

By: Zaffirini

S.B. No. 1325

A BILL TO BE ENTITLED

AN ACT

relating to authorizing counties to establish public guardians to serve as guardians for certain incapacitated persons.

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

SECTION 1. Chapter 1002, Estates Code, is amended by adding Sections 1002.0215 and 1002.0265 to read as follows:

Sec. 1002.0215. OFFICE OF PUBLIC GUARDIAN. "Office of public guardian" means an office of public guardian established by the commissioners court of a county under Subchapter G-1, Chapter 1104.

Sec. 1002.0265. PUBLIC GUARDIAN. "Public guardian" means a person:

(1) appointed to administer an office of public guardian by the commissioners court of a county under Subchapter G-1, Chapter 1104; or

(2) with which one or more counties enter into an agreement under Section 1104.327(a)(2) or (d).

SECTION 2. Section 1104.251(a), Estates Code, is amended to read as follows:

(a) An individual must be certified under Subchapter C, Chapter 155, Government Code, if the individual:

(1) is a private professional guardian;

(2) will represent the interests of a ward as a guardian on behalf of a private professional guardian;

(3) is providing guardianship services to a ward of a guardianship program on the program's behalf, except as provided by Section 1104.254; ~~[or]~~

(4) is an employee of the Health and Human Services Commission ~~[Department of Aging and Disability Services]~~ providing guardianship services to a ward of the commission;

(5) is a public guardian; or

(6) will represent the interests of a ward as a guardian on behalf of a public guardian ~~[department]~~.

SECTION 3. Chapter 1104, Estates Code, is amended by adding Subchapter G-1 to read as follows:

SUBCHAPTER G-1. PUBLIC GUARDIANS

Sec. 1104.326. DEFINITION. In this subchapter, unless the context otherwise requires, "office" means an office of public guardian established under this subchapter.

Sec. 1104.327. ESTABLISHMENT OF OFFICES; PUBLIC GUARDIANS.

(a) The commissioners court of a county by order may:

(1) create an office of public guardian to provide guardianship services to incapacitated persons described by Section 1104.334; or

(2) enter into an agreement with a person operating a nonprofit guardianship program or private professional guardianship program located in the county or in an adjacent county to act as a public guardian by providing guardianship services to incapacitated persons described by Section 1104.334.

(b) Subject to Subsection (c) and Section 1104.328, the commissioners court of a county shall appoint an individual as

1 public guardian to administer the office of public guardian
2 established under Subsection (a)(1) and may employ or authorize the
3 public guardian to employ personnel necessary to perform the duties
4 of the office, including personnel who will represent the interests
5 of a ward as a guardian on behalf of the office if approved by the
6 commissioners court.

7 (c) The commissioners court of a county may appoint an
8 individual as public guardian under Subsection (b) on a part-time
9 basis with appropriate compensation if:

10 (1) the commissioners court determines a full-time
11 appointment does not serve the needs of the county; and

12 (2) the individual who is appointed on a part-time
13 basis is not employed in or does not hold another position that
14 presents a conflict of interest.

15 (d) The commissioners courts of two or more counties may
16 collectively enter into an agreement:

17 (1) to create and fund an office of public guardian for
18 purposes of Subsection (a)(1) and to appoint the same individual as
19 public guardian to that office under Subsection (b); or

20 (2) with a person operating a guardianship program
21 described by Subsection (a)(2) to serve as a public guardian for
22 purposes of that subdivision.

23 (e) An individual appointed as public guardian under
24 Subsection (b) serves a term of five years.

25 Sec. 1104.328. QUALIFICATIONS OF PUBLIC GUARDIAN. To be
26 appointed as public guardian under Section 1104.327(b), an
27 individual must:

1 (1) be a licensed attorney or be certified under
2 Subchapter C, Chapter 155, Government Code; and

3 (2) have demonstrable guardianship experience.

4 Sec. 1104.329. CONFLICT OF INTEREST. (a) Except as
5 provided by Subsection (b), an office or public guardian must be
6 independent from providers of services to wards and proposed wards
7 and may not directly provide housing, medical, legal, or other
8 direct, non-surrogate decision-making services to a ward or
9 proposed ward, unless approved by the court.

