

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1325
By: Zaffirini
State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As the 1993 “Guardianship Laws and Practices in Texas” report by the Senate Interim Committee on Health and Human Services stated so lucidly: “If everyone had someone who cared enough to help with basic decisions when they are unable to proceed on their own, there would be no need for the state or county or any private entity to get involved in guardianship. Unfortunately, this is not the case. There are, undoubtedly, thousands of Texans in need of assistance but with no one to provide it, and all indications are that the numbers are going to get bigger instead of smaller.” This statement was written 24 years ago, and our population, especially in the 65 and older category, has grown significantly since then, yet Texas still does not guarantee a guardian of last resort.

Currently, judges are given the responsibility of appointing guardians for persons who are unable to reasonably care for themselves or their property. In the majority of cases, a spouse, adult child, other family member, or close acquaintance files the petition to be the person’s guardian. In some cases, there is no family member or friend who is qualified, available, or willing to serve as a guardian, and the court may have to ask a guardianship program, a Health and Human Services Commission’s guardian, or an attorney to serve as the guardian in these situations. Due to the complexity of the person’s disabilities, the person’s ability to pay, or the potential guardian’s lack of resources, potential guardians may refuse to serve. In some instances, this places the judge and the person in need in a dire situation where the judge becomes desperate enough to appoint someone despite their shortcomings. A guardian of last resort is an entity that would tackle these difficult situations where no family members or guardianship service providers are an option. Without a guardian of last resort, the State of Texas is exposing our most vulnerable population to considerable risk.

S.B. 1325 provides a clear legal framework for counties interested in establishing an office of public guardian or contracting with a nonprofit guardianship program to be the guardian of last resort. These entities would serve as guardians for persons who have no family members qualified to serve as guardian, lack resources to pay for a private guardian, and do not qualify for alternatives to guardianship. These changes would provide counties with the legal certainty and procedures to establish successfully guardian of last resort programs that ensure that no vulnerable Texan is placed at risk. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1325 amends current law relating to authorizing counties to establish public guardians to serve as guardians for certain incapacitated persons.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 3 (Section 1104.338, Estates Code) and in SECTION 15 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 1002, Estates Code, by adding Sections 1002.0215 and 1002.0265, as follows:

Sec. 1002.0215. OFFICE OF PUBLIC GUARDIAN. Defines "office of public guardian."

Sec. 1002.0265. PUBLIC GUARDIAN. Defines "public guardian."

SECTION 2. Amends Section 1104.251(a), Estates Code, as follows:

(a) Requires an individual to be certified under Subchapter C (Regulation of Certain Guardians), Chapter 155 (Guardianship Certification), Government Code, if the individual:

(1) and (2) makes no changes to these subdivisions;

(3) makes a nonsubstantive change;

(4) replaces reference to the Department of Aging and Disability Services (DADS) with the Health and Human Services Commission (HHSC) and makes a conforming change;

(5) is a public guardian; or

(6) will represent the interests of a ward as a guardian on behalf of a public guardian.

SECTION 3. Amends Chapter 1104, Estates Code, by adding Subchapter G-1, as follows:

SUBCHAPTER G-1. PUBLIC GUARDIANS

Sec. 1104.326. DEFINITION. Defines "office."

Sec. 1104.327. ESTABLISHMENT OF OFFICES; PUBLIC GUARDIANS. (a) Authorizes the commissioners court of a county (commissioners court), by order, to create an office of public guardian (office) to provide guardianship services to incapacitated persons, or enter into an agreement with a person operating a nonprofit guardianship program or private professional guardianship program located in the county or in an adjacent county to act as a public guardian by providing guardianship services to incapacitated persons.

(b) Requires the commissioners court, subject to Subsection (c) and Section 1104.328, to appoint an individual as public guardian to administer the office and authorizes the commissioners court to employ or authorize the public guardian to employ personnel necessary to perform the duties of the office, including personnel who will represent the interests of a ward as a guardian on behalf of the office if approved by the commissioners court.

(c) Authorizes the commissioners court to appoint an individual to act as public guardian under Subsection (b) on a part-time basis with appropriate compensation if the commissioners court determines a full-time appointment does not serve the needs of the county and if the individual who is appointed on a part-time basis is not employed in or does not hold another position that presents a conflict of interest.

