

House Bill 3009
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

(2) based on an examination the physician or advanced practice registered nurse performed not earlier than the 120th

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SECTION 1. Same as House version.

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

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

(2) based on an examination the physician or advanced practice registered nurse performed not earlier than the 120th

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day before the date the application is filed.

(b) The letter or certificate must:

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

(A) handle business and managerial matters;

(B) manage financial matters;

(C) operate a motor vehicle;

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

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

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

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

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

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

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

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

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day before the date the application is filed.

(a-1) For purposes of Subsection (a), a letter or certificate based on an examination by an advanced practice registered nurse must be signed by the supervising physician. [FA1(1)]

(b) The letter or certificate must:

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

(A) handle business and managerial matters;

(B) manage financial matters;

(C) operate a motor vehicle;

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

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

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

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

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

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

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

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

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

- (A) understand or communicate;
- (B) recognize familiar objects and individuals;
- (C) solve problems;
- (D) reason logically; and
- (E) administer to daily life activities with and without supports and services;
- (5) state whether any current medication affects the proposed ward's demeanor or the proposed ward's ability to participate fully in a court proceeding;
- (6) describe the precise physical and mental conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting;
- (6-a) state whether a guardianship is necessary for the proposed ward and, if so, whether specific powers or duties of the guardian should be limited if the proposed ward receives supports and services; and
- (7) include any other information required by the court.

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

(c) If the court determines it is necessary, the court may appoint the necessary physicians or advanced practice registered nurses to examine the proposed ward. The court must make its determination with respect to the necessity for a

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

- (A) understand or communicate;
- (B) recognize familiar objects and individuals;
- (C) solve problems;
- (D) reason logically; and
- (E) administer to daily life activities with and without supports and services;
- (5) state whether any current medication affects the proposed ward's demeanor or the proposed ward's ability to participate fully in a court proceeding;
- (6) describe the precise physical and mental conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting;
- (6-a) state whether a guardianship is necessary for the proposed ward and, if so, whether specific powers or duties of the guardian should be limited if the proposed ward receives supports and services; and
- (7) include any other information required by the court.

(b-1) For purposes of Subsection (b)(2), the opinion of an advanced practice registered nurse that is based on an examination of a proposed ward conducted by the advanced practice registered nurse under delegation from and supervision by a physician and is signed by the supervising physician is considered the supervising physician's opinion.
[FA1(2)]

(c) If the court determines it is necessary, the court may appoint the necessary physicians or advanced practice registered nurses to examine the proposed ward. The court must make its determination with respect to the necessity for a

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physician's or advanced practice registered nurse's examination of the proposed ward at a hearing held for that purpose. Not later than the fourth day before the date of the hearing, the applicant shall give to the proposed ward and the proposed ward's attorney ad litem written notice specifying the purpose and the date and time of the hearing.

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

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

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

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

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

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physician's or advanced practice registered nurse's examination of the proposed ward at a hearing held for that purpose. Not later than the fourth day before the date of the hearing, the applicant shall give to the proposed ward and the proposed ward's attorney ad litem written notice specifying the purpose and the date and time of the hearing.

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

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

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

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

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

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perform the examination, in accordance with rules of the executive commissioner of the commission ~~[Health and Human Services Commission]~~ governing examinations of that kind, and the ~~[physician's or psychologist's]~~ written findings and recommendations include a determination of an intellectual disability; or

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

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

SECTION 4. Section 1102.002, Estates Code, is amended to read as follows:

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

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

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perform the examination, in accordance with rules of the executive commissioner of the commission ~~[Health and Human Services Commission]~~ governing examinations of that kind, and the ~~[physician's or psychologist's]~~ written findings and recommendations include a determination of an intellectual disability; or

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

(a-1) For purposes of Subsection (a), a letter or certificate based on an examination by an advanced practice registered nurse must be signed by the supervising physician. [FA1(3)]

(b) For purposes of Subsection (a)(2)(B), the determination of an advanced practice registered nurse that is based on an examination of a proposed ward conducted by the advanced practice registered nurse under delegation from and supervision by a physician and is signed by the supervising physician is considered the supervising physician's determination. [FA1(4)]

SECTION 4. Section 1102.002, Estates Code, is amended to read as follows:

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

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

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

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

(c) To establish probable cause under Section 1102.001, the court may require:

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

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

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

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

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

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

(c) To establish probable cause under Section 1102.001, the court may require:

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

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

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

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

(d) For purposes of Subsection (c)(2), a letter or certificate based on an examination by an advanced practice registered nurse must be signed by the supervising physician. The opinion of an advanced practice registered nurse that is based on an examination of a proposed ward conducted by the advanced practice registered nurse under delegation from and supervision by a physician and signed by the supervising physician is considered the supervising physician's opinion.

[FA1(5)]

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

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

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

Sec. 1202.152. HEALTH CARE PROVIDER'S [PHYSICIAN'S] LETTER OR CERTIFICATE REQUIRED.

(a) In this section:

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

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

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

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

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

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

SENATE VERSION (IE)

SECTION 5. Same as House version.

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

Sec. 1202.152. HEALTH CARE PROVIDER'S [PHYSICIAN'S] LETTER OR CERTIFICATE REQUIRED.

(a) In this section:

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

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

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

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

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

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

(c-1) For purposes of Subsection (c), a letter or certificate

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

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

- (A) provide food, clothing, and shelter for himself or herself;
- (B) care for the ward's own physical health; and
- (C) manage the ward's financial affairs;

(2) provide a medical prognosis 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 himself or herself 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; and

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

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

(f) [(e)] If the court determines it is necessary, the court may appoint the necessary physicians or advanced practice registered nurses to examine the ward in the same manner and to the same extent as a ward is examined by a physician or

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based on an examination by an advanced practice registered nurse must be signed by the supervising physician. [FA1(6)]

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

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

- (A) provide food, clothing, and shelter for himself or herself;
- (B) care for the ward's own physical health; and
- (C) manage the ward's financial affairs;

(2) provide a medical prognosis 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 himself or herself 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; and

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

(e) For purposes of Subsection (d), the opinion of an advanced practice registered nurse that is based on an examination of a ward conducted by the advanced practice registered nurse under delegation from and supervision by a physician and is signed by the supervising physician is considered the supervising physician's opinion. [FA1(7)]

(f) [(e)] If the court determines it is necessary, the court may appoint the necessary physicians or advanced practice registered nurses to examine the ward in the same manner and to the same extent as a ward is examined by a physician or

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<u>advanced practice registered nurse</u> under Section 1101.103 or 1101.104.	<u>advanced practice registered nurse</u> under Section 1101.103 or 1101.104.	
SECTION 7. The changes in law made by this Act apply only to an application for the appointment of a guardian, for the complete restoration of a ward's capacity, or for the modification of a guardianship that is filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.	SECTION 7. Same as House version.	
SECTION 8. This Act takes effect September 1, 2023.	SECTION 8. Same as House version.	