

AN ACT

relating to informal caregiver support services and to the appointment of a successor guardian for certain wards adjudicated as totally incapacitated.

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

SECTION 1. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Section 161.076 to read as follows:

Sec. 161.076. INFORMAL CAREGIVER SERVICES. (a) In this section:

(1) "Area agency on aging" has the meaning assigned by Section 161.075.

(2) "Local entity" means an area agency on aging or other entity that provides services and support for older or disabled persons and their caregivers.

(b) The department shall coordinate with area agencies on aging and, to the extent considered feasible by the department, may coordinate with other local entities to coordinate public awareness outreach efforts regarding the role of informal caregivers in long-term care situations, including efforts to raise awareness of support services available in this state for informal caregivers.

(c) The department shall perform the following duties to assist a local entity with outreach efforts under this section:

(1) expand an existing department website to provide a link through which a local entity may post and access best practices

1 information regarding informal caregiver support; and

2 (2) create a document template that a local entity may
3 adapt as necessary to reflect resources available to informal
4 caregivers in the area supported by the entity.

5 (d) The department shall create or modify a form to be
6 included in the functional eligibility determination process for
7 long-term care benefits for older persons under the Medicaid
8 program and, to the extent considered feasible by the department,
9 may include a form in systems for other long-term care support
10 services. The department shall use the form to identify informal
11 caregivers for the purpose of enabling the department to refer the
12 caregivers to available support services. The form may be based on
13 an existing form, may include optional questions for an informal
14 caregiver, or may include questions from similar forms used in
15 other states.

16 (e) The department shall coordinate with area agencies on
17 aging and, to the extent considered feasible by the department, may
18 coordinate with other local entities to develop and implement a
19 protocol to evaluate the needs of certain informal caregivers. The
20 protocol must:

21 (1) provide guidance on the type of caregivers who
22 should receive an assessment; and

23 (2) include the use of a standardized assessment tool
24 that may be based on similar tools used in other states, including
25 the Tailored Caregiver Assessment and Referral process.

26 (f) The department shall require area agencies on aging and,
27 to the extent considered feasible by the department, other local

1 entities to use the protocol and assessment tool under Subsection
2 (e) and report the data gathered from the assessment tool to the
3 department.

4 (g) The department shall analyze the data reported under
5 Subsection (f) and collected from the form under Subsection (d) and
6 shall submit a report not later than December 1 of each
7 even-numbered year to the governor and the Legislative Budget Board
8 that summarizes the data analysis.

9 (g-1) Notwithstanding Subsection (g), the department shall
10 submit the initial report required by that subsection not later
11 than December 1, 2012. This subsection expires January 1, 2013.

12 (h) The department shall use the data analyzed under
13 Subsection (g) to:

14 (1) evaluate the needs of assessed informal
15 caregivers;

16 (2) measure the effectiveness of certain informal
17 caregiver support interventions;

18 (3) improve existing programs;

19 (4) develop new services as necessary to sustain
20 informal caregivers; and

21 (5) determine the effect of informal caregiving on
22 employment and employers.

23 SECTION 2. Section 161.101, Human Resources Code, is
24 amended by amending Subsection (d) and adding Subsection (f) to
25 read as follows:

26 (d) The department may not be required by a court to file an
27 application for guardianship, and except as provided by Subsection

1 (f) and Section 695(c), Texas Probate Code, the department may not
2 be appointed as permanent guardian for any individual unless the
3 department files an application to serve or otherwise agrees to
4 serve as the individual's guardian of the person or estate, or both.

5 (f) On appointment by a probate court under Section 695(c),
6 Texas Probate Code, the department shall serve as the successor
7 guardian of the person or estate, or both, of a ward described by
8 that section.

9 SECTION 3. Section 695, Texas Probate Code, is amended by
10 adding Subsections (c), (d), and (e) to read as follows:

11 (c) The court may appoint the Department of Aging and
12 Disability Services as a successor guardian of the person or
13 estate, or both, of a ward who has been adjudicated as totally
14 incapacitated if:

15 (1) there is no less restrictive alternative to
16 continuation of the guardianship;

17 (2) there is no family member or other suitable
18 person, including a guardianship program, willing and able to serve
19 as the ward's successor guardian;

20 (3) the ward is located more than 100 miles from the
21 court that created the guardianship;

22 (4) the ward has private assets or access to
23 government benefits to pay for the needs of the ward;

24 (5) the department is served with citation and a
25 hearing is held regarding the department's appointment as proposed
26 successor guardian; and

27 (6) the appointment of the department does not violate

1 a limitation imposed by Subsection (d) of this section.

2 (d) The number of appointments under Subsection (c) of this
3 section is subject to an annual limit of 55. The appointments must
4 be distributed equally or as near as equally as possible among the
5 health and human services regions of this state. The Department of
6 Aging and Disability Services at its discretion may establish a
7 different distribution scheme to promote the efficient use and
8 administration of resources.

9 (e) If the Department of Aging and Disability Services is
10 named as a proposed successor guardian in an application in which
11 the department is not the applicant, citation must be issued and
12 served on the department as provided by Section 633(c)(5) of this
13 code.

14 SECTION 4. If before implementing any provision of this Act
15 a state agency determines that a waiver or authorization from a
16 federal agency is necessary for implementation of that provision,
17 the agency affected by the provision shall request the waiver or
18 authorization and may delay implementing that provision until the
19 waiver or authorization is granted.

20 SECTION 5. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 271 passed the Senate on March 19, 2009, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 29, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 271 passed the House, with amendment, on May 27, 2009, by the following vote: Yeas 140, Nays 8, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor