative Care Association
P.O. Box 10796
Portland, OR 97296
503-228-2104

8-10 Help with Medicare and Other Insurance

Help evaluating and choosing a Medicare plan, Supplemental Insurance, and Part D coverage:

Oregon Senior Health Insurance Benefits Assistance (SHIBA)
350 Winter St NE, Ste 330
PO Box 14480
Salem, OR 97309-0405
503-947-7979; 800-722-4134
www.oregonshiba.org

**Consumer education materials, approved
Medicare supplemental policies, and consumer
rights:**

Oregon Insurance Division Consumer Advocacy Section
3350 Winter St NE, Room 440
PO Box 14480
Salem, OR 97309
503-947-7984; 888-877-4894
www.oregoninsurance.org

Glossary of Terms

Age Discrimination in Employment Act (ADEA): A federal law protecting people age 40 and older from discrimination in employment settings.

Americans with Disabilities Act (ADA): Federal law that provides persons with disabilities receive reasonable accommodations from agencies and most businesses.

Bureau of Labor and Industries Civil Rights Division (BOLI): State agency that protects people from discrimination in the workforce. Claim of Exemption: A document filed with the court seeking certain property to be exempt from creditors.

Conservatorship: A legal proceeding to give a person (the conservator) power to manage the property and finances of someone who is financially incapable.

Credits: For Social Security & Railroad Retirement benefits. Refers to the amount of benefits accrued from working over time.

Deed: A written instrument to convey land.

Donut Hole: The gap in coverage for prescription drug plans.

Equal Employment Opportunity Commission (EEOC): Federal agency protecting people from discrimination in the workforce.

Fair Market Value: The price a willing buyer would pay for a product as is.

Identity Theft: When someone uses another person's name or other personal information to purchase items or obtain credit cards, bank accounts, loans, etc.

Joint Tenancy: Property ownership with a survivorship interest with someone other than your spouse where all the property passes to the joint owner upon the death of the other.

Judgment: A court decision stating that money is owed.

Medically Necessary Inpatient Hospital Stay: One of the requirements before Medicare will pay for skilled nursing care. Requires a minimum of three days admitted as a patient in the hospital.

Open enrollment Period: For Medicare Parts C & D, you can change plans from October 15th through December 15th, or switch back to original Medicare from January 1st through February 14th.

Payee(s): The people who receive the money.

Payment on Death (POD) Account: A bank account that belongs to people named by the account holder upon the account holder's death.

Personal Property: All property other than real property, such as cars, boats, clothing, stocks, bonds, and personal items.

Personal Representative: The person who handles your affairs after your death. This person is either appointed by you in your will or by a court.

Physician's Order for Life-Sustaining Treatment (POLST): An official order from a doctor that requires medical providers to honor your wishes about the kind and extent of care you want when you are near death.

Power of Attorney: Legal authority, in writing, given by a person to an agent to manage some or all of that person's financial affairs.

Premium: Monthly fee associated with your Medicare and other insurance plans.

Prenuptial Agreement: An agreement, in writing, between two people before marriage on what rights each of them will keep over certain property if a divorce or death occurs.

Principal (definition #1): The person who grants, in writing, power of attorney to another.

Principal (definition #2): The property (invested in a trust). When the trust expires, the trustee will distribute the property, principal plus interest, to the beneficiaries.

Private Contract: An agreement between a doctor and a patient where they are responsible for the payment for service rather than Medicaid.

Probate: The legal process by which your property is collected and distributed according to your will or by intestate succession.

Protected Person: Someone who has been found to be financially incapable (in a conservatorship proceeding) or incapacitated (in a guardianship proceeding).

Real Property: Land and buildings or structures placed on land, such as houses, commercial buildings and agricultural buildings.

Reconsideration: The first step of the appeals process when you ask the Social Security Administration to review its decision to deny you benefits.

Regular Current Connection: A requirement for annuity based on occupational disability. Requires a railroad employee to have worked twelve of the thirty-month period before the annuity begins.

Regular Probate: A formal probate process that is required if your real property is valued at no less than \$200,000 and/or your personal property is more than \$75,000.

Representative Payee: Another person who has been given the responsibility to receive and use benefit payments solely for the person entitled to receive the benefits. This arrangement is generally used by a government agency.

Residential Care Facility: Facility for six or more older or disabled adults offering room, board, organized activities, and security. It offers limited services for housekeeping and personal care.

Respite Care: Temporary care for a disabled or ill person for whom a family member normally cares.

Retirement Benefits: Monthly benefits you receive from Social Security if you are 62 or older, have enough credits, and are retired or employed with limited earnings.

Social Security: A federal program providing benefits to eligible workers and/or their families when the worker retires, becomes severely disabled, or dies.