(d) Authorizes the commissioners courts of two or more counties to collectively enter into an agreement to create and fund an office for purposes of Subsection (a)(1) and to appoint the same individual as public guardian to that office under Subsection (b), or with a person operating a guardianship program described by Subsection (a)(2) to serve as a public guardian for purposes of that subdivision.

(e) Provides that an individual appointed as public guardian under Subsection (b) serves a term of five years.

Sec. 1104.328. QUALIFICATIONS OF PUBLIC GUARDIAN. Requires an individual, to be appointed as public guardian, to be a licensed attorney or be certified under

Subchapter C, Chapter 155, Government Code, and have demonstrable guardianship experience.

Sec. 1104.329. CONFLICT OF INTEREST. (a) Requires that, except as provided by Subsection (b), an office be independent from providers of services to wards and proposed wards and prohibits an office from directly providing housing, medical, legal, or other direct, non-surrogate decision-making services to a ward or proposed ward, unless approved by the court.

(b) Authorizes an office or public guardian to provide money management services described by Section 531.125 (Grants), Government Code, or other representative payee services to a ward or proposed ward.

Sec. 1104.330. COMPENSATION. Requires that a person appointed or acting as public guardian receive compensation as set by the commissioners court and provides that the person is not entitled to compensation under Subchapter A (Compensation of Guardians in General), Chapter 1155 (Compensation, Expenses, and Court Costs) unless approved by the court.

Sec. 1104.331. BOND REQUIREMENT. (a) Requires a public guardian to file with the court clerk a general bond in an amount fixed by the commissioners court payable to the county and issued by a surety company approved by the county judge. Requires that the bond be conditioned on the faithful performance by the person of the person's duties and, if the public guardian administers an office, the office's duties.

(b) Provides that the bond required by this section satisfies any bond required under Chapter 1105 (Qualification of Guardians).

Sec. 1104.332. VACANCY. Requires the commissioners court, if an individual appointed as public guardian under Section 1104.327(b) vacates the position, to appoint an individual, subject to Section 1104.328, to serve as public guardian for the unexpired term.

Sec. 1104.333. POWERS AND DUTIES. (a) Requires an office or public guardian to:

(1) if applicable, evaluate the financial status of a proposed ward to determine whether the proposed ward is eligible to have the office or public guardian appointed guardian of the ward under Section 1104.334(a)(2)(A); and

(2) serve as guardian of the person or of the estate of a ward, or both, on appointment by a court in accordance with the requirements of this title (Guardianship and Related Procedures).

(b) Authorizes a court with jurisdiction over the guardianship proceeding, in connection with a financial evaluation and on the request of an office or public guardian, to order the release of public and private records, including otherwise confidential records, to the office or public guardian.

(c) Prohibits a state agency, notwithstanding Section 552.261 (Charge for Providing Copies of Public Information), Government Code, from charging an office or public guardian for providing the office or public guardian with a copy of public information requested from the agency by the office or public guardian.

Sec. 1104.334. APPOINTMENT OF OFFICE OR PUBLIC GUARDIAN AS GUARDIAN. (a) Authorizes a court, in accordance with applicable law, including Subchapter C (Determination of Necessity of Guardianship; Findings and Proof), Chapter 1101 (General Procedure to Appoint Guardian), to appoint an office or public guardian to serve as guardian of the person or of the estate of a ward, or both, if certain conditions exist.

(b) Provides that, for purposes of Subsection (a)(2)(A) (relating to authorizing a court to appoint a certain guardian if the court finds that the ward does not have sufficient assets or resources to pay a private professional guardian to serve), the determination of a ward's ability to pay a private professional guardian is dependent on certain factors.

(c) Prohibits the number of appointments of an office from exceeding 35 wards for each guardian representing the interests of wards on behalf of the office.

(d) Requires an office, if each guardian representing the interests of wards on behalf of an office reaches the limitation provided by Subsection (c), to immediately give notice to the courts.

Sec. 1104.335. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION. (a) Provides that all files, reports, records, communications, or working papers used or developed by an office or public guardian in the performance of duties relating to a financial evaluation or the provision of guardianship services are confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

(b) Authorizes confidential information to be disclosed only for a purpose consistent with this subchapter, as required by other state or federal law, or as necessary to enable an office or public guardian to exercise the powers and duties as guardian of the person or of the estate of a ward, or both.

