

## **BILL ANALYSIS**

C.S.H.B. 1708  
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Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

When an application has been filed to create a guardianship for a person with mental retardation, a judge may not grant that application without a letter or certificate from a licensed physician or psychologist providing verification of the person's mental retardation. When the Legislature amended the Probate Code to allow these certificates to be submitted by psychologists, there were concerns that the psychologists needed to follow certain rules and procedures when making their assessments. In response, the Legislature again amended the code to require that psychologists comply with rules developed by the Health and Human Services Commission. This change unintentionally required physicians to certify that they had complied with the Commission's rules, despite the fact that physicians had previously been subject only to their own medical standards of professional conduct.

C.S.H.B. 1708 clarifies the Probate Code by specifying that a physician may submit a letter or certificate verifying a person's mental retardation, without complying with the rules developed by the Health and Human Services Commission. Psychologists continue to be required to comply with such rules. To safeguard thorough examination of proposed wards, C.S.H.B. 1708 also includes additional information a physician must include in their letter or certificate to provide a detailed evaluation to the court.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

CSHB 1708 amends Section 687, Probate Code, to allow an applicant, when requesting a court to grant an application to create a guardianship for an incapacitated person whose alleged incapacity is mental retardation, to either present a written letter or certificate from a physician as provided in Subsection (a) verifying the proposed ward's mental retardation or present documentation showing that a physician or psychologist has, within 24 months of the hearing, examined the proposed ward in accordance with rules set by the executive commissioner of the Health and Human Services Commission and that physician or psychologist's findings.

CSHB 1708 requires that a written letter or certificate submitted by an applicant for the creation of a guardianship of an incapacitated person, provided by a physician under Subsection (a) include: 1) a description of the nature, degree, and severity of the incapacity, including a certain list of functional deficits; 2) an evaluation of the proposed ward's physical and mental function and a summary of the proposed ward's medical history if reasonably available; 3) a statement about the proposed ward's ability to make decisions including a certain list of physical and mental capabilities; 4) a statement of whether any current medication affects the demeanor of the proposed ward or the proposed ward's ability to participate fully in a court proceeding; 5) if applicable, a description of whether there is a diagnosis of dementia and a certain list of needs of the proposed ward to treat dementia; 6) a statement of whether the proposed ward has a developmental disability; and 7) any other information required by the court.

CSHB 1708 states that the changes in this act only applies to guardianship applications filed on or after the effective date.

**EFFECTIVE DATE**

September 1, 2007.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 1708 amends the bill as filed by adding requirements of additional information to be included in a physician's letter or certificate to ensure a more detailed evaluation is presented to the court.