

SUBJECT: Excepting certain assistance for elders from the definition of legal practice

COMMITTEE: Judicial Affairs — committee substitute recommended

VOTE: 7 ayes — Thompson, Hartnett, Deshotel, Garcia, Solis, Talton, Uresti
0 nays
2 absent — Capelo, Hinojosa

WITNESSES: For — Roger Curme, Legal Hotline for Older Texans, Texas Legal Services Center; Guy Herman, Statutory Probate Judges of Texas
Against — None
On — Ray Ferris; Jerry Jones, Texas Academy of Probate Attorneys

BACKGROUND: Government Code, chapter 81, subchapter G prohibits the unauthorized practice of law. Practicing law typically includes providing assistance in choosing and filling out legal forms.

The Texas Department on Aging's 28 area agencies across the state are staffed by people who provide social services for Texans over age 60. When those services involve assisting elderly people with certain legal documents, the area offices work by telephone with attorneys at the department's Austin-based statewide legal hotline.

DIGEST: CSHB 1420 would create an exception to the definition of the practice of law for certain technical advice and help with preparation of legal documents provided by an employee or volunteer working for an area agency on aging. The exception would cover advice and assistance related to creating and executing a medical power of attorney or a designation of a guardian before the need arose. The employee or volunteer would have to:

- ! provide benefits counseling to clients of the area agency and meet the department's requirements for qualifications and training to provide such counseling, including legal assistance and awareness services; and

! have received training and be certified by the department to offer such advice.

The Department on Aging would have to promulgate rules governing the certification of these employees and volunteers.

This bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

CSHB 1420 would maximize the social services and legal resources available to elderly Texans. Currently, attorneys at the Department on Aging's legal hotline must interact on the phone with counselors in the 28 area agencies for those counselors to help elders prepare medical powers of attorney or designate guardians for themselves. This is inefficient, because the forms are available in the Probate Code and the counselors in the area offices can help elders fill out these documents. Allowing them to do so independently would enable the counselors to help more clients, because they would not have to call an attorney to participate in the process. This also would free attorneys at the legal hotline to help more and other types of clients, because the attorneys would spend less time on the phone with the area offices filling out medical powers of attorney and guardian designations.

Counselors at the area agencies on aging already provide similar kinds of assistance and are well versed in this type of counseling. For instance, these counselors already may help elders fill out applications for food stamps, social security disability, and Medicare services. They also can advocate for elders in various kinds of social-service hearings, such as before the Social Security administration and the Texas Department of Human Services. With the proper training, which this bill would require, these counselors could provide competent assistance with medical powers of attorney and guardian designations.

**OPPONENTS
SAY:**

If the Department on Aging provided inadequate training and certification for its counselors, they could cause more harm than good by causing elders to create ineffective documents. Such harm probably would not be discovered until the elder's family or guardian sought to use the document, at which point the elder would be incapacitated and the mistake could not be fixed.

NOTES: The committee substitute eliminated durable powers of attorney from the list in the filed version of types of documents for which employees of an area agency on aging could offer technical advice and assistance.