Guardian/Conservator Association of Oregon, Inc.

Senator Floyd Prozanski, Chair
Senator Kim Thatcher, Vice-Chair
Senator Michael Dembrow, Member
Senator Dennis Linthicum, Member
Senator James Manning Jr., Member

May 18, 2017

Re: House Bill 2630

Dear Chair Prozanski, Vice-Chair Thatcher, and members of the Committee:

Thank you for the opportunity to provide testimony on House Bill 2630. As requested, on behalf of the Guardian/Conservator Association of Oregon ("GCA"), I offer additional written testimony for your consideration regarding the proposed HB 2630. The GCA opposes this bill as currently written, on the following grounds:

1) the proposed 30-day advance notice requirement (and associated costs of court filings) every time a protected person wants or needs to be moved to a different residential setting does not allow for the prompt actions needed to be taken by a court-appointed fiduciary to be able to effectively secure the most suitable place for the person to live;

2) the requirement to advise a court if a "plenary" guardianship is being requested is confusing, lacks definition, and has no meaningful application to ORS Chapter 125 as it currently exists; and

3) a portion of the bill appears to legislatively overrule recent Oregon appellate case law regarding a guardian's ability and responsibility to protect certain disclosures of a protected person's location where protection of that information is in the best interests of the protected person.

As noted in the recently-submitted testimony of Tim McNeil, GCA president, the GCA was not contacted or afforded opportunity to be involved in the modification of laws that affect the way that professional guardians can take care of the persons they are appointed and trusted to serve. While the GCA welcomes the chance for future involvement in discussions of how Oregon's guardianship laws and procedural best practices can advance the care and protection of persons adjudged to be incapacitated by a court, we recognize that time for dialogue on the issues raised by HB 2630 as introduced, and as modified, is short in this legislative session.

Action Requested:

Accordingly, the GCA respectfully requests this Committee to either **not move this bill** so that an informed and collaborative approach to modification of guardianship laws can occur prior to the next legislative session, or to **modify** the bill as suggested by the submitted Proposed -1 Amendment to HB 2630-A (submitted separately, for convenience) in such format as is agreeable to the committee and as legislative counsel may prepare.

Rationale:

1) <u>The existing statutory requirement and timeframe for notice of change of residence of a protected person should be retained, and the proposed 30-day requirement should be rejected</u>.

The members and board members of the GCA support enhancements to the law that will allow a protected person to exercise such independence and civil rights as they are able to, and that will maximize the opportunities made available to protected persons to be able to have determination over their life circumstances. The professional guardians and conservators of the GCA also need to have the tools and legal authority to be able to promptly assist their clients when needs arise and preferences can be met, *without having to wait at least 30-days to be able to act*.

Currently, Oregon law requires that guardians inform the court and provide relevant notice to certain persons noted in statute when the guardian plans to, or has had to, change the residence of a protected person. Specifics are set out in ORS 125.320 concerning "limitations on guardian." The time frame for associated court notice requires at least 15 days before the final date for the filing of objections to the petition or motion. ORS 125.065(3). Existing law already provides for notification and due process regarding notices of changes of residence and clearly describes the opportunity for persons to object to a proposed move.

While supporting due process rights for all persons under guardianship or conservatorship, the GCA recognizes that the majority of guardianships for an incapacitated person are not "contested" and controversial, nor do they present frequent need for judicial intervention or litigation proceedings in court. With this in mind, expanding the time frame for notices from 15 days to 30 provides little practical benefit to a protected person but hampers her guardian's ability to act promptly to provide medical care or other residential care protections, and to act swiftly to secure a better and more suitable residential environment.

GCA members provide the following testimonial excerpts, as sample cases, for your consideration:

> *"The 30 day standard notice of change in placement, as proposed by HB 2630, would create hardship and risk to our guardianship clients. Many of our clients need to be moved quickly due to issues of safety and appropriateness of care. Waiting 30 days could cause the very issues of safety and risk that a change in placement seeks to avoid. In addition, clients would need to pay for the room the guardian seeks to move the client to, while still having to pay the current placement until the notice is up. Many of our clients are on Medicaid and are simply unable to pay to have a room held for them while waiting the 30 days. We recently had a client who was disabled who was in need of more support and a higher level of care than his independent living situation could provide. We toured assisted living facilities and found an appropriate one that he liked, but the facility was only willing to hold the room for a week. We had to move quickly because to wait would have resulted in our client not having an appropriate place to live with*

the higher level of care that he needed for his health and safety. Please keep the 15 day required notice period."

