

By: Naishtat

H.B. No. 1708

A BILL TO BE ENTITLED

AN ACT

relating to examination requirements in certain guardianship matters concerning persons with mental retardation.

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

SECTION 1. Section 687, Texas Probate Code, is amended to read as follows:

Sec. 687. EXAMINATIONS AND REPORTS. (a) Except as provided by Subsection (c) of this section, the [The] court may not grant an application to create a guardianship for an incapacitated person, other than a minor~~[, person whose alleged incapacity is mental retardation,]~~ or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated not earlier than the 120th day before the date of the filing of the application and based on an examination the physician performed not earlier than the 120th day before the date of the filing of the application. The letter or certificate must:

(1) describe the nature and degree of incapacity, including the medical history if reasonably available;

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

(3) state how or in what manner the proposed ward's ability to make or communicate responsible decisions concerning

1 himself or herself is affected by the person's physical or mental
2 health;

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

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

8 (6) include any other information required by the
9 court.

10 (b) If [~~Except as provided by Subsection (c) of this~~
11 ~~section, if~~] the court determines it is necessary, the court may
12 appoint the necessary physicians to examine the proposed ward. The
13 court must make its determination with respect to the necessity for
14 a physician's examination of the proposed ward at a hearing held for
15 that purpose. Not later than the fourth day before the date of the
16 hearing, the applicant shall give to the proposed ward and the
17 proposed ward's attorney ad litem written notice specifying the
18 purpose and the date and time of the hearing. A physician who
19 examines the proposed ward, other than a physician or psychologist
20 who examines the proposed ward under Subsection (c)(2) [~~(c)~~] of
21 this section, shall make available to an attorney ad litem
22 appointed to represent the proposed ward, for inspection, a written
23 letter or certificate from the physician that complies with the
24 requirements of Subsection (a) of this section.

25 (c) If the basis of the proposed ward's alleged incapacity
26 is mental retardation, the court may not grant an application to
27 create a guardianship for the proposed ward unless the applicant

1 presents to the court:

2 (1) a written letter or certificate that complies with
3 Subsection (a) of this section; or

4 (2) both:

5 (A) ~~[shall be examined by a physician or~~
6 ~~psychologist licensed in this state or certified by the Texas~~
7 ~~Department of Mental Health and Mental Retardation to perform the~~
8 ~~examination, unless there is]~~ written documentation showing ~~[filed~~
9 ~~with the court that shows]~~ that, not earlier than 24 months before
10 the date of the hearing, the proposed ward has been examined by a
11 physician or psychologist licensed in this state or certified by
12 the Department of Aging and Disability Services to perform the
13 examination, in accordance with rules of the executive commissioner
14 of the Health and Human Services Commission governing examinations
15 of that kind; and

16 (B) the physician's or psychologist's ~~[according~~
17 ~~to the rules adopted by the Texas Department of Mental Health and~~
18 ~~Mental Retardation not earlier than 24 months before the date of a~~
19 ~~hearing to appoint a guardian for the proposed ward. The physician~~
20 ~~or psychologist shall conduct the examination according to the~~
21 ~~rules adopted by the Texas Department of Mental Health and Mental~~
22 ~~Retardation and shall submit]~~ written findings and recommendations
23 [to the court].

24 SECTION 2. The changes in law made by this Act to Section
25 687, Texas Probate Code, apply only to an application for the
26 creation of a guardianship filed on or after the effective date of
27 this Act. An application for the creation of a guardianship filed

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1 before the effective date of this Act is governed by the law in
2 effect on the date the application was filed, and the former law is
3 continued in effect for that purpose.

4 SECTION 3. This Act takes effect September 1, 2007.