10 (b) An office or public guardian may provide money
11 management services described by Section 531.125, Government Code,
12 or other representative payee services to a ward or proposed ward.

13 Sec. 1104.330. COMPENSATION. A person appointed or acting
14 as public guardian under Section 1104.327 shall receive
15 compensation as set by the commissioners court and is not entitled
16 to compensation under Subchapter A, Chapter 1155, unless approved
17 by the court.

18 Sec. 1104.331. BOND REQUIREMENT. (a) A public guardian
19 shall file with the court clerk a general bond in an amount fixed by
20 the commissioners court payable to the county and issued by a surety
21 company approved by the county judge. The bond must be conditioned
22 on the faithful performance by the person of the person's duties
23 and, if the public guardian administers an office, the office's
24 duties.

25 (b) The bond required by this section satisfies any bond
26 required under Chapter 1105.

27 Sec. 1104.332. VACANCY. If an individual appointed as

1 public guardian under Section 1104.327(b) vacates the position, the
2 commissioners court shall appoint, subject to Section 1104.328, an
3 individual to serve as public guardian for the unexpired term.

4 Sec. 1104.333. POWERS AND DUTIES. (a) An office or public
5 guardian shall:

6 (1) if applicable, evaluate the financial status of a
7 proposed ward to determine whether the proposed ward is eligible to
8 have the office or public guardian appointed guardian of the ward
9 under Section 1104.334(a)(2)(A); and

10 (2) serve as guardian of the person or of the estate of
11 a ward, or both, on appointment by a court in accordance with the
12 requirements of this title.

13 (b) In connection with a financial evaluation under
14 Subsection (a)(1) and on the request of an office or public
15 guardian, a court with jurisdiction over the guardianship
16 proceeding may order the release of public and private records,
17 including otherwise confidential records, to the office or public
18 guardian.

19 (c) Notwithstanding Section 552.261, Government Code, a
20 state agency may not charge an office or public guardian for
21 providing the office or public guardian with a copy of public
22 information requested from the agency by the office or public
23 guardian.

24 Sec. 1104.334. APPOINTMENT OF OFFICE OR PUBLIC GUARDIAN AS
25 GUARDIAN. (a) In accordance with applicable law, including
26 Subchapter C, Chapter 1101, a court may appoint an office or public
27 guardian to serve as guardian of the person or of the estate of a

ward, or both, if:

(1) on the date the guardianship application is filed,
the ward resides in or is located in the county served by the office
or public guardian; and

(2) the court finds that:

(A) the ward does not have sufficient assets or
other resources to pay a private professional guardian to serve as
the ward's guardian;

(B) the ward does not have a family member,
friend, or other suitable person or entity willing and able to serve
as the ward's guardian; or

(C) the appointment of an office or public
guardian is in the ward's best interest.

(b) For purposes of Subsection (a)(2)(A), the determination
of a ward's ability to pay a private professional guardian is
dependent on:

(1) the nature, extent, and liquidity of the ward's
assets;

(2) the ward's disposable net income, including income
of a recipient of medical assistance that is used to pay expenses
under Section [1155.202](#)(a);

(3) the nature of the guardianship;

(4) the type, duration, and complexity of services
required by the ward; and

(5) additional, foreseeable expenses.

(c) The number of appointments of an office under this
section may not exceed 35 wards for each guardian representing the

1 interests of wards on behalf of the office.

2 (d) If each guardian representing the interests of wards on
3 behalf of an office reaches the limitation provided by Subsection
4 (c), the office shall immediately give notice to the courts.

5 Sec. 1104.335. CONFIDENTIALITY AND DISCLOSURE OF
6 INFORMATION. (a) All files, reports, records, communications, or
7 working papers used or developed by an office or public guardian in
8 the performance of duties relating to a financial evaluation under
9 Section 1104.333(a)(1) or the provision of guardianship services
10 are confidential and not subject to disclosure under Chapter 552,
11 Government Code.