Becky Reichard, Case Manager
Senior Citizens Council of Clackamas County,
GCA board member

"While HB 2630 was undoubtedly written with good intentions of providing protections for a protected person, its application is problematical. A major concern is that a facility will not hold a bed/room for 30 days without payment. A good placement may be lost when the protected person is not at risk in the current setting, and/or there are no funds to pay for two facilities. It is often difficult to find an opening in an appropriate facility. Given the practicalities of securing an appropriate placement, requiring prior 30-day notice would be onerous."

S. Jane Patterson
Attorney at Law,
GCA board member

"HB 2630 would impose a 30 day standard notice prior to a guardian being authorized to change the placement of a protected person. While notice of a change in placement is essential in guardianship cases, thirty days' notice prior to a change in placement is inconsistent with the reality that every guardian faces when considering placement changes. The need to change placement often arises in times of crisis, and appropriate placement options, particularly when mental health issues are involved, are limited. Guardians must accept or lose placement options in days, not weeks, or risk losing placement and leaving the protected person in a care environment that may be hostile or, most importantly, unable to satisfy care needs. While HB 2630 allows a guardian to waive notice in certain circumstances, when those circumstances almost always exist, it indicates that a thirty day notice standard is not appropriate. The existing notice standard of 15 days should remain in place."

Timothy McNeil
Attorney at Law,
GCA President

"Meet our client, MR. MR spent several weeks in an acute care hospital after being determined in need of care for a psychotic disorder. When she was stable, the search began for an

appropriate treatment facility. After several weeks of searching, complete informational packets having been sent throughout the State, a vacancy became available at a secure facility in Hermiston area. She was quickly moved out of the hospital and into the facility.

But, within 2 weeks, MR had been evicted for assaulting a peer. She was taken to jail, booked, and released-- in December, in Pendleton. We asked a secure transportation company to retrieve her from Pendleton and bring her back to the Metro area. Because she was without a prescriber, without a behavioral health system, and her County of Responsibility was not in the Metro area, no one would help us find placement for her. (Her COR had already informed us they had no resources for her.) We placed MR in a motel with daily spending cards (pre-paid VISA) for food and transportation. She walked away and was on the streets-- psychotic, and she developed pneumonia before we could find her in January. She was again hospitalized in an acute care setting. Again informational packets were distributed throughout the State. Again we waited many weeks for MR's acceptance in an appropriate facility. She was considered at baseline at about 60 days-- and the search continued until day 118 at which time MR was told she had to go... with no facility willing to take her. She is, again in a motel, awaiting appropriate treatment in the community. But, again, without the involvement of her County of Responsibility, she has few prospects of placement or treatment.

It is a daunting prospect to think we might be saddled with a mandatory 30-Day Notice before moving MR to an appropriate facility when/ if we find one. It will be financially untenable to have her remain in a motel for an additional 30 days at $60/ night, to be without a treatment provider, without a prescriber, and without the services required to assist this very ill woman. And, should a facility bed become available, administration would not hold a bed while we waited for the 30-day notice period to elapse. As she was deemed 'at baseline' when discharged from the hospital, thus no immediate threat to her health and well-being, we would not be able to rely upon that facet of the rule to allow quick placement without 30-Day Notice.

I humbly request that the requirement for 30-Day Notice be reconsidered in the best interest of many vulnerable and mercurial mentally ill persons who are dependent upon a guardian. The guardian must be able to find facilities and to be able to act quickly and decisively before someone snaps up the opportunity to avail a very precious resource.

Thank you very much for your consideration. Someday, when we have adequate facilities and resources for this vulnerable

population, the notion of 30-Day Notice will be more realistic. But now, it is a scary prospect!"

Nancy Doty, Nancy Doty, Inc.
BSN; Oregon Certified Professional Fiduciary
National Certified Guardian / Center for Guardian Certification.

