By:  Neave H.B. No. 3318

A BILL TO BE ENTITLED

AN ACT

relating to guardianships, alternatives to guardianship, and supports and services for incapacitated persons.

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

SECTION 1.  Section 1023.005, Estates Code, is amended to read as follows:

Sec. 1023.005.  COURT ACTION. (a) On hearing an application or motion under Section 1023.003, if [~~good cause is not shown to deny the transfer and~~] it appears that transfer of the guardianship is in the best interests of the ward and either the ward has resided in the county to which the guardianship is to be transferred for at least six months or good cause is not otherwise shown to deny the transfer, the court shall enter an order:

(1)  authorizing the transfer on payment on behalf of the estate of all accrued costs; [~~and~~]

(2)  requiring that any existing bond of the guardian must remain in effect until a new bond has been given or a rider has been filed in accordance with Section 1023.010; and

(3)  certifying that the guardianship is in compliance with this code at the time of transfer.

(b)  In making a determination that the transfer is in the best interests of the ward under Subsection (a), the court may consider:

(1)  the interests of justice;

(2)  the convenience of the parties; and

(3)  the preference of the ward, if the ward is 12 years of age or older.

(c)  On receipt of an order described by Subsection (a), the county shall accept the transfer of the guardianship.

SECTION 2.  Section 1023.008, Estates Code, is amended to read as follows:

Sec. 1023.008.  CONTINUATION OF GUARDIANSHIP. (a) When a guardianship is transferred from one county to another in accordance with this chapter:

(1)  [~~,~~] the guardianship proceeds in the court to which it was transferred as if it had been originally commenced in that court;

(2)  the court to which the guardianship is transferred becomes the court of continuing, exclusive jurisdiction;

(3)  a proceeding relating to the guardianship that is commenced in the court ordering the transfer continues in the court to which the guardianship is transferred as if the proceeding commenced in the receiving court;

(4)  a judgment or order entered in the guardianship before the transfer has the same effect and must be enforced as a judgment or order entered by the court to which the guardianship is transferred; and

(5)  the court ordering the transfer does not retain:

(A)  jurisdiction of the ward who is the subject of the guardianship; and

(B)  the authority to enforce an order entered for a violation of this title that occurred before or after the transfer.

(b)  It is not necessary to record in the receiving court any of the papers in the case that were recorded in the court from which the case was transferred.

SECTION 3.  Chapter 1023, Estates Code, is amended by adding Section 1023.011 to read as follows:

Sec. 1023.011.  NO LIABILITY OF JUDGE. (a) When a guardianship is transferred from one county to another in accordance with this chapter, a judge of the court from which the guardianship is transferred may not be held civilly liable for any injury, damage, or loss to the ward or the ward's estate that occurs after the transfer.

(b)  A judge of the court to which a guardianship is transferred as described by Subsection (a) may not be held civilly liable for any injury, damage, or loss to the ward or the ward's estate that occurred before the transfer.

SECTION 4.  Subchapter D, Chapter 1055, Estates Code, is amended to read as follows:

SUBCHAPTER D. MEDIATION

Sec. 1055.151.  MEDIATION OF CONTESTED GUARDIANSHIP PROCEEDING. (a) Subject to Subsection (b), on [~~On~~] the written agreement of the parties or on the court's own motion, the court may refer a contested guardianship proceeding to mediation.

(b)  If the court refers to mediation a proceeding under Subsection (a) regarding the appointment of a guardian for a proposed ward:

(1)  a determination of incapacity of the proposed ward may be an issue to be mediated, but the applicant for guardianship must still prove to the court that the proposed ward is an incapacitated person in accordance with the requirements of Chapter 1101; and

(2)  all parties to the proceeding shall evaluate during the mediation alternatives to guardianship and supports and services available to the proposed ward, including whether the supports and services and alternatives to guardianship would be feasible to avoid the need for appointment of a guardian.

(c)  The cost of mediation shall be paid by the parties to the proceeding unless otherwise ordered by the court. If the parties are unable to pay the cost of mediation, the court may refer the parties to a local alternative dispute resolution center providing services as part of a system for resolution of disputes established under Section 152.002, Civil Practice and Remedies Code, if a system has been established in the county, and the local center may waive mediation costs as appropriate.

Sec. 1055.152.  MEDIATED SETTLEMENT AGREEMENTS. (a) A mediated settlement agreement is binding on the parties if the agreement:

(1)  provides, in a prominently displayed statement that is in boldfaced type, in capital letters, or underlined, that the agreement is not subject to revocation by the parties;

(2)  is signed by each party to the agreement; and

(3)  is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(b) [~~(c)~~]  If a mediated settlement agreement meets the requirements of this section, a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law.

(c) [~~(d)~~]  Notwithstanding Subsections (a) and (b) [~~and (c)~~], a court may decline to enter a judgment on a mediated settlement agreement if the court finds that the agreement is not in the ward's or proposed ward's best interests.

SECTION 5.  Section 1202.001, Estates Code, is amended by adding Subsection (b-1) to read as follows:

(b-1)  A guardianship of the person shall be settled and closed when the court finds that the ward's incapacity needs can be managed without the necessity for that continued guardianship by an alternative to guardianship or with supports and services as provided by Subchapter F.