12 (b) Confidential information may be disclosed only for a
13 purpose consistent with this subchapter, as required by other state
14 or federal law, or as necessary to enable an office or public
15 guardian to exercise the powers and duties as guardian of the person
16 or of the estate of a ward, or both.

17 (c) A court on its own motion or on the motion of an
18 interested person may order disclosure of confidential information
19 only if:

20 (1) a hearing on the motion is conducted;

21 (2) notice of the hearing is served on the office or
22 public guardian and each interested person; and

23 (3) the court determines after the hearing and an in
24 camera review of the information that disclosure is essential to
25 the administration of justice and will not endanger the life or
26 safety of any individual who:

27 (A) is being assessed for guardianship services;

1 (B) is a ward of the office or public guardian; or
2 (C) provides services to a ward of the office or
3 public guardian.

4 (d) The Office of Court Administration of the Texas Judicial
5 System shall establish policies and procedures for the exchange of
6 information between offices, public guardians, and other
7 appropriate governmental entities, as necessary for offices,
8 public guardians, and governmental entities to properly execute
9 their respective duties and responsibilities relating to
10 guardianship services or other needed services for a ward. An
11 exchange of information under this subsection does not constitute a
12 release for purposes of waiving the confidentiality of the
13 information exchanged.

14 (e) To the extent consistent with policies and procedures
15 adopted by an office or public guardian, the office or public
16 guardian on request may release confidential information in the
17 record of an individual who is a former ward of the office or public
18 guardian 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), an office or public guardian shall edit the
25 information to protect the identity of any individual whose life or
26 safety may be endangered by the release. A release of information
27 under Subsection (e) does not constitute a release for purposes of

1 waiving the confidentiality of the information released.

2 Sec. 1104.336. CERTAIN ADMINISTRATIVE COSTS. (a) If an
3 office or public guardian is appointed guardian of the person or of
4 the estate of a ward, or both, the administrative costs of the
5 guardianship services provided to the ward may not be charged to the
6 ward's estate unless the court determines, subject to Subsection
7 (b), that the ward is financially able to pay all or part of the
8 costs.

9 (b) A court shall measure a ward's ability to pay for costs
10 under Subsection (a) by whether the ward has sufficient assets or
11 other resources to pay a private professional guardian to serve as
12 the ward's guardian in accordance with Section 1104.334(b).

13 Sec. 1104.337. OFFICE OF COURT ADMINISTRATION OF THE TEXAS
14 JUDICIAL SYSTEM; REPORT. (a) Not later than December 1 of each
15 even-numbered year, the Office of Court Administration of the Texas
16 Judicial System shall submit a report to the governor and the
17 legislature that contains an evaluation of public guardians
18 established under this subchapter, including the establishment and
19 operation of offices of public guardians under this subchapter and
20 the provision of guardianship services by the offices. The report
21 must include:

22 (1) an analysis of costs and offsetting savings or
23 other benefits to the state as a result of the establishment and
24 operation of offices and public guardians under this subchapter;
25 and

26 (2) recommendations for legislation, if any.

27 (b) If it is cost-effective and feasible, the Office of

1 Court Administration of the Texas Judicial System may contract with
2 an appropriate research or public policy entity with expertise in
3 gerontology, disabilities, and public administration to conduct
4 the analysis described by Subsection (a)(1).

5 Sec. 1104.338. RULES. The supreme court, in consultation
6 with the Office of Court Administration of the Texas Judicial
7 System and the presiding judge of the statutory probate courts
8 elected under Section 25.0022, Government Code, shall adopt rules
9 necessary to implement this subchapter.

