

## **BILL ANALYSIS**

C.S.H.B. 889  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

When an application has been filed to create a guardianship for a person with a mental disability, 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 condition. When the 73rd Legislature, Regular Session, 1993, amended the Texas Probate Code to allow these certificates to be submitted by psychologists, there was a belief that the psychologists needed to follow certain rules and procedures when making their assessments. In response, the legislature amended the code to require that psychologists comply with rules developed by the Texas Department of Mental Health and Mental Retardation. Later, physicians were added back into the statute to make mental retardation determinations. However, adding physicians into the statute alongside psychologists unintentionally required physicians to certify that they had complied with the department's rules, despite the fact that physicians had previously been subject only to their own medical standards of professional conduct.

C.S.H.B. 889 prohibits a court from granting an application to create a guardianship for a proposed ward of the state whose alleged incapacity is mental retardation unless the applicant presents to the court a written letter or certificate from a physician licensed in Texas or a physician's or psychologist's written findings and certain documentation.

### **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**

C.S.H.B. 889 amends the Texas Probate Code to prohibit a court from granting an application to create a guardianship for a proposed ward of the state whose alleged incapacity is mental retardation unless the applicant presents to the court a written letter or certificate from a physician licensed in Texas that:

- describes the nature, degree, and severity of incapacity, including functional deficits, if any, regarding the proposed ward's ability to handle business and managerial matters, manage financial matters, operate a motor vehicle, make personal decisions regarding residence, voting, and marriage, and consent to medical, dental, psychological, or psychiatric treatment;
- provides an evaluation of the proposed ward's physical condition and mental function and summarizes the proposed ward's medical history if reasonably available;
- states how or in what manner the proposed ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the person's physical or mental health, including the proposed ward's ability to understand or communicate, recognize familiar objects and individuals, perform simple calculations, reason logically, and administer to daily life activities;
- describes the precise physical and mental conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services

- that would allow the individual to live in the least restrictive setting;
- provides a description regarding the proposed ward's ability to operate a motor vehicle and make personal decisions regarding voting that states whether in the physician's opinion the proposed ward has the mental capacity and ability to perform certain activities; and
  - states whether the proposed ward has a developmental disability and, if so, describes the nature of the disability.

The bill requires the written letter or certificate from a physician licensed in Texas to state that the physician has made a determination of mental retardation in accordance with provisions relating to the determination of mental retardation.

C.S.H.B. 889 provides that the applicant may provide, as an alternative, both written documentation showing that, not earlier than 24 months before the date of the hearing, the proposed ward has been examined by a physician or psychologist licensed in Texas or certified by the Department of Aging and Disability Services to perform the examination, in accordance with rules of the executive commissioner of the Health and Human Services Commission, and the physician's or psychologist's written findings and recommendations including a statement as to whether the physician or psychologist has made a determination of mental retardation in accordance with provisions relating to the determination of mental retardation.

#### **EFFECTIVE DATE**

September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 889 differs from the original by omitting the requirement of a written letter or certificate from a physician licensed in Texas that describes the precise physical and mental conditions underlying a diagnosis and specified information relating to that diagnosis, and instead requiring a letter or certificate describing the precise physical and mental conditions underlying a diagnosis of a mental disability and stating whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting. The substitute omits a provision included in the original requiring the letter to state whether the proposed ward has a developmental disability. The substitute adds the requirement that the letter state that a physician or psychologist has made a determination of mental retardation in accordance with provisions relating to the determination of mental retardation.