

BILL ANALYSIS

C.S.S.B. 220
By: Nelson
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that certain procedural reforms, with a goal of improving the system of guardianships and protection of wards, would make it easier for families to navigate the guardianship system, increase due process protections for guardians, and protect the assets of a ward. C.S.S.B. 220 seeks to address matters 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

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 of this bill.

ANALYSIS

C.S.S.B. 220 amends the Government Code to include among the individuals required to hold a guardianship certificate, an individual, other than a volunteer, who will provide guardianship services or other services described by the bill's provisions relating to the use of volunteers to a ward of a guardianship program and an individual, other than a volunteer, who will provide such services to a ward of Department of Aging and Disability Services (DADS) on the department's behalf. The bill makes conforming changes.

C.S.S.B. 220 amends the Human Resources Code to require the Health and Human Services Commission (HHSC), in computing the applied income of a Medicaid recipient and to the extent allowed by federal law, to deduct in the manner provided by the bill's provisions 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 provisions of the Texas Probate Code relating to compensation of certain guardians and certain other guardianship costs. The bill makes a deduction ordered under those provisions effective beginning on the later of the month in which the order is signed or the first month of Medicaid eligibility for which the recipient is subject to a copayment. The bill removes a provision requiring HHSC, in a guardianship established for a Medicaid recipient and to the extent allowable by federal law, to provide for Medicaid reimbursement for compensation and costs ordered under those provisions.

C.S.S.B. 220 requires HHSC to compute the applied income of a Medicaid recipient as follows: HHSC is required to deduct from the earned and unearned income the personal needs allowance for residents of certain long-term care facilities before making any other deduction; if after that deduction the recipient has remaining income, HHSC is required to deduct the lesser of the amount of the remaining income or the amount of the additional personal needs allowance for compensation and costs ordered to be deducted under Texas Probate Code provisions relating to compensation of certain guardians and certain other guardianship costs; and if after those deductions the recipient has remaining income, HHSC is required to deduct any other authorized allowances. The bill establishes that the amount of income remaining, if any, after HHSC makes

the deductions previously described is the amount of the applied income of the Medicaid recipient.

C.S.S.B. 220 requires the executive commissioner of HHSC to adopt rules providing a procedure by which a Medicaid recipient for whom amounts are ordered deducted under Texas Probate Code provisions relating to compensation of certain guardians and certain other guardianship costs may submit to HHSC a copy of the court order issued under those provisions to receive a deduction of those amounts from the recipient's income as provided by the bill's provisions. The bill removes a provision requiring the executive commissioner to adopt rules providing a procedure by which a person to whom amounts are ordered paid may submit a claim to and receive reimbursement from Medicaid. The bill prohibits HHSC, if the order is issued after the Medicaid recipient dies, from allowing a deduction for the additional personal needs allowance for compensation and costs ordered to be deducted under Texas Probate Code provisions relating to compensation of certain guardians and certain other guardianship costs. The bill makes its provisions relating to an additional personal needs allowance for guardianship expenses of certain Medicaid recipients applicable to a Medicaid recipient regardless of whether the recipient was determined eligible for medical assistance before, on, or after the bill's effective date and regardless of whether a guardianship was created for the recipient before, on, or after that date. The bill provides for the meaning of "applied income," for purposes of provisions relating to such an additional personal needs allowance, " by reference to the Texas Probate Code.

C.S.S.B. 220 includes an individual to whom guardianship services are provided among the individuals for whom DADS is required to have access to all records and documents concerning the individual that are necessary to the performance of the department's duties. The bill includes financial information among the information to which DADS is required to have access concerning an individual who is referred for guardianship services or to whom guardianship services are provided. The bill includes a financial record among the records for which DADS is exempt from the payment of a fee otherwise required or authorized by law to obtain such a record. The bill specifies that DADS is exempt from the payment of a fee for certain specified records from any source, rather than from a hospital or health care provider, and includes among the conditions for such an exemption that the request for a record be related to the provision of guardianship services by DADS.

C.S.S.B. 220 authorizes DADS, to the extent consistent with department policies and procedures and on request, 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 an executor or administrator of the individual's estate. The bill requires DADS, before releasing such confidential information, 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. The bill establishes that a release of such confidential information does not constitute a release for purposes of waiving the confidentiality of the information released.

C.S.S.B. 220 requires DADS to encourage the involvement of volunteers in guardianships in which DADS serves as guardian of the person or estate, or both. The bill requires DADS, in order to encourage that involvement, to identify issues and tasks with which a volunteer could assist DADS in a guardianship. The bill authorizes a volunteer to provide life enrichment activities, companionship, transportation services, and other services to or for the ward in a guardianship. The bill prohibits the volunteer from providing services that would require the volunteer to hold a guardianship certification. The bill provides for the meaning of "volunteer," for purposes of these provisions, by reference.

C.S.S.B. 220 amends the Texas Probate Code to require the citation required to be issued by a court clerk when an application for guardianship is filed to contain a clear and conspicuous statement informing those interested in the welfare of the proposed ward of the right provided by specified provisions of law 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. The bill requires the citation to appear and answer the application for guardianship served by the sheriff or other officer on certain specified persons to contain the statement regarding such a right that is required in the citation issued by the court clerk stating that, among other specified information, the application for guardianship was filed.

C.S.S.B. 220 requires an applicant for guardianship to mail a copy of certain documents relating to the application for guardianship to each person named as another relative within the third degree by consanguinity in the application, rather than to each person named as next of kin in the application, and adds as a condition of that requirement that the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or that there is no spouse, parent, adult sibling, or adult child.

C.S.S.B. 220 authorizes the following persons to at any time retain an attorney who holds a certificate for successfully completing a course in guardianship law and procedure to represent the person's interests in a guardianship matter instead of having those interests represented by an attorney ad litem appointed under specified provisions of law: a ward who retains the power to enter into a contract under the terms of the guardianship, subject to provisions of law authorizing a ward to retain an attorney for a proceeding involving the complete restoration of the ward's capacity or modification of the ward's guardianship and a proposed ward for purposes of a proceeding for the appointment of a guardian as long as the proposed ward has capacity to contract. The bill authorizes a court, if the court finds that the ward or the proposed ward has capacity to contract, to remove an attorney ad litem appointed under specified provisions of law and appoint a ward or a proposed ward's retained counsel.

C.S.S.B. 220 authorizes a court that appoints a guardian for a Medicaid recipient who has applied income to order certain specified compensation and costs to be deducted as an additional personal needs allowance in the computation of the recipient's applied income in accordance with provisions relating to an additional personal needs allowance for guardianship expenses of certain Medicaid recipients, rather than authorizing such a guardian to order those costs to be paid under the Medicaid program. The bill prohibits a court from ordering that such deduction for compensation and costs take effect before the later of the month in which the court order is signed or the first month of Medicaid eligibility for which the recipient is subject to a copayment. The bill prohibits a court from ordering a deduction for services provided before the effective date of the deduction for compensation and costs. The bill redefines "applied income," for purposes of provisions relating to compensation of certain guardians and certain other guardianship costs, to mean the portion of certain earned and unearned income that is paid under the Medicaid program to an institution or long-term care facility, rather than a nursing home, in which the recipient resides. The bill makes its provisions relating to compensation of certain guardians and certain other guardianship costs applicable to a Medicaid recipient regardless of whether the recipient was determined eligible for medical assistance before, on, or after the bill's effective date and regardless of whether a guardianship was created for the recipient before, on, or after that date.

C.S.S.B. 220 specifies that an application to commence a proceeding for the appointment of a guardian is required to state, if the proposed ward is a minor and 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 adults and who are related to the proposed ward within the third degree by consanguinity, rather than requiring the application to state the names and addresses of the proposed ward's next of kin who are adults. The bill specifies that such an application must state, if the proposed ward is an adult, and 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 adults and who are related to the proposed ward within the third degree by consanguinity, rather than requiring the application to state the names and addresses of the

proposed ward's next of kin who are adults.

C.S.S.B. 220 specifies that an individual volunteering with DADS, in addition to an individual volunteering with a guardianship program, is not required to hold a guardianship certification to provide guardianship services and includes services under the bill's provisions relating to the use of volunteers provided by such persons on the program's or the department's behalf as services for which such persons are not required to hold a guardianship certificate.

C.S.S.B. 220 specifies, in a provision of law authorizing a court to remove without notice and on its own motion or the motion of any interested person, including the ward, an appointed guardian, that removal is authorized for an appointed guardian who has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, if engaged in with respect to an elderly or disabled person. The bill makes conforming changes. The bill requires the court to appoint a guardian ad litem and an attorney ad litem in a proceeding to remove an appointed guardian who misapplied, embezzled, or removed property committed to the guardian's care; engaged in conduct relating to abuse, neglect, or exploitation; or neglected to educate or maintain the ward. The bill establishes that the attorney ad litem has the duties as prescribed by specified provisions of law and 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.S.S.B. 220 specifies, in a provision of law authorizing a 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, that a court is authorized to remove such a guardian when the guardian has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation if engaged in with respect to an elderly or disabled person. The bill makes a conforming change.

C.S.S.B. 220 establishes that, subject to a court order, a successor guardian has the rights and powers of the removed guardian. The bill establishes that the appointment of a successor guardian does not preclude an interested person from filing an application to be appointed guardian of the ward for whom the successor guardian was appointed and requires a court to hold a hearing on an application filed under such circumstances. The bill 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 provisions of law relating to guardians of minors and persons other than minors, as applicable. The bill authorizes the court, if the court sets aside the appointment of the successor guardian, 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.

C.S.S.B. 220 requires DADS and the adult protective services division of DFPS to identify and implement modifications to investigations of abuse, neglect, and exploitation conducted under provisions of law relating to investigations and protective services for elderly and disabled persons and the provision of protective and guardianship services under those provisions of law and provisions of law relating to DADS, to ensure that the agencies prevent any unnecessary duplication of efforts in performing their respective responsibilities.

C.S.S.B. 220 establishes that its provisions apply to a guardianship created before, on, or after the bill's effective date. The bill requires a state agency that is affected by a provision of the bill to request a federal waiver or authorization if the agency determines that a waiver or authorization is necessary for the implementation of the provision, and it authorizes the agency to delay implementation until the federal waiver or authorization is obtained.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 220 contains a provision not included in the original requiring the Health and Human Services Commission (HHSC), in computing the applied income of a Medicaid recipient and to the extent allowed by federal law, to deduct in the manner provided by the substitute's provisions 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 provisions of the Texas Probate Code relating to compensation of certain guardians and certain other guardianship costs. The substitute contains a provision not included in the original making a deduction ordered under those provisions effective beginning on the later of the month in which the order is signed or the first month of Medicaid eligibility for which the recipient is subject to a copayment. The substitute contains provisions not included in the original providing for the method by which HHSC is required to compute the applied income of a Medicaid recipient and establishing that the amount of income remaining, if any, after HHSC makes certain deductions is the amount of the applied income of the Medicaid recipient. The substitute contains a provision not included in the original requiring the executive commissioner to adopt rules providing a procedure by which a Medicaid recipient for whom amounts are ordered deducted under provisions of the Texas Probate Code relating to compensation of certain guardians and certain other guardianship costs may submit to HHSC a copy of the court order issued under those provisions to receive a deduction of those amounts from the recipient's income as provided by the substitute's provisions. The substitute contains a provision not included in the original prohibiting HHSC, if the order is issued after the Medicaid recipient dies, from allowing a deduction for the additional personal needs allowance for compensation and costs ordered to be deducted under provisions of the Texas Probate Code relating to compensation of certain guardians and certain other guardianship costs.

C.S.S.B. 220 contains a provision not included in the original making its provisions relating to an additional personal needs allowance for guardianship expenses of certain Medicaid recipients applicable to a Medicaid recipient regardless of whether the recipient was determined eligible for medical assistance before, on, or after the bill's effective date and regardless of whether a guardianship was created for the recipient before, on, or after that date. The substitute contains a provision not included in the original removing a provision requiring HHSC, in a guardianship established for a Medicaid recipient and to the extent allowable by federal law, to provide for Medicaid reimbursement for compensation and costs ordered under those provisions. The substitute contains a provision not included in the original providing for the meaning of "applied income," for purposes of provisions relating to such an additional personal needs allowance, by reference to the Texas Probate Code.

C.S.S.B. 220, in a provision authorizing certain specified persons to retain an attorney to represent the person's interests in a guardianship matter instead of having those interests represented by an attorney ad litem appointed under state law, contains a specification not included in the original that the attorney a person is authorized to retain is an attorney who holds a certificate for successfully completing a course in guardianship law and procedure.

C.S.S.B. 220 contains a provision not included in the original authorizing a court that appoints a guardian for a Medicaid recipient who has applied income to order certain specified costs to be deducted as an additional personal needs allowance in the computation of the recipient's applied income in accordance with the substitute's provisions relating to an additional personal needs allowance for guardianship expenses of certain Medicaid recipients. The substitute contains a provision not included in the original prohibiting a court from ordering that the deduction for compensation and costs take effect before the later of the month in which the court order is signed or the first month of Medicaid eligibility for which the recipient is subject to a copayment

and prohibiting a court from ordering a deduction for services provided before the effective date of the deduction for compensation and costs. The substitute contains a provision not included in the original making its provisions relating to compensation of certain guardians and certain other guardianship costs applicable to a Medicaid recipient regardless of whether the recipient was determined eligible for medical assistance before, on, or after the bill's effective date and regardless of whether a guardianship was created for the recipient before, on, or after that date.

C.S.S.B. 220 contains a provision not included in the original requiring a state agency that is affected by a provision of the bill to request a federal waiver or authorization if the agency determines that a waiver or authorization is necessary for the implementation of the provision and authorizing the agency to delay implementation until the federal waiver or authorization is obtained.