10 SECTION 4. Section 1104.402(a), Estates Code, is amended to
11 read as follows:

12 (a) Except as provided by Section 1104.403, 1104.404, or
13 1104.406(a), the clerk of the county having venue of the proceeding
14 for the appointment of a guardian shall obtain criminal history
15 record information that is maintained by the Department of Public
16 Safety or the Federal Bureau of Investigation identification
17 division relating to:

18 (1) a private professional guardian;

19 (2) each person who represents or plans to represent
20 the interests of a ward as a guardian on behalf of the private
21 professional guardian;

22 (3) each person employed by a private professional
23 guardian who will:

24 (A) have personal contact with a ward or proposed
25 ward;

26 (B) exercise control over and manage a ward's
27 estate; or

(C) perform any duties with respect to the management of a ward's estate;

(4) each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward of the program on the program's behalf; ~~or~~

(5) a public guardian appointed under Section 1104.327(b);

(6) each person who represents or plans to represent the interests of a ward as a guardian on behalf of an office of public guardian;

(7) each person employed by an office of public guardian who will:

(A) have personal contact with a ward or proposed ward;

(B) exercise control over and manage a ward's estate; or

(C) perform any duties with respect to the management of a ward's estate; or

(8) any other person proposed to serve as a guardian under this title, including a proposed temporary guardian and a proposed successor guardian, other than an attorney.

SECTION 5. Section 1104.409, Estates Code, is amended to read as follows:

Sec. 1104.409. USE OF INFORMATION BY COURT. The court shall use the information obtained under this subchapter only in determining whether to:

(1) appoint, remove, or continue the appointment of a

1 private professional guardian, a guardianship program, an office of
2 public guardian, or the Health and Human Services Commission
3 ~~[department]~~; or

4 (2) appoint any other person proposed to serve as a
5 guardian under this title, including a proposed temporary guardian
6 and a proposed successor guardian, other than an attorney.

7 SECTION 6. Section 1155.151(a-2), Estates Code, is amended
8 to read as follows:

9 (a-2) Notwithstanding any other law requiring the payment
10 of court costs in a guardianship proceeding, the following are not
11 required to pay court costs on the filing of or during a
12 guardianship proceeding:

13 (1) an attorney ad litem;

14 (2) a guardian ad litem;

15 (3) a person or entity who files an affidavit of
16 inability to pay the costs under Rule 145, Texas Rules of Civil
17 Procedure, that shows the person or entity is unable to afford the
18 costs;

19 (4) a nonprofit guardianship program;

20 (5) a governmental entity, including an office of
21 public guardian; and

22 (6) a government agency or nonprofit agency providing
23 guardianship services.

24 SECTION 7. Section 1163.005(a), Estates Code, is amended to
25 read as follows:

26 (a) The guardian of the estate shall attach to an account
27 the guardian's affidavit stating:

(1) that the account contains a correct and complete statement of the matters to which the account relates;

(2) that the guardian has paid the bond premium for the next accounting period;

(3) that the guardian has filed all tax returns of the ward due during the accounting period;

(4) that the guardian has paid all taxes the ward owed during the accounting period, the amount of the taxes, the date the guardian paid the taxes, and the name of the governmental entity to which the guardian paid the taxes; and

(5) if the guardian is a private professional guardian, a guardianship program, an office of public guardian, or the Health and Human Services Commission [~~Department of Aging and Disability Services~~], whether the guardian or an individual certified under Subchapter C, Chapter 155 [~~111~~], Government Code, who is providing guardianship services to the ward and who is swearing to the account on the guardian's behalf, is or has been the subject of an investigation conducted by the Judicial Branch [~~Guardianship~~] Certification Commission [~~Board~~] during the accounting period.

SECTION 8. Section 1163.101(c), Estates Code, is amended to read as follows:

(c) The guardian of the person shall file a sworn affidavit that contains:

(1) the guardian's current name, address, and telephone number;

(2) the ward's date of birth and current name, address,

1 telephone number, and age;

2 (3) a description of the type of home in which the ward
3 resides, which shall be described as:

4 (A) the ward's own home;

5 (B) a nursing home;

6 (C) a guardian's home;

7 (D) a foster home;

8 (E) a boarding home;

9 (F) a relative's home, in which case the
10 description must specify the relative's relationship to the ward;

11 (G) a hospital or medical facility; or

12 (H) another type of residence;

13 (4) statements indicating:

14 (A) the length of time the ward has resided in the
15 present home;

16 (B) the reason for a change in the ward's
17 residence, if a change in the ward's residence has occurred in the
18 past year;