Special Enrollment Period: Period of time you are eligible for Original Medicare after being enrolled under an employment group health plan. Also for Medicare C & D when there is a change in circumstance such as moving or losing coverage.

Springing Power of Attorney: A power of attorney that begins after the happening of a specific event described in the document.

Supplemental Security Income (SSI): A federal program providing a basic level of income to anyone who is at least 65 years old or blind or disabled, has limited income and resources, and meets the citizenship/alien eligibility requirements.

Survivors' Benefits: Social Security benefits paid to the surviving family members of an eligible worker who has died.

Survivorship Interest: The right of a person holding property jointly to have the entire estate after the other person passes.

Tenancy by the entirety: A form of joint tenancy for spouses where, when one passes away, the property passes to the other spouse.

Testamentary Trust: A type of trust that is set up in your will. It takes effect only after your death.

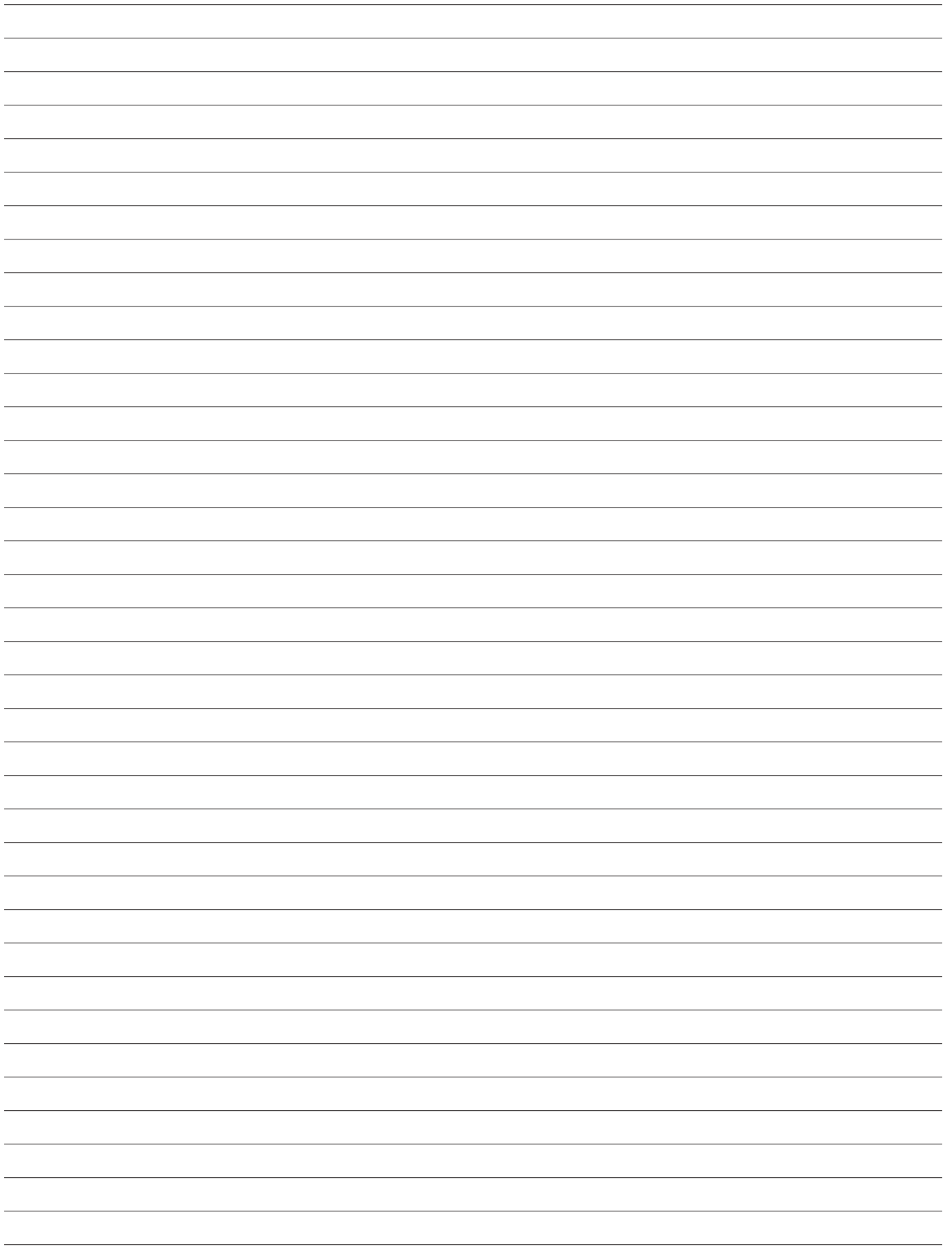
Trust: An arrangement in which one person (trustee) holds property for the benefit and use of another (beneficiary).

