

BILL ANALYSIS

Senate Research Center

S.B. 220
By: Nelson
Jurisprudence
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 220 amends current law relating to guardianships, including the assessment of prospective wards for, and the provision of, guardianship services by the Department of Aging and Disability Services.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 2 (Section 32.02451, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 111.042(a), Government Code, as follows:

(a) Requires the following individuals, to provide guardianship services in this state, to hold a certificate issued under this section:

- (1) an individual who is a private professional guardian;
- (2) an individual who will provide those services to a ward of a private professional guardian on the guardian's behalf, rather than an individual who will provide those services to a ward of a private professional guardian or the Department of Aging and Disability Services (DADS) on the guardian's or DADS's behalf; and
- (3) an individual, other than a volunteer, who will provide those services or other services under Section 161.114, Human Resources Code, to a ward of a guardianship program or DADS on the program's or DADS's behalf.

SECTION 2. Amends Section 32.02451, Human Resources Code, as follows:

Sec. 32.02451. New heading: **ADDITIONAL PERSONAL NEEDS ALLOWANCE FOR GUARDIANSHIP EXPENSES OF CERTAIN RECIPIENTS.** (a) Defines, in this section, "applied income."

(b) Creates this subsection from existing text. Requires the Health and Human Services Commission (HHSC), to the extent allowed by federal law, in computing the applied income of a recipient of medical assistance, to deduct in the manner provided by this section an additional personal needs allowance from the earned and unearned income of the recipient or, if applicable, the recipient and the recipient's spouse, for compensation and costs ordered to be deducted under Section 670, Texas Probate Code. Provides that, subject to Subsection (f), a deduction ordered by the court under Section 670, Texas Probate Code, is effective beginning on the later of:

- (1) the month in which the order is signed; or

(2) the first month of medical assistance eligibility for which the recipient is subject to a copayment.

Deletes existing text requiring HHSC, to the extent allowed by federal law, to provide medical assistance reimbursement for compensation and costs ordered under Section 670, Texas Probate Code, in a guardianship established for a medical assistance recipient.

(c) Requires HHSC to compute the applied income of a recipient of medical assistance as follows:

(1) HHSC shall deduct from the earned and unearned income the personal needs allowance authorized by Section 32.024(w) (relating to requiring HHSC to set a personal needs allowance) before making any other deduction;

(2) if after the deduction under Subdivision (1) the recipient has remaining income, HHSC shall deduct the lesser of the following:

(A) the amount of the remaining income; or

(B) the amount of the additional personal needs allowance for compensation and costs ordered to be deducted under Section 670, Texas Probate Code; and

(3) if after the deductions under Subdivisions (1) and (2) the recipient has remaining income, HHSC shall deduct any other authorized allowances.

(d) Provides that the amount of income remaining, if any, after HHSC makes the deductions as provided by Subsection (c) is the amount of the applied income of the recipient of medical assistance.

(e) Creates this subsection from existing text. Requires the executive commissioner of HHSC to adopt rules providing a procedure by which a recipient of medical assistance for whom amounts are ordered deducted under Section 670, Texas Probate Code, may submit to HHSC a copy of the court order issued under that section to receive a deduction of those amounts from the recipient's income as provided by this section. Deletes existing text requiring the executive commissioner of the Health and Human Services Commission to adopt rules providing a procedure by which a person to whom amounts are ordered paid under Section 670, Texas Probate Code, may submit a claim to and receive reimbursement from the medical assistance program.

(f) Prohibits HHSC from allowing a deduction for the additional personal needs allowance for compensation and costs ordered to be deducted under Section 670, Texas Probate Code, if the order is issued after the recipient of medical assistance dies.

SECTION 3. Amends Sections 161.109(a) and (b), Human Resources Code, as follows:

(a) Requires DADS to have access to all records and documents concerning an individual who is referred for guardianship services or to whom guardianship services are provided under this subchapter (Guardianship Services) that are necessary to the performance of DADS's duties under this subchapter, including client-identifying information; and medical, psychological, educational, financial, and, rather than or, residential information.

(b) Exempts DADS from the payment of a fee otherwise required or authorized by law to obtain a financial or medical record, including a mental health record, from any source if the request for a record is related to an assessment, rather than from a hospital or health

care provider if the request is made in the course of an assessment, for guardianship services conducted by DADS or the provision of guardianship services by DADS.

SECTION 4. Amends Section 161.111, Human Resources Code, by adding Subsections (e) and (f), as follows:

(e) Authorizes DADS on request, to the extent consistent with DADS's policies and procedures, to release confidential information in the record of an individual who is assessed by DADS or is a former ward of DADS to the individual, the individual's guardian, or the executor or administrator of the individual's estate.

