1 AN ACT

2 relating to the referral of an elderly or disabled person to the

3 Department of Aging and Disability Services and the determination

4 by that agency of the need for a guardianship for that person.

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

6 SECTION 1. Section 161.101, Human Resources Code, is

7 amended by amending Subsections (b) and (c) and adding Subsections

8 (c-1) and (c-2) to read as follows:

9 (b) The department shall conduct a thorough assessment of

10 the conditions and circumstances of an elderly or disabled person

11 referred to the department under Section 48.209(a)(2) for

12 guardianship services to determine whether a guardianship is

13 appropriate for the individual or whether a less restrictive

14 alternative is available for the individual. In determining

15 whether a guardianship is appropriate, the department may consider

16 the resources and funds available to meet the needs of the elderly

17 or disabled person. The executive commissioner shall adopt rules

18 for the administration of this subsection.

19 (c) Subject to Subsection (c-1), if [If] after conducting an

20 assessment of an elderly or disabled person under Subsection (b)

21 the department determines that:

22 (1) [a] guardianship is appropriate for the elderly or

23 disabled person, the department shall:

24 (A) file an application under Section 682 or 875,

1 Texas Probate Code, to be appointed guardian of the person or

2 estate, or both, of the individual; or

3   (B) if the department determines that an

4 alternative person or program described by Section 161.102 is

5 available to serve as guardian, refer the individual to that person

6 or program as provided by that section; or

7   (2) [~~. If after conducting the assessment the~~

8 ~~department determines that~~] a less restrictive alternative to

9 guardianship is available for the elderly or disabled person, the

10 department shall pursue the less restrictive alternative instead of

11 taking an action described by Subdivision (1) [~~applying for~~

12 ~~appointment as the person's guardian~~].

13   (c-1) Not later than the 70th day after the date the

14 department receives a referral under Section 48.209(a)(2) for

15 guardianship services, the department shall make the determination

16 required by Subsection (c) and, if the department determines that

17 guardianship is appropriate and that the department should serve as

18 guardian, file the application to be appointed guardian under

19 Section 682 or 875, Texas Probate Code. If the department

20 determines that an alternative person or program described by

21 Section 161.102 is available to serve as guardian, the department

22 shall refer the elderly or disabled person to that person or program

23 in a manner that would allow the person or program sufficient time

24 to file, not later than the 70th day after the date the department

25 received the referral, an application to be appointed guardian.

26   (c-2) With the approval of the Department of Family and

27 Protective Services, the department may extend, by not more than 30

1 days, a period prescribed by Subsection (c-1) if the extension is:

2 　　　　　　(1)　made in good faith, including any extension for a

3 person or program described by Section 161.102 that intends to file

4 an application to be appointed guardian; and

5 　　　　　　(2)　in the best interest of the elderly or disabled

6 person.

7 　　　　SECTION 2.　The changes in law made by this Act apply to a

8 referral of a person by the Department of Family and Protective

9 Services to the Department of Aging and Disability Services for a

10 determination of the need for a guardianship that is made on or

11 after the effective date of this Act.

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

_____ _____
  President of the Senate   Speaker of the House

   I certify that H.B. No. 3112 was passed by the House on May 15, 2009, by the following vote: Yeas 144, Nays 0, 1 present, not voting.

              _____
              Chief Clerk of the House

   I certify that H.B. No. 3112 was passed by the Senate on May 27, 2009, by the following vote: Yeas 31, Nays 0.

              _____
              Secretary of the Senate

APPROVED: _____
        Date

_____
    Governor