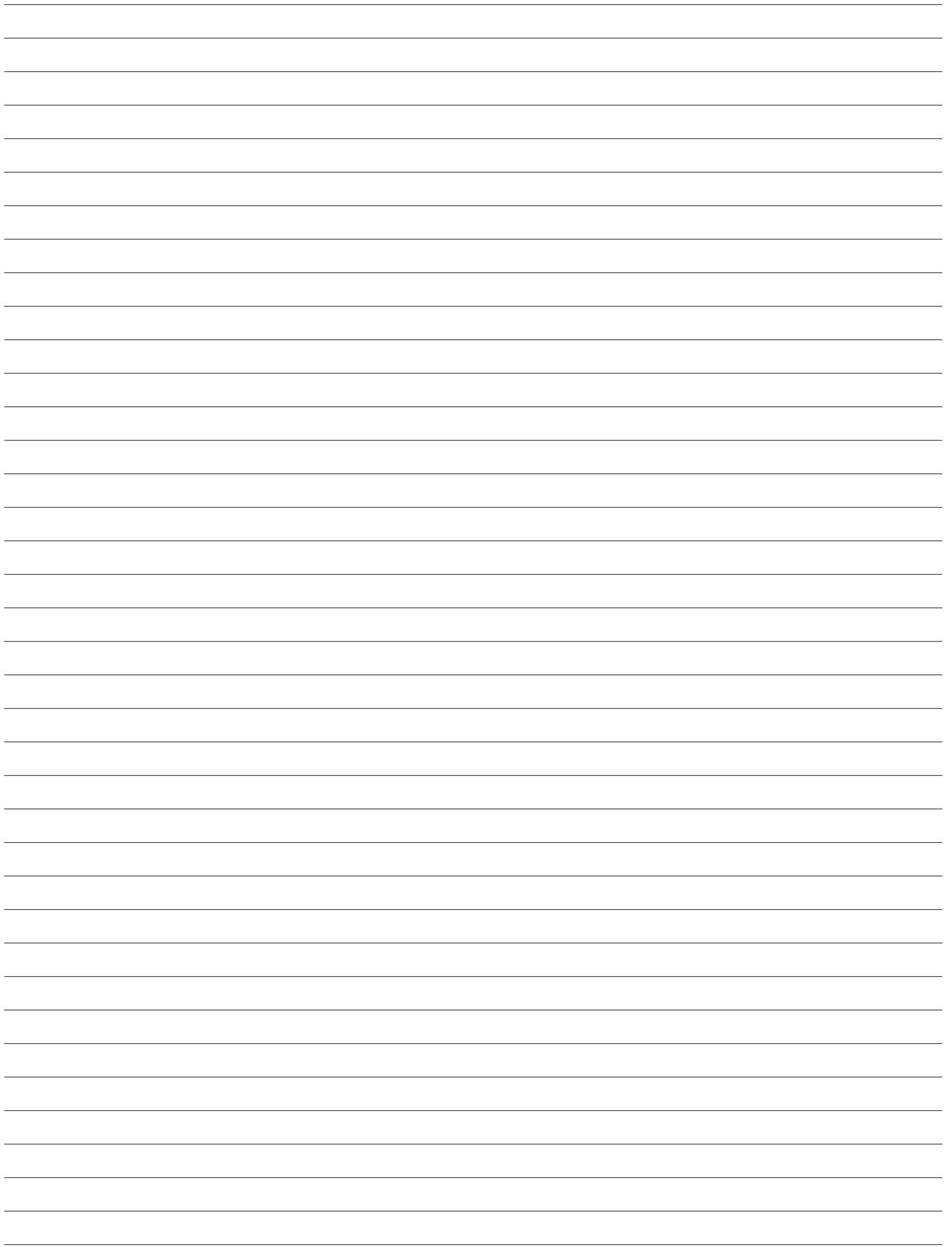
Trustee: The person who manages and distributes the property held in a trust.

