

AN ACT

relating to the health care providers authorized to examine a person to determine whether the person is incapacitated for purposes of certain guardianship proceedings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 1101, Estates Code, is amended by adding Sections 1101.100 and 1101.1011 to read as follows:

Sec. 1101.100. DEFINITIONS. In this subchapter:

(1) "Advanced practice registered nurse" has the meaning assigned by Section 301.152, Occupations Code.

(2) "Physician" means an individual licensed by the Texas Medical Board to practice medicine in this state.

Sec. 1101.1011. LIMITATION ON ACTS BY ADVANCED PRACTICE REGISTERED NURSE. An advanced practice registered nurse may act under this subchapter only if the advanced practice registered nurse is acting under a physician's delegation authority and supervision in accordance with Chapter 157, Occupations Code.

SECTION 2. Section 1101.103, Estates Code, is amended to read as follows:

Sec. 1101.103. DETERMINATION OF INCAPACITY OF CERTAIN ADULTS: HEALTH CARE PROVIDER [~~PHYSICIAN~~] EXAMINATION. (a) Except as provided by Section 1101.104, the court may not grant an application to create a guardianship for an incapacitated person,

1 other than a minor or person for whom it is necessary to have a  
2 guardian appointed only to receive funds from a governmental  
3 source, unless the applicant presents to the court a written letter  
4 or certificate from a physician or advanced practice registered  
5 nurse [~~licensed in this state~~] that is:

6 (1) dated not earlier than the 120th day before the  
7 date the application is filed; and

8 (2) based on an examination the physician or advanced  
9 practice registered nurse performed not earlier than the 120th day  
10 before the date the application is filed.

11 (a-1) For purposes of Subsection (a), a letter or  
12 certificate based on an examination by an advanced practice  
13 registered nurse must be signed by the supervising physician.

14 (b) The letter or certificate must:

15 (1) describe the nature, degree, and severity of the  
16 proposed ward's incapacity, including any functional deficits  
17 regarding the proposed ward's ability to:

18 (A) handle business and managerial matters;

19 (B) manage financial matters;

20 (C) operate a motor vehicle;

21 (D) make personal decisions regarding residence,  
22 voting, and marriage; and

23 (E) consent to medical, dental, psychological,  
24 or psychiatric treatment;

25 (2) in providing a description under Subdivision (1)  
26 regarding the proposed ward's ability to operate a motor vehicle  
27 and make personal decisions regarding voting, state whether in the

1 physician's opinion the proposed ward:

2 (A) has the mental capacity to vote in a public  
3 election; and

4 (B) has the ability to safely operate a motor  
5 vehicle;

6 (3) provide an evaluation of the proposed ward's  
7 physical condition and mental functioning and summarize the  
8 proposed ward's medical history if reasonably available;

9 (3-a) in providing an evaluation under Subdivision (3),  
10 state whether improvement in the proposed ward's physical condition  
11 and mental functioning is possible and, if so, state the period  
12 after which the proposed ward should be reevaluated to determine  
13 whether a guardianship continues to be necessary;

14 (4) state how or in what manner the proposed ward's  
15 ability to make or communicate responsible decisions concerning  
16 himself or herself is affected by the proposed ward's physical or  
17 mental health, including the proposed ward's ability to:

18 (A) understand or communicate;

19 (B) recognize familiar objects and individuals;

20 (C) solve problems;

21 (D) reason logically; and

22 (E) administer to daily life activities with and  
23 without supports and services;

24 (5) state whether any current medication affects the  
25 proposed ward's demeanor or the proposed ward's ability to  
26 participate fully in a court proceeding;

27 (6) describe the precise physical and mental

1 conditions underlying a diagnosis of a mental disability, and state  
2 whether the proposed ward would benefit from supports and services  
3 that would allow the individual to live in the least restrictive  
4 setting;

5 (6-a) state whether a guardianship is necessary for the  
6 proposed ward and, if so, whether specific powers or duties of the  
7 guardian should be limited if the proposed ward receives supports  
8 and services; and

9 (7) include any other information required by the  
10 court.

11 (b-1) For purposes of Subsection (b)(2), the opinion of an  
12 advanced practice registered nurse that is based on an examination  
13 of a proposed ward conducted by the advanced practice registered  
14 nurse under delegation from and supervision by a physician and is  
15 signed by the supervising physician is considered the supervising  
16 physician's opinion.