"I was a practitioner of this "art" of guardianship for some 25 years with the Multnomah County Public Guardian and currently serve on the GCA Board of Directors. In my reading of HB 2630 and the documentation by its proponents, I see no compelling reason to change the placement notice period from its current 15 days to a proposed 30 days. The change to 30 days would, I fear, initiate an almost "cottage industry" of giving a generalized four-week notice even if the guardian didn't quite know where the protected person was going. Remember, guardians must hire attorneys to do this work, and, the protected person pays the legal bills. Why add this expense, when the possible placement might not even materialize? At the current 15 days, plans are more definite and the legal notice more definite and precise. Lacking a compelling reason to change this statute, the 15-day notice period should remain as it is."

Jeff Brandon,
GCA Director

"HB 2630 proposes to increase the objection period for a notice of move from 15 to 30 days. I am concerned about how this change in notice period would affect guardianship clients forced to move due to the closure of their current care setting. On February 16, 2017, this office was notified that a care facility outside of the Portland metro area specializing in treatment of individuals diagnosed with a chronic mental illness had decided to close. The staff at the facility was actively looking for new placements for each of the residents, two of whom are current guardianship clients on Medicaid. The guardian could not have filed the move notices when notified of the closure of the facility because neither of the clients had placements immediately lined up. Once the placements were secured, the guardian could have filed the notices but by the time the 30 day objection period had passed the vacancies would have been filled because neither of the clients had funds available to pay a deposit to hold a room for 30 days. The clients were still living in their current residence (which had not yet closed), so the move was not necessitated by an immediate threat to their health, welfare or safety, therefore negating the option of providing notice after the move.

Client A was screened by a provider on March 21, approved to move in on March 27, and physically moved into an adult care home in the Portland metro area on April 1.

Client B had a placement interview on February 17, was approved to move in on February 21, and physically moved into a new care setting on February 23.

Finding residences for individuals diagnosed with a chronic mental illness is already challenging due to the shortage of appropriate care settings throughout the state. I feel a 30 day notice period for a change in residence as proposed in HB 2630 would make this already cumbersome process virtually impossible."

Stefanie Young
Nancy Doty Inc.,
GCA board member

For all of the above reasons, the GCA recommends that the proposed 30-day notice requirement be removed from HB 2630.

2) <u>The requirement for a petitioner to advise a court if a "plenary" guardianship is being requested is confusing, lacks definition, and has no meaningful application to ORS Chapter 125</u>.

The proposed HB 2630-A requires a petition in a protective proceeding to include a statement "that indicates whether the petitioner is petitioning for plenary authority or specified limited authority for the person nominated as fiduciary." A-Eng. HB 2630, at page 2, lines 19-20. This requirement adds unnecessary confusion to protective proceedings as "plenary authority" is not defined in ORS Chapter 125; nor is it defined in the proposed bill. In fact, the statutory scheme sets forth numerous limitations on a fiduciary's authority to act, and lists specific situations in which a fiduciary can only act with separately-requested court permission.

It is not at all clear that plenary authority exists in the context of Oregon guardianships. Rather, the judge, and not any of the parties, decides what authority will be granted to a court-appointed fiduciary. See ORS 125.305(2): "The court shall make a guardianship order that is no more restrictive upon the liberty of the protected person than is reasonably necessary to protect the person." Because the proposed bill would establish plenary guardianships as a confusing classification of guardianship without definition, the GCA suggests that this requirement should be removed from the bill.

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3) The proposed bill appears to legislatively overrule recent Oregon appellate case law regarding a guardian's ability and responsibility to protect certain disclosures of a protected person's location where protection of that information is in the best interests of the protected person.

The GCA brings to this committee's attention that the provision of HB 2630 appearing on page 4, lines 31-32, requiring a guardian to always disclose the specific whereabouts and contact information for the protected person, sets forth a requirement that seems contrary to the recent Oregon appellate court decision in *State v. Symons (In re Symons)*, 264 Or.App. 769, 333 P.3d 1170 (Or.App.2014), available at: http://www.publications.ojd.state.or.us/docs/A152489.pdf.

In that case, the Oregon Court of Appeals held that a trial court did not err in not requiring a guardian to disclose a protected person's address information where disclosure would not be in the protected person's best interests, as a guardian has a duty to immediately and directly promote and protect the welfare of the protected person. Proposed HB 2630 does not provide an exception to disclosure requirements to protect the best interests of a protected person. The GCA brings this case to light so committee members may be informed of additional consequences of the passage of this proposed bill in its current form.

Thank you for the opportunity to provide testimony on this bill.

Sincerely,

Christian Hale,
Vice-President, Guardian/Conservator Association of Oregon,
on behalf of its members

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