Submitter: victoria blachly

On Behalf Of:

Committee: Senate Committee On Judiciary

Measure: SB528

Dear Chair Senator Prozanski and the Senate Committee on Judiciary:

As an Oregon and Washington attorney of more than 25 years' experience, with an emphasis on fiduciary litigation, trust and estate litigation, and protective proceedings, I write in opposition to SB 528. The new provisions will increase the expense of a protective proceeding, particularly with petitioning every 5 years and seeking the input of the protected person prior to filing the annual reports. What benefit does it have to seek that input? What if the protected person objects to X, Y or Z, yet the law in Oregon already requires X, Y or Z to be in the report? That will alienate the protected person even more.

Right before typing this testimony, I heard this statistic at a legal seminar, from the Washington County Probate Department: They spend 58.5% of their time "consumed with protective proceedings." The new provisions of SB 528 would take an already overstressed court staff and bench and push them to failure. Before any serious consideration of this bill is considered, the fiscal impact to the courts should be evaluated by professionals.

The new restriction to life sustaining medicine under 125.320(1)(c) would leave protected people stranded in a hospital, without the medical decision maker allowed to make the most important of medical decisions. As the new provision reads, if there is no advance health care directive, then the Guardian cannot make those decisions. Then who is going to make those decisions? The doctor? Hospitals aren't going to take on that role, when there is a court-appointed guardian and more often than not, hospitals are loathe to make those decisions without a guardian. This creates a bizarre new mess.

The new provision for living arrangements also seems unworkable, where options are limited unless the court order says the fiduciary can make specific living arrangement decisions. Often the fiduciary doesn't know the plan, when first appointed, so that initial order may not contemplate the living arrangements sufficiently. Or there can be emergency situations where prompt living arrangements need to be made, to address various challenges. Oregon law already has a provision that requires the fiduciary to notify the court about living arrangements, so why add a new and unnecessary provision?

There is a national focus to implement lesser restrictive measures, which is already required under Oregon law, and I appreciate the desire to treat protected persons

with dignity and respect in seeking the least restrictive plan to ensure their safety. However, the length to which the new provisions would require an expanded report is going to significantly increase the expense of protective proceedings. If the proponent of this bill is concerned that there are Oregon judges not already considering lesser restrictive measures, then the remedy is to increase education of the bench and court visitors, not require the assets of the protected person to be used for unnecessary administrative expenses.

And for those on the Judiciary Committee that are unaware, that is where the expense for these new requirements would fall - on the vulnerable persons we are already seeking to protect. The law in Oregon is that the assets of a protected person may be used for the legal expenses of the guardian, after court review and approval. SB 528 will generate more legal fees that will be borne by the protected persons.

Another major concern that has been raised to me (but is not my particular area of law) is who will pay for the Medicaid Guardian of the Person's extra cost when all financial resources are reserved for housing, supplemental insurance, and personal funds?

These are but some of the numerous concerns that are being discussed by Oregon attorneys that practice in this area. Accordingly, I respectfully ask that SB 528 not proceed.