86R6242 CLG-F

By:  Zaffirini S.B. No. 1768

A BILL TO BE ENTITLED

AN ACT

relating to guardianships and supports and services for incapacitated persons.

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

SECTION 1.  Section 22.016, Estates Code, is amended to read as follows:

Sec. 22.016.  INCAPACITATED PERSON. A person is "incapacitated" if the person:

(1)  is a minor;

(2)  is an adult who lacks the ability to meet essential requirements for his or her own physical health, safety, or self-care or to manage the person's own financial affairs because the person is unable, due to a physical or mental condition, to receive and evaluate information or make or communicate decisions, even with:

(A)  appropriate supports and services, including assistive technology; or

(B)  supported decision-making [~~, because of a physical or mental condition, is substantially unable to:~~

[~~(A)  provide food, clothing, or shelter for himself or herself;~~

[~~(B)  care for the person's own physical health; or~~

[~~(C)  manage the person's own financial affairs~~]; or

(3)  must have a guardian appointed for the person to receive funds due the person from a governmental source.

SECTION 2.  Section 22.033, Estates Code, is amended to read as follows:

Sec. 22.033.  WARD; PERSON WITH A GUARDIAN. "Ward" or "person with a guardian" means a person for whom a guardian has been appointed.

SECTION 3.  Chapter 1001, Estates Code, is amended by adding Section 1001.004 to read as follows:

Sec. 1001.004.  USE OF PERSON FIRST RESPECTFUL LANGUAGE INSTEAD OF WARD. (a) The legislature, the Texas Legislative Council, and other state agencies and entities are directed to avoid using the term "ward" in any new provision of law and are directed to replace, as appropriate, that term in any existing law as that existing law is otherwise amended with the following preferred terms or phrases or appropriate variations of those terms or phrases:

(1)  "person";

(2)  "incapacitated person"; and

(3)  "person with a guardian."

(b)  A law is not invalid solely because it does not employ this section's preferred terms or phrases.

SECTION 4.  Section 1002.017, Estates Code, is amended to read as follows:

Sec. 1002.017.  INCAPACITATED PERSON.  "Incapacitated person" means:

(1)  a minor;

(2)  an adult who lacks the ability to meet essential requirements for his or her own physical health, safety, or self-care or to manage the person's own financial affairs because the person is unable, due to a physical or mental condition, to receive and evaluate information or make or communicate decisions, even with:

(A)  appropriate supports and services, including assistive technology; or

(B)  supported decision-making [~~, because of a physical or mental condition, is substantially unable to:~~

[~~(A)  provide food, clothing, or shelter for himself or herself;~~

[~~(B)  care for the person's own physical health; or~~

[~~(C)  manage the person's own financial affairs~~]; or

(3)  a person who must have a guardian appointed for the person to receive funds due the person from a governmental source.

SECTION 5.  Section 1002.026, Estates Code, is amended to read as follows:

Sec. 1002.026.  PROPOSED WARD; ALLEGED INCAPACITATED PERSON. "Proposed ward" or "alleged incapacitated person" means a person alleged in a guardianship proceeding to be incapacitated.

SECTION 6.  Section 1002.030, Estates Code, is amended to read as follows:

Sec. 1002.030.  WARD; PERSON WITH A GUARDIAN. "Ward" or "person with a guardian" means a person for whom a guardian has been appointed.

SECTION 7.  Section 1002.031, Estates Code, is amended to read as follows:

Sec. 1002.031.  SUPPORTS AND SERVICES.  (a)  "Supports and services" means available community-based formal and informal resources and assistance that enable an individual to:

(1)  meet the individual's needs for food, clothing, or shelter, regardless of whether the individual is able to make or communicate decisions about those needs;

(2)  care for the individual's physical or mental health, regardless of whether the individual is able to make or communicate decisions about health needs;

(3)  manage the individual's financial affairs, regardless of whether the individual is able to make or communicate decisions about those affairs; or

(4)  make personal decisions regarding residence, voting, operating a motor vehicle, and marriage.

