

SUBJECT: Guardianship matters concerning persons with mental retardation.

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Rose, S. King, J. Davis, Eissler, Herrero, Hughes, Naishtat

0 nays

2 absent — Parker, Pierson

WITNESSES: For —Aaryce Hayes, Advocacy Inc.; Jamie MacLean; (*Registered, but did not testify*: Guy Herman, Statutory Probate Courts of Texas)

BACKGROUND: Probate Code, sec. 687 states that a court may not grant an application to create a guardianship for an incapacitated person unless the applicant presents to the court a written letter or certificate from a physician licensed in Texas that is dated no earlier than 120 days before the filing date. The letter or certificate must:

- describe the nature and degree of incapacity;
- provide a medical prognosis specifying the estimated severity of the incapacity;
- state how the proposed ward's ability to make decisions concerning himself or herself is impaired by the incapacity;
- state whether any current medication may affect the proposed ward's ability to participate in court proceedings;
- describe the precise physical and mental conditions of senility when applicable; and
- include any other information required by the court.

Sec. 687(c) provides that if a proposed ward is determined mentally retarded, the proposed ward must be examined by a physician or psychologist licensed in Texas or certified by the Department of Aging and Disability Service (DADS), unless written documentation filed with the court demonstrates the proposed ward was examined according to the rules adopted by DADS no earlier than 24 months before a scheduled hearing to appoint a guardian. Examinations conducted by a physician or psychologist must be according to rules adopted by DADS and written findings and recommendations must be submitted to the court.

A physician who examines the proposed ward, other than a physician or psychologist under sec. 687(c), must make available to an attorney ad litem a written letter or certificate, including an evaluation of the proposed ward.

DIGEST:

CSHB 1708 would amend Probate Code, sec. 687 to modify the content of a letter or certificate presented with an application for guardianship for an incapacitated person. The letter or certification would have to:

- describe the nature, degree, and severity of incapacity, including any functional deficits regarding the proposed ward's ability to: handle business and managerial matters, manage financial matters, operate a motor vehicle, make personal decisions regarding residence, voting, and marriage, and consent to medical, dental, psychological or psychiatric treatments;
- provide an evaluation of the proposed ward's physical condition and mental function and summarize the proposed ward's medical history;
- state how the proposed ward's ability to make decisions based on himself or herself is impaired by the incapacity, including: understanding or communicating, recognizing familiar objects and individuals, performing simple calculations, reasoning logically, and administering to daily life activities;
- include whether any current medication may affect the proposed ward's ability to participate in court proceedings;
- when applicable, describe the precise physical and mental conditions underlying a diagnosis of dementia, and state whether a specialized placement or medication would benefit the proposed ward; and
- describe the nature of any found developmental disability.

If a physician alleged an incapacity of mental retardation, the court could not grant an application to create a guardianship unless the applicant presented:

- a letter or certificate provided by a physician, or
- a court filing showing that an examination was conducted no earlier than 24 months prior by a physician or psychologist licensed in Texas and certified by DADS, in accordance with rules of the Health and Human Services, and a physician's or psychologist's written findings and recommendations.

The bill would take effect September 1, 2007, and would apply only to applications for the creation of guardianship filed on or after the effective date..