

By: Smithee

H.B. No. 3063

A BILL TO BE ENTITLED

AN ACT

relating to the duties of a private professional guardian regarding end-of-life and critical care decisions concerning an adult ward.

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

SECTION 1. This Act may be cited as the Michael Hickson Act.

SECTION 2. Sections 1151.051(a) and (c), Estates Code, are amended to read as follows:

(a) Except as provided by Section 1151.057, the ~~[The]~~ guardian of the person of a ward is entitled to take charge of the person of the ward.

(c) A guardian of the person has:

(1) the right to have physical possession of the ward and to establish the ward's legal domicile;

(2) the duty to provide care, supervision, and protection for the ward;

(3) the duty to provide the ward with clothing, food, medical care, and shelter;

(4) except as provided by Section 1151.057, the power to consent to medical, psychiatric, and surgical treatment other than the inpatient psychiatric commitment of the ward;

(5) on application to and order of the court, the power to establish a trust in accordance with 42 U.S.C. Section 1396p(d)(4)(B) and direct that the income of the ward as defined by that section be paid directly to the trust, solely for the purpose

1 of the ward's eligibility for medical assistance under Chapter 32,  
2 Human Resources Code; and

3 (6) the power to sign documents necessary or  
4 appropriate to facilitate employment of the ward if:

5 (A) the guardian was appointed with full  
6 authority over the person of the ward under Section 1101.151; or

7 (B) the power is specified in the court order  
8 appointing the guardian with limited powers over the person of the  
9 ward under Section 1101.152.

10 SECTION 3. Subchapter B, Chapter 1151, Estates Code, is  
11 amended by adding Section 1151.057 to read as follows:

12 Sec. 1151.057. PRIVATE PROFESSIONAL GUARDIAN DUTIES  
13 REGARDING CRITICAL AND END-OF-LIFE CARE DECISIONS. (a) In this  
14 section:

15 (1) "Disability advocacy organization" means a  
16 nonprofit organization that advocates for the rights and inclusion  
17 of persons with disabilities but that does not provide services  
18 related to guardianships.

19 (2) "Informed consent" means an acknowledgment that a  
20 person agrees to a specified action being taken after having been  
21 provided with information concerning the facts, options, and risks  
22 associated with the action.

23 (3) "Next of kin" means a relative of a person in the  
24 following order of priority:

25 (A) the person's spouse;

26 (B) an adult child of the person;

27 (C) an adult descendant of the person, other than

1 an adult child;

2 (D) the person's parent;

3 (E) the person's adult sibling;

4 (F) a descendant of the person's adult sibling;

5 or

6 (G) any other relative of the person's parent.

7 (b) Except as provided by Subsection (e), a private  
8 professional guardian appointed as guardian of the person of an  
9 adult ward may not make a critical care or end-of-life decision  
10 regarding the ward unless:

11 (1) the private professional guardian obtains the  
12 informed consent of the ward's closest living next of kin, as  
13 determined under the order of priority listed in Subsection (a)(3);  
14 and

15 (2) the informed consent is evidenced by:

16 (A) a form signed and dated by the person; or

17 (B) a verbal agreement that is provided by the  
18 person through an electronic device and that is observed by and  
19 documented on a form by a health care professional or other witness.

20 (c) Immediately after discovering that a critical care or  
21 end-of-life decision regarding an adult ward is necessary, the  
22 private professional guardian appointed as guardian of the person  
23 of the ward must contact the ward's closest living next of kin to  
24 obtain the informed consent required under Subsection (b). The  
25 private professional guardian shall contact the court to obtain the  
26 name and contact information of the ward's closest living next of  
27 kin if the private professional guardian does not have that

1 information. If the private professional guardian has incorrect  
2 contact information for the ward's closest living next of kin, the  
3 private professional guardian shall attempt to obtain correct  
4 information as soon as practicable.

5 (d) The private professional guardian shall attempt to  
6 contact the ward's closest living next of kin at least three times  
7 each day for a period of at least 48 hours by telephone and e-mail.  
8 Each attempt to contact the next of kin must:

9 (1) be at a different time of day;

10 (2) for all attempts by telephone, include a voice  
11 mail message identifying the caller, the reason for the call, and a  
12 telephone number at which the caller may be reached; and

13 (3) for all attempts by e-mail, identify the sender,  
14 the reason for the e-mail, and a telephone number and e-mail address  
15 at which the sender may be reached.

16 (e) If the private professional guardian is unable to  
17 contact the ward's closest living next of kin within the period  
18 specified by Subsection (d) after complying with the requirements  
19 of that subsection, the private professional guardian shall:

20 (1) submit documentation to the court regarding each  
21 attempt to contact the next of kin; and

22 (2) consult with a disability advocacy organization  
23 regarding what decision regarding care is in the best interest of  
24 the ward.

25 (f) If a disability advocacy organization is consulted  
26 under Subsection (e)(2) and that organization, the private  
27 professional guardian, and the health care professional with

1 primary responsibility for providing the ward's care unanimously  
2 agree regarding how to proceed with the ward's critical care or  
3 end-of-life treatment, the private professional guardian may  
4 consent to the agreed-upon treatment.

5 (g) If the private professional guardian contacts the  
6 ward's closest living next of kin within the period specified by  
7 Subsection (d), the health care professional with primary  
8 responsibility for providing the ward's care shall continue to  
9 provide care to the ward that is reasonable and prudent until the  
10 private professional guardian and the contacted next of kin agree  
11 on how to proceed with the ward's care.

12 (h) After unsuccessfully attempting to reach an agreement  
13 with the ward's closest living next of kin concerning the ward's  
14 care, the private professional guardian shall contact a  
15 representative of a disability advocacy organization to assist in  
16 mediating the dispute until an agreement is reached. On reaching an  
17 agreement regarding the ward's care, the ward's closest living next  
18 of kin shall provide informed consent for the agreed-upon care in  
19 the manner specified by Subsection (b)(2). The private professional  
20 guardian shall provide a copy of the form evidencing that consent to  
21 the next of kin, the health care professional with primary  
22 responsibility for providing the ward's care, and the court.

23 (i) At least once each year, a private professional guardian  
24 appointed as the guardian of the person for an adult ward shall  
25 obtain and verify the contact information for each of the ward's  
26 next of kin.

27 SECTION 4. This Act takes effect September 1, 2021.