

BILL ANALYSIS

S.B. 2344
By: Uresti
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

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 in 1993 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 the 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, by adding physicians into the statute alongside psychologists, this change unintentionally required physicians to be certified as having complied with the Health and Human Service Commission's (HHSC) rules, despite the fact that physicians had previously been subject only to their own medical standards of professional conduct.

S.B. 2344 amends current law relating to examination requirements in certain guardianship matters concerning persons with mental retardation.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Section 687, Texas Probate Code, as follows:

Sec. 687. EXAMINATIONS AND REPORTS. (a) Creates an exception under Subsection (c). Deletes existing text prohibiting the court from granting an application to create a guardianship for an incapacitated person other than a person whose alleged incapacity is mental retardation unless the applicant presents to the court certain information. Requires that the letter or certificate:

(1) describe the nature, degree, and severity of the 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, rather than the medical history if reasonably available;

(2) provide an evaluation of the proposed ward's physical condition and mental function and summarize the proposed ward's medical history if reasonably available, rather than 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 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;

(4) makes no changes to this subdivision;

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

(6) in providing a description under Subdivision (1) of this subsection regarding the proposed ward's ability to operate a motor vehicle and make personal decisions regarding voting, state whether in the physician's opinion the proposed ward has certain capacity and abilities; and

(7) include any other information required by the court.

(b) Deletes an existing exception under Subsection (c). Requires a physician who examines the proposed ward, other than a physician or psychologist who examines the proposed ward under Subsection (c)(2), rather than Subsection (c), of this section, to make available to an attorney ad litem appointed to represent the proposed ward, for inspection, a written letter or certificate from the physician that complies with the requirements of Subsection (a) of this section.

(c) Prohibits the court, if the basis of the proposed ward's alleged incapacity is mental retardation, from granting an application to create a guardianship for the proposed ward unless the applicant presents to the court:

(1) a written letter or certificate that complies with Subsection (a) of this section and states that the physician has made a determination of mental retardation in accordance with Section 593.005 (Determination of Mental Retardation), Health and Safety Code; or

(2) 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 this state or certified by the Department of Aging and Disability Services (DADS) to perform the examination, in accordance with rules of the executive commissioner of the Health and Human Services Commission governing examinations of that kind; 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 Section 593.005, Health and Safety Code. Deletes existing text requiring the proposed ward to be examined by a physician or psychologist licensed in this state or certified by the Texas Department of Mental Health and Mental Retardation (MHMR) to perform the examination, unless there is written documentation filed with the court that shows that the proposed ward has been examined according to the rules adopted by MHMR not earlier than 24 months before the date of a hearing to appoint a guardian for the proposed ward and requiring the physician or psychologist to conduct the examination according to the rules adopted by MHMR to submit written findings and recommendations to the court.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009.