

By: Naishtat

H.B. No. 889

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, and severity of incapacity, including functional deficits, if any, regarding the proposed ward's ability to:

(A) handle business and managerial matters;

(B) manage financial matters;

(C) operate a motor vehicle;

1                    (D) make personal decisions regarding residence,  
2 voting, and marriage; and

3                    (E) consent to medical, dental, psychological,  
4 or psychiatric treatment [~~the medical history if reasonably~~  
5 ~~available~~];

6                    (2) provide an evaluation of the proposed ward's  
7 physical condition and mental function and summarize the proposed  
8 ward's medical history if reasonably available [~~a medical prognosis~~  
9 ~~specifying the estimated severity of the incapacity~~];

10                    (3) state how or in what manner the proposed ward's  
11 ability to make or communicate responsible decisions concerning  
12 himself or herself is affected by the person's physical or mental  
13 health, including the proposed ward's ability to:

14                    (A) understand or communicate;

15                    (B) recognize familiar objects and individuals;

16                    (C) perform simple calculations;

17                    (D) reason logically; and

18                    (E) administer to daily life activities;

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

22                    (5) describe the precise physical and mental  
23 conditions underlying a diagnosis of a mental disability, and state  
24 whether the proposed ward would benefit from supports and services  
25 that would allow the individual to live in the least restrictive  
26 setting [~~senility, if applicable~~];

27                    (6) in providing a description under Subdivision (1)

1 of this subsection regarding the proposed ward's ability to operate  
2 a motor vehicle and make personal decisions regarding voting, state  
3 whether in the physician's opinion the proposed ward:

4 (A) has the mental capacity to vote in a public  
5 election; and

6 (B) has the ability to safely operate a motor  
7 vehicle; and

8 (7) 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:

3 (A) complies with Subsection (a) of this section;

4 and

5 (B) states that the physician has made a  
6 determination of mental retardation in accordance with Section  
7 593.005, Health and Safety Code; or

8 (2) both:

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

20 (B) the physician's or psychologist's [~~according~~  
21 to the rules adopted by the Texas Department of Mental Health and  
22 Mental Retardation not earlier than 24 months before the date of a  
23 hearing to appoint a guardian for the proposed ward. The physician  
24 or psychologist shall conduct the examination according to the  
25 rules adopted by the Texas Department of Mental Health and Mental  
26 Retardation and shall submit] written findings and  
27 recommendations, including a statement as to whether the physician

1 or psychologist has made a determination of mental retardation in  
2 accordance with Section 593.005, Health and Safety Code [~~to the~~  
3 ~~court~~].

4         SECTION 2. The changes in law made by this Act to Section  
5 687, Texas Probate Code, apply only to an application for the  
6 creation of a guardianship filed on or after the effective date of  
7 this Act. An application for the creation of a guardianship filed  
8 before the effective date of this Act is governed by the law in  
9 effect on the date the application was filed, and the former law is  
10 continued in effect for that purpose.

11         SECTION 3. This Act takes effect September 1, 2009.