(b)  "Community-based informal resources and assistance" means resources and assistance provided to an individual by a family member, friend, neighbor, or other support system that help the individual address daily living needs and responsibilities. The term includes:

(1)  providing free or reduced cost meals and transportation to the individual;

(2)  providing food and prescription delivery to the individual;

(3)  providing peer support to the individual;

(4)  opening a joint checking account or obtaining a joint debit card with the individual;

(5)  providing assistance with arranging for direct deposits at a bank or other financial institution or with paying bills for the individual;

(6)  making daily telephone calls on the individual's behalf; and

(7)  making home visits to the individual.

(c)  "Community-based formal resources and assistance" means resources and assistance provided to an individual with a disability or an elderly individual under a state or federal program that enable the individual to remain in his or her own home or in the community by providing assistance with activities of daily living, including instrumental activities of daily living. The term includes:

(1)  personal attendant services;

(2)  assistance in communicating the individual's decisions to other persons, including through the use of an interpreter;

(3)  assistance with shopping, handling medication, and housekeeping;

(4)  assistance in accessing or collecting financial and health benefits;

(5)  nurse-delegated tasks;

(6)  customized durable medical equipment, assistive technology, or assistance animals; and

(7)  affordable integrated housing and transportation assistance.

SECTION 8.  Section 1054.004, Estates Code, is amended by amending Subsection (c) and adding Subsections (d), (e), and (f) to read as follows:

(c)  Before the hearing, the attorney ad litem shall:

(1)  discuss with the alleged incapacitated person:

(A)  [~~proposed ward~~] the attorney ad litem's opinion regarding[~~:~~

[~~(1)~~]  whether a guardianship is necessary for the alleged incapacitated person [~~proposed ward~~]; and

(B)  if the attorney ad litem believes a guardianship is necessary, discuss with the alleged incapacitated person [~~(2)  if a guardianship is necessary,~~] the specific powers or duties of the guardian that should be limited if the person [~~proposed ward~~] receives supports and services; and

(2)  advise the alleged incapacitated person of his or her right to oppose the guardianship and shall allow the person to make the decision regarding whether to oppose the guardianship.

(d)  If the alleged incapacitated person expresses a desire to oppose the guardianship, the attorney ad litem appointed to represent the person shall advocate zealously on the person's behalf and seek alternatives to guardianship or supports and services to avoid the need for the guardianship.

(e)  The attorney ad litem representing the alleged incapacitated person shall make every reasonable effort within the bounds of law to advocate for the protection of the person's rights by ensuring that the applicant for the appointment of a guardian meets the burden of proof required under Section 1101.101 to establish the need for that appointment.

(f)  The attorney ad litem shall communicate the information required by this section in the alleged incapacitated person's native language or preferred mode of communication and in a manner that is accessible and understandable to the alleged incapacitated person.

SECTION 9.  Section 1101.051(a), Estates Code, is amended to read as follows:

(a)  At a hearing for the appointment of a guardian, the court shall:

(1)  inquire into the ability of any allegedly incapacitated adult to:

(A)  meet the essential requirements for his or her own physical health, safety, or self-care [~~feed, clothe, and shelter himself or herself;~~

[~~(B)  care for his or her own physical health~~]; and

(B) [~~(C)~~]  manage his or her property or financial affairs;

(2)  ascertain the age of any alleged incapacitated person [~~proposed ward~~] who is a minor;

(3)  inquire into the governmental reports for any person who must have a guardian appointed to receive funds due the person from any governmental source; and

(4)  inquire into the qualifications, abilities, and capabilities of the person seeking to be appointed guardian.