(f) Requires DADS, before releasing confidential information under Subsection (e), to edit the information to protect the identity of the reporter to the Department of Family and Protective Services (DFPS) and to protect any other individual whose life or safety may be endangered by the release. Provides that a release of information under Subsection (e) does not constitute a release for purposes of waiving the confidentiality of the information released.

SECTION 5. Amends Subchapter E, Chapter 161, Human Resources Code, by adding Section 161.114, as follows:

Sec. 161.114. USE OF VOLUNTEERS. (a) Defines "volunteer" in this section.

(b) Requires DADS to encourage the involvement of volunteers in guardianships in which DADS serves as guardian of the person or estate, or both. Requires DADS, to encourage that involvement, to identify issues and tasks with which a volunteer could assist DADS in a guardianship, subject to Subsection (c).

(c) Authorizes a volunteer to provide life enrichment activities, companionship, transportation services, and other services to or for the ward in a guardianship, except the volunteer is prohibited from providing services that would require the volunteer to be certified under Section 111.042 (Certification Required for Certain Guardians), Government Code.

SECTION 6. Amends Section 633, Texas Probate Code, by amending Subsections (b) and (d) and adding Subsection (c-1), as follows:

(b) Requires that the citation cite all persons interested in the welfare of the proposed ward to appear at the time and place stated in the notice if they wish to contest the application and contain a clear and conspicuous statement informing those interested persons of the right provided under Section 632(j) (relating to filing a written request that a person be notified of any or all specifically designated motions, applications, or pleadings filed by any person, or by a person specifically designated in the request) of this code to be notified of any or all motions, applications, or pleadings relating to the application for the guardianship or any subsequent guardianship proceeding involving the ward after the guardianship is created, if any.

(c-1) Requires that the citation served as provided by Subsection (c) (relating to a sheriff or other officer serving a citation to appear and answer the application for guardianship on certain individuals) of this section contain the statement regarding the right provided under Section 632(j) of this code that is required in the citation issued under Subsection (b) of this section.

(d) Requires an applicant to mail a copy of the application for guardianship and a notice containing certain required information by registered or certified mail, return receipt requested, or by any other form of mail that provides proof of delivery, to, in addition to certain other individuals, each person named as another relative within the third degree by consanguinity, rather than named as next of kin, in the application for guardianship as required by Section 682(10) (relating to the proposed ward being a minor known by the applicant) or (12) (relating to the proposed ward being an adult known by the applicant)

of this code if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

SECTION 7. Amends Subpart E, Part 2, Chapter XIII, Texas Probate Code, by adding Section 646A, as follows:

Sec. 646A. REPRESENTATION OF WARD OR PROPOSED WARD BY ATTORNEY. (a) Authorizes the following persons at any time to retain an attorney who holds a certificate required by Section 647A (Certification Requirement for Certain Court-Appointed Attorneys) of this code to represent the person's interests in a guardianship matter instead of having those interests represented by an attorney ad litem appointed under Section 646 (Appointment of Attorney Ad Litem and Interpreter) of this code or another provision of this chapter:

(1) a ward who retains the power to enter into a contract under the terms of the guardianship, subject to Section 694K (Attorney Retained on Ward's Behalf) of this code; and

(2) a proposed ward for purposes of a proceeding for the appointment of a guardian as long as the proposed ward has capacity to contract.

(b) Authorizes the court, if the court finds that the ward or the proposed ward has capacity to contract, to remove an attorney ad litem appointed under Section 646 of this code or any other provision of this chapter that requires the court to appoint an attorney ad litem to represent the interests of a ward or proposed ward and appoint a ward or proposed ward's retained counsel.

SECTION 8. Amends Section 670, Texas Probate Code, as follows:

Sec. 670. COMPENSATION OF CERTAIN GUARDIANS; CERTAIN OTHER GUARDIANSHIP COSTS. (a) Redefines, in this section, "applied income."

(b) Authorizes a court that appoints a guardian for a recipient of medical assistance who has applied income, notwithstanding any other provision of this chapter and to the extent permitted by federal law, to order certain items to be deducted as an additional personal needs allowance in the computation of the recipient's applied income in accordance with Section 32.02451, Human Resources Code. Deletes existing text authorizing a court that appoints a guardian for a recipient of medical assistance who has applied income, notwithstanding any other provision of this chapter and to the extent permitted by federal law, to order certain items to be paid under the medical assistance program.

(c) Authorizes costs ordered to be deducted, rather than paid, under Subsection (b)(2) (relating to costs directly related to establishing or terminating the guardianship, not to exceed \$1,000 except as provided by Subsection (c) of this section) of this section to include compensation and expenses for an attorney ad litem or guardian ad litem and reasonable attorney's fees for an attorney representing the guardian.

