

SUBJECT: Allowing APRN to examine person for incapacity in guardianship cases

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Leach, Davis, Dutton, Julie Johnson, Krause, Middleton,
Moody, Schofield, Smith

0 nays

WITNESSES: For — Ben King; (*Registered, but did not testify*: Dan Finch, Texas
Medical Association; Casey Haney, Texas Nurse Practitioners)

Against — Jeff Miller, Disability Rights Texas; Lauren Hunt; Clifford
Walker; (*Registered, but did not testify*: Guy Herman, Travis County
Probate Court; Craig Hopper)

On — Brian Hill

BACKGROUND: Occupations Code sec. 301.152 defines "advanced practice registered
nurse" as a registered nurse licensed to practice after completing an
advanced educational program. The term includes a nurse practitioner,
nurse midwife, nurse anesthetist, and clinical nurse specialist.

Estates Code ch. 1101, subch. C governs court procedures for determining
whether to appoint a guardian for a proposed ward, and ch. 1102 governs
court procedures for appointing guardians for a person who is
incapacitated. Before a guardian may be appointed, a physician must
examine the person with an alleged incapacity to determine the severity of
the person's alleged incapacity. Ch. 1202 governs court procedures for
modifying or terminating a guardianship.

When a court is deciding whether to appoint a guardian, accurate findings
about a person's mental state and medical conditions must be presented by
a physician. Some parties suggest expanding the list of health care
providers who can evaluate patients to include advanced practice
registered nurses acting under a physician's delegation or supervision.

DIGEST: CSHB 3126 would allow an advanced practice registered nurse (APRN) to act under Estates Code chs. 1101, 1102, and 1202 only if the APRN was acting under a physician's delegation authority and supervision.

The bill would establish that an APRN's opinion based on an examination of a proposed ward that was conducted under a physician's delegation and supervision would be considered the delegating physician's opinion.

The bill also would make conforming changes under current law.

The bill would take effect September 1, 2021, and would apply only to an application for the appointment of a guardian, for the complete restoration of a ward's capacity, or for the modification of a guardianship that was filed on or after the bill's effective date.