SECTION 10.  Sections 1101.101(a) and (c), Estates Code, are amended to read as follows:

(a)  Before appointing a guardian for an alleged incapacitated person [~~a proposed ward~~], the court must:

(1)  find by clear and convincing evidence that:

(A)  the alleged incapacitated person [~~proposed ward~~] is an incapacitated person;

(B)  it is in the alleged incapacitated person's [~~proposed ward's~~] best interest to have the court appoint a person as the alleged incapacitated person's [~~proposed ward's~~] guardian;

(C)  the alleged incapacitated person's [~~proposed ward's~~] rights or property will be protected by the appointment of a guardian;

(D)  alternatives to guardianship that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and

(E)  supports and services available to the alleged incapacitated person [~~proposed ward~~] that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and

(2)  find by a preponderance of the evidence that:

(A)  the court has venue of the case;

(B)  the person to be appointed guardian is eligible to act as guardian and is entitled to appointment, or, if no eligible person entitled to appointment applies, the person appointed is a proper person to act as guardian;

(C)  if a guardian is appointed for a minor, the guardianship is not created for the primary purpose of enabling the minor to establish residency for enrollment in a school or school district for which the minor is not otherwise eligible for enrollment; and

(D)  the alleged incapacitated person [~~proposed ward~~]:

(i)  [~~is~~] totally lacks the ability to meet the essential requirements for his or her own physical health, safety, or self-care [~~without capacity as provided by this title to care for himself or herself~~] and to manage his or her property for the reasons provided by Section 1002.017(2); or

(ii)  lacks the ability [~~capacity~~] to do some, but not all, of the tasks necessary to meet the essential requirements for his or her own physical health, safety, or self-care [~~care for himself or herself~~] or to manage his or her property for the reasons provided by Section 1002.017(2).

(c)  A finding under Subsection (a)(2)(D)(ii) must specifically state whether the alleged incapacitated person [~~proposed ward~~] lacks the ability [~~capacity~~], or lacks the sufficient ability [~~capacity~~] with supports and services, to make personal decisions regarding residence, voting, operating a motor vehicle, and marriage.

SECTION 11.  Sections 1101.103(a) and (d), Estates Code, are amended to read as follows:

(a)  The [~~Except as provided by Section 1101.104, the~~] court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is:

(1)  dated not earlier than the 120th day before the date the application is filed; and

(2)  based on an examination the physician performed not earlier than the 120th day before the date the application is filed.

(d)  A physician who examines the alleged incapacitated person [~~proposed ward, other than a physician or psychologist who examines the proposed ward under Section 1101.104(2),~~] shall make available for inspection by the attorney ad litem appointed to represent the alleged incapacitated person [~~proposed ward~~] a written letter or certificate from the physician that complies with the requirements of Subsections (a) and (b).

SECTION 12.  Section 1101.151, Estates Code, is amended to read as follows:

Sec. 1101.151.  ORDER APPOINTING GUARDIAN WITH FULL AUTHORITY. (a)  If it is found that the alleged incapacitated person [~~proposed ward is~~] totally lacks the ability, for the reasons provided by Section 1002.017(2), to meet the essential requirements for his or her own health, safety, or self-care [~~without capacity to care for himself or herself~~], manage his or her property, operate a motor vehicle, make personal decisions regarding residence, and vote in a public election, even with appropriate supports and services or supported decision-making, the court may appoint a guardian of the alleged incapacitated person's [~~proposed ward's~~] person or estate, or both, with full authority over the incapacitated person except as provided by law.

(b)  An order appointing a guardian under this section must contain findings of fact and specify:

(1)  the information required by Section 1101.153(a);

(2)  that the guardian has full authority over the incapacitated person;

(3)  if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156;

(4)  whether the person [~~is~~] totally lacks the ability to meet the essential requirements for his or her own health, safety, or self-care [~~incapacitated~~] because of a mental condition;

(5)  that the person does not have the ability [~~capacity~~] to operate a motor vehicle, make personal decisions regarding residence, and vote in a public election; and

(6)  if it is a guardianship of the person of the incapacitated person [~~ward~~] or of both the person and the estate of the incapacitated person [~~ward~~], the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1).

(c)  An order appointing a guardian under this section that includes the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF AN INCAPACITATED PERSON [~~A WARD~~] TO HAVE PHYSICAL POSSESSION OF THE INCAPACITATED PERSON [~~WARD~~] OR TO ESTABLISH THE INCAPACITATED PERSON'S [~~WARD'S~~] LEGAL DOMICILE AS SPECIFIED IN THIS ORDER.  A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE INCAPACITATED PERSON [~~WARD~~].  ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000."

