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H.B. No. 3126

A BILL TO BE ENTITLED

AN ACT

relating to the health care providers authorized to examine a person to determine whether the person is incapacitated for purposes of certain guardianship proceedings.

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

SECTION 1. Subchapter C, Chapter 1101, Estates Code, is amended by adding Sections 1101.100 and 1101.1011 to read as follows:

Sec. 1101.100. DEFINITIONS. In this subchapter:

(1) "Advanced practice registered nurse" has the meaning assigned by Section 301.152, Occupations Code.

(2) "Physician" means an individual licensed by the Texas Medical Board to practice medicine in this state.

Sec. 1101.1011. LIMITATION ON ACTS BY ADVANCED PRACTICE REGISTERED NURSE. An advanced practice registered nurse may act under this subchapter only if the advanced practice registered nurse is acting under a physician's delegation authority and supervision in accordance with Chapter 157, Occupations Code.

SECTION 2. Section 1101.103, Estates Code, is amended to read as follows:

Sec. 1101.103. DETERMINATION OF INCAPACITY OF CERTAIN ADULTS: HEALTH CARE PROVIDER [~~PHYSICIAN~~] EXAMINATION. (a) Except as provided by Section 1101.104, the court may not grant an application to create a guardianship for an incapacitated person,

1 other than a minor or person for whom it is necessary to have a
2 guardian appointed only to receive funds from a governmental
3 source, unless the applicant presents to the court a written letter
4 or certificate from a physician or advanced practice registered
5 nurse [~~licensed in this state~~] that is:

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

8 (2) based on an examination the physician or advanced
9 practice registered nurse performed not earlier than the 120th day
10 before the date the application is filed.

11 (b) The letter or certificate must:

12 (1) describe the nature, degree, and severity of the
13 proposed ward's incapacity, including any functional deficits
14 regarding the proposed ward's ability to:

15 (A) handle business and managerial matters;

16 (B) manage financial matters;

17 (C) operate a motor vehicle;

18 (D) make personal decisions regarding residence,
19 voting, and marriage; and

20 (E) consent to medical, dental, psychological,
21 or psychiatric treatment;

22 (2) in providing a description under Subdivision (1)
23 regarding the proposed ward's ability to operate a motor vehicle
24 and make personal decisions regarding voting, state whether in the
25 physician's opinion the proposed ward:

26 (A) has the mental capacity to vote in a public
27 election; and

1 (B) has the ability to safely operate a motor
2 vehicle;

3 (3) provide an evaluation of the proposed ward's
4 physical condition and mental functioning and summarize the
5 proposed ward's medical history if reasonably available;

6 (3-a) in providing an evaluation under Subdivision (3),
7 state whether improvement in the proposed ward's physical condition
8 and mental functioning is possible and, if so, state the period
9 after which the proposed ward should be reevaluated to determine
10 whether a guardianship continues to be necessary;

11 (4) state how or in what manner the proposed ward's
12 ability to make or communicate responsible decisions concerning
13 himself or herself is affected by the proposed ward's physical or
14 mental health, including the proposed ward's ability to:

15 (A) understand or communicate;

16 (B) recognize familiar objects and individuals;

17 (C) solve problems;

18 (D) reason logically; and

19 (E) administer to daily life activities with and
20 without supports and services;

21 (5) state whether any current medication affects the
22 proposed ward's demeanor or the proposed ward's ability to
23 participate fully in a court proceeding;

24 (6) describe the precise physical and mental
25 conditions underlying a diagnosis of a mental disability, and state
26 whether the proposed ward would benefit from supports and services
27 that would allow the individual to live in the least restrictive

1 setting;

2 (6-a) state whether a guardianship is necessary for the
3 proposed ward and, if so, whether specific powers or duties of the
4 guardian should be limited if the proposed ward receives supports
5 and services; and

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

8 (b-1) For purposes of Subsection (b)(2), the opinion of an
9 advanced practice registered nurse that is based on an examination
10 of a proposed ward that is conducted under delegation from and
11 supervision by a physician is considered the delegating physician's
12 opinion.

13 (c) If the court determines it is necessary, the court may
14 appoint the necessary physicians or advanced practice registered
15 nurses to examine the proposed ward. The court must make its
16 determination with respect to the necessity for a physician's or
17 advanced practice registered nurse's examination of the proposed
18 ward at a hearing held for that purpose. Not later than the fourth
19 day before the date of the hearing, the applicant shall give to the
20 proposed ward and the proposed ward's attorney ad litem written
21 notice specifying the purpose and the date and time of the hearing.

22 (d) A physician or advanced practice registered nurse who
23 examines the proposed ward, other than a physician, advanced
24 practice registered nurse, or psychologist who examines the
25 proposed ward under Section 1101.104(2), shall make available for
26 inspection by the attorney ad litem appointed to represent the
27 proposed ward a written letter or certificate from the physician or

1 advanced practice registered nurse that complies with the
2 requirements of Subsections (a) and (b).

