

By: VanDeaver

H.B. No. 3126

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the health care providers authorized to examine a
3 person to determine whether the person is incapacitated for
4 purposes of certain guardianship proceedings.

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

6 SECTION 1. Section 1101.103, Estates Code, is amended to
7 read as follows:

8 Sec. 1101.103. DETERMINATION OF INCAPACITY OF CERTAIN
9 ADULTS: HEALTH CARE PROVIDER [~~PHYSICIAN~~] EXAMINATION. (a) Except
10 as provided by Section 1101.104, the court may not grant an
11 application to create a guardianship for an incapacitated person,
12 other than a minor or person for whom it is necessary to have a
13 guardian appointed only to receive funds from a governmental
14 source, unless the applicant presents to the court a written letter
15 or certificate from a physician or advanced practice registered
16 nurse licensed in this state that is:

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

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

22 (b) The letter or certificate must:

23 (1) describe the nature, degree, and severity of the
24 proposed ward's incapacity, including any functional deficits

1 regarding the proposed ward's ability to:

2 (A) handle business and managerial matters;

3 (B) manage financial matters;

4 (C) operate a motor vehicle;

5 (D) make personal decisions regarding residence,
6 voting, and marriage; and

7 (E) consent to medical, dental, psychological,
8 or psychiatric treatment;

9 (2) in providing a description under Subdivision (1)
10 regarding the proposed ward's ability to operate a motor vehicle
11 and make personal decisions regarding voting, state whether in the
12 physician's or advanced practice registered nurse's opinion, the
13 proposed ward:

14 (A) has the mental capacity to vote in a public
15 election; and

16 (B) has the ability to safely operate a motor
17 vehicle;

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

21 (3-a) in providing an evaluation under Subdivision (3),
22 state whether improvement in the proposed ward's physical condition
23 and mental functioning is possible and, if so, state the period
24 after which the proposed ward should be reevaluated to determine
25 whether a guardianship continues to be necessary;

26 (4) state how or in what manner the proposed ward's
27 ability to make or communicate responsible decisions concerning

1 himself or herself is affected by the proposed ward's physical or
2 mental health, including the proposed ward's ability to:

- 3 (A) understand or communicate;
- 4 (B) recognize familiar objects and individuals;
- 5 (C) solve problems;
- 6 (D) reason logically; and
- 7 (E) administer to daily life activities with and
8 without supports and services;

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

12 (6) describe the precise physical and mental
13 conditions underlying a diagnosis of a mental disability, and state
14 whether the proposed ward would benefit from supports and services
15 that would allow the individual to live in the least restrictive
16 setting;

17 (6-a) state whether a guardianship is necessary for the
18 proposed ward and, if so, whether specific powers or duties of the
19 guardian should be limited if the proposed ward receives supports
20 and services; and

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

23 (c) If the court determines it is necessary, the court may
24 appoint the necessary physicians or advanced practice registered
25 nurses to examine the proposed ward. The court must make its
26 determination with respect to the necessity for a physician's or
27 advanced practice registered nurse's examination of the proposed

1 ward at a hearing held for that purpose. Not later than the fourth
2 day before the date of the hearing, the applicant shall give to the
3 proposed ward and the proposed ward's attorney ad litem written
4 notice specifying the purpose and the date and time of the hearing.

5 (d) A physician or advanced practice registered nurse who
6 examines the proposed ward, other than a physician, advanced
7 practice registered nurse, or psychologist who examines the
8 proposed ward under Section 1101.104(2), shall make available for
9 inspection by the attorney ad litem appointed to represent the
10 proposed ward a written letter or certificate from the physician or
11 advanced practice registered nurse that complies with the
12 requirements of Subsections (a) and (b).

13 SECTION 2. Section 1101.104, Estates Code, is amended to
14 read as follows:

15 Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING
16 INTELLECTUAL DISABILITY. If an intellectual disability is the
17 basis of the proposed ward's alleged incapacity, the court may not
18 grant an application to create a guardianship for the proposed ward
19 unless the applicant presents to the court a written letter or
20 certificate that:

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

24 (A) the proposed ward has been examined by a
25 physician, advanced practice registered nurse, or psychologist
26 licensed in this state or certified by the Health and Human
27 [~~Department of Aging and Disability~~] Services Commission to perform

1 the examination, in accordance with rules of the executive
2 commissioner of the commission [~~Health and Human Services~~
3 ~~Commission~~] governing examinations of that kind, and the
4 physician's, advanced practice registered nurse's, or
5 psychologist's written findings and recommendations include a
6 determination of an intellectual disability; or

7 (B) a physician, advanced practice registered
8 nurse, or psychologist licensed in this state or certified by the
9 Health and Human [~~Department of Aging and Disability~~] Services
10 Commission to perform examinations described by Paragraph (A)
11 updated or endorsed in writing a prior determination of an
12 intellectual disability for the proposed ward made by a physician,
13 advanced practice registered nurse, or psychologist licensed in
14 this state or certified by the commission [~~department~~].

15 SECTION 3. Section 1102.002, Estates Code, is amended to
16 read as follows:

17 Sec. 1102.002. ESTABLISHMENT OF PROBABLE CAUSE FOR
18 INVESTIGATION. To establish probable cause under Section 1102.001,
19 the court may require:

20 (1) an information letter about the person believed to
21 be incapacitated that is submitted by an interested person and
22 satisfies the requirements of Section 1102.003; or

23 (2) a written letter or certificate from a physician
24 or advanced practice registered nurse who has examined the person
25 believed to be incapacitated that satisfies the requirements of
26 Section 1101.103, except that the letter must be:

27 (A) dated not earlier than the 120th day before

1 the date of the appointment of a guardian ad litem or court
2 investigator under Section 1102.001; and

3 (B) based on an examination the physician or
4 advanced practice registered nurse performed not earlier than the
5 120th day before that date.

6 SECTION 4. Section 1202.054(b-1), Estates Code, is amended
7 to read as follows:

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

12 SECTION 5. Section 1202.152, Estates Code, is amended to
13 read as follows:

14 Sec. 1202.152. HEALTH CARE PROVIDER'S [~~PHYSICIAN'S~~] LETTER
15 OR CERTIFICATE REQUIRED. (a) The court may not grant an order
16 completely restoring a ward's capacity or modifying a ward's
17 guardianship under an application filed under Section 1202.051
18 unless the applicant presents to the court a written letter or
19 certificate from a physician or advanced practice registered nurse
20 licensed in this state that is dated:

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

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

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

27 (1) describe the nature and degree of incapacity,

1 including the medical history if reasonably available, or state
2 that, in the physician's or advanced practice registered nurse's
3 opinion, the ward has the capacity, or sufficient capacity with
4 supports and services, to:

5 (A) provide food, clothing, and shelter for
6 himself or herself;

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

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

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

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

14 (4) state whether any current medication affects the
15 ward's demeanor or the ward's ability to participate fully in a
16 court proceeding;

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

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

21 (c) If the court determines it is necessary, the court may
22 appoint the necessary physicians or advanced practice registered
23 nurses to examine the ward in the same manner and to the same extent
24 as a ward is examined by a physician or advanced practice registered
25 nurse under Section [1101.103](#) or [1101.104](#).

26 SECTION 6. The changes in law made by this Act apply only to
27 an application for the appointment of a guardian, for the complete

1 restoration of a ward's capacity, or for the modification of a
2 guardianship that is filed on or after the effective date of this
3 Act. An application filed before the effective date of this Act is
4 governed by the law in effect on the date the application was filed,
5 and the former law is continued in effect for that purpose.

6 SECTION 7. This Act takes effect September 1, 2021.