



Guardian/Conservator Association of Oregon, Inc.

May 14, 2017

Re: House Bill 2630

Dear Members of the Senate Judiciary Committee:

The Board of Directors of the Guardian/Conservator Association of Oregon (GCA) objects to House Bill 2630. Specifically, the GCA Board objects to the requirement in the Bill that fiduciaries provide thirty days notice prior to moving a protected person. While this bill substantially affects professional fiduciaries statewide, GCA was not contacted or included as a stakeholder in the discussion that resulted in the Bill. This letter explains who GCA is and why this provision of HB 2630 causes us great concern.

GCA is an organization of more than one hundred professional fiduciaries who serve as guardians and other fiduciary roles throughout Oregon. GCA is an affiliate of the National Guardianship Association (NGA), and is the main provider, in Oregon, of required certification credits for professional fiduciaries through the national Center for Guardianship Certification (CGC). Often, GCA members serve in cases which vulnerable citizens need the assistance of a medical decisionmaker, and no friends or family are able or appropriate to serve.

One of the most challenging issues that GCA members face is placement of a protected person in a guardianship case. No decision is more vital, but the scarcity of placement options often forces the guardian to accept an open room or bed for the protected person without hesitation and with limited notice. In nearly all cases involving GCA members, a thirty day notice period prior to accepting an open bed or room for a protected person would mean that the protected person would lose the opportunity to move to a more appropriate care environment every time that opportunity arose, or pay to hold the new placement while paying for current placement and waiting for the notice period to run. Although House Bill 2630 includes exceptional circumstances in which thirty days notice prior to a move is not required, these exceptional circumstances nearly always exist. Attached is an example of the typical placement decision that a GCA member faces.

Current law requires a guardian to provide notice of the intent to move a protected person to a mental health treatment facility, nursing home, or other care facility at least fifteen days prior to the move (ORS 125.320(3)). Further, the court may remove a guardian for failing to provide this notice (ORS 125.225(3)). The requirement of fifteen days prior notice is inconsistent with the reality that



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guardian's face: placements are secured or lost in days, sometimes hours. The requirement of thirty days prior notice deepens this disconnect between the law and its practical application.

GCA is aware that of all guardian authorities, the authority to place a protected person is one of the most invasive. As a result, GCA members strive to provide as much notice as possible. However, a protected person will benefit from placement in an appropriate care environment more than he will benefit from prior notice. The thirty day notice period required in HB 2630 will make this essential benefit nearly impossible to claim. GCA favors that the existing notice requirement in the statute, already challenging for guardians to fulfill, is retained without change.

Thank you for your consideration.

Sincerely,

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The following anecdote, provided by a GCA member, is representative of placement issues which guardians face:

Recently a temporary guardian was appointed for an elderly woman, Mrs. S who was residing in her own home. Her water service had been shut off due to non-payment of the bill, and her electricity and natural gas bills were about to be disconnected for the same reason. The woman was paranoid and suffered from cognitive impairment. Adult protective services made a referral to a professional fiduciary to intervene and assist the woman.

Between the time Mrs. S was served with the notice informing her of the pending guardianship and the time the temporary guardian was appointed, she was removed by the police from a local mall because she was yelling racial epithets at other shoppers. The police transported her to the hospital. The hospital stabilized her medically and was prepared to transfer her to a local inpatient geriatric psychiatry unit for evaluation. However, she improved to the point of being ineligible for inpatient psychiatric evaluation and treatment. The temporary guardian received a phone call mid-day from the hospital social worker who requested that the guardian find a memory care



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facility for Mrs. S since the hospital staff felt she was not safe returning to living independently in her home.

The temporary guardian began calling local facilities and sharing the limited information it had about Mrs. S in hopes of finding a place for her to go. To further complicate matters, the temporary guardian had no information about Mrs. S's financial resources, so a facility which accepted Medicaid residents needed to be found. The following day, a facility was found that had availability and was willing to take Mrs. S.

Had the proposed changes to ORS 125.320 been in place, the guardian would have had a more difficult time placing Mrs. S. There is no mechanism for keeping a medically and/or psychiatrically stable individual hospitalized in order to wait out a notice period (whether it be 5, 15, or 30 days). Additionally, it is my understanding that Mrs. S could not have been transferred from the medical unit of hospital A to the geriatric psychiatry unit of hospital B without an additional 30 day notice period. Vacancies in nursing homes, assisted living facilities, adult care homes and ESPECIALLY specialty care facilities (for example secure mental health treatment facilities) are very fluid. A facility may have three vacancies on Monday and none on Friday. A facility is not going to hold a bed for someone for 30 days without some type of payment. While this may be fine for individuals with ample financial resources, it is impossible for individuals on public assistance benefits. Additionally, because of the severe lack of specialty care facilities, vacancies in these types of settings are extremely rare and are generally snatched up immediately. Imposing a 30 day waiting period before moving into a specialty care facility would make an already challenging task nearly impossible.