

By: Hartnett

H.B. No. 3112

A BILL TO BE ENTITLED

AN ACT

relating to determining the need for guardianship.

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

SECTION 1. Section 161.101, Human Resource Code, is amended by adding Section 161.101(d) renumbering subsequent subsections accordingly and is additionally amended to read as follows:

Sec. 161.101. GUARDIANSHIP SERVICES.

(b) The department shall conduct a thorough assessment of the conditions and circumstances of an elderly or disabled person referred to the department under Section 48.209(a)(2) for guardianship services to determine whether a guardianship is appropriate for the individual. In conducting the assessment of the conditions and circumstances, the department must use the current physician's certificate provided by Adult Protective Services that complies with Section 687(a) of the Texas Probate Code. The department may consider the investigation and findings of Adult Protective Services concerning the elderly or disabled person to determine whether a guardianship is appropriate. In addition to the conditions and circumstances of the elderly or disabled person, ~~[In determining whether a guardianship is appropriate,~~ the department may consider the person's resources and funds available ~~[to meet the needs of the disabled or elderly person]~~ and resources and funds that the elderly or disabled person may qualify for to determine whether a guardianship is appropriate.

1 The executive commissioner shall adopt rules for the administration
2 of this subsection.

3 (c) If after conducting an assessment of an elderly or
4 disabled person under Subsection (b) the department determines that
5 a guardianship is appropriate for the elderly or disabled person,
6 the department shall file an application under Section 682 or 875,
7 Texas Probate Code, to be appointed guardian of the person or
8 estate, or both, of the individual using the current physician's
9 certificate provided by Adult Protective Services. If after
10 conducting the assessment the department determines that a less
11 restrictive alternative to guardianship is available for the
12 elderly or disabled person, the department shall pursue the less
13 restrictive alternative instead of applying for appointment as the
14 person's guardian.

15 (d) Within 30 days of receiving a referral to the department
16 under Section 48.209(a) for guardianship services, the department
17 shall determine if a guardianship is appropriate or if there are
18 appropriate less restrictive alternatives. If guardianship is
19 appropriate, the department must file an application for
20 guardianship under Sections 682 or 875 of the Texas Probate Code
21 within that 30 day period.

22 SECTION 2. Section 48.209, Human Resource Code, is amended
23 by adding Section 48.209(b) and renumber subsequent subsections
24 accordingly:

25 (b) When the department refers an individual to the
26 Department of Aging and Disability Services for guardianship
27 services under Subchapter E, Chapter 161, the department shall

1 provide a current physician's certificate that complies with
2 Section 687(a) of the Texas Probate Code. The physician's
3 certificate must not expire within 31 days of the referral to the
4 Department of Aging and Disability Services.

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