17 (c) If the court determines it is necessary, the court may  
18 appoint the necessary physicians or advanced practice registered  
19 nurses to examine the proposed ward. The court must make its  
20 determination with respect to the necessity for a physician's or  
21 advanced practice registered nurse's examination of the proposed  
22 ward at a hearing held for that purpose. Not later than the fourth  
23 day before the date of the hearing, the applicant shall give to the  
24 proposed ward and the proposed ward's attorney ad litem written  
25 notice specifying the purpose and the date and time of the hearing.

26 (d) A physician or advanced practice registered nurse who  
27 examines the proposed ward, other than a physician, advanced

1 practice registered nurse, or psychologist who examines the  
2 proposed ward under Section 1101.104(2), shall make available for  
3 inspection by the attorney ad litem appointed to represent the  
4 proposed ward a written letter or certificate from the physician or  
5 advanced practice registered nurse that complies with the  
6 requirements of Subsections (a) and (b).

7 SECTION 3. Section 1101.104, Estates Code, is amended to  
8 read as follows:

9 Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING  
10 INTELLECTUAL DISABILITY. (a) If an intellectual disability is the  
11 basis of the proposed ward's alleged incapacity, the court may not  
12 grant an application to create a guardianship for the proposed ward  
13 unless the applicant presents to the court a written letter or  
14 certificate that:

15 (1) complies with Sections 1101.103(a) and (b); or  
16 (2) shows that not earlier than 24 months before the  
17 hearing date:

18 (A) the proposed ward has been examined by a  
19 physician or advanced practice registered nurse or by a  
20 psychologist licensed in this state or certified by the Health and  
21 Human [~~Department of Aging and Disability~~] Services Commission to  
22 perform the examination, in accordance with rules of the executive  
23 commissioner of the commission [~~Health and Human Services~~  
24 ~~Commission~~] governing examinations of that kind, and the  
25 [~~physician's or psychologist's~~] written findings and  
26 recommendations include a determination of an intellectual  
27 disability; or

1 (B) a physician or advanced practice registered  
2 nurse or a psychologist licensed in this state or certified by the  
3 Health and Human [~~Department of Aging and Disability~~] Services  
4 Commission to perform examinations described by Paragraph (A)  
5 updated or endorsed in writing a prior determination of an  
6 intellectual disability for the proposed ward made by a physician  
7 or by a psychologist licensed in this state or certified by the  
8 commission [~~department~~].

9 (a-1) For purposes of Subsection (a), a letter or  
10 certificate based on an examination by an advanced practice  
11 registered nurse must be signed by the supervising physician.

12 (b) For purposes of Subsection (a)(2)(B), the determination  
13 of an advanced practice registered nurse that is based on an  
14 examination of a proposed ward conducted by the advanced practice  
15 registered nurse under delegation from and supervision by a  
16 physician and is signed by the supervising physician is considered  
17 the supervising physician's determination.

18 SECTION 4. Section [1102.002](#), Estates Code, is amended to  
19 read as follows:

20 Sec. 1102.002. ESTABLISHMENT OF PROBABLE CAUSE FOR  
21 INVESTIGATION. (a) In this section:

22 (1) "Advanced practice registered nurse" has the  
23 meaning assigned by Section [301.152](#), Occupations Code.

24 (2) "Physician" has the meaning assigned by Section  
25 [1101.100](#).

26 (b) An advanced practice registered nurse may act under this  
27 section only if the advanced practice registered nurse is acting

1 under a physician's delegation authority and supervision in  
2 accordance with Chapter 157, Occupations Code.

3 (c) To establish probable cause under Section 1102.001, the  
4 court may require:

5 (1) an information letter about the person believed to  
6 be incapacitated that is submitted by an interested person and  
7 satisfies the requirements of Section 1102.003; or

8 (2) a written letter or certificate from a physician  
9 or advanced practice registered nurse who has examined the person  
10 believed to be incapacitated that satisfies the requirements of  
11 Section 1101.103, except that the letter must be:

12 (A) dated not earlier than the 120th day before  
13 the date of the appointment of a guardian ad litem or court  
14 investigator under Section 1102.001; and

15 (B) based on an examination the physician or  
16 advanced practice registered nurse performed not earlier than the  
17 120th day before that date.