SECTION 13.  Section 1101.152, Estates Code, is amended to read as follows:

Sec. 1101.152.  ORDER APPOINTING GUARDIAN WITH LIMITED AUTHORITY. (a)  If it is found that the alleged incapacitated person [~~proposed ward~~] lacks the ability, for the reasons provided by Section 1002.017(2), [~~capacity~~] to do some, but not all, of the tasks necessary to meet the essential requirements for his or her own health, safety, or self-care [~~care for himself or herself~~] or to manage his or her property with or without supports and services, the court may appoint a guardian with limited powers and permit the alleged incapacitated person [~~proposed ward~~] to care for himself or herself, including making personal decisions regarding residence and regarding the person's own physical health, safety, or self-care, or to manage his or her property commensurate with the alleged incapacitated person's [~~proposed ward's~~] ability.

(b)  An order appointing a guardian under this section must contain findings of fact and specify:

(1)  the information required by Section 1101.153(a);

(2)  the specific powers, limitations, or duties of the guardian with respect to the person's health, safety, or care or the management of the person's property by the guardian;

(2-a)  the specific rights and powers retained by the person:

(A)  with the necessity for supports and services; and

(B)  without the necessity for supports and services;

(3)  if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156; and

(4)  whether the person is incapacitated because of a mental condition and, if so, whether the person:

(A)  retains the right to make personal decisions regarding residence or vote in a public election; or

(B)  maintains eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code.

(c)  An order appointing a guardian under this section that includes the right of the guardian to have physical possession of the incapacitated person [~~ward~~] or to establish the incapacitated person's [~~ward's~~] legal domicile as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF AN INCAPACITATED PERSON [~~A WARD~~] TO HAVE PHYSICAL POSSESSION OF THE INCAPACITATED PERSON [~~WARD~~] OR TO ESTABLISH THE INCAPACITATED PERSON'S [~~WARD'S~~] LEGAL DOMICILE AS SPECIFIED IN THIS ORDER.  A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE INCAPACITATED PERSON [~~WARD~~].  ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000."

SECTION 14.  Section 1101.155, Estates Code, is amended to read as follows:

Sec. 1101.155.  DISMISSAL OF APPLICATION.  If it is found that an alleged incapacitated person [~~a proposed ward~~] who is an adult possesses the ability to meet the essential requirements for his or her own physical health, safety, or self-care [~~capacity to care for himself or herself~~] and to manage his or her property as would a reasonably prudent person, the court shall dismiss an application for guardianship.

SECTION 15.  Section 1202.001(b), Estates Code, is amended to read as follows:

(b)  A guardianship shall be settled and closed when the incapacitated person [~~ward~~]:

(1)  dies and, if the incapacitated person [~~ward~~] was married, the person's [~~ward's~~] spouse qualifies as survivor in community;

(2)  is found by the court to have full ability [~~capacity~~], or sufficient ability [~~capacity~~] with supports and services, to meet the essential requirements for his or her own physical health, safety, or self-care [~~care for himself or herself~~] and to manage the incapacitated person's [~~ward's~~] property;

(3)  is no longer a minor; or

(4)  no longer must have a guardian appointed to receive funds due the incapacitated person [~~ward~~] from any governmental source.

SECTION 16.  Section 1202.051(a), Estates Code, is amended to read as follows:

(a)  Notwithstanding Section 1055.003, a person with a guardian [~~ward~~] or any person interested in the [~~ward's~~] welfare of the person with a guardian may file a written application with the court for an order:

(1)  finding that the person with a guardian [~~ward~~] is no longer an incapacitated person and ordering the settlement and closing of the guardianship;

(2)  finding that the person with a guardian [~~ward~~] lacks the ability, for the reasons provided by Section 1002.017(2) [~~capacity~~], or lacks the sufficient ability [~~capacity~~] with supports and services, to do some or all of the tasks necessary to meet the essential requirements for his or her own physical health, safety, or self-care [~~provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health,~~] or to manage his or her [~~the ward's~~] own financial affairs and granting additional powers or duties to the guardian; or

