



May 16, 2017

TO: Senator Floyd Prozanski, Chair
Senate Committee on Judiciary
FR: Bob Joondeph, Executive Director
RE: HB 2630

Disability Rights Oregon (DRO) is Oregon's nonprofit *Protection and Advocacy* office that provides legal-based advocacy to Oregonians with disabilities. DRO has a role under state law to monitor guardianship proceedings for individuals with mental health or developmental disabilities who may be placed in restrictive settings. As a result of this work, DRO has recognized ways in which our guardianship statutes can be improved to assure that those subject to guardianships have an opportunity to be heard in the process.

I would first like to address a concern that have recently be raised about the bill's requiring 30 day notice of a change of placement or abode. As described below, Section 5 of the bill requires 30 day notice to the protected person and the court except when the guardian determines "that the change or placement must occur in less than 30 days to protect the immediate health, welfare or safety of the protected person or others".

The concern is NOT that a guardian will not be able to act when necessary. The guardian has authority to override the time limit based upon the guardian's own assessment of need. The concern is that almost all cases require immediate relocation and so Section 5 is misleading.

From DRO's perspective, this concern actually reinforces the need for Section 5. Under present law, a guardian may change the abode of the protected person at any time and under any circumstances without notice to the court or protected person and without an opportunity for objection by the protected person. DRO has heard many stories from protected persons about their being notified of a change of abode moments before being transported to a new and strange residence.

Such a precipitous change of residence, unless truly necessary, seems to be not only unhealthy but to contradict the standards set out in ORS 125.300:

125.300 In general. (1) A guardian may be appointed for an adult person only as is necessary to **promote and protect the well-being of the protected person**. A guardianship for an adult person must be designed to encourage the development of **maximum self-reliance and independence of the protected person and may be ordered only to the extent necessitated by the person's actual mental and physical limitations**.

(2) An adult protected person for whom a guardian has been appointed **is not presumed to be incompetent.**

(3) A protected person **retains all legal and civil rights** provided by law except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the person include but are not limited to the right to contact and retain counsel and to have access to personal records.

For these reasons, DRO believes that the recently raised concern is not supported by the purpose of our guardianship system and actually exemplifies the practices that Section 5 hopes to moderate.

Returning to the bill as a whole, HB 2630 would make the following changes:

Section 1 concerns the contents of a petition in a protective proceeding. It requires that, among the factual information that supports a request for appointment, the “alternatives to the appointment of a fiduciary that have been considered and why the alternatives are inadequate” be included.

Section 2 requires that notices of motions for the termination of the protective proceedings, for removal of a fiduciary, for modification of the powers or authority of a fiduciary, for approval of a fiduciary’s actions or for protective orders in addition to those sought in the petition include the address, telephone number or other contact information of the protected person.

Section 3 permits a protected person to object to motion that has been filed in a protective proceeding orally in person or by other means that are intended to convey the person’s objections to the court. It further directs the court to designate the manner in which oral objections may be effectively made.

Section 4 eliminates the court’s authority to waive the appointment of a court visitor when considering appointment of a successor fiduciary.

Section 5 requires a guardian to inform the court and give the protected person 30 days prior notice of changing the placement or abode of the protected person. The 30 day requirement may be waived by a guardian who determines that the change or placement must occur in less than 30 days to protect the immediate health, welfare or safety of the protected person or others. If swift action is necessary, the court and protected person are to be notified with as much advance notice as possible, in no event later than two judicial days after the change or placement occurs.

Section 6 requires that yearly Guardian’s Reports include facts that support the conclusion that the person is incapacitated. The Report will also provide notice to anyone who has concerns about the guardianship on how to contact the court.

In addition to the printed bill, DRO would propose additional provisions, by amendment that would:

- Require petitions to designate the exact powers a proposed fiduciary is seeking,
- Require petitioners to provide written information regarding less restrictive alternatives that have been tried and the reason for their failure,
- Assure that contact information for a protected person is adequate to allow the person to be reached,
- Expand the time of prior notice for a change of residence to 30 days,
- Change the term “incapable” to “incapacitated” in ORS 125.325(11) so that it is consistent with the chapter.

Thank you for this opportunity to testify in support of HB 2630.