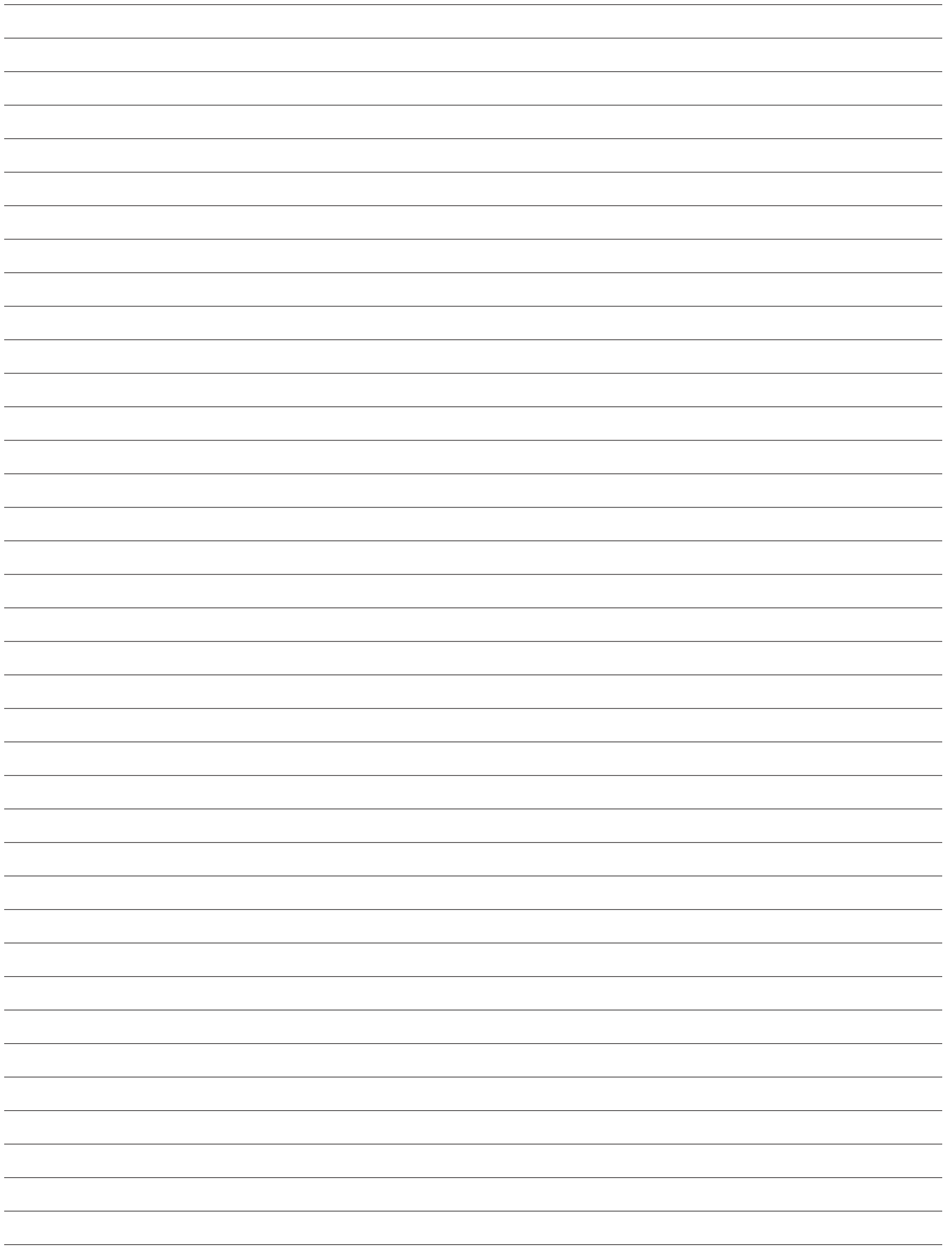
Trustor: A person or persons who put money or property into a trust.

Veterans' Centers: Centers that offer peer counseling services for veterans and family members.

Will: A signed, written legal document that shows how you want your estate to be divided after you die.







In addition to the information provided in this book, the Oregon State Bar provides free legal information at:

www.oregonstatebar.org

Topics include:

Bankruptcy and Debt

Business Law

**Consumer Rights
and Remedies**

Criminal Law

Disability Law

**Arbitration
and Mediation**

**Employment and
Public Benefits**

Family Law

**Gay, Lesbian, Bisexual
and Transgender Rights**

Immigration Law

Landlord and Tenant

Libel and Slander

**Marijuana and Hemp
(Cannabis) Law**

Oregon's Legal System

**Traffic Law and
Auto Accidents**

Youth Law

Wills, Trusts & Elder Law

**Oregon
State
Bar**

The OSB Lawyer Referral Service (LRS) has a variety of programs to help you find the right lawyer.

A referral through our service guarantees you an initial consultation of up to 30 minutes for a maximum fee of \$35.

Depending on your financial situation and legal need, you may qualify for our reduced-fee service called the Modest Means Program.

We also have special referral programs for young people and active-duty military personnel.

For more information on our referral programs, or to fill out an online referral request, please visit our website or give us a call.

www.oregonstatebar.org/public/ris
(503) 684-3763 / (800) 452-7636



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