

1-1 By: VanDeaver (Senate Sponsor - Zaffirini) H.B. No. 3009
1-2 (In the Senate - Received from the House May 12, 2023;
1-3 May 12, 2023, read first time and referred to Committee on
1-4 Jurisprudence; May 21, 2023, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 21, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			

1-13 A BILL TO BE ENTITLED
1-14 AN ACT

1-15 relating to the health care providers authorized to examine a
1-16 person to determine whether the person is incapacitated for
1-17 purposes of certain guardianship proceedings.

1-18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-19 SECTION 1. Subchapter C, Chapter 1101, Estates Code, is
1-20 amended by adding Sections 1101.100 and 1101.1011 to read as
1-21 follows:

1-22 Sec. 1101.100. DEFINITIONS. In this subchapter:

1-23 (1) "Advanced practice registered nurse" has the
1-24 meaning assigned by Section 301.152, Occupations Code.

1-25 (2) "Physician" means an individual licensed by the
1-26 Texas Medical Board to practice medicine in this state.

1-27 Sec. 1101.1011. LIMITATION ON ACTS BY ADVANCED PRACTICE
1-28 REGISTERED NURSE. An advanced practice registered nurse may act
1-29 under this subchapter only if the advanced practice registered
1-30 nurse is acting under a physician's delegation authority and
1-31 supervision in accordance with Chapter 157, Occupations Code.

1-32 SECTION 2. Section 1101.103, Estates Code, is amended to
1-33 read as follows:

1-34 Sec. 1101.103. DETERMINATION OF INCAPACITY OF CERTAIN
1-35 ADULTS: HEALTH CARE PROVIDER [PHYSICIAN] EXAMINATION. (a) Except
1-36 as provided by Section 1101.104, the court may not grant an
1-37 application to create a guardianship for an incapacitated person,
1-38 other than a minor or person for whom it is necessary to have a
1-39 guardian appointed only to receive funds from a governmental
1-40 source, unless the applicant presents to the court a written letter
1-41 or certificate from a physician or advanced practice registered
1-42 nurse [licensed in this state] that is:

1-43 (1) dated not earlier than the 120th day before the
1-44 date the application is filed; and

1-45 (2) based on an examination the physician or advanced
1-46 practice registered nurse performed not earlier than the 120th day
1-47 before the date the application is filed.

1-48 (b) The letter or certificate must:

1-49 (1) describe the nature, degree, and severity of the
1-50 proposed ward's incapacity, including any functional deficits
1-51 regarding the proposed ward's ability to:

1-52 (A) handle business and managerial matters;

1-53 (B) manage financial matters;

1-54 (C) operate a motor vehicle;

1-55 (D) make personal decisions regarding residence,
1-56 voting, and marriage; and

1-57 (E) consent to medical, dental, psychological,
1-58 or psychiatric treatment;

1-59 (2) in providing a description under Subdivision (1)
1-60 regarding the proposed ward's ability to operate a motor vehicle
1-61 and make personal decisions regarding voting, state whether in the

