

BILL ANALYSIS

Senate Research Center
81R31498 KFF-D

H.B. 3112
By: Hartnett (Nelson)
Health & Human Services
5/20/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill is intended to streamline guardianship assessments and determinations.

The bill directs the Department of Aging and Disability Services (DADS), when assessing an elderly or disabled person for guardianship services, to make guardianship determinations within 70 days after Adult Protective Services' referral and if DADS guardianship is appropriate, file the application to be appointed guardian. If a less restrictive alternative is available, DADS must refer the individual to that person or program no later than the 70th day after DADS received the referral.

Also, with Department of Family and Protective Services approval, DADS may extend the period to make guardianship determinations by up to 30 days if the extension is made in good faith and is in the best interest of the elderly or disabled individual.

H.B. 3112 amends current law relating to the referral of an elderly or disabled person to DADS and the determination by DADS of the need for a guardianship for that person.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 161.101, Human Resources Code, by amending Subsections (b) and (c) and adding Subsections (c-1) and (c-2), as follows:

(b) Requires the Department of Aging and Disability Services (DADS) to conduct a thorough assessment of the conditions and circumstances of an elderly or disabled person referred to DADS under Section 48.209(a)(2) (relating to a requirement that DADS refer a person for guardianship services if the person is an elderly or disabled person who meets certain requirements) for guardianship services to determine whether a guardianship is appropriate for the individual or whether a less restrictive alternative is available for the individual.

(c) Provides that subject to Subsection (c-1), if after conducting an assessment of an elderly or disabled person under Subsection (b) DADS determines that:

(1) guardianship is appropriate for the elderly or disabled person, DADS is required to take certain actions, including if DADS determines that an alternative person or program described by Section 161.102 (Referral to Guardianship Program, Court, or Other Person) is available to serve as guardian, refer the individual to that person or program as provided by that section; or

(2) a less restrictive alternative to guardianship is available for the elderly or disabled person, DADS is required to pursue the less restrictive alternative instead of taking an action described by Subdivision (1). Deletes existing text requiring DADS, if after conducting the assessment DADS determines that a less restrictive alternative to guardianship is available for the elderly or disabled person, to

pursue the less restrictive alternative instead of applying for appointment as the person's guardian. Makes nonsubstantive changes.

(c-1) Requires DADS, not later than the 70th day after the date DADS receives a referral under Section 48.209(a)(2) for guardianship services, to make the determination required by Subsection (c) and, if DADS determines that guardianship is appropriate and that DADS should serve as guardian, file the application to be appointed guardian under Section 682 (Application; Contents) or 875 (Temporary Guardian—Procedure), Texas Probate Code. Requires DADS, if DADS determines that an alternative person or program described by Section 161.102 is available to serve as guardian, to refer the elderly or disabled person to that person or program in a manner that would allow the person or program sufficient time to file, not later than the 70th day after the date DADS received the referral, an application to be appointed guardian.

(c-2) Authorizes DADS, with the approval of the Department of Family and Protective Services (DFPS), to extend, by not more than 30 days, a period described by Subsection (c-1) if the extension is made in good faith, including any extension for a person or program described by Section 161.102 that intends to file an application to be appointed guardian, and in the best interest of the elderly or disabled person.

SECTION 2. Provides that changes in law made by this Act apply to a referral of a person by DFPS to DADS for a determination of the need for a guardianship that is made on or after the effective date of this Act.

SECTION 3. Effective date: September 1, 2009.