

## **BILL ANALYSIS**

C.S.H.B. 3112  
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Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

A series of news articles and an attorney general investigation led to significant reforms in the Texas protective system with the enactment of S.B. 6 by the 79th Legislature, Regular Session, 2005. While improvements have been made, many vulnerable older and disabled Texans remain at risk. The conflict of interest which was the underlying problem was simply transferred from Adult Protective Services (APS) to the Department of Aging and Disability Services (DADS).

Under current procedures, an APS case worker first conducts an investigation and determines that a person at risk may need a guardian for protection of the person's rights and safety. APS then offers services and performs an assessment, which includes a doctor's examination, usually by an appropriate specialist. If there are no less restrictive alternatives and the assessment indicates incapacity, APS refers the client to DADS. DADS conducts a second assessment, which includes many of the same processes that APS has been mandated to complete. The DADS assessment is usually performed by a family practitioner and results in DADS sending the case back to APS to try other alternatives. Finally, in the majority of cases, DADS declines to apply for guardianship based on its assessment, in spite of the previous, usually more thorough, assessment that determined a guardian was needed.

Persons at risk of mistreatment are not receiving the protection of a guardianship and services that a guardian would coordinate. Even when DADS does accept guardianship for a client, so much time has been spent conducting multiple assessments that the client's situation has decompensated significantly and sometimes irreversibly. Also, assets are lost to exploitation, leaving the client dependent on publicly-funded assistance programs.

C.S.H.B. 3112 requires the Department of Aging and Disability Services (DADS) to conduct a thorough assessment of the conditions and circumstances of an elderly or disabled person referred to DADS for guardianship services to determine whether a less restrictive alternative is available for the individual.

### **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. 3112 amends the Human Resources Code to require the Department of Aging and Disability Services (DADS) to conduct a thorough assessment of the conditions and circumstances of an elderly or disabled person referred to DADS for guardianship services to determine whether a less restrictive alternative is available for the individual. The bill requires DADS, if after conducting an assessment of an elderly or disabled person DADS determines that guardianship is appropriate for the person and an alternative person or program is available to serve as guardian to that person, to refer the individual to that person or program.

C.S.H.B. 3112 requires DADS, not later than the 70th day after the date DADS receives a referral for guardianship services, to make the required determination and, if DADS determines that guardianship is appropriate and that DADS should serve as guardian, to file the application to be appointed guardian under the Texas Probate Code. The bill requires DADS, if DADS determines that an alternative person or program is available to serve as guardian, to refer the elderly or disabled person to that person or program in a manner that would allow the person or program sufficient time to file, not later than the 70th day after the date DADS received the referral, an application to be appointed guardian. The bill authorizes DADS, with the approval of the Department of Family and Protective Services, to extend by not more than 30 days an application period if the extension is made in good faith, including any extension for a person or program that intends to file an application to be appointed guardian, and is in the best interest of the elderly or disabled person.

**EFFECTIVE DATE**

September 1, 2009.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3112 differs from the original by omitting provisions regarding the use of a current physician's certificate when the Department of Aging and Disability Services (DADS) is conducting the assessment of the conditions and circumstances of an elderly or disabled individual. The substitute includes a provision not in the original adding the determination by DADS, in conducting the assessment of the conditions and circumstances of an elderly or disabled individual, of whether a less restrictive alternative to guardianship is available to the individual. The substitute differs from the original by adding provisions requiring DADS to refer an individual to an alternate person or program if available.

C.S.H.B. 3112 differs from the original by requiring DADS to make a determination of appropriate guardianship in 70 days, rather than 30 as in the original. The substitute differs from the original by setting forth procedures for a determination of guardianship by DADS or an alternative person or program following a referral, whereas the original only required DADS to file an application for guardianship if guardianship is determined to be appropriate. The substitute adds provisions not in the original providing for the extension to fulfill requirements related to a determination by DADS that guardianship is appropriate for an elderly or disabled person referred to DADS. The substitute adds a standard savings provision not in the original.