19 (C) the date the guardian most recently saw the
20 ward;

21 (D) how frequently the guardian has seen the ward
22 in the past year;

23 (E) whether the guardian has possession or
24 control of the ward's estate;

25 (F) whether the ward's mental health has
26 improved, deteriorated, or remained unchanged during the past year,
27 including a description of the change if a change has occurred;

1 (G) whether the ward's physical health has
2 improved, deteriorated, or remained unchanged during the past year,
3 including a description of the change if a change has occurred;

4 (H) whether the ward has regular medical care;
5 and

6 (I) the ward's treatment or evaluation by any of
7 the following persons during the past year, including the person's
8 name and a description of the treatment:

9 (i) a physician;

10 (ii) a psychiatrist, psychologist, or other
11 mental health care provider;

12 (iii) a dentist;

13 (iv) a social or other caseworker; or

14 (v) any other individual who provided
15 treatment;

16 (5) a description of the ward's activities during the
17 past year, including recreational, educational, social, and
18 occupational activities, or a statement that no activities were
19 available or that the ward was unable or refused to participate in
20 activities;

21 (6) the guardian's evaluation of:

22 (A) the ward's living arrangements as excellent,
23 average, or below average, including an explanation if the
24 conditions are below average;

25 (B) whether the ward is content or unhappy with
26 the ward's living arrangements; and

27 (C) unmet needs of the ward;

1 (7) a statement indicating whether the guardian's
2 power should be increased, decreased, or unaltered, including an
3 explanation if a change is recommended;

4 (8) a statement indicating that the guardian has paid
5 the bond premium for the next reporting period;

6 (9) if the guardian is a private professional
7 guardian, a guardianship program, an office of public guardian, or
8 the Health and Human Services Commission [~~Department of Aging and~~
9 ~~Disability Services~~], whether the guardian or an individual
10 certified under Subchapter C, Chapter 155, Government Code, who is
11 providing guardianship services to the ward and who is filing the
12 affidavit on the guardian's behalf, is or has been the subject of an
13 investigation conducted by the Judicial Branch [~~Guardianship~~
14 ~~Certification Commission~~ Board] during the preceding year; and

15 (10) any additional information the guardian desires
16 to share with the court regarding the ward, including:

17 (A) whether the guardian has filed for emergency
18 detention of the ward under Subchapter A, Chapter 573, Health and
19 Safety Code; and

20 (B) if applicable, the number of times the
21 guardian has filed for emergency detention and the dates of the
22 applications for emergency detention.

23 SECTION 9. Section 155.001, Government Code, is amended by
24 amending Subdivisions (4) and (6) and adding Subdivisions (5-a) and
25 (6-a) to read as follows:

26 (4) "Guardianship program" means a local, county, or
27 regional program, other than an office of public guardian, that

1 provides guardianship and related services to an incapacitated
2 person or other person who needs assistance in making decisions
3 concerning the person's own welfare or financial affairs.

4 (5-a) "Office of public guardian" has the meaning
5 assigned by Section 1002.0215, Estates Code.

6 (6) "Private professional guardian" means a person,
7 other than an attorney, ~~[or]~~ a corporate fiduciary, or an office of
8 public guardian, who is engaged in the business of providing
9 guardianship services.

10 (6-a) "Public guardian" has the meaning assigned by
11 Section 1002.0265, Estates Code.

12 SECTION 10. Section 155.101(a), Government Code, is amended
13 to read as follows:

14 (a) The commission shall adopt minimum standards for:

15 (1) the provision of guardianship services or other
16 similar but less restrictive types of assistance or services by:

17 (A) guardianship programs; and

18 (B) private professional guardians; ~~[and]~~

19 (2) the provision of guardianship services by the
20 Health and Human Services Commission; and

21 (3) the provision of guardianship services by offices
22 of public guardians ~~[Department of Aging and Disability Services]~~.