2-1 physician's opinion the proposed ward:
 2-2 (A) has the mental capacity to vote in a public
 2-3 election; and
 2-4 (B) has the ability to safely operate a motor
 2-5 vehicle;
 2-6 (3) provide an evaluation of the proposed ward's
 2-7 physical condition and mental functioning and summarize the
 2-8 proposed ward's medical history if reasonably available;
 2-9 (3-a) in providing an evaluation under Subdivision (3),
 2-10 state whether improvement in the proposed ward's physical condition
 2-11 and mental functioning is possible and, if so, state the period
 2-12 after which the proposed ward should be reevaluated to determine
 2-13 whether a guardianship continues to be necessary;
 2-14 (4) state how or in what manner the proposed ward's
 2-15 ability to make or communicate responsible decisions concerning
 2-16 himself or herself is affected by the proposed ward's physical or
 2-17 mental health, including the proposed ward's ability to:
 2-18 (A) understand or communicate;
 2-19 (B) recognize familiar objects and individuals;
 2-20 (C) solve problems;
 2-21 (D) reason logically; and
 2-22 (E) administer to daily life activities with and
 2-23 without supports and services;
 2-24 (5) state whether any current medication affects the
 2-25 proposed ward's demeanor or the proposed ward's ability to
 2-26 participate fully in a court proceeding;
 2-27 (6) describe the precise physical and mental
 2-28 conditions underlying a diagnosis of a mental disability, and state
 2-29 whether the proposed ward would benefit from supports and services
 2-30 that would allow the individual to live in the least restrictive
 2-31 setting;
 2-32 (6-a) state whether a guardianship is necessary for the
 2-33 proposed ward and, if so, whether specific powers or duties of the
 2-34 guardian should be limited if the proposed ward receives supports
 2-35 and services; and
 2-36 (7) include any other information required by the
 2-37 court.
 2-38 (b-1) For purposes of Subsection (b)(2), the opinion of an
 2-39 advanced practice registered nurse that is based on an examination
 2-40 of a proposed ward conducted by the advanced practice registered
 2-41 nurse under delegation from and supervision by a physician and is
 2-42 signed by the supervising physician is considered the delegating
 2-43 physician's opinion.
 2-44 (c) If the court determines it is necessary, the court may
 2-45 appoint the necessary physicians or advanced practice registered
 2-46 nurses to examine the proposed ward. The court must make its
 2-47 determination with respect to the necessity for a physician's or
 2-48 advanced practice registered nurse's examination of the proposed
 2-49 ward at a hearing held for that purpose. Not later than the fourth
 2-50 day before the date of the hearing, the applicant shall give to the
 2-51 proposed ward and the proposed ward's attorney ad litem written
 2-52 notice specifying the purpose and the date and time of the hearing.
 2-53 (d) A physician or advanced practice registered nurse who
 2-54 examines the proposed ward, other than a physician, advanced
 2-55 practice registered nurse, or psychologist who examines the
 2-56 proposed ward under Section 1101.104(2), shall make available for
 2-57 inspection by the attorney ad litem appointed to represent the
 2-58 proposed ward a written letter or certificate from the physician or
 2-59 advanced practice registered nurse that complies with the
 2-60 requirements of Subsections (a) and (b).
 2-61 SECTION 3. Section 1101.104, Estates Code, is amended to
 2-62 read as follows:
 2-63 Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING
 2-64 INTELLECTUAL DISABILITY. (a) If an intellectual disability is the
 2-65 basis of the proposed ward's alleged incapacity, the court may not
 2-66 grant an application to create a guardianship for the proposed ward
 2-67 unless the applicant presents to the court a written letter or
 2-68 certificate that:
 2-69 (1) complies with Sections 1101.103(a) and (b); or

3-1 (2) shows that not earlier than 24 months before the
 3-2 hearing date:
 3-3 (A) the proposed ward has been examined by a
 3-4 physician or advanced practice registered nurse or by a
 3-5 psychologist licensed in this state or certified by the Health and
 3-6 Human [Department of Aging and Disability] Services Commission to
 3-7 perform the examination, in accordance with rules of the executive
 3-8 commissioner of the commission [Health and Human Services
 3-9 Commission] governing examinations of that kind, and the
 3-10 [physician's or psychologist's] written findings and
 3-11 recommendations include a determination of an intellectual
 3-12 disability; or

3-13 (B) a physician or advanced practice registered
 3-14 nurse or a psychologist licensed in this state or certified by the
 3-15 Health and Human [Department of Aging and Disability] Services
 3-16 Commission to perform examinations described by Paragraph (A)
 3-17 updated or endorsed in writing a prior determination of an
 3-18 intellectual disability for the proposed ward made by a physician
 3-19 or by a psychologist licensed in this state or certified by the
 3-20 commission [department].

3-21 (b) For purposes of Subsection (a)(2)(B), the determination
 3-22 of an advanced practice registered nurse that is based on an
 3-23 examination of a proposed ward conducted by the advanced practice
 3-24 registered nurse under delegation from and supervision by a
 3-25 physician and is signed by the supervising physician is considered
 3-26 the delegating physician's determination.

3-27 SECTION 4. Section 1102.002, Estates Code, is amended to
 3-28 read as follows:

3-29 Sec. 1102.002. ESTABLISHMENT OF PROBABLE CAUSE FOR
 3-30 INVESTIGATION. (a) In this section:

3-31 (1) "Advanced practice registered nurse" has the
 3-32 meaning assigned by Section 301.152, Occupations Code.

3-33 (2) "Physician" has the meaning assigned by Section
 3-34 1101.100.

3-35 (b) An advanced practice registered nurse may act under this
 3-36 section only if the advanced practice registered nurse is acting
 3-37 under a physician's delegation authority and supervision in
 3-38 accordance with Chapter 157, Occupations Code.