18 (d) For purposes of Subsection (c)(2), a letter or  
19 certificate based on an examination by an advanced practice  
20 registered nurse must be signed by the supervising physician. The  
21 opinion of an advanced practice registered nurse that is based on an  
22 examination of a proposed ward conducted by the advanced practice  
23 registered nurse under delegation from and supervision by a  
24 physician and signed by the supervising physician is considered the  
25 supervising physician's opinion.

26 SECTION 5. Section 1202.054(b-1), Estates Code, is amended  
27 to read as follows:

1 (b-1) A written letter or certificate from a physician or  
2 advanced practice registered nurse as described by Section 1202.152  
3 is not required before the appointment of the court investigator or  
4 a guardian ad litem under Subsection (b).

5 SECTION 6. Section 1202.152, Estates Code, is amended to  
6 read as follows:

7 Sec. 1202.152. HEALTH CARE PROVIDER'S [~~PHYSICIAN'S~~] LETTER  
8 OR CERTIFICATE REQUIRED. (a) In this section:

9 (1) "Advanced practice registered nurse" has the  
10 meaning assigned by Section 301.152, Occupations Code.

11 (2) "Physician" has the meaning assigned by Section  
12 1101.100.

13 (b) An advanced practice registered nurse may act under this  
14 section only if the advanced practice registered nurse is acting  
15 under a physician's delegation authority and supervision in  
16 accordance with Chapter 157, Occupations Code.

17 (c) The court may not grant an order completely restoring a  
18 ward's capacity or modifying a ward's guardianship under an  
19 application filed under Section 1202.051 unless the applicant  
20 presents to the court a written letter or certificate from a  
21 physician or advanced practice registered nurse licensed in this  
22 state that is dated:

23 (1) not earlier than the 120th day before the date the  
24 application was filed; or

25 (2) after the date the application was filed but  
26 before the date of the hearing.

27 (c-1) For purposes of Subsection (c), a letter or



1 certificate based on an examination by an advanced practice  
2 registered nurse must be signed by the supervising physician.

3 (d) [~~(b)~~] A letter or certificate presented under  
4 Subsection (c) [~~(a)~~] must:

5 (1) describe the nature and degree of incapacity,  
6 including the medical history if reasonably available, or state  
7 that, in the physician's opinion, the ward has the capacity, or  
8 sufficient capacity with supports and services, to:

9 (A) provide food, clothing, and shelter for  
10 himself or herself;

11 (B) care for the ward's own physical health; and

12 (C) manage the ward's financial affairs;

13 (2) provide a medical prognosis specifying the  
14 estimated severity of any incapacity;

15 (3) state how or in what manner the ward's ability to  
16 make or communicate responsible decisions concerning himself or  
17 herself is affected by the ward's physical or mental health;

18 (4) state whether any current medication affects the  
19 ward's demeanor or the ward's ability to participate fully in a  
20 court proceeding;

21 (5) describe the precise physical and mental  
22 conditions underlying a diagnosis of senility, if applicable; and

23 (6) include any other information required by the  
24 court.

25 (e) For purposes of Subsection (d), the opinion of an  
26 advanced practice registered nurse that is based on an examination  
27 of a ward conducted by the advanced practice registered nurse under

1 delegation from and supervision by a physician and is signed by the  
2 supervising physician is considered the supervising physician's  
3 opinion.

4 (f) [~~(e)~~] If the court determines it is necessary, the court  
5 may appoint the necessary physicians or advanced practice  
6 registered nurses to examine the ward in the same manner and to the  
7 same extent as a ward is examined by a physician or advanced  
8 practice registered nurse under Section [1101.103](#) or [1101.104](#).

9 SECTION 7. The changes in law made by this Act apply only to  
10 an application for the appointment of a guardian, for the complete  
11 restoration of a ward's capacity, or for the modification of a  
12 guardianship that is filed on or after the effective date of this  
13 Act. An application filed before the effective date of this Act is  
14 governed by the law in effect on the date the application was filed,  
15 and the former law is continued in effect for that purpose.

16 SECTION 8. This Act takes effect September 1, 2023.

---

President of the Senate

---

Speaker of the House

I certify that H.B. No. 3009 was passed by the House on May 11, 2023, by the following vote: Yeas 142, Nays 2, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3009 on May 25, 2023, by the following vote: Yeas 142, Nays 0, 1 present, not voting.

---

Chief Clerk of the House

I certify that H.B. No. 3009 was passed by the Senate, with amendments, on May 23, 2023, by the following vote: Yeas 31, Nays 0.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor