

By: Nelson
(Naishtat)

S.B. No. 220

Substitute the following for S.B. No. 220:

By: Gonzalez

C.S.S.B. No. 220

A BILL TO BE ENTITLED

1 AN ACT
2 relating to guardianships, including the assessment of prospective
3 wards for, and the provision of, guardianship services by the
4 Department of Aging and Disability Services.

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

6 SECTION 1. Subsection (a), Section 111.042, Government
7 Code, is amended to read as follows:

8 (a) To provide guardianship services in this state, the
9 following individuals must hold a certificate issued under this
10 section:

11 (1) an individual who is a private professional
12 guardian;

13 (2) an individual who will provide those services to a
14 ward of a private professional guardian [~~or the Department of Aging~~
15 ~~and Disability Services~~] on the guardian's [~~or department's~~]
16 behalf; and

17 (3) an individual, other than a volunteer, who will
18 provide those services or other services under Section 161.114,
19 Human Resources Code, to a ward of a guardianship program or the
20 Department of Aging and Disability Services on the program's or
21 department's behalf.

22 SECTION 2. Section 32.02451, Human Resources Code, is
23 amended to read as follows:

24 Sec. 32.02451. ADDITIONAL PERSONAL NEEDS ALLOWANCE

1 ~~[REIMBURSEMENT]~~ FOR GUARDIANSHIP EXPENSES OF CERTAIN RECIPIENTS.

2 (a) In this section, "applied income" has the meaning assigned by
3 Section 670, Texas Probate Code.

4 (b) To the extent allowed by federal law, the department, in
5 computing the applied income of a recipient of medical assistance,
6 shall deduct in the manner provided by this section an additional
7 personal needs allowance from the earned and unearned income of the
8 recipient or, if applicable, the recipient and the recipient's
9 spouse, ~~[provide medical assistance reimbursement]~~ for
10 compensation and costs ordered to be deducted under Section 670,
11 Texas Probate Code. Subject to Subsection (f), a deduction ordered
12 by the court under Section 670, Texas Probate Code, is effective
13 beginning on the later of:

- 14 (1) the month in which the order is signed; or
15 (2) the first month of medical assistance eligibility
16 for which the recipient is subject to a copayment~~[, in a~~
17 guardianship established for a medical assistance recipient].

18 (c) The department shall compute the applied income of a
19 recipient of medical assistance as follows:

20 (1) the department shall deduct from the earned and
21 unearned income the personal needs allowance authorized by Section
22 32.024(w) before making any other deduction;

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

- 26 (A) the amount of the remaining income; or
27 (B) the amount of the additional personal needs

1 allowance for compensation and costs ordered to be deducted under
2 Section 670, Texas Probate Code; and

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

6 (d) The amount of income remaining, if any, after the
7 department makes the deductions as provided by Subsection (c) is
8 the amount of the applied income of the recipient of medical
9 assistance.

10 (e) The executive commissioner of the Health and Human
11 Services Commission shall adopt rules providing a procedure by
12 which a recipient of medical assistance for ~~person to~~ whom
13 amounts are ordered deducted ~~paid~~ under Section 670, Texas
14 Probate Code, ~~that section~~ may submit to the department a copy of
15 the court order issued under that section to receive a deduction of
16 those amounts from the recipient's income as provided by this
17 section ~~[a claim to and receive reimbursement from the medical~~
18 ~~assistance program]~~.

19 (f) The department may not allow a deduction for the
20 additional personal needs allowance for compensation and costs
21 ordered to be deducted under Section 670, Texas Probate Code, if the
22 order is issued after the recipient of medical assistance dies.

23 SECTION 3. Subsections (a) and (b), Section 161.109, Human
24 Resources Code, are amended to read as follows:

25 (a) The department shall have access to all of the records
26 and documents concerning an individual who is referred for
27 guardianship services or to whom guardianship services are provided

1 under this subchapter that are necessary to the performance of the
2 department's duties under this subchapter, including:

- 3 (1) client-identifying information; and
4 (2) medical, psychological, educational, financial,
5 and ~~or~~ residential information.

6 (b) The department is exempt from the payment of a fee
7 otherwise required or authorized by law to obtain a financial or
8 medical record, including a mental health record, from any source
9 [~~a hospital or health care provider~~] if the request for a record is
10 related to [~~made in the course of~~] an assessment for guardianship
11 services conducted by the department or the provision of
12 guardianship services by the department.

13 SECTION 4. Section 161.111, Human Resources Code, is
14 amended by adding Subsections (e) and (f) to read as follows:

15 (e) To the extent consistent with department policies and
16 procedures, the department on request may release confidential
17 information in the record of an individual who is assessed by the
18 department or is a former ward of the department to:

- 19 (1) the individual;
20 (2) the individual's guardian; or
21 (3) an executor or administrator of the individual's
22 estate.

23 (f) Before releasing confidential information under
24 Subsection (e), the department shall edit the information to
25 protect the identity of the reporter to the Department of Family and
26 Protective Services and to protect any other individual whose life
27 or safety may be endangered by the release. A release of

1 information under Subsection (e) does not constitute a release for
2 purposes of waiving the confidentiality of the information
3 released.

4 SECTION 5. Subchapter E, Chapter 161, Human Resources Code,
5 is amended by adding Section 161.114 to read as follows:

6 Sec. 161.114. USE OF VOLUNTEERS. (a) In this section,
7 "volunteer" has the meaning assigned by Section 161.113.

8 (b) The department shall encourage the involvement of
9 volunteers in guardianships in which the department serves as
10 guardian of the person or estate, or both. To encourage that
11 involvement, the department shall identify issues and tasks with
12 which a volunteer could assist the department in a guardianship,
13 subject to Subsection (c).

14 (c) A volunteer may provide life enrichment activities,
15 companionship, transportation services, and other services to or
16 for the ward in a guardianship, except the volunteer may not provide
17 services that would require the volunteer to be certified under
18 Section 111.042, Government Code.

19 SECTION 6. Section 633, Texas Probate Code, is amended by
20 amending Subsections (b) and (d) and adding Subsection (c-1) to
21 read as follows:

22 (b) The court clerk shall issue a citation stating that the
23 application for guardianship was filed, the name of the proposed
24 ward, the name of the applicant, and the name of the person to be
25 appointed guardian as provided in the application, if that person
26 is not the applicant. The citation must cite all persons interested
27 in the welfare of the proposed ward to appear at the time and place

1 stated in the notice if they wish to contest the application and
2 must contain a clear and conspicuous statement informing those
3 interested persons of the right provided under Section 632(j) of
4 this code to be notified of any or all motions, applications, or
5 pleadings relating to the application for the guardianship or any
6 subsequent guardianship proceeding involving the ward after the
7 guardianship is created, if any. The citation shall be posted.

8 (c-1) The citation served as provided by Subsection (c) of
9 this section must contain the statement regarding the right
10 provided under Section 632(j) of this code that is required in the
11 citation issued under Subsection (b) of this section.

12 (d) The applicant shall mail a copy of the application for
13 guardianship and a notice containing the information required in
14 the citation issued under Subsection (b) of this section by
15 registered or certified mail, return receipt requested, or by any
16 other form of mail that provides proof of delivery, to the following
17 persons, if their whereabouts are known or can be reasonably
18 ascertained:

- 19 (1) all adult children of a proposed ward;
- 20 (2) all adult siblings of a proposed ward;
- 21 (3) the administrator of a nursing home facility or
22 similar facility in which the proposed ward resides;
- 23 (4) the operator of a residential facility in which
24 the proposed ward resides;
- 25 (5) a person whom the applicant knows to hold a power
26 of attorney signed by the proposed ward;
- 27 (6) a person designated to serve as guardian of the

1 proposed ward by a written declaration under Section 679 of this
2 code, if the applicant knows of the existence of the declaration;

3 (7) a person designated to serve as guardian of the
4 proposed ward in the probated will of the last surviving parent of
5 the ward;

6 (8) a person designated to serve as guardian of the
7 proposed ward by a written declaration of the proposed ward's last
8 surviving parent, if the declarant is deceased and the applicant
9 knows of the existence of the declaration; and

10 (9) each person named as another relative within the
11 third degree by consanguinity [~~next of kin~~] in the application for
12 guardianship as required by Section 682(10) or (12) of this code if
13 the proposed ward's spouse and each of the proposed ward's parents,
14 adult siblings, and adult children are deceased or there is no
15 spouse, parent, adult sibling, or adult child.

16 SECTION 7. Subpart E, Part 2, Chapter XIII, Texas Probate
17 Code, is amended by adding Section 646A to read as follows:

18 Sec. 646A. REPRESENTATION OF WARD OR PROPOSED WARD BY
19 ATTORNEY. (a) The following persons may at any time retain an
20 attorney who holds a certificate required by Section 647A of this
21 code to represent the person's interests in a guardianship matter
22 instead of having those interests represented by an attorney ad
23 litem appointed under Section 646 of this code or another provision
24 of this chapter:

25 (1) a ward who retains the power to enter into a
26 contract under the terms of the guardianship, subject to Section
27 694K of this code; and

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

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

10 SECTION 8. Section 670, Texas Probate Code, is amended to
11 read as follows:

12 Sec. 670. COMPENSATION OF CERTAIN GUARDIANS; CERTAIN OTHER
13 GUARDIANSHIP COSTS. (a) In this section:

14 (1) "Applied income" means the portion of the earned
15 and unearned income of a recipient of medical assistance or, if
16 applicable, the recipient and the recipient's spouse, that is paid
17 under the medical assistance program to an institution or long-term
18 care facility [~~a nursing home~~] in which the recipient resides.

19 (2) "Medical assistance" has the meaning assigned by
20 Section 32.003, Human Resources Code.

21 (b) Notwithstanding any other provision of this chapter and
22 to the extent permitted by federal law, a court that appoints a
23 guardian for a recipient of medical assistance who has applied
24 income may order the following to be deducted as an additional
25 personal needs allowance in the computation of the recipient's
26 applied income in accordance with Section 32.02451, Human Resources
27 Code [~~paid under the medical assistance program~~]:

1 (1) compensation to the guardian in an amount not to
2 exceed \$175 per month;

3 (2) costs directly related to establishing or
4 terminating the guardianship, not to exceed \$1,000 except as
5 provided by Subsection (c) of this section; and

6 (3) other administrative costs related to the
7 guardianship, not to exceed \$1,000 during any three-year period.

8 (c) Costs ordered to be deducted [~~paid~~] under Subsection
9 (b)(2) of this section may include compensation and expenses for an
10 attorney ad litem or guardian ad litem and reasonable attorney's
11 fees for an attorney representing the guardian. The costs ordered
12 to be paid may exceed \$1,000 if the costs in excess of that amount
13 are supported by documentation acceptable to the court and the
14 costs are approved by the court.

15 (d) A court may not order:

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

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

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

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

26 SECTION 9. Section 682, Texas Probate Code, is amended to
27 read as follows:

1 Sec. 682. APPLICATION; CONTENTS. Any person may commence a
2 proceeding for the appointment of a guardian by filing a written
3 application in a court having jurisdiction and venue. The
4 application must be sworn to by the applicant and state:

5 (1) the name, sex, date of birth, and address of the
6 proposed ward;

7 (2) the name, relationship, and address of the person
8 the applicant desires to have appointed as guardian;

9 (3) whether guardianship of the person or estate, or
10 both, is sought;

11 (4) the nature and degree of the alleged incapacity,
12 the specific areas of protection and assistance requested, and the
13 limitation or termination of rights requested to be included in the
14 court's order of appointment, including a termination of:

15 (A) the right of a proposed ward who is 18 years
16 of age or older to vote in a public election; and

17 (B) the proposed ward's eligibility to hold or
18 obtain a license to operate a motor vehicle under Chapter 521,
19 Transportation Code;

20 (5) the facts requiring that a guardian be appointed
21 and the interest of the applicant in the appointment;

22 (6) the nature and description of any guardianship of
23 any kind existing for the proposed ward in any other state;

24 (7) the name and address of any person or institution
25 having the care and custody of the proposed ward;

26 (8) the approximate value and description of the
27 proposed ward's property, including any compensation, pension,

1 insurance, or allowance to which the proposed ward may be entitled;

2 (9) the name and address of any person whom the
3 applicant knows to hold a power of attorney signed by the proposed
4 ward and a description of the type of power of attorney;

5 (10) if the proposed ward is a minor and if known by
6 the applicant:

7 (A) the name of each parent of the proposed ward
8 and state the parent's address or that the parent is deceased;

9 (B) the name and age of each sibling, if any, of
10 the proposed ward and state the sibling's address or that the
11 sibling is deceased; and

12 (C) if each of the proposed ward's parents and
13 adult siblings are deceased, the names and addresses of the
14 proposed ward's other living relatives who are related to the
15 proposed ward within the third degree by consanguinity and [~~next of~~
16 ~~kin]~~ who are adults;

