

## **BILL ANALYSIS**

C.S.H.B. 3063  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been noted that a lack of statewide standards relating to crisis care and end-of-life decisions under private professional guardianships may leave people with disabilities vulnerable to decision-making that is not in their best interest, as consultation of a ward's next of kin is not currently required. C.S.H.B. 3063 seeks to address this issue by requiring private professional guardians to attempt to contact a ward's closest living next of kin and providing for the authority of the next of kin to make critical care and end-of-life decisions.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3063 amends the Estates Code to require a private professional guardian who is appointed as guardian of the person of a ward to contact the ward's closest living next of kin immediately after discovering that a critical care or end-of-life decision regarding the ward is necessary. The bill sets out the steps the guardian must take if they do not have the name and contact information of that next of kin or if the contact information they do have is incorrect. Contact must be attempted at least three times each day for a period of at least 72 hours by a combination of telephone and email, and each attempt must be at a different time of day. The bill sets out requirements regarding the manner in which telephone and email attempts must be made. After those attempts, the guardian must wait for a period of an additional 48 hours for a response, and if there is no response before that period expires, the next of kin is considered unreachable. In that event, the guardian is required to submit documentation to the court regarding each attempt to contact the next of kin and is authorized to make a critical care or end-of-life decision regarding the ward. The guardian is not otherwise authorized to make such a decision.

C.S.H.B. 3063 entitles the ward's closest living next of kin, if the guardian is able to contact that next of kin within the specified period, to act as follows:

- communicate directly with the health care professional with primary responsibility for providing the ward's care; and
- make the critical care or end-of-life decision, unless the next of kin desires for the guardian to proceed with making the decision and in writing authorizes the guardian to do so.

The bill requires the health care professional with primary responsibility for providing the ward's care to continue to provide care that is reasonable and prudent while the guardian complies with the bill's requirements.

C.S.H.B. 3063 requires a private professional guardian appointed as the guardian of the person of a ward to obtain and verify the contact information for each of the ward's next of kin at least once every six months. The bill requires the guardian to obtain the ward's preferences regarding critical care or end-of-life decisions immediately after being appointed, providing that the order appointing the guardian states that the ward is competent to express the ward's opinion regarding such decisions. If the order does not state that the ward is competent to express those preferences, the guardian must obtain those preferences from the ward's closest living next of kin, if known.

C.S.H.B. 3063 defines "closest living next of kin" of an individual who is a patient as the living relative of the patient from one of the following categories in the following order of priority:

- the patient's spouse;
- the patient's reasonably available adult children;
- the patient's parents; or
- the patient's next closest relative.

The bill establishes that an individual is not considered to be a patient's closest living next of kin if the individual is younger than 18 years of age, has been judicially declared incompetent, owes money or another thing of value to the patient, is involved in a property or contract dispute against the patient, or has pending criminal charges against the individual involving an offense in which the patient is the alleged victim.

C.S.H.B. 3063 also defines "critical care" and "end-of-life" as follows:

- "critical care" means medical care for an individual who has a life-threatening injury or illness, including placement of the individual in an intensive care unit with a team of specially trained health care providers who provide care 24 hours a day, seven days a week or, if required by the individual's injury or illness, the use of a machine to monitor the individual's vital signs; and
- "end-of-life" means the period during which it is medically obvious that an individual's death is imminent or a terminal moribund state cannot be prevented due to the individual's health condition.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3063 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the original and substitute relate to a private professional guardian's duties regarding critical care and end-of-life decisions for a ward for whom they have been appointed guardian of the person, but the substitute revises the process by which such decisions are to be made as described below.

The substitute does not include the following provisions contained in the original:

- provisions relating to a guardian's authority to make critical care or end-of-life decisions regarding the ward on obtaining informed consent of the ward's closest living next of kin;
- provisions relating to the involvement of a disability advocacy organization in the consultation and agreement on a ward's care; and

- provisions requiring agreement between the ward's guardian and closest living next of kin regarding the ward's care.

The substitute includes the following provisions not in the original:

- definitions for the terms "critical care" and "end-of-life";
- a requirement that a guardian wait for a period of an additional 48 hours for a response from a ward's closest living next of kin after making the requisite attempts to contact them;
- a provision establishing that a ward's closest living next of kin is considered unreachable if the guardian does not receive a response from that next of kin before the expiration of that 48-hour period;
- an authorization for a guardian to make a critical care or end-of-life decision regarding the ward in the event the closest living next of kin is unreachable;
- an entitlement for a ward's closest living next of kin who is successfully contacted to communicate directly with the health care professional with primary responsibility for providing the ward's care and to make a critical care or end-of-life decision unless the next of kin desires for the guardian to proceed with making the decision and authorizes that in writing; and
- a requirement for a guardian to obtain a ward's preferences regarding critical care or end-of-life decisions from the ward or the ward's closest living next of kin, as applicable.

The substitute revises the definition of "next of kin" as it appears in the original by changing the term to "closest living next of kin" and making certain changes to the definition language and order of priority. The substitute also disqualifies certain persons from consideration as closest living next of kin.

The substitute extends the period of time during which a guardian must attempt to contact a ward's closest living next of kin from a period of at least 48 hours, as required in the original, to a period of at least 72 hours. The original specified that the attempts must be made by telephone and email, whereas the substitute specifies that attempts must be made by a combination of telephone and email.

The original required a health care professional with primary responsibility for providing a ward's care to continue to provide care to the ward that is reasonable and prudent until the guardian and the contacted next of kin agree on how to proceed with the ward's care. The substitute requires instead that the health care professional continue to provide such care while the guardian complies with the bill's requirements.

The substitute changes the frequency with which a guardian is required to obtain and verify the contact information for each of the ward's next of kin from at least once each year, as in the original, to at least once every six months.

The substitute changes the bill's effective date from September 1, 2021, as in the original, to on passage, or, if the bill does not receive the necessary vote, September 1, 2021.