(d) Prohibits a court from ordering:

(1) that the deduction for compensation and costs under Subsection (b) of this section take effect before the later of:

(A) the month in which the court order issued under that subsection is signed; or

(B) the first month of medical assistance eligibility for which the recipient is subject to a copayment; or

(2) a deduction for services provided before the effective date of the deduction as provided by Subdivision (1) of this subsection.

SECTION 9. Amends Section 682, Texas Probate Code, to require that an application to commence a proceeding for the appointment of a guardian be sworn to by the applicant and state certain information, including if the proposed ward is a minor and if known by the applicant, the names, ages, and addresses of certain persons, including if each of the proposed ward's parents and adult siblings are deceased, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults; and if the proposed ward is an adult and if known by the applicant, certain information regarding certain persons, including if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased, or, if there is no spouse, parent, adult sibling, or adult child, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults. Makes conforming changes.

SECTION 10. Amends Section 697B(d), Texas Probate Code, to provide that an individual volunteering with a guardianship program or with DADS is not required to be certified as provided by this section to provide guardianship services or other services under Section 161.114, Human Resources Code, on the program's or DADS's behalf.

SECTION 11. Amends Section 761, Texas Probate Code, by amending Subsections (a), (c), and (f) and adding Subsections (a-1), (h), and (i), as follows:

(a) Authorizes the court, on its own motion or on motion of any interested person, including the ward, and without notice, to remove any guardian appointed under this chapter, who, in addition to certain other actions, has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002 (Definitions), Human Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section, rather than who has neglected or cruelly treated a ward.

(a-1) Requires the court, in proceeding to remove a guardian under Section (a)(6) (relating to misapplying, embezzling, or removing property committed to a guardian's care from the state), (7) (relating to abuse, neglect, or exploitation), or (8) (relating to neglecting to educate or maintain a ward as liberally as means and condition permit) of this section, to appoint a guardian ad litem as provided by Section 645 (Guardians Ad Litem) of this code and an attorney ad litem. Provides that the attorney ad litem has the duties prescribed by Section 647 (Appointment of Attorney Ad Litem and Interpreter) of this code. Authorizes the court, in the interest of judicial economy, to appoint the same person as guardian ad litem and attorney ad litem unless a conflict exists between the interests to be represented by the guardian ad litem and attorney ad litem.

(c) Authorizes the court to remove a guardian on its own motion, or on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice, when certain circumstances exist, including that the guardian has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section. Makes a conforming change.

(f) Provides that, subject to an order of the court, a successor guardian has the rights and powers of the removed guardian. Makes a nonsubstantive change.

(h) Provides that the appointment of a successor guardian under Subsection (f) of this section does not preclude an interested person from filing an application to be appointed guardian of the ward for whom the successor guardian was appointed. Requires the court

to hold a hearing on an application filed under the circumstances described by this subsection. Authorizes the court, at the conclusion of the hearing, to set aside the appointment of the successor guardian and appoint the applicant as the ward's guardian if the applicant is not disqualified and after considering the requirements of Section 676 or 677 (Guardians of Persons Other than Minors) of this code, as applicable.

(i) Authorizes the court, if the court sets aside the appointment of the successor guardian under this section, to require the successor guardian to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the estate property.

SECTION 12. Requires DADS and the adult protective services division of DFPS to identify and implement modifications to investigations of abuse, neglect, and exploitation conducted under Chapter 48 (Investigations and Protective Services for Elderly and Disabled Persons), Human Resources Code, and the provision of protective and guardianship services under Chapters 48 and 161 (Department of Aging and Disabilities Services), Human Resources Code, to ensure that the agencies prevent any unnecessary duplication of efforts in performing their respective responsibilities under those chapters.

SECTION 13. (a) Provides that this Act, except as otherwise provided by this section, applies to a guardianship created before, on, or after the effective date of this Act.

(b) Provides that Section 32.02451, Human Resources Code, as amended by this Act, and Section 670, Texas Probate Code, as amended by this Act, apply to a recipient of medical assistance under Chapter 32, Human Resources Code, regardless of whether the recipient was determined eligible for medical assistance before, on, or after the effective date of this Act, and regardless of whether a guardianship was created for the recipient before, on, or after the effective date of this Act.

(c) Makes application of Sections 633 and 682, Texas Probate Code, as amended by this Act, to an application for guardianship, prospective.

(d) Makes application of Section 761, Texas Probate Code, as amended by this Act, prospective.

SECTION 14. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 15. Effective date: September 1, 2011.