3-39 (c) To establish probable cause under Section 1102.001, the
 3-40 court may require:

3-41 (1) an information letter about the person believed to
 3-42 be incapacitated that is submitted by an interested person and
 3-43 satisfies the requirements of Section 1102.003; or

3-44 (2) a written letter or certificate from a physician
 3-45 or advanced practice registered nurse who has examined the person
 3-46 believed to be incapacitated that satisfies the requirements of
 3-47 Section 1101.103, except that the letter must be:

3-48 (A) dated not earlier than the 120th day before
 3-49 the date of the appointment of a guardian ad litem or court
 3-50 investigator under Section 1102.001; and

3-51 (B) based on an examination the physician or
 3-52 advanced practice registered nurse performed not earlier than the
 3-53 120th day before that date.

3-54 SECTION 5. Section 1202.054(b-1), Estates Code, is amended
 3-55 to read as follows:

3-56 (b-1) A written letter or certificate from a physician or
 3-57 advanced practice registered nurse as described by Section 1202.152
 3-58 is not required before the appointment of the court investigator or
 3-59 a guardian ad litem under Subsection (b).

3-60 SECTION 6. Section 1202.152, Estates Code, is amended to
 3-61 read as follows:

3-62 Sec. 1202.152. HEALTH CARE PROVIDER'S [PHYSICIAN'S] LETTER
 3-63 OR CERTIFICATE REQUIRED. (a) In this section:

3-64 (1) "Advanced practice registered nurse" has the
 3-65 meaning assigned by Section 301.152, Occupations Code.

3-66 (2) "Physician" has the meaning assigned by Section
 3-67 1101.100.

3-68 (b) An advanced practice registered nurse may act under this
 3-69 section only if the advanced practice registered nurse is acting

4-1 under a physician's delegation authority and supervision in
4-2 accordance with Chapter 157, Occupations Code.

4-3 (c) The court may not grant an order completely restoring a
4-4 ward's capacity or modifying a ward's guardianship under an
4-5 application filed under Section 1202.051 unless the applicant
4-6 presents to the court a written letter or certificate from a
4-7 physician or advanced practice registered nurse licensed in this
4-8 state that is dated:

4-9 (1) not earlier than the 120th day before the date the
4-10 application was filed; or

4-11 (2) after the date the application was filed but
4-12 before the date of the hearing.

4-13 (d) ~~[(b)]~~ A letter or certificate presented under
4-14 Subsection (c) ~~[(a)]~~ must:

4-15 (1) describe the nature and degree of incapacity,
4-16 including the medical history if reasonably available, or state
4-17 that, in the physician's opinion, the ward has the capacity, or
4-18 sufficient capacity with supports and services, to:

4-19 (A) provide food, clothing, and shelter for
4-20 himself or herself;

4-21 (B) care for the ward's own physical health; and

4-22 (C) manage the ward's financial affairs;

4-23 (2) provide a medical prognosis specifying the
4-24 estimated severity of any incapacity;

4-25 (3) state how or in what manner the ward's ability to
4-26 make or communicate responsible decisions concerning himself or
4-27 herself is affected by the ward's physical or mental health;

4-28 (4) state whether any current medication affects the
4-29 ward's demeanor or the ward's ability to participate fully in a
4-30 court proceeding;

4-31 (5) describe the precise physical and mental
4-32 conditions underlying a diagnosis of senility, if applicable; and

4-33 (6) include any other information required by the
4-34 court.

4-35 (e) For purposes of Subsection (d), the opinion of an
4-36 advanced practice registered nurse that is based on an examination
4-37 of a ward conducted by the advanced practice registered nurse under
4-38 delegation from and supervision by a physician and is signed by the
4-39 supervising physician is considered the delegating physician's
4-40 opinion.

4-41 (f) ~~[(e)]~~ If the court determines it is necessary, the court
4-42 may appoint the necessary physicians or advanced practice
4-43 registered nurses to examine the ward in the same manner and to the
4-44 same extent as a ward is examined by a physician or advanced
4-45 practice registered nurse under Section 1101.103 or 1101.104.

4-46 SECTION 7. The changes in law made by this Act apply only to
4-47 an application for the appointment of a guardian, for the complete
4-48 restoration of a ward's capacity, or for the modification of a
4-49 guardianship that is filed on or after the effective date of this
4-50 Act. An application filed before the effective date of this Act is
4-51 governed by the law in effect on the date the application was filed,
4-52 and the former law is continued in effect for that purpose.

4-53 SECTION 8. This Act takes effect September 1, 2023.

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