17 (11) if the proposed ward is a minor, whether the minor
18 was the subject of a legal or conservatorship proceeding within the
19 preceding two-year period and, if so, the court involved, the
20 nature of the proceeding, and the final disposition, if any, of the
21 proceeding;

22 (12) if the proposed ward is an adult and if known by
23 the applicant:

24 (A) the name of the proposed ward's spouse, if
25 any, and state the spouse's address or that the spouse is deceased;

26 (B) the name of each of the proposed ward's
27 parents and state the parent's address or that the parent is

1 deceased;

2 (C) the name and age of each of the proposed
3 ward's siblings, if any, and state the sibling's address or that the
4 sibling is deceased;

5 (D) the name and age of each of the proposed
6 ward's children, if any, and state the child's address or that the
7 child is deceased; and

8 (E) if the proposed ward's spouse and each of the
9 proposed ward's parents, adult siblings, and adult children are
10 deceased, or, if there is no spouse, parent, adult sibling, or adult
11 child, the names and addresses of the proposed ward's other living
12 relatives who are related to the proposed ward within the third
13 degree by consanguinity and ~~next of kin~~ who are adults;

14 (13) facts showing that the court has venue over the
15 proceeding; and

16 (14) if applicable, that the person whom the applicant
17 desires to have appointed as a guardian is a private professional
18 guardian who is certified under Subchapter C, Chapter 111,
19 Government Code, and has complied with the requirements of Section
20 697 of this code.

21 SECTION 10. Subsection (d), Section 697B, Texas Probate
22 Code, is amended to read as follows:

23 (d) An individual volunteering with a guardianship program
24 or with the Department of Aging and Disability Services is not
25 required to be certified as provided by this section to provide
26 guardianship services or other services under Section 161.114,
27 Human Resources Code, on the program's or the department's behalf.

1 SECTION 11. Section 761, Texas Probate Code, is amended by
2 amending Subsections (a), (c), and (f) and adding Subsections
3 (a-1), (h), and (i) to read as follows:

4 (a) The court, on its own motion or on motion of any
5 interested person, including the ward, and without notice, may
6 remove any guardian[~~7~~] appointed under this chapter[~~7~~] who:

7 (1) neglects to qualify in the manner and time
8 required by law;

9 (2) fails to return within 30 days after
10 qualification, unless the time is extended by order of the court, an
11 inventory of the property of the guardianship estate and list of
12 claims that have come to the guardian's knowledge;

13 (3) having been required to give a new bond, fails to
14 do so within the time prescribed;

15 (4) absents himself or herself from the state for a
16 period of three months at one time without permission of the court,
17 or removes from the state;

18 (5) cannot be served with notices or other processes
19 because of the fact that:

20 (A) the guardian's whereabouts are unknown;

21 (B) the guardian is eluding service; or

22 (C) the guardian is a nonresident of this state
23 who does not have a resident agent to accept service of process in
24 any guardianship proceeding or other matter relating to the
25 guardianship;

26 (6) has misapplied, embezzled, or removed from the
27 state, or is about to misapply, embezzle, or remove from the state,

1 all or any part of the property committed to the guardian's care;

2 (7) has engaged in conduct with respect to the ward
3 that would be considered to be abuse, neglect, or exploitation, as
4 those terms are defined by Section 48.002, Human Resources Code, if
5 engaged in with respect to an elderly or disabled person, as defined
6 by that section [~~neglected or cruelly treated a ward~~]; or

7 (8) has neglected to educate or maintain the ward as
8 liberally as the means of the ward and the condition of the ward's
9 estate permit.

10 (a-1) In a proceeding to remove a guardian under Subsection
11 (a)(6), (7), or (8) of this section, the court shall appoint a
12 guardian ad litem as provided by Section 645 of this code and an
13 attorney ad litem. The attorney ad litem has the duties prescribed
14 by Section 647 of this code. In the interest of judicial economy,
15 the court may appoint the same person as guardian ad litem and
16 attorney ad litem unless a conflict exists between the interests to
17 be represented by the guardian ad litem and attorney ad litem.

18 (c) The court may remove a guardian on its own motion, or on
19 the complaint of an interested person, after the guardian has been
20 cited by personal service to answer at a time and place set in the
21 notice, when:

22 (1) sufficient grounds appear to support belief that
23 the guardian has misapplied, embezzled, or removed from the state,
24 or that the guardian is about to misapply, embezzle, or remove from
25 the state, all or any part of the property committed to the care of
26 the guardian;

27 (2) the guardian fails to return any account or report

1 that is required by law to be made;

2 (3) the guardian fails to obey any proper order of the
3 court having jurisdiction with respect to the performance of the
4 guardian's duties;

5 (4) the guardian is proved to have been guilty of gross
6 misconduct or mismanagement in the performance of the duties of the
7 guardian;

8 (5) the guardian becomes incapacitated, or is
9 sentenced to the penitentiary, or from any other cause becomes
10 incapable of properly performing the duties of the guardian's
11 trust;

12 (6) the guardian has engaged in conduct with respect
13 to the ward that would be considered to be abuse, neglect, or
14 exploitation, as those terms are defined by Section 48.002, Human
15 Resources Code, if engaged in with respect to an elderly or disabled
16 person, as defined by that section [~~neglects or cruelly treats the~~
17 ~~ward~~];

18 (6-a) the guardian neglects to educate or maintain the
19 ward as liberally as the means of the ward's estate and the ward's
20 ability or condition permit;

21 (7) the guardian interferes with the ward's progress
22 or participation in programs in the community;

23 (8) the guardian fails to comply with the requirements
24 of Section 697 of this code;

25 (9) the court determines that, because of the
26 dissolution of the joint guardians' marriage, the termination of
27 the guardians' joint appointment and the continuation of only one

1 of the joint guardians as the sole guardian is in the best interest
2 of the ward; or

3 (10) the guardian would be ineligible for appointment
4 as a guardian under Section 681 of this code.

5 (f) If the necessity exists, the court may immediately
6 appoint a successor guardian without citation or notice but may not
7 discharge the person removed as guardian of the estate or release
8 the person or the sureties on the person's bond until final order or
9 judgment is rendered on the final account of the guardian. Subject
10 to an order of the court, a successor guardian has the rights and
11 powers of the removed guardian.

12 (h) The appointment of a successor guardian under
13 Subsection (f) of this section does not preclude an interested
14 person from filing an application to be appointed guardian of the
15 ward for whom the successor guardian was appointed. The court shall
16 hold a hearing on an application filed under the circumstances
17 described by this subsection. At the conclusion of the hearing, the
18 court may set aside the appointment of the successor guardian and
19 appoint the applicant as the ward's guardian if the applicant is not
20 disqualified and after considering the requirements of Section 676
21 or 677 of this code, as applicable.

22 (i) If the court sets aside the appointment of the successor
23 guardian under this section, the court may require the successor
24 guardian to prepare and file, under oath, an accounting of the
25 estate and to detail the disposition the successor has made of the
26 estate property.

27 SECTION 12. The Department of Aging and Disability Services

1 and the adult protective services division of the Department of
2 Family and Protective Services shall identify and implement
3 modifications to investigations of abuse, neglect, and
4 exploitation conducted under Chapter 48, Human Resources Code, and
5 the provision of protective and guardianship services under
6 Chapters 48 and 161, Human Resources Code, to ensure that the
7 agencies prevent any unnecessary duplication of efforts in
8 performing their respective responsibilities under those chapters.

9 SECTION 13. (a) Except as otherwise provided by this
10 section, the changes in law made by this Act apply to a guardianship
11 created before, on, or after the effective date of this Act.

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

20 (c) Sections 633 and 682, Texas Probate Code, as amended by
21 this Act, apply only to an application for a guardianship filed on
22 or after the effective date of this Act. An application for a
23 guardianship filed before the effective date of this Act is
24 governed by the law in effect on the date the application was filed,
25 and the former law is continued in effect for that purpose.

26 (d) Section 761, Texas Probate Code, as amended by this Act,
27 applies only to a proceeding to remove a guardian commenced on or

1 after the effective date of this Act. A proceeding to remove a
2 guardian commenced before the effective date of this Act is
3 governed by the law in effect on the date the proceeding was
4 commenced, and the former law is continued in effect for that
5 purpose.

6 SECTION 14. If before implementing any provision of this
7 Act a state agency determines that a waiver or authorization from a
8 federal agency is necessary for implementation of that provision,
9 the agency affected by the provision shall request the waiver or
10 authorization and may delay implementing that provision until the
11 waiver or authorization is granted.

12 SECTION 15. This Act takes effect September 1, 2011.