(c) Authorizes a court on its own motion or on the motion of an interested person to order disclosure of confidential information only if certain conditions are met regarding a hearing on the motion.

(d) Requires the Office of Court Administration of the Texas Judicial System (OCA) to establish policies and procedures for the exchange of information between offices, public guardians, and other appropriate governmental entities, as necessary for offices, public guardians, and governmental entities to properly execute their respective duties and responsibilities relating to guardianship services or other needed services for a ward. Provides that an exchange of information under this subsection does not constitute a release for purposes of waiving the confidentiality of the information exchanged.

(e) Authorizes an office or public guardian on request, to the extent consistent with policies and procedures adopted by the office or public guardian, to release confidential information in the record of an individual who is a former ward of the office or public guardian to the individual, the individual's guardian, or an executor or administrator of the individual's estate.

(f) Requires an office or public guardian, before releasing confidential information, to edit the information to protect the identity of any individual whose life or safety may be endangered by the release. Provides that a release of information does not constitute a release for purposes of waiving the confidentiality of the information released.

Sec. 1104.336. CERTAIN ADMINISTRATIVE COSTS. (a) Prohibits the administrative costs of the guardianship services provided to the ward, if an office or public guardian is appointed guardian of the person or of the estate of a ward, or both, from being charged to the ward's estate unless the court determines, subject to Subsection (b), that the ward is financially able to pay all or part of the costs.

(b) Requires a court to measure a ward's ability to pay for costs by whether the ward has sufficient assets or other resources to pay a private professional guardian to serve as the ward's guardian.

Sec. 1104.337. OFFICE OF COURT ADMINISTRATION OF THE TEXAS JUDICIAL SYSTEM; REPORT. (a) Requires OCA, not later than December 1 of each even-numbered year, to submit a report to the governor and the legislature that contains an evaluation of public guardians, including the establishment and operations of offices and the provision of guardianship services by the offices. Requires that the report include an analysis of costs and offsetting savings or other benefits to the state as a result of the establishment and operation of offices and public guardians and recommendations for legislation, if any.

(b) Authorizes OCA, if it is cost-effective and feasible, to contract with an appropriate research or public policy entity with expertise in gerontology, disabilities, and public administration to conduct the described analysis.

Sec. 1104.338. RULES. Requires the Texas Supreme Court (supreme court), in consultation with OCA and the presiding judge of the statutory probate courts elected under Section 25.0022 (Administration of Statutory Probate Courts), Government Code, to adopt rules necessary to implement this subchapter.

SECTION 4. Amends Section 1104.402(a), Estates Code, as follows:

(a) Requires the clerk of the county having venue of the proceeding for the appointment of a guardian, except as provided by Section 1104.403 (Submission of Criminal History Record Information by Proposed Guardian), 1104.404 (Exception for Information Concerning Certain Persons Holding a Certificate), or 1104.406(a) (relating to requiring DADS to obtain criminal history record information about certain individuals), to obtain criminal history record information that is maintained by the Texas Department of Public Safety (DPS) or the Federal Bureau of Investigation (FBI) identification division relating to:

(1) to (3) makes no changes to these subdivisions;

(4) makes a nonsubstantive change;

(5) a public guardian appointed under Section 1104.327(b);

(6) each person who represents or plans to represent the interests of a ward as a guardian on behalf of an office;

(7) each person employed by an office who will have personal contact with a ward or proposed ward, exercise control over and manage a ward's estate, or perform any duties with respect to the management of a ward's estate; or

(8) creates this subdivision from existing text and makes no further changes to this subdivision.

SECTION 5. Amends Section 1104.409, Estates Code, to require the court to use the information obtained under this subchapter (Access to Criminal History Records) only in determining whether to appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, an office, or HHSC, rather than DADS, and makes no further changes to this section.

SECTION 6. Amends Section 1155.151(a-2), Estates Code, to include a governmental entity, including an office, among certain entities not required to pay court costs on the filing of or during a guardianship proceeding and makes no further changes to this subsection.

