

Friday, March 15, 2013

House Committee on Human Services and Housing

RE: HB3129
First Hearing, HR D
Personal Testimony

My name is Kevin Burke. I am a professional fiduciary with 12 years of experience. I was President of the Guardian Conservatorship Association in 2006 when we instituted our current system of voluntary certification through the national Center for Guardianship Certification. As you have heard this certification process involves training, testing and criminal background checks that are repeated at regular intervals. We also included an test for an Oregon-specific designation in this process.

Two states, Illinois and Alaska have achieved certification of professional fiduciaries through making the CGC certification process mandatory through state statute. I am here as a practicing fiduciary and member of the GCA to encourage consideration of incorporating this approach, or aspects of this approach, as a means of achieving statutory certification of Oregon fiduciaries in an efficient and cost effective manner. Both states that followed this path are similar to Oregon in having a relatively small number of fiduciaries and a great need for state standards and certification.

I want to briefly highlight how this certification process is already supporting the dignified care of Oregonians who require the protection of professional guardians.

The practice of guardianship by nationally certified guardians is governed by two core values. The first is known as Substitute Judgment, a professional guardian is required to make every effort to follow a protected person's values and judgments. The ability to make decisions that protect a protected person's health and safety while respecting their values, family relationships and personal beliefs is one of the basic duties of a nationally certified guardian. Only after a careful consideration of a client's health, safety and care needs is a nationally certified professional guardian allowed to make a care decision that varies from their client's wishes prior to their incapacity. Though such decisions must sometimes be made on behalf of vulnerable individuals in crisis, the principal of Substituted Judgment, if followed correctly, assures that due process and respect for the rights of protected person are ongoing processes that continue even after a judge signs an order appointing a guardian.

By including the CGC process in Oregon's solution to certifying professional fiduciaries this value would be immediately enshrined in Oregon statute, with existing training materials and standards of practice available to all new fiduciaries.

Similarly, the right of protected persons to receive care in the Least Restrictive setting that is feasible is also a core part of the Center for Guardianship Certification's standards for how certified guardians arrange care for their clients. This means that a professional guardian certified by the CGC is required to assess carefully that his or her client will have the most possible freedom before placing them in any kind of care setting. This standard also requires that a professional guardian periodically reassess a clients' progress so that, for example, they can help a client who has improved in their ability to function move from a group home type setting to their own apartment with appropriate supports. The willingness to follow the principle of helping protected persons live in the Least Restrictive setting is crucial for guardians working with clients whose capacity will fluctuate with treatment or therapy.

Having guardians certified through a process that incorporates the CGC's values will immediately create public awareness that professional guardians are required to employ Substitute Judgment in care decisions and seek out Least Restrictive living situations while protecting their clients' health, safety and dignity. Because of these two values, veteran professional guardians can all tell stories of reviving the health and fortunes of victims of elder financial abuse, traumatic brain injuries, chronic mental illness and other disabilities.

I thank the committee for permitting me the time to highlight the core values that guide the training and national certification of professional guardians and encourage them to consider incorporating the Center for Guardianship Certification's system for certifying professional guardians in any statutory certification plan.