

PUBLIC COMMENTS

HB 3126

HOUSE COMMITTEE ON JUDICIARY & CIVIL JURISPRUDENCE

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Hearing Date: April 6, 2021 8:00 AM

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Alisha King, MD

Self

san antonio, TX

Please oppose HB3126. Nurse practitioners do not receive training to be able to determine capacity and should not be allowed to make these assessments. Taking away someone's autonomy is one of the most serious decisions that a physician can make and very specific criteria must be followed for these evaluations.

In addition nurse practitioners are very unlikely to be held accountable if they erroneously take away someone's ability to manage his/her medical care and finances. The nursing board only holds them to a nursing standard, and this is a medical (physician) decision.

Sona Aujja

Self

Cedar park, TX

Should only be done by clinical practice physician IM / Family medicine/ geriatric/ neurologist who have been in practice for 3 years

Vijaya Mummadi

Self

Plano, TX

Nurse Practitioners or Physicians do not have appropriate training to be able to determine if a person is incapacitated. Only Doctors have that training, either MD or DO. If this bill passes, whole of Texas will be doomed as almost everyone other one will show up as incapacitated and everyone else will paying for them. This can't be happening.

Anisha Malhotra

Self

Austin, TX

Physician Assistants and Nurse Practitioners do not receive anywhere near the same education as Physicians (MD/DOs) about normal vs abnormal physiology and behavior. Many NPs don't even receive 1/30 of the education and training of a physician. Determining capacity is a huge responsibility with far reaching affects and I am very concerned that this will lead to misguided diagnoses that will ruin lives. Moreover, the nursing board has already been lax about appropriately disciplining malpractice cases and there is no reason to believe this will be different or easier to manage. Physicians, at least, are held accountable by the medical board. Please protect our most vulnerable and leave these life changing legal responsibilities to physicians.

R. Dyann McCully

Self - Attorney

Printed on: April 18, 2021 2:14 PM

North Richland Hills, TX

I am an attorney who has practiced in the area of guardianship and guardianship litigation for 34+ years. I am also a member of the State Bar Real Estate Probate Trust Law Section Council, and Guardianship Legislation Chair of that organization. Note that my comments are in my individual capacity, and not as a representative of any organization. I have serious concerns with HB 3126. The purpose of a determination of incapacity is to strip someone of their Constitutional rights and give their rights to someone else (the guardian). We must ensure that the medical provider who is making that determination truly knows how to properly evaluate cognitive function and deficits. There is no "one size fits all," when it comes to evaluating a person's mental capacity. Also, although I can understand the goal of the bill, I'm concerned that it creates different standards of depriving someone of their rights simply based on where someone lives. If I'm a proposed incapacitated person ("IP"), I want to know that my rights are only being taken away after I'm examined by a licensed Texas physician. I shouldn't be deprived of my rights on the opinion of an RN simply because I live in a small county. In addition, if the concern is that of imminent harm to a proposed IP or that person's property, a temporary guardianship can be created without a medical evaluation. The temporary guardian is authorized to take immediate steps to assist the proposed IP. The temporary guardian may then arrange for a proper medical evaluation. In many cases a proposed IP needs a higher level of care than the person is receiving at home, and the temporary guardian has the authority, with the approval of the court, to place the proposed IP in a facility that provides the appropriate level of care for the proposed IP. If there are no facilities in the proposed IP's county, a facility must be found in another county, in order to properly care for the proposed IP. These facilities typically provide for a physician to see the residents on a regular basis. That physician can evaluate the proposed IP's mental capacity. Also, it is in the proposed IP's best interest to be examined by a physician, preferably one specializing in geriatrics, so the proposed IP receives the appropriate level of care. Another concern is that the bill would allow guardianship litigants in larger counties an additional tool to muddy the waters, delay the process, and incur unnecessary attorney's fees and expense. In the larger counties litigants facing a certificate of medical examination completed by a nurse practitioner would almost certainly be forced to seek an evaluation by a geriatric neurologist and a neuropsychological evaluation by a geriatric clinical psychologist. On the other hand, if a physician completes the initial medical examination certificate, it is less likely that the litigants will seek the higher level evaluation. Thank you for your consideration. R. Dyann McCully

Lisa Flores

Easterseals Central Texas

Austin, TX

For almost 80 years Easterseals has been committed to providing high quality, person-centered services to children and adults with disabilities and their families. Our mission is to promote independence and create opportunities for people with disabilities to pursue their hopes and dreams. We appreciate the opportunity to provide public comment and are submitting these comments on behalf of members of the Easterseals Coalition Serving Texas, comprised of four Texas Easterseals affiliates: Easterseals Central Texas, Easterseals Greater Houston, Easterseals North Texas and Easterseals Rio Grande Valley.

Our Texas affiliates provide an array of services to individuals with disabilities across the lifespan in urban and rural areas throughout the state, and the majority of our families access special education services at some point.

As an advocacy organization that focuses on disability issues, it is with this lens we cannot support HB3126. It should not be easier to submit a person with a disability into guardianship.