23 SECTION 11. Section 155.102(a), Government Code, is amended
24 to read as follows:

25 (a) To provide guardianship services in this state, the
26 following individuals must hold a certificate issued under this
27 section:

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

3 (2) an individual who will provide those services to a
4 ward of a private professional guardian on the guardian's behalf;
5 ~~[and]~~

6 (3) an individual, other than a volunteer, who will
7 provide those services or other services under Section 161.114,
8 Human Resources Code, to a ward of a guardianship program or the
9 Health and Human Services Commission ~~[Department of Aging and~~
10 ~~Disability Services]~~ on the program's or commission's
11 ~~[department's]~~ behalf;

12 (4) an individual who is a public guardian; and

13 (5) an individual who will provide those services to a
14 ward of an office of public guardian.

15 SECTION 12. Section 155.105, Government Code, is amended by
16 adding Subsection (b-1) to read as follows:

17 (b-1) Not later than January 31 of each year, each office of
18 public guardian shall provide to the commission a report containing
19 for the preceding year:

20 (1) the number of wards served by the office;

21 (2) the total amount of any money received from this
22 state for the provision of guardianship services; and

23 (3) the amount of money received from any other public
24 source, including a county or the federal government, for the
25 provision of guardianship services, reported by source, and the
26 total amount of money received from those public sources.

27 SECTION 13. Section 411.1386(a), Government Code, is

amended to read as follows:

(a) Except as provided by Subsections (a-1), (a-5), and (a-6), the clerk of the county having venue over a proceeding for the appointment of a guardian under Title 3, Estates Code, shall obtain from the department criminal history record information maintained by the department that relates to:

(1) a private professional guardian;

(2) each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian;

(3) each person employed by a private professional guardian who will:

(A) have personal contact with a ward or proposed ward;

(B) exercise control over and manage a ward's estate; or

(C) perform any duties with respect to the management of a ward's estate;

(4) each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward of the program on the program's behalf; ~~or~~

(5) a public guardian, as defined by Section 1002.0265(1), Estates Code;

(6) each person who represents or plans to represent the interests of a ward as a guardian on behalf of an office of public guardian;

(7) each person employed by an office of public

1 guardian, as defined by Section 1002.0215, Estates Code, who will:

2 (A) have personal contact with a ward or proposed
3 ward;

4 (B) exercise control over and manage a ward's
5 estate; or

6 (C) perform any duties with respect to the
7 management of a ward's estate; or

8 (8) any other person proposed to serve as a guardian
9 under Title 3, Estates Code, including a proposed temporary
10 guardian and a proposed successor guardian, other than an attorney.

11 SECTION 14. Section 161.103, Human Resources Code, is
12 amended to read as follows:

13 Sec. 161.103. CONTRACT FOR GUARDIANSHIP SERVICES. (a) If
14 appropriate, the commission ~~[department]~~ may contract with a
15 political subdivision of this state, a guardianship program as
16 defined by Section 1002.016, Estates Code, a private agency, or
17 another state agency for the provision of guardianship services
18 under this section.

19 (b) A contract under Subsection (a) may allow for the
20 provision of guardianship services by an office of public guardian,
21 as defined by Section 1002.0215, Estates Code.

22 SECTION 15. Not later than January 1, 2018, the supreme
23 court shall adopt rules necessary to implement Subchapter G-1,
24 Chapter 1104, Estates Code, as added by this Act, including rules
25 governing the transfer of a guardianship of the person or of the
26 estate of a ward, or both, if appropriate, to an office of public
27 guardian established under that subchapter or a public guardian

1 contracted under that subchapter.

2 SECTION 16. (a) The changes in law made by this Act apply
3 only to the appointment of a guardian of the person or of the estate
4 of a ward, or both, made on or after July 1, 2018.

5 (b) Notwithstanding any other law, a person who,
6 immediately before July 1, 2018, is serving as guardian of the
7 person or of the estate of a ward, or both, who, under Section
8 1104.334, Estates Code, as added by this Act, would be eligible for
9 appointment of an office of public guardian as the ward's guardian,
10 may continue to serve as guardian of the person or of the estate of
11 the ward, or both, unless otherwise removed as provided by law.

12 SECTION 17. This Act takes effect September 1, 2017.