

By: Harris

S.B. No. 1701

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of a successor guardian for certain wards adjudicated as totally incapacitated.

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

SECTION 1. Section 161.101, Human Resources Code, is amended by amending Subsection (d) and adding Subsection (f) to read as follows:

(d) The department may not be required by a court to file an application for guardianship, and except as provided by Subsection (f) and Section 695(c), Texas Probate Code, the department may not be appointed as permanent guardian for any individual unless the department files an application to serve or otherwise agrees to serve as the individual's guardian of the person or estate, or both.

(f) On appointment by a probate court under Section 695(c), Texas Probate Code, the department shall serve as the successor guardian of the person or estate, or both, of a ward described by that section.

SECTION 2. Section 695, Texas Probate Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) The court may appoint the Department of Aging and Disability Services as a successor guardian of the person or estate, or both, of a ward who has been adjudicated as totally incapacitated if:

(1) there is no less restrictive alternative to

1 continuation of the guardianship;

2 (2) there is no family member or other suitable  
3 person, including a guardianship program, willing and able to serve  
4 as the ward's successor guardian;

5 (3) the ward is located more than 100 miles from the  
6 court that created the guardianship;

7 (4) the ward has private assets or access to  
8 government benefits to pay for the needs of the ward;

9 (5) the department is served with citation and a  
10 hearing is held regarding the department's appointment as proposed  
11 successor guardian; and

12 (6) the appointment of the department does not violate  
13 a limitation imposed by Subsection (d) of this section.

14 (d) The number of appointments under Subsection (c) of this  
15 section is subject to an annual limit of 55. The appointments must  
16 be distributed equally or as near as equally as possible among the  
17 health and human services regions of this state as established  
18 under Section 531.024, Government Code. The Department of Aging  
19 and Disability Services at its discretion may establish a different  
20 distribution scheme to promote the efficient use and administration  
21 of resources.

22 (e) If the Department of Aging and Disability Services is  
23 named as a proposed successor guardian in an application in which  
24 the department is not the applicant, citation must be issued and  
25 served on the department as provided by Section 633(c)(5) of this  
26 code.

27 SECTION 3. Subsection (b), Section 697A, Texas Probate

1 Code, is amended to read as follows:

2 (b) The Department of Aging and Disability Services, if the  
3 department [~~files an application for and~~] is appointed to serve as  
4 guardian or successor guardian for one or more incapacitated  
5 persons residing in the county as provided by Subchapter E, Chapter  
6 161, Human Resources Code, or Section 695(c) of this code, shall  
7 submit annually to the county clerk the information required under  
8 Subsection (a) of this section for each department employee who is  
9 or will be providing guardianship services in the county on the  
10 department's behalf.

11 SECTION 4. This Act takes effect immediately if it receives  
12 a vote of two-thirds of all the members elected to each house, as  
13 provided by Section 39, Article III, Texas Constitution. If this  
14 Act does not receive the vote necessary for immediate effect, this  
15 Act takes effect September 1, 2007.