SECTION 7. Amends Section 1163.005(a), Estates Code, as follows:

(a) Requires the guardian of the estate to attach to an annual account the guardian's affidavit stating:

(1) through (4) makes no changes to these subdivisions; and

(5) if the guardian is a private professional guardian, a guardianship program, an office, or HHSC, whether the guardian or an individual certified under Subchapter C, Chapter 155, rather than a private professional guardian, a guardianship program, or DADS, whether the guardian or an individual certified under Subchapter C, Chapter 111, Government Code, who is providing guardianship services to the ward and who is swearing to the account on the guardian's behalf, is or has been the subject of an investigation conducted by the Judicial Branch Certification Commission (JBCC), rather than by the Guardianship Certification Commission, during the accounting period.

SECTION 8. Amends Section 1163.101(c), Estates Code, as follows:

(c) Requires the guardian of the person to file a sworn affidavit that contains:

(1) to (8) makes no changes to these subdivisions;

(9) if the guardian is a private professional guardian, a guardianship program, an office, or HHSC, whether the guardian or an individual certified under Subchapter C, Chapter 155, Government Code, who is providing guardianship services to the ward and who is filing the affidavit on the guardian's behalf, is or has been the subject of an investigation conducted by JBCC, rather than by the Guardianship Certification Board, during the preceding year and makes a conforming change; and

(10) makes no changes to this subdivision.

SECTION 9. Amends Section 155.001, Government Code, by amending Subdivisions (4) and (6) to redefine "guardianship program" and "private professional guardian" and adding Subdivisions (5-a) and (6-a) to define "office of public guardian" and "public guardian."

SECTION 10. Amends Section 155.101(a), Government Code, as follows:

(a) Requires JBCC to adopt minimum standards for:

(1) makes no changes to this subdivision;

(2) the provision of guardianship services by HHSC; and

(3) the provision of guardianship services by offices.

Changes reference to DADS to HHSC.

SECTION 11. Amends Section 155.102(a), Government Code, as follows:

(a) Requires the following individuals, to provide guardianship services in this state, to hold a certificate issued under this section:

(1) makes no changes to this subdivision;

(2) makes a nonsubstantive change;

(3) makes conforming changes to this subdivision;

(4) an individual who is a public guardian; and

(5) an individual who will provide those services to a ward of an office.

SECTION 12. Amends Section 155.105, Government Code, by adding Subsection (b-1), to require each office, not later than January 31 of each year, to provide to JBCC a report containing certain information for the preceding year.

SECTION 13. Amends Section 411.1386(a), Government Code, as follows:

(a) Requires, except as provided by Subsections (a-1), (a-5), and (a-6), the clerk of the county having venue over a proceeding for the appointment of a guardian under Title 3, Estates Code, to obtain from DPS criminal history record information maintained by DPS that relates to:

(1) to (3) makes no changes to these subdivisions;

(4) makes a nonsubstantive change;

(5) a public guardian as defined by Section 1002.0265(1), Estates Code;

(6) each person who represents or plans to represent the interests of a ward as a guardian on behalf of an office;

(7) each person employed by an office who will have personal contact with a ward or proposed ward, exercise control over and manage a ward's estate, or perform any duties with respect to the management of a ward's estate; or

(8) creates this subdivision from existing text and makes no further changes to this subdivision.

SECTION 14. Amends Section 161.103, Human Resources Code, as follows:

Sec. 161.103. CONTRACT FOR GUARDIANSHIP SERVICES. (a) Creates this subsection from existing text and replaces reference to DADS to HHSC.

(b) Authorizes a contract under Subsection (a) (relating to authorizing HHSC to contract with certain entities for the provision of guardianship services) to allow for the provision of guardianship services by an office.

SECTION 15. Requires the supreme court, not later than January 1, 2018, to adopt rules necessary to implement Subchapter G-1, Chapter 1104, Estates Code, as added by this Act, including rules governing the transfer of a guardianship of the person or of the estate of a ward, or both, if appropriate, to an office established under that subchapter or a public guardian contracted under that subchapter.

SECTION 16. (a) Provides that the changes in law made by this Act apply only to the appointment of a guardian of the person or of the estate of a ward, or both, made on or after July 1, 2018.

(b) Authorizes a person who, immediately before July 1, 2018, notwithstanding any other law, is serving as guardian of the person or of the estate of a ward, or both, who, under Section 1104.334, Estates Code, as added by this Act, would be eligible for appointment of an office as the ward's guardian, to continue to serve as guardian of the person or of the estate of the ward, or both, unless otherwise removed as provided by law.

SECTION 17. Effective date: September 1, 2017.