(3)  finding that the person with a guardian, despite the reasons provided by Section 1002.017(2), [~~ward~~] has the ability [~~capacity~~], or sufficient ability [~~capacity~~] with supports and services, to do some, but not all, of the tasks necessary to meet the essential requirements for his or her own physical health, safety, or self-care [~~provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health,~~] or to manage his or her [~~the ward's~~] own financial affairs and:

(A)  limiting the guardian's powers or duties; and

(B)  permitting the person with a guardian [~~ward~~] to provide for his or her own physical health, safety, or self-care [~~care for himself or herself~~], make personal decisions regarding residence, or manage the person's [~~ward's~~] own financial affairs commensurate with the person's [~~ward's~~] ability, with or without supports and services.

SECTION 17.  Section 1202.152, Estates Code, is amended to read as follows:

Sec. 1202.152.  PHYSICIAN'S LETTER OR CERTIFICATE REQUIRED. (a) The court may not grant an order completely restoring the [~~a ward's~~] capacity of or modifying a [~~ward's~~] guardianship for a person with a guardian under an application filed under Section 1202.051 unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated:

(1)  not earlier than the 120th day before the date the application was filed; or

(2)  after the date the application was filed but before the date of the hearing.

(b)  A letter or certificate presented under Subsection (a) must:

(1)  describe the nature and degree of incapacity, including the medical history if reasonably available, or state that, in the physician's opinion, the person with a guardian [~~ward~~] has the ability [~~capacity~~], or sufficient ability [~~capacity~~] with supports and services, to:

(A)  meet the essential requirements for his or her own health, safety, or self-care [~~provide food, clothing, and shelter for himself or herself;~~

[~~(B)  care for the ward's own physical health~~]; and

(B) [~~(C)~~]  manage the person's [~~ward's~~] financial affairs;

(2)  provide a medical prognosis specifying the estimated severity of any incapacity;

(3)  state how or in what manner the [~~ward's~~] ability of the person with a guardian to make or communicate responsible decisions concerning himself or herself is affected by the person's [~~ward's~~] physical or mental health;

(4)  state whether any current medication affects the [~~ward's~~] demeanor of the person with a guardian or the person's [~~ward's~~] ability to participate fully in a court proceeding;

(5)  describe the precise physical and mental conditions underlying a diagnosis of senility, if applicable; and

(6)  include any other information required by the court.

(c)  If the court determines it is necessary, the court may appoint the necessary physicians to examine the person with a guardian [~~ward~~] in the same manner and to the same extent as a person with a guardian [~~ward~~] is examined by a physician under Section 1101.103 [~~or 1101.104~~].

SECTION 18.  Section 36.001(1), Government Code, is amended to read as follows:

(1)  "Competency evaluator" means a physician or psychologist who is licensed or certified in this state and who performs examinations to determine whether an individual is incapacitated or has an intellectual disability for purposes of appointing a guardian for the individual.  The term includes physicians and psychologists conducting examinations under Section [~~Sections~~] 1101.103 [~~and 1101.104~~], Estates Code.

SECTION 19.  Section 155.001(7), Government Code, is amended to read as follows:

(7)  "Ward" or "person with a guardian" has the meaning assigned by Section 22.033, Estates Code.

SECTION 20.  Section 240.002(15), Property Code, is amended to read as follows:

(15)  "Ward" or "person with a guardian" has the meaning assigned by Section 22.033, Estates Code.

SECTION 21.  Section 1101.104, Estates Code, is repealed.

SECTION 22.  The changes in law made by this Act to Sections 1054.004, 1101.051(a), 1101.101(a) and (c), 1101.103(a) and (d), 1101.151, 1101.152, and 1101.155, Estates Code, apply only to a guardianship proceeding commenced on or after the effective date of this Act. A guardianship proceeding commenced before the effective date of this Act is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 23.  The changes in law made by this Act to Sections 1202.001(b), 1202.051(a), and 1202.152, Estates Code, apply only to a proceeding for the complete restoration of capacity of an incapacitated person or modification of a guardianship commenced on or after the effective date of this Act. A proceeding described by this section commenced before the effective date of this Act is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 24.  This Act takes effect September 1, 2019.