

## **BILL ANALYSIS**

Senate Research Center

H.B. 3009  
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Jurisprudence  
5/16/2023  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The medical condition and mental state of a person proposed for guardianship must be considered by the court in a guardianship proceeding. An initial "gatekeeping" function of this process is that a physician complete a physician's certificate of evaluation for the proposed person.

Under current law, only a licensed physician can complete the required letter or certificate setting forth the health and mental condition of the person proposed for guardianship. An increasing number of persons, however, rely on advanced practice registered nurses (APRNs) or nurse practitioners as health care providers.

H.B. 3009 would permit judges to consider a letter or certificate from an APRN or nurse practitioner regarding the proposed person's health and mental condition. This would give the judge better information on which to base a guardianship decision, and ensure judges continue to make timely and well-informed determinations in guardianship proceedings.

H.B. 3009 amends current law relating to the health care providers authorized to examine a person to determine whether the person is incapacitated for purposes of certain guardianship proceedings.

### **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 Subchapter C, Chapter 1101, Estates Code, by adding Sections 1101.100 and 1101.1011, as follows:

Sec. 1101.100. DEFINITIONS. Defines "advanced practice registered nurse" and "physician."

Sec. 1101.1011. LIMITATION ON ACTS BY ADVANCED PRACTICE REGISTERED NURSE. Authorizes an advanced practice registered nurse to act under Subchapter C (Determination of Necessity of Guardianship; Findings and Proof) only if the advanced practice registered nurse is acting under a physician's delegation authority and supervision in accordance with Chapter 157 (Authority of Physician to Delegate Certain Medical Acts), Occupations Code.

SECTION 2. Amends Section 1101.103, Estates Code, as follows:

Sec. 1101.103. New heading: DETERMINATION OF INCAPACITY OF CERTAIN ADULTS: HEALTH CARE PROVIDER EXAMINATION. (a) Prohibits the court, except as provided by Section 1101.104, from granting 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, rather than from a physician licensed in this state, that is:

(1) makes no changes to this subdivision; and

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

(b) Makes no changes to this subsection.

(b-1) Provides that 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, for purposes of Subsection (b)(2) (relating to requiring that the letter or certificate, in providing a description 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 meets certain criteria), is considered the delegating physician's opinion.

(c)-(d) Makes conforming changes to these subsections.

SECTION 3. Amends Section 1101.104, Estates Code, as follows:

Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING INTELLECTUAL DISABILITY. (a) Creates this subsection from existing text. Prohibits the court, if an intellectual disability is the basis of the proposed ward's alleged incapacity, from granting an application to create a guardianship for the proposed ward unless the applicant presents to the court a written letter or certificate that:

(1) makes no changes to this subdivision; 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 Services Commission (HHSC), rather than the Department of Aging and Disability Services (DADS), to perform the examination, in accordance with rules of the executive commissioner of HHSC governing examinations of that kind, and the written findings and recommendations, rather than the physician's or psychologist's written findings, 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 HHSC, rather than DADS, 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 HHSC, rather than by DADS.

Makes conforming and nonsubstantive changes.

(b) Provides that 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, for purposes of Subsection (a)(2)(B), is considered the delegating physician's determination.

SECTION 4. Amends Section 1102.002, Estates Code, as follows:

Sec. 1102.002. ESTABLISHMENT OF PROBABLE CAUSE FOR INVESTIGATION.

(a) Defines "advanced practice registered nurse" and "physician."

(b) Authorizes an advanced practice registered nurse to 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) Creates this subsection from existing text and makes conforming changes.

SECTION 5. Amends Section 1202.054(b-1), Estates Code, to make a conforming change.

SECTION 6. Amends Section 1202.152, Estates Code, as follows:

Sec. 1202.152. New heading: HEALTH CARE PROVIDER'S LETTER OR CERTIFICATE REQUIRED. (a) Defines "advanced practice registered nurse" and "physician."

(b) Authorizes an advanced practice registered nurse to 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) Makes a conforming change to this subsection.

(d) Redesignates existing Subsection (b) as Subsection (d). Makes nonsubstantive and conforming changes.

(e) Provides that 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, for purposes of Subsection (d) (relating to requiring that a certain letter or certificate meet certain criteria), is considered the delegating physician's opinion.

(f) Redesignates existing Subsection (c) as Subsection (f). Makes conforming changes.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2023.