SECTION 6.  Chapter 1202, Estates Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. TERMINATION OF GUARDIANSHIP OF THE PERSON ON FINDING THAT THE WARD'S INCAPACITY NEEDS CAN BE MANAGED WITHOUT GUARDIANSHIP

Sec. 1202.231.  TERMINATION OF GUARDIANSHIP OF THE PERSON ON FINDING THAT WARD'S INCAPACITY NEEDS CAN BE MANAGED WITHOUT GUARDIANSHIP. (a) In addition to a court's possible termination of a guardianship under Section 1202.001(b), on application by the guardian of the person of a ward, a court investigator or guardian ad litem appointed by the court, or another person interested in the ward's welfare who has been granted permission by the court to intervene under Section 1055.003, or on the court's own motion and subject to Section 1202.232, the court may order that the guardianship of the person of the ward terminate and be settled and closed if the court makes the findings required under Section 1202.233.

Sec. 1202.232.  PHYSICIAN'S LETTER OR CERTIFICATE REQUIRED. (a) The court may not grant an order terminating a guardianship of the person under Section 1202.231 unless the applicant presents to the court or the court secures 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 the date the court enters the court's motion; or

(2)  any time after the date the application was filed or the date the court's motion was entered 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 of the ward, including the ward's medical history if reasonably available;

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

(3)  state how or in what manner the ward's ability to make or communicate responsible decisions concerning the ward is affected by the ward's physical or mental health;

(4)  state whether any current medication affects the ward's demeanor or the 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;

(6)  describe feasible alternatives to guardianship available to the ward that would avoid the need for the continued appointment of a guardian of the person and state whether, in the physician's opinion, those alternatives to guardianship meet the following needs of the ward without the necessity for a continued guardianship of the person:

(A)  provision of food, clothing, and shelter for the ward's own self;

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

(C)  management of the ward's financial affairs;

(7)  describe feasible supports and services available to the ward that would avoid the need for the continued appointment of a guardian of the person for the ward and state whether, in the physician's opinion, the supports and services meet the following needs of the ward without the necessity for a continued guardianship of the person:

(A)  provision of food, clothing, and shelter for the ward's own self;

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

(C)  management of the ward's financial affairs; and

(8)  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 ward.

Sec. 1202.233.  FINDINGS REQUIRED. Before ordering the termination of a guardianship of the person under Section 1202.231, the court must find by a preponderance of the evidence that:

(1)  the ward remains a partially or completely incapacitated person;

(2)  the current nature and degree of the ward's incapacity and the ward's needs can be managed without the necessity of a continued guardianship of the person by:

(A)  alternatives to guardianship that are available to the ward and that are determined to be feasible; or

(B)  supports and services that are available to the ward and that are determined to be feasible; and

(3)  termination of the guardianship of the person:

(A)  is in the ward's best interest; and

(B)  will encourage the development or maintenance of maximum self-reliance and independence in the ward.

Sec. 1202.234.  GENERAL REQUIREMENTS FOR ORDER. A court order that terminates a guardianship of the person under this subchapter must:

(1)  contain the findings required under Section 1202.232;

(2)  state the guardian's name;

(3)  state the ward's name;

(4)  specify:

(A)  the supports and services that:

(i)  will meet the ward's needs without the continued necessity for guardianship of the person; and

(ii)  justify the termination of that guardianship; or

(B)  the alternatives to guardianship that:

(i)  will meet the ward's needs without the continued necessity for guardianship of the person; and

(ii)  justify the termination of that guardianship;

(5)  identify the persons or entities providing or that will provide:

(A)  the supports and services described by Subdivision (4)(A); or

(B)  alternatives to guardianship described by Subdivision (4)(B);

(6)  state that the guardian is required to:

(A)  immediately settle the guardianship in accordance with this title; and

(B)  deliver all of the ward's remaining personal effects and assets, if any, to the persons or entities identified under Subdivision (5)(A) or (B), as applicable; and

(7)  state that the clerk shall revoke letters of guardianship of the person when the guardianship is finally settled and closed.

Sec. 1202.235.  APPOINTMENT OF ATTORNEY AD LITEM OR GUARDIAN AD LITEM. A court may enter additional orders in the best interest of the ward, including:

(1)  requiring notice to interested persons;

(2)  appointing a court investigator; or

(3)  appointing an attorney ad litem or guardian ad litem, or both, for the ward.

SECTION 7.  Chapter 155, Government Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. GUARDIANSHIP MEDIATION TRAINING

Sec. 155.301.  TRAINING. (a) The office by rule shall establish a training course with at least 24 hours of training for persons facilitating mediations under Title 3, Estates Code, that may be provided by a mediation training provider approved by the office. A mediation training provider shall adhere to the established curriculum in providing the training course.

(b)  This section does not require a mediator facilitating a mediation under Title 3, Estates Code, to attend or be certified under a training course established under Subsection (a).

SECTION 8.  The changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act.

SECTION 9.  The Office of Court Administration of the Texas Judicial System is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the office may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 10.  This Act takes effect September 1, 2021.