

BILL ANALYSIS

Senate Research Center

S.B. 36
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State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently it is not possible for members of the judicial system or the public to determine whether a provider of guardianship services is a legitimate enterprise that complies with certain minimum standards. The Judicial Branch Certification Commission (JBCC) has authority to certify and regulate individual professional guardians, but not guardianship programs which employ one or more individual guardians. These programs only are required to disclose annually to JBCC information regarding the persons with a guardian assigned to the program. S.B. 36 would provide JBCC with the additional authority to register and monitor guardianship programs similar to the way that JBCC oversees court reporting and shorthand reporting firms. This would allow JBCC to ensure that guardianship programs adhere to minimum standards that further the welfare of those under a program's care and would increase transparency. (Original Author's / Sponsor's Statement of Intent)

S.B. 36 amends current law relating to the regulation of certain guardianship programs.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 5 (Section 155.153, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter H, Chapter 1104, Estates Code, by adding Section 1104.359, as follows:

Sec. 1104.359. EFFECT OF LACK OF REQUIRED REGISTRATION. (a) Prohibits a guardianship program (program) from being appointed guardian:

- (1) if the program is not registered as required under Subchapter D, Chapter 155, Government Code;
- (2) if a registration certificate issued to the program under Subchapter D, Chapter 155, Government Code, is expired or refused renewal, or has been revoked and not been reissued; or
- (3) during the time a registration certificate issued to the program under Subchapter D, Chapter 155, Government Code, is suspended.

(b) Provides this section does not prevent the appointment, on the individual's own behalf, of an individual who is employed by or contracts with a program to provide guardianship and related services independently of the program.

SECTION 2. Amends Section 155.101(a), Government Code, to require the Judicial Branch Certification Commission (JBCC) to adopt minimum standards for the provision of guardianship services or other similar but less restrictive types of assistance or services by individuals employed by or contracting with programs to provide the assistance or services on behalf of the programs and private professional guardians; and the provision of guardianship services by the Department of Aging and Disability Services or its successor agency.

SECTION 3. Amends Section 155.102, Government Code, by adding Subsection (a-1) to require that an individual who directly supervises an individual who will provide guardianship services in this state to a ward of a guardianship program hold a certificate issued under this section.

SECTION 4. Amends Subchapter C, Chapter 155, Government Code, by adding Section 155.106, as follows:

Sec. 155.106. PROHIBITED EMPLOYMENT. Prohibits a program from employing an individual to provide, or directly supervising the provision of, guardianship and related services on the program's behalf if a certificate issued to the individual under this subchapter is expired or refused renewal, or has been revoked and not been reissued, or during the time a certificate issued to the individual is suspended.

SECTION 5. Amends Chapter 155, Government Code, by adding Subchapter D, as follows:

SUBCHAPTER D. REGULATION OF GUARDIANSHIP PROGRAMS

Sec. 155.151. APPLICATION OF SUBCHAPTER. Provides that this subchapter does not apply to guardianship and related services provided by a program under a contract with the Health and Human Services Commission (HHSC).

Sec. 155.152. STANDARDS FOR OPERATION OF GUARDIANSHIP PROGRAMS. (a) Requires JBCC, in consultation with HHSC and other interested parties, to adopt minimum standards for the operation of programs.

(b) Requires JBCC to design the standards to monitor and ensure the quality of guardianship and related services provided by programs.

(c) Requires that adopted standards be designed to ensure continued compliance by a program with this chapter and other applicable state law.

Sec. 155.153. REGISTRATION REQUIRED FOR GUARDIANSHIP PROGRAMS. (a) Prohibits a program from providing guardianship and related services to an incapacitated person or other person described by Section 155.001(4) (relating to the definition of "guardianship program") unless the program is registered with and holds a certificate of registration issued by JBCC.

(b) Requires the Texas Supreme Court (supreme court) to adopt rules and procedures for issuing, renewing, suspending, or revoking a registration certificate. Requires that rules adopted by the supreme court:

(1) ensure compliance with the standards adopted under Section 155.152;

(2) provide that JBCC establish qualifications for obtaining and maintaining a registration certificate;

(3) provide that a registration certificate expires on the second anniversary of the date the certificate is issued;

(4) prescribe procedures for accepting complaints and conducting investigations of alleged violations by programs of the adopted standards or certain other violations;

(5) prescribe procedures by which JBCC, after notice and hearing, may suspend or revoke the registration certificate of a program that does not substantially comply with the adopted standards or other provisions of this chapter or other applicable state law; and

(6) prescribe procedures for addressing a guardianship for which a program is the appointed guardian if the program's registration certificate is expired or refused renewal, or has been revoked and not been reissued.

Sec. 155.154. REGISTRATION DATABASE. (a) Requires JBCC to make available on JBCC's Internet website a publicly accessible list of all registered programs. Requires that the list contain, for each program, the information provided under Section 155.105(a) (relating to each program providing a certain annual report to JBCC) and whether the program holds in good standing a registration certificate.

(b) Requires JBCC to update the described list at least quarterly.

SECTION 6. (a) Requires that, as soon as practicable after the effective date of this Act, JBCC and the supreme court adopt the standards and rules, respectively, necessary to implement Subchapter D, Chapter 155, Government Code, as added by this Act.

(b) Provides that a program is not required to hold a registration certificate issued under Section 155.153, Government Code, as added by this Act, until September 1, 2018.

(c) Provides that an individual described by Section 155.102(a-1), Government Code, as added by this Act, is not required to hold a certificate issued under that section until September 1, 2018.

SECTION 7. Effective date: September 1, 2017.