3 SECTION 3. Section 1101.104, Estates Code, is amended to
4 read as follows:

5 Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING
6 INTELLECTUAL DISABILITY. (a) If an intellectual disability is the
7 basis of the proposed ward's alleged incapacity, the court may not
8 grant an application to create a guardianship for the proposed ward
9 unless the applicant presents to the court a written letter or
10 certificate that:

11 (1) complies with Sections 1101.103(a) and (b); or
12 (2) shows that not earlier than 24 months before the
13 hearing date:

14 (A) the proposed ward has been examined by a
15 physician or advanced practice registered nurse or by a
16 psychologist licensed in this state or certified by the Health and
17 Human [~~Department of Aging and Disability~~] Services Commission to
18 perform the examination, in accordance with rules of the executive
19 commissioner of the commission [~~Health and Human Services~~
20 ~~Commission~~] governing examinations of that kind, and the
21 [~~physician's or psychologist's~~] written findings and
22 recommendations include a determination of an intellectual
23 disability; or

24 (B) a physician or advanced practice registered
25 nurse or a psychologist licensed in this state or certified by the
26 Health and Human [~~Department of Aging and Disability~~] Services
27 Commission to perform examinations described by Paragraph (A)

1 updated or endorsed in writing a prior determination of an
2 intellectual disability for the proposed ward made by a physician
3 or by a psychologist licensed in this state or certified by the
4 commission [~~department~~].

5 (b) For purposes of Subsection (a)(2)(B), the determination
6 of an advanced practice registered nurse that is based on an
7 examination of a proposed ward that is conducted under delegation
8 from and supervision by a physician is considered the delegating
9 physician's determination.

10 SECTION 4. Section [1102.002](#), Estates Code, is amended to
11 read as follows:

12 Sec. 1102.002. ESTABLISHMENT OF PROBABLE CAUSE FOR
13 INVESTIGATION. (a) In this section:

14 (1) "Advanced practice registered nurse" has the
15 meaning assigned by Section [301.152](#), Occupations Code.

16 (2) "Physician" has the meaning assigned by Section
17 [1101.100](#).

18 (b) An advanced practice registered nurse may act under this
19 section only if the advanced practice registered nurse is acting
20 under a physician's delegation authority and supervision in
21 accordance with Chapter [157](#), Occupations Code.

22 (c) To establish probable cause under Section [1102.001](#), the
23 court may require:

24 (1) an information letter about the person believed to
25 be incapacitated that is submitted by an interested person and
26 satisfies the requirements of Section [1102.003](#); or

27 (2) a written letter or certificate from a physician

1 or advanced practice registered nurse who has examined the person
2 believed to be incapacitated that satisfies the requirements of
3 Section 1101.103, except that the letter must be:

4 (A) dated not earlier than the 120th day before
5 the date of the appointment of a guardian ad litem or court
6 investigator under Section 1102.001; and

7 (B) based on an examination the physician or
8 advanced practice registered nurse performed not earlier than the
9 120th day before that date.

10 SECTION 5. Section 1202.054(b-1), Estates Code, is amended
11 to read as follows:

12 (b-1) A written letter or certificate from a physician or
13 advanced practice registered nurse as described by Section 1202.152
14 is not required before the appointment of the court investigator or
15 a guardian ad litem under Subsection (b).

16 SECTION 6. Section 1202.152, Estates Code, is amended to
17 read as follows:

18 Sec. 1202.152. HEALTH CARE PROVIDER'S [~~PHYSICIAN'S~~] LETTER
19 OR CERTIFICATE REQUIRED. (a) In this section:

20 (1) "Advanced practice registered nurse" has the
21 meaning assigned by Section 301.152, Occupations Code.

22 (2) "Physician" has the meaning assigned by Section
23 1101.100.

24 (b) An advanced practice registered nurse may act under this
25 section only if the advanced practice registered nurse is acting
26 under a physician's delegation authority and supervision in
27 accordance with Chapter 157, Occupations Code.

1 (c) The court may not grant an order completely restoring a
2 ward's capacity or modifying a ward's guardianship under an
3 application filed under Section 1202.051 unless the applicant
4 presents to the court a written letter or certificate from a
5 physician or advanced practice registered nurse licensed in this
6 state that is dated:

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

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

11 (d) [~~(b)~~] A letter or certificate presented under
12 Subsection (c) [~~(a)~~] must:

13 (1) describe the nature and degree of incapacity,
14 including the medical history if reasonably available, or state
15 that, in the physician's opinion, the ward has the capacity, or
16 sufficient capacity with supports and services, to:

17 (A) provide food, clothing, and shelter for
18 himself or herself;

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

20 (C) manage the ward's financial affairs;

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

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

26 (4) state whether any current medication affects the
27 ward's demeanor or the ward's ability to participate fully in a

1 court proceeding;

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

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

6 (e) For purposes of Subsection (d), the opinion of an
7 advanced practice registered nurse that is based on an examination
8 of a ward conducted by the advanced practice registered nurse under
9 delegation from and supervision by a physician is considered the
10 delegating physician's opinion.

11 (f) [~~(e)~~] If the court determines it is necessary, the court
12 may appoint the necessary physicians or advanced practice
13 registered nurses to examine the ward in the same manner and to the
14 same extent as a ward is examined by a physician or advanced
15 practice registered nurse under Section [1101.103](#) or [1101.104](#).

16 SECTION 7. The changes in law made by this Act apply only to
17 an application for the appointment of a guardian, for the complete
18 restoration of a ward's capacity, or for the modification of a
19 guardianship that is filed on or after the effective date of this
20 Act. An application filed before the effective date of this Act is
21 governed by the law in effect on the date the application was filed,
22 and the former law is continued in effect for that purpose.

23 SECTION 8. This Act takes effect September 1, 2021.